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# THE INSTITUTIONAL FRAMEWORK FOR INVESTIGATIONS OF CORRUPTION AND ORGANIZED CRIME

**Comparative Models**

Key Findings and Recommendations

November 2013  
Podgorica



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## Introduction

Although the issue of fight against corruption and organized crime is one of the most common topics in the Montenegrin public discourse, during the 2013th included, the Progress Report of the European Commission on Montenegro continues to record the same serious concerns for the situation in this area. The idea of reorganization and establishment of the independent Office of the Special Prosecutor for the Suppression of Corruption on High Levels and Organized Crime came from Miroslav Lajčák, Minister of Foreign Affairs of Slovakia. This proposal was endorsed by the Government of Montenegro, which announced its plan to establish the Special Prosecutor's Office modeled on the Croatian Uskok.

Following the indicators of the need for further reform of the institutional framework for investigations of corruption and organized crime in Montenegro, it is our intention with this study to provide alternatives and models for improving cooperation and efficiency of all stakeholders, especially the Prosecution and the Police. Bearing that in mind, we analyzed and indicated the problems and lessons learned from five countries' institutional frameworks: Bulgaria, Lithuania, Macedonia, Romania and Serbia. The conclusions we reached became additionally actualized with the beginning of work of the Government's working group for drafting special legislation, which will regulate the jurisdiction and organizational structure of the State Prosecution for dealing with cases of organized crime and corruption.

The study consists of two parts – the first includes a summary of the recommendations relevant for the Montenegrin context, with special emphasis on the examples of good practices of the Special Prosecutor's Offices, while the second part presents in greater detail the institutional frameworks of the five aforementioned countries, providing an overview of all authorities with investigative powers in cases of corruption and organized crime.

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The research was conducted from July to November 2013. We owe special gratitude for the information provided to the following institutions: Embassies of Bulgaria and Romania to Montenegro, which acted as mediators in the communication with relevant authorities of these countries; Romanian Ministry of Foreign Affairs and Directorate for Investigating Organized Crime; Lithuanian Institute of Law and the Police Department under the Ministry of the Interior of the Republic of Lithuania; as well as the Special Prosecutor's Office for Organized Crime of the Republic of Serbia.

## I SUMMARY AND RECOMMENDATIONS

There is an international and regional tendency of prosecutors' offices to specialize in criminal offence of corruption and organised crime. Old member states of the European Union have specialized bodies in charge of solving complex criminal offences such as the Prosecutor's Office for the fight against mafia in Italy (*Procura Nazionale Antimafia*), the Office for suppression of corruption within the Prosecutor's Office in Spain (*Fiscalía Anticorrupción*), Serious Fraud Office in the UK and alike.

In the region, following Croatia and the experience of its Office for suppression of corruption and organised crime (*USKOK*), established in 2001, Republic of Slovenia founded its Special Prosecutor's Office in 2011. Republic of Serbia introduced the competence of state bodies in suppression of organised crime, corruption and serious crime in a single law, while the work of the Special Prosecutor's Office began in 2003. Lithuania established its Special Prosecutor's Office as a separate body within the State Prosecutor's Office in 2001, thereby replacing the hitherto department within the regular prosecutor's office. In Romania, the National Anti-Corruption Directorate, established in 2002, has been operational since 2005, while the Directorate for organised crime and terrorism since 2004. The Basic Public Prosecutor's Office for the fight against organised crime and corruption was established in 2008 in Macedonia within the Supreme State Prosecutor's Office. The Special Prosecutor's Office and the Special Court for organised crime were established in Bulgaria through the amendments to relevant laws in December 2010 and January 2011, and have been operational since January 2012.

Yet, comparative experience shows that the establishment of special prosecutor's offices does not guarantee quick and significant results. The path to better, greater and more significant results of special prosecutor's offices in the fight against organised crime and corruption depends on a set of internal and external factors. Time is needed for first visible results.

