

European integration and the fight against corruption

Still at the beginning

EUROPEAN INTEGRATION AND THE FIGHT AGAINST CORRUPTION: STILL AT THE BEGINNING

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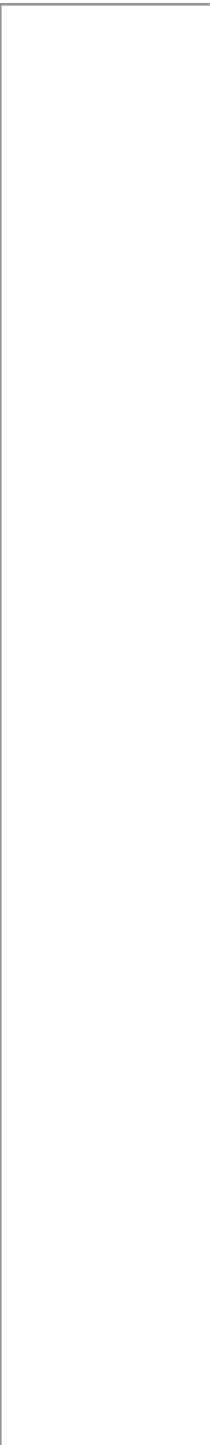
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Podgorica, February 2014

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Introductory Remarks

The publication which is before you, is the product of a several months long project entitled **'Journalistic Investigation and Debate on European Integrations and the Rule of Law'**, which was carried out in 2013 by the weekly *Monitor* with support from the Embassy of the Kingdom of the Netherlands and from the Republic of Austria.

The publication consists of articles published in *Monitor* and contributions from the round table **'The Fight against High-level Corruption and the Process of European Integrations'**, which took place in Podgorica at the end of 2013 and which was attended by the representatives of a number of domestic and foreign institutions, political parties and experts. The round table stimulated discussion about this important subject, which is also a problem and one of the biggest challenges, not only for the process of European integrations, but also for achieving the goal that Montenegro becomes a functional democracy.

The fight against organized crime and corruption is not only a challenge for Montenegro, but also for the societies which are already integrated into the European Union and especially those which, like our country, had a difficult legacy of an authoritarian system of government. Our, post-Yugoslav societies were in addition criminalized during the troublesome nineties. Therefore it is nowadays extremely difficult to build strong and independent institutions, especially the judiciary.

Monitor is particularly interested in the process of European integration and the fight against corruption. Our weekly magazine, since its inception back in 1990 on the eve of the Yugoslav wars and conflicts, declared joining Europe as its first goal with the rule of law as a means to achieving that goal. At that time in the nineties, we were a minority in a country whose Government supported the policy of isolation and conflict with Europe and its democratic principles. Today too, the media who engage in the coverage of the fundamental issues in society in a professional way are a minority.

In addition to strengthening state institutions and the Judiciary in particular, the media play a significant role in the fight against corruption and organized crime and especially corruption at the highest level. Without the professionally done investigative articles, without the brave journalists who are willing to investigate the abuses of power, there is no free society.

In our country the investigative media, which published analysis of suspicious privatizations, such as that of Aluminijski kombinat (Aluminum Factory), or wrote about cigarette smuggling and illegal tobacco factories, or illegal use of state resources to influence elections, are experiencing constant threats of violence. We believe that the main reason for these attacks is our perseverance in covering of the issues related to high-level corruption and organized crime. The latest Progress Report by the European Commission, which highlights all of these problems and emphasizes the importance of the freedom of the media in the fight for the rule of law, is therefore of a particular importance. Finally, I wish to thank all the participants of this project and especially the Embassies of the Netherlands and Austria, without whose support this project would not have happened.

European integration and the fight against corruption

As a part of the project, *Journalistic Research and Debate - the European Integration Process, the Rule of Law, the Fight against Corruption and Organized Crime*, which the weekly *Monitor* is implementing with the support of the Embassy of the Kingdom of the Netherlands and Austria, the round table discussion named *The Process of European Integration and the Fight Against the High-Level Corruption*, took place in Podgorica on 22 November.

'Our goal is to encourage a public discussion of various social actors who are dealing with the issues of rule of law and fight against the corruption, in their capacity as the representatives of the Government, the Parliament, the NGO sector, or as experts and foreign diplomats who closely follow the developments in our country and the region', said **Milka Tadic - Mijović**, Executive Director of *Monitor*, in her opening speech.

- 'It is indeed a great honor for me to participate in this round table organized by *Monitor* with the support of the Dutch and Austrian Embassies', **Johann Frohlich**, Austrian Ambassador to Montenegro said in his welcome speech.

'Allow me to remind you that Austria has been chairing the Council of Ministers in Strasbourg since 14 November 2010 and will remain in this important position until 14 May 2014. During its Presidency Austria will continue to make efforts towards further democratization. Priorities during the Presidency of the Council of Europe will be human rights, democracy and the rule of law.

Freedom of expression and the safety of journalists will be one of the main goals of all Austrian efforts. Montenegro is an example of good neighborly relations and constructive regional cooperation. Austria supports Montenegro on its path towards the European Union. However, Montenegro faces many challenges and will have to work hard. Not only in terms of institution building, but also to establish trust in the Judiciary and the legal system. We expect Montenegro to strengthen its overall capacity and to ensure a thorough monitoring of the activities planned to bring about eradication of corruption.'

- When it comes to corruption and organized crime, they remain major problems in Montenegro. But it has not gone unnoticed that Montenegro is trying very hard to fight organized crime. Its progress in the integration process will be judged depending on the performance and the effectiveness of measures against organized crime and corruption, concluded Frohlich.

'I first want to extend compliments to *Monitor* for organising this round table', said **Laurent Louis Stokvis**, the Ambassador of the Kingdom of the Netherlands at the beginning of his address, adding that „the subject, journalistic investigation and debate, centered in our discussion today on EU integration and the fights against high-level corruption is a highly important one“.

He said: "Becoming a member of the EU means aligning national laws with the rules and regulations of the EU, and implementing them. It also requires transforming societal norms and values so that the citizens' perception of state institutions and other societal actors, such as the media, increases.

Montenegro shows great commitment to its European path. The efforts it made to successfully finalise the action plans for chapters 23 and 24 are noteworthy. I especially commend Vice Prime Minister Markovic for his leadership and Deputy Minister Mrs. Rajkovic and her team for their dedication and hard work. We all know it was not an easy job.

However, work is only starting. The EU progress report 2013 restates common knowledge: corruption continues to

form a serious problem in Montenegro. Further efforts are needed to establish a credible track record of investigation, prosecution and conviction in corruption cases, especially high-level cases. For this, independent, impartial, efficient, accountable judiciary is indispensable and the EU progress report notes that shortcomings in this area continue hampering the fight against corruption. It may also be necessary to rebalance the emphasis in prosecution in a situation of limited resources. A study, that the Netherlands supported [by Centre for Civic Education], shows that in 2013 many corruption cases that were prosecuted are directed at offenses of little monetary value. Is there a lack of capacity to prosecute effectively more severe and often more complex alleged offences?

In the screening report of chapter 23, Montenegro recognises the need to further reinforce the capacity of the judiciary to fight corruption, in particular high level corruption, by improving the capacity of prosecutors to conduct financial investigations, trace criminal assets and present related evidence before the courts. I hope that priority is going to be given to this area.

Trainings in order to improve cooperation between the prosecution and police during investigations may be necessary, as corruption cases are often difficult to identify and even more difficult to substantiate with relevant evidence.

It is my conviction that only when the judiciary system shows zero-tolerance to corruption and citizens see that no one is exempted, will transformation start.

But we shouldn't put the burden solely on the judiciary. Parliament and media have a crucial role. I am so pleased to see here the honourable member of parliament, Mr. Radunovic, Chairperson of the Committee on European Integration.

Societal transformation, necessary for EU integration, requires a transformation of perceptions. Perceptions matter, they influence confidence in institutions and societal actors. The annual research on perception of corruption by Centre for Democracy and Human Rights identified in 2013 predictors of perception of corruption. An important one is the level of confidence in media: higher confidence in media, the lower perception of corruption by citizens.

The same study showed that the relation between court and the media needs improvement. Some professionals in the judiciary believe that the media violate the presumption of innocence and others even feel pressure to take decisions, which have already been made in public opinion. Media can have a great influence on the proceedings. Better skills on both sides, as well as a structural dialogue between the media and the judiciary can help.

The media also have an important responsibility. Self-regulation to prevent and deter incorrect publication of information, which can have an influence on the course of the case, could be helpful.

Investigative journalism should be supported and more efficient mechanisms must be set to protect journalists.

As to the role of the parliament, the Netherlands is supporting via civil society (MANS) the work of the parliament on anti-corruption. Policy research of best practices other countries' parliaments in corruption oversight will be published in 2014. Exchange of knowledge, skills and access to best practices will provide parliament the tools to further improve its fight against corruption".

A big job and/or false enthusiasm

With praise for the organization and recognition of the importance of informing the public about the process of European integration, I have to remind you that the Committee for European Integration also started a similar project which includes organizing public meetings where professionals and other interested members of the public have an opportunity to become more familiar with specific negotiating chapters, but also to express to the Team their views, criticism and any suggestions which the Committee always takes into consideration at meetings where draft negotiating positions are discussed.

With this in mind, at the beginning of October, a public meeting on the topic 'Montenegro and the EU - negotiating Chapters 23 and 24', was organized. After that, the Committee held a meeting where a proposal was adopted to amend the draft position for the Intergovernmental Conference on Accession of Montenegro to the European Union regarding the Chapter 23 - Judiciary and Fundamental Rights, which was accepted by the representatives of the negotiating team who were present, and also a positive opinion was voiced about the Draft Position for the Intergovernmental Conference on Accession of Montenegro to the European Union on Chapter 24 - Justice, Freedom and Security.

However, I must emphasize that the Committee and Parliament in general, did not participate in the preparation of action plans for these Chapters. The content of the Action Plans is good and that is how we evaluated it at the Committee for European Integration. But whether the implementation of those Action Plans will go as planned, will depend on the will of the political elite, who must become aware of the fact that in Chapters 23 and 24 are not up for negotiation, instead an action is needed to start to address the issues which will ultimately lead not only to opening of those Chapters, but also to success in facing the real situation in a society where corruption is pervasive. In this respect, the Parliament has approached with the utmost responsibility their oversight role to ensure that the interests of Montenegro are protected to the highest degree possible.

I have to remind you that the Committee for European Integration is a relatively young labor body, formed a year ago and that the Parliament of Montenegro transferred to it virtually all powers relating to the process of European integration. In this regard, its responsibilities are defined as follows:

- Monitoring the negotiations on the accession of Montenegro to the European Union;
- Oversight and evaluation of the progress of negotiations and giving opinions and guidance on behalf of Parliament about the prepared negotiating positions;
- Reviewing information about the negotiation process and reviewing and giving opinions on issues that arise during the negotiations;
- Review and evaluation of the activities of the Negotiating Team;

The role of the Montenegrin Parliament e.g. the role of the Committee for European Integration, was to be further defined by the Amendments to the Resolution on the method, the quality and pace of integration of Montenegro into the European Union, but due to a sudden loss of will in the DPS to strengthen the oversight role of the Parliament, the Resolution itself was withdrawn, in order to once again try to reach a consensus. If, however, that does not happen at the next session on 3 December a new Resolution will be proposed, which will include

an Amendment by the Committee for European Integration, for which there is already a support by the absolute majority of MPs.

