

INFLUENCE OF POLITICAL CORRUPTION ON THE DECISION MAKING PROCESS AT THE LOCAL LEVEL



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INTRODUCTORY REMARKS

The project *Corruption at the local level- zero tolerance*¹ aims at strengthening the role of civil society organizations, local self-government and competent state bodies in development of policies, monitoring and implementation of campaigns for reduction of corruption in local communities of Montenegro. In line with the principle of balance representation of the northern, central and southern parts of the country, the project encompasses 14 Montenegrin municipalities: Bar, Budva, Cetinje, Danilovgrad, Herceg Novi, Kolašin, Kotor, Mojkovac, Nikšić, Pljevlja, Plužine, Podgorica, Rožaje and Tivat.

The intention of the authors of the analysis „**Influence of political corruption on the decision-making process at the local level**” is to examine one of the six identified areas² - political corruption, through the role of political parties, i.e. its representatives and local self-government bodies. Existing legislative and institutional framework governing this area, media archives and examples from practice have been taken into account during collection of information.

Local self-governments are facing a number of risks for emergence of corruption, whereas political corruption produces the most

1 The project is implemented by Centre for Civic Education (CCE) in cooperation with Institute Alternative, NGO Bonum from Pljevlja and NGO Nada from Herceg Novi, with the support of European Union and co-financing of the Norwegian Royal Embassy.

2 The project identified the following areas of risk for corruption: public procurement, public-private partnerships, spatial development, employment, work of the local assemblies and political corruption

severe systematic consequences for the community. Aside from the fact that it has an adverse effect on the political system, making it dysfunctional, political corruption incites emergence of illegal corruptive (in)actions in many other fields, such as employment, public procurement procedures, concluding of public-private partnerships, in the field of spatial development and work of the local assemblies.

Special problem for establishment of a more effective fight against corruption is indolence of the Supreme State Prosecution (SSP) in the cases where there is a reasonable doubt of elements of political corruption, i.e. that the actions of some councillors and party officials are in the zone of criminal liability. The fact that competent institutions, with emphasis on SSP failed to prosecute actions that had led to changing of the electoral will and inexistence of continuous fight against political corruption represent a serious constraint for democratization of Montenegrin society.

DEFINITION OF THE CORRUPTION

Definition of the corruption, beside standard criminal law approach, can also be made through interpretation of this phenomenon as economic problem, problem of morals, ethics, accountability, abuse of the office, monopoly and discretion etc.

Today corruption is seen as global phenomenon that undermines democracy and rule of law principles and it could be understood as internal-external, individual-institutional, material, political, psychological etc. The most common form of corruption is abuse of the office and it exists on different levels of authority and it can be centralized or decentralized.

“Centralized corruption is more common in dictatorships, and decentralized more common for democracies. Centralized corruption is technically easier to combat with, because the circle of those involved is very small and all that is necessary is good democratic control of the top of the government.”³

Decentralized corruption is a challenge for the modern state and represents a big problem because whole network of individuals and organizations is involved in corruptive actions. Joseph Nye⁴ explains it as deviant behavior of officials in the public administration (elected and non-elected ones) which is not in line with their professional duties, and its goal is to gain personal wealth or status for an individual,

3 Prokopijević, Miroslav, *Constitutional economy*, Beograd, € press, 2000, s.18

4 Nye, Joseph S., *Corruption and Political Development: A Cost-Benefit Analysis*, American Political Science Review, 1967

his immediate family or close group of people.

World Bank provides simple but clear definition:

*“Corruption is misuse or the abuse of public office for private gain.”*⁵

Whereas, according to United Nations, or Convention against Corruption to be more precise:

*“Corruption is asking, giving or receiving, directly or indirectly, of bribe or any other undue advantage, that for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.”*⁶

“Economists moved the accent in explaining of causes for corruption from character and virtues to something completely different, and those are rules and incentives. If the system of incentives is such in a certain context or situation that it stimulates corruption, it will exist, regardless of the strength of character or influence of virtue to forming of a character”⁷. Also, according to Civil Law Convention on Corruption, Council of Europe defines corruption as “corruption represents a major threat to the rule of law, democracy and human rights, fairness and social justice, hinders economic development and honest functioning of market economy”. Lawyers have somewhat different view so “...corruption as a global social phenomenon should be seen from four perspectives: first, as one of indicators of respect towards to law by public officials and citizens, i.e. rule of law in modern societies, second, as indicator of moral, value-wise and political state of society, third, extensiveness of corruption pressure and vulnerability to corruption and fourth, extensiveness and size of corruption and bribery channels in specific segments of society”⁸.

5 Word Bank

6 http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

7 Prokopijević, Miroslav, *Corruption: economic side: File Corruption*, year 1(2011), br. 1, p. 5-19

8 Vuković, Slobodan, “*Law and corruption, Criminality in transition – phenomenology, prevention and state reaction*”, Belgrade, Cigoja Štampa, 2007, p. 103

Political corruption in context of local self-government

Political corruption is mostly connected with illicit actions in exercising of powers of political office and as such represents the most dangerous form of corruption because it facilitates and fuels systematic spreading of corruption on all levels of government.

Definition of corruption, a general one, was given by Vito Tanzi,⁹ and mostly defines the topic of this study – political corruption. According to that definition, corruption exists if there is intentional violation of principle of impartiality in making decisions with the aim to claim some undue advantage. Tanzi "...introduces two clear sets of restrictions in the beginning and in the end of potential corruptive interaction. First, there is no corruption if there is no deliberate, planned violation of the principle of impartiality. Lack of information or making a decision based on feeling of sympathy or antipathy suggests lack of professionalism and knowledge, but not necessarily corruption. Second, if there is no even delayed payment for the service, even if there is a lot of prejudice and arrogance on the side of administration there is no necessarily case of corruption..."¹⁰

On the other hand political corruption prospers if there is a suitable environment and established system of causes and incentives. Causes of political corruption on local level can be found in (in)direct factors. Direct factors can be different: abuse of state resources for the sake of political party which is facilitated because of complicated regulations and procedures for issuing of different administrative licenses and approvals; unclear local tax regulations that cause frequent contacts between citizens and local officials; decisions of executive power (mayors) related to public expenditures, investment projects and additional budgetary funds; providing of goods and service at prices lesser than market value, as well as other discretionary decisions (for example, about privatization, use of real estate owned by the state,

9 <http://www.imf.org/external/pubs/ft/wp/wp9863.pdf>

10 Stojiljković, Zoran, *Political corruption and weak state*, Philosophy and society XXIV, 2013, p. 11

foreign investments etc.), and system of financing of political parties on local level. Indirect factors can be: quality of administrative system (level of corruptive behavior is greater in cases where recruitment and promotion are not based on merit); salary levels in public sector; inadequate penal system and penal policy; bad and inefficient institutional mechanisms of control, lack in transparency in the work of bodies of local self-government, unclear laws and procedures; examples set by highest state officials and political leaders (Jovanović 2012).

LEGISLATIVE AND STRATEGIC FRAMEWORK FOR THE FIGHT AGAINST CORRUPTION

Provisions of the *Criminal Code of Montenegro*¹¹ which are directly related to corruption, therein including political corruption, are contained in the Chapter 34 regulating Criminal offences against official duty. Thus, it is stated that:

„A person acting in an official capacity who obtains a gain for himself or another or causes damage to another or seriously infringes on the rights of another person by using his official status or authority, exceeding the limits of his authority or failing to perform his official duty, shall be liable to imprisonment for a term of six months to five years.“¹²

To follow are provisions covering malpractice in office (Article 417), i.e. unconscientious acts in the performance of office, then unlawful collection and payment (Article 418), fraud in service (Article 419), embezzlement (Article 420), unauthorized use (Article 421), as well as minor fraud in service, embezzlement and unauthorized use Article 421a). Provisions regarding unlawful influence and trading in influence have a special significance in the field of fight against political corruption. They are specifically covered by Article 422, paragraph 1:

11 Criminal Code, available at: <http://poslodavci.org/doc/Zakoni/krivicni%20propisi/Krivicni%20zakonik.pdf>

12 Article 416, Abuse of official status, Criminal Code of Montenegro, “Official Gazette of Montenegro”, no. 70/03 from 25.12.2003, 13/04 from 26.02.2004, 47/06 from 25.07.2006, “Official Gazette of Montenegro”, no. 40/08 from 27.06.2008, 25/10 from 05.05.2010, 32/11 from 01.07.2011.

„Anyone who accepts a reward or any other benefit for interceding that an official act be or not be performed by taking advantage of his official or social position or influence, shall be punished by imprisonment for a term of three months to three years.“ and paragraph 2 of this article: „Anyone who, by taking advantage of his official or social position or influence, intercedes that an official act that should not be performed be performed or that an official act that should be performed not be performed, shall be punished by imprisonment for a term of six months to five years.“

When it comes to enticement of illegal influence, the basic provision in the Article 422a reads:

„Anyone who offers or promises to a person acting in an official capacity or another person a reward or any other benefit for interceding that an official act be or not be performed by taking advantage of his official or social position or influence, shall be punished by imprisonment for a term of up to two years.“

This was prescribed by the Criminal Code of 2011, whereas in the Law on Amendments and Changes of the Criminal Code from August 02, 2013 both of the articles dealing with unlawful influence are changed so that the term „reward“, as well as the phrase „reward or any other benefit“, are replaced with the term „bribe“ in both Articles, while in Article 422 one more paragraph is added, which reads:

“(3) If for mediation referred to paragraph 2 of this Article a bribe was received, the offender shall be punished by imprisonment for a term from one to eight years. (4) The received bribe shall be seized.“

One of the basic provisions in the field of political corruption relates to active and passive bribery, and thus the Criminal Code envisages the following:

„A person acting in an official capacity who request or receives bribe or who accepts a promise of bribe for himself/herself or another for agreeing to perform within the scope of his/her official powers an official act he must perform, or not perform an official act he should otherwise not perform, shall be punished

by imprisonment for a term of one to eight years.¹³, as well as for active bribery: „Anyone who gives, offers or promises a bribe to an official who agrees to perform an official act within his/her official powers that he ought not to perform or to omit to perform an official act he ought to perform, or a person who mediates in bribery of an official, shall be punished by imprisonment for a term of one to eight years.¹⁴

Provisions of the Criminal Code, which also relate to existence of political corruption relate to violation of voting right, i.e. unlawful prevention or disturbing of voting right (Article 185), influencing a person to vote or not to vote (Article 186), voting instead of another person, voting more than once at the same elections or using more than one ballot paper (Article 187), composing of inaccurate list of voters in the intention to influence the results of elections or a referendum (Article 188), unlawful obstruction or disturbing of elections at a polling station (Article 189), obstructing or disturbing the monitoring of the course of election or determining of the results of voting by member of the electoral board (Article 190), violating the secrecy of voting (Article 191), falsifying the results of voting, i.e. changing the number of ballot papers or casted votes or publishing untrue results of voting (Article 192), destroying and concealing of documents on voting (Article 193), official person using or allowing the use of assets of the state bodies, public institutions, public companies and funds, local self-government units or business organizations for representing the electoral lists (Article 193a), as well as money laundering (Article 268). As regards the Article 186, influencing a person to vote or not to vote, prescribed punishment for a member of the electoral board or some other person performing duties pertaining to voting who commits this crime is much higher, i.e. instead of a fine or an imprisonment sentence not exceeding three years, these persons shall be punished by an imprisonment sentence for a term from three months to five years. Similarly, in Article 187, which prescribes that a person who votes instead of another person, votes more than once or uses more than one ballot paper the punishment is a fine or

13 Article 78, Law on Amendments and Changes of the Criminal Code, „Official Gazette of Montenegro“, no. 40/2013.

14 Article 79, Law on Amendments and Changes of the Criminal Code, „Official Gazette of Montenegro“, no. 40/2013.

imprisonment sentence not exceeding one year, and in case this offence is committed by a member of the electoral board than the punishment is a fine or maximum two years of imprisonment. Also, in the Article 191 regulating violating the secrecy of voting, general punishment is set at fine or six months of imprisonment, and punishment for a member of electoral board or some other person performing duties pertaining to voting is set at fine or two years of imprisonment sentence.

