

**THROUGH PARTICIPATION
AGAINST CORRUPTION!**

**- ANTICORRUPTION MECHANISMS
AT THE LOCAL LEVEL -**



The project is financed by the EU and co-financed by the Royal Norwegian Embassy



NORWEGIAN EMBASSY

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Podgorica, 2014

Through participation against corruption! – Anti-corruption mechanisms at the local level

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Corruption and local self-government – definition framework

Corruption in local self-government is in direct correlation with the weaknesses of administration, from organizational to technical, managerial and human resources. Municipalities have a monopoly position in relation to providing of certain services, which represents a suitable frame for acts of corruption. Opportunities for corruption at the local level are broad, since almost all of the employees – from the ones occupying the lowest positions to the highest level of authority have direct contact with the beneficiaries. The most common forms of corruption in local self-governments are connected to exemption from paying of utility bills and taxes, financing of projects, works or services which should not be supported, or the provided support is much higher than is actually needed. Acts of corruption could also be linked to non-transparent recruitment in local self-government bodies or public institutions founded by the municipality; selling or leasing municipal land, procurement of goods or services conducted contrary to established rules or public procurement procedures, etc.

Structural problems in functioning of Montenegrin institutions- zero tolerance for corruption?¹

Reform of local self-governments in Montenegro as well as the decentralization process failed to match the desired pace.

¹ While monitoring six high-risk areas for corruption at the local level, the research team from Centre for Civic Education (CCE) and Institute Alternative (IA) prepared analyses of the problems local self-governments are facing in the areas of public procurement, public-private partnerships, employment, political corruption, urban planning and work of the local assemblies. This brief proposal of practical policies lists only some of the problems identified in these areas.

Montenegrin municipalities suffer from low level of transparency, oversight mechanisms are weak and civic activism is at a low level.

Competences transferred from the central level have not been accompanied by the fiscal autonomy. There is also a problem of a surplus labor. In 2013, 10,508 civil servants and state employees² worked in 21 local self-government units, or at least 1,604 surplus employees from

the optimal number.³ Local self-government debt at the end of the first quarter of 2014 amounted to 171.05 million EUR or 4.86 % of the estimated GDP for the current year. In March 2014, total outstanding liabilities of municipalities amounted to 108. 61 million EUR.⁴

To paint the whole picture of challenges local self-government is facing we need to take into consideration the appliance of the legislative framework at the local level in areas of high risk of corruption. Municipalities violate legal provisions in the area of public procurement. Exceeding of the limits determined for the use of direct agreement, tardiness in submitting the annual reports on procurements, failure to report on violation of anti-corruption rules are just some of the irregularities.⁵ Montenegrin local self-governments do not have necessary expertise for implementation of public-private partnerships, do not adopt concession contracts even though they have legal obligation to do so in accordance with the Law on Concessions, they do not have insight into the subject of concession based on which payment is made from the State Treasury, nor the time frame for payment of the concession fee.⁶ Even 18 months after Law on Civil Servants and State Employees came into effect formal conditions for its application at the local level have not

2 Plan of reorganization of the public sector, July 2013, p

3 This is a provisional number for reduction of the number of employees foreseen in the Plan of reorganization of the public administration, Ibid, p.

4 Quoted from: Bulletin XXXII, Ministry of Finance of Montenegro, April- June, 2014, p. 58-59

5 More about this in: "Procurement in Montenegrin municipalities", Centre for Civic Education and Institute Alternative, 2013

6 More about this in: "Local self-governments and public-private partnership", Centre for Civic Education and Institute Alternative, 2014

been met, which impedes improvement of procedures for recruitment and evaluation in municipalities.⁷ In the area of urban planning there are insufficient instruments for use of planning document and there is a shortage of qualified staff- inspectors for construction at the local level.⁸

Mechanisms for combating corruption at the local level

In countries where corruption is all-present and represents an obstacle to structural reforms, improvement of business environment and financial sustainability, the role of all actors in eradication of this problem is extremely important. This analysis will examine the role of citizens, civil society organizations and directly elected representatives as actors in fight against corruption.

