



PERMANENT MISSION OF MONTENEGRO TO THE UNITED NATIONS OFFICE
AND OTHER INTERNATIONAL ORGANIZATIONS IN GENEVA

No 762/OHCHR

The Permanent Mission of Montenegro to the United Nations Office and other International Organizations in Geneva presents its compliments to the Secretariat of the Office of the High Commissioner for Human Rights and has the honour to convey the Written Replies to the Questionnaire concerning the HRC Resolution 29/11 on the negative impact of corruption on the enjoyment of human rights.

The Permanent Mission of Montenegro to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Secretariat of the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 14 December 2015

**Secretariat of the OHCHR
Geneva**



OHCHR QUESTIONNAIRE

- 1) **Examples which show how anticorruption efforts can be effectively complemented through the use of human rights standards, methods and mechanisms**
- As the new Agency for Prevention of Corruption will be fully operational as of 1st January 2016 according to the Law on Prevention of Corruption, it will be possible to measure its results and track such efforts after one year of its operability.
- 3) **Examples which show how the work of national anti-corruption agencies (ACAs) and (NHRIs) can be interlinked, substantively, structurally and organizationally (such as existing memoranda of understanding; other formal working relations; designated human rights/anti-corruption focal points)**
- According to the Article 37 of the Law on Prevention of Corruption, the Agency for Prevention of Corruption has the legal possibility to assign the proceedings to competent authorities, if it has information pointing to irregularities that are not within its jurisdiction. This article allows for the cooperation between ACA and NHR in Montenegro. However, as it is mentioned in the answer for the 1st question, the results of this cooperation are yet to be expected.
- 5) **Examples of the incorporation of human rights considerations in self-assessment of implementation of the United Nations Convention against Corruption**
- We did not have examples of this kind during the self-assessment of implementation of the UNCAC.
- 6) **Examples of successful human rights litigation, or of investment disputes or civil law cases where human rights arguments played a decisive role, in corruption cases**
- Corruption cases, according to our legal system, are subject to criminal proceedings only, and can't be subject of civil proceedings (dispute).
- 7) **Good practices for safeguarding human rights while combating corruption, in particular with regard to: a) criminalization of corruption (c.g. illicit enrichment), b) the detection and investigation of corruption, c) the prosecution and judicial proceedings (including *suo motu* powers) and d) in the recovery of illicit assets**
- a) Criminal offences with elements of corruption are criminalized in the Criminal Code of Montenegro, mostly within the title thirty-four - Criminal offences against official duty and title twenty-three - Criminal offences against payment transactions and business operations. Thus, corruption in our legal system is not incriminated as a specific criminal offense but it is contained in more criminal offences with elements of corruption that are prescribed by Criminal Code of Montenegro. Criminal Code of Montenegro, within the criminal offences against official duty, prescribes Passive Bribery (article 423) and Active Bribery (article 424), which are active

and passive bribing in public sector, and within the criminal offences against payment transactions and business operations, prescribes criminal offences - Passive Bribery in Business Sector (article 276a) and Active Bribery in Business Sector (article 276b), which are active and passive bribing in private sector. Illicit enrichment is not criminalized in Montenegro, as of article 20 of the UN Convention against corruption, which refers to illicit enrichment, has optional character and not binding.

b) According to Criminal Procedure Code, where there are grounds for suspicion that a criminal offence which is subject to prosecution by virtue of office has been committed, the police shall inform the competent State Prosecutor and take necessary measures as a self-initiative or upon a petition by a State Prosecutor, with a view to discovering the perpetrator, preventing the perpetrator or accomplice from fleeing or hiding, discovering and securing traces of the criminal offence and items which may serve as evidence, and to gathering all information which could be useful for conducting the criminal proceedings successfully. Also, the police authorities may seek information from citizens, apply polygraph testing, conduct voice analysis, perform anti-terrorist raid, restrict movement or the access to certain persons in a certain area for a relevant period; publicly offer a reward with the view of collecting information, request from the entity delivering telecommunication services to establish identity of telecommunication addresses that have been connected at a certain moment, carry out a necessary inspection of the means of transportation, passengers and luggage; undertake measures aimed at locating the persons; undertake necessary measures related to the establishment of the identity of persons and the sameness of items, take a DNA sample for analysis, issue a wanted notice for a person or warrant for seizure of items which are subject to a search, inspect, in the presence of the authorized person, facilities and premises of state authorities, companies, other legal persons and entrepreneurs, have insight in their documentation and seize it where needed, and take other necessary measures and actions in compliance with this Code. Records or an official annotation shall be made on the facts and circumstances established in the course of individual actions, which may be of importance for the criminal proceedings, as well as on discovered or seized items. The police may also make audio or audiovisual recordings of the execution of certain actions from this paragraph, in which case such recordings shall be enclosed with the record or the official annotation thereon.

