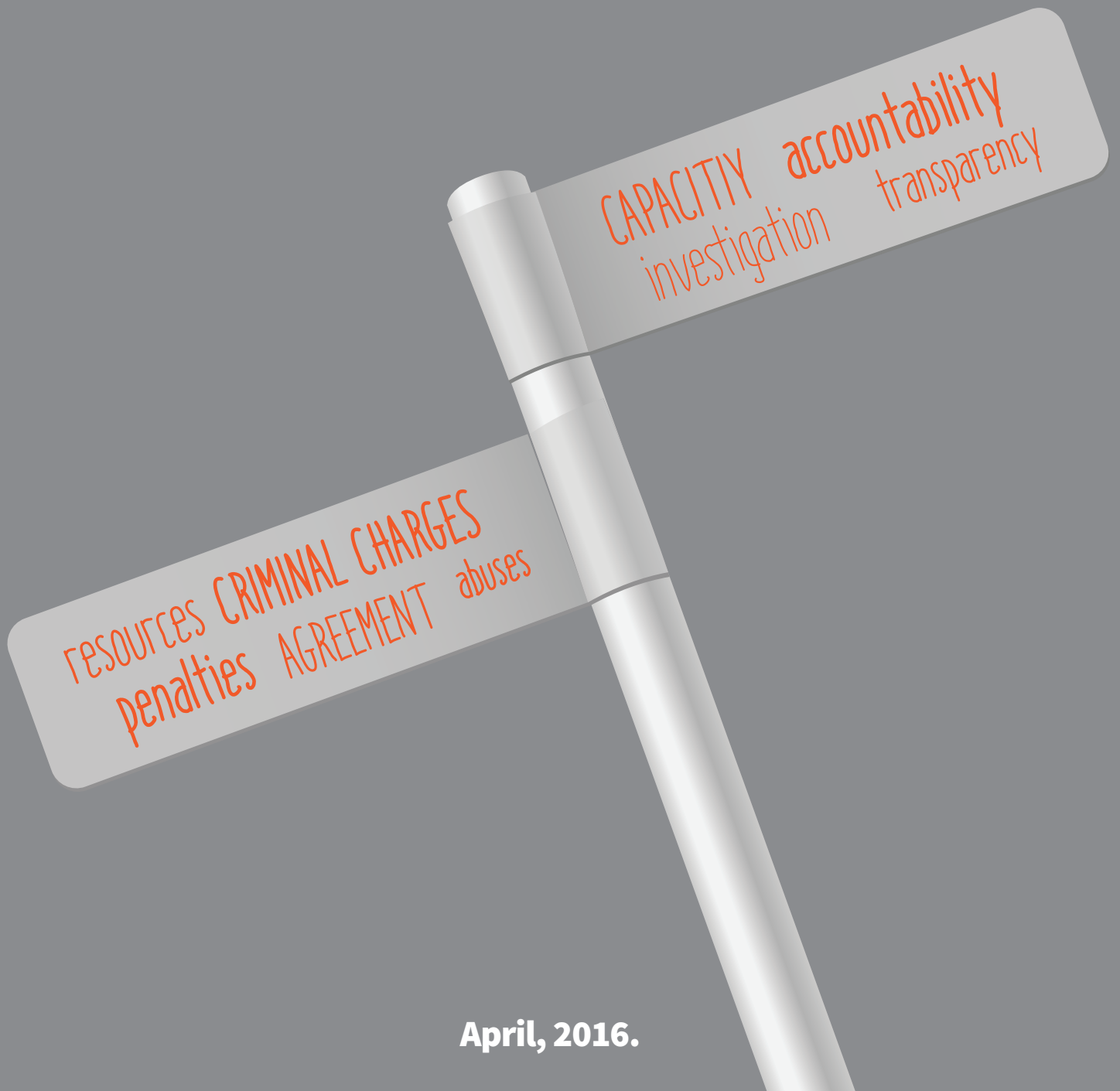


# Audit Finding: Evidence and Indication

Cooperation between the SAI and Prosecutor's Office in Montenegro



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## INTRODUCTION

Cooperation between the State Audit Institution (SAI) and State Prosecutor's Office in Montenegro<sup>1</sup> does not produce desired results in the fight against corruption and sanctioning of those responsible for misuse of budget funds. This assessment is based on the lack of:

- criminal liability arising from the SAI's findings;
- complete and timely information on actions taken by the Prosecutor's Office based on the SAI's negative findings;
- criminal charges filed by the SAI.