Civilian control

”Involvement of citizens in the decision-making process in the local community, achievement of the principle of transparency of work of the bodies and accountability for decision-making are of crucial importance for realization of the role of citizen in the local self-government and full affirmation of the position that citizen belongs to the local community.”⁹

Citizens in Montenegro at the local level have access to different forms of direct participation in expressing their opinions and decision-making, through: initiative, citizens’ initiative, assembly of citizens, local and municipal referendum.¹⁰

7 More about this in: ”Employment in Montenegrin municipalities- merit or party based?”, Centre for Civic Education and Institute Alternative, 2014

8 More about this in: ”Urban planning in Montenegro- construction or corruption?”, Centre for Civic Education, 2014

9 ”Strengthening of Accountability and Transparency at the Local Level in Montenegro”, Union of Municipalities of Montenegro, 2010, p. 8

10 Article 100 of the Law on Local Self-Government, ”Official Gazette of Montenegro”, no. 42/03, 28/04, 75/05, 13/06, ”Official Gazette of Montenegro”, no. 88/09, 03/10 and 38/12

Participation contributes to improvement of cooperation and communication channels between the representatives of local self-government and its citizens, and in this way it affects better understanding of the problems burdening the work of local authorities. However, citizens only rarely and sporadically influence the decision making process at the local level in Montenegro. The activism is mostly limited to participation in public debates and voting on local and national elections. However, active citizenship entails advocating some legislative solutions, submitting initiatives and petitions as well as request for free access to information, insisting on regular meetings and consultations with representatives of executive and legislative branch, etc.

Even when it comes to using the public debate mechanism, citizens do not show high degree of participation. Namely, during public debate on key anti-corruption document at the local level organized in Capital city only two citizens were present, and 3 subjects submitted written proposal for improvement of this Action plan.¹¹

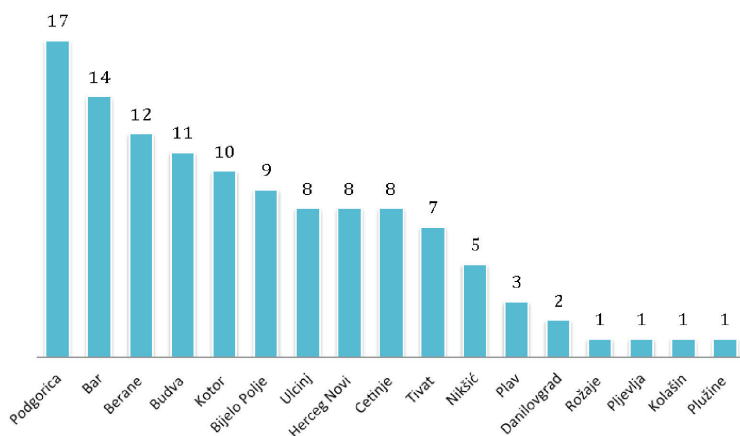
2

participants during
public debate on
AP for fight against
corruption in the
Capital city

Important mechanism for participation of citizens in fight against corruption is a possibility to report corruption. Information from the Directorate for Anti-Corruption Initiative show that in the second half of 2013 number of reports of corruption increased for 22 in comparison to the first 6 months, and totally 118 reports of corruption have been sent to the addresses of 12 institutions that have open lines or in other ways receive reports on corruption.¹² According to municipalities, most reports have been submitted in Podgorica (17 reports), whereas there were no reports in Andrijevica, Mojkovac, Šavnik and Žabljak.

11 See: Report on public debate on the draft Action Plan for fight against corruption conducted in the Capital city (2013-2014), July 2013.

12 Report on submitted number of reports on corruption for the period July-December 2013, Directorate for Anti-Corruption Initiative, Podgorica, January 2014, p. 12



Graph 1: Overview of submitted reports of corruption by municipalities

However, regardless of this increase, total number of reports still remains low, and this combined with insignificant number of criminal charges and indictments raised by prosecution for corruption gives rise to a dilemma if the extent of this problem at the local level is negligible or the system as such, that is competent institutions which are under strong political influence, do not inspire confidence of the citizens to report corruption?