Although the European Commission in its latest Progress Report highlighted the importance of further strengthening the oversight role of the Parliament, the main pillars of the regime are ignoring it and are once again demonstrating the lack of will to change anything in the system that is perfectly tailored to their needs.

Joining the EU is a strategic goal of Montenegro, for which there is full consensus among all political parties. The existence of a consensus, however, does not necessarily mean agreement of political actors on all issues that arise in the process of accession. In fact, anticipating the opening of the most challenging Chapters 23 and 24, we can say that in the European integrations we reached the moment when serious activities increasingly impacted on the regime. I think that the eagerness and the enthusiasm that the Government has shown will slowly tone down, proportionate to the need to take real action. So, in addition to formal and legal conditions which are certainly met, an effective fight against crime and corruption is now ahead of us. It is well clear that concrete results in the fight against corruption are a condition for further progress in the European integration process. But the fact is that the institutions and the Prosecution Service in particular, are not doing their job, and for that reason there are no achievements in the fight against the high-level corruption, and consequently against organized crime for which the high-level corruption is a condition. Corruption is destroying the economy and is a cause of poverty, it undermines the rule of law and threatens the basic functions of the state, but the war against corruption we can and we must win.

There are a series of cases which demonstrate that the Prosecution Service is the weakest link in the fight against organized crime and corruption in Montenegro. I will only remind you about the cases of the privatization of Telecom, KAP, Zeljezara, EPCG, and about the case of Prva banka, about suspicions of money laundering in DPS during the election process, about many criminal charges against senior officials which are not being processed by the Prosecutors or they are dismissing them without explanations. In many cases, such as, say, the 'Recording Affair', the Prosecution is waiting for messages from Brussels to start investigation. Let's not forget the claims by the former officer Brajuško Brajušković that heads of the Police organized 'black trios' for attacks on journalists and opposition leaders, and events during and after the Presidential election in Montenegro in April. All suspicions and scandals lead us to the same address. That address is known to every citizen of Montenegro, but not to even one Prosecutor so far.

We must do everything to ensure that a person of integrity, who will be professionally competent and honest enough to do the job, is nominated for the position of the State Prosecutor. But, whether those in positions of power will have the courage 'to cut the branch they sit on' and to participate in the election of a prosecutor who will then prosecute them, and not the one, who they will control and maybe use to fight those who hold different views, remains to be seen.

Concerns about unquantifiable results in the field of high-level corruption, were also expressed by the European Commission's Progress Report on Montenegro 2013, which stresses that the reform of the legal framework governing the electoral process must be finalized, in order to strengthen public confidence in the election outcomes and the work of the institutions. It also recommended strengthening of the control functions of the Montenegrin Parliament, especially after a Parliamentary inquiry into the 'Recording Affair', did not produce any concrete results.

Finally, last year's civil protests have shown that there is both awareness and great energy and readiness for change in Montenegro. Although, after the change of Government, whoever takes the positions of responsibility, will find themselves in a situation where they will have to deal with accumulated problems, such as the 'hole' in the budget, punishing interest rates, high unemployment ...

Something that we all certainly have in common, regardless of religion, ethnicity and party affiliation – is that we pay the price of corruption.

Government cannot do it alone

I have not prepared a speech, I wanted to feel the spirit of other contributions and address them through my speech. Many thanks to the Ambassadors for their compliments regarding action plans and commitments we have undertaken. That is where I would start from. It is no secret to you or to us that certain assessments in the Progress Reports have been repeating for several years. Also, we should all be aware that we've written our Action Plans taking into account these recommendations.

The Report from the bilateral screening is practically in line with the assessment and recommendations, such as in the Progress Report, which we all recently had an opportunity to see. I think that the Government in the recent period did not do a bad job. The opposite is the case. I think that our approach was specific and, perhaps, quite ambitious. Both Action Plans are very ambitious, in terms of deadlines and in terms of financial resources. I would like to remind you that the state is responsible for providing 2 /3 of the resources required by the Action Plan. We did not rely too much on IPA funds, except where we thought that the job could not be done without significant resources. I cannot promise anything, nor do I want to do that. But I can tell you one important thing. The people who wrote those Action Plans were experts who were competent to offer solutions. It seems to me, that is what gave extra quality to the Action Plans, which I think that EC also noted. The very fact that it has accepted them without any additional recommendation, says a lot.

Soon we will officially open Chapters 23 and 24. We have in fact already opened them in the Government. Up to 15 September only one action was not implemented, which, of course, does not mean that this will always continue in the future, and that all will be perfectly fine and fast. These were the measures that have been already planned for 2013. The challenge is the year 2014. You could see that in both Plans there is a huge number of serious laws in our work program. A lot of seriousness, pragmatism and in-depth approach is needed. Those laws are in the area of Justice, corruption and organized crime. Not to mention all that we planned to change in these laws.

I want to send another important message. This job is definitely not just a Government job and the Government cannot carry it out on its own. That's why we included into the Action Plans a number of institutions which should be involved. That is why the Action Plans include representatives of the civil sector and a number of NGOs. I would like, once again, to use this occasion to invite you to join in. This is not the time when we can afford polarization. I'm not saying that the Government should not take full responsibility, of course it should. The Government has a primary, but not a sole responsibility for this work. To complete the whole circle of fight against corruption, at least as I see it, everyone must be included. Still, it is not enough only to have the institutions and people, we have to change the people's awareness of corruption. When I was a child, corruption was seen as dishonorable. People used to say *I treated someone* and not *'I gave them a bribe'*. We need to consider whether there is some responsibility of all of us as citizens, not just the Government officials and the institutions.

The political will is, of course, necessary, but it depends on our overall approach to this matter. If we manage to hang on to the knowledge and maintain capacity, we will succeed.

There is a lot to do but, there are not enough people and expertise. Let's not criticize each other but work together. The development of the Action Plans proved to be the ideal model. Believe me, the civil society representatives helped us a lot in this work. Constructive criticism and arguments will, of course, be accepted. You are invited to join and help the Government, civil servants and not Government representatives, to complete this work.

Three simple points

First, I think the importance of the start of accession negotiations between Montenegro and the EU cannot be overestimated. By this the integration process has become much more technical, and less political. It has become bureaucratic in a positive sense. Progress now depends much less on decisions of the European top leadership and thus on upcoming elections in one or another member state. Instead, a whole army of civil servants in Brussels and the member states deal now with this process.

It is during the negotiations that a country gets exposed to the full conditionality of the EU tool box. All of a sudden there are thousands of conditions, not ten or two as before the start of negotiations. Monitoring becomes more intensive and stricter, including also in the area of the rule of law and the fight against corruption which we discuss today. This also makes it easier for civil society organisations, media, and the opposition to pressure for reform.

Once the negotiation process starts, it affects also the motivation of the people who are actually doing the biggest part of all the work, the civil servants in the administration of the accession country. There is this widespread notion that the start of negotiations is a motivation, a reward, an encouragement for the political leadership. This actually does not hold true. Most prime ministers lost power after the start of negotiations. When we look at the last enlargement round, the only prime minister who stayed from the opening to the closing of negotiations in power was **Mikulas Dzurinda** of Slovakia. The negotiation process, however, strongly motivates the people doing the actual work. For them it is a challenge, a huge, but manageable task, a task that others, in other countries, have managed before. It makes their work meaningful, provides satisfaction, and might also provide a career boost.

So it is very important for Montenegro and the integration process that accession talks have started. If anyone has doubts, just take three minutes and think how Montenegro compares to Macedonia. How strong is reform pressure now here in Montenegro, and how strong in Macedonia? How does conditionality and EU leverage compare in these two countries? And what does it mean for the motivation of civil servants to work in a country that is negotiating like Montenegro, or in a country that is waiting since five years like Macedonia?

The second point I want to make is that in Montenegro the EU now has the best opportunity to have a real impact on the rule of law, the judiciary and the fight against corruption. If we look at what the EU tried to do in this area, we see a clear learning curve: in the fifth enlargement round, this topic was one of many. No particular attention was paid to these issues. And the EU did not really know what it wanted in these areas. The home affairs *acquis* was rather new, and we had situations that the EU criticised in the Baltics what it recommended in the Czech Republic and vice versa. With Bulgaria and Romania more focus was laid on the rule of law and corruption, but only late in the process, after the other countries acceded in 2004. There was too little time for serious change, and demands were often quite blurry and the EU's analysis unfocused. Croatia, the last country joining, experienced more pressure. However, it also intensified also only late in the process, through providing quite impressive results.

But now with Montenegro a key focus is laid on rule of law issues from the very beginning. This provides – for the first time – a time horizon of 8 to 10 years. In this time it is possible to achieve real results and reform the judicial system. The EU and the member states will ask for this. No comparisons to the earlier enlargement rounds or problems in some current member states will lower the bar.

Montenegro will have to deliver, more than any other country before. The sceptics will look very carefully. But also the friends of Montenegro, the friends of enlargement, will look closely. For them it is important that Montenegro

will be a success story. Otherwise the prospects for further enlargement will be endangered. So there will be a lot of attention that these reforms are really carried through.

To conclude, quickly a few thoughts on a third point: what can be done to assist this process? First, pressure by civil society and the media is very important. For the size of the country, Montenegro has an impressively vivid and critical media landscape and NGO scene, which is very positive and encouraging. But what can the EU do? The more countries are in the negotiation process the better. Competition helps – it increases pressure, it allows watchdogs and the opposition to compare progress with other countries, and it allows successful reformers to point out success. The sooner the EU allows Serbia, ideally also Albania and Macedonia, to start negotiations, the better.

The EU could also do more to make its monitoring more transparent and systematic. Today it is difficult to follow the assessments by the European Commission and different EU mechanisms aiming at monitoring accession countries (such as peer reviews or member state assessment missions). Many reports and data are not publicly available, or their form makes it very difficult to assess what a country has really achieved. A more transparent and systematic approach would help all those who want to push more efficiently for required reforms.

Corruption as a system

There is a widespread perception in the Western Balkans that all of these countries suffer from high-level corruption. And this is probably an accurate perception. But is it the disease, or just a symptom? It's an important question for anyone who wants to do something about it, whether that be a European official, interested in these countries' eventual membership in the EU, or a donor worried about where funds are going, or an interested citizen. I think corruption is just a symptom, and trying to root it out with the conventional therapies, like criminal investigation and prosecution, new rules, regulations and laws designed to make it more difficult, will help very little or not at all. Dealing with the real problem means first of all understanding what the problem is. Only then can an adequate therapy be devised.

What I would like to suggest this morning is that the behaviours we refer to and complain about as high-level corruption are not the abuses of the system but rather the system functioning in the way it has been designed. In other words, what we have throughout the Western Balkans is a set of political and economic structures that are designed to concentrate economic power in the hands of a small, politically powerful elite. This elite is expected to take care of a network of clients that extends virtually to the borders of their respective state—that includes almost everyone. But not in a equal way: being in the elite, or near it, can mean immense wealth, while being distant from it can mean struggling to make a living.

To make this less theoretical, let me offer three or four examples—descriptions of situations or events that could be happening, have happened and probably are happening right now in any or all of the states of the Western Balkans.

First example: you want to build a shopping mall. You apply for all of the many—very many—permits and approvals you will need, and gradually it becomes clear to you that you will never get them all unless you hire the architects, contractors, construction firms and what have you that are favoured by the party in power. Once you have hired the right people, everything goes smoothly.

Second example: the government announces a tender for a concession to exploit some resource. You apply and lose. The winner has submitted a lower bid, even though they have virtually no experience, but are owned by a shell company that is controlled by a relative of someone in power. Once they start work, they quickly increase the cost of the contract through various amendments.

