



Crna Gora
Agencija za sprječavanje korupcije

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Pursuant to Articles 78 and 79 of the Law on Prevention of Corruption (Official Gazette of Montenegro, Nos. 53/14 and 42/17) and Article 10 of the Statute of the Agency for Prevention of Corruption, acting *ex officio*, the Agency for Prevention of Corruption issues the following:

**OPINION ON THE DECISION OF THE NATIONAL COUNCIL
FOR THE FIGHT AGAINST HIGH-LEVEL CORRUPTION
("OFFICIAL GAZETTE OF MONTENEGRO" NO. 125/20 AND NO. 11/21)**

The Agency for the Prevention of Corruption points out that the Decision on the National Council for the Fight against High-Level Corruption ("Official Gazette of Montenegro" No. 125/20, No. 11/21 and No. 34/21) was adopted contrary to the provisions of Article 12 of the Decree of the Government of Montenegro, and that Articles 3, 5, 6, 7 and 9 of the said Decision establishing the National Council for the Fight against High-Level Corruption may lead to potential risks of endangering the public interest due to insufficient precision of the members of the Decision, and the observed lack of transparency and wide discretionary powers in certain procedures, which created space for various abuses.

Article 12 of the Decree of the Government of Montenegro ("Official Gazette of Montenegro", No. 80/2008, 14/2017 and 28/2018), among other things, foresees that the Government may establish a temporary working body to consider certain issues within its competence and give opinions and proposals. Therefore, the temporary working body may have the same competencies as the Government of Montenegro, and through the decision can not give itself the competencies of the Special State Prosecutor's Office, Supreme, Higher and Basic Prosecutor's Offices, as well as the competencies of the Agency for Prevention of Corruption.

Article 3, paragraphs 1 to 4 and paragraph 6 of the cited Decision, leaves space for interpretation that may affect the unity and independence of the State

Prosecutor's Office, which, according to the Constitution of Montenegro and special regulations, primarily the Law on State Prosecutor's Office and the Law on Special State Prosecutor's Office, established as a state body that prosecutes perpetrators of criminal offenses and other criminal offenses prosecuted ex officio, and by forming parallel institutions creates space to undermine the independence and autonomy of both the Prosecutor's Office and the Agency for Prevention of Corruption, guaranteed by the Law on Prevention of Corruption.

Article 5 of the Decision does not define a clear structure of the Council by determining the number of members of the Council, and the criteria for selection of members, i. e. their dismissal, and it is stated that the current composition of the Council, which includes two senior executive officials, one of whom is the President, and the second Deputy President of the Council, is in direct collision with the expectations that the stated body also controls its "creator", i.e. the Government of Montenegro. Senior executive officials have broad powers to serve the citizens of Montenegro, which entails the possibility of their abuse, and therefore they are a high-risk group in the context of high-level corruption.

Article 6 of the Decision lacks guidelines, i. e. criteria related to the source of donations and who can be a potential donor, so the question of potential conflict of interest arises, leaving space in which a particular individual or company can be a donor pursuant to the Decision, and at the same time be the subject of the interest of this Council.

Article 7 of the Decision needs to be improved in such a way that, in addition to the criteria related to election and dismissal, as well as the number of members that the Council should have, Article 7 has to contain clear criteria based on which it can engage experts and representatives of domestic or international organizations or institutions in areas related to the scope of work of the Council.

The Agency for the Prevention of Corruption points out that Articles 3, 5, 6, 7 and 9 of the Decision on the National Council for the Fight against High-Level Corruption level may lead to potential risks of endangering the public interest due to insufficient precision of the cited articles and lack of transparency and wide discretionary powers in certain procedures, which created space for various abuses.

Adoption of clear and precise regulations, as well as strengthening the human and technical capacities of institutions whose competence includes the prevention and repression of high-level corruption, are the only model aimed at creating conditions in which corruption is a high-risk venture with uncertain personal gain, and which entails social, political and criminal responsibility.

In this regard, the Agency for the Prevention of Corruption calls on the Government of Montenegro to eliminate the identified shortcomings identified in Articles 3, 5, 6, 7 and 9 of the Decision, and to adjust the competencies and

tasks of the National Council to the competencies of temporary working bodies, which the Government of Montenegro may establish in accordance with Article 12 of the Decree of the Government of Montenegro, to consider specific issues within the competence of the Government and giving opinions and proposals.