Comparatively speaking, key questions for regulating the work of special prosecutor's offices include:

- 1) Alignment of all related laws and bylaws;
- 2) Model and conditions for the appointment of the Head of the Prosecutor's Office and his/her deputies;
- 3) Duration of the term of office of prosecutors and possibility of re-election;
- 4) Security and asset checks of employees;
- 5) Definition of competences – jurisdiction over criminal offences;
- 6) Precise definition of relations between the special and the regular prosecutor's offices;
- 7) Introducing disciplinary accountability of employees in all bodies in case of failure to act upon request of the Special Prosecutor;
- 8) Precisely defining communication relations and cooperation with the Police;
- 9) Precisely defining relations with other state bodies;
- 10) Internal organisation of the prosecution and definition of the optimal number of prosecutors/deputies;
- 11) Ensuring expert support, expert and administrative staff;
- 12) Access to databases in other state bodies;

- 13) Introducing proactive investigative methodologies for complex cases of corruption and financial investigations;
- 14) Specialisation and education; International legal cooperation; Cooperation with prosecutor's offices in other countries and EU member states;
- 15) Reporting on the work of prosecutor's offices;
- 16) Special Prosecutor's Budget; Establishing income and other motivation factors for prosecutors, expert and administrative staff.

It is especially important to align the provisions regulating the work of the Special Prosecutor's Office with:

- Constitution, especially in part relating to the protection of human rights;
- Criminal Procedure Code;
- Law on internal affairs;
- Provisions regulating the work of the Police;
- Ratified international agreements.

### *Preconditions for the Special Prosecutor's Office (SPO) to start working*

Comparative experience shows that for a successful start of work of the SPO it is especially significant to have a wide societal consensus with regard to the appointment of key office holders in the SPO, as well as the realistic expectations from the initial phase of the SPO work. Bearing in mind that the experience of other SPOs demonstrates that the beginnings of their work had been marked by lack of serious results, it is necessary to ensure that this period does not become an excuse for slowing down or stopping the work of the prosecution as a whole with regard to corruption and organised crime.

It is therefore better to ensure harmonisation of all necessary laws and bylaws, support to key appointments, to fill all vacancies in line with objective criteria, to carry out all the necessary trainings and only then to take over the competence, rather than allowing this process to go the other way round.

In parallel with the drafting and adoption of a law on special prosecution, it is necessary to prepare and adopt the aligned provisions on internal affairs and the police, as well as on the criminal procedure. It is also necessary to bear in mind the provisions which will be contained in the Law which will regulate the competences and the work of the Anti-Corruption Agency.

### *Conditions for appointment*

Conditions for application/appointment of prosecutors and other employees of the Special Prosecutor's Office differ from country to country. For instance in Bulgaria, the condition is to have ten years of experience of which at least five must be in the area of criminal matters in the capacity of a judge, prosecutor or investigator; while in Serbia it is ten years of experience in legal matters for the special prosecutor and eight years for deputy.

### *Term of office*

The term of office of the Head of Romanian National Anti-Corruption Directorate is three years with the possibility of one re-election, while the Lithuanian General Prosecutor for the fight against organised crime and corruption has a five year mandate.

### *Security and asset checks*

Prosecutors and other employees in the Special Prosecutor's Office must undergo prior and ongoing security and asset checks. This practice has become a standard and takes into account the special sensitivity of the cases that fall under the competence of special prosecutor's offices. In that sense, the law should prescribe the procedure and the role of the competent state administration body which would carry out such checks.

### *Competences*

The definition of criminal offences that fall under the competence of SPO should include all forms of organised crime, corruption-related offences committed by public officials (in line with the definition contained in the Law on prevention of conflict of interest) or civil servants above a certain amount (thereby precisely defining the competence of this prosecutor's office for corruption of greater danger for the public), criminal offence of money laundering, trafficking in human beings, criminal offence of terrorism, criminal offence against state bodies and against the judiciary.

### *Disciplinary accountability of employees in all bodies*

It is necessary to strengthen the competences of the Special Prosecutor to allow for a swifter reaction of employees in other bodies. The Serbian Criminal Procedure Code foresees an obligation of all state bodies to act upon every request submitted by the public prosecutor. In case the Police or other state body fails to act upon the public prosecutor's request, the public prosecutor shall notify the head of the body in question. State body is obliged to act upon the request within 24 hours from the moment of receiving the notification of the prosecutor. In case it fails to act upon this request, the public prosecutor may request the launching of a disciplinary proceeding against the person considered responsible for failing to act upon the request.