Third example: you are the CEO of a publicly traded corporation. Your Board of Directors is, of course, chosen by the largest shareholders—and these are often holding companies and shell corporations that are owned by other shell corporations that are owned by offshore companies that own each other in a bewildering tangle that ultimately come back to ownership by, say, the pension funds of government ministries and other assets controlled by Government or members of the elite. If you cross them, by for example firing unproductive workers in a municipality where those workers' votes are needed to keep the party in power, you will be out of a job yourself.

Fourth example: you have decided to invest in a country in the Western Balkans and want to build a factory there. You have picked out the best location for you. But the ruling party needs votes somewhere else, which means you will come under irresistible pressure—in the form of approvals that take forever to appear, unless you've placed your factory where the government wants it to be.

All of these examples look corrupt in that they show money and goods flowing from where they would do most good to places favored by political power. But they are either legal or impossible to prosecute, which amounts to the same thing. They are the system operating as it was designed to. They are also immune to pressure from below; one of the characteristics of the fusion of economic and political power is the effective disenfranchisement of the electorate. When your mayor is also, directly or indirectly, your boss, or your boss's boss, you are in a truly weak position as a voter or activist.

In a nutshell, this is an evolved version of the 1980s Yugoslav self-managing socialist system. It is designed to produce an acceptable living for as many people as possible, while allowing space at the top for a connected few to live extremely well. The system is understood perfectly by all those are privileged to be within it, but not at all, or not well, by those outside the charmed circle.

Over time, as legislatures came under pressure to, say, adopt reforms to tendering procedures, enhance transparency, set up anti-corruption watchdogs and special prosecutors, the elite found ways to do the same things through different channels.

The system works, in a fashion: it delivers subsistence to most residents and modest economic growth in normal times. So a cynic may wonder, why worry about it? I can think of three reasons. The first is it leads to popular frustration, with passivity and rage the only sensible political options. Second, it works, but not very well. Third, it may require levels of external support - remittances from émigrés, foreign aid and loans - that are unsustainable in the long run and cause collapse when withdrawn.

If this is an accurate description of the prevalent economic system in the Western Balkans - and I admit it is based on my impressions from about twenty years of observations and not on systematic economic analysis - then there are a few sobering implications. The first is that we are not dealing with individual acts (crimes) but with a system of interlocking parts that also performs many critically important tasks. Changing it means breaking up the system, which may make matters worse in the short term. The second is that the usual medicines of regulation and law enforcement will not work.

I used to think integration of the EU *acquis* into domestic legislation would break up the Balkan system but I am no longer so sure. There seem to be disturbing signs of it in the southeaster part of the Union: in Greece, Cyprus, Croatia, Slovenia, Bulgaria, Romania and Hungary. It's worth looking at how things work in those countries, how different are they to the Western Balkan aspirants, and to what extent has EU accession made a difference. Integration is probably not enough on its own, and it can probably be made more effective by this kind of study.

The other thing that should help is foreign investment and ownership. Large international firms should be more resistant to the system than are domestic actors, and they should create competitive pressures that limit the extent to which captured local companies can serve political ends. The telecoms industry seems to bear this out: the companies that are foreign-owned are pressuring the remaining state-held providers and offer better service.

These two things should be mutually reinforcing. States integrating into Europe are more attractive markets for investment; candidates attracting foreign capital are better able to integrate into the single European market. Yet we must recognize that we may not yet know how to cure this disease fully.

Let me close, then, with the big irony of Balkan corruption. We all, inside and outside the region, see there is a problem. Countries like this won't be admitted into the European Union. There is a feeling that high-level corruption, which involves the rich getting richer, abuse of public trust and other offences and is thus morally more repulsive than regular corruption, must be met with stern measures. For Europe those inevitably mean strict conditionality and generally keeping candidates at arms' length until they have cleaned up their houses. Yet, and this is the irony, it may be that it is only the enlargement process itself, with a combination of unfamiliar regulation and foreign competition, that will bring effective change. In other words, the current European disposition may amount to a decision to keep the one effective therapy for the region's worst problem just out of reach.

Building accountable institutions

We in the civilian sector are very much looking forward to the opening of negotiations, particularly on Chapter 23. Do we think that priorities, set by the EU to Montenegro in its Opinion about Montenegro's application for accession to the EU from 2010, which are the conditions for opening of the negotiations which started a year ago, have really been met? No. Can anyone in this room say that Montenegro already has stable institutions capable of ensuring the rule of law, which includes respect for human rights and fight against organized crime and corruption? And that was after all, a precondition in that EU Opinion for opening negotiations.

Montenegro will join the EU, I hope, when we are able to establish a greater degree of democracy, rule of law, when we have measurable results showing that we are able to indiscriminately apply the law and that we are able to consistently suppress impunity. However, it is obvious that we will have to wait for all of it to happen, and the same is with the membership in the EU. As an NGO, we look forward to the opening of negotiations, just as we look forward to all measures which can help introduction of the rule of law as soon as possible.

But allow me, before I give a constructive suggestion, that we are hurt by the views coming from the EU, which present Montenegro as a country of good news where we have all excellent Action Plans and so on and so forth. Let me say that I too think that the Action Plan for Chapter 23 is extremely good. But what Mrs. Rajkovic said, that there were no substantial comments to the Plans, only speaks in favor of our thesis that what now finally needs to be done, could have been done, i.e. there was awareness that it needed to be done, 10 years ago. Because Montenegro is not a country without legal tradition, which has never before known the means to the rule of law.

I agree with Ms. Rajkovic, when she talks about corruption and says that in Montenegro there is a custom that people are a little inclined to be corrupt. Crime will always exist. There will always be people who will be willing to bribe or accept bribes. But among us, as in any serious country, you have to have those who will be ready to punish, those who are in that business. We must have a professional Police Force and State Prosecutors, whose successfulness will be assessed objectively and based on those assessments, they will keep their positions of responsibility or not.

So nobody forbade us all these years to have a responsible Chief State Prosecutor, a responsible Police, to have an accountable system which is able to enforce the rule of law, but only now we find ourselves in a situation, to, with the pressure from abroad, force ourselves to work on creating accountable institutions.

We should not expect that some hero will be selected as a State Prosecutor, that is probably currently the most thankless job that someone in Montenegro can take, provided that the person wants to put in a maximum effort, but I sincerely hope that this new system, which has certainly been provided by changes in the Constitution, will contribute to us at least getting somebody who is a bit more of an expert in this field and who will be more embarrassed than its predecessor, to close their eyes in front of the obvious and be ignorant about their responsibilities.

As for the other functions which are important for the de-politicization of the Judiciary. HRA is not in the least satisfied with the guarantees that have been introduced in the new laws about who should be the new eminent lawyers in the Judicial and Prosecutorial Council. Again, there is no provision that prevents a conflict of interest and we can experience again that the wife of the President is sitting in the Judicial Council and disciplining judges, or to find in these councils officials of the political parties. Unfortunately, this is the fault of all MPs - none of them

supported our proposals of amendments which could have prevented it. But still, I hope that new elections for these positions will present an opportunity to choose good quality lawyers and that we will, at least in the area of professional competence, move towards the desired accountable Judiciary, which would, in the coming years, secure the rule of law .

In the meantime, until stable institutions are created, I think the most constructive proposal for ensuring justice at some future time, would be to change the Criminal Code and drop the periods of limitation for murder , torture, corruption, organized crime ... Fortunately , there is no statute of limitations for the prosecution of war crimes. The EU too has noted that in Montenegro, there is impunity for these most horrible crimes. It would not be fair if one day, when the conditions for the consistent implementation of the law are in place, justice simply cannot be achieved because it is too late and it is obsolete. That has already proved to be a problem in many cases.

The obvious cases of drastic human rights violations remain unpunished, think only of beating detainees in Spuž and by the Police itself, and even though the EU requested an investigation and a court action, nothing was done. The abuse of users of the facility *Komanski most* was pointed directly by the European Committee for the Prevention of Torture, but nobody was prosecuted... Specifically, on the subject of combating corruption and organized crime, even when we are 'served' the case from abroad, such as, for example, the corruption in the case of Telecom, the Chief State Prosecutor never came out to say 'people I'm sorry that I was not the one to identify this case and start the prosecution', or somebody to explain why to this day, we are waiting for the prosecution? Why does it happen that those who are in the region and beyond known as heads of organized crime flee Montenegro and nobody is held responsible for that? Obviously we don't have responsible institutions or adequate mechanisms to make them accountable and we will have to acquire them, via the Action Plans, in the years to come. Therefore, it would only be fair to drop the statutes of limitation until such responsible institutions are in place.

In the forthcoming period a serious monitoring of implementation of the Action Plans will be crucially important in terms of quality of implementation and the respect for implementation deadlines. This country does not have too many experts and it is therefore necessary that the Working Groups bring in all those with sufficient expertise who are willing to help. The published work of the HRA, particularly in relation to combating impunity for violations of human rights, improvements of the Judicial and Prosecutorial Councils and performance evaluations for judges and prosecutors, as well as our human resources, are still available in order to achieve, as soon as possible, rule of rule of law in Montenegro and its accession to the European Union .

TGP NOTE: After the discussion at the roundtable, answering questions from the Antena M journalist, the Ministry of Justice pointed out that the recent amendments to the Criminal Code in August 2013, already excluded statute of limitation for offenses related to organized crime and corruption. HRA commends this move and continues to be committed to achieving the same for the acts of murder and torture.

Where there is no political will, there is no way out

‘It is only right that Monitor should organize this conference’, said **Zarko Rakčević**, Coordinator of *Forum 2010*. Let’s look back a quarter of a century: where was *Monitor* was 23 years ago, and where was this same, unchanged Government. Perhaps, a part of the answer to that question will show who truly supports European values, who is truly against corruption and organized crime and anyone who wants to present its different Janusian face to the European Union. Perhaps through a short retrospective it will all become clearer to some. Maybe to some, that will sound like we are prisoners of the past, or maybe not, maybe someone will learn lessons ...

In the early 90s the official position of the Montenegrin authorities, which are still the same people in power - unchanged, was that Montenegro is not at war and that 10,000 Montenegrin reservists were taking over the borders of Greater Serbia. They were ‘trashing’ Dubrovnik, as they used to say, they were destroying Dubrovnik and bringing shame to the generations to come.

Monitor was in the early 90s clearly and totally against the war, against the ethnic cleansing, against the war crimes, against the deportations of refugees... Where were the Montenegrin authorities, we have already said. The EU was clear then in assessing their acts as aggression and they imposed sanctions. That was 23 years ago.

In these 23 years the target and the witch-hunter remained the same. The same target was independent journalism embodied in *Monitor*, later joined by *Vijesti* and *Dan*. The same witch-hunters, the same unchanged rulers who draw a ‘target’ sign on all those who support European values and want new political winds to blow in our small and beautiful Montenegro ... Once the bombs were thrown at the Monitor. History repeats itself today. Journalists, who write critically and accurately, are beaten up. Journalists are killed. And that has not changed.

Since 2010, the official position of the Montenegrin Government was that there is no organized crime in Montenegro. EU reports were very clear about organized crime. *Monitor*, *Vijesti* and *Dan* have written about, what I truly believe to be organized crime and plunder the resources of Montenegro, which is the privatization of KAP, Zeljezara, Telekom ... The EU said that in 2013 they will start with Chapter 23. The EU is right and it has made a right diagnosis that one of the biggest systemic problems in Montenegro is the octopus of corruption and crime.