EXPLANATION

I PROCEDURE

The Law on Prevention of Corruption defines the competence of the Agency for Prevention of Corruption (hereinafter the Agency) to, according to Article 78, paragraph 1 of the Law on Prevention of Corruption:

- "Take the initiative to amend the laws, other regulations and general acts, in order to to eliminate the possible risk of corruption or to bring them in line with international standards in the field of anti-corruption;
- Give opinions on draft laws and other regulations and general acts for the purpose of their alignment with international standards in the field of anti-corruption "

Also, Article 79 of the same Law foresee that the Agency may, on its own initiative or at the request of an authority, company, legal entity, entrepreneur or natural person, give an opinion for the purpose of improving the prevention of corruption , reduce the risk of corruption and strengthening of ethics and integrity in authorities and other legal persons, which includes an analysis of the risk of corruption, measures to eliminate the risk of corruption and corruption prevention.

In its Opinions, the Agency may refer to the provisions of the Constitution and relevant laws, but not in terms of assessing constitutionality and legality, but in terms of applying and achieving the purpose of Article 79 of the Law on Prevention of Corruption.

National Council for the Fight against High-Level Corruption addressed the Agency for the Prevention of Corruption with a request registered in the Agency under no. 02-01-279 from February 19, 2021, to give an opinion on whether the members of the National Council, who are not civil servants, are obliged, as members of that body, to submit a report on income and assets, and on the same occasion submitted the Decision on the establishment of the Council, Rules of Procedure and Decision on the appointment of the National Council. In this regard, the Agency inspected the submitted documentation and decided to initiate the procedure ex officio on the basis of Articles 78 and 79 of the Law on Prevention of Corruption, and review all available acts related to this issue.

II ANALYSIS OF THE DECISION ON THE NATIONAL COUNCIL FOR THE FIGHT AGAINST HIGH-LEVEL CORRUPTION ("Official Gazette of Montenegro" No. 125/20 and No. 11/21) - Articles 3, 5, 6, 7 and 9 of the Decision

At its session on December 17, 2020, the Government of Montenegro adopted the Decision on the National Council for the Fight against High-Level Corruption ("Official Gazette of Montenegro", No. 125/20 and 11/21 and No. 34/21) . By this Decision, the National Council was established as a temporary working body of the Government, according to Article 12 of the Decree on the Government of Montenegro ("Official Gazette of Montenegro", No. 80/2008, 14/2017 and 28/2018), which foresees, inter alia, that the Government may establish a temporary working body to consider certain issues within its competence and to give opinions and proposals.

In addition, the Decision on the National Council for the Fight against High-Level Corruption foresees in Article 3 that the Council:

- (1) determines the plan and dynamics of collecting information related to high-level anti-corruption cases and for that purpose cooperates with the bodies responsible for managing these cases;
- 2) compile an overview of the current course of conducted investigations on cases in the field of fight against corruption at a high level, based on the obtained information related to those cases;
- 3) prepare an opinion on the effective manner in which the investigation of high-level anti-corruption cases could be improved and, to that end, propose concrete measures to improve the situation;
- 4) monitor and synchronize the activities of state bodies in the implementation of the fight against high-level corruption;
- 5) communicate with international institutions, international organizations and representatives of the diplomatic corps in order to gather all necessary information for the smooth functioning of the Council;
- 6) request data, explanations and reports from state bodies regarding issues related to the prevention and suppression of high-level corruption;
- 7) determine priorities and propose activities in the implementation of projects related to the fight against high-level corruption;
- 8) perform other tasks in accordance with the law. "