## Violating law without accountability

To date, the State Audit Institution (SAI) in Montenegro has published 121 reports,<sup>2</sup> in which it has pointed out to numerous irregularities, grave violations of the law and misuse of funds. From 2009 to 2016, 16 reports have been particularly problematic in terms of the established irregularities, so these audited entities have received negative audit opinions from the SAI.<sup>3</sup> According to the methodology applied by the SAI, negative opinion indicates significant material discrepancies in a financial audit, or substantial non-compliance with the regulations in a regularity audit<sup>4</sup>. Negative opinion from the SAI does not automatically mean that a criminal offence has been committed, but, due to the methodology, a criminal offence may be "hidden" even with those audited entities that received a conditional opinion. However, in this period, the SAI has sent reports and documentation to the Prosecutor's Office, but has not filed any criminal charges. Such passiveness is not due to the incomplete legal framework. The obligation to report criminal offences is established in the Criminal Procedure Code, and reiterated in the Law on State Audit Institution:

*"The Institution shall, without delay, file criminal charges, if during the audit procedure it determines that there are grounds for suspicion that a criminal offence has been committed".<sup>5</sup>*

The Law on SAI also stipulates the obligation to inform the audited entity on the grounds for initiating proceedings for compensatory damages, while in case of damage to state property, the SAI is to inform the prosecutor.<sup>6</sup> Rules of Procedure of the State Audit Institution further stipulate that, if a state auditor, in an audit procedure, learns about the information and facts indicating that the audited entity should initiate proceedings for compensatory damages against third parties, the state auditor must inform the Board thereof. This body informs the audited entity about it, in writing.<sup>7</sup> When state auditors during the audit procedure, or members of the Board or heads of departments during the review of produced report, establish that there are grounds for suspicion that a criminal offence has been committed, they must inform the Senate

thereof, and provide evidence and opinion of the Department of Legal Affairs. If the Senate finds the evidence and opinion justified, it informs the public prosecutor thereof, and may decide to suspend the audit until completion of the proceedings.<sup>8</sup> The Rules of Procedure also provide for the procedure implemented when there are grounds for suspicion that damage was incurred to state property, in which case, upon receiving the information from the auditors, the Board informs the Senate, and the Senate informs the state prosecutor thereof. Competent board prepares evidence for the prosecutor.

**16**  
negative  
opinions from  
the SAI

### The SAI and Prosecutor's Office – who is to "blame" for the lack of results?

The State Prosecutor's Office points out that the SAI should use its legal obligation to file criminal charges instead of submitting certain audit reports, since the SAI's reports are voluminous and become an unnecessary workload for prosecutors.<sup>9</sup>

1 State Prosecutor's Office entails entire organisational structure of this institution – Supreme, Special state and basic prosecutor's offices.

2 The number does not include audits of political parties; 11 audit reports on statement of accounts of the budget; 19 audits of municipalities (of which 4 control audits); 52 audits of budget beneficiaries (of which 5 control audits); 9 audits of state funds (2 control audits); 10 audits of public enterprises; 4 audits of other audited entities; 3 performance audits; 13 other audits (reports).

3 Data provided by Branislav Radulović, PhD, a member of the SAI's Senate, at the Institute Alternative's conference „Auditors and prosecutors on the same mission“, held in Podgorica, on 16 February 2016, available at: [http://www.dri.co.me/1/index.php?option=com\\_k2&view=item&id=282:odr%C5%BEana-konferencija-%E2%80%9Erevizori-i-tu%C5%BEioci-na-istom-zadatku%E2%80%9D&lang=sr](http://www.dri.co.me/1/index.php?option=com_k2&view=item&id=282:odr%C5%BEana-konferencija-%E2%80%9Erevizori-i-tu%C5%BEioci-na-istom-zadatku%E2%80%9D&lang=sr)

4 Instructions on methodology for financial audits and regularity audits, Official Gazette of Montenegro 07/15, dated 17 February 2015, available at: <http://www.dri.co.me/1/doc/Uputstvo%20o%20metodologiji%20vrsenja%20finansijske%20revizije%20i%20revizije%20pravinosti.pdf>

5 Article 23 of the Law on State Audit Institution, Official Gazette of Montenegro, 28/04 dated 29.04.2004, 27/06 dated 27.04.2006, 78/06 dated 22.12.2006, Official Gazette of Montenegro 17/07 dated 31.12.2007, 73/10 dated 10.12.2010, 40/11 dated 08.08.2011, and 31/14 dated 24.07.2014.

6 Article 22 of the Law on State Audit Institution.

7 Article 54 of the Rules of Procedure of the State Audit Institution, Official Gazette of Montenegro 03/15 dated 21.01.2015.

8 Article 56 of the Rules of Procedure of the State Audit Institution.

9 Assessment of the Chief Special Prosecutor for the fight against corruption and organised crime Milivoje Katnić in the TV show "Načisto", broadcasted on TV Vijesti on 19 November 2015.

Prosecutors further say that the prosecutors' work would be easier, if the SAI would clearly point out the facts indicating serious violations of the law at the end

of its reports. In other words, the prosecutors find the SAI's reports in their current form to be inadequate for analytical processing and impeding their work.<sup>10</sup>

**Filing criminal charges by the SAI is not an option, but a legal obligation**

However, while investigating the reports submitted by the SAI, the prosecutors request the SAI to furnish them with additional documentation concerning the submitted reports, which contradicts the claims that the reports are voluminous. It is particularly problematic that such additional information the prosecutors request from the SAI and not from those

institutions and responsible persons audited by the SAI.

The SAI, on the other hand, points out that the reports they produce contain high quality data and analysis, and serve as solid evidence material. The two institutions, therefore, constantly deny and pass the buck, instead of seeking solutions for more meaningful joint activities. Countries in the European Union, which, like Montenegro, sought additional mechanisms for streamlining activities of institutions in order to effectively fight corruption, have been concluding special agreements to define binding procedures between the SAI and Prosecutor's Office.