What is, on the other hand, the official position of the ‘one and the same’, unchanged elite? The official position is that Montenegro is in the grip of economic crisis caused by global disturbances, that Montenegro is a regional leader and the only bright star, whose shine and aura are being denied by the ‘media mafia’. The target is that very same *Monitor* - as it was in the 90s and also *Vijesti* and *Dan*. After a quarter of a century we have the same target, the same witch-hunters and the same systemic corruption.

Help is needed get the institutions to start functioning. Personally, I expect a stalemate and prolonging the election of State Prosecutor, because I do not believe that the opposition will support the election of some people, whose main goal is to cover up organized crime, corruption and war crimes. I think that Montenegro, in the coming months, will not move forward. We need the presence of the EU, because all steps forward in the past 23 years, were in fact concessions made at the request of the international community.

Rakčević reminded that, 'over the past 23 years there has not been a single case of a conviction of anybody from the high echelons, when it comes to corruption and organized crime'.

Milan Popovic, Law Faculty Professor, said that he would talk on the subject of the roundtable, in the light of the results of the local elections in three municipalities – Cetinje, Mojkovac and Petnjica.

- Their main characteristics are the growth and strengthening of the ruling party and of the political corruption which was exposed by the '*Recording Affair*'. We are talking here, not about corruption at high level, but at the highest level. That is because the President of the ruling Democratic Party of Socialists (DPS), is the supreme commander of that corruption, said Popovic adding a 'technical note': - I will speak as a Law School Graduate with a Master's Degree and Doctor of Legal Sciences and a Professor of the Faculty of Law, after teaching 35-36 generations of students. When I, therefore, use the terms *criminal organization* and *mafia* for the ruling party and the term *fascism* for what Montenegro is threatened with, I use these terms as a sociologist and as a criminal lawyer. If there are certain misunderstandings, I would be happy to make more detailed arguments on another occasion.

The first conclusion that I draw from the results of the local elections in connection with the theme of our conference, is that a responsible and principled opposition must not take part in any elections in Montenegro in these times of extreme lack of conditions. When I say 'extreme lack of conditions', as a criminal lawyer, I will specify that this is not just about the misuse of state resources for political purposes. Those who read the Montenegrin Criminal Code know that we are talking about several most serious crimes against the Constitutional System. Therefore, the claim that 'Recording Affair' offered the evidence that the top of the DPS, headed by the current Prime Minister, is the most dangerous criminal organization under Article 401 of the Criminal Code, unfortunately, is not at all an expression of emotions and exaggeration of some Law Professor.

These days, we are suffocated by an unbearable amount of arrogance and absurd statements, such as those that *there is no evidence*. Even a student who has passed the Criminal Law knows that the '*Recording Affair*' offered un-denied, self-incriminating confessions. We are talking therefore, about the evidence of the greatest probative force. The facts are even notorious. The deafening silence of the Justice System and, it is not even worth mentioning, the derogatory language, and daily threatening aggressiveness coming from the Prime Minister and the ruling party - yesterday we had the opportunity to hear them in Parliament .

In these circumstances a responsible opposition can no longer participate in the elections as this helps the criminal organization to complete what it does. I want to point out the consequences. So, if the democratic forces in Montenegro with the help from friends in the EU, fail to stop the growing aggression and violence, then we will slip into fascism. I believe that the people in this room know that parts of the EU are also sliding into that direction, the danger is more widespread. But, in Montenegro, the danger is even greater because of the relative lack of democratic tradition.

The meaning of a *citizen* is mythologized, especially in the NGO world. It is understood as an ideal citizen who wants only positive change and alternatives. The hypothesis that the breadth and depth of corruption in the society went so far that I do not even know what percentage of people have been caught into this defective practice, is not being considered.

'Only current political pathology in Montenegro can explain why - although a positive alternative is within reach - there is such a level of paralysis among the key actors about that alternative. The principled opposition, the SDP and the European Commission, are the three actors, who could, within only a month or two, achieve a vote of no confidence to the hyper - corrupt Government of Milo Djukanovic, then form a new parliamentary majority and choose an interim technocratic Government with the mandate to prepare, within a year or two, early parliamentary elections. Criminal prosecutions of the top of the ruling party and its possible banning on the grounds of it being the most dangerous criminal organization, for which there is no lack of evidence, are certainly prerequisites for holding early parliamentary elections', concluded Popovic.

- To consolidate the rule of law in Montenegro, the judicial reform and the fight against corruption, certainly including at the high-level, is of crucial importance, agrees **Milena Joksimovic**, Secretary of the Youth Club Positive Montenegro. 'Accession negotiations are far more complex and certainly will look for concrete results and not just promises. Judicial reform implies the constitution of a Judicial System based on the principles of independence, impartiality, accountability and efficiency.

Judicial reform is at the beginning. We have adopted Action Plans for Chapters 23 and 24, but it is indicative that in the Action Plan for Chapter 23 is planned as late as in January 2016. Especially since Montenegro has a set of anti-corruption laws, but they are not being implemented, or are being implemented in a selective manner. The fundamental question is whether the state wants to implement the EU heritage. And the main reason why there is no fight against high-level corruption is the lack of political will.

The deeper cause of corruption is institutional and systemic in nature. We have institutions which are politicized and inefficient. It is essential that institutions are freed from political influence. No fight against corruption is possible without preventive measures, educational measures and repressive measures. Of these, I would particularly emphasize the importance of confiscation of property acquired illegally.

In addition to the reform of the Judiciary, the public administration reform, it is also certainly necessary', concluded Joksimovic.

Budo Minic, a former lawyer and a candidate for the Constitutional Court Judge added 'why are our remedies not effective in an effort to make the Justice System more efficient? The reason is because our remedies are mere packaging and its content does not match the real prescription. We have a legal system which is being dictated to us from outside, and often, it is not sufficiently adapted to the actual needs of Montenegrin society ...'

I'll say a few sentences about the Prosecutorial Council, not the whole of it, but the part which was selected from the ranks of the 'eminent lawyers', with the intention to fake a body that will pretend to be fulfilling its role as prescribed by law. Those who have recently seen a report on the nomination of candidates for the Council, could see that an *eminent lawyer*, who is a 'gravedigger' of the Montenegrin Prosecutor's Office is now to propose a Chief Prosecutor who will reconstruct, from the ruins, the new Prosecution Service and change the methods and the ways of working, which the *eminent lawyer* actively promoted while he was at the head of the Prosecution.

This is a mockery of Europe and of the efforts of experts to make the Prosecution Service more efficient. The person who was the head of that Prosecutor's Office, while the 'trainloads of major problems' were passing by, was unanimously nominated for re-election. I say unanimously, while stating that people who sit there are not from within the Prosecutor's Office.

The same is the case with the Judicial Council. They even have there the Office for the Fight against Corruption in the Judiciary. More than two years ago I filed criminal charges with the title *Corruption in the Very Top of the Judiciary*. For two years they did not dare to reject it or to do something with it. That is because the *Charges* contained clear evidence about how low the Judiciary has sunk.

'No one in the Government, in the Ministries and in the NGO sector has any illusions that the real, genuine change, the implementation of European values and a faster journey to EU membership is possible, with the current lack of political will', **Zeljko Ivanovic**, Director of the daily newspaper *Vijesti* said in his presentation, while claiming that 'The political will is not there at the very top of Government'.

- If I say that the main obstacle and the main problem in Montenegro is one man, someone will immediately say - you're personal and not constructive. There's nothing personal in it. That one man is actually not a problem - the problem is the system that is the one man, his team, his party, his Government has developed over these 23 years. In that system, we know who the winners are and who the losers are.

Winners are corruption, nepotism, lawlessness. And the losers are justice and law, European values, the civil sector. We can talk about great agendas and documents, the great willingness of some segments of the society to achieve change, but until the most powerful center in the country, whose political will defines every change in

the society and implementation of all the standards, is changed, it's simply impossible, even cynical to talk about any kind of progresses.

In his speech, The Vice President of Positive Montenegro **Mladen Bojanic** first addressed Mrs. Svetlana Rajkovic. 'You said that you and the Ministry of Justice are calling on all people who have expertise to assist in the integration process. Here, I openly say that I am very willing to assist in the area where expertise is required. I'll do it free of charge. The only condition is that I am invited and given access to the documentation so that I can assist in the detection of high-level corruption. I primarily think of the capital market, the banking market and of course, the prevention of money laundering. I'll be happy to answer every call to help with expert work.'

Bojanic then added: 'Every day our ears are being pounded by the claims that direct foreign investment is something that will bring prosperity to all citizens. I claim that it will not. It is a fallacy which is being peddled intentionally. In a country with high levels of corruption, like Montenegro, direct foreign investment will only promote corruption and cause further stratification of society.'

In the period between 2006 and 2010, the value of direct foreign investment was between 4.5 and 4.7 billion euros. I now ask you to look around. Have all the citizens benefited or is it only the elite which took advantage of this? It does not matter which country the investment comes from, if the state is unable to practice the full rule of law and, it seems to me, that there is still no political will to do so. As the evidence for these claims is the fact that we have suspicions that the three largest investments in Montenegro were corrupt: Privatization of Telekom and KAP and partial privatization and recapitalization of EPCG.'

Slaven Radunović, Chairman of Chairman - Committee on European Integration also joined the discussion. 'The problem is not in the public administration and civil servants - they generally do a great job. They even, by making a big effort and by managing to deal with all the demands which are put before them in the integration process, in a way, provide a cover for a lack of political will which exists. The only problem for the integration is a lack of political will. There were laws to this day, which were more or less good, but if they were respected we would not be in the situation we are in. All these adjustments to EU standards require one condition to be met and that is, that we are willing to change Montenegro. The majority of citizens want the change. I would say 99 percent, but we have a problem with that one percent...'

'I would like to thank all the independent media for the role they played in the fight against corruption at all levels', said **Ana Selic**, of NGO CEMI. 'Most of the thanks go for all the valuable research which would have led to immeasurable results in the progress of European integration, had it been followed up by an independent Judiciary and Prosecution. But there is something which is called the responsibility of the media. All media should be aware of professional ethics and integrity which is required for doing their job. Three trends are visible: the Public Service whose reporting is partial, incomplete and biased. Independent media, which since lately - I do not know for what reasons - have been trying to have as sensationalist headlines as possible. And we have the *spin offs* which use a vulgar, inflammatory language, for which, I don't know, why they are not put on trial.'

Mehmet Bardhi, from Democratic Union, pointed to the question 'are there forces in Montenegro, primarily political, willing to make some changes? From my perspective, I see that there aren't. Lot of individuals who were active before, have now gone quiet. Instead of praise for what they have done before and for what they stood for, they received quite the opposite'. Bardhi expressed the view that the rule of law and the fight against corruption, has to include the questions of minority and human rights. I say this because Montenegro is a multi-national state. Now at the highest bodies, at the top of the state, there are representatives of only one nation. How am I to be represented? It is hardly unlikely that they will know what pains me and what bothers me.'

- Can we say that Montenegro is a stable country, if anybody holding a different opinion is immediately accused of being against Montenegro, and not against a particular policy, asked Bardhi the end of his speech.

'In journalism there are several strict ethical norms', highlighted Editor in Chief of *Monitor* **Esad Kocan**. 'One of them, which is very important, is that we are responsible not only for what you write, but also, for what we don't

write about.

We were asked to keep quiet about Dubrovnik and Srebrenica, to be silent on the crime of deportations and on the Montenegrin Government's role in all of this, we are asked to shut up about the privatization of Zeljezara, the KAP and the EPCG and not to notice available data about the corrupt sale of *Telekom*. We did not agree to do that and that's why we are consistently treated as the enemies of the state. This is the most prevalent experience of *Monitor*.