The cited competencies, and especially those listed in Article 3, paragraph 1, items 1 to 4, which relate to determining the plan and dynamics of gathering information related to high-level anti-corruption cases, compiling an overview of the current course of investigations on these cases, the preparation of opinions on effective ways in which the conduct of investigations could be improved, and the monitoring and synchronization of activities of state bodies in the implementation of the fight against high-level corruption, should be given special

attention, bearing in mind that the National Council for the Fight against High-Level Corruption was established as a temporary working body of the Government, in accordance with Article 12 paragraph 3 of the Decree on the Government of Montenegro. The mentioned article of the Decree in paragraph 2 stipulates that a temporary working body is formed for the purpose of considering certain issues within the competence of the Government and giving opinions and proposals. Also, the Rules of Procedure of the Government of Montenegro ("Official Gazette of Montenegro", No. 3/12, 31/15, 48/17 and 62/18) in Article 27 states that the Government may establish a council or other advisory body to consider issues and give proposals and opinions related to the exercise of the constitutional functions of the Government, and whose tasks, composition and manner of work are determined by the act on its formation.

On the other hand, if having in mind the position of the State Prosecutor's Office, i. e. its autonomy and independence, which is, first of all, guaranteed by Article 134 of the Constitution of Montenegro, as well as its competence to prosecute perpetrators of ex officio crimes, guided in its work by the principles of constitutionality and legality, independence, impartiality and openness, raises the issue of interference in the prosecutor's office, which directly opens the space for undermining the independence of the judiciary, i. e. the independence of the prosecution as a key principle on which the social order of modern European states is based. The independence of prosecutors implies the absence of a relationship of dependence or the existence of a controlled and clearly prescribed relationship of dependence of the prosecution in relation to all other state authorities.

The Law on the State Prosecutor's Office ("Official Gazette of Montenegro", No. 11/15, 42/15, 80/17, 10/18 and 76/20) stipulates in Article 3 that the activities of the State Prosecutor's Office may not be performed under anyone's influence and that no one can influence the State Prosecutor's Office in the performance of its duties, while Article 41, paragraphs 1 and 2 stipulates that the Prosecutorial Council compiles an annual report containing data on the work of the Prosecutorial Council, a description and analysis of the situation in the State Prosecutor's Office, each state prosecutor's office, related to the number of received and resolved cases during the year for which the report is prepared, detailed data for each state prosecutor's office related to the number of received and resolved cases during the year for which the report is prepared, problems and shortcomings in their work, as well as measures to be taken to eliminate the observed shortcomings, as well as data on the state and trends of crime in previous year. Also, the manner of managing the work of the State Prosecutor's Office, basic, higher, Special and Supreme State Prosecutor's Offices are regulated by Article 17 and Article 37 (competence of the Prosecutorial Council). In addition, Article 42 (relationship between the Prosecutorial Council and the State Prosecutor's Office) stipulates that state prosecutor's offices are obliged to submit to the Prosecutorial Council, at its request, all data and information within their competence, within the deadline set by the Prosecutorial Council, as well as

that the State Prosecutor's Office is obliged to provide the Prosecutorial Council, at its request, with direct access to official files, documentation and data, and to submit copies of the requested files and documents.

The Supreme State Prosecutor's Office supervises the lower prosecutor's offices. Supervision over the work of state prosecutors is performed by direct insight into the work of each state prosecutor and by taking other appropriate measures for the efficient and lawful work of state prosecutors. The Special State Prosecutor's Office performs activities in accordance with a special law that regulates the conditions for the election of heads and state prosecutors of the Special State Prosecutor's Office and was established for the territory of Montenegro, and is responsible for prosecuting perpetrators of organized crime, high corruption, money laundering, terrorism, war crimes and since August 2016 is also responsible for crimes against electoral rights.

Likewise, since the adoption of the Criminal Procedure Code ("Official Gazette of Montenegro", No. 57/09, 49/10, 47/14 - Decision of the Supreme Court of Montenegro, 2/15 - Decision of the Supreme Court of Montenegro, 35/15, 58/15, 28 / 18 - Decision of the Supreme Court of Montenegro and 116/20 - Decision of the Supreme Court of Montenegro), which entered into force on August 26, 2009, and which is applied in proceedings for criminal offenses of organized crime, corruption, terrorism and war crimes of August 26 2010, and in proceedings for other crimes from September 1, 2011, its most important novelty is reflected in the fact that it places the investigation, i. e. the detection and clarification of the criminal offense and the collection of evidences for a possible accusation, within the competence of the state prosecutor, which allows him to be more active in the pre-indictment phases, which increases his responsibility for evidence quality on which the indictment will be based.

