



**FINAL PROJECT REPORT**

**ENHANCING CO-OPERATION  
AMONG POLICE, PROSECUTORS AND JUDGES  
IN THE FIGHT AGAINST TRANSNATIONAL ORGANIZED CRIME**

*“The Organization for Security and Co-operation in Europe works for stability, democracy and prosperity in 56 States through political dialogue about shared values and through practical work that makes a lasting difference.”*

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## **Foreword**

**By the representative of the Chairmanship,  
Ambassador, Carlos Sánchez de Boado y de la Válgoma,  
Head of Spanish Mission before the OSCE.**

The Spanish authorities pay special attention to the cooperation among Police, Prosecutors and Judges in the criminal procedure. Since mid-2006, we were interested in the OSCE preparing and implementing a project in which elements of cooperation among those institutions would be included. We were and still are particularly concerned about how the investigations against organized crime, including trafficking in human beings, can be improved by participating States.

The Strategic Police Matters Unit prepared a project that included those elements that we wanted to work on together. We then needed two countries to co-operate in this project, that were able to commit themselves to the OSCE structures and, together with local experts, discuss in-depth the status of cooperation among these key institutions in the criminal justice procedure. We would like to thank the willingness and commitment of the Albanian and Montenegro authorities for participating in this project.

This report is the product of many hours of tough work and efforts to coordinate all stakeholders. The Strategic Police Matters Unit, the OSCE presence in Albania, the OSCE mission to Montenegro and the local experts and authorities have done a great deal of work.

We hope that this report will be seen as a reference material to draw good practices and an inspiration source for improvements in the co-operation among police, prosecutors and judges in the criminal procedures.

We are looking forward to seeing this pilot project replicated in other interested areas where the OSCE could also facilitate dialogue and cooperation

## **Foreword**

**By Kevin Carty, Senior Police Advisor to the OSCE Secretary General.**

I wish to express the gratitude of the Secretary General and the Strategic Police Matters Unit to the Government of Spain for the generous funding which allowed this very important project to be undertaken. I would also like to extend a very sincere thanks to the Governments of Albania and Montenegro for making available the senior officials of the Judiciary, Prosecution Services and Police who engaged professionally with the International experts and energetically contributed to the findings and recommendations of this report.

I would also like to thank the OSCE Missions in Albania and Montenegro for the assistance they rendered to the Strategic Police Matters Unit in the organization of the various meetings and workshops and in facilitating the overall project in the two Countries. The professional help provided by the National staff of both Missions with language and translation skills was invaluable and made a significant contribution to the expeditious completion of the project.

The Governments of Spain, Italy and Ireland kindly provided the three International Experts who worked tirelessly with their counterparts from Albania and Montenegro to ensure the success of the project. It was obvious that a tremendous amount of professional respect and friendship developed between the International Experts and their National colleagues during the course of the project and this has manifested itself in agreed conclusions on the various systems, mechanisms and processes.

The project focused on the professional interaction between Judiciary, Prosecutors and Police in the investigation of Organized Crime with a special emphasis on Human Trafficking. It is important to remember that the investigation of organized crime requires a multi-agency approach with the support of civil society. To this extent I am very happy that international organizations, non-government agencies and civil society made important contributions to the discussion processes that led to the conclusions and findings of the project.

If the fight against Organized Crime is to be successful, then it is essential that the different elements of the Criminal Justice System work cohesively together. Lack of co-ordination militates against the overall effectiveness of the system and only serves the interest of the criminal. One of the prime objectives of the Strategic Police Matters Unit is to work with partners to help develop the overall effectiveness of the Criminal Justice System in the OSCE Region. We are happy to be able to assist in the implementation of this project because it makes a significant contribution to the co-ordination of the Criminal Justice System and the International fight against Organized crime.

Kevin Carty,  
Senior Police Adviser to the Secretary General of OSCE

December 2007

## **Introduction to the report**

Organized crime groups have taken advantage of the technological advances, the borders policy and the free markets, to succeed in their criminal aims. Criminals develop an authentic business activity with technical knowledge, specialization and coordination. They can destabilize institutions and break the rule of law in nascent democracies. When the political and economical situations are not solid, criminals have a clean path for their purposes.

The fight against organized crime must be tackled from a global perspective, which means that it is vital to create professional and specialized police units, courts and prosecutors. It is also essential to establish legal assistance mechanisms. Efforts need to be coordinated since a country cannot succeed in the fight against organized crime on its own.

In the Millennium Declaration, adopted in the United Nations in September 2000, the State Heads ratified the human right to live and to educate their children with dignity and absence of fear of violence, oppression and injustice.

In December 2000, in Palermo (Italy), the United Nations Convention against Transnational Organized Crime was adopted. With the signature of this instrument and its Protocols, the international community demonstrated its determination against organized crime. To paraphrase Kofi A. Annan, the former United Nations General Secretary, “If crime crosses borders, legal action must do the same.”

International cooperation must be complemented with national efforts; each state needs the necessary human and material resources – independent and prepared judges, specialized prosecutors and police units, legal framework and the essential equipment.

The institutional and political reactions to fight against organized crime, particularly against trafficking in human beings (THB), are very recent. In South-Eastern Europe, coordination efforts are needed. This region suffers from being the place of origin, transit and destination in TFH-related criminality. Traffickers have the advantage of different laws, jurisdictional limits and restricted cooperation and understanding between the different states. Efforts are needed at the legal, structural and institutional level.

Since the Palermo Convention, a deep movement in this region has begun. Initiatives such as the Stability Pact for South Eastern Europe, the South-Eastern Cooperation Initiative and

Southeastern Police Chiefs Association, or the Police Cooperation Convention for SEE, have been an important starting point in the fight against organized crime. It is necessary to continue improving interagency mechanisms of coordination, as well as the transborder cooperation.