Thus, the Criminal Code identifies a number of possible abuses of official position, where these violations are not solely connected to official persons. However, the law prescribes significantly higher penalties for persons who from the official position commit criminal offences in the field of corruption.

Law on Preventing Conflict of Interest¹⁵ clearly prescribes obligations and duties of public officials:

*„Public official shall be obliged to perform his duties in such a manner to give priority to public interest over his private interest, as well as not to cause conflict between public and private interest.“
Conflict of interests is also defined as „conflict of interests arises if a private interest of a public official affects or may affect impartiality of public official in exercising public function.“¹⁶*

Following this, the law lists all persons who are considered as public officials, which leaves no room for confusion over the issue to which persons provisions of this Law apply.¹⁷ If a public official was an owner

15 The Law on Preventing Conflict of Interest is available at: <http://www.konfliktinteresa.me/regulativa/Dopuna%20Zakona%202011.pdf>

16 Article 2, Law on Preventing Conflict of Interest, “Official Gazette of Montenegro”, no. 1 from January 9, 2009

17 According to the Article 3 of the Law, public officials shall be: every person elected directly in elections, every person elected or appointed by the Parliament of Montenegro, person appointed by the President of Montenegro, person elected, appointed or nominated by the Government of Montenegro, or whose election is confirmed by the Government of Montenegro, President and member of the Judicial Council, Court President and judge elected by the Judicial Council, President and member of the Prosecutorial Council, Deputy State Prosecutor and Director of the Broadcasting Agency, person appointed by, or whose appointment is approved by the Assembly or the Mayor of the Capital, Old Royal Capital or Municipality as well as other persons who decide on rights, obligations or interests of physical and legal entities or decide on public interest.

or founder of a public company, he/she is obliged to transfer his/her management rights to any other person, and in case that the company has a management body in and the public official is a member of this body he/she must transfer such management rights and resign from the membership (Article 7). In continuation, the provisions that can have preventive character in relation to emergence of political corruption by public officials stipulate that a public official may not be president, executive director, member of management or supervisory boards or member of management in any company, public company, public institution or any other legal entity (Articles 8 and 9) and that he/she shall not conclude any contract on provision of services with a public company, as well as that a public official shall not conclude any contract on provision of services with any company which performs any activity for the Government or local government unit during the exercise of his/her public function, unless the value of such a contract is less than 500 EUR per year (Article 11). If a public official takes part in dispute and decision making on matters in which he/she has interest in, he/she shall notify other participants in the dispute and decision making on presence of a private interest. The exemption relates to members of the Parliament and councillors or to public officials exempted by the way of Rules on Exemption prescribed by special law or similar act (Article 12). Law on Preventing Conflict of Interest prescribes public officials are prohibited from accepting gifts (Article 14), it stipulates refusing a gift, when a public official cannot accept the gift from the reasons stipulated by this Law (Article 15), managing of gifts (Article 16), records of gifts (Article 17), illegal accepting of gifts (Article 18). The Law prescribes that upon taking the public office, a public official should submit to the Commission a report on his/her property and incomes, as well as the property and income of his/her spouse and children if they live in the same household, and after that submit the report once a year (Article 19). Due to the specific work of customs officers, the Customs Administration requested a clarification, and the Commission for Prevention of Conflict of Interest has confirmed that they are considered to be public officials, with a conclusion: *„Reporting of the property of customs officers is one of the links in the chain of the fight against corruption based*

upon prevention of conflict of interests, encouraging transparency and accountability in the work of customs officers, as well as promoting of the organizational culture of the Customs service which does not tolerate conflict of interest.”¹⁸

In essence, this provision provides a certain degree of control and transparency of performing of public function, and it is certainly one of the mechanisms for prevention of corruption. According to data from the web site of the Commission for Prevention of Conflict of Interest¹⁹ a total of 3,896 public officials have been recorded at the state and local level. Of these, 3,605 or 92.5% of public officials submitted to the Commission for Prevention of Conflict of Interest the report on property and incomes for the period 2013/2014.²⁰ Information is available for each individual.²¹ Further, in case a public official has any doubt that he/she might be in the situation of conflict of interest, and report the suspicion to the Commission (Article 20). The procedure on deciding if there has been a violation is initiated by the Commission upon the request of the authority where the public official is performing or has performed his/her function, or by the Commission ex officio (Article 24), the public official has the right to submit the statement regarding the potential violation (Article 27), and the decision on violation is made by the Commission (Article 34).

***Law on Public Procurement*²²** shall apply to: state administration bodies, local self-government units, public services and other beneficiaries of the Budget of Montenegro, that is the Budget of the local self-government unit and other public funds, legal entities performing tasks of public interest, legal entities where more than half the members are representatives of the state administration body or

18 Announcement available at: <http://www.gov.me/pretraga/137280/Saopstenje-Izvjestaj-o-prihodima-i-imovini-carinskih-sluzbenika.html>

19 Web site visited on May 01, 2014

20 Information available at: <http://www.konfliktinteresa.me/funkcioneri/funkcioneri.htm>

21 Financial disclosure records of public officials available at: <http://www.konfliktinteresa.me/new/imovinski-kartoni-funkcionera.html>

22 Law on Public Procurement, „Official Gazette of Montenegro“, no. 42/2011 from 15.8.2011: http://195.66.166.70/wp-content/uploads/2011/11/Zakon_o_javnim_nabavkama_Crne_Gore.doc

the local self-government body, etc. (Article 2). As regards the fight against corruption, and particularly political corruption, the Article 6 prescribes *the principle of ensuring competition*, i.e. the contracting authority may not limit or prevent competition among the bidders:

“In particular, a contracting authority may not prevent any bidder from participating in public procurement by unjustified use of the negotiated procedure or by using discriminatory requirements or criteria, or measures favoring individual bidders.” (Article 6) .

Connected to this principle is a principle of equality, i.e. a provision envisaging that contracting authority should ensure an equal treatment of all bidders in all phases of the public procurement procedure (Article 8). The principle of transparency of the public procurement procedure is prescribed in the Article 7, and it is ensured primarily through publishing of documents related to a specific public procurement procedure. However, the central provision of the Law on Public Procurement which is connected to the fight against corruption is Chapter 4: Anti-corruption rule and prevention of conflict of interests, which prescribes that the contracting authority shall reject or refuse a bid if it finds or reasonably suspects that a bidder has given or offered a bribe or a bidder has threatened to:

„A public procurement officer, a member of the Committee for opening and evaluation of bids, a person who participated in the preparation of the contract notice, invitation to tender and tender documents, a person participating in planning the public procurement or some other person in order to influence them in order to discover confidential information or influence the contracting authority’s action” (Article 15).

A provision on prevention of conflict of interest is incorporated in the Law on Public procurement as well, and it stipulates that the persons participating in public procurement procedure are obliged to inform the competent authority on existence of conflict of interest (Article 16). The same article prescribes the following:

„Participants in the public procurement procedure referred to in paragraph 2 of this article may not enter into employment with

the bidder to whom the public procurement contract was awarded by a contracting authority with which the persons referred to in paragraph 2 of this article or the legal persons related to them were employed, for at least two years after the public contract was concluded.”

Further on, in detail are prescribed the cases of existence of conflict of interest on the side of the contracting authority and on the side of the bidder (Articles 16 and 17), as well as that the public procurement procedure conducted with existence of conflict of interest shall be declared null and void (Article 18). Also, the Law prescribes transparency of public procurement (Articles 62, 63 and 64) and control of public procurement procedures (Articles 144, 145, 146) which somewhat helps prevent political corruption in this field. The Law also foresees a pecuniary fine ranging from 2,000 to 20,000 EUR for the person which, among other:

fails to record a violation of anti-corruption rules, to make an official note thereof or to submit a report to the competent state authorities for the purpose of undertaking measures in accordance with the Law and if it fails to notify the competent authority (Article 15 paragraph 3); fails to record the cases of existence of conflict of interest referred to in Articles 16 and 17 of this Law and notify the competent authority without any delay (Article 18 paragraph 2); fails to publish on the Public Procurement Portal and to submit to the bidders the decision on suspension of public procurement procedure within no longer than three days as of the day of its adoption (Article 105 paragraph 4); adopts the decision on selection of the most favorable bid without previously conducted public procurement procedure, although there was an obligation of conducting it (Article 106 paragraph 5), etc. (Article 149).

According to the **Law on Spatial Development and Construction of Structures**²³ local administration authority is competent for keeping

²³ Law on Spatial Development and Construction of Structures, „Official Gazette of Montenegro“, no. 51 from August 22, 2008, 40/10, 34/11, 47/11, 35/13, 39/13: [http://www.mrt.gov.me/ResourceManager/FileDownload.aspx?rid=163281&rType=2&file=Zakon%20o%20ure%C4%91enju%20prostora%20i%20izgradnji%20objekata%20-%20pre%C4%8Di%C5%A1%C4%87ena%20verzija%20\(1\).pdf](http://www.mrt.gov.me/ResourceManager/FileDownload.aspx?rid=163281&rType=2&file=Zakon%20o%20ure%C4%91enju%20prostora%20i%20izgradnji%20objekata%20-%20pre%C4%8Di%C5%A1%C4%87ena%20verzija%20(1).pdf)

documentation base about space to serve the needs of monitoring of the status of space and development of the planning documents (Article 14). Also, Ministry and local administration authority are obliged to submit to the Government or parliament of the local self-government respectively a report on the status of spatial development, which should contain analysis of the implementation of planning documents, data on constructed structures also including illegally built structures, etc. (Article 15). On the basis of this report, annual Spatial Development Program is adopted, which:

„Contains assessment of the need for development of new or amendments and additions of existing planning documents and measures of significance for the development and adoption of these documents” (Article 16)

As regards drafting and adoption of the planning document, decision on preparation of the document is adopted by the local self-government Assembly, and then it is submitted to the Ministry and administration authority. It also contains a decision on prohibition of construction on space or part of space for which such plan is being developed. However, practice shows that individuals often build structures on a space which has not been regulated by plans. This creates a problem of having a large number of illegally constructed structures which implies a need for their legalization and represents an additional burden for the local self-governments.

