

Report on the findings and recommendations of the Peer Review Mission on Fight against corruption and organised crime in Montenegro, 30 January 2017 – 03 February 2017

1. Introduction

The aim of the assistance was to provide an assessment of where Montenegro stands in terms of effectively investigating corruption and organised crime, with a special focus on financial investigation.

The operational capacity of law enforcement agencies, the relationship between the police and the prosecution, the pro-activeness of the investigative bodies, the evidence gathering techniques and the different steps in the financial investigation are the focal points in this assessment.

The method used to conduct the assessment of the investigation chain and the inter - agency co-operation was based on outcomes of meetings and interviews directed with relevant law enforcement agencies involved in the investigation, the prosecution and conviction of corruption and organised crime related cases, as well as on the analysis of background documentation.

2. Institutions

There can't be an efficient and successful fight against corruption and organised crime if there are no installed trustworthy, specialized institutions with a sufficient, experienced and well equipped staff that is integer and independent.

Since the implementation in February 2015 of the Law on the Special State Prosecutor's Office and the starting up of the Special Prosecutor's Office in July 2015, most relevant institutions in this fight against organised crime and high-level corruption in Montenegro are the Special State Prosecution Office itself, as well as the Special Police Department and the Special Division of the High Court.

2.1 Special State Prosecutor's Office

As mentioned, the Special State Prosecutor's Office is installed by the Law on the Special State Prosecutor's Office. It can be considered to be operative since October 2015.

Due to the short period of functioning only the first and partial results of this Prosecutor's Office, investigating organised crime and corruption cases, could be observed. So it has to be taken into consideration that the Special State Prosecution Office is still a very 'young' institution and some credits have to be given.

2.1.1. However, it has to be said that during different meetings **a positive assessment about this office and its functioning** was put forward. Through different meetings I noticed **the right 'mind-set'** and the willingness to fight organised crime and (high-level) corruption in a systematic way. This has to be seen as a very positive evolution, and an important step forward.

Within the Special State Prosecution Office there was **the awareness of the need to detect legal and organizational problems themselves**. The Chief Special State Prosecutor takes his responsibility in this matter, and his **openness and constructiveness** has to be seen as a key element in the efficient functioning of his office.

2.1.2. Nevertheless, apart from this very positive observation about the Special State Prosecution Office as an institution, some important remarks and even strong recommendations have to be made.

i) The aim of setting up a Special Prosecutor's Office was/is to install a specialized structure in combatting organised crime, corruption and money laundering. So it should be expected to be an office with the most experienced Prosecutors whom, without any exception, should be able to efficiently investigate complex cases in an international context.

According to article 13 of the Law on the Special State Prosecution the prescribed requirements for the selection of special prosecutors are: completed Law School, VII level of qualifications, passed judicial exam and at least 10 years of service as state prosecutor, judge or lawyer. Article 17 of the aforementioned law requires 'work experience to work in criminal cases'.

Taking into account these above mentioned requirements, no special investigative (international) experience in complex criminal cases is explicitly needed to be a candidate for a Special State Prosecutor. So according to this law it is possible to be selected on the basis of only experience in criminal cases as a lawyer or as a judge, without having any investigative experience at all.

Not requiring this investigative experience is not in line with the fact Special State Prosecutors are dealing with most complex, often international cases, which require a lot of experience and specialization.

An amendment to the Law on the Special State Prosecution is needed. Only appointing well experienced candidates with high skills should be possible. For example Prosecutors in duty for five years and with a relevant experience in investigating more complex crimes.

As regards candidates for Chief Special State Prosecutor, working experience of seven years in a Prosecution office and relevant experience in leading a Prosecution office or a division should be required.

ii) It was mentioned during the meetings that actually not all the appointed Special State Prosecutors have such experience. The Prosecutorial Council appointed for example two lawyers and two judges, who had not had relevant investigative skills in complex criminal cases at that time.

Nevertheless, all Special State Prosecutors are aware of their specific task and the expected competence of the prosecutorial staff in the Special State Prosecutor's Office. They are all highly educated, with extensive expertise and legal knowledge.

Even though experience in (international) criminal complex investigations has to be build up, some measures to increase experience in this kind of investigations might be needed. **Special topic related training, systematic case related consultations with the Chief Special Prosecutor and the Special Prosecutors with long term experience are advisable.**

iii) The appointment of less experienced Special State Prosecutors was decided by the Prosecutorial Council.

Although the above mentioned election was fully in line with the legal requirements, and although there might be some good explanation (for example not enough candidates), the appointment of four, seemingly not sufficiently experienced, candidates by the Prosecutorial Council can be questioned.

Being responsible for the good functioning of Prosecutorial offices, the Prosecutorial Council had to put forward at least itself in this issue (e.g. informing the Minister of Justice, make a (public) statement or not selecting not sufficiently experienced candidates). The appointment of people with a high level of professionalism and experience was/is a key issue, and not doing this or not being able to do so, is problematic for the good functioning of the Special Prosecutor's office.

An independent well organised and fully responsible Prosecutorial Council is responsible for the good functioning of prosecution offices, and is an important institution. **The Prosecutorial Council should be encouraged to be active in safeguarding the good functioning of Prosecutorial offices. If faced with some organizational problems, the Prosecutorial Council should explicitly inform Montenegrin authorities (or even public opinion) and confront them with their responsibilities. On the other hand some constructive solutions could be proposed in order to solve certain problems.**

The selection of the right people, i.e. those with the right skills, who can develop a policy and strategy on how to manage cases, in cooperation with the other stakeholders, who are able to set some targets and follow-up the final results that hopefully will be made, are vital for such an important institution, and the Prosecutorial Council just partly succeeded to do so.

iv) Another concern, when talking about the appointment of Prosecutors in the Special State Prosecution office, is that there are no possibilities to really appoint Prosecutors according to the needs of the office itself.

Taking into account the 'broad' jurisdiction of the State Prosecution Office with a lot of competences, it is advisable that the Chief Special State Prosecutor himself has the possibility to inform the Prosecutorial Council about the 'profile (= specialization) he is looking for in order to have a more broad specialization in his office.

In case he needs for example somebody who is more specialized in financial investigations he should be able to ask the Prosecutorial council to appoint a person with such a specialization.

It is recommended that the Chief State Prosecutor has the possibility to suggest, in a motivated manner, what kind of 'profile' he needs in his office. Profiles could be made for vacancies, and the regulation could be amended in such manner that the Prosecutorial Council can only nominate people within this profile.

v) Staffing the Special State Prosecution Office with the most experienced and specialized Prosecutors implies that the position of Special Prosecutor has to be attractive, in order to avoid a lack of interest.

It has to be noted that such a lack of interest, in being a candidate to be elected as a Special Prosecutor, was mentioned during the discussions.

Provisions, making the position of special prosecutors an attractive one for professionals, thus enabling the office to attract the best prosecutors and best experts, are needed. Legal provisions which ensure an additional motivation for the prosecutors working within the Special Prosecutor's Office are necessary, for example provisions that give a higher salary and/or ensure other benefits (higher pension or any other benefits).

Not appointing a chief of the State Police or sufficient Police officers, not creating a good atmosphere or/and circumstances to encourage Prosecutors, experts and/or staff working for the Special State Prosecutor's office, is not supporting the Special State Prosecutors in their work and has an impact on their efficiency and has to be avoided, since these are examples of very bad governance.

2.1.3. The Special State Prosecution office is staffed with a Chief Special Prosecutor, 11 Special prosecutors (1 seconded from Higher State Prosecutor's Office), 7 advisors/legal experts, 5 expert associates /economics experts and 3 experts for IT and digital evidence.

i) Concerning the workload, it was reported that in the year 2016 the Special State Prosecution Office had 1029 cases of which 443 are pending and 586 are finished. In 424 cases the perpetrator was known. 49 cases were transferred to other Public Prosecutors and 156 are pending. 60% of the cases were organised crime cases, especially related to drugs (but also human trafficking), 30% of the cases concerned High-Level corruption and 10% money laundering / terrorism / financial investigations.