In its Decision No. 5/06 on *Organized Crime* on 5 December 2006, the OSCE Ministerial Council:

... 6. Recommended increasing national efforts in international co-operation, co-ordination and information exchange as an important step in countering transnational organized crime;

... 11 (a) Tasked the Secretary General and the relevant OSCE executive structures, within their respective mandates, with giving enhanced attention in their policies and activities to the key role of criminal justice systems in institution-building and in the promotion of the rule of law, as well as with co-operating and co-ordinating more closely in order to take better into account the interaction between the components of those systems;

... (f) Tasked the Secretary General and the relevant OSCE executive structures including Office for Democratic Institutions and Human Rights (ODIHR), as appropriate in co-ordination and co-operation with other international organizations and institutions, to stand ready to respond to project proposals and requests for co-operation from participating States (pS) and to consider facilitating training programmes, all within their respective mandates and as contributions are available for this purpose.

In addition, the *OSCE Action Plan to Combat Trafficking in Human Beings* (PC DEC/557 from 23 July 2003) recommends in *Section 3, law enforcement co-operation and information exchange between participating States*.

The Strategic Police Matters Unit defined this project as one of the activities to address these mandates and contribute to the national and international efforts against organized crime, particularly THB in the South-Eastern Europe. This project has been made possible due to the extra-budgetary funds from Spain and the cooperation of the authorities of Albania and Montenegro. On the one hand, the project sought to improve and strengthen the internal coordination mechanisms between judges, prosecutors and police. On the other hand, it aimed at promoting transborder co-operation mechanisms among the participating countries.

The fight against organized crime is not an isolated task for police, prosecutors or judges. During the investigation, it is not useful for the police to gather evidence or make any other interventions, which later could not be used by the prosecutor or that could be rejected for

lack of validity. The success of good police work does not stop in the pre-trial phase, but continues until the trial, where the prosecutor will review all the facts and the court will decide, rendering a conviction if the evidence is valid and incriminatory, or otherwise acquit the accused.

This project has therefore required the assistance of international experts in three spheres: police, prosecution and judiciary. The participation of international and local practitioners has been essential as their experience in the fight against organized crime can be expected to provide valuable experience and insight for all the OSCE participant states (pS).

The first requirement for combating transnational crime is the adequate national legislation. Consequently, the project has involved compilation of relevant international law requirements, such as included in the UN Convention against transnational organized crime and its Protocols, and self-assessment by local legal experts on how the international requirements have been met in the national legislation.

With the aim of gathering information on the current status and to become familiar with the mechanisms in both countries, several meetings with representatives of the corresponding agencies were scheduled to take place during the last two weeks of September and the beginning of October 2007.

These interviews were conducted in the Police Directorates, Basic, High and Supreme Courts, Special Prosecutors, Investigative Judges, Legal Advisers, NGOs and civil society.

In all these meetings, the actual legal framework – national and international – was discussed. The internal structures designed to face organized crime and to protect the victims were analysed. The identification of inter-institutional co-ordination mechanisms between judges, prosecutors and police was studied with special interest, as well as the cooperation and understanding level between police and judicial authorities from Albania and Montenegro.

Two national level roundtables took place, on the 20th September in Podgorica (Montenegro), and on the 25th September in Tirana (Albania). In both roundtables, the implementation of the Palermo Convention and its Protocols was reviewed, the current legal framework and its efficiency was analysed, highlighting the current gaps and contradictions, specifically the legal coverage of the special investigation techniques was evaluated, as well



as the convenience of its use in the crime investigations. Also, the importance of the protection of victims and witnesses and the need for promoting the use of direct channels of communication in transnational co-operation was emphasized.

A draft report was produced and discussed in a meeting in Shkodra (Albania) with national and international experts from both, Albania and Montenegro, IOM, NGOs, OSCE presence in Albania, OSCE mission to Montenegro and the Strategic Police Matters Unit. As a result of this meeting, a series of recommendations were agreed by the participants.

This report is the outcome of all these activities and the hard work of national and international participants in the project.

It should be pointed out that the activities were conducted within a short period of time and that this report gives a fairly superficial overview of the situation. While the findings are the experts' own, the recommendations are the result of discussions that took place in Shkodra, and reflect common points of view of the experts and criminal justice system practitioners from Albania and Montenegro.

The individual reports of the international experts, which are more comprehensive, will be shared with national experts and OSCE field operations in Albania and Montenegro at a later stage, as a practical contribution of this project to the enhancement of the criminal justice systems in Albania and Montenegro.

The Strategic Police Matters Unit would like to thank the OSCE's field operations in Albania and Montenegro. Without their efforts, it would have not been possible to carry out all the project activities. The receptiveness of the Albanian and Montenegrin authorities must also be mentioned, as well as their cordiality and cooperation. The same applies all the representatives from different institutions participating in the interviews and discussions. Thanks to all of them we have been able to gather very valuable information.

## **Part A**

### **State of play at the national level**

#### **1.- ALBANIA**

##### **1.1.- Systems**

###### **1.1.1.- Legislation**

In a very short period of time, Albania achieved a remarkable level of progress towards bringing the criminal justice system in line with the United Nations Convention against Transnational Organized Crime (UNTOC) requirements. As an example Albania fulfils the obligation of punishing money laundering with criminal sanctions and there are provisions covering seizure, freezing and confiscating of the proceeds of criminal activities related to organized crime. The *special investigative techniques* under Art. 20, para 1 of the Convention, namely interceptions and undercover operations, are allowed in Albania for investigations of crimes of trafficking. Albania has adopted provisions to set up structures responsible for providing assistance and protection to victims of organized crime as well as protection of witnesses from potential retaliation or intimidation.

