GRECO Groupe d'Etats contre la corruption
Group of States against corruption

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

DIRECTORATE GENERAL I – LEGAL AFFAIRS
DEPARTMENT OF CRIME PROBLEMS

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Joint First and Second Evaluation Rounds

Evaluation Report on the Republic of Montenegro

Adopted by GRECO
at its 30th Plenary Meeting
(Strasbourg, 9-13 October 2006)

INTRODUCTION

1. The State Union of Serbia and Montenegro joined GRECO on 1 April 2003, i.e. after the close of the First Evaluation Round. Following the referendum organised in Montenegro on 21 May 2006 and the declaration of independence adopted by the National Assembly of Montenegro on 3 June 2006 and in accordance with Article 60 of the Constitutional Charter of the State Union of Serbia and Montenegro, the State Union of Serbia and Montenegro ceased to exist. Subsequently, the Republic of Montenegro has become an independent and sovereign State[1]. The Republic of Montenegro was submitted to a joint evaluation procedure covering the themes of the First and Second Evaluation Rounds (cf. paragraph 3 below). The GRECO Evaluation Team (hereafter referred to as the "GET") was composed of Mr Kazimir ÅBERG, Director of International Affairs, Head of Director–General's Office, Economic Crimes Bureau (Sweden); Mr Jorn GRAVESEN, Detective Chief Superintendent, the Public Prosecutor for Serious Economic Crime (Denmark); Mrs Anca JURMA, Head Prosecutor, International Cooperation Service, National Anticorruption Prosecutor's Office (Romania), and Mr Kęstutis ZABORSKAS, Head of Analytical Organisational Division, Special Investigations Service (Lithuania). This GET, accompanied by a member of the Council of Europe Secretariat, visited the Republic of Montenegro from 13 to 17 June 2005 (Podgorica). Prior to the visits the GET experts were provided with replies to the Evaluation questionnaire (documents Greco Eval I-II (2004) 1E Eval I – Part 1 and Greco Eval I-II (2004) 1E Eval II – Part 2), copies of relevant legislation and other documentation.

2. The GET met with officials from the following State bodies and institutions: Directorate for Anticorruption Initiative, Ministry of Finance, Ministry of Justice, Committee for immunities of the Parliament of the Republic of Montenegro, Ministry of Interior (Legal Department, special operational units: Unit for prevention and suppression of organised crime, Unit for combating economic crime, Witness Protection Unit), Special Prosecutor for Suppression of Organised Crime, Supreme State Prosecutor, Investigative judges, Judges of the Supreme Court, Central Registry of the Commercial Court in Podgorica, Administration for the Prevention of Money Laundering, Public Procurement Commission, Commission for Determination of Conflicts of Interest, Human Resources Directorate, Ombudsman, National Auditing Institution, Department for Local Self-Government of the Ministry of Justice, Local Council of Podgorica, Customs Administration, Agency for Economic Restructuring and Foreign Investment of the Republic of Montenegro and Department of Public Revenues of the Republic of Montenegro. Moreover, the GET met with members of the following non-governmental institutions: NGOs sector, Union of Municipalities, Association of Judges, Association of accountants and auditors, Chamber of Commerce and Association of entrepreneurs.

3. It is recalled that GRECO, in accordance with Article 10.3 of its Statute, agreed that:

- the First Evaluation Round would deal with the following themes:

  - **Independence, specialisation and means available to national bodies engaged in the prevention and fight against corruption[2]:** Guiding Principle 3 (hereafter "GPC 3": authorities in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy); Guiding Principle 7 (hereafter "GPC 7": specialised persons or bodies dealing with corruption, means at their disposal);

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[1] The Committee of Ministers of the Council of Europe agreed in its 967th meeting (14 June 2006) that the Republic of Montenegro's declaration of succession to the Criminal Law Convention on Corruption (ETS No. 173) made it *ipso facto* a member of GRECO.
[2] Themes I and II of the First Evaluation Round

- ❖ **Extent and scope of immunities[3]:** Guiding Principle 6 (hereafter, "GPC 6": immunities from investigation, prosecution or adjudication of corruption); and

- the Second Evaluation Round would deal with the following themes:

  - ❖ **Proceeds of corruption[4]:** Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 19 paragraph 3, 13 and 23 of the Convention;
  - ❖ **Public administration and corruption[5]:** Guiding Principles 9 (public administration) and 10 (public officials);
  - ❖ **Legal persons and corruption[6]:** Guiding Principles 5 (legal persons) and 8 (fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 14, 18 and 19, paragraph 2 of the Convention.

The Federal Republic of Yugoslavia ratified the Criminal Law Convention on Corruption on 18 December 2002, which entered into force on 1 April 2003.

4. The present report was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit to Podgorica. The main objective of the report is to evaluate the effectiveness of measures adopted by the authorities of Republic of Montenegro in order to comply with the requirements deriving from the provisions indicated in paragraph 3. The report presents – for each theme - a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Montenegro in order to improve its level of compliance with the provisions under consideration.

I. OVERVIEW OF ANTI-CORRUPTION POLICY IN THE REPUBLIC OF MONTENEGRO

a. Description of the situation

Perception of corruption

5. The authorities of the Republic of Montenegro consider corruption as "a complex, extremely dangerous and widespread criminal phenomenon". According to the results of a survey carried out in March 2004[7] (sample of 700 persons in the eight biggest Montenegrin municipalities), 76,4% of those interviewed considered corruption and organised crime a major concern. According to the same research, the categories of persons considered as more involved in corruption are: high state officials, doctors, managers in state enterprises, judges, customs' officials and police officers. Serbia and Montenegro, according to Transparency International's corruption perception index 2005, was ranked 97 out of 158 countries (rating 2.8 out of 10).

6. In their replies to GRECO's questionnaire, the authorities of the Republic of Montenegro report that countries in transition, which include the Republic of Montenegro, are more vulnerable to organised criminal groups' activities than other states. They mention extortion (quoted also as "elimination of competition"), money laundering, illegal gambling businesses, robbery, traffic in

[3] Theme III of the First Evaluation Round
[4] Theme I of the Second Evaluation Round
[5] Theme II of the Second Evaluation Round
[6] Theme III of the Second Evaluation Round
[7] Sources "Damar" Agency (provided by the authorities of the Republic of Montenegro).

motor vehicles and prostitution as the main criminal activities of organised groups in the region. There are no systematic statistics on the number of cases of corruption investigated, prosecuted and adjudicated.

Criminal Law

7. In Montenegro, provisions on corruption are set out in the Criminal Code of the Republic of Montenegro (hereafter CC), which was adopted in 2003 and enforced from April 2004[8]. The CC criminalises active and passive bribery of domestic and foreign public officials and in the private sector (Articles 423 and 424). Illegal mediation, misuse of official position, embezzlement and fraud in the performance of duties are also covered by the CC. As regards sanctions, up to fifteen years' imprisonment is provided for passive bribery, and up to five years for active bribery.

8. Corruption committed within the framework of a criminal organisation is not defined as a separate criminal offence but it might be considered as an aggravating circumstance. Establishing - or participating in - a criminal association is a separate criminal offence, sanctioned by up to five years' imprisonment.

Major initiatives

9. At the time of the visit, the Government of the Republic of Montenegro was preparing a "Programme for the Fight against Corruption and Organised Crime" and planning to incorporate it into the set of measures and activities aimed at curbing organised crime and corruption in the country. The afore-mentioned Programme is to be followed by an Action Plan including specific implementation measures (see also paragraph 62)[9].

10. The authorities of the Republic of Montenegro mentioned the Law on Public Procurement and the Law on Financing of Political Parties (adopted in 2001 and 2004 respectively) as major undertakings in the country's efforts to combat corruption in the most vulnerable areas[10]. In particular, the Law on Public Procurement establishes the general principle that tendering procedures must be open for competition. The current public procurement system provides, *inter alia*, for specific commissions (Commission for opening bids, Commission for examination, evaluation and comparison of bids and Award Commission), each of them entrusted with checking the regularity of the tendering procedure at a specific stage, and the obligation to announce any tender exceeding 10,000 Euros to the public, via the Public Procurement Commission web-site. In addition, the contracting authority has the right to announce the tender in the "Official Gazette" or in local or international specialised publications. The Law provides opportunities to suppliers to address complaints to the public entity concerned within 8 days and, if not satisfied by the answer received, to address a new complaint to the Public Procurement Commission. The complaining party may also initiate an administrative procedure against the Commission's decision, before the competent court.

International co-operation

11. The Federal Republic of Yugoslavia ratified the Criminal Law Convention on Corruption on 18 December 2002, the Convention on Laundering, Search, Seizure and Confiscation of the

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[8] The Law on Amendments to the Criminal Code was adopted in July 2006; it entered into force on 2 August 2006.

[9] The Government of Montenegro adopted the "Programme for the Fight against Corruption and Organised Crime" on 28 July 2005. Adoption of its Action Plan followed on 24 August 2006. The Action Plan includes goals, measures, deadlines, competent institutions, indicators of success and risk factors for implementation.

[10] The Montenegrin Parliament adopted a new Law on Public Procurement on 10 July 2006.

Proceeds from Crime and the UN Convention Against Transnational Organised Crime. Serbia and Montenegro is also party to the European Convention on mutual legal assistance in criminal matters, ratified in 2001[11].

12. Following the referendum on the State-status of Montenegro and its subsequent declaration of independence, the Republic of Montenegro has become an independent and sovereign State with full international legal personality. In this connection, a Law on Mutual Legal Assistance to provide for international cooperation in criminal matters is planned for adoption in 2006. Unless otherwise provided by international treaties and until the above-mentioned *lex specialis* is adopted, the procedure of mutual legal assistance, including on corruption cases, is governed by the Law on Criminal Procedure of the Federal Republic of Yugoslavia. According to its provisions, requests from domestic courts for legal assistance have to be forwarded to relevant foreign bodies via the Federal Ministry of Foreign Affairs (Article 518). Requests from foreign bodies for legal assistance are forwarded to domestic courts in the same way. Execution of foreign judgments is only possible if agreed upon in the international treaty and a sanction has been adjudicated by a domestic court, in accordance with the Former Republic of Yugoslavia's criminal legislation (Article 520). As regards operational investigative activities, the authorities of Montenegro state that, in practice, mutual legal assistance in criminal matters is provided upon the request of Ministries of the Interior of other countries which are forwarded to the Ministry of the Interior of the Republic of Montenegro through the Office of the Central National Bureau of Interpol in Belgrade. Likewise, the Montenegrin Ministry of the Interior receives the requests from foreign authorities which are addressed to the Ministry of Justice of the Republic of Montenegro, in all cases when the High Court orders the Ministry of the Interior to perform certain measures and activities.

b. Analysis

13. During recent years, many new pieces of legislation have been adopted by the Montenegrin Parliament, mainly in order to bring the legal framework of the Republic of Montenegro as close as possible to European standards. However, it was clear to the GET that the authorities responsible for applying the new legislation were not always in a position to do so, sometimes because of lack of means but most often because civil servants lacked training and information. It was also clear that legislation had not always been prepared thoroughly enough and often required amending. As an example, the Law on Public Procurement was mentioned to the GET. This situation is conducive to corruption and contributes to creating an important level of uncertainty as it calls for frequent changes to and amendments of existing legislation.