Only in the media which are not under Government control, could all these years, citizens and the courageous whistleblowers speak out about the misuses of power. It is extraordinary, that in most cases the most courageous citizens were Police officers. **Slobodan Pejovic** testified about the deportations – and we know how he was treated. **Goran Stankovic** talked about the beatings at police premises and he is now going through Golgotha. **Slavoljub Šćekić** was sent to the mafia, for what looked like an execution. The official version about the suicide of **Ernad Kalač**, the Police Chief in Rozaje, offends common sense. We have a testimony by **Suad Muratbasic**, how he was forced to steal the election for DPS. There are Police officers who spoke out on organized crime activities at the border crossings with Kosovo and who then had to flee the country. I might miss somebody in this account...

We the media, call on citizens to speak out in the name of public interest, the EU officials call them to report corruption and crime within the Government. And when they spill the beans they are at the receiving end of the full force of the regime. All we have to do to avoid being treated as enemies is to betray the people. When we refused to do that, an organized witch-hunt started which climaxed in the recent *Beba's conference*. That is where *Monitor*, *Vijesti* and *Dan*, were declared to be '*media mafia*'. Let them do their job. I can only say - we will never betray those brave people, nor shall we keep silent about the issues which give Montenegrin journalism a reason to exist.'

Systematic changes are needed

1. To combat corruption, it is necessary to change the system;
2. The most important is the political will and cooperation between the Government, the Parliament, the Judiciary, the media and civil society;
3. It is necessary to build an independent Judiciary, to strengthen anti-corruption bodies and an administrative capacity to combat corruption at all levels;
4. It is necessary to strengthen the controlling role of Parliament;
5. There is a need to harmonize our legal framework with that of the EU;
6. There can be no achievements in the fight against corruption and organized crime without achieving convictions for corruption at the highest levels;
7. Professional and investigative media are essential in the fight against corruption. The media must strengthen self-regulation and gain free access to information;
8. Monitoring results in the fight against the corruption, coming both from the EU and the Member States, must be transparent;
9. It is necessary to organize training of Police, Judiciary, representatives of the Parliament, the media and other stakeholders;

The rot needs to be hidden

Representatives of the civil sector with whom we spoke believe that after the long anticipated constitutional changes, the Government did not include many of the important recommendations of the Venice Commission in the proposed set of laws regulating the system of justice on which Parliament will vote on Monday.

The European Commission presented to the Council of Europe the *Report on the Fulfillment of Conditions for Opening Negotiations between Montenegro and the EU in Chapters 23 and 24*, covering the Judiciary and the fight against corruption and organized crime.

Commission spokesman **Peter Stano** said that the Enlargement Working Group is currently discussing the issues and when an agreement is reached, Montenegro will be invited to send their negotiating position for both Chapters.

Previously, Podgorica's daily *Dan* published that the European Union postponed the deadline for making a decision on opening negotiations with Montenegro on the most difficult Chapters 23 and 24, which will now take place after the adoption of the EC Report and not on 30 September. Foreign Minister **Igor Luksic** said that there is no delay and that the work will be completed by the end of the year.

While the Montenegrin public is trying to figure out if they are witnessing a slowdown and caution on the part of Brussels because of the level of achievement in these areas and numerous unsolved affairs, the process of the adoption of an important set of laws regulating Justice, is being finalized in an almost total silence.

The Government submitted to Parliament four draft laws concerning the Constitutional Court and they will be on the Parliament Agenda of Monday 23 September. The draft laws were preceded by Constitutional Amendments in a part of the Judiciary, which, according to many, made the new laws possible and which will, at least on paper, free the Montenegrin Judiciary of political influence. Brussels has in the past often warned Montenegro that their politicized and inefficient Judiciary is one of the main obstacles for the country's further progress towards the EU membership.

It was expected that Amendments to the Constitution would ensure better laws. The Government proudly announced that: 'By developing proposals to amend the set of laws concerning the Judiciary, the Government has proved its maximum responsibility and commitment to the implementation of the Constitutional Amendments and the fulfillment of its obligations in the negotiation process for Montenegro's European Union membership'.

Tea Gorjanc Prelević: 'We are dissatisfied with the proposed laws. We will send to Parliament amendments to all four of them. Although there is some progress, many important things have not been done. For instance, nowhere does it say that those who are not judges in the Judicial Council may not be members or even presidents of the parties. It only says that they have to be lawyers'.

Representatives of the civil sector with whom we spoke, however, are not satisfied. They believe that the Government did not include many of the important recommendations by the Venice Commission.

'We are dissatisfied with the proposed laws. We will send to Parliament Amendments to all four of them. Although there is some progress, many important things have not been done. For instance, nowhere does it say that those who are not judges in the Judicial Council may not be members or even presidents of the parties. It only says that they have to be eminent lawyers', says **Tea Gorjanc Prelević** to *Monitor*

'In order to prevent the possibility that eminent lawyers, maybe have previous convictions and that they have improper family or political relationships i.e. that they are in a situation of conflict of interest, which would create an impression amongst the members of the public which would put in doubt the independence and impartiality that this body needs to enjoy, we proposed Amendments to the Draft,' says the Director of the AHR. That NGO proposed that the new law contains a provision that would proscribe that such members of the Council cannot either be persons previously convicted, or spouses, relatives, or functionaries of political parties.

She said that what is particularly difficult to comprehend is that there was no opportunity for public debate on such important proposed laws.

Human Rights Action has previously repeatedly criticized the legislation regulating the composition of the Judicial Council and the independence of its members.

The Judicial Council is directly responsible for the appointment, promotion, disciplining and dismissal of judges.

Under the new arrangements, it is the Judicial Council and not, as until now, the Parliament, which elects the President of the Supreme Court.

Only recently, the previous President of the Court of Appeal **Svetlana Vujanovic**, the wife of the President of Montenegro **Filip Vujanovic**, was selected to be a Supreme Court judge. She said that she had no ambition to run for the position of a President of that Court. If she changes her mind and if the current proposals are adopted, it would not be impossible that the members of the DPS decide on her eventual candidature. The fact that her husband is Head of State would particularly endear her to them.

The text which will be considered by the MPs on Monday, according to Gorjanc Prelević, will not contain provisions to prevent conflicts of interest.

One of the Amendments relating to the selection of the Judicial Council members came from CEMI. They seek abolition of the requirement that the candidates for the Judicial Council judge's positions must have five years of previous paid work experience.

'As many as 40 percent of judges did not meet this requirement and for that reason they could not apply and therefore the constitutional principle of equal representation of judges could not be fulfilled', explained **Vlado Dedović** from this NGO.

Regarding the draft law on the Constitutional Court, that document, according to the AHR contains provisions that are *extremely worrying*.

'These provisions are allowing the Constitutional Court to set the deadline for Parliament, or other state authority, for amending any unconstitutional or unlawful regulations, and if this is done, impose a mandatory suspension while not making the decision public. Such an arrangement would undermine legal certainty and would prevent the retroactive rectification of issues arising from unconstitutional or unlawful regulations', explains the AHR.

If these provisions are implemented the citizens who have been wronged as a result of application of an unconstitutional or unlawful regulation, might

If the provisions of the proposed law on the Constitutional Court get implemented, the citizens harmed by the application of an unconstitutional or unlawful regulation, would not be able to be freed from prison, receive compensation, nor prevent the enforcement of decisions imposed on them under such an unconstitutional regulation.

not be released from prison and awarded compensation. Also they would not be able to change or prevent the execution of decisions imposed on them, under such unconstitutional regulations.

The positive change is, AHR believes, that it is, at long last, possible for the judges of the Constitutional Court to declare their dissenting opinion in Constitutional Court decision making. That is what AHR proposed in 2008.

That the proposed Amendments to the Law on the Constitutional Court has serious flaws, is also the position of the Parliamentary Committee on Political System, Judiciary and Administration. This body has not approved the Draft law and neither did they approve the proposed Law on Public Prosecution.

The set of laws that are being amended includes the Law on Public Prosecution. During the Constitutional Amendment process the selection of the Chief State Prosecutor generated the most discussion. This post would, instead by simple majority, now be filled by a 2/3 majority in Parliament with the 'unblocking' mechanism being put in place.

From the SNP and Pozitivna Crna Gora, Amendments are announced relating to the nomination process for the members of the Prosecutorial Council. From the DF we hear that they will not be sending Amendment proposals.

'The Prosecution is the weakest link in the Justice System, especially when one bears in mind organized crime and corruption. The Public Prosecution is under the greatest influence by the DPS – SDP', according to **Vladislav Bojovic** from DF. He says that such arrangements make it possible for the ruling parties to maintain indefinitely temporary solution in the Public Prosecution Service.

It is clear that those in power want to maintain the Judiciary in its current state for as long as possible. Only in this way can numerous scandals remain unsolved. It is deemed that for the sake of 'Europe' the *rot* needs to be hidden.

Milena PEROVIĆ - KORAC

Justice chained by the godfathers

We should not be surprised if tomorrow we hear that the Government is using taxpayers money to pay back Vektra's loans, which this company secured by using privatized assets in Pljevlja and Herceg Novi as collaterals

Again, the predictions by Dragan Brkovic and his colleagues from *Vektra Montenegro* (undergoing bankruptcy procedures), its sister companies (most of them undergoing bankruptcy procedures), the Montenegrin Government and its Justice system, did not materialize.

So, the company *Vektra Jakic* from Pljevlja did not in mid-September manage to free itself from the bankruptcy procedures, into which it entered in May last year, due to the outstanding debt claimed by the Hungarian *OTP Bank*. **Milic Popovic**, one of Brkovic's closest associates, repeatedly and wrongly stated that the abolition of bankruptcy will prove that the *OTP Bank* could not initiate the bankruptcy procedures, since it was not Jakic's creditor.

'We have proved that what this achieved was to stop an investment which would have been enormously beneficial for the whole of Montenegro', argued Popovic. The desired outcome has not materialized, at least for now.

Instead, *Vektra Jakic* filed a lawsuit in the Commercial Court in Bijelo Polje against the *OTP Bank* seeking compensation of about 80 million. Hungarians have, in the opinion of the *Vektra* owners and lawyers, damaged this company from Pljevlja by filing with the court a request for bankruptcy proceedings!? They do not think it matters that the court accepted their request.

'This is the first case in Montenegro where the debtor is suing a creditor because they want to collect the money they loaned them by filing a request for bankruptcy proceedings', commented **Filip Jovović**, lawyer of the *OTP Bank* to the daily *Vijesti*. **Jovović** reiterated that his clients – the *OTP Bank* and its partner in Montenegro, *Crnogoska komercijalna banka* (CKB) – are much more interested in the fate of their appeal to the Appeal Court. And to remind ourselves, the appeal is asking for the annulment of the decision Commercial Court in Bijelo Polje made last spring, that because *OTP Bank's* lawyer was 10 minutes late (of which the Court was notified), the lawsuit against *Vektra Jakic* was dismissed, which made it impossible for the *OTP Bank* to collect documented payments worth 77 million euros.

