

# BEHIND THE NUMBERS

OVERVIEW OF THE RESULTS OF THE SPECIAL FIGHT  
AGAINST ORGANIZED CRIME AND HIGH-LEVEL CORRUPTION



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Institute Alternative

**institut alternativa**

57, George Washington Boulevard

Podgorica, Montenegro

Tel/Fax: (+382) 20 268 686

E-mail: [info@institut-alternativa.org](mailto:info@institut-alternativa.org)

Website: [www.institut-alternativa.org](http://www.institut-alternativa.org)

**For the publisher:**

Stevo Muk, president of the Managing Board

**Editor:**

Stevo Muk

**Author:**

Dina Bajramspahić

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Ana Jovović

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## INTRODUCTION

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In Montenegro, there has been a special prosecution office for organized crime, corruption, terrorism and war crimes, in different formats for last fourteen years. The Department for Suppression of Organized Crime, as part of the Supreme State Prosecution Office, started working on June 30, 2004. Since then, the Department and the related government bodies responsible for suppression of organized crime and corruption have been in a continuous process of reform under the supervision of the European Union.

During this period, the jurisdiction of the Department was expanded in 2008 to include corruption, terrorism and war crimes and therefore the number of special prosecutors<sup>1</sup> increased; the new Criminal Procedure Code was adopted in 2010 which introduced prosecutorial investigation; the capacities of Prosecution Office, Police, Customs, Department for Public Revenues and Administration for Prevention of Money Laundering and Terrorist Financing were strengthened; their joint investigation team was formed in 2011<sup>2</sup>. After all this, in 2015, the Special State Prosecution Office (hereinafter: SSPO), modeled after the Croatian "USKOK"<sup>3</sup>, was established and its jurisdictions temporary expanded to include criminal offenses under the Election Law since August 2016<sup>4</sup>.

The continuity between the Department and the SSPO can not be disputed and it is reflected in the fact that four state prosecutors worked in the Department and in today's SSPO, thus preserving the institutional memory, as well as in the fact that the significant number of cases which had been under the jurisdiction of the Department, had its judicial epilogue in the work of the SSPO. For this reason, in this analysis, the results of the competent authorities in the period from 2004 – 2018 will be taken into consideration, in order for the reforms to be assessed objectively.

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**1** / With the Law on Amendments to the Law on State Prosecutor, the jurisdiction of the Department was expanded on the corruption, terrorism and war crime and its existing capacities strengthened with 4 new deputies of special prosecutor and 4 state employees who help state prosecutors in their work necessary for the Department.

**2** / At the end of 2011, the signatories to the Agreement on the establishment of a joint investigation team determined the permanent members: two deputies of state prosecutor and financial expert of the Department, two representatives of the Police Administration, one representative from Administration for Prevention of Money Laundering and Terrorist Financing, Customs Administration and Department for Public Revenues.

**3** / Croatian State Prosecutor's Office for the Suppression of Organized Crime and Corruption (USKOK).

**4** / More precisely, violations of the electoral rights stipulated in the Section Sixteen of the Criminal Code of Montenegro for which the SSPO is in charge until the final conclusion of all procedures initiated one occasion of the elections scheduled for October 16, 2016.

## WHAT IS SPECIFICALLY REQUESTED FROM MONTENEGRO IN THE FIELD OF REPRESSION?

In this analysis, we began from the European Union's conditions set out in the Accession Document and in two particularly important benchmarks for Chapter 23 from 2013<sup>5</sup>:



- «Montenegro establishes a new Special Prosecution Office, which should bring better-established priorities in cases of serious criminal offenses, better specialization of employees and substantially enhanced cooperation between institutions and data exchange.»
- « Montenegro substantially improves the capacity of the Ministry of Interior to conduct investigations of financial crime. Montenegro provides that the Ministry of Interior and the Special Prosecution Office are well connected with other relevant agencies. Montenegro provides the necessary training for financial investigations and conducts financial investigations parallel with criminal investigations within organized crime and corruption cases.»

Bearing in mind the fact that SSPO has the most difficult task in the frame of Montenegrin negotiations with the European Union and that is to deliver measurable results in fight against organized crime and corruption, after three years since its establishment, and five years since the European Union set out establishing this Prosecution as a condition, there are preconditions for measuring what has been achieved so far and which are the forthcoming challenges.

The aim of this analysis is to contribute to the work of the Special State Prosecution Office and the Special Police Department through analysis of their work and the state in the field of the chosen interim benchmarks and through giving suggestions and recommendations for resolving the problems in their work.

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The analysis is structured in three key parts: in the first part, statistical data on criminal charges, investigations, indictments, attendance to the main hearing, and other parameters in the last 14 years are being compared; in the second part the work results in 2017 regarding the structure of criminal offenses are being analyzed; and in the third part institutional and other preconditions for work are being analyzed and the conclusions and recommendations are being given.

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<sup>5</sup> / Interim benchmarks for Chapter 23 "Judiciary and Fundamental Rights" are given in European Union Joint Position, Brussels, 12 December 2013.

## METHODOLOGICAL LIMITATIONS AND OTHER IMPORTANT NOTICES

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This analysis is based on the official reports of the State Prosecution Office and SSPO. Although reporting on the work of the SSPO has been significantly improved over the previous period, significant differences in reporting make it impossible to accurately compare data. Improvement refers to the fact that semi-annual and annual work reports containing more data than what was previously available are being prepared and published. However, the categories of data differ, and all the important data required for the analysis of work are still not available<sup>6</sup>. An additional challenge stems from the fact that most of the work of the SSPO is secret and that the public can not access it, so all the specifics of concrete preliminary investigations can not be analyzed. Regardless of this limitation, based on the available data, it is possible to obtain a certain picture of the results of the work of the SSPO.



In the SSPO, they believe that it is not possible to conduct comparison of parameters without data "about the type of cases in the work, the severity of the criminal offenses, the manner of their execution, the perpetrators of criminal offenses - their organization, equipment, mutual communication, methodology of criminal offenses, protection against detection and prosecution etc"<sup>7</sup>. However, the SSPO does not publish such data in its annual reports, so it is not possible to make such a kind of comparison and analysis.