Taking into account some of the difficulties the Special State Prosecution office had to deal with, the short period the office is operational, the complexity of several cases and the fact that more initiatives will be necessary, **the workload of the State Prosecutor's office can be seen as high**. Now it can be expected that the activity of the Prosecution office will increase and with the Special Police Department being operational, even an increase in the number of cases has to be expected.

A further follow up of the workload is needed, but already the actual situation requires two more Special Prosecutors on a permanent base.

Article 24 of the Law on the Special State Prosecution creates some possibilities to reassign State Prosecutors to the Special State Prosecution, but this is only a short term solution. It is only for a certain period of time in order for him/her to carry out, subject to the written consent of the state prosecutor being reassigned and this may only last up to two years or for a certain period of time, in order for him/her to work on a specific case.

At the moment one State Prosecutor is reassigned. Taking into account the actual workload, **it is recommended to start up the procedure to reassign two (even three) more State Prosecutors (preferably specialized in financial investigations).**

Having enough (flexible) capacity in relation to the number of cases that have to be handled is a key issue. This is something that is certainly experienced in Belgium, where, at present, the Federal Prosecutor's office is being flooded with terrorism cases.

ii) Staffing of civil servants and state employees, i.e. specialized experts and other administration employees is carried out pursuant to the Rulebook on Internal Organization and Systematization, which, following the approval of the Government, is adopted by the Chief Special Prosecutor.

The Rulebook contains internal organization and job systematization, number and type of organizational units, content of jobs carried out within internal organizational units and their systematization, total number of job posts and employees performing those jobs, requirements for performing specified jobs and description of job posts.

The first Rulebook of 05 October 2015 identified 34 job posts with 43 employees.

The experience showed that certain jobs have not been necessary for the optimal functioning of the Special State Prosecutor's Office, while other jobs required a higher number of employees. Therefore, a new Rulebook is being prepared, and its adoption is expected soon. This proposal of the Rulebook stipulates 23 job posts with 37 employees, thus the planned number of employees is reduced to 6 in relation to the previous Rulebook.

A new organization has been defined with the view of a more efficient work process, which has to be seen as a very good practice.

No problems were reported, except the issue of the lowering of the salary of the other administration employees in function.

It was reported and confirmed that due to the implementation of new regulation on salaries, these employees, once they are in function at the Special State Prosecutions office, lose half of their salary. Such a measure has a very negative effect on the willingness of those employees to be assigned to the Special Prosecution office and has a great impact on the effective functioning of the Prosecution office.

So it is strongly recommended to cancel this measure, at least to cancel its negative effect on the salary of the employees as aforementioned.

2.1.4. According to the Law on the Special State Prosecution's Office 4 divisions will carry out a specific task. The Division for Criminal Prosecution, the Division for Financial Investigations, the Division for Analytics and Research and the Division for International Cooperation.

Each division has its own responsibility, and it is good to have this organizational concept within the legislation.

However talking about a Prosecutor's office that has to deal especially with complex cases in a very broad jurisdiction (all kinds of organised crime, high-level corruption, money laundering, terrorism and war crimes) **it is advisable, especially for terrorism, money laundering and even high-level corruption, to encourage further specialization as much as possible** and encourage for example within a 'Division for Criminal Prosecution' further specialization. For example regarding trafficking of human beings, international drug trafficking, but also corruption or terrorism.

In this view it might be needed to amend/change article 48 and following of the Rulebook on Internal Operation of the State Prosecutor's Office which govern the assignment of cases.

2.1.5. During the mission I had the opportunity to visit the Special State Prosecutorial office and the offices where Prosecutors, experts and staff worked in.

There I could observe that Prosecutors were doing their work in a rather small room. In the same small room another three (in some rooms even four) persons had to work. There wasn't enough working space for everybody. Not everybody had his own desk, telephone or/and computer. ***This kind of workplace is unacceptable. It is impossible to work (in an efficient way) in this kind of office.***

It is urgently recommended to improve the housing as well as working conditions. Offices with at the most two persons, with enough space, a decent desk and a computer for every person are essential and required.

2.1.6. The jurisdiction of the Special Prosecutor's Office is very broad. Article 3 of the Law on Special Prosecutor's Office regulates this jurisdiction: organised crime, high-level corruption, money laundering, terrorism and war crimes.

Specialization and prioritizing is really essential in order to be efficient in fighting crimes related to the aforementioned crimes.

Especially in terms of corruption offences this broad jurisdiction was reported as problematic. A limitation of the jurisdiction regarding corruption was suggested.

Article 3 of the Law on the Special Prosecutor's Office provides the investigation of abuse of office, fraud in the conduct of an official duty, trading in influence, inciting to engage in trading in influence, passive bribery and active bribery by a public official under the jurisdiction of the Special Prosecutor's Office regardless of the sum which makes the object of the crime.

Out of 658 cases related to High-Level corruption, 97 cases (against 182 known persons) and 100 cases against unknown persons had to be considered as less important.

On my opinion **the concerns of the Chief Special Prosecutor on this issue are legitimate**, especially taking in account the limited resources of the Office. However centralizing all cases of corruption, even cases involving small amounts or people who do not hold important positions, can have its advantages.

Less important corruption cases can lead to higher-level corruption crimes. **Increasing the human resources, alternative sanctioning for less important cases, and setting priorities, can also bring solutions for the reported problem.**

2.2. Special Police Department

2.2.1. The establishment and functioning of the Special Police Department was discussed rather briefly during the meetings. The other expert (Maurizio Varanese) covers this issue in detail.

The Special Police Department is established and is operational. The chief of the Special Police Department was appointed in March 2016, and all members by October 2016.

Specialized Police officers have been selected and appointed. **Nine out of twenty Police officers are dealing with financial investigations and have relevant experience in the field, what has to be seen as very positive. The Chief of this Police unit also has relevant experience.** Access to databases and interconnections is established. A lack of material or financial resources was not reported.

These motivated and experienced police officers are able to build up complex (international) cases. First results can be observed.

However, the need for more capacity seems necessary. It has to be said that only 20 specialized police officers to tackle organised crime, money laundering, (high-level) corruption, terrorism and war crimes in often complex investigations can impossibly fulfil the needs.

Recruiting but also training more police officers will be an important issue and has to be considered as a priority.

The Montenegrin police have a rather limited amount of police officers with sufficient experience regarding investigations of organised crime and even less regarding financial crimes, so preparing more police officers to the more specialized work of the Special Police Department will be necessary in order to fill vacancies (if needed).

2.2.2 There is without any doubt a clear legal distinction between the competence of the Special Police Department and the Criminal police. So legally there is no overlapping in the functioning of both police divisions and in theory there should/can be a perfect functioning.

However in practice there will always be a risk of overlapping and even possible incidents/conflicts between both teams.

An individual case of the Criminal police can for example - looking from another perspective - fit in the activities of a criminal organization. In such a case several options to investigate this case will be possible. A very good cooperation between both divisions (Criminal Police – Special Department) to avoid certain conflicts/incidents will be needed. Not having a good cooperation can for example lead to NOT starting up the criminal investigation, or even a conflict between two separate investigations.

Although a very good cooperation between the Criminal Police and the Special Department was reported, this risk has to be taken in consideration seriously. It can even be illustrated with a concrete case that was mentioned during the meetings with the Special Prosecutor's office. In one of the mentioned cases the Special Prosecutor had to find out there was already an investigation with special investigating measures at the moment that he asked the investigating judge himself to approve certain special investigating measures.

In this particular case it was also mentioned that the Police hadn't informed the Prosecutor's offices immediately about their investigations.