Code of Ethics as a mechanism for strengthening citizens' confidence in work of the local administration

An additional option for fight against corruption at the local level is the use of mechanisms specified in the Code of Ethics of local civil servants and employees.¹³ According to the Code, the procedure

¹³ As municipalities have prepared their Codes based on the Model provided by the Union of Municipalities from 2009, this analysis used an example of a Code of Ethics of Local Civil Servants and Employees from Municipality Nikšić, as this was one of the municipalities covered by the project "Corruption at the local level- zero tolerance!". In 2010, municipality Nikšić has adopted a Code of Ethics of local civil servants and employees see: Code of Ethics of Local Civil Servants and Employees of Municipality Nikšić, "Official Gazette of Montenegro- municipal regulations", no.13/10 from 08.04.2010.

before the Ethical Committee can be initiated by filing of complaint or initiative by citizens, legal persons or other entities. The Code of Ethics specifies that:

*“Ethical Committee shall be obliged to act on the bases of the anonymous complaint, when the allegations from the complaint, together with other available facts and evidence, provide sufficient reasons to conduct further proceedings”.*¹⁴

But this solution does not contain precisely defined preconditions necessary to act on the basis of the anonymous complaint.

The difference between this procedure and the procedures initiated for violation of the legal norms is that the outcome of this type of procedure is a decision of the Ethical Committee if the local civil servant breached the provisions of the Code of Ethics. In case a violation has been established, the Committee would give a recommendation to the head of the local self-government body, or competent public administration body where the employee works, to take actions from his/her competence.

However, citizens do not use the option to submit an anonymous complaint. The Report on work of Ethical Committee for 2013 in municipality Nikšić does not contain information about deciding on a single complaint or initiative at the meetings of the Committee, whereas only one NGO representative attended the meeting with non-governmental organizations.

Role of NGO sector

One of the most effective measures in fight against corruption at the local level is to encourage and enhance cooperation between local self-government and non-governmental organizations. Transparency in work of the local self-government is reflected in involvement of

14 Article 46, Code of Ethics of Local Civil Servants and Employees of Municipality Nikšić

representatives of civil society in work of local bodies and commissions, regular information sharing and consultations on issues (acts, decisions) of importance for the work of all entities in the local community.

Local self-governments in Montenegro do not sufficiently consult citizens and non-governmental organizations on the issues of importance for the development of the community, or during adoption of important municipal acts and decisions, which to a large extent, determine living conditions in the community. There are only a few examples of organizing of joint round tables, public forums and similar events to show mutual understanding and support.

Although the Statute of municipalities contains a provision obliging president of the local assembly to at least once a year organize a working meeting with representatives of local non-governmental organizations, this has not come to life in practice.

Role of the Municipal Assembly and councillors

After the elections, councillors from municipal assemblies are practically not responsible to citizens, but exclusively to their party. Practice of holding regular consultation with citizens prior to sessions of the assembly is not in place. Councillors do not have significant influence on the measures contained in the strategic documents. Based on the Report on public debate on draft Program and Action Plan for fight against corruption,¹⁵ it can be concluded that councillors rarely participate and give their contribution to the discussion. Information on work of the councillors is not presented at the web sites of municipalities.

How transparent are Montenegrin municipalities?

In order for citizens to be able to actively influence the decision-making process of importance for the quality of their life they need to be adequately informed. Availability of all information and full transparency influences

¹⁵ Report from the public debate on the draft Program and Action plan for fight against corruption, 2013, <http://www.bar.me/files/1368454104.pdf>

the increase of trust of citizens in the local self-government. Citizens and stakeholders should have easier access to policies, strategies of work, decisions and activities of the local self-government authorities.

However, the official web sites of local self-governments do not contain annual reports of conducted public procurements or contracts concluded on the basis of direct agreement,¹⁶ granted concessions on the territory of municipality, or contacts on public-private partnerships. Municipalities advertise open vacancies on their web sites, but rank list of candidates are available only in municipalities Budva and Podgorica, while, with an exception of municipality Tivat, information on trainings conducted by local civil servants and employees on the annual level, are available exclusively in the annual reports of the competent secretariats.¹⁷

