RHETORIC AND REFORM

A CASE STUDY OF INSTITUTION BUILDING IN MONTENEGRO 1998 – 2001

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EXECUTIVE SUMMARY

With the demise of former Yugoslav President Slobodan Milosevic and the change of administration in Belgrade in autumn 2000, an extraordinary period in Montenegrin history came to an end. Since then, as the Federal Republic of Yugoslavia has re-entered international institutions, the political landscape has been transformed. As political changes in Belgrade reduce Montenegro's strategic importance to the West, donor priorities are changing and Montenegro can no longer count on external subsidies continuing at the extraordinary level of the past years. At the same time, the issue of the legacy of Yugoslavia – including servicing the US$ 12.2 billion foreign debt – is back on the table, together with negotiations with the IMF, the World Bank and other creditors.

In 1999 and 2000, the European Union and the United States pledged some DM 485 million in assistance to Montenegro. Another DM 280 million in support has been announced for 2001. This significant foreign aid package succeeded in its primary objective – strengthening Podgorica in its confrontation with Belgrade – but did little to promote change within Montenegro. Assistance levels in 2002 are certain to be considerably lower.

Montenegrin economic reformers seek to promote a vision of their republic as an "efficient microstate". In reality, the size, cost and bureaucratic reach of the government administration has continued to grow in comparison to 1990. Most of the institutional change during the past three years has been a steady expansion of the republican administration, as it absorbed more functions from Yugoslavia. Although most available statistics need to be treated with caution, the general picture is clear. Some 60 percent of Montenegro's official workforce are now employed by the state or in public companies. The cost of supporting the administration absorbs two-thirds of the Montenegrin budget, and is met only through massive and until now largely unconditional foreign assistance. The consolidated budget deficit is a striking 15 percent of total GDP.

While constitutional issues continue to absorb the attention both of the Montenegrin government and of most Western observers, the stability of Montenegro rests much less on the question of its status inside or outside Yugoslavia than on its ability to pursue serious reform. Failure by Montenegro to tackle its own internal shortcomings will constitute a serious problem both for the pro- and anti-independence agendas. Montenegro's institutions are not effective enough to allow it either to function as an independent, European state or to prosper within a loose federal or confederal arrangement. If Western aid is conditioned on Montenegro remaining within the Yugoslav federation, then it will not be an effective lever to promote internal reforms.

The record of reform of the Montenegrin administration since 1998 deserves to be closely examined. In recent years, the Vujanovic administration and president Milorad Djukanovic regularly stressed their commitment to institutional reforms. There has been no shortage of strategy documents, project proposals, working groups and expert teams developing long lists of objectives. However, as so often in the former Yugoslavia, the rhetoric of change has become a substitute for the reality. In the field of judicial reform, not one new law has been adopted since the reform process was launched in 1998. In the field of administrative reform, no action has taken place. In the field of local government reform no substantial changes have taken place. The most important "reform achievement" has been the setting up of a seriously under-resources Institute of Judiciary, Public Administration and Local Government in Podgorica.

No real attempt has been made to identify the human and financial resources required to implement complex reform programmes. Foreign assistance has preserved a political economy based on heavy *industry, a bloated administration and a large security apparatus. The state is the largest employer, the most important consumer, and the source of subsidies for loss-making public enterprises. It sets important prices and controls most wages, but lacks the most basic capacity to manage public expenditure. All large banks are publicly owned and banking regulation is lax. There is no effective separation between the different branches of government, nor between the economy and the public administration. The executive is subject to little parliamentary control or public accountability. The judiciary remains subordinate to the executive. A complex web of cross ownership and mutual control links politics and economics in a highly non-transparent fashion. Nearly every influential politician is active in the public economy and political patronage determines appointments to all key economic positions.*

Administration reform, including a review of the structure of the central government and developing a smaller and more professional civil service, is a prerequisite across a range of other reform goals, helping the state to develop the executive capacity to carry out its plans. While a well-structured administration does not guarantee successful reforms where political support is lacking, the current dysfunctional administration guarantees failure.