So both in theory and in practice (in case there isn't an excellent cooperation) there is without any doubt a risk of certain incidents.

Taken into account this risk it is advisable to have an very good information exchange between the Criminal Police and the Special Police Department, with a permanent evaluation of this exchange, where all relevant information about the starting up of an investigation and the involvement of certain entities is immediately available to both police divisions, as well as to the competent Prosecutor. Any delay in informing the Prosecutor is inadmissible and should be reacted on (sanctions included) immediately.

The appointment of one police officer who is a kind of 'liaison' between both departments (Criminal Police – Special Police Department) could be suggested.

In any way it is strongly recommended to monitor the cooperation between Criminal Police and the Special Department and the incidents (like the one reported during a meeting with the Special Prosecution Office) should be reacted on.

2.3. High Court

2.3.1 Cases of the Special State Prosecution Office fall under the jurisdiction of the Special Division of the High Court (article 2 of the Law on the Special State Prosecutor's Office).

Five judges and the president of the Court are dealing with these cases. Two investigative judges were appointed.

The President of the High Court illustrated how he managed the Special Division of the High Court. Cases were assigned randomly, and until now no case was removed from a judge. It only occurred that a judge was blocked from the randomly assigning of cases, because of his workload.

A very good cooperation with the Prosecutors and the willingness to be constructive with respect for the law were underlined. Indictments were said to be of good quality.

All this has to be seen as very positive, and can be used as a role model for other courts. Specialization and a more harmonized jurisdiction within the Special Division of the High Court is installed.

2.3.2 Cases were said to be monitored and adequate statistics were said to be available and reported every 6 months. Concrete comments and suggestions on possible improvement of legislation or procedure issues were said to be made in a kind of group of Montenegrin practitioners, where the president of the Court was a member of.

Handling cases within a reasonable timeframe was a priority. No problems of capacity were mentioned. The cases that were sent by the Special State Prosecution Office were said to be handled within the frame of the law.

Especially the monitoring of the cases to be handled by the courts and the willingness to detect problems and trying to solve them, should be encouraged in all courts. Follow up of caseload has to be taken care of, because it can be expected that the number of cases increases.

In order to improve the quality of the decisions, **further specialization is needed.** The Special Division of the high court has to deal with a wide range of complex cases.

Trainings should really focus on the on-the-job training. It is still necessary to adopt measures for all the judges to have specialized knowledge in order to hear and issue decisions in connection with the complex cases under the jurisdiction of the Special Prosecutor's Office.

2.3.3. **Clearly motivated court decisions are certainly necessary and need to be encouraged.** Reading a judgement should make it very clear why certain decisions are taken. **Publication on a website has to be seen as a good practice.**

2.4. Centre for Training in Judiciary and State Prosecution

2.4.1 The Centre for Training in Judiciary and State Prosecution also reported about their activities related to organised crime and financial investigation.

In 2015 and 2016 they delivered 9 trainings on financial investigations in which 153 participants participated, 68 from Prosecution and 58 from Judiciary. In the same period there were 40 trainings related to different criminal matters, with 597 participants (338 from Prosecution and 235 from Judiciary).

2.4.2 Special Prosecutors and state employees of the Special State Prosecutor's office participated in a number of seminars and conferences both in Montenegro and abroad, where they could acquire useful knowledge:

- 12 seminars/conferences/ related to the fight against corruption and organised crime
- 3 seminars/conferences related to prosecution of war crimes
- 1 seminar/conference/ dedicated to the investigations in money laundering cases
- 3 seminars/conferences/ dedicated to the fight against human trafficking
- 2 seminars/conferences/ on financial investigations

The Special Prosecution Office mentioned also several international study visits:

- Study visit to the Prosecutor's Office in Macedonia
- Study visit to the Prosecutor's Office in Slovenia
- Study visit to the Prosecutor's Office in Berlin and their return visit to the Special State Prosecutor's Office
- Study visit to the judicial institutions in BiH
- Study visit to the United Kingdom

2.4.3 **It is quite clear the Centre for Training in Judiciary and State Prosecution is very active and trainings have a sufficient participation rate. Special Prosecutors received adequate trainings.**

However regarding trainings related to organised crime, terrorism high-level corruption, money-laundering and financial investigations some suggestions can be made.

- **Special intensive trainings on seizure and confiscation**, but also on the concept of financial investigation is suggested, preferably by someone who knows the Montenegrin system very well and can explain the different possibilities in the legal system and can provide some best practices. It might be suggested that one of the outcomes of these trainings should be the draft of some guidelines.
- Especially **case related training and assistance with very concrete cases, is suggested.**

Practical trainings lasting not less than 2/3 days could be organised by using a real closed complex case and inviting at least those who've worked with the case (*police officers, prosecutors and judges*) in order to have a true international interaction with international trainees holding practical experience in police, prosecutor and judging topics.

Working with experts/trainees that have a good sound knowledge of the Montenegrin legislative framework have to be encouraged

- **The development of a yearly special training programme for Prosecutors and Judges dealing (or going to deal) with organised crime, high-level corruption, money – laundering and financial investigations, or with specific topics related to this**, in order to build up knowledge, and exchange experiences, focusing on specific problems and possible solutions or good practices, is necessary. Such training is also a manner to enable new candidates, that want to apply for vacancies in the Special Prosecution Office, to prepare themselves.
- **Special training on the use of a ‘JIT’ (joint investigation team)**. During the meetings not using this instrument was observed, and additional training was requested. Maybe ‘EUROJUST’ and ‘TAIEX’ can contribute to such training.

3. **Instruments**

3.1. In general **legal legislation of Montenegro is adequate to tackle issues of organised crime, high-level corruption, money laundering and corruption**. Quite a lot of new ‘instruments’ were implemented during the previous years.

Some smaller changes might be needed, but at the moment maybe the most important recommendation on this issue of the legislation, is **to work with the legal instruments that exist at the moment, and improve knowledge about them**.

Changing key legislation each year forms an obstacle for an efficient functioning of the system.

An expert group existing of judges, prosecutors and experts might be a good instrument to follow up possible legal problems, and make suggestions for amendments (if needed).

3.2. The Law on Special State Prosecutor’s Office

Establishing the Special State Prosecution’s Office and the Special Police department, was obviously an important step forward in fighting organised crime, high-level corruption, money laundering, terrorism and war crimes.

There are some concerns about an independent functioning and a very broad jurisdiction, **but in general first positive results are clearly observed**.

The jurisdiction of the Special State Prosecutor's office is regulated in article 3 of the Law on Special Public Prosecutor's Office. According to this article 3, the Special State Prosecutor's Office has jurisdiction for the prosecution of criminal perpetrators for 1) organised crime, 2) high-level corruption, 3) money laundering, 4) terrorism and 5) war crimes.

During the discussions with the Special State Prosecutors this broad competence was reported and a more limited competence as regards high-level corruption was suggested, especially as to article 3 2) a, and the definition of the term 'public official' stipulated within this article.

In the mentioned article the law defines a public official as 'person who is elected, nominated or appointed to a state authority, state administrative authority, local self-government authority, local administration authority (hereinafter referred to as official authority), independent authority, regulatory authority, public institution, public enterprise or to any other business organisation or legal entity that exercises public powers or undertakes activities of public interest or is owned by the state, as well as a person whose election, nomination and appointment is subject to the consent of the official authority'.

Such a broad definition of the term 'public official' does not correspond to the term 'criminal offence of high-level corruption'.

Amendments to the Law should prescribe that a public official, within the meaning of this law shall be 'a person who is elected, nominated or appointed to a state authority, state administrative authority, local self-government authority or a local administration authority'.

By this narrowing of jurisdiction, the Special State Prosecutor's Office would be disburdened from prosecution of offences that actually do not fall under 'high-level corruption'.