Thus, prosecutors discover and prosecute perpetrators of criminal acts, conduct investigations, file and represent indictments before the competent court, and participate in appellate proceedings before the competent courts, which indicates that prosecutors have become a key link in the criminal justice system by developing and reforming criminal proceedings that is, the party that has the largest number of rights and obligations in the criminal procedure and which actively participates in the criminal procedure from the phase of detecting the criminal offense. This ultimately implies that the protection of prosecutors from political influence or any other interference must be ensured through the authority and independent prosecutorial service guaranteed by the state authority. Prosecutor's offices may cooperate with all state authorities if it is in the interest of the criminal policy, and in addition to this type of cooperation is desirable, Article 254 paragraphs 1 and 3 of the Code of Criminal Procedure specifically stipulates the obligation to report a crime in the following circumstances:

"Officials and responsible persons in state bodies, local self-government bodies, public companies and institutions are obliged to report criminal offenses for which they are prosecuted ex officio, of which they have been informed or of which they

find out in the performance of their duties ... paragraph 1 of this Article shall state the evidence known to them and the company shall take measures to preserve the traces of the criminal offense, cases on which or by which the criminal offense was committed, objects created by the commission of the criminal offense and other evidence. "

Giving instructions to prosecutors from external sources is a particularly sensitive issue, as it can potentially lead to actual or perceived abuse and improper influence, but on the other hand the CPC establishes the obligation to report a crime after which the prosecutor who plays an essential role in exercising the rule of law and the rule of functioning of the criminal justice system, decide whether to initiate or continue criminal prosecution, to conduct criminal prosecution before a court..

A kind of institutional independence of the prosecution, which is not formally part of the judiciary, nor the part of the executive branch, and acts independently as a separate body, must be preserved in order to improve the quality of human rights, public safety and rule of law, bearing in mind that prosecutors are at the forefront of the prosecution of serious crimes.

It is necessary to show special caution when it comes to "stepping" into the existing criminal justice system, and in a substantially justified way to strengthen existing capacities in the fight against corruption and organized crime, primarily the State Prosecutor's Office, which has a key role in combating these occurrences.

Criminal procedure is a reflection and consequence of the form of social organization, and depends on the social values that the state wants to achieve and protect. Thus, in creating strategies and policies in this area, with aim to create such environment in which corruption, organized crime and other serious and organized crimes are undesirable phenomena, to which this society will not respond favorably and where the consequences, i. e. sanctions, in the form of legal, as well as strong moral condemnation, will be a logical consequence of such behavior, international standards must be taken into account, especially those of Council of Europe, the largest international organization in Europe.

Thus, in Opinion no. 11 (2016) of the Consultative Council of European Prosecutors on the quality and efficiency of the work of prosecutors, including in the fight against terrorism and serious organized crime, adopted by the CCPE at its 11th plenary session (Strasbourg, November 17-18, 2016) states, inter alia, that "prosecutors should perform their functions without any inappropriate external influences, incentives, pressures, threats or obstructions, whether direct or indirect, from any environment or for any reason ... thus Prosecutors are at the forefront of the prosecution of serious crimes, and therefore have an essential role to play in preserving public safety and protecting the rule of law ... in the section containing recommendations ensure that prosecutors can perform their functions with the greatest degree of independence, without undue influence,

allegation, pressure, threats or interference, ordinary or indirect, which comes at any time and for any reason. It is also stated that in order to ensure conditions in which prosecutors can act efficiently and with quality, and as the public expects and to pay appropriate attention to all issues related to their cases, prosecutors should have adequate human, financial and material resources, including special units within the prosecution.