Brkovic and Ivanovic announced continued cooperation between Djukanovic's Government and Djukanovic's best man. Anyone who is familiar with their business CVs, can be sure of one thing. Whatever this cooperation is about, it will cost us dearly

The story about a dozen companies from Brković's system *Vektra Jakic* located from Pljevlja to Herceg Novi, undergoing bankruptcy procedures, including the local *HTP Boka*, because of unpaid debts to *OTP Bank* of more than 100 million euros, is almost two years old. In short: Brkovic managed, with the wholehearted support from the Judiciary (and it is suspected the Executive too), to postpone indefinitely the court proceedings, which should under current regulations last little more than a month. The judges postponed hearings for his and others' illnesses, the lawyers cancelled authorizations last minute, there was no end of *expert opinions* and experts and expert witnesses *contradicted* each other's opinions and calculations.

As early as May last year, it seemed that the Hungarians finally lost patience. 'The executives of the OTP Bank were considering international arbitration against the Government of Montenegro', domestic and foreign media were reporting at the time. And then the arbitration story got forgotten. Government of **Igor Lukšić** and **Milo Đukanović** primarily dealt with the *OTP Bank* on solving the issues arising from the Kombinatski aluminijski kombinat, Podgorica's (Aluminum Factory Podgorica - KAP) debt to this bank. But it is true to say that Vektra never completely fell off the agenda.

That is why the Bank's spokespeople from Budapest (with the oil company MOL, OTP is one of the two largest Hungarian companies) restarted the arbitration process. They repeatedly used Radio TV *Pljevlja* to address the local audiences pointing out at the 'various attempts by the *Vektra Group*' to avoid the payment of their debts. All this, they say, is 'the product of an orchestrated campaign by people associated with the *Vektra Group*, who want to avoid their obligations at all costs'. The statements' authors listed some of the alleged illegalities which they encountered, pointing a finger at the Montenegrin Judiciary and Legal System. 'The Legal System has not passed the test, given that such abuses were not prevented and there seems to be no will to put an end to this'. What follows is a very serious warning: 'If this situation persists and OTP continues to be illegally harassed and discriminated against, such a state of affairs would undermine the reputation of Montenegro as an attractive investment destination and it certainly can lead to the escalation of the issues and the need to seek fair satisfaction at an international level, through the arbitration process'.

So we face, after the *Zeljezara* (Steel Factory) and the *Aluminijski kombinat*, another arbitration that could result in a financial assault on the State budget. Legal experts and economic analysts have warned as early as last year that the way in which the bankruptcy proceedings have been carried out in the case of Brković's companies, can result in his debts having to be repaid by the Montenegrin taxpayers.

After all, it would not be the first time that Dragan Brkovic and his *Vektra* make a profit at the expense of taxpayers. On the contrary, many of this company's successes are a direct result of doing business with the State

Let's start with the *KAP*. Shortly after the introduction by the Security Council of economic sanctions on the then Federal Republic of Yugoslavia, the management of *KAP* and the Montenegrin Government decided that *KAP* should carry out majority of its import- export operations using *Vektra* as a mediator. At the time *Vektra* was a couple of years old company with a few employees, registered to import and sell French *Peugeot* cars. There is a rumor that a few of these cars, allegedly it was the model 107, have been given as a gift to the people in the right places, at the top of the ruling DPS, who offered a helping hand in awarding *Vektra* the *KAP* mediation job.

Then the Government bought the product of Brković's construction debut, disregarding the fact that the development was of extremely poor quality and done without the required building permits (washbowls and buckets for collecting rainwater were for years a distinctive 'eco' decor of the Ministry of Tourism building). Prices per square meter were, therefore, 'international' measuring up to the property prices in the center of Rome or London. And Đukanovic and Brkovic made sure that *KAP* settled the bill for this.

Shortly thereafter *Vektra* was included in the list of 'foreign creditor companies,' which were given priority for debt repayment by the *KAP*. What this meant was that *Vektra* became one of the three companies *Aluminijski kombinat* would repay at all costs. Similarly, any possibility to verify the legitimacy of these payment claims, was prevented.

Brkovic acquired, on the wings of this and alike 'successes', former state owned transport companies *Rumijatrans* and *Moracatrans*, integrating them and renaming them as Horizon Logistics. Not long after, the new company was liquidated and the workers made unemployed. .

For a while Dragan Brkovic turned to buying real estate. In spite of everything, he could not sit still.

It would not be the first time that Dragan Brkovic and his *Vektra* make a profit at the expense of taxpayers. On the contrary, many of this company's successes are a direct result of doing business with the state

Brkovic acquired the *Vektra Jakic* through bankruptcy process in 2006 for 1,6 million. He conditioned the purchase upon the request that the Government, through the Forestry Directorate, gives him a long term concession to 'all forests areas under Forest Administration Pljevlja'. Although the consortium of already existing wood processors from the north of Montenegro, the *PV Company*, offered 20 million euros more for the same concession than Brkovic, but the 30 year long concession was won by the favorite businessman of the Montenegrin Government. Today *Vektra Jakic* owes the money for the concession, but that does not prevent its owners from asking for an extension to the 2041. How much would *Jakic* owe then, we can only assume.

All in all, *Vektra Montenegro* at the end of 2007, also bought Government stocks in *HTP Boka* worth 22 million euros, with the obligation to invest 64 million euros. In the meantime, both *HTP Boka*, and its majority owner *Vektra Montenegro* ended up in bankruptcy. The state or, more precisely, the Government of Milo Djukanovic, in spite of all of that, is not considering termination of the contract. Partly because the purchase contract was such, that even if it was to be broken because of something *Vektra* did or didn't do, it would receive the compensation from the State. To a large extent, this is because Dragan Brkovic, like the majority of tycoons at the DPS court, followed a business model which enabled them to profit without working. It was enough to use as a collateral cheaply bought State property.

For example, a year after he bought for 1.6 million *Vektra Jakic* company, Brkovic used it as a security for a loan of 73,6 million euros, which the *OTP Bank* gave to his umbrella company, *Vektra Montenegro*. And now the credit payments have been demanded of *Jakic* by both the *OTP* and *Vektra*. Using similar method, Dragan Brkovic used as securities with domestic banks a large chunk of the real estate on the Montenegrin coast he purchased. He showed complete disregard for the people who made a living in the companies which fell into his hands.

In Pljevlja people joked: *Jakic* employees receive their wages regularly - every November. The reality is not so cheerful. At the time when the Commercial Court declared (the new) bankruptcy in *Vektra Jakic*, Brkovic owed 12 salaries to the workers of this company. A year earlier he owed them 'only' nine. The same in 2009. Trade union activists who organized a strike were sacked. The situation is similar in Herceg Novi. This summer the strikes were on there because of seven unpaid monthly wages, six months of travel expenses, two additional holiday payments, unpaid taxes and contributions for three years. Those facts do not prevent Brkovic to boast that he is a '*mother of the working class*'.

On the day when claims by Dragan Brkovic and Milic Popovic that *Vektra Jakic* will emerge recovered from bankruptcy, failed to materialize, the troubled company in Pljevlja was visited by the Minister of Agriculture **Petar Ivanovic**. Journalists could not find out if the Government gave Brkovic *under the table* 500,000 euros which he is using these days to pay the workers off and gain 'advantage' with the creditors.

Instead Brkovic and Ivanovic posed for pictures in the empty (unfinished) factory halls while announcing continued cooperation between Djukanovic's Government and Djukanovic's best man. Anyone who is familiar with their business CVs, can be sure of one thing. Whatever this cooperation is about, it will cost us dearly.

There are hints of this. So let's not be surprised if tomorrow we hear that the Government is going to use taxpayers' money to pay back the loans *Vektra* took on by using privatized assets in Pljevlja and Herceg Novi as collateral.

Zoran RADULOVIĆ

Under the watchful eye of Brussels

After many undeserved compliments by the EU technocrats, the Montenegrin Government expected that Brussels would turn a blind eye to the 'Recording Affair'. But they were wrong. We are used to the practice that votes are traded for money, for employment or are extracted under duress, which will be an obstacle for joining the EU.

The Montenegrin Government misjudged the reaction of Brussels. Podgorica officials hoped that the European Commissioners would somehow forget about the 'Recording Affair' after the Montenegrin Parliament voted in this summer the Amendments to the Constitution related to the Judiciary, which the EU pushed hard for. Their expectation that Brussels would turn a blind eye to dodgy practices before and during the elections grew, after it was stated in the latest Progress Report that 'Montenegro took a leading role in promoting regional cooperation, particularly through the Western Balkan Six initiative'.

However, the Commissioner for Enlargement **Štefan Füle** sent a clear message to the Government in Podgorica on Wednesday by saying 'We expect both legal and political reaction to the 'Recording Affair'. It is not ours to say what needs to be done or to comment on specific court judgments.

'It is time for reforms, it is time for results', he tweeted on the Report on Montenegro. The same message was conveyed to the Montenegrin Prime Minister Milo **Djukanovic** by the Head of EU Delegation in Podgorica **Mitja Drobnic**, which indicates that the pressure on the Government in Podgorica will grow by the day. The increase in pressure is sure sign of a state getting closer to joining the Union. The further proof for this is the Brussels decision to open negotiations with Montenegro on Chapters 23 and 24 later this year, which will reduce the maneuvering space for avoidance of reforms in key areas of state administration and the rule of law.

A whole six months passed without the Montenegrin authorities even starting to investigate those responsible for the 'Recording Affair', which is clearly shown that the DPS and its leadership operate as an organised criminal association which violates the Constitution.

They paid little attention to suggestions and recommendations, which were, in the meantime, given by friendly EU Parliamentarians led by **Jelko Kacin**. The message from the German Ambassador in Montenegro, Pius Fischer, said that 'listening to the 'Recording' I have heard a way of thinking, which is inconceivable for a country that aspires to the rule of law', but this was also ignored.

It is indeed inconceivable for the Europeans that in a country which is involved in accession negotiations, political criteria for joining the EU are so brutally trampled. They can under no circumstances accept that the standards which they worked hard to establish are systematically breached.

The fact that we are used to that and that it has become a common practice that votes are traded for money, for employment or are extracted under duress, cannot make us a part of Europe. This is because political corruption and misuse of public office distorts the electoral will and leads to discrimination against citizens. That is a violence that

every citizen has a direct experience of. Montenegrin leaders do not have the political will to make a change, because the system as it is, ensures their hold on power.

Brussels, especially Fule and his Assistant for Montenegro **Dirk Lange**, knows that only too well, and so does Djukanovic, who is becoming increasingly suspicious and anxious. In the clash of two wills, it is clear that only the strength of pressure from Brussels will determine the speed of removal of political obstacles by Montenegro in aiming to join the Union. Judging by the words of Fule, it is to be expected that: 'Montenegro needs to live by the letter and spirit of these Chapters. Starting from now and not only when the process is completed!'

Daliborka Uljarević, the Executive Director of the Centar za gradjansko obrazovanje (Center for Civic Education-CCE), is certain that in the forthcoming period we will witness the adequate legal resolution of the 'Recording Affair'. 'It transpires that the more DPS resists it, the more the European Commission becomes explicit in giving specific examples of the solution it expects e.g. saying in what areas and how it wants to see measurable results', she says.

A great connoisseur of the region **Kristof Bender**, Deputy Chairman of the *European Stability Initiative*, in one of his reports for the German Ministry of Foreign Affairs, as early as 2001, stated that in Montenegro 'rhetoric replaced reforms'. He believed that Brussels will, as evidence of commitment to strengthening the rule of law, seek to bring to justice the 'big fry'. That is a way to start returning confidence in the institutions.

Until that happens, Montenegro will be a classic proof of the claim by the former Czech President **Vaclav Havel** that 'bad governance creates bad societies'. To recover from a long, bad governance and to create a society which creates rather than manipulates, to release creative energy, we need a long, stable Government and above all the political will to choose that path.