3.3. Law on amendments to the Criminal code of Montenegro

A draft law to amend the criminal code was produced for further modernization and in order to bring this legislation in line with the so called 'standards' (Conventions of the Council of Europe and United Nations, legal standards of the European Court of Human Rights and other international documents).

During the meetings strong reservations were made on article 29 of this Law on amendments to the criminal code of Montenegro¹.

This amendment limits / violates the freedom of speech and has to be cancelled.

3.4 The Criminal procedure code

As regards the Criminal Procedure Code no specific problems were reported. Nevertheless a suggestion has to be made in respect of the appeal procedure.

In Montenegrin procedure, after the decision of a First Instance Court, there is the possibility to appeal this decision. The case will be sent back to the First Instance Court, if the appeal is upheld. So the same First Instance Court will deal again with the same case, and its decision is appealable again. In such a situation the Appeal Court will deal with the case again and will take a decision if needed.

It is advisable to change such a procedure, and limit the possibilities for appeal to just one time in order to shorten procedure. It is preferable the Appeal Court doesn't send back the case to first instance but deals with the case itself.

3.5. Law on Seizure and Confiscation

This separate Law on Seizure and Confiscation **creates different possibilities and conditions for a better result in the area of seizure and confiscation, than was the case in the previous period.**

'Financial investigation' as meant in this Law should be a central phase in the criminal assets recovery in which evidence is collected regarding property, legal income and costs of life of the accused and of the testator, as well as the evidence of the property of the legal successor or third party.

¹ Article 29

Article 396a shall be replaced by the following:

"(1) Anyone who publicly exposes to mockery any court or state prosecution office, shall be punished by a fine or a prison term of up to six months."

(2) Anyone who, before a final court ruling is rendered, violates the presumption of innocence by a public statement about the proceedings that is pending, or makes such public statement in the intention to violate independence of the court or to influence the state prosecutor in discharging his/her duties or to seriously hinder the criminal proceedings in any other way shall be punished by a fine or a prison term of up to one year."

(3) Anyone who, through the use of force or threat or in any other way, seriously hinders or prevents a state prosecutor, attorney-at-law, notary or bailiff from discharging his/her duty to render or to fail to render any decision or to take or fail to take certain actions shall be punished by a prison term of six months to five years.

(4) Anyone who in committing the offence referred to in para. 3 of this Article threatens to use arms or to inflict light body injury on the judge, state prosecutor, attorney-at-law, notary or bailiff, shall be punished by a prison term of one to eight years."

4. Investigation

During the different meetings investigations on organised crime (especially related to drugs and human trafficking), money laundering, (high-level) corruption, and the so called 'financial investigations', were discussed. Some of these investigations were described in detail, and further information on investigations and working methods was also provided.

The discussions and the additional provided information could make clear that the **Special State Prosecutor's Office (as well as the Special Police Department) achieved some promising results**. Knowing they are both still very 'young' organizations these results have to be seen as positive and a clear indication steps forward are taken. **The Montenegrin authorities (State Police and Special State Prosecutors) have without any doubt the capacities to deal with international crime cases**. The State Prosecutor's Office has to be encouraged to set further steps forward.

4.1. The Law on the Special State Prosecutor's Office provides under the jurisdiction of the Special Prosecutor's Office the simultaneous investigation of all cases of high-level corruption, organised crime, money laundering, terrorism and war crimes.

This is a broad jurisdiction (even if the competence regarding high-level corruption would be limited), which mainly includes complex (international) cases and leads to a very large workload. Such a workload influences (and will influence) without any doubt the efficiency of the Special State Prosecutor's offices.

Establishing priorities to the activity of the Special State Prosecutor's office, in accordance with the caseload and the available human resources, which will always be limited, is needed.

A policy with priorities should be written and clearly and preferably in line with the police strategies and priorities. For example it could be stated that priority will be given to money laundering cases with possibilities for seizure or confiscation, or to cases on high – level corruption of elected persons. In such a policy the need for a certain number of pro-active investigations or criteria for starting up financial investigations could also be stipulated.

In such a policy a Prosecutor can also focus on certain crime 'phenomena' and stipulate (in line with the Special Police Department) a plan of action to tackle it. As regards for example high-corruption in Budva, such an action plan in order to tackle the seemingly widespread corruption in this city is necessary.

4.2. The Special State Prosecutor's office reported to have started up 56 pro-active investigations in 2016. The Special Police Department also said to have good practices in this matter.

It is a good start, but as regards high-level crimes much more has to be and can be done. Like for example : a better use of available information in order to start up high – level cases. The fact that out of all the international cases presented, only one was started up by Montenegrin police itself, might be a clear illustration of a lack of pro-activeness.

There are without any doubt possibilities in Montenegro to **increase the number of pro-active investigations**, in particular with regard to real estate transactions or casinos, but also to drug trafficking or the starting up cases of the criminal organization itself.

4.3 An **appropriate approach in criminal investigations was reported by the Special State Prosecution and the Special Police Department**. This approach should be encouraged and intensified.

Article 276 of the Criminal Procedure Code is clear and stipulates that the Prosecutor is appointed to conduct the investigation, what has to be seen as essential. Policemen have to abide the orders of the Prosecutor in investigating.

Nevertheless, it was reported that Police officers were encouraged to be active and pushing things forward, reacting (but also anticipating) on received information. Such a more active and intense cooperation is very important in cases where high-level crimes are investigated.

The interviewed prosecutors with more experienced background report in a way that makes clear they know how to manage a criminal investigation in general. They know how to work together with the police, are conscious of their leading role within an investigation and are aware of the fact that a dynamic way to investigate cases, including constant interaction with the Police, is needed. This observation has to be seen as very positive.

A very good cooperation with the Special Police Department was reported and could also be observed during the meetings. It was said that regular meetings were organised, especially in complex cases.

Police officers reported that they frequently had contact with the Prosecutors, which was confirmed during the meetings with the Prosecutors.

One of the police officers mentioned that ‘a Prosecutor is the leader of an investigation but that it is the responsibility of a police-officer to suggest possible acts of investigation during this investigation’. Such an approach has to be seen as excellent and has to be encouraged, but can certainly also be improved (intensified) on a certain level, especially when dealing with complex cases.

This reported **working method is excellent and has to be further encouraged within the Special State Prosecution Office, but of course also in other Prosecution Offices.** These Prosecutor Offices also have an important (indirect) role in the fight against organised crime.

4.4 Once the police/prosecutor starts an investigation, it is important that the above mentioned cooperation between the police and the prosecutor will be continued. It was reported during the meetings that such a permanent collaboration was put in practice.

Of course an investigation also has to be qualitative and exhaustive, and not limited to merely some superficial investigation measures, but really going into the cases.

Some successful cases were mentioned during our visit. As well on the level of the police as on the Prosecutor's level. Those results have to be seen as very positive. In two of the cases more could be done and a very narrow approach was noticed.

4.4.1. A first but important step in a qualitative investigation is gathering information and analyse it efficiently.

Accessibility to all kind of data was mentioned. These are, of course, important and valuable tools. **Direct access to all kind of databases** is key issue. Loss of time, inaccurate information and leakage can be avoided when having such direct access. For example direct access to bank information will be very helpful.

Information was said to be partly gathered and analysed by the Prosecutor, while as regards Police related information, the Police gathers and takes care of further analysing.

Although no problems were reported, this is not the most efficient working method. Information should be gathered and analysed together by the same person or group of persons. Because bringing together information is an important police task and police officers should be trained in it.

In the long term it is recommended that all information should go to the Police and they take care of analysing it. If needed, the Prosecutor can send experts to the police for further assistance.

Those experts, the employees from another administration or the investigation teams (in quite complex cases and within the Special Prosecution Office), are a very good tool.

These tools were said to be used frequently and results were more than satisfying. A list of cases where special investigative teams were established² was provided.

4.4.2 Also special investigative measures, surveillance and undercover operations are important tools in investigating complex crimes.

