

# Committee for Anticorruption: Cure or Placebo?

November, 2012

## INTRODUCTION:

Amendments to the Rules of Procedure of the Parliament of Montenegro, made in May 2012<sup>1</sup>, have envisaged the establishment of the Committee for Anticorruption, as a permanent working body. The competences of the new Committee include the monitoring and analysis of the work of state authorities, institutions, organizations and bodies engaged in the fight against corruption and organized crime, as well as the consideration of issues and problems arising from the implementation of laws, strategies and action plans in the field and proposing the measures for their improvement. Furthermore, the Committee is in charge of considering petitions and its referral to the competent authorities.

Strengthening the Parliament's role and more efficient fight against corruption and organized crime are among the key challenges that Montenegro has been confronted with in the accession process into the EU. Thus, the establishment of the Committee represents a chance for making a comprehensive progress in the required reforms. However, in order for it to efficiently use its competences and to overcome the challenges that may arise in its work, the Committee for Anticorruption needs to define the directions of its work and the relationship with other Committees and anticorruption bodies.

The objective of this paper is to pinpoint possible dilemmas in the work of the new Committee, as well as to present desirable interpretation of its competences aimed at strengthening the parliamentary role in the fight against corruption and organized crime.

1 Rules of Procedure of the Parliament of MNE, Article 38 ("Official Gazette of the RoM", No. 51/06 of 4 August 2006, 66/06 of 3 November 2006, "Official Gazette of MNE", No. 88/09 of 31 December 2009, 80/10 of 31 December 2010, 39/11 of 4 August 2011, 25/12 of 11 May 2012);

## Why the Committee for Anticorruption?

Activities of the Parliament in the fight against corruption have so far, to the greatest extent, entailed the reviewing and voting for certain laws<sup>2</sup>.

**Parliamentary Administrative Committee, at its session held on 22 November 2012, has passed the Decision on the appointment of the opposition delegate as the Chairperson of the Committee for Anticorruption. This Decision is in compliance with both the practice used in the parliaments of other countries and the recommendations of international organizations.**

The use of other tools that are at the Parliament's disposal for the purpose of strengthening its overall oversight role has increased in the past two years, yet there is a room for improvement<sup>3</sup>.

Opening of the parliamentary inquiry and establishment of the Inquiry Committee for the purpose of collecting information and facts on corruption in the privatization of the Telecom MNE in 2012, has boosted the strengthening of the parliamentary

2 Committee for Political System, Judiciary and Administration, *Report on Implementation of the Resolution on the fight against corruption and organized crime, of 12 July 2011*;

3 In addition to MP's question, the number of which has significantly increased from 208 questions and 38 additional ones in 2010, to 393 questions and 35 additional ones in 2011, the application of other control and oversight mechanisms, such as the consultative hearings, is rarely applied being concentrated in certain Committees. During 2010, only 2 hearings were conducted, whereas this number increased to 7 in 2011. The Committee for International relations and the EU Integration was the leader in conducted consultative hearings (13 conducted in 2010 and 28 in 2011), that conducted 12 hearings in 2010, or 21 in 2010.

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oversight role. However, as far as the parliamentary role is concerned, this inquiry was confronted with numerous challenges and restrictions, stemming from the failure of MPs to set the inquiry's objective in a realistic manner. Instead of trying to determine political responsibility in the case, they were trying to prove criminal liability.<sup>4</sup>

The work of individual permanent parliamentary working bodies such as the Committee for Economy, Finance and Budget, Committee for Security and Defense, and the Committee for Political System, Judiciary and Administration was, to some extent, focused on the area of fight against corruption and organized crime in the past. Precisely because there is a room for the capacities of existing committees to be enhanced for a more efficient fight against organized crime and corruption, some delegates have questioned the idea of centralizing Parliament's role in this fight within one working body.<sup>5</sup> On the other hand, the Centre for Research and Monitoring (CEMI) in 2010, has advocated the establishment of a special Committee for Anticorruption, arguing that, inter alia, the strengthening of the current Committees' functions in the fight against corruption and organized crime was insufficient, since these issues constituted only one aspect of their work.