When comparing the official data between different years, it is also necessary to take into account that SSPO's jurisdiction when compared to the Department is narrowed down, that is, the number of criminal offenses for which the SSPO is in charge is reduced. The following criminal offenses are exempted: violation of equality in the conduct of business activities, abuse of monopolistic position, causing bankruptcy procedure, causing false bankruptcy, false balance, abuse of assessment, revealing a business secret, revealing and using stock-exchange secret<sup>8</sup>. When it comes to corruptive criminal offenses, there has also been a change and narrowing down in jurisdiction in order to focus more on the most sensitive cases, as the SSPO is now in charge of giving and receiving bribes only when public officials are perpetrators. What is added to the SSPO is the criminal offense of money laundering which is one of the most demanding criminal offenses to prove.

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<sup>6</sup> / More about data that is not available below. However, it should be emphasized that at the beginning of this research, the annual reports on the work of the State Prosecution Office for the period 2004 to 2017 were available on the State Prosecution's website and that only four reports (for years 2014-2017) are available today. This is a big setback in transparency and will prevent future research and more detailed informing of citizens about the work of the Prosecution Office.

<sup>7</sup> / Memo from the Special State Prosecution Office to Institute Alternative from 14.6.2018.

<sup>8</sup> / For the sake of precision, these criminal offenses were not represented to a significant extent in the work of the Department, we refer to them only as a factual difference in jurisdiction over the earlier period.

For the proper interpretation of data from year to year, it is also important to have in mind the capacities with which the special prosecution functioned in various forms. According to the available data from the annual reports on the work of the State Prosecution Office, its human resources are as follows:

Second half of 2004:	Special prosecutor and one deputy.
2008:	Special prosecutor, 4 deputies and 4 state employees.
2014:	At the end of the reporting year, in the Department, out of 7 systematized seven positions of the Deputy Special Prosecutor, there were 5 Deputy Special Prosecutors and 3 Prosecutors who were sent to work in the Department from other prosecution offices, and 4 state employees.
2016:	Besides 12 prosecutors, in this year in the Special State Prosecution Office, 28 civil servants and state employees were working on administrative and technical jobs.
2017:	By the end of this year, there were 15 prosecutors <sup>9</sup> and 35 civil servants and state employees <sup>10</sup> out of 37 which were systematized. (Although formally speaking 1+10, additional four prosecutors were sent to work to SSPO during whole 12 months of 2017).

Based on all of the above, it can be concluded that the number of prosecutors who acted in the SSPO is effectively three times higher than it was, and that the number of civil servants and state employees is seven times higher than it was before the establishment of the SSPO.

It is also a novelty that twenty police officers from the Special Police Department (hereinafter: SPD) who act only on the orders of the special prosecutors provide immediate support to the Special State Prosecution Office. This solution contributed to overcoming the obstacles in cooperation with the Police that the Department<sup>11</sup> was facing, and thus the conditions for the work of SSPO were improved.

Additionally, it is important to keep in mind that the employments have also been accompanied by investments in human resources, in terms of domestic and international vocational trainings and specializations for issues in the field of organized crime and corruption, as well as the participation and cooperation of the SSPO and the Police Administration in numerous projects of the European Union, projects of the member states of the European Union, the United States of America and others.

Since the SSPO was established as a separate prosecution office in 2015, major institutional and administrative changes were completed by the end of 2017, and half of the mandate of

<sup>9</sup> / List of prosecutors available at: [http://tuzilastvocg.me/media/files/SDT%20funkcioneri%20DECEMBAR%202017\(1\).pdf](http://tuzilastvocg.me/media/files/SDT%20funkcioneri%20DECEMBAR%202017(1).pdf)

<sup>10</sup> / List of civil servants available at: <http://tuzilastvocg.me/media/files/SDT%20sluzbenici%20DECEMBAR%202017.pdf>

<sup>11</sup> / Information from the interview with representatives of the State Prosecution Office.

the Chief Special Prosecutor expired. Therefore, in the second part of the analysis, special emphasis will be placed on the analysis of the results of the work in the last year, 2017, while the data from other years will be used for comparative analysis and objective interpretation of the results of the work.

The final methodological note: this report does not include the analysis of financial investigations of the SSPO, which will be the subject of a special report of Institute Alternative in the following period.

## **STRATEGIC FRAMEWORK FOR REFORMS: EU REQUIREMENTS 2008-2012-2018**

Observing reforms over the past decade, what is particularly striking is the extent to which the requirements of the European Commission at the beginning of the reform to join the EU and today are the same. Thus, for example, the “Roadmap for Visa Liberalization of Montenegro”, as one of four requests issued on May 27, 2008, imposes set of tasks under the name “public order and security”, which, among other things, meant the obligations of Montenegro to implement a number of strategies and action plans and ensure co-operation between competent institutions.<sup>12</sup>



As a result of Screening, which was implemented in 2012 for Chapters 23 and 24, problems were noted in the aforementioned areas. When considering the relevant interim benchmarks for these two chapters, it can be noted that the same issues continue to be relevant. Therefore, within these two chapters, Montenegro again implements action plans that include measures to combat corruption, organized crime, money laundering, narcotics, trafficking, works to improve judicial cooperation in criminal matters and cooperation between national authorities, etc.

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**12 /** a) implement the action plan for the fight against corruption and organized crime,

b) implement the anti-trafficking strategy,

c) ensure the implementation of anti-money laundering legislation and strengthens the Administration for Prevention of Money Laundering,

d) adopt and implement a strategy for the fight against narcotics,

e) adopt and implement legislation on the prevention and combating of corruption, as well as appropriate conventions, standards and recommendations in all aforementioned areas,

f) ensure judicial cooperation in criminal matters,

g) ensure co-operation with law enforcement agencies (especially border police, police, customs officials, as well as cooperation with judicial bodies). - “Visa Liberalization Procedure for Montenegro - A Roadmap” (2008), p. 5

*Decade and a half of reforms:*

*Employment, projects, trainings, strategies and action plans, memorandum on cooperation, new technologies and other investments in the fight against corruption and organized crime.*

Finally, the European Commission report on Montenegro published in April 2018 concludes that a certain level of preparation for the fight against corruption and organized crime has been achieved, but that a proactive relationship of institutions is still expected, as well as further improvements that should provide a balance of results in successful investigations and judgments<sup>13</sup>.