14. The fact that the Republic of Montenegro is a small country, with approximately 620,000 inhabitants, encourages the development of a close-knit community culture reticent to report suspicions of corruption. During the on-site visit, the Ombudsman mentioned the fact that he had received complaints from citizens reporting allegations of corruption. However, these complaints were submitted orally. During the last years, about 70 per cent of state owned property has been subject to privatisation. The procedure is almost completed. Privatisation processes always provide initiatives for corrupt activities, especially in economies in transition. The GET was also told that there is reason to believe that irregularities have occurred in this process. Other sectors mentioned as being affected by corrupt activities are the judiciary, the health care system and public procurement. As already indicated in the descriptive part of the report, the survey carried out in the eight biggest Montenegrin municipalities showed that 76,4 per cent of those

[11] The Republic of Montenegro ratified the Second Additional Protocol to the European Convention on mutual legal assistance in criminal matters in May 2006. In addition, the Republic of Montenegro became a member of Interpol in September 2006.

interviewed considered corruption and organised crime as one of the most important social concerns.

15. Against the background of this challenging situation, no official studies provide a clear insight into the scale of corruption in the country, the forms it takes, the areas mainly affected or its causes. The GET is of the view that a study carried out on the basis of official information and/or data collected by those organisations directly involved in the prevention of/fight against corruption could be used to draw up more appropriate and hence more effective anti-corruption policies. This is all the more urgent since corruption is regarded as one of the main obstacles to the country's economic and social development. Therefore, **the GET recommends that the authorities of Montenegro carry out the necessary studies in order to gain a clearer insight into the scale of corruption and its various features so that anti-corruption initiatives and plans can be targeted more effectively.**

16. The Law on Public Procurement has been in force for just a few years. The GET is of the opinion that the Law is comprehensive. However, during the on-site visit the GET was told that there were significant lacunae in the Law and that it was very difficult to apply. As an example it was mentioned that there had been 350 complaints concerning different interpretations of the Law. In addition, there are no sanctions prescribed in the Law for breaches of its provisions. The Law gives the buyer large room for manoeuvre and it is also up to the contracting authority to decide how the different elements in the procedure should be valued when taking a decision on the best bid. Although the Law provides for specific committees (Commission for opening bids, Commission for examination, evaluation and comparison of bids and Award Commission) to reduce opportunities for corrupt activities during the procedure, the GET is of the opinion that the Law suffers from a significant lack of clarity. At the time of the on-site visit, the GET was told that a new legislative framework was being prepared to bring procurement procedures of Montenegro into line with European Union standards. **The GET recommends that the Law on Public Procurement be revised with a view to clarifying its provisions and ensuring a more transparent procedure**.

II. INDEPENDENCE, SPECIALISATION AND MEANS AVAILABLE TO NATIONAL BODIES ENGAGED IN THE PREVENTION AND FIGHT AGAINST CORRUPTION

a. Description of the situation

The Directorate for Anti-Corruption Initiative

17. In 2000, the authorities of Montenegro considered that the setting-up of a specific body entrusted with the task of advising the government on anti-corruption policies and legislation was required. Therefore, in January 2001 the "Anti-Corruption Initiative Agency" was created. Within the general ongoing context of criminal legislation reform and the adoption of preventive measures, the Anti-corruption Initiative Agency was responsible for cooperation with international organisations and institutions and for coordination between domestic and foreign state authorities. In the light of the "Public Administration Reform Strategy in Montenegro 2002-2009", adopted by the government in March 2003, a new set of legislation was adopted, among which the "Decree on organisation and functioning of public administration". According to the Decree, the name of the Anti-Corruption Initiative Agency was changed to the Directorate for Anti-Corruption Initiative and was put under the supervising authority of the Ministry of Finance. At the time of the on-site visit, the Directorate was staffed with 5 employees. The Directorate's main tasks are:

- undertaking promotional and preventive activities aimed at the effective combat of corruption;
- working closely with the Government towards adoption and implementation of European and international standards and instruments, regarding the anti-corruption initiatives;
- enhancing the transparency in business and financial operations;
- performing other activities that arise from the membership of the Stability Pact for the South-Eastern Europe and other international organisations and institutions;
- and other activities delegated to its competence.

The Police

18. The Law on Police, which was adopted on 28 April 2005, provides for a complete restructuring of the police, which is now an autonomous body within the State administration. The Ministry of the Interior maintains a certain supervisory role concerning the work of the Police Directorate. The police is organised into 7 districts, including the capital Podgorica. The total number of police officers is approximately 4,200. The Department of Criminal Investigation comprises the following units:
    - the Unit for Economic Crime, dealing with economic crime and corruption, which is staffed by four police officers at central level (in Podgorica), and 64 other police officers employed in all other police districts;
    - the Unit for Organised Crime, established in May 2003 and staffed with four police officers which mainly focuses on money laundering, organised crime and cyber crime;
    - the Unit for ordinary crime;
    - the Unit for drug smuggling;
    - the Unit for cooperation with Interpol and Europol;
    - the Forensics Unit.

    Special *ad hoc* teams - and joint teams from central and regional level units - can be set up to conduct investigations related to complicated or sensitive cases. The police is competent to carry out investigations and has the obligation to inform the prosecution authorities beforehand.

19. An Internal Control Department has been established within the Police Directorate to control the legality of police officers' work.

20. No special training is provided to police officers on corruption matters.

Criminal investigation of corruption: Special investigative techniques and Witness protection

21. Article 237 of the Criminal Procedure Code of the Republic of Montenegro (hereafter CPC) regulates the use of special investigative techniques. The list includes, *inter alia*:
    - secret surveillance and technical recording of telephone conversations;
    - secret photographing and video recording in private premises;
    - simulated purchase of objects and simulated giving and taking of bribes;
    - use of electronic devices for detecting locations and positioning of persons and objects;
    - use of undercover investigators.

    Upon the request of the State Prosecutor, the investigative judge may order the designated special investigative technique. The use of these measures is allowed for the purpose of criminal investigations related to criminal offences punishable by imprisonment for a term of no less than 10 years or criminal offences committed within the framework of a criminal organisation.

22. The Law on Witness Protection entered into force on 1st April 2005 and, pursuant to Article 1, "shall regulate terms and procedures for providing protection and assistance to a witness (…)

when reasonable fear exists that testifying for the purpose of bringing evidence about the criminal offences (…) would expose the witness to severe danger to life, health, corporal inviolability, freedom (…). At the request of the witness, the protection and assistance may also be provided to a person close to him or her." According to Article 6 of the Law, "Decisions on application, extension, termination of the Protection Programme shall be passed by the Commission for Application of the Witness Protection Programme", which is composed of three members: a judge from the Supreme Court, a representative of the Chief State Prosecutor and the Head of the Protection Unit. Once admitted to the Programme, the witness is assigned to the Protection Unit. The measures foreseen can range from concealment of identity, physical protection, relocation and re-identity. At the time of GRECO's visit, a number of persons were waiting to be granted witness protection. The GET was told that for the year 2005 no governmental budget was allocated to the witness protection programme and that the programme was limited to a number of 10 persons in total due to financial and practical reasons. The overall budget for the witness protection programme including training and equipment was estimated to total 700,000 Euros. At the time of the visit, only the Commission and the head of the witness protection programme had been appointed.

Public Prosecution Service (the "State Prosecutor")

23. According to the provisions of Articles 26-28 of the Law on the State Prosecutor, prosecutors "shall be appointed and removed by the Assembly of the Republic of Montenegro" (Parliament) upon a proposal made by the Prosecutors' Council. The Council is composed of six prosecutors, a professor in law at Podgorica University, a practising lawyer, a legal expert and a representative of the Ministry of Justice, all appointed by the Assembly. Prosecutors are appointed for a term of five years with the possibility of reappointment. According to Article 9 of the Law on the State Prosecutor, prosecutors "have the right and the duty to develop their skills in order to exercise their office more successfully". The chief state prosecutor is responsible for the implementation of programmes for the development of professional skills, which are to be adopted by the Prosecutors' Council.

24. Articles 2 and 3 of the Law on the State Prosecutor state that prosecutors "shall be autonomous and independent" and that they have to exercise their office without "anybody's influence". Article 101 of the same law reads as follows: "The Ministry of Justice shall, through an authorised officer, carry out the supervision over the work of the State Prosecutor, with respect to:
    1) organisation of work of the State Prosecutor in compliance with the Rules of Procedure of the State Prosecutor,
    2) handling complaints and petitions,
    3) work of the filing office and archive,
    4) keeping of official records, and
    5) other tasks related to proper work and performance of duties of the prosecutorial administration."

25. The Law on State Prosecutor states that the chief state prosecutor is competent throughout the entire territory of the Republic of Montenegro, the high state prosecutor is competent within the territory of High and Commercial Courts and the basic state prosecutor is competent within the area of one or more Basic Courts.

26. Article 20 CPC sets out the "Rule of legality of criminal prosecution": "Unless otherwise prescribed by this Code, the State Prosecutor shall be bound to initiate prosecution when there is a reasonable suspicion that a certain person has committed a criminal offence that is automatically prosecuted." According to the provisions of Article 44 CPC, the main function of the

prosecutors "shall be the prosecution of perpetrators of criminal offences." Prosecutors are "competent to: 1) conduct pre-trial proceedings; 2) request that an investigation be carried out and direct pre-trial proceedings; 3) issue and represent an indictment before the competent court; 4) file appeals against court decisions that are not final; 5) undertake other actions determined by this Code." All authorities taking part in a pre-trial proceeding are bound to notify the competent State Prosecutor before taking any action, except in case of emergency. Police officers and other state authorities in charge of detecting criminal offences are bound to proceed upon any request of the competent State Prosecutor.

27. Within the Public Prosecution Service, there is no special department dealing with corruption offences. A Specialised Department for Combating Organised Crime has been established. This department is headed by the Special Prosecutor who was appointed in July 2004. All criminal offences with elements of organised crime will be prosecuted by this department, including corruption offences, provided that they are committed within the framework of a criminal organisation.

Courts

28. The Courts which exercise jurisdiction in criminal matters in the Republic of Montenegro are the following:

- the Basic Court: first instance court. Maximum sentencing: ten years.

- the High Court: first instance court for offences carrying a sentence of more than 10 years' imprisonment. It also adjudicates specific offences prescribed by Law. It hears appeals against Basic Court decisions.

- the Appellate Court: It hears appeals against High Court decisions when acting as a first instance jurisdiction.