According to Criminal Procedure Code the basic right and the main duty of the State Prosecutor shall be the prosecution of criminal offenders. For criminal offences prosecuted by virtue of office, the State Prosecutor shall be competent to: issue binding orders or directly manage the activities of the administrative authority competent for police affairs (hereinafter: the police authorities, military police, administration body in charge of customs affairs, administration body in charge of tax affairs and other administration bodies) in the preliminary investigation; render decisions on the postponement of criminal prosecution, when envisaged so by the present Code and reject criminal charges for reasons of fairness; order the investigation to be conducted, conduct the investigation and perform urgent evidentiary actions during the preliminary investigation; conclude agreements on the admission of guilt with accused persons, in line with the present Code, after having collected evidence in line with the present Code; present and represent indictments, i.e. bills of indictment before competent courts; lodge legal remedies against judgments and undertake other actions provided for by this Code. In order to exercise powers of State Prosecutor, police and other public authorities shall notify the competent State

Prosecutor before taking any action, except in cases of emergency. The police and other public authorities in charge of revealing criminal offences shall proceed upon the request of the competent State Prosecutor. During the investigation the State Prosecutor shall establish with equal attention the facts which are exculpatory and inculpatory for the accused.

Police tasks related to the criminal offences referred to in The Law on Special State Prosecutor's Office (organized crime regardless of duration of the prescribed punishment, high level corruption, money laundering, terrorism and war crimes) will be carried out by police officers employed in a special organizational unit of the administrative authority responsible for police work with the Special State Prosecutor's Office. For the purpose of investigating criminal offences that fall within jurisdiction of the Special State Prosecutor's Office, the chief special prosecutor may delegate certain tasks to the civil servants employed in administrative authorities responsible for tax affairs, customs affairs, affairs involving prevention of money laundering and terrorist financing and inspection affairs. In particularly complex cases the chief special prosecutor may form a special investigative team which, besides special prosecutor, may also comprise police officers from the Police Department, investigators and civil servants from another competent authority.

c) Parliament of Montenegro adopted The Law on Special State Prosecutor's Office is adopted in February 2015. This Law made a legal bases for Special State Prosecutor's Office. Under the jurisdiction of the Special State Prosecutor's Office is prosecution of the perpetrators of the following criminal offenses: organized crime regardless of duration of the prescribed punishment, high level corruption, money laundering, terrorism and war crimes. The tasks involving prosecution of the perpetrators of criminal offences under the jurisdiction of Special State Prosecutor's Office are carried out by the chief special prosecutor as the head of the state prosecutor's office and special prosecutors as state prosecutors. The Special State Prosecutor's Office is established for the territory of Montenegro within the State Prosecution Service which is a unique and autonomous authority. The seat of the Special State Prosecutor's Office is in Podgorica. The Special State Prosecutor's Office is taking all the actions falling within its jurisdiction before the Special Division of the High Court in Podgorica.

d) Asset recovery office in Montenegro is special police unit competent for financial investigations. Parliament of Montenegro in September 2015 adopted The Law seizure and confiscation of material benefit derived from criminal activity which, among the other, regulates the restitution of Seized Material Benefit. Where a provisional measure to secure assets or seizure of movable property were imposed in accordance with this Law, the holder shall be entitled to restitution of seized material benefit and damages in accordance with the law governing contractual relations, in the case where: a decision was issued to reject the motion for confiscation of material benefit derived from criminal activities or acquired by a criminal offence; judgment of acquittal or judgment of rejection were rendered with regards to the offence referred to in Art. 2 Para. 1¹ of this Law. In this case, the competent body shall restitute seized

¹ abduction referred to in Article 164; criminal offences against sexual freedom referred to in Articles 206, 208, 209, 210, 211, 211a and 211b; criminal offences against property referred to in Articles 240, 241, 242, 243, 244, 244a; 249, 250, 251, 252; criminal offences against payment transactions and business operations referred to in Art. 258, 259, 260, 261, 262, 263, 264, 265, 268, 270, 272, 273, 274, 276, 276a, 276b, 281 and 281a; unauthorized production, possession and release into circulation of narcotic drugs referred to in Art.300; criminal offences against environment and spatial planning referred to in Articles 303, 305 and 307; criminal offences against security of computer data referred to in