Also, in its Opinion no. 9 (2014) of the Consultative Council of European Prosecutors on European norms and principles for prosecutors - entitled "Rome Charter", adopted by the CCEP in Strasbourg on December 17, 2014, states that in all legal systems, public prosecutors contribute to guaranteeing the rule of law, primarily fair, impartial and efficient administration of justice in all cases and at all stages of proceedings within their jurisdiction ... that the independence and autonomy of the state prosecutor's office are a necessary factor in the independence of the judiciary; independence and effective autonomy of the state prosecutor's office ... that prosecutors should be independent in decision-making and should perform their duties without external pressure or interference, taking into account the principles of separation of powers and responsibilities ... and that transparency in the work of prosecutors is of essential importance in modern democracy ... The Charter builds on the achievements of Recommendation Rec (2000) 19 of the Committee of Ministers of the Council of Europe on the role of the Public Prosecutor's Office in the criminal justice system and further, in order to meet the need to update and consolidate relevant Council of Europe principles in this area.

This Opinion states that it is essential to ensure the independence and effective autonomy of prosecutors and to establish appropriate guarantees ... that the autonomy of prosecutors - which is essential for the rule of law - must be guaranteed by law, at the highest possible level, similar to judges. ... that prosecutors should be independent in making decisions and that in cooperation with other institutions they should perform their duties without external pressure or interference from the executive or the assembly, while respecting the principles of separation of powers and responsibilities ...

The competence of the National Council for the Fight against High - Level Corruption is stated in Article 3, paragraph 1, item 6 of the Decision, referring to the investigative procedure "which refers to the prevention and suppression of corruption". Article 35 of the Law on Prevention of Corruption ("Official Gazette of Montenegro", No. 53/14 and 42/17) provides for the manner of establishing facts and circumstances, i.e. the manner of conducting the procedure for establishing violations of the provisions of the Law on Prevention of Corruption. Article 4, paragraph 1 of the Law on Prevention of Corruption states that "activities to prevent conflicts of public and private interest, restriction of public office, verification of income and assets reports of public officials, handling whistleblower reports, whistleblower protection, and other activities in accordance with this Law, is performed by the Agency for Prevention of

Corruption (hereinafter: the Agency), as an independent and autonomous body, established by the Parliament of Montenegro, in accordance with this Law". Having in mind the competencies of the Agency for Prevention of Corruption, the manner of its establishment, the status of an independent and autonomous body, in accordance with the law, opens the question of interference with the explicit competencies of the Agency and create a space for undermining the autonomy and independence of the Agency, and raises the question of the motivation for the constitution of parallel institutions, i.e. organizations that are not necessarily dedicated to the mission but can serve to achieve the political goals of the members of the National Council from executive authority, with the formal participation of the civil sector (such as the selection of candidates from the non-governmental sector for members of the National Council and working groups that the Council may form in accordance with Article 7 of the Decision, without any selection criteria).

Finally, the question arises, in which manner, through the National Council for the Fight against High - Level Corruption, the Government of Montenegro will control itself and be accountable for its work, whether is it a simulation of support for the executive and its political initiatives, and whether the Government of Montenegro is abusing the anti-corruption mechanism, in order to control other authorities, without the possibility of autonomous action of the National Council. The creation of parallel institutions whose activities are aimed at justifying and confirming the opinion of the Government, counterfeit the process of participation of the civil sector and citizens in the fight against corruption, and leads to public confusion.

With regard to Article 5 of the Decision on the National High-Level Anti-Corruption Council, it states the following:

"Article 5

The Government shall, by a special decision, appoint the President, the Deputy President, the members, the Secretary and the Deputy Secretary of the Council. The Deputy Prime Minister is, as a rule, the President of the Council. A member of the Council, as a rule, cannot be a public official appointed or nominated by the Government, nor a civil servant. The Secretary and Deputy Secretary of the Council are appointed from among the employees of the General Secretariat of the Government, i.e. the Cabinet of the President or Deputy Prime Minister. The term of office of the President, Deputy President and members of the Council shall be four years. "

Reading the mentioned norm, the lack of precise criteria and conditions under which the Government elects the members of the Council is evident, except when it comes to the function of the President of the Council, where Decision determines that it will be performed by the Deputy Prime Minister, as well as the Secretary and Deputy Secretary. In addition, it is not specified how many

members the Council has, so that the cited article of the Decision leaves significant space for broad interpretation, and its application leaves space for various abuses.