- the Supreme Court: It deals with questions of law referred to it, without prejudice to the verdict ("decide on extraordinary legal remedies[12] against the decisions of the courts in the Republic" - Article 26 of the Law on Courts).

29. The judges of all courts are appointed by the Assembly (Parliament), on a proposal of the Judicial Council, pursuant to Articles 35 to 39 of the Law on the Courts. The independence of the courts is guaranteed by Article 100 of the Constitution of the Republic of Montenegro according to which "Courts of law (judiciary) shall be independent and autonomous. Courts of law shall rule on the basis of the Constitution and the law." The Law on the Courts, under Article 41, lays down the text of the oath of office to be taken by all judges on appointment. Judges cannot be removed and transferred from office except in cases defined by law[13].

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[12] Extraordinary legal remedies are provided for in Chapter XXV of the CPC: "1. Reopening of criminal proceedings"; "2. Extraordinary mitigation of punishment" ; "3. Request for protection of legality" and "4. Request for review of legality of the final verdict".

[13] Article 103 of the Constitution: "Judges shall have a life tenure. A judge's tenure of office may be terminated at his own request or when he meets conditions for retirement, and if he should be sentenced to a prison sentence without the right of appeal. A judge may be dismissed if he has been convicted of an offence making him unsuitable to perform judicial functions, or when he performs his judicial function unprofessionally and unconscientiously, or when he has permanently lost the working capacity for performing judicial function. A judge may not be transferred against his will."

30. The functions and composition of the Judicial Council are defined by the Law on the Courts. Article 75 states that "The Judicial Council shall:
    - define the proposal for the election and removal of judges;
    - conduct proceedings for establishing the responsibility of judges as regards the timely and orderly functioning of the court as well as the preservation of the dignity of the judicial office;
    - determine the method for substituting the President of the Judicial Council;
    - propose to the Government special appropriations in the budget destined to the needs of the courts;
    - perform other duties provided by the law."

    As regards its composition, Article 76 states that "The Judicial Council shall have a Chairman and ten members. The President of the Supreme Court shall be the Chairman of the Judicial Council by virtue of his/her office. The Assembly shall appoint ten members of Judicial Council as follows: six from amongst judges; two from amongst the Law Faculty professors; two from amongst renowned law experts".

b. Analysis

31. During the evaluation visit, the GET noted that particular attention is being paid to the issues of independence, vulnerability to political influence and the functioning of the judiciary (including both courts and the prosecution service). Significant improvements have been achieved through the adoption of the Law on Courts (in 2002) and the Law on the State Prosecutor (in 2003), which have *inter alia* established specific bodies playing an important role with regard to the appointment procedure of judges and prosecutors as well as the disciplinary procedures applicable to them: the Judicial Council and the Prosecutors Council. In addition, as a result of the adoption of the aforementioned laws, the involvement of the government in the judiciary is currently very limited and relates mainly to administrative matters. In particular, the government no longer makes proposals to the Parliament on the appointment of the State Prosecutor. However, the situation is totally different when it comes to the role that Parliament plays in the work of the courts and the State Prosecutor. According to the Constitution and the laws on courts and on the State Prosecutor, judges and prosecutors are elected and promoted by the Parliament upon a proposal made by the Judicial and the Prosecutors' Councils respectively.

32. As regards judges, the GET is aware of the fact that there is no general rule or international standard preventing their election by Parliament. However, the GET considers that this procedure requires careful review in the light of the concrete conditions in which it is applied in individual countries. As it is stated in the Explanatory Memorandum to Recommendation No. R (94) 12 of the Council of Europe on the independence, efficiency and role of judges, in countries "where the decision to appoint judges is taken by organs which are not independent of the government on the administration or, for instance, by the Parliament or the President of the state, it is important that such decisions are taken only on the basis of objective criteria". In Montenegro, proposals on the election or promotion of judges are submitted by the Judicial Council to the Parliament, together with a note providing the basic personal data of each candidate, data on his/her previous professional activity and the reasons for the proposal (opinion). The Parliament debates the proposals and has the possibility to analyse the previous candidates' performance and decides, by simple majority. Both judges and prosecutors and the representatives of civil society met by the GET reported that political influence is seriously feared because this procedure allows the Parliament (and therefore individual political parties) to evaluate the judicial competence of candidates and to decide not to retain a candidate who has issued a decision they consider controversial. The possibility of a politically motivated decision in

the election procedure of judges and prosecutors is even more substantiated because judges and prosecutors in Montenegro have the right to be members of political parties.

33. As far as prosecutors are concerned, they need to go through a re-election procedure every five years and in case of non re-election, they lose their position. This procedure makes prosecutors particularly vulnerable to political pressure, since they could be tempted to act in conformity with the prevailing political views in order to secure their position/career, especially in politically sensitive cases. According to Recommendation No. R (2000) 19 of the Council of Europe on the role of the public prosecution in the criminal justice system, "the recruitment, the promotion and the transfer of public prosecutors [should be] carried out according to fair and impartial procedures embodying safeguards against any approach which favours the interest of specific groups [….]". The same Recommendation stresses that public prosecutors should have reasonable conditions of service, commensurate to their crucial role, tenure being one of them. The limited five year mandate of prosecutors, regardless of their position in the hierarchy, puts in danger not only their independence, but also minimises specialisation and training developments. As far as the GET was able to ascertain, in Montenegro, there is a perception that members of the judiciary are politically influenced, which could create obstacles to investigating high-level corruption cases. With a view to reducing political influence in the selection of judges and prosecutors, **the GET recommends i) to review the present situation concerning recruitment and promotion procedures of judges and prosecutors in order to ensure that those procedures are based on objective criteria, and ii) to see to it that the conditions related to the tenure of prosecutors do not undermine their independence**.

34. The GET appreciates the mechanism introduced by the Law on the State Prosecutor, which guarantees the prosecutor's professional independence within the hierarchy of the Prosecution Service by establishing that general and individual instructions addressed to prosecutors are issued in writing and, if deemed unlawful or ill-founded, they can be appealed to the higher hierarchical level.

35. The adoption of the abovementioned laws on Courts and the State Prosecutor, as well as of the Criminal Procedure Code in 2003, certainly represents an important step forward towards a more independent and efficient functioning of the judiciary[14]. However, during the on-site visit the GET acknowledged that public opinion on the independence and the efficiency of the justice system is still fairly negative. The Ombudsman informed the GET that most of the complaints he receives are connected to the functioning of the judiciary. Citizens mainly complain about the length of criminal investigations and proceedings and the non-enforcement of court decisions. They also report allegations of corruption within the judiciary. The GET was not able to assess the accuracy of such allegations. No written complaint or denunciation regarding a judge or a prosecutor has ever been filed with the Ombudsman and the latter is prevented by the principle of confidentiality from making oral complaints public, unless the interested party gives his/her authorisation to do so. However, the GET repeatedly raised this matter with the representatives of the 27 governmental and civil society organisations it met during the evaluation visit. There is no code of ethics for prosecutors[15]. Therefore, **the GET recommends to implement a general policy aiming at restoring the public trust in the justice system that should include i) a thorough analysis of the existing civil and criminal procedures in order to find ways of simplifying and speeding up trials; ii) the adoption of a Code of Ethics for Prosecutors, whose**

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[14] The Law on Education in the Judiciary was adopted in April 2006. It aims at improving the level of knowledge, competence and skills of judges and prosecutors in a manner that will ensure autonomous, independent, impartial, specialised and efficient performance of their functions in compliance with professional ethics' standards.

[15] The GET was informed after the visit that a Draft Code of Ethics for Prosecutors is expected to be adopted by the end of 2006.

enforcement should be monitored by the Prosecutors Council; and iii) a training programme for judges and prosecutors on judicial deontology.

36. In Montenegro, there is no prosecutor's office specialised in dealing with corruption offences. In 2004, a Specialised Department for Combating Organised Crime was established within the Supreme State Prosecutor's Office. The Supreme State Prosecutor appoints the Special State Prosecutor and his/her deputies, upon prior consultation of the Prosecutors' Council. The Special State Prosecutor was appointed in July 2004 and, at the time of the on-site visit, she had no deputies. With regard to corruption cases, the competence of the Special State Prosecutor covers only corruption offences committed within the framework of a criminal organisation. At the time of the visit, the Special State Prosecutor had not filed any charge of corruption in the cases with which it had dealt. Prosecutors working at the level of the High Courts are competent for the most serious offences of passive bribery, i.e. those carrying a sentence of more than 10 years' imprisonment; prosecutors working at the level of the Basic Courts are competent for all other corruption offences. The need for specialisation of prosecutors dealing with serious corruption offences and economic and financial offences that could be related to corruption was highlighted by the GET's interlocutors. Carrying out investigations, especially in corruption cases occurring in sectors such as privatisation or public procurement, requires special expertise and knowledge that cannot be gained by prosecutors who deal with all types of criminal cases. In the GET's view, in order to assure the best strategic coordination and use of human and technical resources it would be beneficial to create a special unit within the prosecution service to deal with corruption and corruption-related offences, be it within or outside of the Specialised Department for Combating Organised Crime. Therefore, **the GET recommends to create a special unit within the Public Prosecution Service to deal with corruption (including corruption-related economic crime offences) and to provide it with the necessary human resources, technical equipment and training.**

37. When the police become aware of an offence, they are obliged to inform the prosecutor without delay so that the latter can direct the preliminary investigations: the prosecutor issues instructions to the police regarding the actions that need to be taken and controls and supervises the police activity. The GET was informed that, in practice, there is a certain feeling of frustration within the police and among prosecutors about the lack of cooperation between the two institutions. In particular, prosecutors expressed their dissatisfaction that, although the law clearly prescribes that they have to supervise the pre-investigative measures undertaken by the police in criminal cases, they do not have the necessary means to control whether the police inform them immediately about a detected criminal offence. On the other hand, the police complained that prosecutors are not proactive enough in conducting the preliminary stage of the criminal investigations and, in particular, about the fact that they do not always provide prompt feedback on the police investigative activities. The GET is aware that the situation is often similar in other comparable systems where no multidisciplinary teams or other specific mechanisms of cooperation between the police and the prosecution services are in place. In the GET's view, this situation constitutes a hindrance to an efficient fight against criminality, including corruption, and needs therefore to be addressed. During the stage following the preliminary investigation phase, the prosecutor asks for an investigation to be carried out by an investigative judge. The investigative judge is entitled, *inter alia*, to authorise preventive measures such as issuing a search warrant, ordering the detention of a suspect or to authorise the use of special investigative techniques. The GET was informed that, in practice, the investigative phase of a criminal case could extend beyond the 6 months provided for by law, sometimes lasting significantly longer in complex cases. Investigative judges met by the GET admitted that, due to the huge number of cases they have to deal with, they try to avoid complex cases involving economic and financial crimes. Therefore, **the GET recommends that i) a clear mechanism for**

cooperation between the police and the prosecution service be put in place, that would consolidate the leading role of the prosecutors in the preliminary phase of criminal investigations and would ensure that they are provided with all relevant information as soon as possible; ii) the role of the investigative judge be reviewed with a view to ensuring more rapid and effective criminal investigations.