The need to implement identical reforms after fifteen years and to propose the same solutions for solving problems (strategies, action plans, law enforcement, cooperation, employment of officers) points to the obvious fact that, on the other hand, in the previous period the expected results were not achieved, and, on the other, points to the need for the European Union to review its approach and find a more efficient and effective model for monitoring and fostering reforms.

However, all listed activities, legislative, strategic, educational, etc, serve to create conditions for work, such as preparation and support to the SSPO and the Police Administration to exercise their role in the system of repressive fight against organized crime and high-level corruption. To what extent have these institutions been successful in this and how much effect have the reform activities produced will be analyzed in the following chapters.

## **ANALYSIS OF THE RESULTS OF WORK OF THE SPECIAL PROSECUTION OFFICE (SPO)**

### **1. CRIMINAL CHARGES – CITIZENS BESTOWED TRUST, POLICE AT THE LEVEL FROM 2010**



To get a particular image of the trend of crime within the jurisdiction of the Special Department and the Special State Prosecution Office, as well as their scope of work, the first parameter to be taken into consideration is the number of criminal charges which the special prosecutors acted upon. Therefore, the first characteristic of the work of SSPO is the increase in the number of criminal charges that are referred to the SSPO. Thus, in 2017, SSPO received charges against 754 persons, and had criminal charges in its work against 1299 persons (with charges from the previous period against 545 persons). In 2016, there was a record number of charges received, 1126. This is a very significant increase in the number of persons included in the charges.

<sup>13</sup> / The European Commission, Montenegro Report, Strasbourg, 17.4.2018, p. 18



It is important to point out that in comparison to 2014, when natural persons submitted charges to the Department against 23 persons in total, natural persons submitted charges against 266 persons in 2015 and against 482 persons in 2016<sup>14</sup>. This is an important parameter that has clearly pointed out to the trust that the citizens showed as a response to the establishment of this prosecution office, since they were encouraged to submit charges in a significant degree. The optimism that followed the establishment of the SSPO is a consequence of the fact that immediately before that, the Supreme State Prosecutor was elected by the votes of a part of the opposition and had a three-fifths majority of the Parliament. This is also due to the fact that the Supreme State Prosecutor and the Chief Special Prosecutor were elected from the ranks of judges and not prosecutors which have already performed these functions, so they personified the time of changes in the State Prosecution.

However, although a separate Police Department was set up in 2016 to deal with the cases within the jurisdiction of the Special Prosecution and despite all the reforms that the Police had been through during the past years, the number of persons against whom the police filed criminal charges after the founding of the SSPO is at an approximately the same level as in the period 2010-2012, when the Police filed charges against, on average, about 100 persons.

In 2014 and 2015, the Police recorded a certain decline, when charges were filed against 13 and 58 persons respectively. After the establishment of the Prosecution, this number returned to the previous state, but did not show a significant increase. More specifically, the Police Administration submitted charges against 116 persons in 2016 and against 114 persons in 2017.

The Prosecution's reports do not distinguish between the charges filed by the SSPO and the remainder of the Criminal Police Sector (hereinafter: the CPS) but refer to the Police Administration as a single body. For this reason, the effect of establishing the SSPO can not be analyzed in more detail, but according to the total number of charges it can be safely concluded that the difference is not still noticeable. (For a detailed overview of the number of persons against whom criminal charges were brought in the period 2004-2018, see Annex 1, at the end of this report).

## 2. INVESTIGATIONS INITIATED FOLLOWING THE PRELIMINARY INVESTIGATIONS – SEPARATING “WHEAT FROM THE CHAFF”

*Out of the total number of persons reported in 2017, against 13.6% of them the investigation was initiated.*

The number of investigations launched in relation to the number of criminal charges gives a partial answer to the question of the quality of the charges and answers colloquially to the question of the extent to which “real crime” was recounted.

The table below provides an overview of the investigations initiated. The Annual Reports of the Prosecution Office for the

<sup>14</sup> / This trend continued in 2017, when citizens filed complaints against 356 persons, which is 47, 21% of the total number.

years 2012 to 2016 do not give a precise summary data on the orders for conducting investigations<sup>15</sup>. However, the available data shows that the number of persons for which the orders for conducting investigations were given in 2017 (168) is unexpectedly low. On the one hand, the investigations were launched against only 13.6% of the total number of persons against whom charges had been brought or which were in the work of the SSPO (1229 persons). In other words, a little more than ten percent of the “material” the special prosecutors worked on (based on the charges brought and on their own initiative) has “qualitatively” pointed out to the crimes. On the other hand, we note that in 2009, when the Department had half the number of prosecutors and seven times smaller number of employees, that number was 122 persons.



In 2016, the order to conduct investigation was given for 71 persons, which is in range of 2008 or 2011.

Table 1: Overview of the initiated investigations (2005-2017)

2005.	2006.	2007.	2008.	2009.	2010.
Investigations initiated against 49 persons		Investigations initiated against 60 persons	Investigations initiated against 75 persons	Request for conducting investigation submitted against 122 persons	Investigation initiated against 104 persons

2011.	2012.	2013.	2014.	2015.	2016.	2017.
Order to conduct investigation issued against 73 persons					Order to conduct investigation issued against 71 persons	Order to conduct investigation issued against 168 persons

Although without deeper analysis of the structure of initiated investigations a parallel can not be drawn with certainty, it can be noticed that the number of charges submitted by the Police and the number of investigations initiated is roughly the same, which partly indicates the progression of the charges submitted by the Police and less progression of other charges. Progression of charges by the Police is not surprising since the Police “prepares” criminal charges in cooperation with this Prosecution and often submits them when the prosecutor in charge believes that enough evidence had been collected. On the other hand, it is particularly noticeable that a vast amount of charges by the citizens, legal entities, other bodies and NGOs did not significantly affect the number of initiated investigations.

<sup>15</sup> / In addition, since the data on the investigations was not mentioned for every criminal offense, we could not get to accurate data by simply multiplying.