### *Cooperation with the Police and permanent joint investigative teams*

The most complex and crucial question, i.e. challenge, is to define communication, cooperation and coordination between the SPO and the Police Directorate. – both at the level of heads of these two bodies and at the level of prosecutors and police officers working together on a daily basis.

It is interesting to note the legal provision<sup>1</sup> in Serbia which stipulates the need for a prior consent of the Special Prosecutor for the appointment of the Head of unit for suppression of organised crime at the Ministry of Interior. This is related to the need to ensure trust of the Special Prosecutor in the professionalism and accountability of the Head at the Police Directorate who will directly cooperate with the Special Prosecutor when performing his/her direct duties.

Matters that had been previously covered by the agreement between the State Prosecutor's Office and the Police Directorate in Montenegro need to be defined in the law. Having in mind the comparative experience, it seems that the provision which would ensure significant participation of the SPO in the selection of police officers for cooperation and which would regulate the establishment of a special team of police officials working with the SPO, would enable direct coordination and intensive integration of police officials in the prosecutorial investigation. This or a similar provi-

<sup>1</sup> Law on the organisation and competences of state bodies in suppression of organised crime, corruption and severe crimes



sion would require precise definition of responsibility of police officials vis-à-vis their superiors in the PD or SPO, including the assessment and evaluation of their work results, as well as their dismissal from duties carried out with the SPO.

Comparative experience is in favour of such a solution. Joint investigative teams were introduced in Bulgaria before the Special Prosecutor's Office had been established and they continued with their work after the establishment of SPO.

### *"Judicial" Police*

The Criminal Procedure Code of the Republic of Macedonia established the so-called Judicial Police whose task is to assist the State Prosecutor in investigating organised crime and corruption. The most significant role of this police is evident in preliminary investigations. Police officials are policemen/women from the Ministry of Interior, officers of the Financial Police, Military Police and the Customs Administration of the Republic of Macedonia.

The public prosecutor in Macedonia has the right to request from the Ministry of Interior and/or other institutions to delegate one or more officers who would be at his/her disposal for a certain period of time in the preliminary investigation procedure, as well as during the criminal proceeding itself which is implemented upon the prosecutor's warrant. The selected officer delegated to assist the public prosecutor receives instructions only from the prosecutor and is accountable for his/her activities to the prosecutor. The Ministry or any other institution which the officer was delegated from have no right to recall him/her or to interfere in his/her duties in the public prosecutor's office.

### *Cooperation between SPO and Anti-Corruption Agency*

The Law should define communication and cooperation with the future Anti-Corruption Agency (which should integrate the operations of the former-current Commission for the prevention of conflict of interest and the Directorate for Anti-Corruption Initiative), with a view to avoiding the problem which existed, e.g. in cooperation between the prosecutors and investigative officers in the Special Investigative Anti-Corruption Agency in Lithuania where these forms of cooperation have not always been the most efficient, while cooperation as such was not strictly defined in the CPC.

### *Cooperation with the National Security Agency*

Access to and exchange of analytical data between the National Security Agency, the Police Department in charge of intelligence affairs and the SPO is yet another important issue which needs to be precisely defined in the Law.

### *Internal organisation and number of deputies*

The number of Special Prosecutor's deputies needs to be established bearing in mind the results of the hitherto number of deputies (7), but also bearing in mind that it is certain that some of the deputies will prove to be ready and capable to carry out these duties in practice, while others will fail to meet the set goals.

### *Expert support, expert and administrative staff*

According to the new systematization act of the Supreme State Prosecutor's Office from 2013, three experts in the field of economics are foreseen and one expert to

work with the Special Prosecutor. It is necessary to establish the adequate qualifications for expert staff of the SPO, bearing in mind the real needs and realistic limitations in the qualified labour market. There should be room for outsourcing possibility both at the national and international labour market for highly specialised services.

In the Republic of Romania, as regards personnel, besides the Chief Prosecutor, his deputies and advisors, the staff of the National Anti-Corruption Directorate (NACD) consists of prosecutors, judicial police and experts in the field of economy, finance, banking, customs, IT and other areas, specialised auxiliary staff as well as the staff dealing with finance and administration within the Directorate itself.<sup>2</sup> NACD may also hire experts from state and private, Romanian or foreign institutions, to carry out technical-scientific tasks.