Training

38. Financial investigation is crucial in the detection of corruption, particularly when tracing criminal proceeds that could be subject to confiscation. A key element for ensuring the success of financial investigations is systematic, professional cooperation between the police, the prosecution service, the tax and auditing authorities etc., in order to effectively identify data regarding income, asset declaration, tax declaration etc. The GET noted that the police, the anti-money laundering authorities, the tax service and banks etc. cooperate to some extent. At the same time, during the on-site visit, the GET was told by the police officers and prosecutors that there is a need for joint training on how to conduct investigations in a more professional way with regard to financial crimes related to corruption. Therefore, **the GET recommends to set up a comprehensive training programme for police officers (especially for the Unit for Economic Crime) and prosecutors, more directly involved in corruption cases, in order to share common knowledge and understanding on how to deal with corruption and financial crimes related to corruption.**

Criminal investigation of corruption, special investigative means and witness protection

39. As mentioned in the descriptive part of the report (see paragraph 21), according to Article 237 of the Criminal Procedure Code, the investigative judge may order, upon a public prosecutor's request, the use of special investigative techniques (hereafter SITs). The order is implemented by the police. SITs can only be used in relation to criminal offences punishable by imprisonment for a term of no less than ten years or when the offence is committed within the framework of a criminal organisation (Article 238 of the Criminal Procedure Code). The representatives of the law enforcement bodies met by the GET stated that, in practice, SITs are used above all in cases of crimes involving organised groups and that they had never been used in corruption cases because of the above-mentioned limitation prescribed by Article 238 of the Criminal Procedure Code. They stressed the need for more specialised training for police officers who use such techniques and for necessary means to apply them in practice. Consequently, **the GET recommends to extend the application of the provisions on the use of special investigative techniques (in particular Article 238 of the Criminal Procedure Code) to include all corruption offences and to provide the competent agencies with appropriate means and training in order to make the system of special investigative techniques work efficiently in practice.**

40. As already detailed in the descriptive part of the report (see paragraph 22), the Law on Witness Protection entered into force on 1 April 2005. During the on-site visit, the GET was informed that the implementation of the witness protection programmes had not started mainly due to financial reasons. Therefore, **the GET recommends to adopt all necessary measures to ensure that appropriate witness protection programmes can be implemented in practice.**

III. EXTENT AND SCOPE OF IMMUNITIES FROM PROSECUTION

a. Description of the situation

41. The following categories of persons enjoy immunities in the Republic of Montenegro:

- The President of the Republic,
- Members of the Government,
- Members of the Assembly (Parliament),
- Judges,
- Constitutional Court Judges,
- State Prosecutors,
- The Protector of human rights and freedoms (ombudsperson) and his/her deputy.

42. In addition to immunity for opinions expressed or votes cast in the exercise of their functions ("non-liability immunities"), Members of Parliament also enjoy "inviolability", which means that "(…) criminal proceeding can not be initiated, nor detention ordered without previous approval of the Parliament" (Article 79 paragraph 3 of the Constitution). Pursuant to paragraph 4 of the same article, a Member of Parliament can be detained without approval of the Parliament, if apprehended in the act of committing a criminal offence sanctioned by imprisonment of no less than five years. According to paragraph 5, "The immunity enjoyed by the Members of the Parliament is also enjoyed by the President of the Republic, members of the Government, judges, justices of the Constitutional Court and the public prosecutor". The same applies to the ombudsperson and his/her deputy.

b. Analysis

43. The rules prescribing the immunities enjoyed by certain categories of persons in the Republic of Montenegro (President of the Republic, members of the Government and of the Parliament, judges, prosecutors and ombudspersons) are laid down in Article 79 of the Montenegrin Constitution. In addition, Article 220 of the Criminal Procedure Code contains provisions related to "approval for criminal prosecution". According to paragraph 1, in order to open an investigation into one of the abovementioned persons who enjoy immunity, prosecutors have to make a specific request to the competent state authority, i.e. the Commission for immunities of the Parliament of the Republic of Montenegro, asking for the immunity to be lifted. When a prosecution is based upon a private complaint, the prosecutor has to transmit the case to the court with a request for the immunity to be lifted. The court has to turn to the Commission for immunities which decides on whether immunity can be lifted or not. The Commission submits the case to the Parliament for a final decision. The Parliament takes its decision by a simple majority vote. The Commission for immunities of the Parliament started its activities in 2004. At the time of the on-site visit, it had dealt with twelve cases among which four concerned judges and three Members of Parliament. Every case has been passed on to the Parliament, which has only refused to lift the immunity in one case. The GET concludes that the immunities currently enjoyed by the President of the Republic, members of the Government and Members of the Parliament, Ombudspersons and the related procedures, including those pertaining to the lifting of immunity by Parliament, do not constitute an unacceptable obstacle to the country's capacity to effectively prosecute corruption. That said, some representatives of the State bodies and institutions and of civil society met by the GET raised the question whether or not it was necessary for judges and prosecutors to enjoy immunity. The GET shares such doubts. Nevertheless, it is of the opinion that the system seems to function quite well and it can therefore not see any urgent need to

change the Constitution in this respect. However, the subject of immunities of judges and prosecutors could be considered in the future when the relevant legislation is amended.

IV. PROCEEDS OF CORRUPTION

a. Description of the situation

Confiscation and other deprivation of proceeds of crime

44. In the Montenegrin legal system, confiscation and seizure are two distinct concepts used for the deprivation of objects and proceeds of crime respectively. Seizure is a security measure, the purpose of which is "to eliminate the situations or conditions which might influence an offender to commit criminal offences in the future" (Article 66 of the Criminal Code – hereafter CC). Confiscation of the proceeds of crime is considered as a *sui generis* measure. The use of confiscation is regulated by Chapter VII of the CC ("Confiscation of material gain") and by Articles 538-545 of the Criminal Procedure Code ("Proceedings for confiscation of property gain"). The court may order confiscation of the proceeds of crime within the framework of a conviction, a warrant pronouncing a sentence issued without a trial, a ruling on a judicial admonition, or a ruling on the application of a corrective or security measure (Criminal Procedure Code, hereinafter CPC, Article 542, paragraph 1). Confiscation of the proceeds of crime is not possible without the prior conviction of the perpetrator (Article 539 CPC).

45. Confiscation of the proceeds of crime, or value thereof, is mandatory (Article 112 CC). The court is bound to obtain evidence and to investigate circumstances that are relevant to the determination of the proceeds of crime (Article 538 CPC). If the assessment of the proceeds entails disproportionate difficulties or a significant delay in the proceedings, their amount shall be fixed at the discretion of the court (Article 540 CPC).

46. Proceeds transferred to a third party must be confiscated if they have been transferred to such a party "without compensation or against compensation which is obviously inadequate to its real value" (Article 113 paragraph 2 CC). The property obtained by a criminal offence in favour of other persons must also be confiscated (Article 113 paragraph 3 CC).

47. In cases of confiscation the burden of proof lies with the state prosecutor and cannot be reversed.

48. It is up to the court that rendered the verdict at first instance to decide whether the objects confiscated are to be sold pursuant to the provisions of the enforcement proceedings, given to a museum of criminology or other institution, or destroyed. The proceeds obtained from a sale must be credited to the State's budget (Article 194 paragraph 1 CPC). In criminal proceedings, the injured party has the right to bring a claim for compensation in a civil action (Article 114 CC).

Interim measures: seizure of objects and seizure of property gain

49. The Criminal Procedure Code (hereinafter CPC) provides for two types of interim measures: "seizure of objects" and "seizure of objects and property gain". According to Article 81 CPC ("Seizure of objects under the court order"), "Objects which, according to the Criminal Code, have to be confiscated or which may be used as evidence in the criminal proceedings, shall be temporarily seized and delivered for safekeeping to the Court or their safekeeping shall be secured in some other way". In urgent cases, the police may impose seizure prior to the

commencement of the investigation on condition that a report is submitted to the competent state prosecutor within a three-month period (Article 246 CPC).

50. Temporary seizure of objects and property gain may be ordered according to Article 541 CPC. In addition, Article 523 CPC provides for seizure of objects and property gain "if there are grounds for suspicion or a reasonable suspicion that a criminal offence of organised crime has been committed". If the temporary seizure is pronounced prior to the institution of the criminal proceeding, it has to be revoked if the proceeding regarding the criminal offence of organised crime has not been instituted within a three-month period (Article 527 paragraph 2 CPC). The measure may also be revoked upon request of the state prosecutor or of a person concerned if it is proved that the measure is not indispensable or justifiable taking into account the nature of the crime, the financial situation of the person concerned or other circumstances. For the duration of the measure, the competent state authority is in charge of the administration of property and assets, in accordance with special regulations (Article 529 CPC). Appeal against the ruling on the imposition of temporary seizure is possible but does not stay its execution (Article 525 CPC).

51. Insofar as the systematic tracing of the proceeds of crime is concerned, the CPC provides that, in the course of the investigation, the evidence and information necessary for taking a decision on whether or not to bring an indictment or to discontinue the proceedings (Article 249) must be collected. Banking secret does not seem to present an obstacle to the gathering of evidence as the Law on Banks clearly states that confidential information on bank deposits shall be reported to the relevant authorities upon a written demand of a court (Article 63 Law on Banks).

Statistics

52. No statistics exist on the number of cases in which confiscation has been ordered, including in corruption cases. Similarly, there is no information on the number of corruption cases in which interim measures have been applied or the value of the property seized.

Money laundering

53. Article 268 of the Criminal Code criminalises money laundering. This crime, namely the concealment through banking, financial or other business operations of money or other property that is known to have been acquired through a criminal act, is sanctioned by six months' to five years' imprisonment. All corruption offences are predicate offences to money laundering.

54. The Law on the Prevention of Money Laundering (hereinafter the LPML) was adopted in October 2003. It contains a list of institutions that are obliged to transmit any transaction exceeding 15,000 Euros and connected transactions, as well as suspicious transaction reports to the Administration for the Prevention of Money Laundering (the Montenegrin Financial Intelligence Unit). They include banks and non-banking financial institutions (such as money exchange offices), insurers, investment companies and intermediaries, persons organising games of chance, notaries, stock exchanges and stockbrokers, auditors and chartered accountants. The FIU is bound to screen and analyse all transactions submitted by the entities under the reporting obligation and to subsequently notify the reporting entities about its findings. If there are reasons to suspect money laundering, other state bodies and organisations may also transmit their reports to the FIU, in the legally prescribed form.