The key element of the relevant Albanian legislation is the Law on Preventing and Striking at Organized Crime, largely similar to the Italian Anti-Mafia Law. Among its other provisions, it regulates the creation and function of a special state structure for the administration and distribution of the assets of crime confiscated in a criminal proceeding or according to this new law. The principal bodies responsible for meeting obligations according to the law are the Public Prosecutor's Office, the Judicial Police and the structures of the Ministry of Finance, but in the case of real danger of loss, misappropriation or alienation of the funds and assets, the judge may order preliminary sequestration against them, upon the request of the prosecutor. This law allows blocking of the assets of the persons who are suspected to be involved in the criminal activity, including members of their family.

In general, there have been enough measures adapted and sufficient legislation [in force] in both countries concerning the protection of victims of trafficking and witnesses.

###### **1.1.2.- National Strategy and Action Plans**

Albania has developed and implemented a range of national strategies and corresponding action plans, which conform to the EU acquis and the requirements of the Stabilization and Association Agreements with the EU. This framework is the epitome of good practice for the

fight against trafficking in human beings and organized crime in general. It can be said that everything needed on paper, has been done. At the same time, it needs to be noted that an Impact Assessment Mechanism forms part of typical EU Action Plans. This element does not figure sufficiently prominently in Albania. It may also be useful to verify whether activities have been included into the Action Plans using the five standard EU criteria.

In Albania the National Strategy against Trafficking in Human Beings is supplemented by the National Action Plan for Combating Trafficking in Human Beings for 2005-2007. Furthermore, the National Strategy against Trafficking in Children and the protection of Child Victims of Trafficking with its corresponding Action Plan 2005-2007 was approved in 2005. It is a positive sign that insufficient co-operation between the Police and the Prosecutor Office is specifically mentioned in the National Strategy among issues requiring resolution. The framework of National Strategies also includes a National Counter-Narcotics Strategy and a corresponding Action Plan, as well as a draft of an overarching National Strategy for the Fight against Organized Crime and Terrorism.

## **1.2.- Structures.**

Albania has made great efforts in conforming to international standards, adapting their legal systems and setting up all necessary administrative and operational structures.

The Serious Crime Court (SCC) created in July 2003 is, without doubt, the most effective structure in Albania to fight against organized crime. It has two instances: the Court for Serious Crimes (SCC) and the Court of Appeal for Serious Crimes. The SCC has competence to judge the criminal acts that are provided in Article 75 (a) of the Criminal Procedural Code. The first instance court, as well as the appeal court are composed by five judges and can take place behind closed doors when necessary for the national security, public order, justice or for the protection of the trial participants. This court's judges have special economic conditions and protection measures for them and their relatives.

The General Public Prosecutor's Office can exercise the right to *evocate* any trial. The possible backlog of paperwork can thus be avoided and investigations carried out within the required timeframes. The practical organization of the offices, which are adequately staffed, is a very positive factor, as timely and prompt interventions are essential for successful investigations on organized crime. It is possible to state that pending criminal proceedings against organized crime in Albania can be expected to be completed in a timeframe of just over a year.

Videoconference systems are going to be available to the courts. They are installed and ready for use at the SCC; Albanian Prosecutor's Office will receive one soon. It is important to emphasize that this technical system is particularly important for adversarial trials – especially for cases involving organized crime – in order to assure the safety of witness, the swiftness of proceedings and the usefulness of the collected evidence.

A National Co-ordinator for the Fight against Trafficking in Human Beings has been set up in Albania and it is very effective, which is highly commendable.

The functions of the National Coordinator are conducted by a Deputy Minister of the Interior, who has broad authority to:

- establish central and local national referral structures for victims of THB;
- improve management of Albania's borders and prevention of illegal immigration;
- prevent trafficking of women and children domestically;
- improve the identification of victims;
- increase awareness of personnel working with and assisting peripheral agencies.

The Responsible Authority for the National Referral Mechanism for victims of trafficking in human beings has been established by a Joint Order of the Minister of Interior, the Minister of Foreign Affairs and the Minister of Labour, Social Affairs and Equal Opportunities, with the duty of coordinating the initial assistance, the protection and the rehabilitation of the victims, in close collaboration with the three mentioned Ministers, other involved institutions and the centres that shelter the victims of trafficking.

In addition, Local Anti-trafficking Committees have been established by an order of the Prime Minister. These committees are chaired by the regional Prefect, and their members include the Mayor, Directors of the regional State Social Services, the Employment Office, the Police, the State Informative Service, and Education and Public Health Directorates. They are intended to capitalize on the knowledge of the local community. These Committees have been set up to assist the law enforcement agencies to identify victims and potential victims of trafficking and provide them with immediate protection and support. In addition to identifying, referring and protecting victims of trafficking, the Local Committees are also tasked with monitoring the trafficking situation in their region and identifying any measures

that may be necessary to take to combat this crime. For example, many Local Committees run preventative campaigns in co-operation with the Police, the Prosecutor's Office and Social Services in order to remove children from the streets and register them in schools. A cost-free telephone help-line is in operation and serves as a channel for victims to seek help and denounce traffickers and other perpetrators of crime.

The National Referral Mechanism will be enhanced by the Transnational Referral Mechanism for victims of trafficking in South-East Europe, which has been drafted by Albanian experts with assistance from the OSCE and The International Centre for Migration Policy Development (ICMPD).