There is no dilemma that special prosecutors are obligated to treat all charges with equal responsibility and to undertake all measures and actions provided for by law. However, a low percentage of the initiated investigations raises the question of whether real organized crime and corruption, which international reports claim to be a serious problem in Montenegro<sup>16</sup>, remain outside the cases of the Special State Prosecution, while special prosecutors carry out checks in which they find no criminal offense. In that regard, it should be recalled that the European Commission's benchmark precisely points out to the need for "setting priorities in cases of serious criminal offenses"<sup>17</sup>. According to the prosecutors, the priorities are not formally set, but the cases are taken "on arrival", indicating, to some extent, a passive rather than a proactive approach of prosecutors.

### 3. INDICTMENTS - ANNUAL AVERAGE OF 7 PERSONS BY SPECIAL PROSECUTOR



Although there are formally eleven of them, in 2017, a total of 15 prosecutors worked in the SSPO, as four prosecutors were sent to work in this prosecution. Their total annual results for this year are bills of indictment against 9 persons, immediate charges against 1 person, and indictments against 99 persons, which is a total of 109 accused persons. On average, this means that a special prosecutor charged seven people in a year<sup>18</sup>. Since it can be seen from the media that some special prosecutors deal with several cases in which ten or more persons were charged, and

which were launched in 2017, it can be concluded that there were special prosecutors who did not accuse even 7 persons in this year. (An example is 11 persons charged with money laundering, all indicted by a special prosecutor, or a case known as "coup d'état" in which also 11 accused persons are present.)

Due to differences in reporting in annual reports on work of the State Prosecution, it is not possible to accurately monitor the number of accused persons from year to year. Thus, in some years, the number of indictments was reported, in some of the number of accused persons, in some difference was made between bills of indictments and indictments, and in some it was not, in some the total number of accused persons (with indictments from previous years) was reported and in some it was not.

However, the available data shows that the largest number of accused persons was in 2009 - 154 accused persons. In this part, it should be recalled that the jurisdiction of the Special

<sup>16</sup> / Analysis according to the structure of crime is in the second part of this report.

<sup>17</sup> / "Montenegro establishes a new Special Prosecution Office that should lead to better priority setting in cases of serious criminal offenses..."

<sup>18</sup> / If the total number of accused persons were to be shared with 12 "regular" special prosecutors (without three being sent to work), the average would be 9 accused persons per special prosecutor. However, since the prosecutors were sent to work to this Prosecution Office for all 12 months and they received earnings as special prosecutors, they share responsibility for overall performance and results.

Prosecution in 2009 and in 2017 is not identical, but it is similar. The analysis did not take into account the complexity of the processed criminal offenses by year, since data on this is not available.

Table 2: Overview of the data on accused persons (2004-2017)

½ 2004.	2005.	2006.	2007.	2008.	2009.	2010.
	Indictments against 34 persons filed	77 accused persons	13 indictments against 71 persons	11 indictments against 47 persons, out of which one is charged with a direct indictment	Indictments against 154 persons filed	105 persons charged
2011.	2012.	2013.	2014.	2015.	2016.	2017.
60 persons charged					Indictments against 119 persons	Accused 109, with unre- solved indictments from the previous period, indict- ment against 170 persons

For a better analysis of the work of the SSPO, it is very important that the confirmed indictments are regularly published at the website of this Prosecution Office, which has not been a practice so far<sup>19</sup>. For example, some of the confirmed indictments from 2015 were published in March 2018. Since the establishment of this Prosecution Office on 31 May 2018, 29 confirmed indictments and 3 bills of indictments were published.

Based on the confirmed indictments, it is also possible to monitor and analyze the work of individual special prosecutors in a better, quantitative and qualitative manner, which is very important for improving the overall SSPO results. Based on 32 published documents, it is evident that one special prosecutor filed over half of the total number of indictments, two prosecutors filed one indictment each, while a number of indictments are unsigned. The invisibility of work of more than ten special prosecutors leads to the question of the quality of selection of special prosecutors who failed to distinguish themselves by initiating cases and whose work must be re-examined through procedures stipulated under the law.

Since the special prosecutors are yet to be evaluated by the Prosecutorial Council, it will be interesting to see whether there will be a difference in evaluating the performance of special prosecutors who had indictments and prosecuted potential criminals and those who were largely had rejected indictments throughout the entire year.

Nevertheless, all analyzed data indicate serious differences in workload and the contribution of special prosecutors, and the fact that three times as many prosecutors and seven times as

<sup>19</sup> / Confirmed indictments are available on the following link: <http://tuzilastvocg.me/index.php/odjeljenje-za-suzbijanje-organizovanog-kriminala-korupcije-terorizma-i-ratnih-zlocina/potvrdene-optuznice>

many expert and administrative support did not lead to as many times better results. In this regard, the narrowing down of the competencies of the SSPO should be taken into account by the adoption of a special Law on the Special State Prosecution Office, as well as the fact that the earlier challenges of the Special Prosecutors in cooperation with the Police have largely been overcome by establishment of the Special Police Department<sup>20</sup> which are the changes that were supposed to lead to even more successful results.

#### 4. PRESENCE AT THE MAIN HEARING - TIME SAVINGS FOR PART OF THE PROSECUTOR'S DUTIES IN COURT

The presence of special prosecutors from the SSPO in the main hearing is not more frequent than the presence of special prosecutors from the Department, which indicates to the improved efficiency of the procedure, but also to an insufficient increase in the number of cases in the court. The most striking difference is the one between 2010, when five prosecutors attended 457 main hearings and 2016, when two times more prosecutors attended 268 hearings.

Table 3: Presence at the main hearing (2004-2017)

½ 2004.	2005.	2006.	2007.	2008.	2009.	2010.
Data not available					333	457
2011.	2012.	2013.	2014.	2015.	2016.	2017.
407	371	368	273	258	268	

#### 5. AGREEMENTS ON THE ADMISSION OF GUILT - EFFECTIVE BUT IS IT A SATISFACTORY SOLUTION?

Part of the answer to the question why the numbers for the previously analyzed parameter are not significantly increased is the increase in the application of the institute of agreement on the admission of guilt. In 2017, special prosecutors concluded 32 agreements on the admission of guilt (within 3 criminal cases), in 2016 there were 28 (within 7 criminal cases), while, for the sake of comparison, in 2010, there were only three agreements at the level of the entire State Prosecution Office.