55. The Administration for the Prevention of Money Laundering (hereafter APML) comes under the Ministry of Finance. It was set up in December 2003 and its director was appointed by the Government of Montenegro in February 2004. At the time of the visit, the APML was staffed by

14 employees with different backgrounds. Recruitment was carried out in accordance with the established criteria, based on the determined job description, according to the "Book of regulations on internal organisation and systematisation". The APML is divided into departments: a department for analysis with four employees, a department for suspicious transactions with two employees and a department for international cooperation with two employees. The remaining six employees work as support staff. The APML has no operational power. At the time of the on-site visit, four cases were being investigated by the State Prosecutor and two by the police.

56. In 2004, the list of suspicious transaction indicators, the rule book on reporting of suspicious transactions, and the rule book on the working methods of the compliance officer, the manner of conducting internal control, keeping and protecting data, the manner of record keeping and training of employees were drafted, adopted and transmitted to the relevant authorities involved in anti-money laundering activities. In accordance with the adopted procedures, banks and other financial institutions report in electronic form on a daily basis to the APML. Between July 2004 and June 2005, the APML received 159,295 reports concerning transactions exceeding 15,000 Euros and connected transactions, and 199 reports on suspicious transactions (the vast majority of which were made by banks). In February 2005, the law on changes and amendments to the law on the prevention of money laundering was adopted, which is entitled "Law on the prevention of money laundering and terrorism financing".

Mutual legal assistance: interim measures and confiscation

57. As regards the procedure related to mutual legal assistance, see paragraph 12 above. As already indicated, there are no statistics or information available on corruption cases involving confiscation and seizure or other temporary measures.

b. Analysis

58. The legal system of the Republic of Montenegro provides for the confiscation of objects used for committing a criminal offence (instrumentalities) and objects obtained from the commission of a criminal offence. It also regulates the deprivation of the proceeds obtained by a criminal offence. The perpetrator can be deprived not only of the direct proceeds of the crime, but also of their equivalent value. Moreover, proceeds can be confiscated from third parties when the property was transferred to them without compensation or against compensation that is obviously inadequate in comparison with its real value. According to the representatives of law enforcement authorities met by the GET, proceeds transferred to legal persons can also be confiscated. As regards the practical use of this legal framework, the GET was informed that not one single confiscation order had been issued by a court in Montenegro except with regard to instrumentalities or proceeds of criminal offences found, in *flagrante delicto*, in the possession of the perpetrator. The GET was also told that the police usually focus on gathering evidence needed to indict the perpetrator and that, by contrast, there is no system or strategy in place when it comes to investigations aimed at identifying and tracing proceeds of crime, including corruption. Furthermore, no statistics exist on confiscation or provisional measures applied. During the on-site visit, judges said that they had never been requested to issue confiscation orders. Prosecutors complained about the police officers' insufficient expertise in establishing possible links between a certain sum of money or other assets belonging to the perpetrator and the crimes committed by that person. Police officers stressed that the prosecutors, who direct the police activity in the preliminary stage of the investigation, often fail to give instructions. The issue of training for law enforcement agencies with regard to their competence in using legal and investigative tools for tracing proceeds of corruption was raised. Consequently, **the GET recommends that i) guidelines be issued identifying an effective methodology for**

performing financial investigations, in particular concerning seizure and confiscation measures in corruption cases; ii) a common training programme be developed for the police officers and prosecutors in order to enable, promote and encourage better use of the practical and legal means available for identifying, tracing and seizing the proceeds of crime, including corruption.

59. Seizure measures can be taken during the criminal proceedings for the following purposes: objects that may be used as evidence in court have to be seized, according to Article 81 of the Criminal Procedure Code (hereafter CPC); provisional measures in order to secure a claim related to the civil liability of the defendant as a consequence of the commission of a criminal offence can be ordered by the court, upon request of the injured party (Article 216 CPC); provisional security measures should be ordered by the court when the confiscation of property gain is under consideration (Article 541 CPC). As for the moment when the provisional measures can be taken, the situation differs according to the purpose of the measures and to the nature of the criminal offence. Objects that could serve as evidence (instrumentalities) can be seized immediately after a criminal offence is uncovered. In urgent situations, the police can search premises and seize objects even before a criminal investigation is instituted, provided that the prosecutor and/or the investigative judge are immediately informed. Temporary measures aimed at seizing assets in order to secure possible future confiscation can be issued, as a general rule, only after an investigation is opened. The only exception occurs for the proceeds obtained from crimes committed by an organised criminal group. As a consequence, this provision does not apply for corruption offences unless it is proved that they are committed within the context of organised crime. The GET wishes to stress that it is essential for the efficiency of the fight against corruption that the perpetrator is deprived as soon as possible of the gains s/he might have obtained as a consequence of the criminal offence committed. Therefore, **the GET recommends that legal provisions be introduced which allow measures of seizure of proceeds of all corruption offences at the earliest stage of the preliminary investigation, even if not committed by an organised criminal group.**

60. During the on-site visit, the GET was told by the representatives of the Administration on the Prevention of Money Laundering (the Montenegrin Financial Intelligence Unit) that they were to organise training to intensify their knowledge on different issues related to money laundering. Bearing in mind that the FIU is quite a new organisation, the GET gained the overall impression that it was reasonably well organised with a clear focus on its role as the national agency responsible in the area of fighting against money laundering. The GET was told that it was not easy to hire appropriately skilled professional personnel for the FIU. This was one of the reasons why it was necessary for the FIU to set up an internal training programme. The GET was told that up to 97.49% of the suspicious transaction reports were transmitted to the FIU by banks; only about 2.51% emanated from other obliged entities listed in the Law on the Prevention of Money Laundering. No specific reason was given. To increase the effort to tackle money laundering in a more effective way, the GET is of the opinion that all organisations that are obliged to report to the Administration on the Prevention of Money Laundering are to be well aware of their reporting obligation and of how to proceed. Therefore, **the GET recommends to keep under careful review all reporting institutions, enhance training to increase awareness of suspicious transactions reporting and monitor progress in this area, particularly for those obliged entities that have not as yet reported any suspicious transaction to the relevant authority.**

V. PUBLIC ADMINISTRATION AND CORRUPTION

a. Description of the situation

Definition and legal framework

61. The principles governing the functioning of the public administration are contained in the Law on State Administration (hereinafter the LSA) and the Law on Civil Servants and State Employees (hereinafter the LCS). The definition of public administration, as provided for in the LSA, encompasses the executive activities of the state and other administrative authorities, as well as the activities delegated or entrusted to local authorities, institutions or other legal persons, in their capacity as public authorities (Article 3). The state administration performs administrative functions by virtue of the Constitution, laws and other regulations, and general acts, within the scope of rights and obligations of the Republic of Montenegro (Articles 1 and 2). The LSA provides that the state administration must be "professional, independent and objective in its work" and must decide on the matters within its competence in a lawful and timely manner (Articles 2 and 5).

Anti-corruption policy

62. At the time of the on-site visit, the Ministry of the Interior, in its capacity as co-ordinator, had developed and submitted for approval to the Government the Programme for Combating Corruption and Organised Crime. The focus of the Programme is the establishment of an efficient institutional and legal framework for fighting the above crimes, and more particularly the prevention of corruption, criminal prosecution as well as education and raising awareness of the public. There are plans to involve the general public, non-governmental organisations and private business sector in the implementation of the Programme. Among the priorities in this area are the modernisation of the police and the state prosecutor's office and the monitoring of sectors dealing with the allocation of large portions of state property, such as privatisation, concessions and public procurement. The adoption of the Programme along with its Action Plan was planned for 2005[16].

63. Public administration reform has already begun, following the adoption by the Government, in March 2003, of the Public Administration Reform Strategy. The Strategy comprises a set of public administration reform measures to be undertaken before 2009. The key objectives of the reform are *inter alia* the clear delineation of responsibilities at all levels, wider delegation of competences to the administration at lower levels, better management of the administration and reinforcement of steering and monitoring mechanisms. The drafting of the Strategy was preceded by extensive preparatory work, including making analyses, conducting interviews and developing plans for specific sectors within the administration. Furthermore, in 2001 the Anticorruption Initiative Agency was established and renamed in 2004 as the Directorate for Anti-Corruption Initiative in accordance with the public administration reform (see paragraph 17).

Transparency

64. Article 51 of the LSA secures the citizens' right to have free access to information, data, documents and reports produced by the state authorities. Access to government information on private and legal persons may only be granted "where there exists a legal interest related to a judicial or other procedure, in which a citizen has to realise his/her rights, obligations or legal

[16] See footnote nº 9.

interests." Any deprivation or denial of information must be justified in writing, and the right to file a petition to the supervising authority is provided for. The state administration is under a positive obligation to act lawfully and in a timely manner on citizens' requests to access information and to furnish data, information, explanations or offer other professional assistance (Article 52) in this regard. Access to information may be refused if it concerns a state, military or official secret. At the time of the on-site visit, a draft Law on Free Access to Information had been prepared, which regulates access to government information[17]. Paragraph 27 of the draft Law provides for penalties applicable to civil servants for non-compliance with the Law, ranging from 10 to 100 times the minimum monthly salary.

65. With respect to the practice of public consultation, there is a general obligation on ministries and administrative authorities to familiarise the public with activities within their purview by means of public information or otherwise (Article 95 LSA). While preparing laws regulating citizens' rights, obligations and legal interests, "a minister shall be bound to publicise a draft law in the media and to invite all stakeholders to present their proposals, suggestions or comments thereon" (Article 97). For the adoption of other laws, a minister may decide to resort to the procedure of public debate. When arranging for consultations or other forms of professional treatment of issues within their competence, ministries and administrative authorities are obliged to make relevant announcements in the media and to enable media representatives to follow the work on the issue in question (LSA, Article 98).

Control of public administration

66. The activities of public administration are subject to administrative control exercised by a higher-level administrative authority concerning their accuracy and legality, and also a possible judicial control concerning their legality. Thus the Law on General Administrative Procedure provides a possibility for lodging an administrative appeal against decisions made by administrative authorities. An appeal against a first instance decision issued by an administrative or a local self-government authority, an institution or a legal person with public authority is decided by their respective supervisory agencies (Article 221). If the first instance authority does not alter the decision as requested, a possibility of appeal in the second instance procedure is provided for. A second instance authority may overrule the appeal, nullify the decision partially or as a whole, or amend it (Article 234, par. 3). No further appeal against such decisions is permitted.

67. The Law on Administrative Disputes provides for the judicial control of the legality of administrative acts. Any natural or legal person, who believes that his/her rights or legal interests have been violated by an administrative act, has the right to begin an administrative proceeding. This proceeding may be initiated against an administrative act passed in the second instance, as well as one passed in the first instance, against which no appeal is allowed under administrative or other procedures. Administrative disputes are dealt with by the Administrative Court and the Supreme Court of the Republic of Montenegro.