In the light of the above, the position of the new Committee against the current working bodies, the work of which was so far partly been focused on the fight against corruption and organized crime, is still an open issue. In other words, an unaddressed issue is whether, in the context of the current Parliament's activities in this area, the new competences of the Committee are representing a mere duplication of work, or, whether its establishment will generate synergy benefits/effects for the overall activities of the Parliament in the fight against corruption and organized crime.

## ***Competences – Between a Norm and the Practice***

The formulation of competences of the Committee for Anticorruption leaves a room for a broad interpretation. Hence, although some activities of this new authority are easy to anticipate, the comprehensive implementation of its competences is necessary for its more efficient operation.

The Committee is in charge of the oversight and analysis of the work of state authorities, institutions, organizations and bodies engaged in the fight against corruption and organized crime. This implies the oversight over the leading anticorruption authorities and institutions, such as the Department for the fight against organized crime and corruption of the Police Administration, Sector for combating organized crime, corruption, war crimes and terrorism of the Supreme State Prosecutor, etc., as well as the follow up, i.e. analysis of the State Audit Institution, Ombudsman, National Commission for monitoring the implementation of the Strategy for the Fight Against Organized Crime and Corruption (hereinafter: the Strategy), etc. In order to generate appropriate results, however, this responsibility should also imply the consideration of the budget funds that are allocated to these institutions, in order to make their work more efficient.

Role of the new Committee is to examine the issues and problems in the implementation of laws, strategies and action plans in area of the fight against corruption and organized crime and to propose measures for its improvement. Therefore, the access to all reports of individual state authorities from various Government departments on the implementation of anticorruption measures is a prerequisite for the successful implementation of the overall oversight role of the new Committee. Moreover, as recommended by the UNDP and the GOPAC, it is important to empower the new Committee with the provision to make recommendations on new strategies and action plans in the area of the fight against corruption and organized crime, prior to the Government's adoption<sup>6</sup>. This would generate a greater impact on final versions of the Government's strategic documents, simultaneously providing an opportunity for substantive oversight of the implementation of Committee's recommendations.

4 Institute Alternative, *Inquiry of the Telekom affair in the Parliament: Unrealistic Expectations and Realistic Impediments*, November 2012;

5 Information obtained based on the interview conducted by the Institute Alternative researcher with the delegates of the governing coalition and opposition parties in 24th convocation of the Parliament of MNE;

6 UNDP, GOPAC, *Preventing Corruption: An UNCAC Toolkit For Parliamentarians*, UNDP, GOPAC, 2010, p. 5

*“Member of the National Commission is entitled to be regularly informed on all issues that the National Commission is considering and deciding upon, as well as on other issues of importance for its participation in the work of the National Commission.”*  
*Rules of Procedure of the National Commission*

In considering implementation and making suggestions aimed at improving the legislation governing this area, the new Committee also has a chance to assume proactive role in the creation of anticorruption legal framework. One of the ways in which it can be done, and what has been advocated by not only international organizations but also by the Cetinje Parliamentary Forum in 2010<sup>7</sup>, is the assessment of the current legislative framework and its compliance with the international standards, such as the UN Convention Against Corruption.

So far the Parliament has failed to implement the majority of previously mentioned activities, whose implementation might be boosted by the establishment of the new Committee. In order to facilitate implementation of its competences, this body, however, has to define certain procedures and cooperation mechanisms with other Committees and anticorruption authorities.

### ***Parliament and National Commission: Undefined Relationship of “Mediation”***

So far the Parliament was only indirectly involved in proposing the measures for the improvement of action plans for the fight against corruption and organized crime and in the review of the Government’s reports on the implementation of anticorruption measures. The Parliament’s participation was provided through the two delegates, who are at the same time the members of the National Commission for monitoring the implementation of the Strategy (hereinafter referred to as: the National Commission).

The National Commission is the authority, established by the Decision of the Government in 2007, bringing together fourteen representatives of the

7 Parliamentary Dimension of the Parliamentary Committee of the of Central Atlantic Initiative, the Cetinje Parliamentary Forum, *Final Declaration*, 2010;

three branches of power and non - governmental sector, playing a key role in proposing amendments to the current Strategy and the accompanying Action Plan<sup>8</sup>. Twice a year, the National Commission considers Report with recommendations on the Strategy’s implementation, which is subsequently being adopted by the Government.<sup>9</sup>

Although the Parliament has in the past been familiar with this Report, it failed to play an active role in its review, which should be one of the main duties of the new Committee. The fact that two seats in the National Commission are already reserved for the delegates facilitates the access of the Parliament to the reports on the implementation of anticorruption measures. However, it is necessary to enhance the overall cooperation between the National Commission and the Parliament, which so far has not been at an appropriate level.