During the meetings **these investigation tools were mentioned as being used frequently during investigations**. Infiltration was not explicitly mentioned. Nobody reported a lack of capacity for carrying out such investigations.

It is a positive aspect that the Criminal Procedure Code regulates the aforementioned special investigation techniques. This legislation is quite clear and sufficient.

The use of special investigation measures in organised crime should be further encouraged. It has to be clear that these are important investigative tools to fight organised crime.

Following remarks have to be made on these special investigation measures:

i) The Special State Prosecutors reported some problems executing these special investigative measures. In some cases the request was sent to the Police but due to limited capacities and establishing priorities it happened that it took some time before the request was executed.

In order to a better follow up some measures can be taken. At the moment these special measures are the responsibility of the criminal Police, so it might be **recommended to give the Special Police Department its own capacity to execute those investigation measures, in close cooperation with the Chief Special Prosecutor. If needed, he can decide which specific order will have priority.** In any case a Prosecutor has to be appointed to be the intermediate between the Prosecution office and the Police in order to prioritize execution. If needed together with a contact point from another Prosecution office.

ii) A lack of material and maintenance was reported. It is difficult to have a clear view on this. It is suggested to make **an inventory with the available equipment, and in which precise case failure of equipment was reported.**

² 1. Kti-S no.3/15 TQ PLAZA – investigation; 2. Ktr-S no.220/15 KAMP ZLATICA - preliminary investigation (inquiry); 3. Kti-S no.2/16 GRAHOVO – investigation; 4. Ktr-S no. 176/13 PRIMORKA MELGONIA - preliminary investigation (inquiry); 5. Kt-S no. 148/15 MAK-accusation; 6. Ktr-S no. 173/15 CARINE - preliminary investigation (inquiry); 7. Ktr-S no.218/15 AUSTRALIJA preliminary investigation (inquiry); 8. Kti-S no4/16 DUVANSKI – investigation; 9. SSMno.9/16; 10. Kti-S no. 5/16 ELEKTROPRIVREDA – investigation; 11. Kt-S no.263/16 -PAVICEVIC I TRBO – investigation;12. Kt-S br. 371/16 – SMALJA VLADIMIR – investigation; 13. Ktn-S br.7/16 - KOTORSKI PREDMET – investigation; 14. Ktr-S br.564/16 -DISAPPERANCE OF ARCHIVE MATERIAL IN BUDVA -preliminary investigation (inquiry); 15. Ktr-S br.5/17 KUPOVINA ALPINE – preliminary investigation (inquiry);16. Financial investigation in Budva case; 17. Kti-S br.17/16 - Financial investigation in the case of CKB NIKSIC

4.5. Investigation on mobile phone communication was also said to be often used as an investigation tool. It was mentioned during the meetings that in Montenegro it was only possible to obtain detailed information when you have a specific phone number. The example was given that in case of an incident on a certain place, it was not possible to ask the telephone company to provide all phone numbers that were active on that exact place at that moment.

Based on this received information, **initiative should be taken to improve regulations. This information (localization of phone numbers on a certain place on a defined moment) can be very useful when trying to identify the person(s) who committed a crime.**

4.6. No problems concerning duration of investigations were mentioned. Anyhow this has to be evaluated in a longer term.

In my opinion **it might be a good idea to use procedures to monitor the timeframes of investigative activities, to verify that instructions are effectively implemented by the police or experts, and to calculate the duration of the investigations and to report about the results.** All these are very useful tools in trying to detect and solve problems.

4.7. Financial Investigation

4.7.1 Terminology

Chapter III of the Law on Seizure and Confiscation of material benefit derived from criminal activity deals with a concept 'financial investigation'. Article 12 of the aforementioned law explains *'data and evidence of property, lawful income and costs of living of the holder, which the state prosecutor needs to submit a motion to confiscate material benefit shall be collected during the financial investigation'*.

Talking about the importance of a financial investigation in relation to organised crime and high-level corruption, means much more than this rather narrow concept of chapter III in the Law on Seizure and Confiscation. It is any investigation into a person's financial matters, for example into the finances of a business or a private limited company, and can determine where money comes from, how it is moved and how it is used. This not only has to do with asset recovery and confiscation of criminal property but also with money laundering and the abuse of economic and financial structures.

Financial investigation (in the broad sense) is not only an important tool to seize and confiscate illegal proceeds but also to dismantle international and organised crime networks. It is this kind of financial investigations that are important to tackle organised crime, high-level corruption, and terrorism financing.

Pro-active financial investigations (in the broad sense) have to be encouraged in Montenegro in order to detect and analyse criminal money and other assets trails. (Pro-active) money laundering investigations focusing also on the fact that a person is in possession of (criminal) property or has a too wealthy (criminal) lifestyle, are good instruments to do so.

There is a limited use of the possibilities afforded by financial investigations as the basis for detection of criminal offences and commencement of criminal investigations, particularly if we speak about a criminal offence involving money laundering.

4.7.2 Money laundering cases

Money laundering cases are already for a while a point of concern in Montenegro.

At the moment the **Special State Prosecutor's office reported three investigations on money-laundering. The Special Police Department is also starting up money laundering cases. So first steps of improvement could be noticed.** The provided information on these cases illustrate their complexity and the international context.

i) When talking about money laundering in general, it was reported by the Special State Prosecutors that they needed better quality notifications from the Montenegrin FIU. A lack of analysing and elements in the notifications were mentioned.

On this point it has to be underlined that it is not FIU's responsibility to find more evidence. Neither is it the FIU's task to do analysis in depth. FIU only has to report on suspicious transactions and provide all the information they have. It is the Special Police Department, together with the Prosecutor, that is responsible for further investigation, and trying to find further elements.

ii) More has to be done to increase the number of cases and especially to bring high-level cases to court.

Taking into account that money laundering is not only about cash or money-transactions, but about all forms of criminal property, much more should be done in starting up pro-active cases.

4.7.3. Financial investigation (in the context of the Law on Seizure and Confiscation)

Since its setting up, the Special Prosecutor's Office has 3 files involving a financial investigation (in the context of the Law on Seizure and Confiscation). Within these cases 81 persons are included, which illustrates the complexity of the cases.

There hasn't been any case with a final conviction decision which would allow a clear assessment of the efficiency of the Law on the Special State Prosecutor's Office.

According to the provided information these financial investigations were started up in relation with an already running criminal investigation.

They were always launched after commencement of criminal investigations. So until now, financial investigations (in the context of the Law on Seizure and Confiscation) are based exclusively on an already existing criminal investigation.

i) Taking in account the reported results, **financial investigations (in the context of the Law on Seizure and Confiscation) should be conducted more systematically.** There are a lot of opportunities to improve results on this.

Financial investigation should be part of the criminal investigation, and should be conducted parallel to criminal investigation which, in some criminal offences, should create an interaction in obtaining evidence.

ii) There seems to be a failure in treating financial investigations as a separate institute, but treating it exclusively as a procedure that is supplementary to criminal procedure as a mechanism for detecting criminal assets of suspects, limits the possibilities of financial investigations.

Financial investigations should be launched in accordance with the Law in a way that they are not always procedures that are supplementary to criminal investigations. It is necessary to exhaust possibilities of financial investigation. This is not only the detection and confiscation of criminal assets, but it is also important when it comes to detection of other criminal offences and of the very criminal offence which partly led to the pecuniary gain.

In that regard, financial investigations should be treated and used more as an instrument that comes before criminal investigation and which can, besides detection of criminal assets, also lead to the detection of concrete criminal offences.

iii) The number of financial investigations is expected to rise in the coming period keeping in mind that criminal offences that fall within the competence of the Special State Prosecutor`s Office inherently generate proceeds from crime.

This is particularly relevant to the criminal offence involving the forming of criminal organizations and to the criminal offence involving high-level corruption.