material benefit without delay and at the latest within 15 days from the date of the receipt of the decision rejecting the motion for confiscation of material benefit derived from criminal activities or acquired by a criminal offence. The competent body shall reconstitute seized material benefit without delay and at the latest within 15 days of the receipt of a final judgment of acquittal or of dismissal. An action for damages may not be brought after the expiration of the time-limit of three months as of the date of delivery of the final judgment rejecting the motion for confiscation of material benefit derived from criminal activities or acquired by a criminal offence, and Montenegro shall be accountable for compensation of this damages. A written record shall be drawn up concerning the restitution of property which shall be signed by the director of the competent body and the holder. In the case of restitution of material benefit, the revenues and all other benefits generated during the management of seized material benefit shall be handed over to the holder. If the entire material benefit or part of it was sold during the management of seized material benefit, the competent body shall transfer to the holder the amount of the sales price increased by the amount of average interest rate calculated on sight deposits in Montenegro. If the material benefit against which a seizure order was issued was gifted or destroyed during management, the holder shall be entitled to compensation of damages in accordance with the law governing contractual relations.

8. Good practices for protection of victims, witnesses, reporting persons, anti-corruption activists, whistleblowers and other persons involved in the fight against corruption which explicitly build on human rights standards

Before the adoption of the Law on Prevention of Corruption in December 2014, the protection of whistleblowers in Montenegro was regulated by the Law on Civil Servants and State Employees and Labour Law. The Law on Civil Servants and State Employees applied to civil servants and state employees while the Labour Law applied to private sector employees as well. The new Law on Prevention of Corruption which was adopted in December 2014 further enhanced the protection of whistleblowers. It includes: Broad definition of whistleblowers i.e. not only public sector employees but private sector employees as well; Broad definition of public interest with respect to corruption; the protection is guaranteed for large spectrum of reports of irregularities and unethical behaviour; Clear and specified procedures to be followed within the authority/company of an employee and within Agency for Prevention of Corruption as an external, independent institution; reporting directly to the supervisor within the institution is not mandatory and irregularities can be reported directly to the Agency; Establishing an external, independent authority which guarantees comprehensive protection of whistleblowers; Obligation of the Agency for Prevention of Corruption to verify the allegations of threats to public interest, followed by an Opinion or Recommendation to the authority/company in order to undertake proper measures to prevent these threats; The obligation of the Agency to verify the necessity for the protection of whistleblower and to address mandatory recommendations to authority/company, if protection is requested by the whistleblower; The judicial protection entitled for whistleblowers against discrimination and harassment at work based on reporting

Articles 350, 352, 353 and 354; criminal offences against public law and order referred to in Articles 401, 401a, 402, 404 and 405; criminal offences against legal procedures referred to in Articles 412, 413 and 414; criminal offences against official duty referred to in Articles 416, 419, 420, 422, 422a, 423 and 424; criminal offences against humanity and other values guaranteed by international law referred to in Art. 444, 445, 446, 447, 447a, 447b, 447c, 447d, 449, 449a and 449b.

threats to the public interest that indicate existence of corruption which is exercised in accordance with the law governing the prohibition of discrimination and the law governing the prohibition of harassment at work (Article 68) The implementation of the respective Law will start as of 1st January 2016 which is the date when the new Agency for Prevention of Corruption will start its work and be fully operational. Therefore, it can be expected to have good practice regarding protection of whistleblowers during 2016.

9. Good practices for securing the independence and enhancing the effectiveness of ACAs which draw upon the United Nations Paris Principles and the practice and modalities followed for strengthening the independence and effectiveness of NRIs (e.g. The International Coordinating Committee of NHRIs; its peer review process; sharing of substantive and administrative approaches to work)

Following the Article 6 of the UN Convention against Corruption, which stipulates the necessity for each State Party to establish an independent body which will carry out its functions free from any undue influence, the new Montenegrin Law on Prevention of Corruption establishes the Agency for Prevention of Corruption as an independent anticorruption body which doesn't belong to the executive branch of power and it is accountable to the Parliament of Montenegro. According to the Law it shall submit its annual Report on work to the competent parliamentary working body. The bodies of the Agency are the Council of the Agency and the director of the Agency. Members of the Council are elected by the Parliament, on the proposal of the working body responsible for anti-corruption affairs for a term of four years and director of the Agency is appointed by the Council of the Agency. Main responsibilities of the Agency are defined by the Law on Prevention of Corruption, Law on Lobbying and Law on Financing of Political Entities and Election Campaigns. The Agency will start its work on 1st January 2016. More detailed information on the new Law on Prevention of Corruption are available at the Directorate for Anti-Corruption Initiative's website, <http://www.antikorupcija.me/en/>.