In the *Law on Civil Servants and State Employees*²⁴ there is a provision on avoiding conflict of interest, which reads:

„In performing tasks, civil servant and state employee must not place private interest before public interest and use the performance of tasks for acquiring cash and non-cash gains” (Article 8),

as well as on political neutrality and impartiality which foresees that civil servants and state employees should perform their official duties

²⁴ Law on Civil Servants and State Employees, „Official Gazette of Montenegro”, no. 39/11 from 04.08.2011, 50/11 from 21.10.2011, 66/12 from 31.12.2012: <http://www.mod.gov.me/ResourceManager/FileDownload.aspx?rid=153793&rType=2&file=Zakon%20o%20dr%C5%BEavnim%20slu%C5%BEbenicima%20i%20namje%C5%A1tenicima.pdf>

in accordance with public interest, and thus in a politically neutral and impartial manner, and that they are obliged to restrain from public demonstration of political convictions (Article 9). Also, civil servants and state employees are obliged to perform the tasks of the job position they are assigned based on the order of a manager of organizational unit, but also to:

„Warn immediate manager that the order he received from him is contrary to law, other regulation and Code of Ethics, or if its enforcement might cause damage, constitute a criminal offence or misdemeanor offence.” (Article 63)

The issue of potential political corruption is partly covered through Chapter 3 of the Law which is dealing with integrity, conflict of interest and protection of civil servants and state employees reporting suspicion of corruption. Thus, the civil servant and state employee must conduct in a manner not to diminish their reputation or reputation of a state authority, and not to compromise their impartiality and *„to eliminate suspicion regarding emergence or development of corruption.”*, and all for the purpose *„of creating and maintaining trust of citizens in good faith and responsible performance of duties in the state authority”* (Article 67). The Law stipulates adoption of the Integrity Plan:

„On the basis of assessment of susceptibility of certain job positions for occurrence and development of corruption and other forms of partial actions of civil servants and state employees”, and the Plan should: „contain measures preventing and eliminating the possibilities for corruption occurrence and development, in accordance with the guidelines of administration authority in charge of anti-corruption activities”. (Article 68)

Pursuant to this Law the Government of Montenegro has adopted the Code of Ethics of Civil Servants and State Employees on March 15, 2012²⁵, which *„lays down ethical standards and rules of conduct of civil servants and state employees”* (Article. 1), for the

25 Code of Ethics of Civil Servants and State Employees: <http://www.mup.gov.me/ResourceManager/FileDownload.aspx?rid=99880&rType=2&file=Eticki%20kodeks%20drzavnih%20sluzbenika%20i%20namjestenika.doc>

purpose of „preservation, affirmation and promotion of dignity and reputation of civil servants and state employees and strengthening public confidence in work of state bodies” (Article 2). The Article 5 emphasizes the following:

„Upon conducting personal affairs the employee must not use official documents or the official position he/she holds in the state body.” (Article 5) and in the Article 9 it is stated: „In conducting personal affairs, the employee shall not use the official information obtained in performance of his/her duties” (Article 9)

The Code also prescribes disciplinary responsibility for violation of the Code of Ethics, in accordance with the Law (Article 16). The Law on Civil Servants and State Employees devotes special attention to the conflict of interests and it envisages that the civil servants and state employees are obliged to:

„Avoid situations wherein their private interest affects or may affect their impartial and objective performance of their working duties.” (Article 69)

In connection to the aforementioned is an obligation to report potential conflict of interest (Article 70), as well as prohibition of abuse of authorizations, i.e. prohibition of abuse of the work in the state body and use of state assets or information „for fulfillment of private interest or interest of some other related physical person or legal entity” (Article 71)

In continuation prescribed are: prohibition to receive gifts (Article 72), refusal of gifts (Article 73), prohibition to establish business organizations (Article 75), restrictions of memberships in bodies of legal entities (Article 76), as well as protection of civil servants and state employees reporting suspicion of corruption (Article 79). Some of the severe violations of official duty prescribed by the Law are:

„Abuse of office or overstepping authorities in service; violation of the obligation to avoid conflict of interest or report potential conflict of interest; Restriction or deprivation of rights of civil servant or state employee, who denounces a criminal offence against the official duty or criminal offence or action with elements of

corruption” (Article 83),

Whereas disciplinary measures set for severe violations of official duty are:

„Fine imposed during the period from two to six months in the amount from 20% to 40% of the wage paid for the month when a severe violation of official duty was committed” and termination of employment. (Article 84)

Strategy for Fight against Corruption and Organized Crime for the period 2010-2014²⁶ has been adopted in July 2010 with the aim to define, inter alia, strategic directions, principles and objectives in fighting corruption and organized crime, priority measures in setting up an efficient system for fight against organized crime and corruption, and the role and responsibilities of all actors involved as a basis for *„development of the sustainable system for monitoring and evaluation of the comprehensive national response to the threats posed by organized crime and corruption”*.²⁷ Some of the principles the Strategy is based on are presence of political will, transparency of work, rule of law, as mentioned in the Strategy.²⁸ Also, the goal of the Strategy is: *„to create conditions for the prevention and sanctioning of corruption and organized crime at all levels through further development of institutional framework, efficient criminal prosecution and final adjudication, prevention, education and established monitoring system for the implementation of the Strategy and its Action Plan”*.²⁹ This Strategy is based on an understanding of corruption as misuse of official powers for private purposes and that is represents a misuse of (public) office for obtaining private gain, which threatens public interest,³⁰ and the political corruption is understood to comprise *„all*

26 Strategy for Fight against Corruption and Organized Crime for period 2010- 2014: http://www.antikorupcija.me/index.php?option=com_phocadownload&view=category&download=111:strategija-za-borbu-protiv-korupcije-i-organizovanog-kriminala-za-period-2010-2014.-godine&id=7:strategija-i-akcioni-plan&Itemid=277

27 Strategy for Fight against Corruption and Organized Crime for period 2010- 2014, p. 3

28 Strategy for Fight against Corruption and Organized Crime for period 2010- 2014, p. 4

29 Strategy for Fight against Corruption and Organized Crime for period 2010- 2014, p. 5

30 Strategy for Fight against Corruption and Organized Crime for period 2010- 2014, p. 16

forms of corruption at top levels in the public sphere, where policies and rules are defined“.³¹ The Strategy develops a broad framework in the form of guidelines for further action at the institutional level and in practice, with a review of existing legislative and institutional framework in the areas of importance for fight against corruption, general assessment of situation and the goals to be achieved in these areas. The Strategy also covers the control function of the Parliament, financing of political parties and electoral process, conflict of interest, integrity, free access to information, protection of persons who report corruption, public finances, state property, capital market, private sector, etc. Recognized special risk areas are the following: privatization process, public procurement, spatial planning, education, health sector and local self-government. Subsequently, the Strategy recognizes the need for prevention of corruption in the law enforcement agencies, especially in police and judiciary. In some parts, the Strategy gives recommendations and comments for specific areas. Also, in the integrity part, the Strategy points out to problem of incoherent regulation of the principle of integrity. Namely, it is mentioned that a very small number of authorities adopted individual integrity plans, and that implementation is a problem even where they have been adopted, because there is no efficient oversight mechanism for their implementation.³² In the part dealing with protection of persons reporting corruption (whistleblowers) it is mentioned that in practice implementation is difficult since official reporting channels inside an organization and outside of the authority have not been clearly determined, and the scope of protection of persons reporting corruption is limited since it is guaranteed only to the „*public administration employees*“.³³ In the part dealing with spatial planning, the Strategy states the problem of a large number of illegal buildings caused by the lack of adequate planning documents, as well as inexistence of accurate and updated cadastral records because there are no complete records of constructed buildings.³⁴

31 Strategy for Fight against Corruption and Organized Crime for period 2010- 2014, p. 16

32 Strategy for Fight against Corruption and Organized Crime for period 2010- 2014, p. 20

33 Strategy for Fight against Corruption and Organized Crime for period 2010- 2014, p. 22

34 Strategy for Fight against Corruption and Organized Crime for period 2010- 2014, p. 28

Regarding the local level in Montenegro, Government of Montenegro has in 2008 adopted a ***Model Program of fight against corruption in the local self-government and the Model Action Plan***. All Montenegrin municipalities, except two- Rožaje and Budva have adopted Action plans for the period 2013- 2014. The goal of these documents was to harmonize local action plans for fight against corruption with the sectorial action plans and the Strategy, to ensure monitoring of these plans, to increase accountability and professionalism of the local self-government, to strengthen the control of the work of the local self-government units, transparency in planning adoption and implementation of acts.³⁵ Therefore, inter-institutional cooperation and exchange of information is mentioned as a necessary element in fight against corruption, and one of the goals the Strategy foresees in this part is: „Efficient cooperation and exchange of among the prosecution authorities, Police Directorate, Customs Administration, Tax Administration and Directorate for the Prevention of Money Laundering and Financing of Terrorism”³⁶

For the period of implementation of the ***Action Plan for 2010-2012***³⁷ and ***Action Plan for 2013-2014***³⁸ it is envisaged that the National Commission for implementation of the Strategy for fight against corruption and organized crime controls implementation of this Strategy. Unfortunately, an opportunity to improve the solutions which would have influenced the protection of persons who report corruption (so-called whistleblowers) was missed, as well as to put the focus on the local self-government level in the part dealing with increasing the accountability and professionalism of work.

35 Strategy for Fight against Corruption and Organized Crime for period 2010- 2014, p. 32

36 Strategy for Fight against Corruption and Organized Crime for period 2010- 2014, p.37

37 Adopted in June 2010, and innovated in July 2011

38 Adopted in May 2013

INSTITUTIONAL FRAMEWORK FOR FIGHT AGAINST CORRUPTION

Apart from the general jurisdiction to: „perform the tasks of prosecution of perpetrators of criminal offences and other punishable offences prosecuted *ex officio*, file legal remedies falling within its jurisdiction and perform other affairs as prescribed by the law“,³⁹ within the **Supreme State Prosecution**⁴⁰ is established a Department for Suppression of Organized Crime, Corruption, Terrorism and War Crime, headed by the Special Prosecutor, who is responsible for his/her work and the work of the Department to the Supreme State Prosecutor.⁴¹ The Department has been established in 2004 for the field of organized crime, and in 2008 its jurisdictions have expanded to include the fields of corruption, terrorism and war crimes.⁴²

Directorate for Anti-Corruption Initiative (DACI) has been established by a Decree of the Government of Montenegro in January 2001 as an Agency for Anti-Corruption Initiative and is the first anti-corruption body in Montenegro. By the Reform of Public administration from 2004⁴³ the Agency was transformed into a Directorate. As it is stated on DACI's web site, on the basis of Decree on organization and manner of work of the state administration (“Official

39 Article 17, Law on State Prosecutor's Office, „Official Gazette of Montenegro“, no. 69/2003, „Official Gazette of Montenegro“, no. 40/2008 and 39/2011.

40 Supreme State Prosecution of Montenegro: <http://www.tuzilastvosc.me/>

41 Articles 66-82, Law on State Prosecutor's Office, „Official Gazette of Montenegro“, no. 69/2003, „Official Gazette of Montenegro“, no. 40/2008 and 39/2011.