The victims' protection system used in Albania offers a wide range of data. It is used more with individuals belonging to organized crime ready to collaborate with the authorities – and by their relatives – than with the victims of a crime, especially of trafficking, who receive protection for humanitarian reasons and in order to allow them to give spontaneous and genuine evidence. We are not aware of shelters specialized in children and children's needs in Albania, although it has a system in place for returnees.

Finally, there is a police department responsible for combating organized crime and specialized in their investigation. An Anti-Trafficking Unit, specifically trained and provided also with policewomen, has been established. There are no particular problems concerning co-operation among these special units, the Border Police and the ordinary police departments, which sometimes work together on investigations into organized crime. Equal investigative powers are invested in Judicial Police attached to the Prosecutors office, Criminal Police and Regional Police. Difficulties arise because of differences in qualification and competence. There is a significant gap between legal training of the Judicial Police and the basic level of competence of the Regional Police in the preparation of criminal case material. Many procedural shortcomings can be generally observed on the part of both Police and Prosecutors at the regional level that result in weak cases and failed trials.

### **1.3.- Practices**

In Albania, on average, people held responsible for trafficking in human beings are sentenced to 12 years and eight months' imprisonment, though the Prosecutor's requests are for 15 years and six months on average.

Albania has recently adopted an important investigative instrument, TIMS (**Total Information Management System**), a data-bank accessible both to the Police and Prosecutors, from where they can obtain the full identity, residency (and sometimes even the photos of people submitted to trial, investigation or in any case reported) covering all nationals provided with a passport and all people passing through the Albanian borders.

Albanian legislation provides protection of criminals who co-operate with the justice system by giving evidence on behalf of the state in criminal prosecutions. Use of this law has led to some very good results.

As far as proper investigative tools are concerned, i.e. the methods used to gather material evidence, the whole range of traditional tools appears to be adequately used. In particular, it has to be pointed out that undercover operations are effectively used in Albania. These operations have also been used in investigations concerning trafficking of human beings.

One of the most difficult issues that needs to be resolved during OC trials is administration of **seized assets** such as real estate or businesses. Managers competent in administering these assets on behalf of the Judicial Authority – and willing to do so – could be registered on a National List, once the moral and professional qualities of the person in question have been established. It is advisable that adequate protection can be provided for these professionals to ensure their safety.

The issue regarding **money laundering** offences is exceptional, because only individuals uninvolved in the underlying crime from which money or assets originates can be charged with this offence. It has been noted that there have been no conviction verdicts for this offence, but this is not unusual elsewhere. The effectiveness of concrete counteractions against money laundering can certainly be improved. This mainly depends not on substantive criminal law or on procedural rules, but rather on civil and administrative law, mainly on banking, company and taxation laws, and on administrative regulations concerning asset transfers.

In certain situations, early arrests are unavoidable. However, the Albanian Police see this procedure as a primary requirement and give little thought to collecting all other evidence to support a prosecution. The Albania's early arrest practice is characteristic of systems that, on

the one hand, give the Prosecutor the legal “ownership” and the responsibility for the inquiry, and that, on the other hand, do not imply any institutional hierarchy between the Prosecutor and the Police. In such systems – this applying both to Albania and Italy, from which Albania inherited its procedural code – the Prosecutor cannot give incentives to policemen nor, on the other hand, have a negative influence on their careers if they do not comply with the instructions they received. Unless the current institutional relationship between the Police and the Prosecutor changes radically, the problem can be partly eliminated by linking policemen’s incentives to the investigation, prosecution and trial outcome.

Recently, a measurable improvement in co-operation between Prosecutor and the Police in Albania could be observed. The main reason is the delegation of investigative authority for serious crimes back to the Police, which has led to very successful results. It has created a situation of proper division of responsibilities supported by adequate skills and underpinned by necessary laws. Prosecutors know and trust police investigators and their professional competence. The Prosecutor trusts the Police exercising the judicial attribute for the preparation of case files. At the practical level, the Judicial Police who form part of the Prosecutor’s Office cannot monitor phone traffic and are ill-positioned to conduct surveillance, since their function exclude conduct of operational measures. The need for the Criminal Police to become the primary investigative force thus becomes obvious. They have the technical expertise to conduct investigations from the beginning to the closure.

**Police investigations of THB** are based historically on victim testimony. Victims and witnesses, however, can be easily intimidated and withdraw their statements, leading to mistrial or acquittal of suspected perpetrators. An alternative may be offered by pro-active investigations based on the use of criminal intelligence analysis. In Albania, the advantages of such an approach have been recognized, and efforts to implement it are being made.

In Albania, telephone connectivity data from the phone companies can be obtained only on the basis of a prosecutor's order. It was previously possible without one, but then the General Prosecutor cancelled this police right. The Police are now attempting to have this concession re-instated. It has particular importance when kidnapping is reported where immediate investigation is crucial.

**Phone interception** is achieving reasonable results. The current method is to use information from intercepts to capture material evidence of crime. Building cases solely on intercepts is

not possible since conversations are conducted in code and cannot be presented as evidence. Capturing of information from seized phones and computer hard drives poses a technological problem by virtue of sheer volume.

**Use of analytical products** as evidence can be expected to improve the quality of investigations. On the one hand, it will stimulate confessions; on the other hand, it will reduce the importance of confessions. A consequence will be the reduction of real or false complaints about police torture and reduce incidents where cases are dismissed when defendants claim confessions were forcefully obtained. In the investigation of crimes related to human trafficking, use of analysis can reduce total reliance on victim testimony.

**Rotation of police officers** affects the level of co-operation with the Prosecutors and the overall quality of investigations. Loss of trained personnel leads to disruption of continuity. On a positive side, Border Police in Albania involve NGOs in the interviewing of victims of trafficking, in particular minors to facilitate their quick referral to shelters.