However, the transparency of concluded agreements is not at a satisfactory level and these documents are not published on the pros-

<sup>20</sup> / More about this issue in the last chapter of this report.

ecution's website in a timely manner<sup>21</sup>. Until 31/5/2018, a total number of 43 agreements were pro-actively published.

Although the positive impact on the efficiency of the proceedings cannot be challenged when it comes to the application of this institute, the controversy which follows it is a mild punitive policy and sanctions that encroach on public outcry. The most drastic example is a final verdict based on the agreement on the admission of guilt, according to which the former president of the federal state, the president of the Parliament of Montenegro and the high official of the ruling Democratic Party of Socialists, Svetozar Marović for the criminal offenses he committed which and had serious implications on the state budget<sup>22</sup> should spend a total of three years and nine months in prison. Although this is one of the qualitatively greatest successes of the SSPO, it is at the same time a case that did not meet the need for justice and equity in Montenegrin society, not only because of the striking differences between the acquired wealth and the sentence imposed, but also because of the fact that Marović was granted to leave the country. Until June 2018, the Ministry of Interior and the Ministry of Justice have not taken measures to ensure that the neighboring state of Serbia acts according to the allegedly issued Interpol wanted notice. The Marović wanted notice is not available at the Interpol website, while the Ministry of Interior refused<sup>23</sup> to provide Institute Alternative with any evidence that the communication with the Serbian authorities had been established on this issue<sup>24</sup>, even though this is a case that has been finalized and there is no basis for secrecy of the information<sup>25</sup>.



Another serious problem in this area is that financial investigations, which would have to follow agreements, do not result in a permanent seizure of assets obtained through illegal activi-

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**21** / Agreements are available at the following link: <http://tuzilastvogg.me/index.php/odjeljenje-za-suzbijanje-organizovanog-kriminala-korupcije-terorizma-i-ratnih-zlocina/sporazumi-o-priznanju-krivice>

**22** / Two agreements on the admission of guilt were signed with Svetozar Marovic. He acknowledged the fraud and abuse of the position in the construction of the Lower Boulevard, the road in the village of Krapina, as well as for the cases of "Property investment" "Copyright" (the first agreement), and that he misused his official position when constructing a plateau for holding concerts at Jaz, construction of TQ Plaza and the sale of land on the Privjevor in the municipality of Budva (second agreement). According to unofficial sources from the SSPO, it was told to Vijesti that the damage to the budget is about 100 million Euros. "The group of Svetozar Marovic cost Budva 100 million euros?", Vijesti, 31.7.2017. available at: <http://www.vijesti.me/vijesti/grupa-svetozara-marovica-ojadila-budvu-za-100-miliona-eura-948648>

**23** / Decision of the Ministry of Interior of Montenegro, 39 no: UPI - 007/18 – 2432/3.

**24** / IA requested the following information:

- To the MOI: 1) a copy of the INTERPOL warrant and a copy of any other documentation requesting the extradition of Svetozar Marovic to the competent authorities of the state of Serbia, including all possible urgencies.
- To the Ministry of Justice: 1) a copy of the request for extradition of Svetozar Marovic with all other accompanying documents sent to the competent authorities of the state of Serbia, including all possible urgencies, 2) a copy of any written communication between the Ministry of Justice and the competent authorities of Serbia in relation to Svetozar Marovic.

**25** / Under the Act of the Criminal Police Sector No. 49/9 UPI-007 / LB - 2432 of 26 April 2018, we were informed that "the warrant is used exclusively for police / judicial purposes." Since the Free Access to Information Law does not recognize such grounds for refusing access to information, IA filed a complaint with the Agency for Protection of Personal Data and Free Access to Information on 7 May 2018 that has not yet been resolved.

ty. Therefore, the overall impression of the results of the agreements on the admission of guilt is affected by this issue.

## **ANALYSIS OF THE WORK OF THE SSPO ACCORDING TO THE STRUCTURE OF CRIME**

### **A) BRIBE IS NOT A PRACTICE – HIGH LEVEL CORRUPTION REMAINS A CHALLENGE**



A majority of work of special prosecutors is related to inspections which end with the rejection of criminal charges. In 2017, out of a total of 1,229 persons inspected, criminal charges were rejected against 377 persons, while in 2016, charges were rejected against 595 persons. The majority of rejected criminal charges referred to criminal offenses in the area of “high-level corruption” (in 2017: 304 persons, in 2016: 460 persons). However, Montenegro belongs to countries that are considered to have widespread corruption. Such observations can be found in the regular reports of the European Commission. Nonetheless, special prosecutors fail to reach these perpetrators either on the basis of criminal charges or on their own initiative. In 2017, the SSPO received charges against only one person for receiving a bribe, which was transferred to another competent prosecution office. Since the SPPO is a prosecution office specialized for corruption, it is very worrisome that it does not deal with bribe-giving and receiving cases in its work.

When it comes to criminal offenses in the area of high-level corruption, the abuse of an official position is dominant in the work of the SSPO, which is both expected and positive. However, immediately after this criminal offense, negligent performance of business activities (Article 272 CC) and abuse of authority in economy (Article 276 CC) are the most present. For instance, in 2017, out of all corruption criminal offenses, half of the total number of persons accused of corruption was charged with these two offenses. However, it should be kept in mind that these are classic economic crimes that in practice are not usually committed by public officials who should be in the focus of the SSPO because of the sensitivity of their position. Since the discussion on the need to further narrow down the jurisdiction of this Prosecution in order to achieve greater efficiency is opened, it is certainly necessary to start from analyzing the possibility of excluding these offenses or the possibility of raising a census set by law “if a gain exceeds the amount of forty thousand Euros”.

## B) FRAGMENTARY APPROACH TO ORGANIZED CRIME?

When it comes to organized crime, most SSPO cases are within the thematic area of drugs - in 2017, indictments were brought against 13 people for the unauthorized production, keeping and releasing for circulation of narcotics (Article 300 CC) and the creation of a criminal association.