### ***Directions of Cooperation of the National Commission and the Committee for Anticorruption***

Pursuant to the Government’s Decision on the establishment of the National Commission, the presidents of the Committee for Economy, Finance and Budget and the Committee for Political System, Judiciary and Administration were automatically elected as its members<sup>10</sup>. So far, however, there was no defined procedures based on which the delegates, elected as the members of the National Commission, would be obliged to give opinions,

8 National Commission is in charge of managing, organizing and monitoring the activities of state authorities in relation to the implementation of the Strategy, analysis of its implementation and proposing the measures for its improvement and the submission of reports on implementation of the anticorruption measures envisaged by the Innovated Action Plan to the Government. The Commission is entitled to request the data, information and explanation from the state authorities in reference to the issues related to the prevention of corruption and organized crime;

9 Directorate for Anticorruption Initiative, the authority operating within the Ministry of Justice and Human Rights, being at the same time the General Secretariat of the National Commission, is collecting and processing the reports of individual bodies and institutions on implementation of anticorruption measures for the purpose of producing the final report;

10 Minutes of the 60th Session of the Committee for Political System, Judiciary and Administration, held on 20 July 2011;

recommendations and proposals on behalf of the other delegates.

Innovated Action Plan for the Strategy implementation for the period 2010 – 2012 (hereinafter referred to as: the Innovated Action Plan), is defining the mechanisms of cooperation between the National Commission and the Parliament. Performance indicator is the number of submitted and adopted proposals and recommendations between the Parliament and the National Commission. Cooperation, however, has been only partially implemented by appointing the representatives of the Parliament in the National Commission, and a contact person who is responsible for informing the National Commission on the Implementation of the anticorruption measures that are launched by the Parliament. Yet, the number of the exchanged and adopted proposals and recommendations remains unknown, while there is no explanation for its absence.<sup>11</sup> The establishment of the Committee for Anticorruption thus represents a chance for the improvement of the cooperation mechanisms between the Parliament and the National Commission.

There are at least three possible ways for improving the cooperation between these two authorities. The first implies the further implementation of already envisaged cooperation mechanisms, which includes the increase in the number of exchanged and adopted proposals and recommendations. The second implies the extension of the composition of the National Commission to include the representatives of the Committee for Anticorruption. Ultimately, taking part in the work of the National Commission by the delegates is arguable, since they, by the virtue of MPs capacity, are required to follow up its work and reports on the implementation of the Innovated Action Plan.

Retention of the possibility of having only the presidents of the Committee for Political System, Judiciary and Administration and the Committee for Economy, Finance and Budget as members of the National Commission, would bring the members of the Committee for Anticorruption in a disadvantageous position, since they would be deprived of information relevant to the work

11 National Commission for implementation of the Strategy for the fight against organized crime and corruption, 3<sup>rd</sup> Report on implementation of measures from the Innovated Action Plan for the implementation of the Strategy for the fight against corruption and organized crime, April 2012, p. 15;

of the National Commission. On the other hand, deprivation of some kind of “acquired rights” from the Presidents of the Committee for Political System, Judiciary and Administration, and the Committee for Economy, Finance and Budget, is also not applicable, especially if we have in mind the role of these working bodies in monitoring the work of the key anticorruption institutions such as the judiciary authorities and the State Audit Institution.

The Government’s Decision should therefore provide for the extension of composition of the National Commission to allow the President of the Committee for Anticorruption to actively participate in its work. In a given moment, and in the context of the current structure of the National Commission, this is the best solution, because the members of the new Committee have greater opportunities to engage in the intensive monitoring of the fight against corruption than the National Commission, the members of which are required to meet only twice a year. Moreover, they may define in advance the answers, conclusions, recommendations and any possible proposals of the amendments to the Strategy and Action Plan, which will be presented to the National Commission on behalf of this Committee.