Personnel policies, coupled with a clear division of responsibilities, are a key pre-requisite for effective co-operation between police and prosecutors.

The authorization of certain **intrusive investigative techniques** is permitted by the current Criminal Procedures Code for crimes that carry a punishment of seven years or more, which also covers corruption-related cases; there is therefore no need for introduction of a catalogue of crimes instead.



## 2.- MONTENEGRO

### 2.1.- Systems

#### 2.1.1.- Legislation

In a very short period of time, Montenegro achieved a remarkable level of progress towards bringing their criminal justice system in line with the UNTOC requirements. As an example Montenegro fulfils the obligation of punishing money laundering with criminal sanctions. There are provisions covering seizure, freezing and confiscating of the proceeds of criminal activities related to organize crime. The *special investigative techniques* under Art. 20, para. 1 of the Convention, namely interceptions and undercover operations, are allowed in Montenegro for investigations of crimes of trafficking. Montenegro has adopted provisions to set up structures responsible for providing assistance and protection to victims of organized crime as well as protection of witnesses from potential retaliation or intimidation.

In particular, Article 444 of Montenegro's Criminal Code, which is identical with Article 2 of the corresponding supplementary Protocol, has fully transposed the international notion of trafficking. It has also introduced the specific aggravating circumstances provided in the Protocol, namely those related to the exploitation of children and to actions committed in an organized manner by several persons. Article 445 and Article 446 punish, as separate offences, trafficking in children for the purpose of adoption and submission to slavery or transportation of enslaved persons.

Approximately 20 laws have been adopted in the framework of the Strategy for the Reform of the Judiciary, which will continue until 2012. Its core element, the Criminal Procedure Code, offers the great advantage of clearly defining organized crime activity (Article 507). A criminal offence is considered an act of organized crime if it is a result of organized activity of more than two persons whose aim is to acquire gain or power through commission of serious criminal offences, and if at least three of the following conditions are met:

- that each member of a criminal organization had a predetermined task or role;
- that the activity of a criminal organization was planned for a longer or indefinite period of time;
- that the activity of an organization is based on the application of certain rules of internal control and discipline of its members;
- that the activity of the organization is planned and carried out on an international level;

- that violence and intimidation are used in the execution of activity, or that there is a readiness to apply the same;
- that political, economic or business structures are used for the execution of its activities;
- that the laundering of money or other illegally acquired profit are used;
- that there is an influence of an organization or of one part of it on legislative power, media, executive or judicial power, or on other social or economic factors.

In general, there have been enough measures adapted and sufficient legislation [in force] in Montenegro concerning the protection of victims of trafficking and witnesses.

#### 2.1.2.- National Strategy and Action Plans

Montenegro has developed and implemented a range of national strategies and corresponding action plans, which conform to the EU acquis and the requirements of the Stabilization and Association Agreements with the EU. This framework is the epitome of good practice for the fight against trafficking in human beings (THB) and organized crime in general. It can be said that everything that needed to be done on paper was done. At the same time, it needs to be noted that an Impact Assessment Mechanism forms part of typical EU Action Plans. This element does not figure sufficiently prominently in Montenegro. It may also be useful to verify whether activities have been included into the Action Plans using the five standard EU criteria.

The National Strategy for Fighting against Trafficking in Human Beings adopted in November 2003 describes the tasks and functions of each government agency as well as the role of non-governmental partners. The Action Plan contains division of labour and allocation of capacity required for its implementation. Co-operation between the Police and Prosecutors is embedded in the Action Plan, which contains direct tasking to specific agencies and organizations. Working Groups were established, including the Sub-Group for Fighting against Trafficking in Children.

The Action Plan for implementation of the National Strategy for the Fight against Organized Crime and Corruption, dated July 2006, considers, among other measures, the elaboration of a large legal package and harmonization of the legislation with the international standards, as

well as improvement of the regional cooperation, the material resources for the bodies in charge of the fight against organized crime, and of the training.

The Police have a five-year strategy for responding to future crime threats. It recommends creation of specialist investigation departments, new training programmes at the Police Academy and facilities for processing potential DNA evidence. The Police believe that the conclusions of their analysis of crime trends are not alarming and that they know how to achieve new capacity enabling them to keep the situation under control.

Finally, a National Drug Control Strategy is under formulation, together with the corresponding Action Plan, which will be a logical complement to the Strategy and Action Plan against Organized Crime (OC) and Corruption. Following the practice adopted in many countries, it envisages the creation of a National Drug Commission.

The Ministry of the Interior in Montenegro has elaborated guidelines for regulating the legal status of foreign alleged victims of trafficking and providing them with medical treatment, when necessary. These guidelines are imperative during the legal process.

## **2.2.- Structures**

Montenegro has made great efforts in conforming to international standards, adapting its legal system and setting up all necessary administrative and operational structures.

The Department against Organized Crime within the Public Prosecutor's Office was established in 2004, with the ensuing appointment of a special Public Prosecutor for organized crime as co-ordinator. Preliminary investigations are carried out rapidly, while court hearings are considered to take a long time. Nevertheless, the length of the legal stay of victims is acceptable, if compared to European averages.

Videoconference systems are available to the courts. It is important to emphasize that this technical system is particularly important for adversarial trials – especially for cases involving organized crime – in order to assure the safety of witness, the swiftness of proceedings and the usefulness of the collected evidence.

National Co-ordinator for the Fight against Trafficking in Human Beings has been set up in Montenegro and it is very effective, which is highly commendable. It was set up in 2001.