68. In accordance with the Law on National Auditing Institution (the LNAI), which was enacted in 2004, an independent auditing institution was established. At the time of the on-site visit, six specially trained controllers, appointed by the Assembly after a competition procedure, worked at the National Auditing Institution. At the time of the on-site visit, it was planned to hire six additional controllers in the very near future. The main tasks of the Auditing Institution are to exercise control over the use of state property and funds and to assess the financial performance of institutions. Article 23 of the LNAI provides for an obligation on the National Auditing Institution

[17] The GET was informed after the visit that the Law on Free Access to Information had been adopted on 8 November 2005.

to submit without delay a "criminal report" to the competent authorities if there are reasonable grounds to believe that a criminal offence has been committed.

Ombudsman

69. The Law on the Protector of Human Rights and Freedoms, which was enacted in 2003, introduced the institution of the Protector of human rights and freedoms. The Protector is elected upon a proposal of the competent working body of the Parliament, by a majority vote of all members of the Parliament. The working body makes proposals on candidatures after consultation with research, specialised institutions and non-governmental organisations acting in the field of human rights. The Protector's deputies are elected by a majority vote of all members of the Parliament (which represents a qualified majority) on the proposal of the Protector. The Protector and his/her deputies are elected for a term of six years. The Law prescribes the Protector's right to propose amendments to the legislation on human rights and freedoms with a view to harmonising it with international law standards. The Law (Article 45) confers the right on the Protector to demand that competent institutions impose disciplinary sanctions or remove from office civil servants whose actions amount to a violation of human rights and freedoms. Moreover, the Law provides for a penalty of 10 to 20 times the minimum monthly salary for a delay in providing information requested by the Protector. At the time of the visit, 22 people were employed at the Protector's office. Any procedure is treated confidentially and no information can be revealed without the prior consent of the applicant. There are no specific provisions defining the Protector's specific competence with regard to the prevention and detection of corruption or other criminal offences.

70. In 2004, the Protector received over 600 complaints, 373 of which were within the scope of his competence: 161 of these applications were made with regard to the work of the law enforcement organisations. The content of the applicants' complaints is mostly related to human rights violations under the European Convention on Human Rights pertaining to corruption in the judiciary and corrupt practices of police officers.

Recruitment, career and preventive measures

71. A standard procedure has been introduced for the recruitment of civil servants[18]. Candidates must meet the general requirements laid down in Article 16[19] of the LCS and special requirements established by law and other regulations. In order to acquire the position of civil servant or state employee, a candidate is obliged to sit a professional examination (LCS, Article 41). The law prohibits the recruitment of those convicted of criminal acts making them unsuitable for work in the state administration (Article 16).

Training

72. The professional examination to work in a state authority tests the candidates' familiarity with the principles of the functioning of the civil service, including questions relating to ethics. Professional

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[18] According to Article 2 of the Law on civil servants and state employees "A Civil Servant, i.e. State Employee is a person employed in a State Authority.
A Civil Servant, in terms of this law, with respect to the realization of certain rights, duties and responsibilities, is a head of a state authority and a person that has been employed by appointment, i.e. nomination in a state authority.
A Civil Servant, in terms of this law, is not a Member of Parliament, or a person that is elected or appointed by the Parliament of RoM.
A State Authority, in terms of this law, is a state administration authority, other state authority and services of the President of RoM, the Parliament of RoM, the Government of RoM and the Constitutional Court of RoM."
[19] E.g. be a citizen of Montenegro, of legal age, in good health, etc.

knowledge and skills of a civil servant are further developed through “expert training programmes” designed by the Human Resources Department. The Department develops the Programme for the Strengthening of Administrative Capacity (Development of the Competence of Staff in Public Administration) and it is also in charge of its implementation. The Programme does not provide for special anti-corruption training for civil servants.

Conflicts of interest

73. The legal framework to prevent conflicts of interest in Montenegro is provided for by the Law on Conflicts of Interest, adopted in 2004, with regard to public officials[20] and “persons connected with them”[21], and the Law on Civil Servants and State Employees with regard to civil servants[22].

74. According to the Law on Civil Servants (Article 49), a civil servant must avoid actions that may:
- cause conflict between public duties and his/her private interests;
- affect his/her impartiality when carrying out his/her duties;
- lead to the abuse of classified information; or
- be detrimental to the reputation of the state agency.

The involvement of civil servants in publishing activities, scientific research, teaching at educational establishments and membership in cultural (artistic, sports, humanitarian, etc.) organisations is expressly allowed.

75. According to Article 5 of the Law on Conflicts of Interest (hereafter LCI) “A public official shall not be allowed to:
- accept a gift of great value, a benefit or a service, except in cases envisaged by the present Law;
- favour citizens on the basis of their political or other affiliation, origin, personal links or links through immediate or wider family;
- abuse information s/he has acquired when in public office, and
- exert influence over public procurement procedures.

76. The LCI establishes a “Commission for the determination of conflicts of interest” to examine reports regarding possible conflicts of interest. The Commission informs a public official in writing of the report received and requests that a relevant declaration be presented by him/her within a fifteen-day time limit (Article 21). If the Commission finds evidence of a conflict of interest or if the public official fails to submit his/her report or to rectify errors or irregularities, the Commission proposes to the competent authority the official’s removal from office (Article 22). If the Commission finds that a public official has committed a criminal offence, it must immediately inform the competent state prosecutor thereof. The Commission, consisting of the president and four members, is elected by the Assembly for a term of five years. The Commission keeps registers of income, property and gifts of those public officials, who are obliged, pursuant to the provisions of the LCI, to submit disclosure forms on income and property: (i) at the day of taking public office; (ii) annually during the term of office; (iii) in case of property exceeding 2,000 Euros,

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[20] Article 2 (Scope of the Law) of the Conflicts of interest states:
“The present law refers to public officials and persons connected with them.”
and
“For the purpose of the present Law, a public official shall be understood as the person elected by direct and secret vote, person elected or appointed by the Assembly of the Republic of Montenegro (hereinafter referred to as: Assembly), person appointed by the Government of the Republic of Montenegro and the local self-government bodies.”

[21] “Direct relatives of a public official, collateral relative up to the second degree, relatives through wife’s family up to the first level, a marital or extra-marital partner, adoptive parent or adoptive child, as well as other persons that a public official is personally or professionally connected with.”

[22] For the definition of civil servant see footnote n° 11.

on the day when this change occurred; (iv) after expiration of the term of office. At the time of the on-site visit, eight employees worked at the Commission.

Rotation

77. There are no provisions establishing a system of regular, periodical rotation of staff employed within areas of the public administration considered vulnerable to corruption. Similarly, no measures have been put in place to limit the phenomenon of public officials moving to the private sector.

Gifts

78. The basic rule on gifts is the provision on passive bribery contained in the Criminal Code (Article 423), which explicitly contains a reference to the request, receiving or acceptance of a gift by an official. Restrictions on the acceptance of gifts and services specifically within the public administration are provided for in the aforementioned Law on Conflicts of Interest. In particular, Article 5 stipulates that a public official shall not be allowed to accept a gift of great value, a benefit or a service, except in cases envisaged by law. A gift of significant value is defined as money, securities or other items that are either received or given, and the value of which exceeds 50 Euros (one quarter of the average monthly salary). The aforementioned Commission is responsible for determining the gifts' value, calculated at its market value on the day of receipt (Article 13). If, in connection with performing his/her duties, a public official has received a gift of a significant value, s/he has to report it to the Commission within 15 days of receipt (Article 12). Gifts of a significant value become the property of the State. As regards civil servants, Article 49 of the Law on Civil Servants ("Conflicts of interest") states that "a civil servant, in performing his/her tasks, shall not receive presents of great value, in accordance with regulations on the conflicts of interest".

Code of Ethics

79. According to the Law on Civil Servants and State Employees, a Code of Ethics is to be determined by the ministry competent for administrative affairs, following consultation with civil servants and state employees. The Law further provides that, while exercising his/her duties, a civil servant must abide by the Code (Article 6). At the time of the on-site visit, a working group set up within the Ministry of Justice was drafting the Code of Conduct for civil servants. However, the GET was told that it was not properly co-ordinated with other partners and, supposedly, would undergo numerous amendments and supplements. The Code was expected to be approved by the end of 2005[23].

Reporting corruption

80. Pursuant to the Criminal Procedure Code (Article 227), all state authorities, local government authorities, public companies and institutions are bound to report criminal offences and to preserve the evidence thereof. This obligation is complemented by a civic obligation on each citizen to report criminal offences prosecuted ex officio (Article 228). Failure to report a criminal offence constitutes a criminal offence in cases prescribed by the Code.

81. No measures have been put in place to protect civil servants reporting criminal offences, including corruption, from adverse consequences.

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[23] The GET was informed after the visit the Code of Ethics had been adopted in December 2005.

Disciplinary proceedings

82. Disciplinary proceedings against a civil servant are initiated by the head of a state authority, following a proposal by the civil servant's superior (LCS, Article 58). The procedure is carried out by a Disciplinary Commission whose members are nominated by the head of the state authority (Article 59). Disciplinary proceedings against a manager are conducted by a committee formed by the authority competent for the relevant appointment or nomination (Article 61). In the procedure, a civil servant is allowed to defend him/herself either personally or through an attorney or a trade union representative (Article 62). For any issues not determined by the LCS, appropriate provisions of the law regulating general administrative procedures apply. In the case of minor offences, Article 57 ("Disciplinary Measures") of the LSC establishes that the civil servant may be sanctioned by a 15 per cent cut in his/her monthly salary. With regard to serious offences, the penalty amounts to 20-30 per cent of the monthly salary or termination of employment. No centralised register of sanctions is in place as yet.

83. If a breach of official duty also constitutes a criminal offence as defined in the Criminal Code, criminal proceedings are initiated.

b. Analysis

84. The GET wishes to stress that the Republic of Montenegro has made significant progress in preparing the necessary legal and regulatory basis for the prevention of – and fight against – corruption in the public administration, in particular after the Anticorruption Initiative Agency was established in 2001 (transformed into the Directorate for Anti-Corruption Initiative in 2004). A number of new pieces of legislation were drafted and enacted by Parliament, in particular the Law on Conflicts of Interest, the Law on the National Auditing Institution, the Law on Public Procurement, the Law on Political Party Financing and the Criminal Code. The Directorate actively participates in the development of the Programme for the Fight against Corruption and Organised Crime. When meeting with high-ranking officials of certain government organisations, the GET appreciated their optimistic approach vis-à-vis possible future improvements in the Government's efforts to curb corruption in the country.