The relationship between these two bodies should not be considered in the context of the parliamentary oversight over the work of the National Commission, which is, although subordinate to the Government, independent to a certain extent. On the contrary, it would facilitate the Committee for Anticorruption to exercise the parliamentary oversight over entities subjected to reporting to the National Commission. Consequently, it would also facilitate monitoring of the implementation of anticorruption measures, through the timely access to the necessary reports. Exercise of the parliamentary oversight *through* the anticorruption commissions is also the recommendation of the Professional Development Program for Parliamentarians and Parliamentary Staff, due to the fact that, as it is claimed, the existence of a clear reporting hierarchy, based on which the reports on anticorruption commissions are being distributed both to the Government and to the Parliament, is required for the efficient operation of these bodies.<sup>12</sup>

12 Parliamentary strengthening. org, Unit 7: Political Commitment To Anticorruption, p.4

## ***Oversight Function: Positive or Negative Conflict of Competences with other Committees?***

Cooperation with all parliamentary working bodies is the basis for the successful operation of the new Committee, given that corruption is a phenomenon that permeates all areas of the public administration functioning. In the Montenegrin context, the necessity of such cooperation derives from the fact that local administration, privatization process, urban planning, public procurement, education and health system are identified as the special risk areas, but also due to the fact that any other area is under the risk of corruption<sup>13</sup>.

However, the functioning of the new Committee should also be considered in the context of current activities of other respective committees in the fight against corruption and organized crime. Specifically, the previously presented interpretation of competences implies that the Committee for Anticorruption should conduct the oversight over the leading anticorruption bodies, the work of which, in a capacity of the parent committees, is already subjected to the follow up, monitoring and analysis. In other words, other working bodies, such as the Committee for Security and Defense, Committee for Political System, Judiciary and Administration and the Committee for Economy, Finance and Budget, are already conducting an oversight over some of the aspects of the anticorruption bodies' work.

For example, during 2011, the Committee for Political System, Judiciary and Administration has reviewed and supported, as the parent Committee, the reports of the Judicial Council on the work of the courts and the Supreme State Prosecutor's report on the work of the State Prosecutor's Office, as well as the reports on the work of the Ombudsman and the Commission for the Prevention of the Conflict of Interest.<sup>14</sup> On the other hand, the Committee for Security and Defence, pursuant to the Law on Parliamentary Oversight of the Security and Defense Sector, is in charge, inter alia, of considering the reports of the Police Administration and the Ministry of Internal Affairs, the two bodies with a crucial role in the fight against corruption and

13 Montenegro Ministry of Finance, *Corruption Risk Assessment in Special Risk Areas*, July 2011.

14 Committee for Political System, Judiciary and Administration, *Updated 2011 Annual Report*, February 2012;

organized crime.<sup>15</sup> This Committee was also among the main initiators of the control hearings focusing on the work of bodies engaged in the fight against corruption and organized crime. In 2011,<sup>16</sup> it organized control hearings of the representatives of the Police Administration, Administration for the Prevention of Money Laundering and Terrorism Financing, Supreme State Prosecutor, National Security Agency, with regard to the actions these bodies have undertaken in the so – called Balkan Warrior operation.<sup>17</sup> Finally, Committee for Economy, Finance and Budget, having a crucial role in conducting oversight over the management of public finance and public expenditure, particularly through the review of the State Audit Institution reports, also plays an important role in the fight against corruption.

Therefore, the overlapping between these Committees and the newly established Committee for Anticorruption is inevitable. That can, however, ultimately lead only to the so - called positive conflict of competences. In this concrete case, it means that both bodies are in charge of the oversight of work of the same authorities, each within its level of competences. For example, Committee for Security and Defence, is considering a comprehensive report on the work of the Police Administration. Yet, it doesn't exclude the possibility of the Committee for Anticorruption to consider in details the report on the work of the Police's Department for the fight against corruption and organized crime. This can only contribute to a more comprehensive improvement of the work of these bodies.