42 Analysis of the Organizational Structure of the Bodies for Fight against Corruption, Government of Montenegro, 2013, p.15

43 Directorate for Anti-Corruption Initiative: <http://antikorupcija.me/>

Gazette of Montenegro “, no. 5/2012, 25/2012, 61/2012, 20/2013 and 17/2014), the Directorate is a body within the Ministry of Justice and it performs tasks related to promotional and preventive activities. Some of these tasks include: raising the level of public awareness about the problem of corruption and conducting researches on the extent, manifestations, causes and mechanism of corruption occurrence; cooperation with competent authorities for the purpose of developing and implementing legislative and program documents of importance for the prevention and suppression of corruption; cooperation with non-governmental and private sector for the purpose of suppressing corruption; cooperation with government bodies in proceedings under charges of corruption that the Directorate receives from citizens and other entities; proposing to the Government to conclude and apply European and other anti-corruption and international standards and instruments; monitoring the implementation of the recommendations of GRECO states; collecting data on complaints about corruption from the bodies who receive the complaints and processing of collected data for analytical purposes; preparation of guidelines for developments of integrity plans; and other duties from its jurisdiction.⁴⁴

Commission for Prevention of Conflict of Interest has been established in 2004 on the basis of the Law on Conflict of Interest. After the adoption and coming into force of the new Law on Prevention of Conflict of Interest,⁴⁵ the competences of the Commission have been changed and the previous Law ceased to have effect. Some of the competencies of the Commission are to: conduct proceedings and issue decisions on the violation of the Law on Prevention of Conflict of Interest; give opinions on the existence of conflict of interest which are together with the decisions on violation of the Law binding for public official; determine the value of gifts, gives opinions on the

44 More on Directorate for Anti-Corruption Initiative and its competences: http://www.antikorupcija.me/index.php?option=com_content&view=article&id=339&Itemid=270 http://www.antikorupcija.me/index.php?option=com_content&view=article&id=342&Itemid=275

45 Law on Prevention of Conflict of Interest: <http://www.konfliktinteresa.me/regulativa/Dopuna%20Zakona%202011.pdf>

draft laws, other regulations and general acts, if it considers it to be necessary to prevent conflicts of interest as well as to harmonize them with European and other international standards from the field of anti-corruption initiative and transparency of business transactions; submit a request for initiation of misdemeanor procedure, as well as to perform other affairs in compliance with the Law.⁴⁶

National Commission for Fight against Corruption and Organized Crime has been established in 2010 by the Government in order to monitor implementation of the Strategy for the Fight against Corruption and Organized Crime.⁴⁷ The tasks of the National Commission are as follows: to manage, organize, coordinate and monitor the activities of state bodies, public administration bodies and other competent institutions in the implementation of the Strategy for the Fight against Corruption and Organized Crime; to set priorities, pace and timelines for the implementation and assess the results achieved in implementation of the Strategy, activities and measures from the action plan for implementation of the Strategy; to submit to the Government of Montenegro report on implemented activities, with situation assessment and proposal of additional measures at least twice per year. Also: *„National Commission may request data, explanations and reports from the state bodies and other organizations in relation to the matters which relate to prevention and suppression of*

46 More on Commission for Prevention of Conflict of Interest and its competencies can be found at: http://www.konfliktinteresa.me/new/index.php?option=com_content&view=article&id=185&Itemid=141&lang=me

47 Decision on establishment of the National Commission for the implementation of the Strategy for the Fight against Corruption and Organized Crime, „Official Gazette of Montenegro“, no. 61/10 from 22.10.2010, 04/11 from 18.01.2011, 47/11 from 23.09.2011, 17/12 from 27.03.2012: http://antikorupcija.me/index.php?option=com_phocadownload&view=category&download=216:odluka-o-obrazovanju-nacionalne-komisije-za-sprovođenje-strategije-za-borbu-protiv-korupcije-i-organizovanog-kriminala&id=25:dokumenta-nacionalne-komisije-za-period-2010-2014&Itemid=288, and the Decision on the Amendment of the Decision on establishment of the National Commission for the implementation of the Strategy for the Fight against Corruption and Organized Crime from: http://antikorupcija.me/index.php?option=com_phocadownload&view=category&download=215:odluka-o-izmjeni-odluke-o-obrazovanju-nacionalne-komisije-za-sprovođenje-strategije-za-borbu-protiv-korupcije-i-organizovanog-kriminala-2013&id=25:dokumenta-nacionalne-komisije-za-period-2010-2014&Itemid=288

*the stated detrimental social phenomena.*⁴⁸ For some time now the National Commission does not hold sessions.⁴⁹

Public Procurement Administration⁵⁰ has been established in line with the Decree on Amendments to the Decree on Organization and Manner of Work of State Administration from 2006. In accordance with the Law on Public Procurement, some of the competencies of the Directorate are as follows: to monitor realization of the public procurement system; to establish and maintain the Public Procurement Portal for the purpose of ensuring transparency of public procurement; to publish public procurement plans, contract notices, decisions on candidates' qualifications, decisions on selection of the most favorable bid, decisions on suspension of public procurement procedure, decisions on annulment of public procurement procedure, public procurement contracts, changes or amendments of public procurement plans, contract notices, decisions and contracts, as well as of other acts in accordance with this Law; to prepare and publish a List of contracting authorities on the Public Procurement Portal; to pursue cooperation with international organizations, institutions and specialists in the field of public procurement; to prepare and submit to the Government annual reports on the public procurement, carried out in the previous year; to prepare and publish a list of bidders on the basis of decisions on selection of the most favorable bid on the Public Procurement Portal; to perform inspection control; as well as to perform other tasks, in accordance with the Law.⁵¹ Also, the Administration has opened a telephone line (020/245-798) for reporting corruption in public procurement, as an additional option for citizens who want to report corruption in this area.

48 Decision on establishment of the National Commission for the implementation of the Strategy for the Fight against Corruption and Organized Crime, „Official Gazette of Montenegro“, no. 61/10 from 22.10.2010, 04/11 from 18.01.2011, 47/11 from 23.09.2011, 17/12 from 27.03.2012.

49 The last session was held on December 13, 2013 - <http://www.gov.me/Najave/133920/XII-sjednica-Nacionalne-komisije-za-borbu-protiv-korupcije-i-organizovanog-kriminala.html>

50 Public Procurement Administration: <http://www.ujn.gov.me/>

51 Article 19, Law on Public Procurement, „Official Gazette of Montenegro“, no. 42/11

Directorate for Prevention of Money Laundering and Financing of Terrorism⁵² performs tasks related to detection and prevention of money laundering and financing of terrorism in accordance with the Law on Prevention of Money Laundering and Financing of Terrorism.⁵³ Some of the responsibilities of the Directorate are to: initiate changes and amendments to regulations related to prevention of money laundering and financing of terrorism; develop the list of indicators for the identification of transactions and persons with respect to which there are reasons for suspicion of money laundering or terrorism financing and submit it to subjects who have responsibilities stipulated by this law; publish on its website a list of domestic politically exposed persons; at least once a year publish statistical information in the field of money laundering and financing of terrorism (number of suspicious transactions submitted to competent administrative authority, number of investigated cases, number of prosecuted persons, number of persons adjudicated for criminal offence of money laundering and financing of terrorism, information on the frozen, seized or confiscated property) and in other appropriate manner inform the public about various forms of money laundering and financing of terrorism, as well as other duties stipulated by the Law.⁵⁴

Police Directorate⁵⁵ as a body within the Ministry of Interior, among other things, conducts duties connected to protection of the security of citizens and rights and freedoms guaranteed by the Constitution; prevents commission and detects criminal offences and misdemeanors; locates perpetrators of criminal offences and misdemeanors and brings them to the competent authorities; provides conditions for smooth functioning

52 Directorate for Prevention of Money Laundering and Financing of Terrorism: <http://www.aspn.gov.me/uprava>

53 Law on Prevention of Money Laundering and Financing of Terrorism: <http://www.aspn.gov.me/ResourceManager/FileDownload.aspx?rid=119739&rType=2&file=ZAKON%20O%20SPRIJECAVANJU%20PRANJA%20NOVCA%20I%20FINANSIRANJA%20TERORIZMA-1.DOC>

54 Article 64, Law on Prevention of Money Laundering and Financing of Terrorism "Official Gazette of Montenegro", no. 14/07 from 21.12.2007, 04/08 from 17.01.2008, 14/12 from 07.03.2012.

55 Police Directorate: <http://www.mup.gov.me/upravapolicije/naslovna>

of courts, criminal investigations and forensics and keeps criminal and other records; as well as performs other duties from its competence. With the support of OSCE Police Directorate has prepared the Professional Instruction on procedures for reporting criminal offences with elements of corruptions and protection of persons reporting corruption.⁵⁶ This instruction sets forth the procedures for actions of the authorized police officers in cases of reported corruption, protection of citizens who report corruption and manner in which to promote the procedures and protection. Also, it stipulates the obligation of the Police Directorate to provide a 24h on-call service for receipt of reports and information of importance for detection of criminal offences of corruption and perpetrators of these offences.

Customs Administration,⁵⁷ among other things, has the authority to conduct tasks related to: exercising customs control; implementation of measures of customs investigation and intelligence in order to prevent and detect customs offences and criminal offences committed in violation of customs regulations; conducting control over taking into the customs territory and taking out of the customs territory of local and foreign currencies, etc.⁵⁸ Also, in July 2013 Customs Administration has launched a campaign „Corruption is not an option” with the aim *„to raise awareness of physical and legal persons on the importance of their active participation and contribution in fight against all forms of corrupt behavior”*. As a part of the campaign, the Customs Administration has also foreseen opening of a telephone line for reporting corruption.⁵⁹

56 Professional Instruction on Procedures for Reporting Criminal Offences with Elements of Corruption and Protection of Persons Reporting Corruption to the Police Directorate: http://www.mup.gov.me/ResourceManager/FileDownload.aspx?rid=137052&rType=2&file=Strucno_uputstvo_o_korupciji.pdf

57 Customs Administration: <http://www.upravarina.gov.me/uprava>

58 Decree on Organization and Manner of Work of State Administration, „Official Gazette of Montenegro”, no. 5/2012 from 23.01.2012, p. 4.

59 More on the campaign and anti-corruption activities of the Customs Administration at: <http://www.upravarina.gov.me/rubrike/antikorupcijski-program>, and: <http://www.upravarina.gov.me/pretraga/132440/Saopstenje-Sprjecavanje-i-sankcionsanje-koruptivnih-radnji-kontinuirani-imperativ-u-radu-Uprave-carina.html>

*Administration for Inspection Affairs*⁶⁰ has, by the Decree on Organization and Manner of Work of State Administration, become an independent administrative body by joining together 26 different inspections, „with the aim to achieve greater efficiency in conducting control, increase the cost-efficiency of the control, prevent the occurrence of positive and negative conflict of competencies, achieve more adequate mutual cooperation of inspection bodies, increase professionalism of the inspectors and suppress potential elements of corruption, as well as improve cooperation of the inspection with other bodies carrying out inspection controls”⁶¹. As a newly founded body the Administration is faced with numerous challenges, primarily in the part related to the need to strengthen its own capacities.⁶² The Administration cooperates with a number of relevant institutions working on prevention of corruption, as well as with the non-governmental sector, through the projects: „Involvement of citizens in combating gray economy”, „Strengthening of public procurement system in Montenegro”, „Through inspection against corruption”, „Inspection bodies and protection against discrimination”, etc.⁶³

60 Administration for Inspection Affairs: <http://www.uip.gov.me/uprava>

61 More on this at: http://www.uip.gov.me/uprava/o_nama

62 For more information see: <http://media.cgo-cce.org/2014/06/cgo-uloga-inspekcija-uborbi-protiv-korupcije.pdf>

63 More on Administration for Inspection Affairs at: http://www.uip.gov.me/uprava/o_nama

RISKS AND FORMS OF POLITICAL CORRUPTION AT THE LOCAL LEVEL

Position of councillors

The position of councillors, risks and circumstances which could influence appearance of political corruption can be explained through legislative framework regulating this area and a number of examples from practice which indicate certain problems. Councillors have special importance in the decision-making process and represent one of the most important links in the development of the local self-government. Unfortunately, this is not perceived by public, and consequently the councillors do not enjoy a position which would ensure quantitatively bigger influence on management of public resources and control of the work of the executive branch.