### Criminal liability only a letter of the law

Institute Alternative referred to the issue of the State Audit Institution failing

to file criminal charges back in 2010,<sup>13</sup> by recalling the recommendation of the Group of States against Corruption (GRECO) from 2008, which reads:

*„to establish guidelines and provide training for State Auditors so that they can effectively fulfil their obligation to report suspected criminal offences, including corruption, to the State Prosecutor.“<sup>14</sup>*

In the same document, GRECO recalls the obligation to establish guidelines for state auditors on their legal obligation to report criminal offences. Although the SAI in its report<sup>15</sup> in 2009 informed that it had prepared, in cooperation with the OSCE, a draft document on guidelines regarding criminal charges in the audit procedure, **seven years later, there are still no guidelines and no criminal charges.** Moreover, the SAI pointed out that it was not a prosecuting authority, and that it must be sure of a positive outcome of the charges before filing them.

Taking into account that the largest number of criminal charges filed by the SAI in Serbia, which much like the SAI in Montenegro has the obligation to file criminal charges, referred to the „misuse of budget funds“<sup>16</sup>, it should be noted that the Criminal Code of Montenegro in the part concerning crimes against official duty (articles 416 through 426) does not contain this criminal offence<sup>17</sup>, which significantly reduces the possibility to punish abuses and irregularities identified during the audit.

Comparative experiences:

#### Framework Agreement – Czech Republic

The agreement between the Supreme Audit Institution and Supreme Prosecutor's Office in the Czech Republic<sup>11</sup> stipulates that state auditors are hired as consultants in investigations. The Czech Republic also provides for the obligation to prepare special reports on specific cases being prosecuted.

#### Regular revision of the cooperation agreement between the two institutions – Bulgaria<sup>12</sup>

The agreement between the two institutions provides for the possibility of organising mutual consultation meetings and establishing teams for investigation in the „common interest“, composed of the prosecutor in charge of the investigation, and the auditor who carried out the audit. Seeking advisory opinion when the crime involves public funds, resources, activities and execution of public procurement contracts, is yet another mechanism for cooperation. When the criminal offences involve the misuse of public funds and property, the agreement provides for the establishment of specialised interagency units to assist in the investigation, as well as regular annual meetings to analyse the results of such cooperation.

10 Comments of Veljko Rutović, special prosecutor for the fight against corruption and organised crime, at the Institute Alternative's conference „Auditors and prosecutors on the same mission“, held on 16 February 2015.

11 The agreement was provided by the Supreme Audit Institution of the Czech Republic on 21 December 2015, and Supreme Prosecutor's Office on 21 December 2015.

12 The agreement was provided by the State Audit Institution of Bulgaria on 2 December 2015. The agreement concluded in 2014 cancelled the agreement concluded on 3 July 2007.

13 See: „State Audit Institution in Montenegro – proposals for maximising impact“, Institute Alternative, 2010, available at: <http://institut-alternativa.org/drzavna-revizija-u-crnoj-gori-prijedlozi-za-jacanje-uticaja/>

14 Joint First and Second Evaluation Rounds: Compliance Report on Montenegro, GRECO, December 2008, available at: [https://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2\(2008\)5\\_Montenegro\\_ME.pdf](https://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2(2008)5_Montenegro_ME.pdf)

15 Annual report on performed audits and activities of the State Audit Institution of Montenegro for the period October 2008 – October 2009, p. 199, available at: <http://www.dri.co.me/1/doc/Godisnjij%20izvjestaj%20o%20izvršenim%20revizijama%20i%20aktivnostima%20DRI%20za%20period%20oktobar%202008%20-%20oktobar%202009%20godine.pdf>

16 „The largest number of criminal charges concern the criminal offence stipulated by Article 362a of the Criminal Code - Misuse of budget funds, and its purpose is to prevent spending money over the approved appropriation, thus it could be said it prevents borrowing of the audited entity.“ - Milena Milinkovic, Manager of the Group for Legal Audit Support in State Audit Institution of Serbia, at the conference of the Institute Alternative „Auditors and prosecutors on the same mission“, held on 16 February 2016

17 Criminal Code of Montenegro, Official Gazette of the Republic of Montenegro, 70/2003, 13/2004, 47/2006 and Official Gazette of Montenegro 40/2008, 25/2010, 32/2011, 40/2013 and 56/2013

*“A responsible person in a budget beneficiary, or a responsible person in a mandatory social security organisation, who incurs obligations or approves the payment from the budget account of expenditure and expenses exceeding one million dinars over the sum designated in the budget, a financial plan, or a Government-issued document allocating the amount of a loan, shall be punished with a fine or imprisonment up to one year.”<sup>18</sup>*

- Criminal Code of Serbia

Furthermore, the Law on State Audit Institution unambiguously establishes the obligation to file misdemeanour charges,<sup>19</sup> while Montenegrin law does not contain such article.