A more concrete problem can occur with regard to the new Committee's lack of access to confidential data. Specifically, the number of control and consultative hearings of the executive power representatives, conducted on the basis of monitoring of the implementation of laws, policies and action plans for the fight against corruption and organized crime, will be among the key indicators of the oversight role of the future Commit-

15 Law on Parliamentary Oversight of Defense and Security Sector, Article 3, ("Official Gazette of MNE", No. 80/10 of 31 December 2010);

16 Parliament of MNE, 2011 Annual Report of the Committee for Security and Defense;

17 Balkan Warrior was the international police operation conducted in 2009, that cracked down the international drug trafficking chain. One of the suspects in the case, Darko Saric, Serbian citizen of Montenegrin origin, has escaped from the aforementioned police action

tee. However, the greatest obstacle in obtaining complete information and practicing the oversight role of the new Committee is the unequal access to classified information by the members of the different parliamentary bodies.

Pursuant to the Law on Data Confidentiality, the Committee for Security and Defense is the only working body of the Parliament, which, without seeking special permission, may access classified information, needed for a full exercise of its competences.<sup>18</sup> Since the competences between this Committee and the Committee for Anticorruption are overlapping, this may be used as an excuse for delegating some issues, launched by the Committee for Anticorruption and falling under the competences of its work, to the Committee for Security and Defense.

### ***Role in the Negotiations Process with the EU***

The new committee's role in the EU membership talks will largely depend on its relation with another newly established committee. Pursuant to the amendments to the Rules of Procedure of the Parliament, the Committee for European Integration was also established in May and it will play a key role in the monitoring of Montenegro's accession with the European Union. This role, inter alia, includes the monitoring and evaluation of the negotiation process course, as well as the provision of opinions on prepared negotiating positions.<sup>19</sup> Formally, Rules of Procedure do not envisage an obstacle for other working bodies to review negotiating positions as well. The Committee for Anticorruption, as interested Committee, should thus oversee the course of negotiating process and have an insight into the negotiating positions for the Chapter 23 (Judiciary and Fundamental Rights) and Chapter 24 (Justice, Freedom and Security), precisely because these two Chapters are aimed at enhancing fight against corruption and organized crime. In the light of

18 Law on Data Confidentiality, Article 26 ("Official Gazette of MNE", No. 14/08 of 29 February 2008, 76/09 of 18 November 2009, 41/10 of 23 July 2010, 40/11 of 8 August 2011, 38/12 of 19 July 2012, 44/12 of 9 August 2012);

19 Rules of Procedure of the Parliament of MNE, Article 42a ("Official Gazette of MNE", No. 51/06 of 4 August 2006, 66/06 of 3 November 2006, "Official Gazette of MNE", No. 88/09 of 31 December 2009, 80/10 of 31 December 2010, 39/11 of 4 August 2011, 25/12 of 11 May 2012);

the above, the optimum solution would be to hold joint sessions with the Committee for European Integration, for the purpose of addressing both the negotiating positions and progress made within these two Chapters.<sup>20</sup> This would both strengthen the quality and the Parliament's role in the process, through substantive debate on issues which affect the progress of the negotiations.

The opening benchmarks for the Chapters 23 and 24<sup>21</sup> entail adoption of action plans for addressing the issues, including also the fight against corruption and organized crime. The competence of the Committee to discuss issues and problems arising from the implementation of the action plans for the fight against corruption and organized crime represents the basis for this body to have an insight into the negotiating positions for Chapters 23 and 24, and to propose the mechanisms for the improvement of measures and activities envisaged thereof. The oversight of the Government's activities in these areas, as well as in terms of the negotiations, could be reinforced by introducing the obligation of quarterly reporting to the Committee on implementation of the action plans for the fight against corruption and organized crime.<sup>22</sup> These reports would be discussed in the Parliament, on the joint sessions of the Committee for Anticorruption and the Committee for European Integration, in the presence of the Minister of Foreign Affairs and European Integration, as well as the State Secretary for the European Integration, which is at the same time the Chief Negotiator.<sup>23</sup>

### ***Legislative Functions***

Committee for Anticorruption is among the few ones in the Parliament, along with the Administrative Committee and the Committee for the European

20 More on this issue is given in the analysis *Montenegro and Negotiations within the Chapter 23 – Judiciary, Fundamental Rights*, Institute Alternative, June 2012;