The body formed at this level, and having in mind the complexity and sensitivity of the issues it targets as a competence, and due to its potential importance, both political and essential, requires clearly defined criteria according to which its members will be elected, as well as criteria by which their dismissal will be effected. As the Decision does not envisage the stated criteria related to election and dismissal, and as the number of members that the Council should have has not been determined, and the Decision does not envisage that this issue will be regulated by the Rules of Procedure of the National High-Level Anti-Corruption Council, this indicates that in this article of the Decision, broad discretionary powers are left to the applicant, which due to insufficient precision of the norm directly cause non-transparency, so they can lead to abuse and potential risks of endangering the public interest.

When it comes to Article 6 of the Decision, and specifically Article 6 paragraph 1 which states: "Funds for the work of the Council are provided in the budget of Montenegro and from donations", there is a need for caution, bearing in mind that in the said Decision, as well as the Rules of Procedure do not provide guidelines, i.e. criteria related to the source of donations. This issue is important especially from the aspect of who can be a potential donor, which raises the issue of a potential conflict of interest, and creates a space in which a private person or a company can be a donor under this Decision, and at the same time the subject of interest of the Council.

In order to eliminate the possibility of conflicts of interest, i.e. situations in which certain individuals, organizations, institutions and companies due to the provision of donations, using the weak points of the norm can achieve the status of privileged, it is necessary to correct this norm so that it contains clear criteria on which it can be implemented donor selection, which would minimize discretionary powers and space for possible abuse.

On the line of comments related to Articles 5 and 6 of the Decision, a comment is also given on Article 7 of the Decision, which states:

"The Council may, in order to carry out its tasks efficiently and effectively, form permanent or temporary working groups.

The President of the Council may engage experts and representatives of domestic or international organizations or institutions in areas related to the scope of work of the Council."

The mentioned article of the Decision needs to be improved in such a way that, in addition to the criteria related to selection and dismissal, has to contain clear criteria on the basis of which experts and representatives of domestic or

international organizations or institutions in the field related to the scope of work of the Council can be engaged.

In relation to Article 9, which states:

"The council is accountable to the government for its work. The Council is obliged to submit to the Government a semi-annual report on its work, which, after its adoption, is published on the Government's website." It should be noted that this "external" body is established to fight high-level corruption, and that it includes the Deputy Prime Minister as the President of the cited council and the Minister of Finance and Social Welfare, as his Deputy. This indicates that the mechanism for managing the work of this body is placed directly in the hands of high-ranking executive officials, and the said body is expected to control its "creator", i.e. the Government, bearing in mind that high-ranking executive officials have broad powers to serve the citizens of Montenegro, which entail the possibility of abusing them, and are therefore a risk group in the context of high-level corruption. The cited council, positioned in such way, cannot have the desired control mechanisms, nor take over the existing mechanisms, which are in the competence of the prosecutor's office, other bodies, parliamentary committees and agencies in this area. Although the role of the civil sector is specifically set in view of their participation in this body, this is not a guarantee of objectivity given the current composition of the Council, which includes two senior executive officials, and especially given that Article 5 does not define a clear Council structure through determining the number of members of the Council, and the criteria according to which the election or their dismissal will be made.

V FINAL ASSESSMENTS

Having in mind the institutional independence of the Prosecutor's Office, the principles of the structure of the State Prosecutor's Office, as well as its relationship with the Prosecutorial Council, the powers of the Special State Prosecutor's Office, which clearly stipulate who submits data related to cases in the State Prosecutor's Office, as well as who and in which manner can inspect official files, documentation and data, i. e. get a copy of files and documents, raises the question of expediency of competencies and tasks of the National Council, which are provided by Article 3 paragraph 1-4 of the Decision on the National Council.

In addition to the above, and pursuant to the Criminal Procedure Code, prosecutors discover and prosecute perpetrators, conduct investigations, file and represent indictments before the competent court, and participate in appellate proceedings before the competent courts, which means that prosecutors are a key link in the criminal justice system, so the protection of prosecutors from political influence or any other interference must be ensured through the authority

and independent prosecutorial service, guaranteed by the state authority. Prosecutor's offices may cooperate with all state authorities if it is in the interest of penal policy, and in addition to the fact that such cooperation is desirable, Article 254 of the Criminal Procedure Code also determines when the obligation to report a criminal offense exists.