In order to understand the existing situation, it is necessary to analyze the character and development of the mandate of councillor and member of the parliament in Montenegro. Montenegrin Constitution from 1992 in the Article 77 emphasizes: *“Member of the Parliament shall decide and vote according to his/her own conviction and cannot be recalled.”*⁶⁴ We could conclude that this was a guarantee of a free representational mandate. However, “...the Law on Amendments to the Law on Election of Councillors and Representatives (from 1995) according to which the representative automatically loses his mandate by cessation of his membership in the party, regardless whether this is a result of the member being excluded from the party or deciding

64 Constitution of Republic of Montenegro (Published in „Official Gazette of Montenegro”, no. 48/92) - <http://www.gov.me/biblioteka/1055251939.pdf>

to leave the party...⁶⁵ hinders further development of the free mandate. By this, the political debate in representative bodies became a promotion and ratification of the party views. The representatives and councillors could not vote contrary to party instructions, because they would lose their position. By this, the party could still control its representatives both on national and local level and its particular interest which did not necessarily coincide with the interest of the local population. Finally, in June 2004, according to the decision rendered by the Constitutional Court⁶⁶ the representative retains his/her mandate even after termination of the party membership. Thus, in Montenegro a principle of the free representational mandate is in force, and Montenegrin Constitution guarantees in the Article 85 the following:

„Member of the parliament shall decide and vote according to his/her conviction”

and the Article 87 reads:

„Mandate of a Member of the Parliament shall cease prior to the expiry of the period for which he/she was elected: by resignation; if he/she was convicted by an enforceable decision of the court to and unconditional imprisonment sentence of minimum six months; if he/she was deprived of the ability to work by an enforceable decision; due to cessation of Montenegrin citizenship”

The Law on Election of Councillors and Representatives in the Article 5 prescribes:

„Councillors and/or representatives shall make decisions and shall vote to their own convictions. Councillors and/or MPs cannot be recalled”

and in Article 101 elaborates:

„The term of office of a councillor and/or representative shall be

65 Goati, Vladimir - *Subsystem of political representation, “Achilles’ heel” of establishment in Serbia, Transparency Serbia, Belgrade, 2011.*

66 Decision of the Constitutional Court of Montenegro in no. 14/4, from June 18.2004, “Official Gazette of Montenegro, no. 45/04”

terminated before its expiration in the following cases: by resigning, if he/she has been convicted, by a finally-binding court decision, to an unconditional prison sentence of not less than six months, or to a prison sentence for a criminal act rendering him/her unworthy of this office; if he/she has been stripped of his/her business capacity by a finally-binding court decision; if he/she takes over a position that is incompatible with the position of councillor and/or representative, in conformity with the Constitution and this Law; by revoking of Montenegrin citizenship; in the event of death; if the work of the political party on whose list of candidates he/she has been elected is banned.”

Therefore, the party could previously directly exclude a representative or a councillor and replace him/her, and today the party decides on whom to place on the electoral list, in what order and thus selects people who have made a name for themselves within the party structure, believing they will remain loyal to the party decisions and program. The current Law on Election of Councillors and Representatives⁶⁷ did not bring about any new solutions in this regard and substantial changes that have been made relate to the election administration bodies.

As one of potential risks for the emergence of political corruption at the local level is current position of the councillors. As direct representatives of the citizens, they do not perform their function in a professional capacity (unlike the Members of the Parliament). The function of the President of the Assembly is as a rule voluntary,⁶⁸ i.e. based on the decision of the local assembly it can become a professional function and that is the only councillor who has a possibility to perform the function in a professional capacity. The councillors who represent citizens in the representative body, in line with the prescribed standards decide on: development of the municipality, through adoption or regulations and other general acts, plans and

67 Last amendments are from March 21, 2014 (harmonization of the amendments took ten months)

68 Law on Local Self-Government, Article 53

programs of municipal developments, local planning documents, spatial arrangement program, budget and final financial statement, capital improvement plan and investment policy; establishment of the level of municipal taxes, fees and charges; disposal of property; setting up of conditions for the establishment of local communities and approve ordinance on their establishment; call for the referendum to be organized on the territory of the Municipality or on a part of its territory; decide upon citizens' initiative and on introduction of self-contribution for the territory of Municipality and establishing of public services.⁶⁹ They can also propose acts, propose the agenda of the assembly sessions, and maybe most importantly ask questions about the work of the municipal bodies.⁷⁰

Free representational mandate – risks – Case Montenegro at the local level⁷¹

Although the most common type of mandate, free representational mandate carries with it a number of problems and specific challenges. Practice shows examples of non-discipline of MPs and councillors, which may (or may not) be the result of different external influences, and in any case it is not primarily a consequence of the free mandate. These external influences become important in a moment when local assemblies decide about verification of mandates, the adoption of the budget, providing a quorum or voting for mayor. Experience in Niksic, Budva, Berane, Podgorica or Andrijevisa shows that some councillors, when these important decisions are made that determine the power in office or are related to preservation of acquired monopolies, vote differently than political lists with which they became councillors. It is clear that in such situation there is more than reasonable suspicion that the decision was made as a result of political corruption.

69 Law on Local Self-Government, Article 45

70 The councillor is entitled to request information from the President of the Assembly, President of the working body and Secretary of the Assembly about the matters relating to the affairs from the scope of duties and responsibilities of the municipal authorities. Competent authority is obliged to submit a written response within 10 days.

71 The text covers cases of “turncoats” based on press clippings.

In order to avoid such situations, parties tend to choose councillors that are already high in party hierarchy. Accordingly parties that are highly institutionalized have fewer problems with lack of discipline of MPs and councillors and consequentially redistribution of power, because when deciding about candidates for election lists they take into account their previous engagement, contributions to the party, loyalty etc.

Examples in practice in Montenegro indicate that there was one party that profited the most from party “indiscipline”, which managed to “keep in line” its own councillors and to avoid their changing of sides, while in decisive moment councillors from other parties sided with this party. There are numerous examples of so called “turncoats”, but also of those that voted, in some situations, to support decisions contrary to positions their parties took when they were presenting themselves to voters.

Overview of cases monitored by media in period from 1998 to 2014 is to follow:

First example of a turncoat since multiparty system was introduced in Montenegro was the case that involved one of current councillors of Democratic Party of Socialists (DPS) who, as a councillor of Liberal Alliance of Montenegro (LSCG) supported DPS in voting for mayor of Podgorica. When voting took place his party colleagues left the room together with him, but he came back soon after alone and voted, thus enabling DPS to govern the municipality.⁷²

An interesting case of turncoat happened in Andrijevica where there were actually two “transfers”: first in 2010 when DPS and the opposition won 15 mandates each, while Social-democratic party (SDP) won one mandate. At the time councillor of SDP decided to support opposition, after which he was expelled from SDP.⁷³ Second case happened in 2012 when councillor of Movement for Change

72 <http://www.vijesti.me/vijesti/crnogorski-preletaci-sve-je-pocelo-sa-gegajem-102835>

73 <http://www.pcnen.com/portal/2010/06/25/sdp-iznevjerila-dps-u-andrijevici/>

(PZP) who got the mandate within opposition coalition “Better Montenegro” left the party and supported DPS.⁷⁴

More recent example of a “turncoat” here in non-formal sense, because actual switching of party by councillors did not happen took place in July 2011 in Podgorica when DPS proposed their candidate for mayor, while SDP decides not to support him. However, DPS “received” support of councillors of Democratic Serbian Party (DSS), New Serbian Democracy (NOVA) and People’s Party (NS), although they run the campaign as opposition parties.

In November 2012 situation occurred in Niksic where, like in previous cases there were grounds for suspicion that political corruption took place. Councillor of Positive Montenegro (PCG) supported candidate of DPS for chairmanship of local Assembly and she was elected because of his vote, and after opposition parties protested and demanded for the vote to be repeated he left the room, thus preventing the change of such decision. After that he was expelled from PCG.⁷⁵

Not long after that in July 2013 in municipality Budva similar situation happened during the vote or mayor. Two councillors from PCG supported DPS candidate although recommendation of presidency of PCG was different. After that they were expelled from the party.⁷⁶

Somewhat different situation happened in Berane in December 2013 where councillors of SDP demonstrated “disobedience” who supported proposal of DPS to cut short the mandate of local Assembly of Berane, despite contrary decision of party leadership. There was no “transfer” to other party in this case, but party bodies initiated procedure to make them accountable. Councillors, however, were not

74 <http://www.vijesti.me/vijesti/cukic-pristupio-odbornickom-klubu-dps-a-8772>

75 <http://www.vijesti.me/tv/drago-djurovic-zadrzao-mandat-i-sad-sam-odlucuje-o-volji-23000-gradjana-102761>, <http://www.cdm.me/politika/izabran-predsjednik-so-niksic-drago-durovic-glasao-za-sonju-nikcevic>, http://www.monitor.co.me/index.php?option=com_content&view=article&id=3953:kako-dps-i-mafija-lome-niki&catid=2665:broj-1155&Itemid=3900

76 http://www.monitor.co.me/index.php?option=com_content&view=article&id=5231:budva-politike-prezare-bivi-pozitivci-spaavaju-dps-&catid=3612:broj-1231&Itemid=4880

directly expelled from the party.⁷⁷

Therefore, the most well-known cases of “turncoats” are mostly (in)directly linked with the ruling party on national level, and DPS profited the most from “turning of coats”. From this one can draw a conclusion that DPS is (ab)using existing legal and institutional mechanisms to change election results in their favor, whether we are talking about election of mayor, chairmen of assembly of municipality, budget approval, adopting of final financial statement, voting for report on work of mayor etc. In favor of this assumption goes the fact that some of “turncoats” later found jobs in institutions/companies controlled by DPS.⁷⁸

Criminal offense of corruption is difficult to prove, especially when it comes to political corruption. Processing of such cases by competent authorities, and especially Prosecutor’s Office would encourage citizens to contribute in pre-investigation and investigation stage. Therefore, the basic precondition for beginning of effective fight against political corruption would be “liberation” of competent institutions from undue political influence. It is evident that ruling structures have no will to support of establishing accountability, which also obstructs the work of state bodies, and most of all Prosecutor’s Office. Instead, danger of political corruption is marginalized, which in turn strengthens elements of party state, with state and state institutions being “prisoners” of particulate political influence.

Misuse of public resources

In the context of this analysis, misuse of public resources primarily relates to corruption in employment, public procurement, then to corruption connected to the planning documents, management of the city construction land, procedures for issuing of licenses, approvals, certificates, renting of office space, etc.