The impact of outside assistance has been mixed. The presence of foreign consultants has increased the efficiency of the legislative reform process. Draft laws in different areas are under development, and some economic laws have already been passed by the parliament. However, with the exception of the Montenegrin Central Bank, none of the institutional reforms envisaged in these initiatives has yet reached the implementation stage. The most effective economic "reform" measures to date have been the introduction of the German Mark as a new currency and the take-over of the customs administration. In both cases, the motivation of the government was to strengthen Montenegro's autonomy from Yugoslavia.

Democratisation assistance has focused on legislative reform, seminars and training and limited supplies of equipment, particularly computers. While these forms of assistance may be valuable in the right context, they need to be complementary to and embedded within a focused reform strategy prepared by the Montenegrin government. Such a strategy has not been developed. Without a commitment by the Montenegrin government itself, technical assistance programmes will produce only limited results. There are things that Western donors can do to help this process. They should much more strongly insist on transparency within the Montenegrin government on issues such as government spending and financial flows, the structure of the administration and the size and nature of the police force. Technical assistance to reform efforts should focus on a number of core areas, rather than spread itself too thinly as it does at present.

The risk of Montenegro entering a further spiral of social decline is real. The resulting pressures on Montenegrin society will be considerable, and difficult to predict. Western donors, who have permitted Montenegro to become ever more dependent on generous external support for strategic reasons, now have an interest and a responsibility, given a commitment by the Montenegrin authorities, to assist the former ally to adjust to the new circumstances over a period of time. Grasping the seriousness of the looming crisis is a pre-condition for the Montenegrin leadership to begin to find ways forward. It is equally crucial that outsiders do not take the political and social stability of Montenegro for granted but actively engage the Montenegrin authorities to address the root causes of future instability.

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In much recent development literature, public administration reform is recognised to be of crucial importance.[1] *In practice, improving the performance and capacities of governments has emerged as central to the process of European enlargement to former socialist countries in Central Europe.*[2] *At the same time, public administration reform is exceptionally difficult to implement, and to support from the outside. A study of World Bank-supported public administration reform initiatives around the world in 1997 posed the question of whether they have made a critical impact on government performance. It concluded that, after "nearly a decade and a half of operational experience in civil service reform, the answer is, despite some isolated successes and significant lessons learned, probably not".*[3] *As a consequence the study called for a rethink of the current modalities of foreign assistance, to be fed by case studies of "concrete successes and failures which help to understand the complex dynamics of administrative reform".*[4] *This study hopes to contribute to this wider debate in the specific context of governance reforms in the former Yugoslavia.*

I. INTRODUCTION

This report is a case study of the Montenegrin experience in what is variously called institution building, strengthening governance, capacity building or public administration reform. It is set against the background of a specific historical context: the cold war between Montenegro and Serbia in the period 1997 to 2000. It examines the results of specific reform efforts and their implications for the stability of Montenegro and the wider region. It also considers the impact of foreign assistance and provides recommendations to international policy makers as to how best to use limited international resources.

A key conclusion of this study is that, whatever the outcome of the public debate on the future status of the small Republic (658,000 inhabitants and some 50,000 refugees) inside or outside of the Federal Republic of Yugoslavia (FRY), stability in Montenegro will remain elusive unless the government reverses a decades-long process of social and economic decline. Otherwise Montenegro risks once again returning to the centre of international attention as a source of instability, this time as a result of internal tensions, *irrespective* of its constitutional status.

Montenegro today has most of the institutions of an independent state. It will keep almost all of them according to any of the constitutional proposals currently on the table.[5] However, these institutions are not effective enough to allow Montenegro to function either as an independent state or as a prosperous and stable unit of a loose federal or confederal arrangement. Many of Montenegro's leading politicians believe otherwise.[6] At a time when Podgorica was seen as an indispensable ally against

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1 This reflects the growing influence of "neo-institutional economics" in the development community. See for further information and references: Robert Picciotto and Eduardo Wiesner (ed.) *Evaluation and Development – The institutional dimension*, World Bank publication, 1998; Julio Faundez (ed.) *Good Government and Law – Legal and institutional Reform in Developing Countries*, British Council and Macmillan Press, 1997.