21 Croatia is the first country that negotiated, at that time unified Chapter, within the two Chapter – 23 and 24;

22 Strategy envisages the semi – annual reporting obligation. Reference: Strategy for the Fight Against Corruption and Organized Crime for the period 2010 – 2014, Ministry of Internal Affairs and Public Administration, July 2010, Podgorica;

23 This practice has been established on the occasion of monthly consideration of the Report on Implementation of the Action Plan for monitoring the implementation of recommendations given in the European Commission's opinion by the Committee for International Affairs and the EU Integration during 2011;

Integration, to which the Rules of Procedure failed to explicitly entrust the consideration of draft laws. However, with the aim of the successful operation of this working body in the fight against corruption and organized crime, it would be desirable that the Committee is focused on the evaluation and harmonization of the current legislative framework, proposals and draft laws in the area of the fight against corruption and organized crime with the international standards.

Because of the possible work overload due to the assessment of the current legal framework, the Committee should intensively use the capacity of the professional service and the Parliament's Department for research, analysis, library and documentations. In the initial phase, the Committee may focus its analysis of the quality and implementation of the current legislation with regard to special risk areas for corruption in Montenegro, and, pursuant to possible findings, may launch the amendments thereto.

On the other hand, the activities of the future Committee in considering and analyzing legal proposals and drafts, for which other working bodies are responsible in a capacity of a parent committee, leave vast room for the enhancement of cooperation among the various Committees. There are two main directions for enhancing this kind of cooperation. The Committee for Anticorruption may act as interested Committee for considering certain legislative proposals and drafts and adopt the conclusions that the parent Committee is obliged to consider. It can also insist on organizing joint sessions when addressing specific legislative proposals and drafts, the adoption of which is pivotal in the fight against corruption.

Although scarcely applied in the Parliament so far, this practice has generated certain results. For example, the first joint session of the Committee for Political System, Judiciary and Administration, being the parent Committee, and the Committee for Human Rights and Freedoms, in the capacity of interested Committee, when determining the Proposal of the Law on Treatment of Juveniles in the Criminal Proceedings, has contributed to a constructive debate and the Proposal of the Law was determined upon obtaining a positive oral opinion of the Committee for Human Rights and Freedoms.<sup>24</sup> Another example of organizing joint

sessions in the Parliament is generating greater efficiency in the process of considering the draft laws, due to the greater opportunities of making an influence to the final Proposal of the Law that is subsequently subjected to the plenary vote.<sup>25</sup>

## ***Petitions: Committee's Capacity Test***

One of the special competences of the Committee for Anticorruption is the consideration of petitions and its referral to competent authorities. Pursuant to the Law on Treatment of Petitions and Proposals<sup>26</sup>, petitions are considered to be requests, complaints, proposals and other motions based on which the applicants, individually and in groups, are addressing the authorities.

They therefore represent a potential for increasing not only the representational role, in terms of representing the interests of citizens, but also the oversight role of the Parliament, through the possible launching of consultative and control hearings, on the basis of information, initiatives and complaints that are presented in petitions. However, the lack of clear procedures for the consideration of petitions within the Parliament, on the one hand, and the possibility of receiving a large number of them, on the other hand, may jeopardize the capacity of the Committee to adequately consider all submitted complaints and information.

## **How to Address the Petitions?**

The Parliament has so far also received petitions. Only in 2011, the total number of addresses by the Civil Sector representatives in the Parliament amounted at 110<sup>27</sup>. However, as noted in the most recent progress report of the European

<sup>24</sup> Minutes of the first joint session of the Committee for Political System, Judiciary and Administration and the

Committee for Human Rights and Freedoms, held on 13 December 2011;

<sup>25</sup> Minutes of the first joint session of the Committee for Human Rights and Freedoms and the Committee for Gender Equality of the Parliament of MNE, held on 18 December 2009;

<sup>26</sup> Law on Parliamentary Oversight of the Security and Defense Sector, Article 3, "Official Gazette of the FRoM", No. 22/78 of 26 June 1978, 29/89 of 25 October 1989, 39/89 of 29 December 1989, 48/91 of 28 November 1991, 17/92 of 24 April 1992, 59/92 of 22 December 1992, 27/94 of 29 July 1994, and "Official Gazette of MNE", No. 73/10 of 10 December 2010);

<sup>27</sup> Parliament of MNE, *2011 Annual Report*, p. 45;

Commission on Montenegro, procedures for acting upon civil initiatives have not been adopted yet<sup>28</sup>. The Committee, therefore, should not serve as a mere mediator of citizens' and NGO's sector initiatives. It should rather, as recommended by the U4 Anti-Corruption Resource Centre<sup>29</sup>, make the effort of making the petitions visible to the executive power, and inform the applicants about the activities taken upon their petitions.