77 <http://www.dan.co.me/?nivo=3&rubrika=Politika&datum=2013-12-12&clanak=410346>

78 <http://www.dan.co.me/?nivo=3&rubrika=Vijest%20dana&datum=2014-08-14&clanak=447775>

Political corruption and public procurement

Corruption in public procurement represents a type of political clientelism, i.e. an exchange of goods and services for political support. “In addition to its obligation to provide adequate mechanisms to combat corruption, the State, as the major contracting authority, is an important economic actor in every country. The fact that developed countries are committing 10-15% of the total GDP annually to public procurement is making this area extremely vulnerable to corruption. Concerning the fact that these are public funds, hence the money obtained from the taxpayers, civil servants are obliged to use the funds in a rational and cost-effective manner, with the maximum guarantee that the funds would not be misused. Public procurement encompasses a set of all actions public sector is undertaking to procure several different types of procurement, from the low to extremely large values. When the procurement is placed in the context of the number of institutions financed from the budget, on national or local level, it is clear that there is a great room for corruption.”⁷⁹

“The key difference between the corruption in public procurement and corruption in all other segments and areas of the society is that usually it takes place at the „high level” and has characteristics of „political clientelism”.⁸⁰ In the context of this analysis, “high level”, relates to local officials who are occupying key positions in local self-government and with whose direct approval corruption may occur. High level officials, representatives of citizens enjoy full legitimacy to perform their functions, thus representing „privileged” councillors, such are Presidents of Municipalities, and as such it is difficult to subject them to control. They have political influence which opens a door for corruption, mostly through political corruption, through preferential treatment of the „eligible“ companies which have supported or are still supporting a certain political option, and which,

79 Muk, Stevo, Jovana Marović, Milica Popović, Nemanja Tepavčević, Marko Sošić, *Corruption and Public Procurement*, Institute Alternative, Podgorica, 2012. p. 9

80 Dyulgerov, Asen, Konstantin Pashev, Gergi Kaschiev, *Corruption in Public Procurement – Risks and Reform Policies*, Center for the Study of Democracy, Sofia, 2006, p. 10

of course, in turn, receive financial (or other) benefits. “It is possible to divide these abuses into two directions. The first one is linked with the political party’s interests, whereas the second one is directly linked to the interest of the individual who has the right to make a discretionary decision about the bidder. Political campaigns are, to a large extent, financed through private donations. Victory at the elections and winning the term of office implies a „possibility” of providing certain privileges for these so-called private donors. Enabling „access” to public procurement contracts and direct allocation of public funds to private ones, seems to be the most common type. Based on the aforementioned actions, the state institutions are trapped by the interests of large companies and private companies, thus the incurred losses are enormous.”⁸¹ Acts of corruption in public procurement procedures also happen in situations when the bidder gives bribe in order to have his offer accepted. By this, the company has long-term benefits which are reflected in securing monopoly in the market or a simple short-term profit. Continuous bribery is also a mechanism private companies use to promote their interests and represents a sort of illegal lobbying of the private sector. Bribery could result not only in selecting of a specific company, but also through inviting of certain (selected) bidders to apply or „tailoring“ a tender „to the needs“ of a specific bidder.

High risk of corruption in public procurement procedures, accompanied by the fact that the total share of public procurements in GDP in Montenegro for 2013 was 8.30% or 277,001,460.50 € (total of 5,325 of public procurements contracts concluded after conducted public procurement procedures)⁸² and the fact that not a single final court decision for cases of corruption in public procurement procedures has been issued,⁸³ indicates that ongoing indolence of the

81 Muk, Stevo, Jovana Marović, Milica Popović, Nemanja Tepavčević, Marko Sošić, Corruption and Public Procurement, Institute Alternative, Podgorica, 2012. p. 9

82 Public Procurement Administration, Report on Public Procurement in Montenegro for 2013 p. 46. - <http://www.ujn.gov.me/wp-content/uploads/2014/06/Izvjestaj2013.pdf>

83 Statement of the Director of Public Procurement Administration Mr. Mersad Mujević - http://www.ujn.gov.me/wp-content/uploads/2014/01/PressClipping_korupcija-nije-problem-Pres-2014.pdf

competent bodies has negatively influenced the trust among citizens, resulting in a small number of people reporting corruption.

Through legislative and institutional changes, Ministry of Finance and Public Procurement Administration should increase the transparency in public procurement procedures, thereby reducing the risk of corruption. One of the ways to increase the transparency is to make public all of the concluded public procurement contracts at the web site of the Public Procurement Administration, or at the web site of municipalities, whereat it is necessary to include to contracts concluded on the basis of the direct agreement and all annexes to the contact. In legislative terms it is necessary to: „determine legal liability of the contracting authorities who fail to submit reports on public procurement; reports on violation of anti-corruption rules or submit incomplete or incorrect data; prescribe prevention of conflict of interest of the State Commissions for Control of Public Procurement; prescribe use of direct agreement in exceptional circumstances with an mandatory explanation of its application.”⁸⁴

An additional cause for concern represents the fact that business sector does not show will to report the observed irregularities and suspicions of corruption in public procurement procedures. This sector is directly involved, in the business sense, since two sides are needed to reach an agreement with the elements of corruption. „Moreover, the companies are reluctant to seek protection of their rights in public procurement procedures. There are many reasons for this. Companies avoid to be linked with corruption, even indirectly, if for no other reason, then because of negative marketing.”⁸⁵ Therefore, in addition to public sector, private sector should be involved in the fight against corruption.

84 Marović, Jovana, Stevo Muk, *Procurement in Montenegrin municipalities*, CCE and Institute Alternative, Podgorica 2013.

85 Public Procurement Administration, Report on Public Procurement in Montenegro for 2013, p. 30. - <http://www.ujn.gov.me/wp-content/uploads/2014/06/Izvjestaj2013.pdf>

Disposal of municipal property

In line with the law and the statute, the municipal assembly disposes of the property of the local self-government. The risk of corruption in disposal of the municipal property particularly lies in transferring of city construction land,⁸⁶ the procedure for assigning housing and office space, realization of investment projects, etc.

On the basis of the Law on State Property, Law on Spatial Development and Construction of Structures, an in line with the Spatial Plan of Montenegro until 2020, the municipalities are entitled to dispose of construction land, and the property transferred to the municipality by state bodies, in accordance with public interest. Local self-governments are obliged to use as a starting point when drafting their spatial and urban plans the Spatial Plan of Montenegro, elaborating it further for their own territories in the plans of a lower order, and in this concrete case into spatial plan of the local self-government unit, detailed urban plan, urban project and local study on location.

Accordingly, municipality has the right to manage specific territory within its borders and in the public interest. Every decision of the municipality concerning implementation of the Spatial Plan has to be subject to approval by the Government of Montenegro. In this respect, the municipalities have the right, but not the complete freedom, to use state/municipal property on their territory. The intention here was to try to establish control over the disposal of the municipal property through a sort of centralized decision making, which is essentially an improper approach. Decisive factor for decision making on disposal of property, as for example is bringing of a space to its intended use, should be development projects, and not politically instructed decisions.

Most often the misuse occurs in deciding on disposal and bringing to the use of the city construction land, as well as in assigning of housing, and in

⁸⁶ Disposal of city construction land relates to the authority of the local self-government to dispose of and manage city construction land owned by the state in a manner and under the conditions stipulated by the law

leasing of office spaces or plots. Especially controversial is the fact that the president of the municipality who controls the majority in the assembly has the key influence on most of these decisions. Giving broad powers and possibilities for discretionary decision-making have been used on several occasions in the Capital city, but in other municipalities as well. Thus, for example, “Without consulting local assembly, Mayor of Podgorica enabled company “Carine” to buy without public auction at the price of 165 EUR/m² very attractive zoning lot not far away from the center of the city. The decision of the mayor was illegal and after a law suit was submitted to Administrative Court, the court decided to stop the sale on the grounds that, without the consent of the local assembly, mayor cannot sell land through direct agreement.”⁸⁷ Then, the Mayor of Capital City decided to sell 15,000 m² of land for only 2.5 million EUR. Albeit the estimate value of the land was 13.5 million EUR and the land was in a good location. To make the problem bigger, the land was sold to the owner of the company „Carine“, who was, according to media, a close friend of the mayor. As a result of the public pressure and the President of the local Assembly who publicly challenged the decision of the Mayor, first Basic Court and then Supreme Court decided to return the land and the money. The mayor immediately made a decision to give the same lot for compensation (instead of money) with the obligation to later pay to the buyer an additional almost one million EUR. As a result of the public pressure, he later overturned this decision. By this, the budget of the capital city suffered loss of almost 11 million EUR, and even after in 2012 prosecution found that the sale of the land represented a violation of the law and exceeding of authority and that the Ministry of Finance should overturn this decision, this has not been done until now.

Similar situation happened in Bar, where the president of municipality is under investigation for organizing of criminal structure in management of municipal land. President of the municipality Bar was the General Director of the construction company *Zavod za izgradnju Bara* from 1992. In 2006, he was elected the President of the Municipality and at the same time he becomes the main owner of the company. In the past several years

87 Marić, Boris, Mirko Bošković, Borislav Vukićević, *Urban Planning in Montenegro: Construction or Corruption?*, Centre for Civic Education (CCE), Podgorica, 2014, p.46

this company was very active and constructed many buildings in Bar and was a major beneficiary of the municipal budget. In addition to this, there are also examples of favoring some companies for infrastructure projects within the territory of the municipality Bar.⁸⁸

As “interesting” is the case from municipality Budva. President of municipality is under investigation for misuse of the official position in the case of the sale of municipal land on the hill Košljun, where allegedly the municipal budget suffered a loss of 2 million EUR. Allegedly, he has enabled the sale of land to an individual, under arranged terms at the public auction, and this land was later resold to a foreign investor for a much higher amount. There is also a notorious case „Zavala” where (according to the indictment of the Special Prosecutor for organized crime and corruption) the President of Municipality at the time and the Secretary of the Secretariat for Investments of Municipality Budva misused their official position and made financial benefit for the company “Zavala Invest” DOO Budva, at the same time causing the damage to Municipality Budva amounting to over 800,000 EUR.⁸⁹

The problem at the local level are the disputable decisions regarding assigning of flats, that are conducted in a non-transparent manner and without clear criteria. There are numerous examples of misuse of this mechanism in the pre-election period. Thus, a criminal charge has been filled against the former Mayor of the Municipality Nikšić and the President of the Commission for addressing of the housing needs of the municipal officials for abuse of official position by which they caused damages to municipal budget amounting to approximately 150,000 EUR.⁹⁰ Assigning

88 http://www.monitor.co.me/index.php?option=com_content&view=article&id=5255:dps-ovi-gradonaelnici-u-raljama-bezakonja-kolekcionari-krivinih-prijava&catid=3623:broj-1232&Itemid=4891

89 <http://www.portalanalitika.me/drustvo/tema/138477-qsluaj-koljunq-kako-je-vido-raenovi-postao-klju-optube>,
<http://www.cdm.me/drustvo/hronika/slucaj-kosljun-potvrdena-optuznica-protiv-lazara-i-vida-radenovica-tica-i-petricevic>,
http://www.monitor.co.me/index.php?option=com_content&view=article&id=5255:dps-ovi-gradonaelnici-u-raljama-bezakonja-kolekcionari-krivinih-prijava&catid=3623:broj-1232&Itemid=4891

90 <http://www.mup.gov.me/upravapolicije/centri-bezbjednosti/Niksic/136201/Osumnjiceni>

of flats in Podgorica is also done in a non-transparent manner. By the end of his term of office the Mayor of Podgorica has refused to make public the names of citizens to whom Capital city awarded flats in the previous years. He once stated that in the previous 14 years Capital City has awarded 600 flats⁹¹ and the public did not have a chance to learn who got the apartments and under what conditions.