Free access to information at the local level

One of the most important anti-corruption instruments is the mechanism of free access to information in the possession of state bodies,¹⁸ which is defined in detail in the Law on Free Access to Information.¹⁹ By using this mechanism, citizens exercise their right to review the work of the state bodies, which constitutes one of the basic prerequisites of the effective control of a democratically elected government. The right to review the work of civil servants is derived from the fact that citizens through payment of their taxes finance the work of local administration and that administration should act in

16 In Montenegro, the Law on Public procurement stipulates an obligation to disclose contracts concluded by direct agreement. Since municipalities often violate legal limitation for the use of this, the least transparent procedure, it is necessary to publish them on the web sites of the contracting authorities. More about this at: "Municipalities violate the Law on Public Procurement", Institute Alternative, 2014 available at: <http://institut-alternativa.org/saopstenje-opstine-krse-zakon-o-javnim-nabavkama/>

17 Information from municipalities encompassed by the project "Corruption at the local level- zero tolerance!": Bar, Budva, Cetinje, Danilovgrad, Herceg Novi, Kolašin, Kotor, Nikšić, Mojkovac, Plužine, Pljevlja, Podgorica, Rožaje and Tivat have been taken into consideration.

18 Article 51 of the Constitution of Montenegro, "Official Gazette of Montenegro, no. 1/2007" from 25.10.2007.

19 Law on Free Access to Information "Official Gazette of Montenegro, no. 44/2012" from 9.8.2012

accordance with the general interest. The result of application of this law is transparency, and through providing relevant information public will have access to the content, adoption and implementation of decisions. However, the effectiveness of this mechanism depends on awareness of the citizens on the possibilities the Law on Free Access to Information provides, their interest to actively participate in the control of the work of local self-governments, as well as on the openness of local authorities.

Of the total number of requests for free access to information sent to all bodies and institutions in Montenegro in 2013, the majority (651) was submitted to municipalities²⁰ - and of this number, 158 requests have been submitted by citizens (physical persons) and 403 by non-governmental organizations. However, the data for seven municipalities are not available in the Report on situation in the field of access to information in Montenegro for 2013,²¹ although the Law obliges the state authorities to submit the information to the Agency for Personal Data protection and Free Access to Information²² so that the Agency could prepare an annual report.

Most of the requests have been submitted in Cetinje (169), and Budva (99), whereas the least have been submitted in Ulcinj(3). Citizens have submitted most of the requests in Tivat (46), and Bar (25), whereas in Mojkovac, Bijelo Polje, Danilovgrad and Ulcinj in 2013 not even a single citizen has expressed interest for documents in the possession of the municipality. During 2013, 93 complaints related to free access to information have been submitted to the Agency against municipalities. Of this number, only 3 have been submitted by citizens in Ulcinj and Budva. Most of the complaints referred to municipality Mojkovac (14), and Bijelo Polje (13).²³

20 Report on situation in the field of access to information in Montenegro for 2013, Agency for Personal Data Protection and Free Access to Information, available at: <http://azlp.me/images/stories/izvjestajoraduza2012g/KOMPLETAN%20IZVJESTAJ%20spi.pdf>

21 Report does not contain information for the following municipalities: Plužine, Žabljak, Šavnik, Berane, Kolašin, Plav, Andrijevica

22 Article 42 of the Law on Free Access to Information

23 Detailed overview of requests submitted to municipalities, as well as the number of complaints submitted to the Agency for Protection of Personal Data and Free Access to Information can be found in the Appendix to this analysis.

Control of the work of local authorities and fight against corruption at the local level- how should it be done?

Active promotion of integrity in public sector - the Netherlands²⁴

The Netherlands has developed instruments for dealing with corruption at the local level, and its cities and communities have prepared and are implementing local integrity policies. It is interesting to point out that the Dutch system in addition to Code of Conduct and Manual on conflict of interests has an instrument for self-evaluation of civil servants– SAINT,²⁵ which has been developed for assessment of risk and self-assessment of the impact of the integrity policy of state and local authorities.