As the organizational independence of the Prosecutor's Office, as well as the prosecutors in dealing with individual cases, is unquestionable, the tasks of the Council provided by the Decision on the National Council in Article 3, paragraphs 1-4, seems like a desire to establish external supervision of the Prosecutorial Council, and specifically those tasks of the Council related to determining the plan and dynamics of collecting information related to high-level anti-corruption cases, reviewing the current course of investigations on these cases, preparing opinions on how to conducting an investigation could improve, and monitoring and synchronizing the activities of state bodies in the implementation of the fight against high-level corruption.

The independence of prosecutors is not a prerogative or privilege granted in the interest of prosecutors, but a guarantee of the interests of fair, impartial and effective justice which protects both the public interest and the private interests of the persons concerned. Therefore, the adoption of clear and precise regulations, as well as strengthening the human and technical capacities of institutions whose competence includes the prevention and suppression of high-level corruption are the only models aimed at creating conditions in which corruption is a high-risk endeavor with uncertain personal gain, which entails social, political and criminal responsibility.

Due to the above, the Agency notes that the competencies of the National Council for the Fight against High-Level Corruption provided by the Decision on the National Council for the Fight against High-Level Corruption ("Official Gazette of Montenegro" No. 125/20, No. 11/21 and No. 34/21), with special reference to Article 3 paragraphs 1 to 4 and paragraph 6 of the cited Decision, leave space for interpretation that may affect the uniqueness and independence of the State Prosecutor's Office, which, according to the Constitution of Montenegro and special regulations, is primarily the Law on State Prosecutor's Office and the Law on the Special State Prosecutor's Office, established as a state body that prosecutes perpetrators of criminal offenses and other criminal offenses prosecuted ex officio, and by creating parallel institutions creates space for undermining the independence and autonomy of the Agency for Prevention of Corruption guaranteed by the Law on the Prevention of Corruption.

In addition, in relation to the comments given in the Opinion itself, apart from the comments related to the discretionary powers of the Council, it was pointed out that Article 5 of the Decision does not define a clear structure of the Council by determining the number of Council members and selection criteria, i. e. their dismissal, and it was stated that the current composition of the Council, which

includes two senior executive officials, one of whom is the President and the other Deputy President of the Council, is in direct collision with the expectations that the body controls its "creator", i. e. the Government of Montenegro. Senior executive officials have broad powers to serve the citizens of Montenegro, which entails the possibility of their abuse, and are therefore a high-risk group in the context of high-level corruption.

In addition, the lack of guidelines, i. e. criteria related to the source of donations from Article 6 of the Decision and who can be a potential donor, raises the issue of potential conflict of interest, and leaves space for a private person or company to be a donor under the Decision, and at the same time a matter of interest of the Council.

In the line of comments related to Articles 5 and 6 of the Decision, it was stated that it is necessary to improve Article 7 in such a way that, in addition to the criteria related to election and dismissal, as well as the number of members the Council should have, Article 7 contain clear criteria on the basis of which experts and representatives of domestic or international organizations or institutions in the field related to the scope of work of the Council can be engaged.

In relation to the above, the Agency for the Prevention of the Corruption points out that Articles 3, 5, 6, 7 and 9 of the Decision on the National Council for Fighting High-Level Corruption ("Official Gazette of Montenegro" No. 125/20 and No. 11/21), which established the National Council for Fighting High-Level Corruption can lead to potential risks of endangering the public interest due to insufficient precision of the cited articles of the Decision, and the lack of transparency and wide discretion in certain procedures, which created space for various abuses.

The adoption of clear and precise regulations, as well as the strengthening of human and technical capacities of institutions whose competence includes the prevention and suppression of high-level corruption, are the only model aimed at creating conditions for the fight against corruption.

In this regard, Agency for the Prevention of Corruption calls on the Government of Montenegro to eliminate the shortcomings identified in Articles 3, 5, 6, 7 and 9 of the Decision, and to adjust the competencies and tasks of the National Council to the competencies of temporary working bodies which the Government may establish in accordance with Article 12 of the Decree on the Government of Montenegro, for the purpose of considering certain issues within the competence of the Government and giving opinions and proposals.

 DIRECTOR
Jelena Perovic