The problem of corruption in this area does not only harm the public budget, but also represents one of the major business barriers and thus endangers sustainable economic development of local self-governments. Corruption at the local level has a negative effect on the development of entrepreneurship and healthy competition and consequently does not encourage employment and opening of the new positions, nor does it improve the quality of life of the citizens. The most devastating form of corruption is the one that closes the doors and deters potential investors who want to compete under fair rules and procedures. Instead of „healthy” investments, the ambiance created in this manner attracts dirty money through the companies established by organized crime groups (OCG). Official Serious and Organized Crime Threat Assessment for Montenegro confirms these indications through the findings: „it is important to mention the impact on members of the local government, which is particularly typical for those OCGs which invest a significant portion of their assets in establishment of companies operating in the construction sector. In the above context, association between individual members of OCGs with local government representatives, which is especially noticeable when participating in tenders, provides the basis for the existence of indications of corruption. In the previous period, some companies associated with members of OCGs have often, acting as partners, participated in

[za-KD-zloupotreba-službenog-polozaja.html](http://www.monitor.co.me/index.php?option=com_content&view=article&id=5255:dps-ovi-gradonaelnici-u-raljama-bezakonja-kolekcionari-krivinih-prijava&catid=3623:broj-1232&Itemid=4891)
http://www.monitor.co.me/index.php?option=com_content&view=article&id=5255:dps-ovi-gradonaelnici-u-raljama-bezakonja-kolekcionari-krivinih-prijava&catid=3623:broj-1232&Itemid=4891

91 <http://www.vijesti.me/vijesti/mugosa-zao-mi-je-sto-nemam-pravo-da-sam-dodijelim-stan-rado-bih-to-radio-clanak-166514>
<http://www.cdm.me/drustvo/podgorica/mugosa-da-imam-pravo-da-sam-dodijelim-stan-rado-bih-to-cinio>

construction of infrastructure facilities with local self-government.”⁹² Also, Montenegro Progress Report for 2013 states: „Infiltration of organized crime in the public and private sectors is a serious cause for concern. The areas of construction and spatial planning, education, healthcare and public procurement continue to be extremely vulnerable to corruption.”⁹³

On the other hand, it is expected that the investor (service provider) tries to use all mechanisms to avoid „unnecessary“ costs, to „simplify“ the procedure and to find „loopholes“ in the law in order to increase the profit. Local self-government is obliged to prevent these tendencies, and thus reduce the space for corruptive activities through improvement of the normative and institutional framework and simplification of procedures.

Financing of political parties

When talking about political corruption, we unavoidably need to mention financing of political parties. A division of political corruption by Duschinsky can be taken as a base: “References to „corrupt” political financing usually refer to one of the following:

- political contributions that contravene existing laws on political financing;
- the use for campaign or party objectives of money that a political officeholder has received from a corrupt transaction;
- unauthorized use of state resources for partisan political purpose;
- acceptance of money in return for an unauthorized favor or the promise of a favor in the event of election to an office;
- receiving contributions from disreputable sources;
- spending of money for illegal purposes, such as vote-buying.”⁹⁴

Aforementioned characteristics of political corruption are connected to clientelistic approach. In fact, if we analyze most of the elements of

92 Ministry of Interior, Police Directorate, *Serious and Organized Crime Threat Assessment in Montenegro*, Podgorica, 2013, p.75

93 European Commission, Montenegro Progress Report for 2013, Brussels, 2012, p.55

94 Michael Pinto-Duschinsky: *Journal of Democracy* Volume 13, Number 4 October 2002

such „behavior” we can see that they describe clientelistic party which after coming to power (or even earlier, if this party was in power at the time) allows certain privileges or benefits to those who support it. The combination of clientelistic approach (clientelistic party) and management of public resources represents a very risky combination.

Therefore, the problem of corruption at the local level can be linked to the system of financing of political parties and misuse of state resources during pre-election, election and post-election campaign. In the past several years, significant progress has been made in the legislative framework regulating financing of political parties, but this progress is still insufficient and the abuse is still present.

The new Law on Financing of Political Parties has been adopted on February 17, 2014 and its adoption was accompanied by intense debate, foremost by the ruling DPS. In the period after this, DPS claimed that numerous provisions of the Law are unacceptable, especially those concerning the donation to parties, state institutions and companies, and months' long prohibition of hiring of new employees in state institutions, bans on advertising, too broad authorities of the State Election Commission, as well as the prohibition of one-time financial assistance, etc.). Therefore, it submitted an initiative to the Constitutional Court for the review of constitutionality of the Law on Financing of Political Parties contesting more than two-thirds of the provisions of the law. In the case U-I no. 13/14, the Constitutional Court decided that some of the provisions of this Law are not in conformity with the Constitution of Montenegro and ratified international agreements, by which these provisions ceased to be valid. This related to the provisions which limit the right to labor guaranteed by the Constitution, as well as to provisions regulating receiving of contributions from physical and legal persons who are under investigation, or against whom there is an ongoing court procedure, or who have been convicted for committing a criminal offence with elements of corruption, the donations in the period from the date of the announcement until the day of parliamentary or presidential elections, as well as one month after the elections, payments of one-

time and regular financial assistances, as well as the provisions related to parliamentary control.

The basis for such provisions can be found in the attempt of the opposition to limit the ruling party in terms of potential misuse of financial, media and other resources during and after the election campaign. The reasons for the attempt to impose a more rigorous law can be found in irregularities occurring in Montenegro from introduction of multiparty system until today. They are manifested in serious indications of misuse in allocation of funds to political parties, unclear reports on origin, total amount and the structure of collected funds and funds used in the election campaign, and submission of incomplete reports on financing of the election campaign, using of property of the former socio-political organizations, to so-called „buying“ of votes.

Marcin Walecki⁹⁵ gave a useful typology with an overview of the groups/actors which are particularly vulnerable/susceptible to corruption and description of situation when it comes to basic forms of corruption associated with financing of political actors. The typology included public and private sector, civil servants and officials, ruling party and the opposition.

Type of corruption	Actors	Description
Illegal expenditure including vote Buying	Voters and election officials	A political party or candidate may directly or indirectly bribe voters and election officials. They may alternatively offer the electorate different kinds of incentives (gifts, food, alcohol, or even short-term employment). Beside elections, in some parliaments there is an unofficial market for votes – parliamentarians or councillors might be paid for votes or for joining different caucuses.

⁹⁵ Walecki, Marcin, Political Money and Corruption, International foundation for election systems (IFES), Washington, 2004, s.5

Funding from infamous sources	Candidates and political parties	A political party or candidate may accept money from organized crime (such as drugs traffickers), terrorist groups or foreign governments. These groups might even form their own political parties.
Selling appointments, honors, or access to information	Public servants and candidates	Contributors may gain rewards in the form of job selections, appointments (ambassadorial, ministerial or judicial), decorations or titles of nobility. Money may also be used to buy a seat in Parliament, a place on a party's national list or a candidacy.
Abuse of state resources	Public sector	Certain state resources, such as money and infrastructure, which are available to office holders may be extensively used for electioneering. In addition, through the unauthorized channeling of public funding into controlled companies, organizations or individuals, the political party or candidate may capture state resources.
Personal enrichment	Candidates and politicians	Candidates are required to contribute significant amounts, much higher than their official income, to a party's election fund and also to pay for their individual campaign. Politics becomes a rich man's game and elected representatives accumulate necessary funds to pay for the next elections by taking a percentage on secret commissions and accepting bribes.
Demanding contributions from public servants	Public servants and public sector	A political party or candidate in need of money often imposes excises upon office holders, both public and elected. In some regimes a political party may also force public servants to become party members and then extort kickbacks for some of its expenditure from their salaries.
Activities disobeying political finance regulations	Political parties and candidates	A political party or candidate may accept donations from prohibited sources or spend more than the legal ceiling permits. Violations of disclosure requirements, such as inaccurate accounting or reporting, or lack of transparent funding, are often the cause of political scandals.
Political contributions for favors, contracts or policy change	Private sector	One of the motives for political contributions to a political party or candidate is the possibility of payoffs in the shape of licenses and government public contracts. Donations may also be given for a governmental policy change or legislation favorable to a specific interest group.

Forcing private sector to pay 'protection money'	Private sector	Extortion, for instance through blackmail, tax raids and customs inspections may be used to force entrepreneurs to hand over part of their profits to a political party.
Limiting access to funding for opposition parties	Opposition parties and candidates	Authoritarian regimes with a patrimonial economic system and political repression may seriously constrain financial resources available to opposition parties.

Major types of political finance-related corruption - Table II⁹⁶

Ergo, there are many different methods to influence the electoral process, as well as the decision-making process. The part of irregularities could be overcome if there was a practice of submitting a complete report on financing of the election campaigns and political parties, which is not the case in Montenegro. Ministry of Finance, the body currently responsible for the control of financing of political parties, is not an adequate solution, although it has an obligation to initiate infringement proceedings, in accordance with the legal procedures, against those who did not submit the report. Irresponsibility of parties, and eventually of institutions has resulted in situations where funds are used to influence the election result, and this is very difficult to prove. In this regard, domestic and international public is aware of the infamous affair, dubbed „Recording“ – related to audio recordings from the meetings of officials of the Democratic Party of Socialists (DPS), published by daily „Dan“, which discussed the misuse of public resources for partisan purposes- that is hiring of politically „suitable“ persons on the eve of parliamentary elections, giving „one-time financial assistance“ or social assistance, etc. After daily „Dan“ released the recording of the session, a Parliamentary Inquiry Committee has been established and it heard 17 officials, including the Prime Minister of Montenegro and the leader of DPS. The epilogue of the hearing was the committee issued only a technical report, because there was no agreement of the members that abuse of employment has been determined.

⁹⁶ The table taken from - Vujović, Zlatko, Olivera Komar, Danijela Bošković, *Status and financing of political parties*, CEMI, Podgorica, 2005,p.78

In relation to this case, in 2013, the Deputy Basic Prosecutor from Pljevlja has raised an indictment against the director and one of the employees from the Centre for Social Welfare, due to the affair „Recording” for a criminal offence abuse of official position. Besides them, prosecutor indicted 10 people who were members of municipal board and activists of DPS in Pljevlja for abetting the abuse of official position. Based on the evidence, the prosecution could not determine if the alleged actions of the suspects had elements of the criminal offence, because none of 260 witnesses would confirm they received money in order to vote for DPS. This case has still not received a final epilogue.

Also there is a known case of DPS party official from Cetinje employed in the Public Revenue Directorate, who allegedly offered money before the local elections in exchange for votes for her party. There was a recording of this circulating on social networks. On the recording one person was complaining about a difficult financial situation and the other person was offering money as a gesture of appreciation. Also, in the same recording, allegedly a voice of the head of Cetinje DPS can be heard, while talking with a person who is complaining about receiving too small compensation for damage from natural disaster, to which he responds that he would check why he received so little money and if there is any other way to help him.⁹⁷

Financing of political parties in Montenegro remains a problem, primarily due to lack of the institutional framework which should provide control over the implementation of the law. Ministry of Finance is responsible for the control of implementation of the Law on Financing of Political Parties. However, within the Ministry there is no service which would separately deal with the issues of importance for financing of political parties. More efficient system of control of financing of political parties would be achieved by transferring this competence to the State Election Commission. Some progress has been

⁹⁷ <http://www.vijesti.me/vijesti/afera-snimak-ajde-ela-ela-zasto-da-ne-sto-eura-sto-eura-160006>

made in Article 10 of the Law on Amendments to the Law on Election of Representatives and Councillors which foresees professionalization of the State Election Commission, but it does not foresee control over implementation of the Law on Financing of Political Parties.