The second area is grave types of murder and the SSPO charged 10 people for grave types of murder and creation of a criminal association. Since the SSPO in 2017 dealt with charges against 14 persons in its work, with investigations against 11 people, and if brought charges against 10 of them, it is evident that the SSPO does not deal with grave types of murder committed by an unknown perpetrator, but that the cases present in its work are mostly resolved. The last several years in Montenegro were marked with brutal confrontations of two criminal clans whose war resulted in 24 killings in three years<sup>26</sup>. In the majority of these cases, the Higher State Prosecution acts until the collection of evidence on the elements of association. Due to this, the accent in these cases is to clarify the very act of murder but not related activities. Therefore, the question arises as to whether such an approach is purposeful and whether it gives adequate results since special prosecutors are specialized for these most complex criminal offenses and that a strategic approach is needed to combat organized crime networks<sup>27</sup>. In other words, the question arises whether due to this strictly formal approach to the organized criminal groups of the State Prosecution Office it suppresses their actions in an effective way. This because in parallel with the investigations for the murders which are in the majority of cases ordered, no investigations are conducted for money laundering, financial investigations or other wider analyzes of their actions.

## C) MONEY LAUNDERING - UNRESOLVED "PREVIOUS ISSUES"

When it comes to money laundering, satisfactory results have not yet been achieved. This in particular bearing in mind the importance of these investigations for the fight against organized crime which are held by investing money acquired through illegal activity in legal flows. In 2017, 11 persons were charged with this criminal offense and 4 of them in 2016. However, all of the mentioned 11 persons belong to a single case and are from the same political party, which points to the fact that the operations of all other criminal groups remained out of reach of the SSPO. Investigations on money laundering crimes combined with financial investigations are the only effective way to combat organized crime. Such a strategic approach has not yet been fully established.

The previous years of combating organized crime were also marked by acquittals in several very important money laundering cases ("Šarić / Lončar" and "Kalić")<sup>28</sup>, that is, the cases were

<sup>26</sup> / "Clan War in Montenegro took 24 lives", CDM, 13.11.2017, available at: <https://www.cdm.me/hronika/rat-klanova-u-crnoj-gori-odnio-24-zivota/>

<sup>27</sup> / The balance sheet for the first three months of 2018 is 3 killed, 4 injured, 6 assaulted by firearms, 12 embedded explosions, which well illustrates the extent of crime in Montenegro.

<sup>28</sup> / "The Supreme Court acquitted Duško Šarić and Jovica Lončar", Vijesti, 1.4.2018, available at: <http://www.vijesti.me/vijesti/vrhovni-sud-pravosnazno-oslobodio-duska-sarica-i-jovicu-loncara-982495>



terminated by court decisions acquitting the defendants. In this respect, it is particularly noticeable that the disputable questions related to the legal issues in criminal cases of money laundering have never been examined in a constructive manner, nor have the differences in the legal interpretations of particular issues by the courts and the prosecution discussed, particularly the questions concerning admissibility and credibility of certain evidence accepted by the court<sup>29</sup>. This is a priority issue for the next phase of the fight against organized crime.

## D) OTHER ISSUES

When it comes to terrorism, in 2016, 6 people were indicted and another 5 in 2017. However, besides its qualitative characteristics this case is characterized by its importance and its outcome will have an important place in the assessment of the work of the SSPO in the following period. Finally, when it comes to war crimes, in 2017 an indictment was filed against one person.

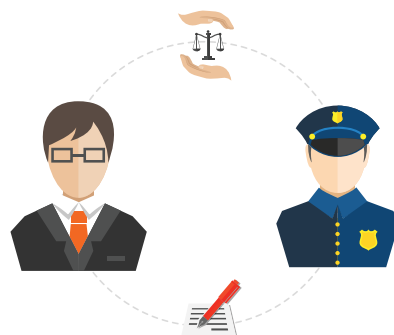
## INSTEAD OF CONCLUSION: REVIEW OF THE INSTITUTIONAL FRAMEWORK AND PRECONDITIONS FOR WORK

### A) RELATION WITH THE POLICE AND PERSPECTIVES

The Special State Prosecution Office and the Police Administration have mutually dependent relation, in which the SSPO has a leading position and the Police has a dual role - executing and initiating in terms of detection of crimes under the jurisdiction of the SSPO.

The analysis of the results of the SSPO according to all parameters from the previous part of this report indicates that the Police Administration did not make any progress in its work during the last years of intensive reforms. Also, its effect, in terms of the number of quality criminal charges within the jurisdiction of the SSPO, did not increase but it is at the level from the period before major institutional reforms. Because of that fact, it can be concluded that optimism which followed establishment of the SSPO in the previous period did not spread to the Police.

However, accountability between the SSPO and Police Administration is not strictly divided, so the effects of the work of the Police depend on special prosecutors who are leading the work of police inspectors, coordinating their activities, defining the priorities, and are the ones who have to ask inspectors to examine suspect persons in the field of organized crime and



<sup>29</sup> / Information from the interview.

corruption. Analysis of the results of the work of SSPO indicates that all special prosecutors do not have this proactive attitude towards their responsibilities.

Institutional establishing of the SSPO was not conducted without problems and has not been completed yet. Filling out of 20 job positions in the Special Police Department was slow and difficult because of the conflict between the management of the Police and SSPO<sup>30</sup> and the fact that the Police Administration has no quality human resources that can fill out important job positions in the Special Police Department and Criminal Police Sector. It is necessary to have these problems in mind during next steps of improving of SSPO's work, especially in terms of suggested increased number of police civil servants in the SPD. Until the necessary synergy between the Special Police Department and Criminal Police Sector is achieved, there will be long-term consequences on the work of the SSPO, since with the existing human resources it is not realistic or sustainable to establish two completely separate criminal police departments, although such tendencies exist<sup>31</sup>.