Although the burden of guilt for failing to file charges falls on the SAI, other state authorities in Montenegro also fail to initiate procedures for establishment of criminal, misdemeanour or disciplinary responsibility, based on the official reports of this institution. As previously noted, the Criminal Procedure Code obliges them (as well

**82%**  
criminal charges filed with SPO  
in 2015 was submitted by  
non-governmental actors

as local government bodies, public enterprises and institutions) to report criminal offences subject to public prosecution, and about which they were informed or have learned otherwise.<sup>22</sup>

The statistics on the total number of criminal charges brought by the state authorities and upon independent initiatives of the Prosecutor's Office is not encouraging either. Although an increase in the total number of filed criminal charges and charges brought by the Special State Prosecutor's Office independently was noted in 2015,<sup>23</sup> the largest number of charges was filed by non-governmental organisations, legal and natural entities, 457 or 82.2% of the total number of charges filed last year.<sup>24</sup> Finally, regardless of the progress in the work of the Special Public Prosecutor's Office registered in 2015, such progress was not identified in the work of

**Public  
administration  
bodies must report  
criminal offences  
they learn about**

Public administration bodies must report criminal offences they learn about

other units of the Prosecutor's Office.<sup>25</sup>

### What about fines for failing to submit documentation?

Administration bodies, i.e. audited entities have not been held accountable for failing to submit information, although the Law on SAI treats such behaviour as misdemeanour, and provides for fines for public administration bodies that fail to provide information. The Law provides for fines ranging from EUR 1,000 to EUR 20,000 for legal person/ audited entity that fails to provide auditors with access to documentation, or fails to furnish the auditors with requested notifications and information, or which provides false information.<sup>26</sup> In the case of audits of state guarantees (2013), the SAI reported that the Ministry of Finance and Ministry of Economy failed to submit to state auditors all requested documents. According to the information obtained by the Institute Alternative, the case ended without any sanctions. In the report on the audit of revenues from concession fees, it was pointed out that the Police Administration did not respond to the request of the SAI,<sup>27</sup> which is also a violation of the article referring to the failure to provide information or notification.

Comparative experience:

#### Initiating proceedings for misdemeanour and criminal liability – Serbia

Based on the requests for initiating misdemeanour proceedings filed by the State Audit Institution of Serbia (over 1000 submitted requests) by 31 December 2015, there were 276 convicting verdicts in the first instance, and 283 final ones. A total of 559 convicting verdicts were reached. As for the criminal charges, a total of 110, in accordance with article 283 of the Criminal Procedure Code of Serbia, 17 suspects met the obligation upon the orders of the public prosecutor, and the charges were dismissed by decisions, one was dismissed due to the death of the suspect, one was dismissed due to the statute of limitation, two verdicts of release were reached, one convicting verdict was reached, and one proceeding was suspended due to the statute of limitation. Other proceedings are ongoing.<sup>20</sup>

The SAI in Serbia also uses the possibility to communicate information to the prosecutors' offices during the audit procedure. "Such information elaborates on the matters observed, noted and established as facts, and any responsibility will be established by the judicial authorities, while our work is limited to the findings."<sup>21</sup>

18 Article 362a of the Criminal Code of Serbia, Official Gazette of the Republic of Serbia 85/2005, 88/2005 – corr, 107/2005 – corr, 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014

19 Article 41 of the Law on State Audit Institution, Official Gazette of the Republic of Serbia 101/20015, 54/2007 and 36/2010

20 Data provided by Milena Milinković, Manager of the Group for Legal Audit Support in State Audit Institution of Serbia, 10 February 2016.

21 Milena Milinković, Manager of the Group for Legal Audit Support in State Audit Institution of Serbia, at the conference of the Institute Alternative „Auditors and prosecutors on the same mission“, held on 16 February 2016.

22 Article 254 of the Criminal Procedure Code, Official Gazette 57/2009, 49/2010, 47/2014 – Decision of the CC, 2/2015 – Decision of the CC of Montenegro, and 35/2015.

23 Law on State Prosecution stipulates that activity report of the Supreme Prosecutor's Office is submitted to the Assembly of Montenegro by 31 March each year for the previous year, thus, it was not produced by the time this study of the Institute Alternative was completed, and does not contain complete statistic data for all prosecution units. According to the statistics, during last year, Special Prosecutor's Office received criminal charges against 556 perpetrators (with 24 unresolved charges from the previous period), which is 1108.70% more than in 2014.

24 Activity report of the Special State Prosecutor's Office for 2015, February 2016, p. 3, available at: <http://tuzilastvosc.me/media/files/IZVJE%C5%A0TAJ%202015%20SPECIJALNO%20.pdf>

25 Assessment of the Minister of Justice Zoran Pažin, at IX national anticorruption conference organised by MANS on 9 December 2015.

26 Article 52 of the Law on State Audit Institution.

27 Report on audit of the budget revenues Montenegro generated from agreements on concessions for the use of natural resources, May 2014, p. 17, available at: <http://www.dri.co.me/1/doc/izvjestaj%20o%20reviziji%20-%20Prihodi%20budzeta%20Crne%20Gore%20po%20osnovu%20zaključenih%20ugovora%20o%20koncesijama%20za%20koriscenje%20prirodnih%20bogastava.pdf>

## To which extent does the Prosecutor's Office inform the public on actions taken based on the SAI's findings?

The public is not sufficiently acquainted with the activities undertaken by the Prosecutor's Office based on the SAI's findings, since the annual activity reports of the Supreme State Prosecutor's Office and Special State Prosecutor's Office do not provide such information, and the matter has not been tackled by prosecutors in public events either.