In Serbia, the Action Plan for the fight against corruption and organised crime prescribes the measure of ‘introducing a team of economic forensic experts in public prosecutor’s offices’ which is a response to difficulties in initiating and carrying out financial investigations due to the absence of adequate experts in the economic-financial area in the prosecution.

### *Databases*

As regards the relations between SPO and Police Directorate, it is particularly important to establish free direct access to databases containing data collected through the application of special measures.

Access to databases managed by other state bodies, especially MoI (registers including databases on asset declarations of police officials); the National Security Agency (register of asset declarations of NSA officials); Administration for the prevention of money laundering and terrorism financing, Real Estate Administration, Tax Administration, Maritime Safety Administration (yacht register), Employment Agency, etc., should be regulated in a manner that would take into account the current state of play and which includes exclusive possibility of physical access and obligatory exchange of written and electronic information. Furthermore, it is necessary to foresee and regulate access to data within the framework of the future automated access to and exchange of data. It is necessary to regulate this matter through the relevant law regulating the work of state administration.

As regards access to databases, it is necessary to align the laws on personal data protection with laws regulating data collection and access by different institutions, taking into account the constitutional provisions and case-law of the European Court of Human Rights related to this area.

### *“Raster” searches*

In Serbia, the Criminal Procedure Code prescribes a special evidentiary proceeding – automatic search of personal and related data. This relates to the databases run by the state bodies, local self-government units, public enterprises and business entities. The essence of evidentiary proceeding is reflected in the possibility and obligation of the owner or user of a particular database to compare the data collected about a specific person and offence, upon order of the investigative judge, with the data already contained in their database. This procedure should accelerate and facilitate identifica-

<sup>2</sup> In September 2013, a total of 130 prosecutors, 170 judicial police officers and 45 highly qualified experts from the abovementioned areas were working on solving the cases of corruption at the highest level. They hold the status of civil servants.

tion of persons, objects and other data relevant for successful running of the criminal proceeding.

### *Methodology for running an investigation*

Based on the example of Bulgaria, where methodology for running special investigations and guidelines for collection of evidence have been prepared in addition to the legal framework, due to frequent invalidation of evidence in court, the possibility of introducing proactive investigative methodology for complex cases of corruption and financial investigations should be taken into consideration. Towards the end of 2013, Bulgaria launched the introduction of a regular case analysis, at a special form of collegium, both for unsuccessful and especially for successful cases in order to identify good methods and practices.

In the previous period, numerous criminal procedural questions have been addressed in Serbia, notably the criminal legal liability and penalties for protected witness (suspension of criminal proceeding or a more lenient sentence vs. motivation for the status of protected witness). The need for constantly upgrading the witness protection system has been an important question in Bulgaria too, where witnesses were often crucial in high-profile investigations.

### *Specialisation and education*

Cases that fall under the competence of the Special Prosecutor's Office are the most complex ones for the investigation. It is therefore necessary to pay special attention to the continuous specialisation and education. The Special Prosecutor's Office in Bulgaria formed a special Service for criminology matters and a Network of special prosecutors for economic and financial crime which are used to exchange experience and education in order to build highly specialised prosecutorial structures.

Cooperation with prosecutor's offices in other countries as well as the international legal cooperation, of which there is a special department in the Special Prosecutor's Office in Bulgaria, have received special attention.

### *Performance report and transparency of the SPO*


Special Prosecutor's Office for the fight against corruption and organised crime should prepare a special annual performance report. The contents, i.e. the type of information to be encompassed by this report should be defined in advance.

It is a common practice for organisational structures of the SPO to have special departments dealing with public relations. So, for instance, in Romania, within the framework of the National Anti-Corruption Directorate, one of the organisational units is the Public Information Office. It is also necessary to create a special webpage where all the information of public importance would be proactively published.

### *Budget*

In the draft budget for the Supreme State Prosecutor's Office, the Special Prosecutor's Office should be treated as a separate programme. It is necessary to initiate the development of impact indicators on the basis of 'value for money' principle.

Establishing income and other motivational factors for prosecutors, expert and administrative staff is one of the key questions which would ensure prerequisites for maintaining integrity and professionalism of employees.



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