2 Many good references can be found in the copious analysis produced by SIGMA (www.oecd.org/puma/sigmaweb), a program supported by the European Commission and the OECD. See also: Barbara Nunberg, *Ready for Europe – Public administration reform and European Union accession in Central and Eastern Europe*, World Bank, 2000. For a short discussion see: European Stability Initiative – East West Institute, *Brussels discussion paper - Stability, Institutions and European Integration*, 31 October 2000, www.esiweb.org.

3 Barbara Nunberg, *Rethinking civil service reform: an agenda for smart government*, World Bank Poverty and Social Policy Department, 30 June 1997, p. 5.

4 *Ibid*., p. 16.

5 English translations of the Montenegrin platform of December 2000 and President Kostunica's proposal of January 2001 were published in Centre for European Policy Studies (CEPS), *Europa South-East Monitor*, Issue 19, January 2001, www.ceps.be.

6 As President Milorad Djukanovic put it optimistically in February 2001: "It is four years now that Montenegro has

Milosevic, outside observers reinforced the image of a "reform administration". As a recent United States State Department Report explained: "the goal of US assistance has remained constant – to support President Djukanovic's reform-minded government. Through technical assistance, budget support, and food assistance, the US is promoting Montenegro's political and economic transition from a state-dominated society to one with strong institutions supportive of democratic principles and open, free and competitive markets".[7]

The problem is that, examined more closely, there is no such "transition" to speak of. Western assistance sought to buy stability in Montenegro and has succeeded. It did not "buy reform". Today the discrepancy between a rhetoric of reform and a reality of institutional inertia is striking, and reminiscent of the late socialist Yugoslavia. Advocates of reform, such as Veselin Vukotic, the head of the Montenegrin Privatisation Council, promote a vision of the country as an "efficient microstate" with a lean public administration. Montenegro's political leaders present integration into European institutions as their foreign policy priority. At the same time, the size, cost and bureaucratic reach of the government has continued to grow substantially. The basic structure of government remains trapped in the socialist past. Reform strategies appear to be drafted mostly for the eyes of outsiders, without even nominal efforts made by the administration to budget for them realistically and without domestic political actors who would hold the executive accountable for its promises. The major "reform trend" of recent years is simply the continuation of a decade-long Yugoslav dynamic, the transfer of responsibilities – in recent years for monetary policy and customs administration – from the Federal to the Republican level.

Although available statistics need to be treated with great caution, the general picture is clear: today more than 60 percent of Montenegro's official workforce is employed by the state or in public companies. The cost of supporting the administration absorbs two-thirds of the Montenegrin budget.[8] Public spending is equal to some 71 percent of official GDP. The consolidated budget deficit in 2000 amounted to a staggering 15 percent of GDP.[9] Until now this has been made possible through massive and largely unconditional foreign assistance (some DM 765 million were committed from 1999 to 2001 by the United States and the European Union). In the absence of continued massive support, this system is as likely to collapse as any unreformed socialist regime at the end of the 1980s. The administration will soon be forced to choose between cutting public sector salaries or pensions, reducing subsidies to state-controlled companies, in particular the electricity company, or reducing the size of government, including the police. No credible strategies for undertaking such cuts exist at present.

There are two main reasons to examine the Montenegrin "reform experience" more closely.

First, given the likelihood of a worsening economic and social situation in the near future, both Montenegrin political actors and the outside world will face difficult choices in deciding how to react. In an optimistic scenario, growing dissatisfaction about the failure of present institutions to provide human security would provide momentum for serious, and indeed long overdue, reforms.[10] The reshaping of Montenegro's public administration, an issue which has to date received very little

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been successfully implementing its project of economic and democratic reforms. Today, we are on a stable and irreversible way to the European and trans-atlantic structures". Introductory speech at conference "The future of Montenegro", organised by CEPS, ICG and the Friedrich Ebert Foundation, Brussels, 26 February 2001.