Comparative experience:

### Reporting on actions taken based on audit findings in the annual reports of the Prosecutor's Office - Croatia

In its annual activity reports, the Public Prosecutor's Office in Croatia informs the public on the activities implemented in relation to the cases established based on findings of the State Audit Office. The report for 2014 points out that the capacities of the prosecution for acting on audit findings were strengthened, and that all instances of the state were engaged in the audit cases.<sup>28</sup>

Moreover, the reports contain extensive statistical data on the number of criminal charges, indictments, court decisions, plea agreements, and similar data, organised by the type of criminal offence, but they do not include sufficient information on the cases, issues arising during investigations, and recommendations on how to further strengthen the capacities of the Office for more successful operation.<sup>29</sup>

In late 2015, the Special State Prosecutor's Office for the first time informed the public

about the cases established based on the findings of the State Audit Institution. The Special State Prosecutor's Office issued a statement to inform the public<sup>30</sup> that cases were established concerning the audit of budget revenues from concession fees; the annual financial report of the Public Enterprise National Parks of Montenegro; and the audit of statement of accounts of the Municipality of Budva for 2014.<sup>31</sup> However, the information on the cases based on the SAI's findings is contained in just one sentence in the entire statement on the work and activities of the Special State Prosecutor's Office.

The key (legal) obstacle for regular provision of information to the SAI, and therefore the public, on the activities of the Prosecutor's Offices concerning the audit reports, is the lack of binding provisions in the Criminal Procedure Code on the outcomes of investigations based on the documents submitted by public authorities.

### Acting upon initiatives and charges filed by citizens

Although, by May 2015, the SAI submitted eight (8) reports to the Prosecutor's Office, the Prosecutor's Office did not inform the public, or the SAI, about the phases of investigations in those cases, due to, as noted earlier, the lack of such binding provision in the law. Therefore, five non-governmental organizations<sup>32</sup> sent the letter to the Supreme State Prosecutor's Office, requesting information on

actions taken based on the SAI's reports. The audit reports concerned the Institute for textbooks and teaching aids, Centre of Contemporary Art, Centre for Vocational Education, RTCG, Montenegrin National Theatre, University of Montenegro, Democratic Party, and the audits of state guarantees. Those eight reports received negative opinions from the SAI, and a number of irregularities had been observed with those audited entities, from the incorrect presentation of large sums in the financial statements to the conclusion of harmful and illegal contracts. For those reasons, the SAI submitted the reports to the Prosecutor's Office. However, in response to our initiative, the State Prosecutor's Office said that certain investigative activities were implemented, but that majority of cases were dismissed without indictment.

Comparative experience:

### The provision of information on the activities carried out based on audit reports - Macedonia

Although the Law on State Audit Institution in Macedonia, much like those in Croatia<sup>33</sup> and Bosnia and Herzegovina<sup>34</sup>, does not provide for filing of criminal charges, the SAI informs competent authority, which must provide feedback to the SAI on the actions taken, within 90 days.<sup>35</sup>

### Agreement as the basis for the exchange of information - Bulgaria

Agreement on cooperation in the prevention, detection and investigation

28 Report of the State Prosecutor's Office of the Republic of Croatia for 2014, April 2015, available at: <http://www.dorh.hr/IzvjesceDrzavnogOdvjetnistvaRepublike>

29 More information: „Fulfilling the form or substance? – Content Analysis of the Annual Performance Reports of the State Prosecutor's Office and the Police Administration”, Institute Alternative, Podgorica, March 2014, available at: <http://media.institut-alternativa.org/2014/06/zadovoljena-forma-ili-sustina.pdf>

30 Statement of the Special State Prosecutor's Office on 21 December 2015, available at: <http://tuzilastvosc.me/media/files/SAOP%20TENJE%20BROJ%201.pdf>

31 Report on the Audit of the Statement of account of the Municipality of Budva for 2014, October 2015, available at: <http://www.dri.co.me/1/doc/Izvje%C5%A1taj%20o%20reviziji%20Zavr%C5%A1nog%20ra%C4%8Duna%20bud%20C5%BEta%20Op%C5%A1tine%20Budva%20za%202014.%20godinu.pdf>

32 The letter was signed by the Institute Alternative, Human Rights Action, Centre for Civic Education, Centre for Development of NGO and Centre for Monitoring and Research.

33 Law on State Audit Office of Croatia, 2011, available at: [http://narodne-novine.nn.hr/clanci/sluzbeni/2011\\_07\\_80\\_1701.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2011_07_80_1701.html)

34 Law on Audit of institutions of Bosnia and Herzegovina, 2006, available at: [http://www.revizija.gov.ba/zakoni\\_i\\_akti/zakon\\_o\\_reviziji/default.aspx](http://www.revizija.gov.ba/zakoni_i_akti/zakon_o_reviziji/default.aspx)

35 Article 24, State Audit Law (as amended), Official Gazette of the Republic of Macedonia 65/97, 70/01, 31/03, 19/04, 70/06, available at: <http://www.dzr.mk/en/Uploads/State%20Audit%20Law.%20PDF.pdf>



of criminal offences stipulates that the State Audit Institution of Bulgaria, among other, informs the Prosecutor's Office, in writing, about the criminal offences identified during the audit activities, as well as about the corruption risk areas. On the other hand, the Prosecutor's Office informs the SAI on the activities undertaken in relation to the information presented to them, the result of the investigation, evidence of illegal actions of organizations and individuals from the scope of audit activities, risk areas and areas for corruption.