First located in Ministry of the Interior, it was later moved to Ministry of Foreign Affairs and finally transferred to the General Secretariat of the Government of Montenegro. The National Co-ordinator is designated by the Government and is a technical appointment. He or she is responsible for the implementation of the Action Plan. The Project Board includes government agencies, NGOs and international organizations. It meets every three months.

The Office of the National Co-ordinator is primarily in charge of co-ordination of the competent bodies of the governmental administration, international organizations and NGOs, and of monitoring all activities related to the implementation of the National Strategy. It coordinates the meetings of the Project Board and of the Working Group on Strategy Implementation, and monitors implementation of Action Plans of the Ministries involved in this action. It also submits reports to the Government on its activities and achieved results. Since the beginning of 2006, the Office has funded all expenses arising from the operation of the shelter for victims of trafficking, administered by the NGO “Montenegro Women Lobby”. The Office of the National Co-ordinator dedicates attention to public awareness building and public information as an instrument for prevention and detection of THB-related crimes. Better communication between state agencies and civil society is viewed as a key instrument for improving the effectiveness of the anti-trafficking effort; such an approach should be supported and encouraged.

The approach taken in Montenegro related to *Referral Mechanisms* is based on the co-operation between government agencies and civil society. Here, establishment of Task Forces on prevention of THB is an example of sustainability of good practices in conditions of institutional development and reform, which characterized the current phase of institutional development in Montenegro. They were originally established in all provinces with the participation of local police, health, social security and public administration authorities. Subsequent to government reform, they were disbanded. However, participants agreed that the idea was good, although its implementation had failings in communication. A memorandum of understanding (MoU) to re-create the Task Force mechanism with due regard to lessons learned and in line with the new structure of governance has been already negotiated and signed under the auspices of the OSCE Mission to Montenegro.

The system for protected witnesses has just recently started, and currently involves a small number of people. As far as victim protection is concerned, there are three shelters for victims of THB run by “Montenegrin Women`s Lobby“, “Safe Women`s House“ and “Centre

Plus“. We are not aware of shelters specialized in children and children’s needs, although Montenegro has the system in place for returnees.

Finally, there is a police department responsible for combating organized crime and specialized in their investigation. There are no particular problems concerning co-operation among this Department, the Border Police and the ordinary police departments, which sometimes work together on investigations into organized crime.

### **2.3.- Practices**

In Montenegro in 2005, four perpetrators were sentenced to a total of 40 years in prison; in 2006, three perpetrators were also sentenced to long prison terms.

With little experience and very cautiously, Montenegrin legislation provides for the protection of criminals who co-operate with the justice system by giving evidence on behalf of the state in criminal prosecutions. Recently, a special prosecutor authorized that a drug trafficker become a protected witness. It was the first case ever that permitted to indict the leader of a major drug trafficking group, previously sentenced in absentia to 20 years in Switzerland.

Some training has been delivered to police, prosecutors and judges in Montenegro with the aim of identifying, investigating, prosecuting and judging the traffickers. Possibly, co-ordination between police and prosecutors will improve with the new procedural pattern in which the investigation is entrusted to prosecutors instead of judges. Co-ordination with judges is more difficult due to the division of powers and their independence. Judges request police officers to be better trained, for instance, in evidence gathering.

As far as proper investigative tools are concerned, i.e. the methods used to gather material evidence, the whole range of traditional tools appears to be adequately used. In particular, it must be pointed out that undercover operations are effectively used in Montenegro. However, these kinds of procedures have been frequently complicated by a lack of special equipment and skills. This issue is recognized and is currently being addressed.

One of the most difficult issues that needs to be resolved during OC trials is administration of seized assets such as real estate or businesses. Managers competent in administering these assets on behalf of the Judicial Authority – and willing to do so – could be registered on a National List, once the moral and professional qualities of the person in question have been

established. It is advisable that adequate protection be provided for these people to ensure their safety.

The issue regarding money laundering offences is exception, because only individuals uninvolved in the underlying crime from which money or assets originate can be charged with this offence. It has been noted that there have been no conviction verdicts for this offence, but this is not unusual elsewhere. The effectiveness of concrete counteraction against money laundering can certainly be improved. This mainly depends not on substantive criminal law or on procedural rules, but rather on civil and administrative law, mainly on banking, company and taxation laws, and on administrative regulations concerning asset transfers.

**Police investigations of THB** are based historically on victim testimony. Victims and witnesses, however, can be easily intimidated and withdraw their statements, leading to mistrial or acquittal of suspected perpetrators. An alternative may be offered by pro-active investigations based on the use of criminal intelligence analysis. In Montenegro, the advantages of such an approach have been recognized, and efforts to implement it are being made; recent examples are several successful investigations that did not involve victim testimony.

In 2005, a Criminal Intelligence Analysis Unit was established within the Criminal Police in Montenegro. The very initiation of the Criminal Intelligence Analysis Unit and employing women in half of the analyst positions is a positive development and is the essence of good practice, and corresponds to the recommendations of standard-setting centres of professional expertise. The Criminal Intelligence Analysis Unit in the Police has a well-articulated and valid medium- and long-term development strategy, based on international good practices. It is embedded in the National Strategy for the Fight against Organized Crime and Corruption and has a clear strategic vision. A decision was made to initiate a transition to intelligence-led policing, thus allowing for the use of criminal intelligence analysis tools to become instrumental for the investigation of OC. Its transformation into a self-standing multi-agency, a National Criminal Intelligence Centre, is currently being considered, since in Montenegro, centralization of law enforcement analysis capacities is perceived to be the most effective and cost-efficient way. Such a transformation will also expand the sources of operational information and respond to the request of specialist departments in the Police and other law

enforcement agencies. Transition to analysis-led policing has resulted in a five-fold increase of cases between 2004-06 and an increase in the detection rate for serious crime.