85. At the time of the visit, a draft Programme for Combating Corruption and Organised Crime had been prepared - as a result of an inter-institutional collaboration - and submitted to the Government for consideration. The main priorities in the fight against corruption indicated in the Programme are: prevention, prosecution (repression), public education and ensuring support from the public. The Montenegrin authorities informed the GET that following the Government's approval of the Programme, an Action Plan would be prepared with the involvement of non-governmental organisations by the end of 2005[24]. The GET believes that it would be beneficial to also involve the local self-governing bodies in the development of the Action Plan so that specific aspects related to the implementation of anti-corruption programmes at local level can be addressed. In the GET's view, this is even more relevant in the light of the implementing policies contained in the Public Administration Reform Strategy, which intends to de-centralise part of the central government administrative functions by delegating them to local self-governing bodies. Subsequently, **the GET recommends i) that the Programme for Combating Corruption and Organised Crime and its Action Plan be formally adopted; ii) to provide for efficient monitoring of the implementation of the anti-corruption programme through a specialised independent anti-corruption body with sufficient resources; iii) to involve local self-**

[24] See footnote nº 9.

governing institutions in the process of elaboration and monitoring of implementation of anti-corruption policies at local level.

86. At the time of the visit, a draft Law on Free Access to Information was under consideration, which, in the opinion of the GET, clearly has the potential to improve citizens' possibilities of obtaining information held by public bodies. It provides, *inter alia*, for civil servants' liability for non-compliance with its provisions. Consequently, **the GET recommends that a Law on Free Access to Information be adopted as soon as possible and that training for civil servants on the public's rights under the Law be provided. Moreover, appropriate information on the Law should be made available to the public at large.**

87. The GET gained the impression that the implementation process of the Law on Civil Servants and State Employees is quite well-advanced, in spite of the fact that the law was adopted only a few years ago. Its implementation is closely related to that of the Public Administration Reform Strategy for 2002-2009, which focuses substantially on strengthening administrative skills. It is worth mentioning, however, that information provided to the GET by the Human Resources Management highlights the fact that insufficient attention is paid to specialised training of civil servants in anti-corruption matters, such as conflicts of interest, standards of ethical behaviour, anti-corruption measures, etc. In this connection, **the GET recommends to prepare and adopt special mandatory anti-corruption training programmes tailored to the needs of the various categories of civil servants.**

88. An analysis of the Montenegrin legislation related to the prevention of conflicts of interest indicates that the system suffers from several shortcomings. Firstly, the GET noted that two different laws are applicable in this field: the Law on Conflicts of Interest with regard to public officials and the Law on Civil Servants with regard to civil servants (as for the definition of public officials and civil servants see footnotes 11 and 13). It is clear that conflicts of interest are regulated in much more detail for public officials than for civil servants: in fact, Article 49 of the Law on Civil Servants only provides for a generic enumeration of basic activities that could undermine civil servants' impartiality when they exercise their public functions. Secondly, the Law does not impose any restrictions on the president and other members of the Commission with regard to their membership of political parties or of elective bodies, such as municipal assemblies. Thirdly, the Law allows the highest-ranking politicians, members of the government and other high-ranking officials to serve on the board of companies with predominant state or municipal capital and to simultaneously negotiate the privatisation of state property on behalf of the state. In the GET's view, this situation can give rise to serious conflicts of interest. In the light of the aforesaid, **the GET recommends to expand the application of the Law on Conflicts of Interest to include all public officials who perform public administration functions, including public officials as referred to in Article 2, paragraph 2, of the Law on Civil Servants. The GET also recommends that legislative or other measures be taken to ensure that all public officials and civil servants are prohibited from acquiring inappropriate benefits for themselves or their relatives through holding a position as member of the board in State owned companies. Finally, the GET recommends to seek ways of reducing the potential of political influence in the decisions taken by the Commission for the determination of conflicts of interest.**

89. The GET notes that there are no specific rules in place that can be applied to public officials who move from the public to the private sector. It considers that there is a potential risk that a promise of future lucrative employment may be used to influence serving public officials, and that former officials may abuse their contacts and inside knowledge of their former work areas, especially in cases where their new employment is closely related to their previous functions. **The GET**

recommends to introduce clear rules/guidelines for situations where public officials move to the private sector ("pantouflage") in order to avoid situations of conflicts of interest.

90. As indicated in the descriptive part of the report (see paragraph 79), a code of conduct for civil servants was being prepared at the time of the on-site visit. The GET considers that it is important not only to adopt such a code without delay, but it is also in the interest of the public administration to implement the rules contained in the code in the near future, and to ensure that public awareness is raised regarding these matters. Therefore, **the GET recommends to give high priority to the planned preparation and adoption of a code of conduct for civil servants and to widely promote and disseminate it among civil servants and the general public.**

91. As already detailed in the descriptive part of this report (paragraph 78), according to the Law on Conflicts of Interest, public officials are allowed to keep gifts not exceeding the amount of 50 Euros. The GET considers this minimum value to be high, especially if compared to the current average salary in Montenegro (200 Euros). Therefore, **the GET recommends to lower the value of any gifts that may be accepted by public officials to levels that clearly do not raise concerns regarding bribes or other forms of undue advantage.**

92. Finally, there are no legal measures in place to ensure confidentiality and to protect civil servants reporting corruption (so-called whistleblowers) from adverse consequences. The GET considers that providing a framework for the protection of whistleblowers would significantly enhance efforts to prevent and detect corruption. Consequently, **the GET recommends to ensure that civil servants who report suspicions of corruption in good faith (whistleblowers) are adequately protected from adverse consequences.**

Licensing and issuing permits

93. In the Republic of Montenegro, it is compulsory to have a license to run a business. Running a business without the necessary licenses could result in a fine or even lead to closure. At the moment, there is no law which compiles regulations on the conditions for obtaining a license. The present system is complicated, e.g., in order to obtain a construction permit the necessary documents have to be collected at over 20 different offices and there are no guidelines for citizens on the procedure. According to the GET, this situation is conducive to corrupt practices and gives rise to serious doubts about the system's reliability and impartiality. Therefore, **the GET recommends to limit licenses and permits to those that are indispensable; ensuring a reasonable time-frame for obtaining licenses and permits; and to encourage the compilation and editing – by the competent authorities - of guidelines for civil servants handling licenses and permits as well as for the general public.**

VI. LEGAL PERSONS AND CORRUPTION

a. Description of the situation

General definition

94. According to the Business Organisation Law (hereinafter the BOL), economic and commercial activities may be exercised through the following main forms of business organisations:

- a joint stock company ("JSC");
- a limited liability company ("LLC");

- a general partnership ("GP"); and
- a limited partnership ("LP").

Establishment

95. The requirements for establishing a company depend on its form. A joint stock company normally has to sign the foundation agreement, approve the charter, elect managerial bodies and pay subscribed shares (BOL, Article 21). Any form of business entity can be founded by domestic or foreign legal or natural persons. As regards the membership, the JSC cannot be founded by a single shareholder, although the law does not exclude the possibility for a single person to acquire all shares subsequent to the company's establishment. The required start-up capital for a JSC is set at 25,000 Euros (to be fully paid prior to registration) and at 1 Euro for an LLC. There are no limitations on legal persons acquiring interests in other legal entities.

Registration and transparency measures

96. A company shall acquire the status of a legal person upon entry in the Central Registry attached to the Commercial Court in Podgorica. The registration process was simplified and is currently based on the system of submission of registration forms directly to the Registry. The responsibility of the registrar to examine the accuracy of the information presented in the registration form has been repealed, as only compliance with formal requirements is verified. The date of submission of the registration form is considered as the date of registration. If the registrar fails to decide upon the request within a prescribed four-day time limit, the entity is considered registered irrespective of whether or not a registration certificate has been issued. Information contained in the Registry is published in the Official Gazette and is accessible through Internet.

Limitation on exercising functions in legal persons

97. For certain criminal offences or for the imposition of certain punishments, the Criminal Code envisages the legal consequence of cessation of specific rights or the prohibition to acquire them (Article 115, paragraph 1). The types of legal consequences of conviction are as follows:

- cessation of public functions or prohibition to accede to them;
- cessation of a job or practice of a profession or occupation, or a prohibition to obtain a specific title, profession or occupation, or in-service promotion; and
- loss of certain permits or licences issued by the decision of a state authority or a local self-government body, or a prohibition to obtain them (Article 116).

Legislation on the liability of legal persons

98. The Criminal Code establishes the principle of corporate liability for criminal offences. Article 31 ("Criminal liability of legal persons") reads as follows: "(1) Liability of legal persons for criminal offences, as well as sanctions to be applied thereto shall be envisaged by law. (2) Criminal offences for which a legal person can be held criminally liable shall be prescribed by law, as well." There are no other provisions providing for any sort of criminal liability of legal entities in the legal system of the Republic of Montenegro.

Sanctions and other measures

99. The law does not stipulate any sanction of limitation or ban on business activities for legal persons.

Tax deductibility

100. The authorities of the Republic of Montenegro state that the existing legal framework does not provide for the deductibility of "facilitation" payments, bribes or other expenses linked to corruption offences.

Fiscal authorities

101. The Public Revenues Directorate of Montenegro is obliged to report tax evasion to the competent authorities. Upon requests from competent bodies, such as the Ministry of the Interior or the State Prosecutor's Office, the Public Revenues Directorate is obliged to provide them with data on tax payers.

Accounting Rules

102. The Law on Accountancy and Audit contains a general obligation on entrepreneurs and legal persons to keep accounting records and business books, following the closure of the business year (Article 11). Various time-limits are prescribed for the storage of accounting data depending on the type of accounting document (e.g. 45 years for annual accounts of employees' earnings or originals of payment lists for the periods not covered by annual accounts; 10 years for final annual bills, main business book and follow-up diary, and 5 years for auxiliary books and semi-annual reports, etc.). No legal person is exempted from the obligation to keep accounting records and books.

103. Administrative responsibility and criminal liability are provided for negligent accounting. Failure by a legal person to submit the annual bill and reports to the Central Registry within the time-frame prescribed by law, as well as failure to keep business books in one of the ways specified in the aforementioned Law on Accountancy and Audit, can be sanctioned with a fine ranging from ten to three hundred times the minimum wage in Montenegro (Article 20). For the same offence, the leading person in a legal person can be punished with a fine ranging from one to two hundred times the minimum wage. Submission of false accounting statements or other means of deceit in order to make unlawful payments are criminalised as "fraud in service". Depending on the amount of illicit material gains, such an offence is subject to six months' to ten years' imprisonment (Article 419, paragraph 4 CC).