However, a significant psychological effect has already been achieved, at least with regard to the misuse of state resources and politically motivated employment during the election campaign. All who dare to do something like that in the future now know that the long arm of justice might reach them. Detection technics have been improved too. Everything is being recorded. And now from Brussels too.

The crimes, again

The people in the highest echelons of the Montenegrin Government do not want to leave their warrior past behind. It is not only the independent media and critical academics who are reminding us of war crimes and those responsible for them. This topic is the focus of the latest Brussels Progress Report on Montenegro. It explicitly states that 'the Montenegrin courts and Prosecutor's Office, did not deal with accusations for the responsibility for giving orders, for complicity, aiding and abetting'.

The Montenegrin courts have not charged anybody so far, for the most serious crimes committed in Montenegro. According to numerous investigations carried out by Monitor and testimonies (by Slobodan Pejovic, Momir Bulatovic), the crime of deportations of refugees from Bosnia and Herzegovina, was ordered by the Montenegrin Government, whose Prime Minister was Milo Djukanovic. The court ruled that in that instance the war crime was not committed.

The courageous witness Slobodan Pejovic has been exposed to many years of violence of all kinds, just like all the media and all the intellectuals who pointed out that Montenegrin political leaders are responsible for issuing orders. Monitor has been and it remains, a favorite target of the regime.

Mustafa CANKA

Still at the beginning

Progress has been made, mainly in investigations related to lower crime structures. But the 'big shots' are rarely being brought to justice. And even when they are, such as in the big cases - from Zavala to the Saric brothers, the trials become sagas with many plots, the charges are withdrawn and retrials are ordered, the main 'actors', like in a fairy tale, end up being freed.

One of the most serious objections by the European Commission in its *Progress Report on Montenegro for 2013* is 'the problem of integration of organized crime groups in the public and private sectors'. That is the opinion of both the Government and the opposition.

'Although I was not surprised, I will admit that this assessment I see as one of the toughest, if not the toughest in this year's *Report*', said Minister of Justice **Dusko Markovic**.

The *Report*, in its Chapter 24, which is with Chapter 23, the most demanding for our country, states that organized crime in Montenegro is a serious problem. Head of Unit for Montenegro in the General Directorate for Enlargement of the European Commission, **Dirk Lange** said as early as beginning of October: 'The European Union is looking for Montenegro to show concrete results in the fight against corruption and organized crime.'

Dusko Markovic tried to clarify. 'Allow me to interpret the term *infiltration* in this assessment as a synonym for corruption links between criminals and individuals in State Institutions, which is nothing new in Montenegro or in Europe'. Markovic claims that Montenegro has already achieved successes in the fight against organized crime, but did not specify what they were.

While representatives of the ruling party are relativizing the EU complaint about the infiltration of organized crime in all spheres of society, the opposition and civil society sector believe that the problem is serious and that the improvements are almost nonexistent. They point out that Montenegro differs from Europe, not in that organized crime here is linked to *individuals in state institutions*, as the Minister of Justice was trying to put across, but that those links go to the very top of the Government.

Just a few days after the *Report* was published, leader of the *Pokret za promjenu* (Movement for Change - PzP), **Nebojsa Medojević**, announced that **Sava Grbović Džigi**, owner of one of the most profitable companies *Lottery of Montenegro*, with a turnover of many millions is 'a member of Budva clan'. Medojević said he obtained this information from National Security Agency, as a member of the Parliamentary Committee for Security.

For Grbović, *Lottery* is not enough, he would like to make decisions in Parliament.

Dusko Markovic: 'Although I was not surprised, I will admit that this assessment I see as one of the toughest, if not the toughest in this year's *Report*', commented the Deputy Prime Minister and Minister of Justice, on findings of the Progress Report, that Montenegro has a problem due to the integration of organized criminal groups in the public and private sector

Predrag Bulatovic: 'Darko Saric was a partner of the Montenegrin Government. Saric, Kalić and Keljendi created business empires in Montenegro using laundered money from the drug trade. That is why DPS will only pay lip service to the serious fight against organized crime.'

He sued the State because he was not allowed to attend the session of the Parliamentary Committee on Economics. In his complaint he said that he was a respectable citizen and member of the Ministry of Finance Working Group for drafting a Law on Games of Chance.

'I am ashamed that I am an MP in the country where all this is taking place. Organized crime exists in other countries but it 'lives' in the 'sewers, in the underground, while in our country it 'visits' Parliament', said the leader of the PzP after Grbović's complaint.

Grbović is the closest collaborator of **Branislav Mićunović** from Niksic, who is a friend of the Prime Minister and they share an Italian arrest warrant for cigarette smuggling. Mićunović and Grbovic are both involved in Dzek Pot company, and Micunovic's daughter **Andrea** sits on the management

board of the *Lottery of Montenegro*, which is a rare example of a privately run national lottery .

Micunovic's family is heavily financed by the brothers Djukanovic's *Prva banka*. His closest relatives are in business relationships through involvement in Budva Marina, with family of **Svetozar Marovic**, the Vice President of DPS. As *Monitor* has already written, one of the companies which were recently a partner of the Government in the privatization of the Duvanski kombinat (Tobacco Factory) is associated with Marovic and Mićunović. The state daily *Pobjeda*, while it was edited by the current Head of the Government Bureau, **Srdjan Kusovac**, was a mouthpiece for Grbović in insulting the opposition politicians and critical media and journalists.

Predrag Bulatovic, DF MP and member of the Parliamentary Committee for Security, believes that connections between the top of the Government and people from the criminal milieu are the reason why Montenegrin authorities have not uncovered large amounts of trafficked drugs, for which they are also criticized in the *Report*. He reminds that one of the major drug lords in the region **Darko Saric**, was a partner of the Montenegrin Government. 'There is sufficient evidence of that, which includes the *Listing Affair*, which has been covered up for exactly the reasons of not throwing light on connections between the Government and people from the criminal world, **Saric**, **Safet Kalić** and **Naser Keljendi**, who all created business empires in Montenegro with laundered drug money. That is the reason why DPS, pays lip service only, and will not wage a serious fight against organized crime', said Bulatovic.

'Montenegro is located on the main Balkan drug trafficking route. Additional efforts by the Police and the Customs Authorities, are required for the detection and confiscation of narcotics at the borders, including all ports. A significant amount of cannabis has been seized, but the quantities of seized heroin and cocaine continues to be very low', says the European Commission *Report*

According to documents issued by the Ministry of Foreign Affairs and European Integration ahead of the *Report*, Montenegrin Police in the first part of the 2013 seized in total 957,718 kilograms of drugs, of which only 15 kilograms of heroin and 6,86 kilograms of cocaine .

'The quantities seized are insignificant compared to the estimated transit, so the logical conclusion is that the tentacles of organized crime have gone deep into the public and private sectors and that in fact they have a full hold over it. The Police, Customs and Tax Authorities, senior Government officials, companies registered in the names of controversial businessmen and persons linked to them and the controversial businessmen themselves, must fund themselves under the scrutiny of the responsible Authorities', says **Daliborka Uljarević**, the Director of Centar za gradjansko obrazovanje (Center for Civic Education -CCE) .

Borislav Banovic, a member of the ruling SDP, also notes that the problem is serious: 'At the Committee for Security, we pointed out to the relevant services, that the levels of seizure of some drugs are significantly lower than in the neighboring countries and at their border crossings. This indicates there is a problem of professional, financial resources in our services... But there are also possible more serious problems – that of the will to act and the corruption. Now that we have the EU on our western border, we will be under the spotlight even more.'

Special emphasis is placed on the problem of protection of border crossings and ports. Some of our ports, however, have been handed over to the drug clans. For example the Port of Risan was, while **Filip Vujanović** was the Prime Minister, privatized and was in the hands of Dragan Dudic, Saric's partner, who was later killed. Vujanović, as the Prime Minister signed the *Decision on the Port of Risan Fulfilling the Conditions Required for the Open Public Maritime Transport*. He had also been emphasizing the public interest in Dudić's takeover of the Port.

The European Commission said in the *Report*, that the European Monitoring Centre for Drugs and Drug Addictions (EMCDDA) provided training to the Ministry of Health and Ministry of Internal Affairs, but that Montenegro is still not fully prepared for systematic cooperation with the EMCDDA, due to the lack of human and budgetary resources.

'It is a devastating fact that as early as 2005, the *Feasibility Study for Serbia and Montenegro* put special emphasis on the issue of the links between organized crime and the parts of the political and institutional system, just as does the current *Progress Report on Montenegro 2013*. By some estimates, at least 80 million euros was invested in the last six years to address this. To find the results we need a magnifying glass', says Uljarević.

Predrag Bulatovic notes that the conditions for progress towards Europe will mean concrete results in the fight against organized crime and corruption, 'Legal processing of the major cases and those involved, bringing final verdicts... Permanent expropriation of proceeds of crime and convictions for corruption of those who have been, or still are state officials, are important parameters for evaluation of progress or the lack of it. For now, there is no progress. And that too, is making Montenegro unique'.

The latest *Report* also emphasizes the cancellation of the first-instance verdicts for organized crime. 'That is a cause for serious concern', states the EC. In February this year the Court of Appeal revised the judgment of the High Court in Bijelo Polje in the case of **Dusko Saric** and **Jovica Loncar**. They were found not guilty of charges related to the creation of a criminal organization and drug trafficking. What they are still charged with is money laundering and the judicial process was returned to the beginning.

Loncar and Saric are accused of laundering money through two banks, the Hypo and brothers Djukanovic's Prva banka. *Monitor* was the first to write about the suspicious transactions by the Saric clan through *Hypo Alpe Adria Bank* and about Dusko Saric receiving a multi-million loan from the Prva banka at a time when the bank of brothers Djukanovic was under a lending ban. Saric is not the only one from the world of organized crime, who was generously helped by the Prva banka. Among those receiving loans was **Naser Keljmenđi**, recently arrested drug baron.

The documents of the Ministry of Foreign Affairs aiming to support the thesis that Montenegro is committed to the fight against organized crime are reminding us of the actions by the intelligence agencies to collect data on organized crime groups, mainly focusing on the Kalić, Saric and Keljmenđi clans.

Although Saric, Kalić and Keljmenđi attracted the interest of security agencies for years, they managed to run diverse businesses including those involving the State and Local Governments as partners, starting from Rozaje and Pljevalja and all the way to Ulcinj.

After his arrest, Dusko Saric and Loncar's property was seized. But, after several auctions, the proceeds of their empire in Montenegro are managed by **Radovan Štrbac**, Saric's lawyer and a person who is on arrest warrants in the region. The authorities also confiscated property of Safet Kalić, a drug baron who is on the run. But according to the media reports, Kalić's assets have been leased to his close friends. The *Progress Report* demands, in addition to the results in organized crime investigations, greater efficiency in the confiscation of assets of criminals.

Daliborka Uljarević: 'The pretense of a fight against corruption and organized crime is obvious in Montenegro, but much more dangerous is the tendency of equating critics of the regime with organized crime groups and surprisingly, the civilian sector offers a helping hand to the regime in perpetuating this. That is one feature of the 'octopus' approach at work to remove public opponents'

'Members of organized crime are often known as controversial businessmen and our decision makers publicly maintain friendly relations with them and the stronger their links the harder it will be to subject them to the prosecutorial and judicial process', says the Director of the CCE.

She recalls the example of Croatia and the successes of its Administration for the Prevention of Corruption and Organized Crime (USKOK), but also the underachievement in this field by Bulgaria and Romania.