In order to successfully combat financial crimes, it will be important that within the prosecution offices, together with the Montenegrin State police and if needed other stakeholders, a working group is installed.

This **‘group of experts’ will set up a strategy/working process with ‘best practices’ and clear goals and will undertake a continuous evaluation of the implementation of this strategy** and the way goals are or are not reached and will point out the (practical and legal) problems and possible solutions on a permanent basis.

All this should be done systematically and a written report should be provided. **Establish detailed track records of seizure and confiscation of criminal assets is needed to have a better follow up.**

4.8. Interagency cooperation / cooperation with other authorities

4.8.1. According to article 28 of the Law on the Special State Prosecutor's Office the chief special prosecutor may delegate certain tasks to the civil servants employed in administrative authorities in charge with tax affairs, customs affairs, affairs involving prevention of money laundering and terrorist financing and inspection affairs.

They are recruited based on a list drawn up by the authorities where these investigators are employed, after the chief special prosecutor submits a request. Subsequently, the latter may conduct a recruitment interview. The law stipulates that the civil servants must have relevant experience and technical knowledge and the interview is not mandatory.

This is a very good tool in order to provide technical assistance (e.g. in tax matters) in very specific complex investigations. The success of this assistance will be determined by several factors. It all depends on the fact if enough good and qualified candidates will be on the list and if their assistance can occur in the best circumstances. **Further evaluation on the use of this tool within a relevant timeframe, is needed.** Until now in three cases technical assistance was delivered by civil servants who were on the pool list. No problems were reported.

4.8.2 Articles 37 and 39 of the Law on the Special State Prosecutor's Office provides the possibility of employing advisors, other civil servants and state employees, civil servants with special expert knowledge (economists, accounting-finance officers and members of other relevant professions with relevant work experience in these areas) who shall assist the special prosecutor in his/her work regarding the matters for which expert knowledge of these fields is required.

Same aforementioned remarks have to be made. Working in multi-professional teams should result in investigations of high quality. It all depends on the quality of those experts and the circumstances they have to work in. **Further evaluation on the use of this tool within a relevant timeframe, is needed. Difficulties have to be listed.**

4.8.3 Cooperation with other authorities is essential as regards receiving the necessary information.

A good cooperation with Commercial banks, Central Bank, Real Estate Administration, Tax Administration, State Property Administration and particularly with Administration for the Prevention of Money Laundering and Terrorist Financing, will lead to positive results as regards collecting relevant and useful information.

Some remarks can be made:

- an efficient, effective and swift exchange of information is key issue. Having **databases with direct access will speed up the availability of information**. Further progress has to be made.
- as regards bank information, the **regulation which obliges banks to provide information on bank accounts and bank transactions digitally should be implemented**.
- it was reported by Special Prosecutors that not being able to use information of national security as evidence was at a certain point a hindrance in starting up investigations. It would be useful to implement **legislation/measures on the cooperation with the intelligence service**. It should be obligatory for the intelligence agency to inform the Special Prosecutor's Office whenever, as a result of its specific activity, it detects information or data regarding offences of organised crime, corruption, money laundering or other crimes under the jurisdiction of the Special State Prosecutor's Office, so a further investigation can be started up.
- an expert of the Special State Prosecution reported that the real estate administration had caused great difficulties in information gathering by using temporary numbers in a certain period of time. A request for this numbers was said to be impossible, because those temporary numbers were not known officially. This illustrates the importance of detailed and correct registration of data. There should be awareness at the administrations that accuracy of their information is of great importance.

4.8.4 Cooperation with the Anti/money laundering administration and with financial institutions was discussed during the meetings.

The Law on the Special Prosecutor's Office contains explicit provisions regarding this cooperation, stipulating the obligation of providing the information requested by the Special State Prosecutor's Office, according to the law.

Financial Investigation Units send notifications to the Special Prosecutor's Office, when they are in the possession of indications regarding money laundering. They send reports about suspicious transactions which **have to be analysed by the Prosecutors of the Special Prosecutor's Office and the Special Police Department** in order to conclude if they are related to any criminal offence.

Since its set up, the Special State Prosecutor's Office has received notifications from the Financial Intelligence Unit (FIU) in which it had to conduct preliminary investigations.

The number of notifications sent to competent authorities varies from 81 (2013), 52 (2014) to 74 (2016). In 2016 the Special State Prosecutor's office received 31 notifications with suspicious transactions. Banks are reporting entities. Much more has to be done by casinos and especially by real estate agents.

Total number of suspicious transactions reports received from the reporting entities defined in the Law on PMLTF		
Reporting entity	2016	
	ML	TF
FINANCIAL INSTITUTIONS		
Banks	206	/
Insurance sector	1	/
Accountant	1	/
Montenegro transfers-WU	17	/
DNFBPs		
Casinos	/	/
Real estate agents	/	/
Lawyers	/	/
Notaries	1	/
STATE AUTHORITIES		
Customs	5	/
TOTAL number of STRs	231	/

Number of suspended transactions	
2016	7
Amount of suspended transactions	8,033,925.00 EUR

4.8.5. Although it was not explicitly discussed during the meetings it has to be said that a good cooperation with the other State Prosecutions is advisable or even recommended.

Having a point of contact for the Special State Prosecution in each State Prosecution office for certain forms of crime which often lead to 'organised crime' might improve such a coordination/co-operation. With these points of contact there can be a meeting where general or case related issues can be discussed on a regular base. The aim of those meetings can be exchange of good practices, exchange of information, agreements on how to handle cases and from which point to send them to the Special State Prosecutor. For example the Belgian Special State Prosecution (named Federal Prosecutor Office) has an important role in such meetings in how to fight itinerant offender groups (often in the context of criminal organization).

4.9. International cooperation

International cooperation is a critical point, also for the European Union Member States, and therefore international cooperation must be considered as a key element. Building up experience and learning how to tackle the problems of international cooperation is important.

International police cooperation, including relations with Europol, is well-established, and the Montenegrin Special Police Department seems to use Europol's strategic capacities and instruments.

It was reported that international cooperation was provided in quite a lot of cases. There were 140 cases of which 56 cases 'active (sent out)' and 20 passive (received) letters rogatory.

Following examples were given:

- Croatia requested a search of dwellings of a Montenegrin citizen
- Belgium and also Great Britain requested introducing secret surveillance measures of undercover agent
- The Netherlands requested the hearing of a witness and the provisional seizure of a yacht

The Special State Prosecutor's office opened a case of natural and legal entities related to persons against whom the investigation is being conducted in the Netherlands for the criminal offence of money laundering.

Also some successful investigations, especially related to drugs, were mentioned. This also has to be seen as a positive evolution.

But also here, more has to be done. The starting up of international cases by Montenegrin authorities, which lead to international crime investigations, isn't observed enough.

During the different meetings it was clear that an interesting instrument as regards international cooperation called the international Joint Investigative Team (so called JIT) was never used until then.

The **use of these JIT's should be encouraged.** It can be very useful especially in investigations of international high level crime.

4.10 Reported leaks in investigations were mentioned as problematic, especially in sensitive cases (organised crime or high-level corruption). In the given example information from a case was published in the media at a very damaging moment. It was said to be clear the media received information.

This could be from a member of the law-enforcement authorities or from other authorities that had information about the case. In some cases it was mentioned that even defendants or suspects leaked information.

Having leaks during the investigation is without any doubt an important hindrance in being successful in fighting organised crime or in building up investigations in depth.

No concrete information on specific cases was given. Taking in account the impact on the efficiency of an investigation, a further follow up or further initiatives to detect such leaks are necessary.

Because of the important consequences such leaks can have, **strict regulation about the secret character of an investigation and severe sanctions for violating this secret character can be helpful. The establishment of a workgroup on this issue, also dealing with the aspect of the role of the media, is advisable.**

The appointment of a Special Prosecutor responsible for the contacts with the press can be seen as a very important first step.