The Committee therefore has to streamline procedures for petitions' consideration. Experience of similar bodies in other countries, points to the possibility of receiving a large number of complaints that may be ignored without an adequate explanation. For example, members of Latvian Committee for Security, Defense, and Corruption Prevention refused to consider the petition lodged by a victim of marathon trials on suspicions of corruption in the Latvian public administration, with an excuse that if a meeting were to be organized on each complaint received, they wouldn't have the time to deal with other things<sup>30</sup>.

In terms of defining procedures for addressing all types of applications, the political systems, such as the Scottish one, the parliament of which was the pioneer in setting up a special Committee on petitions, represents the example of best practice. Specifically, the Scottish Committee, which was established after 1999, has shown a kind of flexibility. After the number of petitions lodged to this authority had increased, specific criteria were introduced for the purpose of filtering out the petitions falling under the authority of the parliament, and dismissing the petitions that are subjected to the court's process, or ones promoting illicit activity or disclosing secret and personal data<sup>31</sup>.

The establishment of the similar procedures in the new Committee would reduce the possibility of examining petitions in a manner that would go

beyond the Parliament's competence. It would simultaneously establish clear rules for the purpose of preventing the absence of considering the petitions and its referral to the competent authorities without providing any previous explanation. Additionally, it would reduce the possibility of compromising the legitimacy of this authority, through nonselective dismissal of petitions using the time constraints as an excuse.

Precisely during the consideration of petitions received, the Committee's capacities will be put to the most difficult test. This is so because, unlike the working bodies being solely competent for addressing the petitions, the Committee for Anticorruption has other responsibilities as well. One of the tasks of the Parliament's professional service should thus be the filtering of petitions, based on pre-defined criteria, and recommendation of petitions that are falling under the competences of the Committee. For the purpose of preventing the risk of jeopardizing the representational role of the new Committee, the final decision on acting upon the petitions received should ultimately rest on the Committee members.

Procedures for consideration of petitions will not only represent a key test of the capacity of the new Committee. Its publicity, i.e., providing for a petitioner to have an insight into the response of the competent authorities on its complaint, initiative or proposal, will be of great importance for the overall confidence of citizens in this new working body. Common point of various modern procedures for addressing the petitions by the Parliament, are the activities pursued in strengthening the publicity of the actions taken upon it. They include the publication of responses of competent authority based on petition, as well as the publication of decisions of the Committee on considered petitions on the web - site of the working bodies.<sup>32</sup> In the light of the above, the process of considering petitions should be public, in terms of publishing petitions, responses of the competent authorities, and the decision of the Committee after considering any petition, for which it has been previously determined that it meets certain criteria, on the website of the Parliament.

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28 European Commission, *Montenegro Progress Report 2012*, Brussels, 10 October 2012;

29 U4 Expert Answer, *Parliamentary Approaches To Corruption*, 2007

30 Too Many Letters Received By Saeima Anti-Corruption Committee, August 2012, [http://www.justiceforinara.eu/index.php?id=84&tx\\_ttnews%5Btt\\_news%5D=85&cHash=47f6baf5bd3d85bf3fb2d7a728c215d7](http://www.justiceforinara.eu/index.php?id=84&tx_ttnews%5Btt_news%5D=85&cHash=47f6baf5bd3d85bf3fb2d7a728c215d7)

31 Lynch, P. and Birrell, P., *Linking Parliament to the People: The Public Petitions Process of the Scottish Parliament*, 2011

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32 Service of the Parliament of MNE, *Address of the Citizens to the Parliament – petition, applications and proposals*, June 2012;



## **Conclusions and Recommendations:**

Competences of the Committee for Anticorruption leave a room for an extensive interpretation. The manner in which they will be applied in practice will provide an answer to the question whether this working body will “be repeating” tasks that have been already assigned to other bodies, or whether it will substantially contribute to the fight against corruption and organized crime through the monitoring of the implementation of legislation and strategies, intensive use of control mechanisms, evaluation of the current legislation and other legislative initiatives.