7 US State Department, *SEED Act Implementation Report Fiscal Year 2000*, Washington, March 2001.

8 The Montenegrin budget for 2001 presented to parliament amounts to DM 449 million; this does not include major public expenditures like the health and pension systems or local government spending (which are all included in what this report calls "consolidated budget"). In the year 2000 the official budget was less than half of the consolidated budget.

9 All statistics must be treated with care, given the dilapidated state of the Montenegrin statistical system. Most figures in this report are based on: Institute for Strategic Studies and Prognoses (ISSP), Centre for European Policy Studies (CEPS), *Montenegro Economic Trends – Monet*, Nr. 5, April 2001, p. 31 (hereafter *Monet*).

10 "Government" stands for the totality of structures exercising sovereign authority, including the executive, the legislature and the judiciary. See Basic Concepts, in Asian Development Bank, *Improving Public Administration in a Competitive World*, 2001, p. 70. "Vlada" is translated as "administration" (as in: "the Vujanovic administration"). References to the "state" (as in "state-controlled companies") refer to the institutions of the Republic of Montenegro, unless otherwise stated.

attention, would be at the heart of such an effort. To design and implement a credible public administration reform strategy, however, requires an understanding of recent failed efforts and of persisting obstacles.

Second, the experience of Montenegrin public administration reform contains important lessons for Serbia's reformers and international donors. It contains a cautionary note not to underestimate the difficulties of translating reform rhetoric into realities, given the weakness of government institutions. It raises the question to what extent reform of government itself receives sufficient attention and resources. There are many reasons why donors and politicians prefer to spend resources in areas with a more immediate and visible impact, from infrastructure to budget support for social transfers. The Montenegrin experience reveals the risks of failing to tackle the administrative shortcomings of the government machinery from the very outset, lest other sectoral reforms (such as macroeconomic reforms or privatisation) fail.

The tendency of international observers to now take Montenegro's stability for granted, having successfully mobilised substantial aid to shore up its fortunes in the face of an aggressive Serbia, could prove a dangerous miscalculation. In a pessimistic scenario for the future, familiar from the past decade of post-Yugoslav history, "conflict entrepreneurs" would emerge from within dissatisfied parts of the political establishment, denouncing the status quo and the compromises it contains. Their banner would not be reform but polarisation, exploiting existing social, regional, political and ethnic cleavages. The unresolved constitutional status, Montenegro's interethnic make-up and the criminal networks left as a legacy of a decade of embargo-busting provide ample material for this. Having seen similar dynamics ravage every other post-Yugoslav republic except Slovenia and, well, Montenegro, should, however, make the outside world wary of complacently assuming that a deeper crisis "could not happen there" if overall social conditions deteriorate further. The underlying assumption is that it is not ancient ethnic hatred, but the inability of governments to provide basic security and stability to their citizens in an equitable manner that creates opportunities for conflict entrepreneurs to polarize societies, from the Caucasus to the Balkans.

II. CONTEXT – THE THIRD YUGOSLAVIA IN CRISIS

The context of the institutional reform efforts examined here is the crisis of the third Yugoslavia.[11] There are two major aspects to this crisis, one constitutional and one social and economic. It is the interrelationship between them, which explains much of Montenegro's present predicament.

The roots of the constitutional crisis of the third Yugoslavia can be found in the constitution of 1992, which set up a new state as a loose federation of two very unequal partners, a large Serbia and a small Montenegro. However, structural problems came to the surface when – for the first time in 1997 – the two governments in Belgrade and Podgorica no longer agreed on basic policies. In 1997 Milorad Djukanovic led almost the complete Montenegrin political establishment to break with Milosevic and Belgrade. This took place against a background of continued international sanctions, street protests in Serbia and growing disaffection in Montenegro with falling standards of living. The Montenegrin governing party, the DPS, and its patronage network largely remained in place throughout this transformation as a "party of power", devoid of ideology and devoted to the institutional status quo.