**Drug investigations** fall under the responsibility of several special prosecutors and common prosecutors. Appointment of additional special prosecutors is not considered necessary, but training in controlled deliveries and other special methods of counter-narcotics investigations could have a positive effect on the effectiveness of drug interdiction operations and drug investigations. A MoU between the Police and Customs on co-operation in drugs interdiction and posting of liaison officers may improve the results even further, as it currently appears that drug interdiction is responsibility solely of the Police.

In accordance with the current Criminal Procedure Code, authorization of certain intrusive investigative measures in Montenegro is permitted only for crimes that carry a punishment of ten years or more. The new Criminal Procedure Code to be enacted in the near future replaces this requirement with a catalogue of particularly dangerous crimes, which do not, however, formally constitute a case of organized crime or have a lower tariff, including taking and receiving of bribes, fraud and abuse of state authority. These crimes are particularly difficult to detect without using special investigative techniques.

The Organized Crime Department in the Montenegrin Police has good experience in co-operation with the Special Prosecutors Department. In the court system jurisdiction, over serious crime remains very dispersed. Judges are ill-prepared for dealing with highly complex organized crime activities. Consideration may be given to introducing positions of specialist judges and prosecutors for certain complex crimes. Centralization to one Court for Organized Crime, as practiced in Serbia for example, may be a logical step.

## **Part B**

### **State of play at the bilateral / international level**

#### **1.- Systems**

Albania and Montenegro have both signed most of the international agreements in the fight against criminality and are party to numerous bilateral and multilateral agreements in the region and with different institutions, both to improve co-operation and to facilitate the protection of witnesses and victims.

In the process of preliminary investigations, execution of letters rogatory follows direct channels, as the two countries have signed conventions allowing direct transmission of requests between judicial offices. The MoU on Co-operation between Prosecutor's Offices states the principle of direct and informal contacts among prosecutors. In cases where this is required, the direct participation of the prosecutor of the requesting country in the execution of the requested activities is allowed – and this is the correct approach – especially in the interrogation of witnesses and the gathering of banking or corporate information. For the purpose of judicial proceedings, evidence can be obtained only by means of communications between the Ministries of Justice. Both channels are used for their respective purposes concurrently.

#### **2.- Structures**

No separate or self-standing structures involved in co-operation at bilateral and multilateral levels were observed.

#### **3.- Mechanisms**

Prosecutors and courts in Albania are authorized to initiate and maintain direct contact with their international opposites, thus accelerating processes that were previously slow and awkward. Before this, only minor cases were prosecuted in Albania. Since 2004, there have been a number of more higher-level cases prosecuted with convictions and substantial sentencing resulting from dedicated co-operation between the Police, Prosecution and Courts internally and collective co-operation with external agencies. As Albania protects its citizens from becoming subject of extradition, comprehensiveness and transmission of information is paramount.

According to the statistics of the Special Prosecutor's Office from Montenegro, 14 court proceedings have been initiated before the competent courts against 94 persons in total, from



the sphere of organized crime, where cooperation with Albanian prosecutors existed and was initiated, due to the proceedings initiated (14) pertain to Albania, either with regard to the offender or the subject of the criminal offence. Out of the given number of court proceedings initiated in Montenegro (14), cooperation with the Albanian prosecutors was formed in the following three cases:

- cigarette smuggling, where 17 persons are being prosecuted and cigarettes and the means of transport originate from Albania. The Albanian prosecutor has delivered information on the goods and the means of transport.
- arms smuggling, where there is a final judgment against one person. The arms were seized in Albania and the Albanian prosecutor is prosecuting the action against several persons.
- arms smuggling, where three persons are being prosecuted for selling arms to an Albanian criminal group. The Albanian prosecutor is concurrently prosecuting the action against the criminal group in Albania concerning the smuggled weapons and there has been two-way exchange of requested information and evidence.

We have been informed with satisfaction about the warm welcome given in Albania to two Public Prosecutors from Montenegro, who have been allowed to go to Albania with a witness to meet the accused Albanian national, in order to proceed to a personal check.

As regards transnational investigations, the practice of concentrating in centralized offices and entrusting specialized magistrates with organized crime trials, as in Albania and in Italy, favours good co-operation. Overall, the duration and the enforcement of International Letters Rogatory, the duration and the outcome of different trials, the high rate of cases dealt with and settled with respect to those reported, the number of magistrates, responsible for dealing with organized crime, shows that both in Albania and in Montenegro the judicial response to the trafficking phenomenon is adequate. In fact, available resources and structures could even meet a bigger demand.

Finally, we need to point out that while judicial structures appear to be adequate and the Police forces have set up specialized units, problems remain – not in how reported trafficking cases are dealt with, but rather, in the insufficient number of real trafficking cases coming to the surface. Obviously, real cases exceed the number of reported cases – trafficking of human beings is a hidden crime.

## Part C

### Conclusions and recommendations

#### 1.- At the national level

It seems that the good systems and structures in both Albania and Montenegro are not always complemented by equally well-developed mechanisms and practices. Further strengthening of the transmission mechanism can be expected to increase the effectiveness of investigations and the quality of cases presented to the court. A serious basis for determining trends in the trafficking of human beings and the true scope of this phenomenon can be established only by conducting analysis in accordance with internationally accepted methods.