The establishment of the Committee for Anticorruption is thus opening up the room for strengthening the fight against corruption and organized crime in Montenegro, as well as the overall oversight and representational role of the parliament. Previously outlined directions of work of this new body, point to the particular challenges and opportunities that will significantly determine the efficiency of the new Committee. These challenges, to the greatest extent, include the manner of interpretation of this working body’s competences, directions of cooperation between the Committee for Anticorruption and the National Commission, as well as with other working bodies, and procedures for the petitions’ consideration.

### **Recommendations in reference to the manner of considering strategies and action plans, and proposing measures for their improvement:**

- Committee should be enabled to assume active role in the development of action plans and strategies prior to their adoption by the Government, for the purpose of exercising greater influence on their final version and a more efficient oversight over their implementation.
- Committee should be enabled to take part in the development of the action plans for the opening of the Chapter 23 (Judiciary and Fundamental Rights) and Chapter 24 (Justice, Freedom and Security), as well as in the consideration of its implementation, all pursuant to the competences of this working body to consider issues and problems in the implementation of the action plans for the fight against corruption and organized crime, and to propose measures for its improvement.

- Oversight of the Government’s activities in the fight against corruption and organized crime, as well as in reference to the negotiations could be reinforced by introducing the quarterly reporting obligation to the Committee on the implementation of the action plan(s) for the fight against corruption and organized crime.

### **Recommendations in reference to the improvement of relationship between the National Commission and the Committee for Anticorruption:**

- Government’s Decision should extend the composition of the National Commission to include the President of the Committee for Anticorruption.
- The cooperation mechanisms between the Committee for Anticorruption and the National Commission should be enhanced, in a manner which would ensure that the actions of the Committee’s representative are grounded on conclusions and recommendations that have been previously agreed on the Committee’s meetings.
- Records on the number of Committee’s recommendations, which are adopted at the sessions of the National Commission and implemented in practice, should be kept.

### **Recommendations in reference to the improvement of the overall oversight and legal role of the Committee for Anticorruption:**

- The Law on Data Confidentiality should be amended in order to provide the members of the new Committee the access to the confidential data.
- The Committee’s capacities for carrying out the evaluation of the legislative framework with regard to its compliance with the international standards in the fight against corruption and organized crime should be strengthened, by ensuring full support from the professional service and the Parliament’s Department for research, analysis, library and documentation.
- For the purpose of improving the anticorruption provisions in the laws, the members of the Committee for Anticorruption should insist on the joint consideration of the proposals and draft laws with other

competent permanent parliamentary working bodies that operate in a capacity of the parent Committees.

**Recommendations in reference to the consideration of petitions and their referral to competent authorities:**

- Based on a special Rulebook, the members of the Committee should define the procedures for petitions' admission and consideration.
- The aforementioned Rulebook should define the minimum criteria to be met by any petition submitted by an individual or a group, including anonymous petitions, for the purpose of being addressed at the Committee's Sessions.
- Professional service of the Committee should provide for a uniform application of these criteria that should classify petitions and recommend to the Committee consideration of those, which fall under the scope of its competences. For the purpose of not jeopardizing the representative role of the new Committee, the ultimate decision on taking actions upon the received petitions should rest on the members of the Committee.
- Procedure of considering the petitions by the Committee should be public, in terms of publication of petitions, responses of authorities, and the decision of the Committee brought after the consideration of each application, which has previously met certain criteria, on the web - site of the Parliament.
- Professional service is obliged to submit a corresponding justification to the petitioners who fail to meet pre- defined criteria.

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- Interviews with:
1. Miodrag Vukovic, former chairman of the Working Group for the Changes of Rules of Procedures of Parliament of Montenegro
  2. Rasko Konjevic, former member of the Committee for Security and Defense and Committee for Economy, Finance and Budget
  3. Goran Danilovic, MP, the main initiator of the formation of the Committee for Anticorruption
  4. Vesna Ratkovic, director of Directorate for Anticorruption
  5. Damir Davidovic, Secretary General of Parliament of Montenegro

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