Role of accountants, auditors and legal professionals

104. Pursuant to the Law on the Prevention of Money Laundering and Terrorism Financing, accountants, independent auditors, auditing companies, lawyers and law firms with which business relations have been established, are bound to identify clients, according to the provisions of law. Also, while planning or carrying out transactions within a specific area on behalf of their clients, they are obliged to notify the Montenegrin Financial Intelligence Unit (the Administration for the Prevention of Money Laundering) of suspicions of money laundering (Article 31, paragraph 2). To facilitate the identification of suspicious transactions, a list of indicators must be established within each entity, and appropriate training should be organised for all its employees. The Auditor's Association, which is a non-governmental organisation with

approximately 600 auditors, acts in conjunction with the National Auditing Institution. The Association developed and implemented the Code of Ethics for Auditors.

b. Analysis

105. Article 31 of the Criminal Code states that "liability of legal persons for criminal offences, as well as sanctions to be applied thereto shall be envisaged by law" and that "criminal offences for which a legal person can be held criminally liable shall be prescribed by law, as well." However, there is no legal provision defining corporate liability or the relevant offences applicable. During the on-site visit, the GET was informed that a working party was elaborating the necessary provisions with a view to preparing new legislation on corporate liability by the end of 2005[25]. Therefore, **the GET recommends to adopt the necessary legislation to speedily implement liability of legal persons for corruption offences providing for sanctions – including monetary sanctions - that are effective, proportionate and dissuasive, in accordance with the Criminal Law Convention on Corruption (ETS No. 173).**

106. The Law on Accountancy and Audit contains a general obligation (Article 11) on legal persons and entrepreneurs to keep accounting records and business books, as well as to designate a person responsible for their keeping. There are no exemptions from this obligation. The destruction of books, the use of false or incomplete information in accounting documents as well as unlawfully omitting to record payments are all offences under Montenegrin law. The GET considers the legislation in this regard to be in conformity with article 14 of the Criminal Law Convention on Corruption.

107. All joint stock companies and some limited liability companies are obliged to undergo auditing of their books. That task is performed by the Republic of Montenegro's 2 200 auditors and accountants. If a court so demands, auditors and accountants are obliged to hand over all information available to them. According to Article 228 of the Code of Criminal Procedure "everyone shall report a criminal offence subject to official prosecution". However, in practice a major problem of inconsistency between the civic obligation to report laid down in article 228 and the principle of confidentiality vis-à-vis the clients that auditors and accountants are obliged to follow, according to their Code of Ethics, appears to exist. Some cases of suspicions of terrorism and drug trafficking were mentioned to the GET where the confidentiality principle could be breached. Consequently, **the GET recommends to encourage private auditors and accountants to report suspicions of corruption to the public prosecutor and to organise training on the detection and reporting of corruption.**

108. The National Auditing Institution performs audits in Montenegro's 21 municipalities, 50 budget users, two funds and four public enterprises. The Institution also performs audits in private companies with business transactions with any of the mentioned state entities. Article 227 of the Code of Criminal Procedure states that "All state authorities, local government authorities, public companies and institutions are bound to report criminal offences subject to official prosecution about which they have learned themselves or have learned in a different way." The same responsibility appears in Article 23 of the Law on the National Auditing Institution. The Institution is also obliged to report to the State Prosecutor as soon as it has information that the audited body "caused damages to the state property". It was clear to the GET that the representatives of the National Auditing Institution did not have enough experience with regard to obligations to report criminal offences subject to official prosecution to the State Prosecutor. Therefore the GET

[25] The GET was informed after the visit that the Government had submitted the Draft Law on Liability of Legal Persons for Criminal Offences to Parliament for adoption.

recommends to establish guidelines and provide training for State Auditors so that they can effectively fulfil their obligation to report suspected criminal offences, including corruption, to the State Prosecutor.

CONCLUSIONS

109. According to a public opinion survey, carried out in March 2004, corruption is one of the major concerns of Montenegrin citizens. The sectors usually identified as being worst affected are the judiciary, the customs service and the police; other activities mentioned as being affected by corruption are healthcare, public procurement, licensing and privatisation. The fact that the Republic of Montenegro is a small country (approximately 620,000 inhabitants) might contribute to the development of a close-knit community culture reticent to report suspicions of corruption. Although significant improvements through legal and institutional reform of the judiciary have been achieved, the independence of judges and prosecutors is still an issue of concern. This calls for the judiciary reform to be continued and targeted more effectively, particularly through simplified and shortened trials, the adoption of a Code of Ethics for Prosecutors, and the development of training programmes on judicial deontology.

110. During recent years, many new pieces of legislation have been adopted to bring the legal framework of the Republic of Montenegro as close as possible to European standards. However, there is a need to provide more training and specialisation for all those concerned with the investigation, prosecution and adjudication of corruption offences, and to establish mechanisms for cooperation between the police and the prosecution service to share common knowledge and understanding on how to deal with corruption and financial crimes related to corruption.

111. As far as public administration and ethics are concerned, the Republic of Montenegro has made significant progress in preparing the necessary legal and regulatory basis for the prevention of – and fight against – corruption in the public administration, in particular after the Anticorruption Initiative Agency was established in 2001 (transformed into the Directorate for Anti-Corruption Initiative in 2004). That said, the country still lacks a comprehensive anti-corruption strategy. Further improvements are recommended with respect, for example, to access to official documents, prevention of conflicts of interest, migration of public officials to the private sector (pantouflage) and licensing procedures. In addition, further implementation of corruption prevention policies in public administration requires extensive awareness-raising and the provision of appropriate information to the relevant authorities and to the public at large.

112. The legal system in the Republic of Montenegro does not provide for liability of legal persons. Consequently, there is a need to establish such liability for the offences of bribery, money laundering and trading in influence and to provide for sanctions that are effective, proportionate and dissuasive, in accordance with the Council of Europe Criminal Law Convention on Corruption. Finally, professionals such as accountants and auditors should become more actively involved in detecting and revealing corruption offences, in particular by complying with their reporting obligation on money laundering.

113. In view of the above, GRECO addresses the following recommendations to the Republic of Montenegro:

    i. **that the authorities of Montenegro carry out the necessary studies in order to gain a clearer insight into the scale of corruption and its various features so that anti-corruption initiatives and plans can be targeted more effectively** (paragraph 15);

ii. **that the Law on Public Procurement be revised with a view to clarifying its provisions and ensuring a more transparent procedure** (paragraph 16);

iii. **i) to review the present situation concerning recruitment and promotion procedures of judges and prosecutors in order to ensure that those procedures are based on objective criteria, and ii) to see to it that the conditions related to the tenure of prosecutors do not undermine their independence** (paragraph 33);

iv. **to implement a general policy aiming at restoring the public trust in the justice system that should include i) a thorough analysis of the existing civil and criminal procedures in order to find ways of simplifying and speeding up trials; ii) the adoption of a Code of Ethics for Prosecutors, whose enforcement should be monitored by the Prosecutors Council; and iii) a training programme for judges and prosecutors on judicial deontology** (paragraph 35);

v. **to create a special unit within the Public Prosecution Service to deal with corruption (including corruption-related economic crime offences) and to provide it with the necessary human resources, technical equipment and training** (paragraph 36);

vi. **that i) a clear mechanism for cooperation between the police and the prosecution service be put in place, that would consolidate the leading role of the prosecutors in the preliminary phase of criminal investigations and would ensure that they are provided with all relevant information as soon as possible; ii) the role of the investigative judge be reviewed with a view to ensuring more rapid and effective criminal investigations** (paragraph 37);

vii. **to set up a comprehensive training programme for police officers (especially for the Unit for Economic Crime) and prosecutors, more directly involved in corruption cases, in order to share common knowledge and understanding on how to deal with corruption and financial crimes related to corruption** (paragraph 38);

viii. **to extend the application of the provisions on the use of special investigative techniques (in particular Article 238 of the Criminal Procedure Code) to include all corruption offences and to provide the competent agencies with appropriate means and training in order to make the system of special investigative techniques work efficiently in practice** (paragraph 39);

ix. **to adopt all necessary measures to ensure that appropriate witness protection programmes can be implemented in practice** (paragraph 40);

x. **that i) guidelines be issued identifying an effective methodology for performing financial investigations, in particular concerning seizure and confiscation measures in corruption cases; ii) a common training programme be developed for the police officers and prosecutors in order to enable, promote and encourage better use of the practical and legal means available for identifying, tracing and seizing the proceeds of crime, including corruption** (paragraph 58);

xi. **that legal provisions be introduced which allow measures of seizure of proceeds of all corruption offences at the earliest stage of the preliminary investigation, even if not committed by an organised criminal group** (paragraph 59);

xii. **to keep under careful review all reporting institutions, enhance training to increase awareness of suspicious transactions reporting and monitor progress in this area, particularly for those obliged entities that have not as yet reported any suspicious transaction to the relevant authority** (paragraph 60);

xiii. **that the Programme for Combating Corruption and Organised Crime and its Action Plan be formally adopted; ii) to provide for efficient monitoring of the implementation of the anti-corruption programme through a specialised independent anti-corruption body with sufficient resources; iii) to involve local self-governing institutions in the process of elaboration and monitoring of implementation of anti-corruption policies at local level** (paragraph 85);

xiv. **that a Law on Free Access to Information be adopted as soon as possible and that training for civil servants on the public's rights under the Law be provided. Moreover, appropriate information on the Law should be made available to the public at large** (paragraph 86);

xv. **to prepare and adopt special mandatory anti-corruption training programmes tailored to the needs of the various categories of civil servants** (paragraph 87);

xvi. **to expand the application of the Law on Conflicts of Interest to include all public officials who perform public administration functions, including public officials as referred to in Article 2, paragraph 2, of the Law on Civil Servants. The GET also recommends that legislative or other measures be taken to ensure that all public officials and civil servants are prohibited from acquiring inappropriate benefits for themselves or their relatives through holding a position as member of the board in State owned companies. Finally, the GET recommends to seek ways of reducing the potential of political influence in the decisions taken by the Commission for the determination of conflicts of interest** (paragraph 88);

xvii. **to introduce clear rules/guidelines for situations where public officials move to the private sector ("pantouflage") in order to avoid situations of conflicts of interest** (paragraph 89);

xviii. **to give high priority to the planned preparation and adoption of a code of conduct for civil servants and to widely promote and disseminate it among civil servants and the general public** (paragraph 90);

xix. **to lower the value of any gifts that may be accepted by public officials to levels that clearly do not raise concerns regarding bribes or other forms of undue advantage** (paragraph 91);

xx. **to ensure that civil servants who report suspicions of corruption in good faith (whistleblowers) are adequately protected from adverse consequences** (paragraph 92);

xxi. **to limit licenses and permits to those that are indispensable; ensuring a reasonable time-frame for obtaining licenses and permits; and to encourage the compilation and editing – by the competent authorities – of guidelines for civil servants handling licenses and permits as well as for the general public** (paragraph 93);

xxii. **to adopt the necessary legislation to speedily implement liability of legal persons for corruption offences providing for sanctions – including monetary sanctions - that are effective, proportionate and dissuasive, in accordance with the Criminal Law Convention on Corruption (ETS No. 173)** (paragraph 105);

xxiii. **to encourage private auditors and accountants to report suspicions of corruption to the public prosecutor and to organise training on the detection and reporting of corruption** (paragraph 107);

xxiv. **to establish guidelines and provide training for State Auditors so that they can effectively fulfil their obligation to report suspected criminal offences, including corruption, to the State Prosecutor** (paragraph 108).

114. Finally, in conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Montenegrin authorities to present a report on the implementation of the above-mentioned recommendations by 31 May 2008.