City of Amsterdam is an example of good practice at the local level, according to European Commission. Within its administrative structure it has an Integrity Bureau,²⁶ which promotes integrity at the local political and administrative level, as well as in relation with service providers and enterprises. The Bureau provides the following services to all municipal units: consultations, trainings, risk assessment, acts in disciplinary cases, provides legal advice, conducts integrity investigations, as well as acts as a contact point for persons who would like to report violation of the integrity rules. This body may conduct internal investigation. If the body or a service proposes certain penalty for violation of the integrity rule, that body or service is obliged to seek the opinion from the legal service working within the Bureau. The purpose of this practice is to ensure consistency of prescribed penalties for such violations. Information received

24 According to: Annex to the EU Anti-Corruption Report Netherlands, COM(2014) 38 final, European Commission, Brussels, 3.2.2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_netherlands_chapter_en.pdf (10.9.2014)

25 Self-Assessment Integrity

26 Integrity Bureau - BI

through the telephone line for reporting of the cases of violation of integrity rules contribute to precise mapping of problematic areas/ sectors and development of preventive policies.

Guidelines for prevention of corruption in public procurement at the local level- Germany²⁷

German Association of Towns and Municipalities in cooperation with Association of small and medium-sized Construction Companies has prepared a brochure on preventing corruption in public tenders with an overview of the preventive measures for combating corruption in public procurement at the level of towns and municipalities. The brochure has been specifically designed as a set of guidelines for public tenders in one of the fields which is the most vulnerable to corruption- construction sector, but ultimately can be applied to all public procurements.

Aforementioned measures include: raising awareness and code of conduct; rotation of employees; clear rules on sponsorship and refusal of gifts; establishment of centralized authority for awarding of contracts; precise description of tender and control of the assessment; organizing of tender procedures, including confidentiality of bids and prevention of manipulation with bids arriving later; increased use of e-procurement; documentation of bids and careful control by supervisory bodies; exclusion of companies found guilty of corruption and creating black lists/ registers of corruption.

²⁷ According to: EU Anti-Corruption Report, Report from the Commission to the Council and the European Parliament, COM(2014) 38 final, Brussels, 3.2.2014, http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf (10.9.2014)

Conclusions and recommendations

Although there are several forms of direct participation in decision-making process available to citizens of Montenegro at the local level, level of activism is low and generally expressed solely through participation in public debates and voting at local and national elections. However, even when it comes to participation in public debates, citizens exhibit low level of interest for the use of this mechanism. Thus, for example, only two citizens took part in the discussion on the Action Plan for fight against corruption in the Capital City. Situation is similar regarding submission of anonymous complaints. The analyzed example of the Code of Ethics of local civil servants and employees of municipality Nikšić does not contain precisely defined conditions necessary to act upon receiving of anonymous complaint. In order to encourage more citizens to report cases of violation of the Code of Ethics it is necessary to pay more attention to defining of these conditions, as well as to open the office of the Committee and complaint boxes outside of the Municipality building. The practice from other countries has shown as good solution to place the boxes for anonymous complaints in busy locations, such as: headquarters of various public services, electricity distribution companies, local television station or radio, cadaster office, tax administration. Useful mechanism would be self-evaluation of local civil servants and employees about the compliance with the Code of Ethics.

Local self-governments insufficiently involve citizens and non-governmental organizations in the decision-making on different issues of importance for improvement of life in the community. The comment primarily relates to organization of thematic debates, consultations and round tables. The obligation to organize working meetings once per year between the representatives of local NGOs and president of

the municipal assembly is not functioning in practice, and the meetings between councillors and stakeholders before prior to the sessions of the local assemblies are also not held. Furthermore, councillors do not contribute to the content of the key strategic documents, and information about their work cannot be found on the official web sites of municipalities (municipal assemblies). The councillors insufficiently use the position they have to publicly express the ideas, problems and irregularities in the work of local self-government.

Montenegrin municipalities lack transparency. Apart from the fact that the Report on the situation in the area of access to information in Montenegro for 2013 does not contain information for seven municipalities, web sites of local self-governments do not have annual reports on conducted public procurements, information about concessions or contracts on public-private partnerships. The same applies to information on employment, which are in most cases incomplete. Reports on work of municipal secretariats solely contain information about implemented activities, but fail to provide information about problems and challenges local self-governments are facing in their work. Information about achieved successes is necessary, but citizens have the right to be regularly informed about the problems municipalities are facing as well.