In addition to the reports submitted to the Prosecutor's Office by the State Audit Institution, the Prosecutor's Office also received at least three criminal charges from the citizens and non-governmental organisations, which were based on the findings of the SAI. One was related to the above-mentioned University of Montenegro (Centre for Civic Education, October 2013), and two were related to the operations of the Old Royal Capital of Cetinje<sup>36</sup> (a citizen, November 2014), and misuse of funds for professional rehabilitation and employment of persons with disabilities<sup>37</sup> (MANS, February 2016). The Prosecutor's Office, as noted above, has recently launched three investigations following the findings of the SAI, on its own initiative. We are awaiting the outcome.

## Capacities – excuse or impediment?

The reason behind the noted lack of proactive action by the Prosecutor's Office and a small number of criminal cases brought by this institution may well be excessive workload due to the lack of capacities.

The Special State Prosecutor's Office currently operates at full capacity as regards the number of prosecutors,<sup>38</sup> however, the administrative capacities were limited even during the operation of the Department for the fight against corruption and organised crime, and the shortage has become particularly obvious upon the establishment of the Special Prosecutor's Office as a separate organisational unit. In December 2015, the Special Prosecutor's Office had a total of nine civil servants and employees,<sup>39</sup> of 43 planned job positions.<sup>40</sup> Of the total number of employees, at the moment, only four are advisors and expert associates. In December, 19 vacancies were advertised, including those for expert associates and financial investigation advisors, advisor in the department of analytics and research, and three prosecution advisors. As for the Supreme State Prosecutor's Office, in December 2015, there were 18 civil servants and employees (39 planned job positions), and nine prosecutors.<sup>41</sup> At this moment, the proposal to establish a special department in the Prosecutor's Office that would deal with the SAI's findings seems untenable,<sup>42</sup> taking into account that the capacities of the Prosecutor's Office have been weakened, and are yet to be strengthened, and especially having in mind the lack of criminal charges filed by the SAI at the moment and the number of potential cases that would be established based on the SAI's report.

**Prosecutor's Office has been operating with less than 50% of administrative capacities**

Last year's response from the State Prosecutor's Office stating that in the case of state guarantees they had been waiting for several months<sup>43</sup> on expert findings indicates the need to recruit specific economic experts to this institution.<sup>44</sup>

On the other hand, the SAI has been pointing out for years that they do not have sufficient capacities in terms of legal staff with experience in criminal law.<sup>45</sup> Two years after adopting the current rulebook on job descriptions of the SAI, despite several attempts, the position of the Head of Department of legal affairs, criminal and misdemeanour charges and anti-corruption in the sector IV<sup>46</sup> has not been filled. The rulebook provides for two job positions, and at the moment only one is filled.<sup>47</sup>

Constantly emphasised lack of knowledge in the field of criminal law in the SAI is a limitation for filing criminal charges. Still, back in 2009, a training session was organised for state auditors on the filing of criminal charges.

It should be noted that the Senate of the State Audit Institution has been operating in an incomplete composition for more than six years, which also significantly reduces the effectiveness of this institution. It is possible that a member of the Senate with the knowledge in criminal justice legislation would enhance the legal capacity of the SAI, as well as the knowledge in this matter in order to fulfil legal obligations.

36 Report on the audit of the Statement of Accounts of the Royal capital Cetinje for 2013, October 2014, available at: <http://www.dri.co.me/1/doc/lzvjestaj%20o%20reviziji%20Zavrsnog%20racuna%20budzeta%20Prijestonice%20Cetinje%20za%202013.%20godinu.pdf>

37 Report on performance audit, Effective use of funds from the contribution for professional rehabilitation and employment of persons with disabilities, October 2015, available at: <http://www.dri.co.me/1/doc/Efikasnost%20kori%C5%A1%C4%87enja%20sredstava%20od%20doprinosa%20za%20profesionalnu%20rehabilitaciju%20i%20zapo%C5%A1javanje%20lica%20sa%20invaliditetom.pdf>

38 Even though two of 10 special prosecutors, foreseen by Law on the Special State Prosecutor's Office, have not yet been appointed, two prosecutors were sent from other departments to work in the Special State Prosecutor's Office.

39 Available at: <http://tuzilastvocg.me/media/files/SPECIJALNO%20ADMINISTRACIJA.pdf>

40 Rulebook on internal organisation and job descriptions of the Special Public Prosecutor's Office, October 2015, available at: [http://tuzilastvocg.me/media/files/Pravilnik%20o%20sistemizaciji%20-%20Spec\\_tuzilastvo.pdf](http://tuzilastvocg.me/media/files/Pravilnik%20o%20sistemizaciji%20-%20Spec_tuzilastvo.pdf)

41 Available at: [http://tuzilastvocg.me/media/files/VRHOVNO%20SLUZBENICI\(2\).pdf](http://tuzilastvocg.me/media/files/VRHOVNO%20SLUZBENICI(2).pdf)

42 Proposal of Branislav Radulovic, PhD, a member of the SAI's Senate, presented at the conference of the Institute Alternative "Auditors and prosecutors on the same mission".