Employment

Abuse of official authority in recruitment and partisan recruitment are problems which occur in the state bodies and in local self-governments. In aforementioned typology, Walecki talks about potential financial contributions which would result in a reward in the form of selection of employment. Abuse does not necessarily occur solely from financing of political party, but it happens through the exchange of „goods” or so-called „buying” of votes. In this manner, the „secure voice” is exchanged for a „secure employment“, and there is an unwritten rule that partisan employment always intensifies before the elections, or after the elections. This leads to excessive employment in public sector, which harms public budget. This is even more widespread at the local level.

Regardless of its epilogue, the affair „Recording“ only confirmed that political abuses did occur and that the state did not show political will to fully investigate the affair and to come to a result which would satisfy professional appliance of the law and the public. As regards the suppression of political/partisan employment, it is necessary to work on reorganization of the local administration and create preconditions for the appliance of the Law on Civil Servants and State Employees at the local level. It is necessary, in institutional terms, to establish separate services/units in all local self-governments which would deal with human resource management, to specify that special units should organize testing of candidates for work in local self-government units and bodies, as well as prepare annual training plan and staffing plan. Also, in normative terms, it is necessary to amend the Law on Local Self-Government, in a manner that it would refer to the Law on Civil Servants and State Employees in relation to filling of vacancies, appraisal of local civil servants, as well as regarding the content and manner of keeping of personnel records. Finally, in

order to establish full transparency it is necessary to create functional databases of employees in local self-government bodies.

MECHANISMS FOR COMBATING POLITICAL CORRUPTION AT THE LOCAL LEVEL

The importance of whistleblowers for local self-government

Whistleblowers, i.e. persons who report crime and corruption are very important mechanism for fight against corruption both on national and local level. Unfortunately, instead of enjoying the protection, they are usually victims of discrimination and persecution, and in that regard broader public support for their protection is necessary. Whistleblowers are extremely important, because they are the ones who point out to misuse within their own lines and who are in direct contact with colleagues and superiors.

Protection of whistleblowers represents an international legal obligation of Montenegro prescribed by the UN Convention against Corruption, as well as Civil Law Convention on Corruption of the Council of Europe which dictates to guarantee the protection to all employees regardless if they are employed in the public or private sector. In Montenegro, protection of whistleblowers is provided by the Law on Civil Servants and State Employees and Labor Law. In addition to these laws, there is a set of laws which do not contain clear provisions that are directly related to the protection of whistleblowers, but which can be applied to them in certain cases. These are: Law on Free Access to Information, Law on State Administration and Law on Witness Protection. The existing system for protection of whistleblowers is inadequate and incomplete because the rights, status and obligations of whistleblowers are not regulated by a separate law.

In order to provide adequate protection to the whistleblowers it is necessary to adopt a single and comprehensive Law on protection of whistleblowers, establish separate institutions or departments in the existing institutional framework to assist the whistleblowers, conduct campaigns to raise public awareness about the importance of whistleblowers as well as to strengthen the capacities and role of civil society and media in protection of whistleblowers.

Local action plans for fight against corruption

One of the mechanisms for fight against corruption at the local level is the work of the municipality through the activities envisaged in the strategies and action plans. Fight against corruption at the local level in Montenegro has been foreseen in the Strategy for Fight against Corruption and Organized Crime for the period 2010-2014 and Innovated Action Plan for implementation of the Strategy from July 2011. The Action Plan for implementation of the Strategy for fight against corruption and organized crime for the period 2013-2014 foresees a measure/obligation to harmonize local action plans with the Model of harmonized action plan for fight against corruption in the local self-government for the period 2013-2014. Local anti-corruption documents for the period 2009-2012 have been based on the Model Program of fight against corruption in local self-government (MP) and Model Action Plan of the program of fight against corruption (MAP) drafted, in accordance with the aforementioned measure, by the Ministry of Interior and Public Administration, Union of Municipalities, representatives of non-governmental organizations, and with expert assistance of the Council of Europe.

It is worth mentioning that the Government has on the session held on July 9, 2008 instructed Ministry of Interior to establish a Commission for monitoring of implementation of the action plan for fight against corruption at local self-government by the end of the fourth quarter of 2008.

Based on reports from municipalities, the Commission should prepare semi-annual reports on implementation of the measures and

submit these reports in the form of annual reports to the Government and the National Commission for Fight against Corruption and Organized Crime.

Judging by the reports and forms on implementation of the Action plans we have obtained from municipalities,⁹⁸ their reporting to Commission was inconsistent, both in terms of the reporting dynamics and in terms of the content of information provided in these forms. Due to the poor reporting by municipalities the Commission's report contains only the most basic information and it fails to provide adequate insight into substantive progress in implementation of the Action Plans and effects of implemented activities.⁹⁹

Action plans in all 14 municipalities, covered by the project, were almost identical, that is they had the same structure of strategic and operational objectives, and a lot of them had even identical measures. The proposed Model should be used as a base of structure, but it is also necessary to take into account the differences of municipalities, which was not the case heretofore and which consequently had an impact on the effectiveness of these documents.

Principle of transparency and involvement of civil society

Fight against corruption at the local level must be accompanied by transparency and active involvement of civil sector in anti-corruption activities. The civil sector plays the role of the „controller” and points out to the shortcomings of the system, but also offers solutions. „The very concept of good governance is characterized by its formative principles, 3 of which are the most important: transparency, accountability and participation- active participation of all relevant

98 These are municipalities Tivat, Kotor, Bar, Herceg Novi, Budva, Pljevlja, Plužine, Kolašin, Rožaje, Mojkovac, Nikšić, Danilovgrad, Old royal capital Cetinje, Capital city Podgorica.

99 Djonović, Nikola i Bajramspahić Dina, *Local self-governments in Montenegro in fight against corruption*, CCE, Podgorica, 2014

and interested actors from the public, private and civil sector.”¹⁰⁰ Civil sector has to become a partner of the local self-government, which is a challenge local authorities have still not faced.

Also, it is necessary to work on the transparency and to regularly update web sites of municipalities so that the civil sector and citizens would be regularly informed. This would also cause the decrease of the large number of requests for free access to information local self-government is receiving. Local self-government needs to consider the promotion of municipality through social networks in order to encourage active participation of citizens in the decision making processes and promotion of local administration as a service to citizens.

The possibility of professionalization of the councillor’s function

The role of the councillor is not professional in Montenegro, it is poorly paid and as such it represents a potential risk for emergence of political corruption. Of course, the role of the councillor in itself is not a risk due to potential misuses in the material sense, but because of the relation of the councillor towards the performance of his duties, which by default, have to come second. The focus of the councillor needs to be progress of the local self-government and dedication to solving of problems of the citizens, which is under the existing legislative framework marginalized.

The fact that groups of the councillors do not have their offices in the municipality building or the local assembly building, or the advisors who would provide them with details about the agenda of the assembly is a serious problem. Heretofore practice that parliamentary service provides these conditions have proven to be an inadequate solution. Namely, the capacities of the services of the municipal assemblies are limited and the number of councillors is generally large¹⁰¹ and

100 Stojiljković, Zoran, *Political corruption and weak state, Philosophy and society* XXIV, 2013

101 Article 3 of the Law on Election of Councillors and Representatives- “30 councillors plus an additional councillor per every 5,000 voters shall be elected in the assembly of municipality, the Old Royal Capital and Capital City (hereinafter: the Municipal Assembly)”

it is disputable if that service can adequately advise and inform the councillors. And without necessary information and advice the councillors often do not have good grounds for forming of decisions. Thus, this decision-making process influences the final decision and can produce consequences for the citizens. The issue becomes more serious if we take into consideration number of sessions of the local assemblies and number of items on the agenda. The question is: is it realistic to expect that the councillors are able to fulfil their obligations in the interest of citizens?

The abovementioned points to the need to consider the possibility of professionalization of the function of the councillor in order to improve the role of the councillor in the municipal assemblies and decision-making process. However, introducing the professional councillors would burden the municipal budget under the existing legislative framework. One of the ways to establish this system, and to balance additional expenditures, would be to introduce professionalization of the function of the councillor for every third councillor, separately by the lists. By this the caucus of councillors would have (one or more) permanent representatives who would be available for regular communication with the citizens, to hear their requests and proposed solutions.

CONCLUSIONS AND RECOMMENDATIONS

Political corruption is usually associated with illegal acts in performance of political functions, and as such represents the most dangerous form of corruption as it enables and encourages systematic spreading of corruption to all levels of the government, followed by non-transparent and irresponsible management of public resources and decrease of trust in administration. The response to political corruption has to be a quality reform of legislative and institutional framework directed towards genuine prevention and suppression of corruption. At the same time, it has to be an „inside” product, as it needs to be ratified by a majority in power. Therefore, it is essential that there is political will for state action and the final battle with this negative phenomenon. Only this type of approach can ensure proactive work of the institutions, application of the legislative framework, responsible and professional administration, transparency and participation of all stakeholders.

Political corruption in public procurement remains a problem of political clientelism, and in this respect competent institutions, i.e. Ministry of Finance and Public Procurement Administration have to work on increasing of transparency in public procurement procedures through the changes of the legislative and institutional framework.

The disposal of municipal property is accompanied by large number of irregularities and violations of the law, which was covered by media. In this respect, it is necessary to simplify administrative procedures in the municipalities, as well as to strengthen the level of transparency and decision-making, with regular updates of web sites of municipalities.

When it comes to financing of political parties, it is important to stress that Ministry of Finance and State Audit Institutions have limited

capacities for monitoring the implementation of the provisions envisaged by the Law on Financing of Political Parties, as there are no separate units or departments which would solely address the issue of enforcement of this law in individual municipalities.

Partisan employments still remains a widespread problem in Montenegrin municipalities, and it is necessary to work on transparency and rationalizing the number of employees in line with the identified needs.

For the protection of whistleblowers, it is necessary to amend the legislative framework, work on awareness raising and strengthening of public support.

The municipalities need to respect the principles of transparency, participation and accountability and in this sense participation of civil society in anti-corruption activities is necessary.

Combating of political corruption at the local level requires the following:

- local strategic action plans should identify political corruption as a source for other forms of corruption and corrupt behavior;
- to encourage active participation of citizens, civil sector and holders of political function in fight against political corruption;
- to simplify administrative procedures in the municipalities, strengthen the level of transparency and decision-making (make the data available online), transform local administrations in services of citizens;
- consistent application of the Law on Free Access to Information, in order to enable proactive access to information;
- to prepare an analysis of the need for adoption of the separate law on election of councillors, which would ensure direct responsibility of the councillors to the citizens. The practice shows that there is a need to rethink the character of the mandate of the councillor;
- to prepare the analysis of the need to professionalize the function of councillor;

- to improve the legislative framework for the protection of whistleblowers through the establishment of special institution or department within the existing institutional framework for assisting of whistleblowers;
- to compete and improve the existing legislative framework and continuously monitor and evaluate the effect of implementation of the Law on Local Self-Government and Law on Election of Councillors and Representatives;
- to improve the capacities of the State Audit Institution (SAI) by establishment of a separate department for monitoring the work of municipalities, but also to establish a practice in SAI to file criminal charges against municipalities in which irregularities have been found;
- to initiate improvement of normative framework which would enable development of necessary capacities of the State Election Commission not only in part connected to organizing and monitoring of the electoral process, but also in part connected to control of financing of political parties.

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