There is a various number of reasons for the lack of synergy between the Special Police Department and Criminal Police Sector: although the SPD is within CPS and thus hierarchically under the jurisdiction of the deputy police director of CPS, the police officers from that department, according the Law on Special State Prosecution act according to the orders of the Chief Special Prosecutor and Special Prosecutors. This solution gives them an organizational dual role and responsibility within the two authorities that in practice became the source of the problem. In addition, the "silent conflict" is expanded because the inspectors of this department received a special bonus of 45% of the increase to their salary, although there is overlap between their work and the work of a certain number of inspectors in the CPS who do not have this bonus. Finally, there was a problem of the Department's distrust in the Sector due to specific cases<sup>32</sup> of leakage of information and sabotage of their work, which is a legitimate reason for the reduced communication. However, completely isolating the Department from the rest of the Police will necessarily limit their impact. It is important to emphasize that the majority of special prosecutors point out that they have excellent cooperation with the SPD and expresses a positive opinion about their work, which is a good basis for further improvement, while they express reservations towards the Sector.

However, the Department did not take on itself the initiative and full responsibility for the fight against organized crime and high corruption. This is also evident in the fact that two years after its formation, the media do not recognize this organizational unit as the address responsible for suppressing the war of criminal clans and prosecution of public officials. The fact is

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**30** / More information about this in the analysis of IA "Six Years of Prosecutorial Investigation - Police and Prosecutorial Cooperation", available at: <http://media.institut-alternativa.org/2017/07/sest-godina-tuzilacke-istrage-u-cg.pdf>

**31** / "Katnic is looking for another 30 policemen, Mol and the Government are against it?", Vijesti, October 2, 2017, available at: <http://www.vijesti.me/vijesti/katnic-trazi-jos-30-policaajaca-mup-i-vlada-ne-daju-956912>

**32** / "Milovan Pavicevic interrogated for theft of letters" Vijesti, available at: <http://www.vijesti.me/vijesti/milovan-pavicevic-sasluan-zbog-krade-pisama-967042>

that with the existing capacities, the SPD, can not tackle such great challenges. However, even in the case of an increase in the number of police officers in their ranks, the SPD will continue to depend on both the Security Centers and the CPS, in logistical terms (since the Department does not have technical and subsidiary services) and in terms of necessity of timely receipt of operational data from all organizational units of the Police on the territory of Montenegro.

## B) HUMAN RESOURCES - FOCUSING ON QUALITY

There is also a public announcement for two new special prosecutors, which will formally improve the capacities of this prosecution office. However, our analysis shows that the increase in the number of prosecutors does not necessarily lead to an increase in its results. This raises the question of the quality of staff and the necessity to hire the best prosecutors, inspectors, experts and associates for the tasks within the competence of SSPO.

Not enough has been done in the area of encouraging the best candidates to perform responsible duties in the fight against the most serious crimes, which is best seen by the small number of candidates applying for these positions. For example, only two candidates applied for the official public announcement for two special prosecutors<sup>33</sup>. In addition, not much has been achieved in building an internal system that recognizes merits in work, acknowledges differences between employees who achieve greater and those who achieve lesser results, and takes into account the complexity of the cases. Establishing such a system is not only the interest of the Special State Prosecution Office, but the strategic interest of the state in the suppression of organized crime and corruption and due to the obligations under Chapters 23 and 24.

Having in mind the dimensions of the problems with organized crime and corruption in Montenegro, the Prosecutorial Council has to show more rigor in the selection of special prosecutors, more proactivity in "attracting" the best staff (for example, by promoting the announcements more) and creating better conditions for the work of special prosecutors. The Prosecution Council should also pay special attention to the need for special prosecutors to have specific knowledge and skills needed to prosecute the most complex criminal offenses. This especially in the light of the uneven workload of special prosecutors and the fact that a certain number of special prosecutors have very little success in prosecuting criminals because their cases mostly end with rejection.

In the previous period, the regulations related to the salaries of the administration, and in particular the financial experts at the disposal of the special prosecutors, were amended in a way that their wages were reduced<sup>34</sup>, which could be interpreted as the pressure of the executive on the work of the SSPO.

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**33** / "Katnic is seeking reinforcement, nobody wants to fight crime and corruption", Fos Media, 25.5.2018, available at: <https://fosmedia.me/infos/drustvo/fos-prica-katnic-trazi-pojacanjanje-niko-ne-zeli-u-borbu-s-kriminalom-i-korupcijom>

**34** / By adopting the new Law on Public Sector Wages in February 2016.

## C) TRANSPARENCY AND ATTITUDE TOWARDS THE PUBLIC'S RIGHT "TO KNOW" - THE NEXT PHASE



The publicity of the work of the SSPO has been improved in relation to the period before 2015. The SSPO has a special section on the website of the State Prosecution Office for its press releases, announcements, etc, as well as a section for the publication of confirmed indictments<sup>35</sup> and concluded agreements on the admission of guilt which is undoubtedly important step forward. In the coming period, however, attention should be paid to proactive reporting to the public and to the dismissed criminal charges that objectively represent a significant part of the work of special prosecutors. In the forthcoming period, however, attention should be paid to proactive reporting to the public and to the dismissed criminal charges that objectively represent a significant part of the work of special prosecutors.

Namely, bearing in mind that the jurisdiction of the SSPO is particularly sensitive and that the rejected criminal charges, especially those against public officials, are the source of the controversy, the SSPO has the responsibility to proactively build public confidence in its independent and impartial work in a way that it will be able to convince the public that they have been taken all possible measures and actions in rejected criminal charges. That there is room for strengthening confidence shows the research by Institute Alternative conducted on a representative sample from December 2017. More precisely, the survey found that even more than half of citizens (53 percent) thinks that "the SSPO treats those public officials who are currently in power more favorably".<sup>36</sup> The public's perception on the existence of a political influence on the judiciary must be an additional motive for a more transparent work.