- A. One of the most difficult issues that needs to be resolved during OC trials is administration of seized assets such as real estate or businesses. Managers competent in administering these assets on behalf of the Judicial Authority – and willing to do so – could be registered on a National List, once the moral and professional qualities of the person in question have been established. It is advisable that adequate protection be provided for these people to ensure their safety.
- B. In the effective court convictions in Montenegro for the criminal offence of THB, the adequacy of the sanction policy should be assessed, especially bearing in mind the nature and character of these offences, their perpetrators and the structure of victims.
- C. Co-location of minors with adult victims is an infringement on children's rights recognized by international conventions. Specialized shelters need to be set up in both countries in accordance with current national laws to ensure adequate protection of minor victims of human trafficking.
- D. The signature of an overarching Memorandum of Understanding between government agencies and the civil society in Montenegro and the creation of the National Referral Mechanism in Albania represent examples of good practices in co-operation of governmental and non-governmental stakeholders in the prevention of THB. Promotion and replication of these good practices in other OSCE pS should be encouraged.
- E. The Montenegrin delegation strongly recommends concentrating judicial jurisdiction for organized crimes by establishing a specialized department within the Superior Court in Podgorica, Montenegro and thus changing the current situation when this jurisdiction is divided among 15 Basic Courts and 2 Superior Courts.

- F. The common position of Albanian and Montenegrin Delegations is that knowledge improvement is needed for the Police, Prosecutors and Judges in the field of freezing and confiscation of assets acquired from crime. For this purpose, a study tour could be organized to Ireland, which has a ten-year record of successful implementation of a most advanced legislation.
- G. In Albania, it is recommended to introduce changes to the Criminal Code with the aim of clarifying the difference between “exploitation of women for prostitution in aggravating circumstances” and “trafficking of women”. The current formulations are interlinked, which is causing difficulties in differentiating between them in practice.

## **2.- At bilateral / international level**

The current practices of bilateral contacts between Montenegrin and Albanian Police in the border region should be recognized and promoted as an example of good practices. Police of both countries are encouraged to further expand these contacts and both governments are encouraged to actively support this process. As one contribution to the process, expert advice on and parallel training of the Police/Border Police in both countries in the conduct of pro-active investigations is recommended; it is imperative that training of police in both countries be conducted by the same training provider to ensure that similar methodology is applied.

Furthermore, the following good practices observed in Albania and Montenegro can be recommended to the OSCE pS, as appropriate:

- Establishment of joint border crossing points greatly helps to expedite the procedures of border crossing and to accelerate information exchange. Experiences are very positive from the one joint border crossing point between Albania and Montenegro because both Police Services work together.
- Establishment of the reversal of burden of proof in order to have success in the fight against money laundering. Albania and Montenegro have the legislation in force.
- Improvement of the process for the implementation of the legislation regarding the criminal liability of the legal entities. Albania and Montenegro have the legislation in place.

To enhance the current status of cooperation at bilateral/international level, the following is recommended:

- A. To establish bilateral agreements between the two countries in order to allow judges to communicate directly in order to avoid slow processes via ministries, similar to the Police and Prosecutor (except of the judicial system with investigative judges). Signing agreements between judiciaries would improve co-operation; the legal framework and bilateral agreements provide the basis for it. When the provisions are the same and the direct connections with the courts are working, personal will in the institutions is the key issue.
- B. To remove obstacles from co-operation among local law enforcement agencies by strengthening personal relations with counterparts at the local level. This could be achieved at a first stage by scheduling periodical meetings with Albanian and Montenegrin Police, Prosecutors and Judges.
- C. To draft a legal framework for the use of joint border patrols. The signing of the protocol is in process in Albania and Montenegro.
- D. To sign Joint Protocols between neighbouring countries in South-East Europe on the prevention of THB and assistance to victims of trafficking. These agreements should foresee the creation of Focal Points in the Police to facilitate quick exchange of information in accordance with operational requirements.
- E. To harmonize legislation based on agreements signed by other countries and the framework of international conventions.
- F. To improve the practice of joint investigations. Montenegro and Albania have good experience here in dealing with organized crime with other countries, but there is evidence that this kind of interaction is needed between them. Since Albanian criminals co-operate with Montenegrin criminals, joint investigations should be conducted. Further development on feedback on how information was used from the country receiving it is needed.
- G. To build trust in international exchange of police intelligence. This is needed to improve pro-activeness in the practice of joint investigations. This is very important when facing organized crime (pro-active instead of reactive). There are no legal barriers for doing this in either of the two countries; there is a need to improve tools for pro-active joint investigations.

- H. To improve the use of the video conference system in order to speed up co-operation and to protect witnesses and victims.
- I. To improve the use of special methods of investigations in both countries.

### **3.- Rights of victims vs effectiveness of investigations**

The following is recommended:

- A. To properly inform the victim about rights and duties prior to the hearing. If this is not done, the risk of problems in the process is more likely.
- B. To organize a system for protecting the victim's right not to be harassed. During the court process, all contacts between suspect and victim must be avoided to prevent continuing victimization. Methods used include, among others, one-way glass windows for identification of perpetrators, no accidental meetings in the court house corridors and proper interviewing/interrogation rooms.
- C. To draft a MoU between NGOs and law enforcement in order to provide the victim or witness with a support person at different stages of criminal procedure. Such agreement exists in Albania and Montenegro.
- D. To offer the victim a period of reflection that may help to encourage willingness to co-operate with the justice system, with due regard to the requirements of the criminal justice process concerning persons taken into custody.
- E. To provide relevant training to prosecutors and police officers dealing with crimes of THB.
- F. To establish systems for relocating victims and their family abroad. Each case must be evaluated separately as the process is difficult for the victim and very expensive for the state. In relocation activities, input from civil society (NGOs and IOM) is crucial.
- G. To give visibility to convictions, prioritize successful actions against high-level traffickers in order to achieve good results from the victims who will trust the system.
- H. Minors need better protection; the focus should be on their well-being and not on the requirements of the investigation process.