5. Results

The results achieved since 2016 by the Special State Prosecution Office and the Special Police Department in the field of organised crime, high - level corruption and financial investigations, were discussed during the meetings. Some additional information and statistics were provided.

First of all it is of course important to emphasize that the activities of both institutions were started up recently. Some serious 'start-up problems' had to be dealt with, and several new instruments and methods had to be put into practice. One or even two more years might be needed to come to some final conclusions about the effectiveness and results.

Nevertheless some first findings and observations can be made.

5.1. Both the Special Police Department and the Special State Prosecutor's office reported about relevant investigations on the field of organised crime related to international drug traffic, high-level corruption, and money laundering.

Money laundering cases were still under investigation at the moment and no final results could be reported.

As in the last years 'money laundering cases' and the results on this matter were problematic, it should be a priority to try to come further on prosecution and final decisions in these cases. Court decisions on money laundering are a rarity. For example in High Court in Podgorica no final conviction (1 case acquitted) on money laundering was reported until now (years 2015-2016).

First results are urgently needed. Not dealing with money laundering cases on a serious basis has to be seen as a key issue and concrete 'results' are needed.

Investigation of some cases of organised crime and high-level corruption could be brought to a further stage. As mentioned, positives steps forward could be observed. However relevant court decisions in complex high level corruption cases (?) aren't available (yet). Also on this matter, some further concrete results (in court) are urgent to be made.

Until now in the aforementioned cases mainly "plea bargaining agreements" were presented as the concrete result.

5.2. As said, in Montenegro until now high level criminal cases of the Special State Prosecutor are mainly closed by using 'plea bargaining'.

The Special Division of the High Court of Podgorica reported 34 decisions in the period 2015-2017 (20 plea bargaining cases on high-level corruption). At the moment there was no final court decision about the plea bargaining agreement of two cases. The Chief Special State Prosecutor mentioned, based on his own experience, the very good results on plea bargaining and believed it to be a useful instrument to conclude criminal cases in an efficient way.

5.2.1. Montenegrin Justice seems to favour 'Plea bargaining'. During the meetings the advantages of such agreements were emphasized. The Special State Prosecutor mentioned plea bargaining as a very useful tool and underlined the advantages when using this system. Also the president of the High Court mentioned certain advantages. The plea bargaining agreements seem to be, or at least seem to become, a general practice.

However both the Chief State Prosecutor and the President of the High Court underlined their cautious way of dealing with this instrument. The Chief Prosecutor mentioned the very transparent way of handling these cases within the Prosecutor's office. The president of the High Court referred to the effective control of the court on the provided evidence.

Using 'plea bargaining' as an instrument 'as such' is no point of concern. Legislation in Montenegro on plea bargaining (article 300 on following Criminal Procedure Code.) is quite clear and applied in a correct way.

The justifications that both the Chief Special State Prosecutor, and the President of the High Court gave, are certainly acceptable. The purpose to come to the conclusions of the agreements was said not to limit evidence gathering but to shorten procedure.

It is correct that these agreements allow Prosecutors (and also Courts) to focus on their time and resources, and it can reduce the number of trials or shorten procedures (before court). Especially in complex cases there might be very good reasons and it can be useful to conclude a criminal case using the instrument of plea bargaining.

It is also correct that [plea bargaining can be an efficient tool in fighting organised crime and thanks to the use of these agreements relevant results on recuperation of caused damages were realized.](#)

Nevertheless it has to be taken into account that this way of concluding criminal proceedings is often criticized (especially by the public opinion). A public trial, with the presentation of evidence, creates a more complete and transparent way of handling cases than a guilty plea and also offers benefits to accused persons / defendants.

The Special State Prosecution has to be aware that the aforementioned comments are an important issue and are relevant in order to build up trust and belief (of the public opinion) in the good and fair functioning of the Special State Prosecution's office.

So more relevant cases have to be dealt with in court. Moreover, some cases have to be dealt with in court, due to the common interest and the importance for the public opinion to see how Justice reacts efficiently on some issues that are extremely relevant to the Montenegrin population.

So article 300 of the Criminal Procedure Code that stipulates that *for all criminal offences which are prosecuted ex officio, except for criminal offences of terrorism and war crimes, the suspect, the accused person and the defence attorney may be made a proposal for the conclusion of an agreement on the admission of guilt, i.e. the suspect, the accused person and defence attorney may propose the conclusion of such an agreement to the State Prosecutor*, is too broad.

I recommend to amend article 300 Criminal Procedure Code in order to exclude more specific crimes from plea bargaining. High-level corruption might be for example one of them. These kind of cases are often very sensitive cases with an enormous impact which undermines the belief of the Montenegrin people in their institutions.

At least I recommend the Chief Special State Prosecutor and the Special State Prosecutors to agree on a concrete written policy on this, in order to come to a more limited use of plea bargaining and to exclude cases with a relevant impact on the society, as for example relevant cases of high-level corruption.

Especially in such cases the most possible transparency is needed and a Prosecutor should be reluctant to offer any deals.

5.2.2. The high court decides by a ruling whether an agreement on the admission of guilt should be rejected, dismissed or accepted.

Until now all agreements of the Special State Prosecution were accepted. Penalties were said to be in line with court decisions, and almost every agreement had an important financial impact. Montenegrin authorities recuperated surely a relevant amount of money.

However **a further accurate follow-up on the contents of plea bargaining agreements, especially in relation with to the complexity and seriousness of the crime and available court decisions, is advisable.** Such a follow-up might be an instrument to enable to contradict certain critics in the near future, but also to detect some anomalies and improve the use of the instrument.

5.2.3 Another point of concern, talking about plea bargaining, has to do with transparency, or even more lack of transparency.

In some cases, like for example high-level corruption or organised crime with an important public interest, information and transparency is needed. Such a transparency is needed in order to keep/restore/build up trust and belief of the Montenegrin citizens in Justice.

Although plea bargain might not be the appropriate instrument in such cases, if used, **the most possible transparency should be provided.**

Publication of the court decision (contents of the agreement) as well as the appointment of a Prosecutor that has to deal with communication and press contacts was reported.

i) The **appointment of a Prosecutor responsible for providing information to journalists has also to be seen as a good practice in this matter.** Informing Montenegrin citizens in a systematic way about the work and results, but also about the difficulties of the Prosecution Office, is key element in building up their belief in the institution.

Although it wasn't possible to focus on this issue within the scope of this peer review, it is advisable to encourage an open and clear communication with the press, and to inform the public as much as possible about decisions linked to cases that caused a larger public attention, as well as explain the underlying motivation that lead to these decisions.

ii) About the publication of the plea bargain agreements and decisions it was reported that only a few decisions linked to the cases that did not cause larger public attention and were not publicly monitored, are available on the website, but not those decisions related to corruption cases.

All court decisions on plea bargaining and all agreements, or at least a summary, should be published on the website. These plea bargaining cases are closed criminal cases and should be published.

But even in case there should be legal obstacles, a further review (even amendments of the law) is needed. **Transparency is really a key issue, especially in cases of public interest. If publication in cases with public interest is not possible, plea bargaining is not the appropriate way of handling such cases.**

5.3 Results on seizure and especially on confiscation are rather weak. Fighting organised crime, but also fighting corruption, has an important financial dimension and confiscating proceeds of crime **has to be a priority**.

The property administration statistics might illustrate this lack in result, when talking about confiscation.