In dealing with the integrity of the police and possible examples of the disproportion between the wealth and income gained, Institute Alternative sent a request for free access to information to the SSPO requesting: copies of all decisions on the dismissal of criminal charges against Veselin Veljovic<sup>37</sup> (in the period from 2007 to 2017), as well as a copy of the official note of the SSPO, which ended the case on the alleged unlawful acquisition of Radosav Lješković's property<sup>38</sup>. The SSPO rejected both requests on the grounds that the decisions

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**35** / IA submitted to the Supreme State Prosecutor the Initiative for the Publication of Confirmed Indictments on 11/3/2014. This proposal was adopted as an example of good practice of cooperation between the State Prosecution and civil society organizations. More details available at: <http://institut-alternativa.org/inicijativa-za-uvodjenje-prakse-proaktivnog-objavlivanja-optuznica/>

**36** / "Citizens' Views on Corruption", Institute Alternative, December 2017. Available at: <http://media.institut-alternativa.org/2018/02/stavovi-gradjana-cg-o-korupciji.pdf>

**37** / The former director of the Police.

**38** / Lješković is the former head of the Special Anti-terrorist Unit (SAJ) with the controversial case regarding the purchase of property Onogost, according to the information published in the article ND Vijesti "Ljeskovic's money is not dirty" on January 12, 2017. Available at: <http://www.vijesti.me/vijesti/ljeskovic-novac-nije-prljav-920073>

were part of a case file<sup>39</sup>. However, these cases have to date been “suspicious” to the public and there is a public interest for a more detailed explanation from this prosecution.

When it comes to these issues, statistical reporting on dismissed criminal charges according to the initiator should also be introduced in order to have a clearer picture of the quality of the charges submitted (including a list of all government agencies that submitted charges with their outcome). More precisely, it is necessary that the SSPO in its reports and communication with the public credibly presents the quality of criminal charges coming from different sources, especially when it comes to state bodies.

## D) SPATIAL AND TECHNICAL CAPACITIES

When it comes to the Government’s attitude towards creating the preconditions for the SPPO, it is necessary to mention that the Special State Prosecution Office functions in highly inadequate premises.

The Special State Prosecution Office of Montenegro and the Higher State Prosecution Office in Podgorica are located in the building of the Supreme State Prosecution Office. This building, which is over 40 years old, is in very bad condition. It is connected with a residential building, it has an insufficient number of work rooms, it does not have adequate access, the official entrance and parking space, there is no adequate room for interrogation, there is only one room for working meetings, and there is also a problem with the elevator.

The Special State Prosecution Office of Montenegro has a particularly pronounced problem with the workplace. Currently, the Special State Prosecution Office has 48 employees, out of which 12 special prosecutors. The total number of offices used by the Special State Prosecution Office is 17<sup>40</sup>. In one office there is video surveillance and there is also the security of the Chief Special Prosecutor.

Besides being inadequate, the work premises are not suitable for the new concept of prosecutorial investigation. Namely, there are two special prosecutors per office, with counselors and expert associates, so it is impossible to carry out certain procedural actions, such as gathering information from citizens, nor to hold working meetings with police, expert witnesses, clients, etc. Working conditions are also hindered in the clerk’s office, as there are five employees in the same office, a part of the archive, and the cases removed.

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**39** / Decision of SSPO Tuspi no. 80/17, Podgorica, December 7, 2017 and the Decision of SSPO Tuspi. no. 81/17. Podgorica, December 7, 2017.

**40** / These are: the Office of the Chief Special Prosecutor, 12 offices used by the Special Prosecutors, associates and advisors, the premises used by the Information Technology and Digital Evidence Service and 2 premises for the hearing of the parties.

## RECOMMENDATIONS:

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- Organize internal consultations between the Special State Prosecution Office and the Police Administration on establishing cooperation between the SSPO and the CPD and ways to achieve better results.
- Organize consultations about the cases of money laundering with the participation of judges, prosecutors, police officers and international and domestic experts who could answer the questions related to the dilemmas that have arisen in Montenegrin practice regarding the admissibility of certain evidence.
- Improve the semi-annual and annual report on the work of the Special State Prosecution Office by including a special part which will provide an overview of the work and results of all special prosecutors, as well as information on the dismissed criminal charges in relation to those who submitted them. Reporting should also be improved by providing information on the complexity of the cases.
- When considering the possibility of further narrowing down of competences of the SSPO, the following criminal offenses should be taken into consideration "Abuse of the position in business operations (Article 272 CC)" and "Abuse of powers in the economy (Art. 276 CC)" or the raising of a cash censure for these offenses.
- Undertake incentive measures to encourage the best candidates for prosecutorial and administrative positions in the SSPO, as well as the reward measures for the best prosecutors, police and civil servants (including public praise).
- Regularly publish plea agreements and confirmed indictments;
- Consider the possibility of proactively informing the public on the rejected criminal charges - especially when it comes to persons for whom the public is already aware that a case has been formed. A brief statement may include, for example, information on how many people have been examined, which documentation is excluded, what other measures and actions have been taken, etc.
- The Government of Montenegro should urgently provide spatial capacities for SSPO.

## ANNEX 1

Table 1: Overview of the total number of persons against whom criminal charges have been brought (2004-2017)

½ 2004.	2005.	2006.	2007.	2008.
3 criminal charges against 6 persons, (of which 5 for organized crime, and 1 for another type of crime)	13 criminal charges against 55 persons, of which 53 persons for organized crime, and 2 persons for another type of crime	20 criminal charges against 120 persons	22 criminal charges against 106 persons of legal age for criminal offenses of organized crime	16 criminal charges against 79 persons of legal age, for criminal offenses of organized crime and corruption + 4 cases against 31 persons for war crimes
2009.	2010.	2011.	2012.	2013.
- criminal charges against 136 persons for criminal offenses of organized crime and corruption	- received criminal charges against 136 persons	- criminal charges against 113 persons for criminal offenses of organized crime and corruption	- 100 perpetrators reported	- against 95 perpetrators
2014.	2015.	2016.	2017.	
criminal charges against a total of 46 perpetrators	criminal charges against a total of 556 perpetrators	criminal charges against a total of 1126 perpetrators	criminal charges against a total of 754 perpetrators	

## ABOUT INSTITUTE ALTERNATIVE (IA)

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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 and public officials; to encourage open, public, constructive and well-argument discussions on important policy issues; raising public awareness about important policy issues, strengthening the capacity of all sectors in 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 programme strands: 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 Public Policy School, which is organized since 2012.

Since 2013, IA has been licensed as a research institute by the Ministry of Science.

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