In line with the aforementioned issues it is necessary to:

In order to improve the transparency of work of local self-governments:

- ✓ Make available on web sites of municipalities:
 - annual reports on conducted public procurements, as well as public procurement contracts concluded on the bases of direct agreement;
 - overview of granted concessions in their territory and contacts concluded using the model of public-private partnership;
 - information about advertising of vacancies; rank list of

candidates who have applied for working position; trainings local civil servants and employees attended on the annual level;

- contacts of councillors, manner of voting on different items of the agenda, as well as report on transparency of work of the municipal assembly and each councillor individually;
- ✓ Organize intensive campaigns to inform citizens in which way they can safely report abuses and activities with potential elements of corruption;
- ✓ Improve mechanisms for presenting the work of the local self-governments in such a way that reports contain critical assessments as well.

With regards to improvement of existing anti-corruption mechanisms:

- ✓ Organize regular meetings/ consultations of councillors with citizens and beneficiaries prior to scheduled sessions of municipal assemblies;
- ✓ Organize annual meetings of president of the local assembly with NGO representatives, as envisaged by municipal statutes;
- ✓ Clearly define minimum information which are required when filling anonymous complaint and make this information publically available on web sites of municipalities, in order to encourage more citizens to report the cases of violation of the Code of Ethics in a manner in which they would feel most protected from any potential negative consequences;
- ✓ Offices of the Ethics Committee, as well as the complaint boxes should be placed outside of the municipality building;
- ✓ Introduce an annual mandatory self-assessment of local civil servants and employees on compliance with the Code of Ethics.

In institutional and capacity-building terms:

- ✓ Raise awareness on corruption and anti-corruption mechanism through regular training of local civil servants and employees;
- ✓ Involve NGO representatives in training on specific issues of importance for work of local self-governments.

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8. Law on Free Access to Information "Official Gazette of Montenegro, no. 44/2012" from 9.8.2012

Appendix 1: Table presenting requests sent to municipalities

	Municipality:	Total number of requests received which were not appealed:	Citizens	NGOs	Bodies with most requests:	Additional number of requests which have been appealed:	Total number of requests:
1.	Cetinje	163	4	159	Secretariat for Finances and Development of Entrepreneurship Service for Common affairs	6	169
2.	Budva	92	23	63	Secretariat for Economy and Finance Secretariat for Protection of Property	7 (2 physical person)	99
3.	Mojkovac	85	0	85	Secretariat for Finances, Economy and Local Public Revenues	14	99
4.	Tivat	80	46	32	Secretariat for Spatial Development and Protection of Environment	(no information)	-
5.	Bar	42	25	12	Secretariat for Spatial Development and Public Utility Services, etc.	1	43
6.	Podgorica	26	13	7	Assembly service Secretariat for Development of Entrepreneurship	9	35

7.	Kotor	21	17	4	Secretariat for Urban Development, Construction and Spatial Planning	5	26
8.	Rožaje	18	5	13	Secretariat for Spatial development and Communal Services	2	20
9.	Pljevlja	17	9	7	Secretariat for General Administration	9	26
10.	Herceg Novi	16	13	1	Secretariat for Local Self-Government	8	24
11.	Nikšić	7	3	4	Local Assembly – Secretary	1	8
12.	Danilovgrad	4	0	4	Secretariat for Economy and Finance	1	5
13.	Ulcinj	2	0	2	Secretariat for Administration and Social Affairs	1 (physical person)	3
14.	Bijelo Polje	1	0	1	Secretariat for Entrepreneurship and Economic Development	13	14
	TOTAL:	574	158	403			651

Appendix 2: Number of complaints submitted to the Agency for Personal Data Protection and Free Access to Information

Municipality:	Number of complaints:
Mojkovac	14
Bijelo Polje	13
Podgorica	9
Pljevlja	9
Herceg Novi	8
Budva	7 (2 by physical person)
Kolašin	6
Cetinje	6
Kotor	5
Plav	2
Rožaje	2
Žabljak	2
Andrijevica	2
Bar	1
Berane	1
Ulcinj	1 (physical person)
Danilovgrad	1
Nikšić	1
Šavnik	1
Plužine	1

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