43 See table in the appendix to the study, p. 18

44 Both the Supreme State Prosecutor's Office and Special State Prosecutor's Office have three job positions each, requiring degree in Economics, but the list of employees does not provide information on whether the advisor positions with such requirement have been filled, only the position titles.

45 See: „State Audit institution in Montenegro – proposals for maximising impact“, Institute Alternative, p. 14.

46 List of employees of the State Audit Institution, submitted to the Institute Alternative in response to the request for free access to information, 16 March 2016

47 Rulebook on internal organisation and job descriptions of the SAI, March 2014, p. 43



## Conclusions:

Cooperation between the State Audit Institution and Supreme State Prosecutor's Office in Montenegro is not an example of imperative timely exchange of information and implementation of coordinated joint activities of the institutions. Constantly shifting of responsibility from one institution to another does not lead to the improvement of this cooperation.

The State Audit Institution has not filed any criminal charges or initiated any damages proceedings to date. Hence, the greatest burden of responsibility for the lack of impact of the work and findings of the audits falls on the SAI. However, the Prosecutor's Office must not wait for information from official reports of state institutions, most often obtained from third parties, as has been the case so far, but must act on them regularly in accordance with its competences. Moreover, the excuse for passiveness of this institution cannot be that SAI does not file criminal charges, often publicly cited as a

reason, especially taking into account that the largest number of charges is still filed by citizens. Over 80% of criminal charges filed with the Special Public Prosecutor's Office in 2015 was filed by citizens, natural and legal persons. Additionally, the SAI's reports should serve as an indicator to numerous actors, as the starting point for their own controls and initiation of any criminal charges and other actions. **Therefore, the findings of the SAI are both evidence and roadmap for further investigation.**

A significant obstacle to better results of the SAI and Prosecutor's Office are their capacities. Both Supreme State Prosecutor's Office and Special Prosecutor's Office are currently working with less than 50% capacity, and recruitment procedures are under way. The SAI, on the other hand, two years after having adopted the new Rulebook on internal organisation and job description, still has not filled the position of the Head of Department of legal affairs, criminal and

misdemeanour charges and anti-corruption, and has only one employee in this department.

The public is not sufficiently informed about the activities of the Supreme State Prosecutor's Office concerning the findings of the SAI. The statement about the three cases established in the Prosecutor's Office on the basis of the audit reports was a new moment. However, it is still not enough. A significant limitation in that sense is the lack of legal obligation of the Prosecutor's Office to report on the submitted documents.

The experience of the countries in the region, as well as the countries of the European Union, offers a wide range of mechanisms and activities that can improve cooperation between the SAI and Prosecutor's Office, whether special agreements and cooperation frameworks, or establishment of task forces, and regular instituting of misdemeanour and criminal proceedings.

## How to maximise the impact of the SAI's findings and enhance cooperation with the Prosecutor's Office?

### General recommendations:

The State Audit Institution and Supreme Public Prosecutor's Office should define a special framework (agreement) for cooperation, which would include the obligation to:

- Organise regular biannual meetings and consultations, or more often if necessary, with a view to the timely exchange information on cases established in the Prosecutor's Office based on the findings of the SAI, and provide additional information that would support the investigation;
- Establish task forces/ teams, composed of prosecutors and auditors, who would work together on particularly complex cases;
- Organise specialised joint training sessions on cooperation in investigations and amendments to criminal legislation that would improve the sanctioning of misuse of budget funds.

Make amendments to the Criminal Code of Montenegro:

- Introduce new criminal offence against official duty – "misuse of budget funds".

### Special recommendations:

*State Audit Institution:*

- Develop guidelines for the preparation of criminal charges based on audit findings;
- Strengthen the capacities of the Department of legal affairs, criminal and misdemeanour charges and anti-corruption in sector IV, through the implementation of specialised training sessions, and recruitment of staff, including of the Head of this Department.

*State Prosecutor's Office:*

- Carry out independent investigative actions based on all audit reports on statements of accounts, and on all reports of the audited entities that have received a negative or conditional opinion from the SAI;

- Improve the content of the annual activity report of the Supreme Public Prosecutor's Office and the six-month activity report of the Special Public Prosecutor's Office, by providing more detailed overview of the activities and results of the legal proceedings instituted based on the findings of the State Audit Institution, joint meetings and consultations held, as well as general information on activities implemented with the SAI;
- Make amendments to article 11 of the Law on Special Public Prosecutor's Office, by stipulating the obligation to publish (improved) six-month activity reports;
- Supreme State Prosecutor's Office and Special State Prosecutor's Office should timely submit non-binding proposals to the Senate of the SAI for conducting audits in public administration bodies when there are grounds for suspicion that public resources have been misused.

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- Audit report on the Annual financial report of the Centre for Vocational Education for 2011
- Audit report on the Annual financial report of the RTCG for 2010
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## Appendix:

Table 1: Summary of findings from the reports of the State Audit Institution, which were submitted to the State Prosecutor's Office, based on which criminal charges were brought or were established independently.