'The pretense of a fight against corruption and organized crime is obvious in Montenegro, but much more dangerous is the tendency of equating critics of the regime with organized crime groups and surprisingly, the civilian sector offers a helping hand to the regime in perpetuating this. That is one feature of the 'octopus' approach at work to remove public opponents', she says.

Institut alternativa (Alternativa Institute) in its analysis related to Chapter 24, as early as last year pointed at the example of Croatia as a good one. Setting up of the Working Groups in Croatia to carry out negotiations began in 2005. The Working Group for Chapter 24 had 29 members. The Croats finalized Chapter 24 in October 2010. The positive assessment by the EU was mainly based on the effective prosecutions of high-profile cases of organized crime. The Police and Prosecution activities (especially USKOK) on identifying major criminal groups, arresting their leaders and confiscating of illegally acquired property, represent one of the foundations for progress made in Croatia in this area, says this NGO.

Montenegro is only now setting up a department modeled on the Croatian USKOK, and cooperation with EUROPOL has not yet been completed. Interior Minister **Raško Konjević** said in early October, that preparations are ongoing for the establishment of a Special Prosecutor's Office for Combating Organized Crime, modeled on the Croatian USKOK. He told Mr Lange that the Montenegrin Government is committed to achieving measurable results in the fight against corruption and organized crime.

'The European Commission has for many years been criticizing Montenegro for the links between top Government officials and organized crime groups. Montenegro still does not have either concrete or any other results to speak of, in the fight against organized crime. When one looks at what the Police and the Prosecution do, it is clear that there is no political will to enter into a serious fight', **Dejan Milovac** from Mreža za afirmaciju nevladinog sektora (Network for Affirmation of Non-Governmental Sector -MANS), said to *Monitor*.

Publicly, the Government highlights a number of successful cases and Police actions. The latest is the arrest of one of the leaders of the Bar of Clan, **Armin Osmanagić**, who has previously been associated with the murder of Dusko Jovanovic, the owner of the daily *Dan*. Osmanagić was arrested in the middle of this week on suspicion of the laundering through his company, of hundreds of thousands of euros, gained illegally from organized gambling 'I want to encourage the Police and Prosecutorial authorities to continue with actions like this one, because hard work pays off', said Minister Konjević. In many European reports and documents it is pointed out that Montenegro has a low rate of convictions for money laundering, which is another serious challenge.

Progress has been made, mainly in investigations related to lower crime structures. But the 'big shots' are rarely being brought to justice. And even when they are, such as in the big cases - from Zavala to the Saric brothers, the trials become sagas with many plots, the charges are withdrawn and retrials are ordered, the main 'actors', like in a fairy tale, end up being freed.

Milena PEROVIĆ - KORAC

And after Vesna, Vesna

'New' old employees in the Judicial Council and the Appeal Court, but also the job recruitments in progress, make it obvious that those in power, with the help of Vesna Medenica, are managing to find ways to continue to control the Judiciary by placing their own appointees even after her departure. The story about an independent and decentralized Judiciary is 'made up' for Europe.

The autumn was rich with new appointments to top Judiciary positions. The new President of the Appeal Court and four judges of the Judicial Council were selected.

By the end of the week, when this issue of *Monitor* is published, application deadline will close for the positions of the remaining four members of the Council 'from among eminent lawyers' and it is expected that the vacant post of the President of High Court will be filled soon after.

New personnel solutions, as well as individual candidates for important positions in the Judiciary, are confirming that the process is not going in the direction of de-politicization and decentralization, which was the requirement by the European Union, reiterated the latest European Commission Progress Report.

Positions in the Judicial Council were mostly given to 'safe' people close to the President of the Supreme Court **Vesna Medenica** and the ruling coalition. The same is the case with the Appeal Court and the candidates who are said to be likely to be considered for the High Court President post. Rules governing the election of the remaining members of the Judicial Council indicate that the authorities are determined to preserve the Judiciary, as their last line of defense.

First, while Medenica was in a rush to use up the last days in the job of the President of the Judicial Council, the President of the High Court **Mušika Dujović** was chosen to become a head of the Appeal Court. Media reported that Dujović was chosen upon the recommendation by Vesna Medenica, over the phone. *Monitor* wrote that in the overturn of the verdict in the murder of **Slavoljub Šćekić**, Medenica had his active support.

At the time when he was elected a President of the Appeal Court, Dujović's term as President of the High Court was still ongoing.

Although some reputable people are mentioned as potential candidates for the job of the new President of the High Court, it is possible that we will have to wait for this job to be advertised.

The media reported that it is likely that Judge **Hasnija Simonovic**, President of the Association of Judges, will become an Acting President of the High Court. She is also a wife of President of COK and an ex functionary of the SDP **Dusko Simonovic**. As *Monitor* has already written, Judge Simonovic was a witness at Medenica's wedding.

She herself has confirmed that she is a person Medenica trusts. 'We hope that Mrs Vesna Medenica, will continue to lead Montenegrin judges, because she deserved it by putting in a great effort and working very hard. She has the full support of all members of the Association', she said to the state daily *Pobjeda* at the end of October. At the

The new composition of the Judicial Council, *Monitor's* sources from the Judiciary say, demonstrates the fear of those in power from Chapters 23 and 24.

Azra Jasavić: 'There are plenty of indicators that the Government does not want to significantly de-politicize the Judiciary. This is because, after the expected reforms of the Prosecution Service and after the Constitutional changes, the Judiciary may be the last line of defense for those currently in power in trying to avoid the bringing of high officials of the ruling coalition to justice.

Day of Judiciary ceremony, where she spoke alongside Medenica and the Justice Minister **Dusko Markovic**, she said that in spite of being labelled as such, there are no corrupt judges in Montenegro. Problem solved.

Simonovic is publicly known for frequent public appearances when she argues that court judgments should not be commented on. She became widely known for her verdict in favor of **Stanko Subotic**. As the President of the High Court Council she reversed in 2002 the decision of the Magistrate Court which acquitted the late **Dusko Jovanovic**, Director of Dan daily and **Vladislav Asanin**, former Editor of that newspaper, following the libel lawsuit by Subotic for printing articles about tobacco smuggling published in the Croatian daily *Nacional*. Judge Simonovic overturned the acquittal and replaced it with the conviction of Ašanin.

It is unlikely that Dujović will be the only member of Medenica's staff in the Appeal Court. That Court was until recently headed by **Svetlana Vujanovic**, wife of **Filip Vujanovic**. The two of them have publicly crossed swords in the past. After Vujanovic moved on to the Supreme Court, Medenica is slowly taking over the Appeal Court.

The Judicial Council under Medenica advertised positions in the Appeal Court on 15 October and two of her close friends applied: **Milenka Zizic**

and a judge **Dragica Vukovic**.

Milenka Zizic brought a long term conviction in a murder case of Medenica's brother in law, having previously *excluded the public* from the proceedings. The lawyer of the accused **Srdjan Radovic** sought exemption of judge Zizic, on the basis of spotting them sitting together before the trial in *Masa* café in Podgorica.

Žižić is known for the acquittal in the case of deportation (translator's note: of refugees fleeing Bosnia and Herzegovina in 1990s). After taking this case on, on 7 October 2009 she was given an official apartment in Podgorica, upon proposal by Medenica, by the Government of **Milo Djukanovic**. Her son, **Milos Zizic** is employed in the Judicial Council. She was talked about as a serious candidate of the ruling coalition for the State Prosecutor position.

The Venice Commission criticized the decision by the President of Montenegro, **Filip Vujanovic** to issue a public call for the selection of two judges of the Constitutional Court of Montenegro. 'Although the reforms are welcome and they seem to be in line with international standards, the Venice Commission is aware that the composition of the Constitutional Court will change before the mandate of current judges expires and also, that all Prosecutors will be subject to re-election. The Venice Commission regrets that the holders of these positions were not allowed to complete their mandate.'

The selection of the members of the Judicial Council continued. In the last days of October four judges were selected for the Judicial Council. In accordance with recent changes in the law, judges were selected by the Conference of Judges. The 'new' old cadres say that Medenica, meaning the authorities, are determined to keep control of this key body making appointments and dismissals of the judges.

The Judges selected were **Milic Međedović**, **Radoje Orović**, **Nataša Božović** and Željka **Jovović**.

The new composition of the Judicial Council, *Monitor's* sources from the Judiciary say, demonstrates the fear of those in power from Chapters 23 and 24. Međedović is Djukanovic's soldier, according to our sources in the Judiciary. Also, he is linked to the deportation cases. He was one of the three-member Special Council working on that case which, on the 29 March 2011 acquitted former Police officers. Međedović was at that time a Regular Judge of Appeal Court. He was sent by Vesna Medenica to 'assist' the High Court in Podgorica, or more precisely to 'assist' Milenka Zizic.

Zeljko Jovovic is the 'offspring' of Medenica from the Magistrate Court, claim our sources. Even though this does

not apply to Nataša Božović, our sources remind us, that her selection to the High Court was an example of one of the successful agreements between the SNP and the DPS.

The fourth selected, Radoje Orović is talked about in public as a man with an interesting hobby. Orović reported to the Commission for Prevention of Conflict of Interests betting shop winnings of 30 thousand euros.

The EC Progress Report released in mid-October, remarks that the criteria for selection of judges to the Judicial Council are still unclear and consequently the judges are not selected on the basis of sufficiently clear criteria. 'The rationale behind the decisions has not been fully documented'.

The Judicial Council is important for those in power because, under the latest rules, it is the Council which selects the President of the Supreme Court. Who are the candidates for the remaining four members of the Council of Judges from among eminent lawyers, is not known, but experts warn that the way they will be selected does not inspire confidence.

Tea Gorjanc Prelević: 'Although the Constitution proscribes that Judicial Council members are elected from a pool of eminent lawyers by the Parliament in a plenary by 2/3 majority, it is required that the candidates are selected by simple majority by the responsible Parliamentary Committee and proposed to the plenary, which is an indirect way to sidestep the principle that the opposition should have a meaningful participation in decision-making'. It is made possible that candidates favored by the ruling coalition are 'served on a plate' to the parliamentary plenary because it has a simple majority in those committees. The Director of Human Rights Action points out that: Council members should be independent and impartial, because the law states that it is their job to protect judges from political and other undue influence. However, neither the Constitution nor the recently amended laws, provide that these four members are not in a situation of conflict of interest. It is not stipulated that they cannot be public officials or members of political parties, that they cannot be closely related to state officials of the Executive, Legislature or Judiciary'. Gorjanc-Prelević warns that a repeat of the situation is possible where a wife of the President of the State becomes the member of the Council and then a President of the Disciplinary Committee, as was the case with Svetlana Vujanovic.

AHR proposed that these things are changed, but that was not accepted. 'No political party wanted to support the amendment and we concluded that it was because all of them in fact want to place their own people in the Committees. I still hope that the failure is due to negligence and not of intent', says Tea Gorjanc Prelević.

According to **Azra Jasavić**, Pozitivna Crna Gora (Positive Montenegro) MP, her party filed an amendment requesting that the President of the Supreme Court is elected by Parliament by 2/3 vote in the first ballot and by 3/5 majority in the second. 'Rejection of that amendment by the governing coalition is one of the indicators that the Government does not want to significantly depoliticize the Judiciary. This, in fact, means that after the anticipated reform of the Prosecution Service, which we expect after the changes in the Constitution, the courts may be the last line of defense for this Government which will not take on high-ranking officials of the ruling coalition', she says.

The plan is clear: that nothing changes after Vesna.

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Milena PEROVIĆ – KORAĆ