MOVEABLE ASSETS					IMMOVEABLE ASSETS					PERISHABLE GOODS						
Sequestered assets			Confiscated assets		Sequestered assets			Confiscated assets		Sequestered assets		Confiscated assets				
Request	Court decision		Request	Court decision		Request	Court decision		Request	Court decision		Request	Decision			
SSP	High Court	1	BSP	Basic court	31	HSP	High Court	13	HSP	High Court	1			Border police	Administration for inspection affairs	1
BSP	High Court	5				BSP	High Court	4								
SSP	High Court	2				SSP	High Court	8								
Tourist inspection	Administration for inspection affairs		3													
SSP of Netherlands	High Court	1														
BSC	Basic Court	1														

SSP- Supreme State Prosecutor HSP- High State Prosecutor BSP- Basic State Prosecutor

Also during the different discussions this lack in results on assets confiscation was noticed. The President of the High Court in Podgorica reported no cases of assets confiscation in organised crime or corruption.

As regards seizure the results are nuanced and first steps from the Special State Prosecutor’s office can be seen. In 2016, the Special State Prosecutor’s office achieved his first results: 1 yacht, 2 passenger motor vehicles, residential dwellings, business premises, garage space, yard and land. These provisional measures were related to 6 cases (abuse of office committed in an organised manner – Criminal organization dealing with production, possession and release into circulation of narcotics).

In my opinion it is necessary to organize a specific follow-up of the results ‘on the field’ in this matter. Financial investigations but especially confiscation is a powerful weapon against organised crime and high-level corruption.

Of course it has to be taken in account that starting up the Special State Prosecuting office was a difficult challenge, and they are realizing their first results in seizing assets, still, it can't be neglected that much more could be done.

In order to realize better results, confiscation should be one of the key priorities. So **more financial investigations have to be launched**, not only by the Special State Prosecutors.

The available legal framework on seizure and confiscation should be sufficient to produce more results. So Prosecutors have to be encouraged to start up financial investigations, further problems should be detected, and if needed **Prosecutors/Judges need to be trained to use the instruments to achieve concrete results in confiscation.**

6. Conclusions

6.1 Montenegro obtained some results in the fight against organised crime, high-level corruption, terrorism and money laundering. Legislation is installed and implemented, and the Special Prosecution office, as well as the Special Police Department is in action.

Although some problems still have to be dealt with and there are some issues of concern, the first results can be noticed. Without any doubt certain steps forward are taken. As regards money laundering more has to be done. Although some cases were ongoing at the moment, results are urgently needed.

6.2 The operational capacity of law enforcement agencies is not yet adequate to run a relevant number of complex criminal and financial investigations. They are organised in a sufficient way, but taking in account the very broad competence and further increase of cases (due to an operational Special Police Department), more human resources are needed. As regards the Special State Prosecution's Office, taking in account the actual caseload, three more Prosecutors (+ if necessary 2 more reassigned from other Prosecutor Offices) might be needed to have a sufficient operational capacity.

The level of specialization within the Prosecution's office is partly (but hopefully temporarily) a point of concern. Less experienced candidates (4) were appointed, and **more case related intensive training is needed. For example, a more experienced colleague can be appointed as a 'mentor'**. Measures to avoid the election of unexperienced candidates are needed.

Special State Prosecutors received several adequate trainings. Nevertheless intensive trainings on seizure and confiscation, but also on the concept of financial investigation is suggested, preferably by someone who knows the Montenegrin system very well and can explain the different possibilities in the legal system. Also more case related training would be very useful.

6.3 Housing and working conditions within the Special State Prosecution Office are insufficient.

The Special Prosecution Office should be the flagship and the working conditions of the people working at this Office should be adjusted to their responsibilities, i.e. dealing with most complex cases. This is not the case. Urgent measures to improve this situation immediately have to be taken. A decent office, desk and a computer for every person are essential and required.

6.4. The relationship between the Special Police Department and the Special State Prosecution is excellent.

The leading role of the prosecutor in the criminal investigation is adequately performed. Very positive steps forward are taken.

The Special Police Department said that pro-active cases were started up. The Special Prosecutor's Office also reported 56 pro-active cases (2016). However the investigative bodies should be even more pro-active in terms of how to react on indications (from the press or NGO's) of organised crime and corruption.

6.5 Limited capacities are of course a hindrance, and should be permanently dealt with. To a certain extent it is inherent to the work of a Prosecution Office. Prioritization is key issue within a Prosecutor's office.

6.6. Evidence gathering techniques are up to standards and are being adequately used (special investigation techniques, the cooperation with other public and private entities to ensure that evidence is searched for and obtained (including access to databases and registries)).

6.7. Steps of improvement in financial investigation are noticed. Hopefully the ongoing cases will lead to success in dismantling criminal networks. However on a bigger scale financial investigations should be conducted more systematically. There are a lot of opportunities to improve results.

It is advised that more systematically financial investigations would be conducted parallel to regular criminal investigations. In some criminal offences, an interaction in obtaining evidence will be created. It is also advised to use financial investigations as a separate institute. as an instrument that comes before criminal investigation and which can, besides detection of criminal assets, also lead to the detection of concrete criminal offences

A working group can be installed in order to set up a strategy/working process with 'best practices' and clear goals. This working group can undertake a continuous evaluation of the implementation of this strategy and the way goals are or are not reached. Furthermore this working group can point out the (practical and legal) problems and possible solutions on a permanent basis. The experts of this group can provide recommendations.

7. Recommendations / suggestions / pieces of advice

7.1. Recommendations

- improve the housing as well as the working conditions of the Special State Prosecution Offices
- an amendment on the Law on the Special State Prosecution in order to make sure only well-experienced candidates with high skills and a relevant experience in investigating more complex crimes will be appointed
- to stipulate the possibility to the Chief State Prosecutor to suggest in a motivated manner the 'profile' of the candidates he needs in his office.
- to provide provisions to make the position of special prosecutors an attractive one
- a further follow-up of the workload and the possibility to recruit two or three extra Special Prosecutors on a permanent base
- realize a clear and written policy on the prioritisation of cases for investigation and prosecution
- recruiting but also training police officers in order to prepare more police officers to the more specialized work of the Special Police Department
- increase the number of pro-active investigations
- monitoring the cooperation between the Criminal Police and the Special Department
- Provide direct access to all kind of databases - regulation should be implemented which obliges banks to provide information on bank accounts and bank transactions digitally

- financial investigations(in the context of the Law on Seizure and Confiscation)
 - o conduct systematically
 - o launch in a way that they are not always procedures that are supplementary to criminal investigation
 - o establish detailed track records of seizure and confiscation of criminal assets
- special training on the use of a 'JIT' (joint investigation team)
- strict regulation about the secret character of an investigation and severe sanctions for violating this secret character
- plea Bargaining
 - o exclude more specific crimes from plea bargaining or come to a concrete written policy on this
 - o a further accurate follow up on the contents of plea bargaining agreements
 - o the most possible transparency should be provided
 - o all court decisions on plea bargaining and all agreements, or at least a summary, should be published on the website

7.2. Suggestions

- establish an expert group existing out of judges, prosecutors and experts to follow up possible legal problems, and make suggestions for amendments (if needed) is suggested
- amendments to the Law on the Special State Prosecution (article 3) should prescribe that a public official, within the meaning of this law shall be 'a person who is elected, nominated or appointed to a state authority, state administrative authority, local self-government authority, local administration authority
- monitor the timeframes of investigative activities
- the appointment of one police officer who is a kind of 'liaison' between both departments (Criminal Police – Special Police Department)
- having a point of contact in each State Prosecution office for certain forms of crime that often lead to 'organised crime' might improve such a coordination/co-operation
- Special intensive trainings on seizure and confiscation case related training and assistance with very concrete cases

7.3. Pieces of advice

- it is advisable, especially for terrorism, money laundering and even high-level corruption, to encourage as much further specialization within the Special State Prosecution office as possible

- it is advisable to have/to persist an excellent information exchange between the Criminal Police and the Special Department, with a permanent evaluation of this exchange.
- the development of a yearly special training programme for Prosecutors and Judges dealing (or going to deal) with organised crime, high-level corruption, money – laundering and financial investigations, or with specific topics related to this
- to encourage the use of JIT's