Audited entity/ audit report	What the SAI said?	What the Prosecutor's Office said?
State Guarantees of the Government of Montenegro issued in 2010 and 2011	"The Government has issued state guarantees for loans to KAP, in the amount of € 135.000.000 without adequate counter guarantee..."	"The finding of an expert witness is being awaited"
PI Institute for textbooks and teaching aids	"The Institute has not been managed with due care, which as a result had uneconomical operations and business losses in the amount of €669,797.23."	"There are no grounds for initiation of criminal proceedings"
Democratic Party, reports for 2013 and 2014	"Failing to document withdrawn cash in the amount of €23,430.00, making up 38% of the total available funds of the audited entity."	"The Prosecutor's Office has initiated misdemeanour proceedings concerning both reports."
PI Centre of Contemporary Arts	"Misuse of funds in the amount of €57,197.80"	"There are no grounds for initiation of criminal proceedings"
PI Centre for Vocational Education	"Significant mistakes have been identified in the financial report, prepared by the Centre for Vocational Education, in the aggregate amount of €330,062.02"	"There are no grounds for initiation of criminal proceedings"
PE Radio and Television of Montenegro	"Employment contracts for managers are contrary to law, since they allow an increase in earnings not provided for in the Labour Law (in one year, four supervisors received over 138,000.00 net income)"	"There are no grounds for initiation of criminal proceedings"
University of Montenegro	"Reported outflow of funds is lower for €946,520.34, compared to the funds presented in bank statements."	"There are no grounds for initiation of criminal proceedings"
Montenegrin National Theatre	"Non-compliance with the Law on Public Procurement in the procurement of goods, services and execution of works in the total amount of €526,610.23"	"There are no grounds for initiation of criminal proceedings"
Funds for vocational rehabilitation and employment of persons with disabilities	"Revenues from contributions for vocational rehabilitation and employment of disabled persons, from early 2009 to the end of 2014, amounted to € 36,509,776.67. According to the annual reports on the implementation of measures and activities for professional rehabilitation, employment of disabled persons, and use of resources of the Fund, submitted by the Employment Institute to the Ministry of Labour and Social Welfare, from the establishment of the Fund in 2009 to the end of 2014, the total of spent funds was €1,972,313.35."	No response from the Prosecutor's Office concerning this case <sup>48</sup>
PE National Parks of Montenegro	"The statement of changes in equity, capital and reserves was stated in the amount of €4,266,430.00, while the audit determined the amount of €2,563,840."	"The case is in the preliminary enquiry phase."
Municipality of Budva	"The audit has found that the Municipality did not pay all liabilities stipulated in the Budget for 2014 in the amount of € 7,633,042.74." "The Municipality of Budva, in the Report on consolidated public spending for 2014, has not stated a change in net liabilities in the amount of €4,734,320.23."	"Investigation and enquiries of irregularities indicated by the SAI are being carried out."
Statement of accounts of the Old Royal Capital Cetinje	"The statement of accounts of the Budget of the Old Royal Capital Cetinje for 2013 does not provide a true and fair presentation of recorded revenues and expenditures on cash basis. The Old Royal Capital Cetinje, in the Report on consolidated public spending, showed a surplus of €1,802,456. However, the audit found irregularities that have significantly affected the reported financial results. The audit found that not all transactions were recorded on the basis of authentic documentation in time in which they were executed, so the financial result corrected by the audit findings showed a deficit of €921,581."	"The findings of the financial expert witness was obtained and preliminary enquiries continued."
Budget revenues from concession fees	"Due to incorrect calculation of the concession fee to the concessionaire Vektra Jakic Ltd – Pljevlja, from 2007 to 2012, the Forrest Administration unjustifiably reduced public revenue in the amount of €1,670,409.60."	"The case is in the preliminary enquiries phase."

48 IA sent letter to the State Prosecutor's Office on 3 March 2016

## About Institute Alternative

**Institute Alternative (IA)** is a non-governmental organization, established in September 2007 by a group of citizens with experience in civil society, public administration and business sector.

Our **mission** is to contribute to strengthening of democracy and good governance through research and policy analysis as well as monitoring of public institutions performance.

Our **objectives** are to increase the quality of work, accountability and transparency, efficiency of public institutions; to encourage open, public, constructive and well-argued discussions on public policy issues; and strengthening the capacity of the state and society for the development of public policies.

The **values** we follow in our work are dedication to our mission, independence, constant learning, networking, cooperation and teamwork.

We function as a **think tank** or a research centre, focusing on the overarching areas of good governance, transparency and accountability. Our research and advocacy activities are structured within five main programmes: **i) public administration, ii) accountable public finance, iii) security and defence, iv) parliamentary programme** and **v) social policy**.

On the basis of our five programmes, we monitor the process of **accession negotiations with the EU**, actively participating in working groups for certain chapters. Our flagship project is the **Public Policy School**, which has been organized since 2012. Ministry of Science has issued a formal decision, granting Institute Alternative the official certificate to conduct research activities in the field of social sciences, on 17 October 2013, based on the Law on Conducting Scientific and Research Activities.

Managing of the organization is divided between the Assembly and the Managing Board. President of the Managing Board is **Stevo Muk**. Research Coordinator is **Jovana Marović, PhD**.

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