Tensions between Podgorica and Belgrade reached a crescendo at the time of the Kosovo war in the spring of 1999. While Serbia declared war, Montenegro remained studiously neutral. This brought the Yugoslav constitutional crisis to a head, but proved a boon in terms of delivering economic relief. Suddenly, the survival of the government came to be seen as a major security interest of the West. The governing coalition crafted a consensus in support of building the institutions required for quasi-independence, while postponing any final decision on status. The perceived threat from Belgrade helped to sustain its unity.

[11] The first Yugoslavia was founded following World War One, the second, socialist, Yugoslavia, following World War Two.

The roots of the social and economic crisis lie in the Yugoslav model of economic development.[12] Detailed household surveys provide a clear sense how this crisis affects the population. According to one recent study, 56 percent of Montenegrin households have not been able to afford any major purchase such as an apartment, car, washing machine, refrigerator, TV, stereo, personal computer or furniture in the course of the last five years. For more than 60 percent of households, securing food represents a problem. 27 percent of Montenegrin households have less than DM 100 available per household member per month.[13]

Djukanovic's coalition won the 1998 parliamentary elections on the promise of a "better life", not constitutional reform. Paradoxically, it was the security threat and aggravated constitutional crisis at the time of the Kosovo war which allowed the government to fulfil at least part of this promise. From 1999 onwards, Montenegro received substantial budgetary support from the European Union and the United States. This aid was unconditional, allowing the government to increase the subsidies (open and hidden) to loss-making public companies, to maintain social transfers, expand the bureaucracy and raise public sector salaries. Montenegro was encouraged to play an international role unencumbered by one of the most onerous economic legacies the Federal Republic of Yugoslavia inherited from its predecessor, a huge foreign debt of some US$ 12.2 billion. In part as a result of foreign net transfers, the average Montenegrin became substantially better off than his/her Serbian counterpart, with net wages and pensions about twice those across the republican border.

With the arrival of new Serbian and Yugoslav governments in Belgrade and the entry of Yugoslavia into international institutions, this extraordinary period in Montenegrin history came to a close. The political consensus on the status issue among the governing coalition dissipated, leading to its collapse and early parliamentary elections in April 2001. The massive foreign debt is again on the table in negotiations with outside creditors. Despite a *relative* improvement in Montenegro's position during the past three years compared to Serbia, most of the population continues to struggle. The social and economic gap between different regions, in particular the poorer North and the relatively better off coastal areas, but also between a small elite at the top of the political-economic system and the larger population dependent on government handouts and individual survival strategies in the grey economy is growing. Monthly incomes, including estimated gains from the grey economy, range between DM 233 in the North, DM 280 in the central region (Podgorica) to some DM 478 on the coast. While a large part of the population is struggling, some 8 percent say that they are well-off.[14]

Montenegro's situation today resembles that in the last years of the former socialist Yugoslavia. This holds especially true for the pattern of outside assistance. After its celebrated break with Stalin in 1948, the Socialist Federal Republic of Yugoslavia (SFRY) received significant Western financial assistance, most of it unconditional. The US covered 60 percent of its current account deficits from 1950 to 1964, in the interest of maintaining its unique geopolitical position "between East and West". This enabled Yugoslavia both to build up its strong armaments industry and its concentration of heavy industry. Yugoslavia's indebtedness leapt from US$ 4 billion in 1972 to US$ 20 billion by 1982.[15] As John Lampe put it, by the end of the 1980s "the Western support that was part of Tito's legacy had now become part of the problem: it legitimised the political stalemate and its distribution of economic resources in return for the guarantee of debt repayment."[16] Following the end of the cold war in 1989, Yugoslavia's strategic importance vanished almost overnight. Foreign support and attention diminished sharply, despite a deepening economic and constitutional crisis. Western policy makers did not seriously reengage until the domestic crisis was far advanced.

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12 ESI, *Autonomy, Dependency, Security: The Montenegrin Dilemma*, 4 August 2000, p. 10-16.

13 OCHA Sub-Office Pdogorica, Economics Institute Belgrade, *Income & Expenditures in Montenegro. A personal income and household survey*, December 2000, pp. 18, 22, and 13.

14 *Ibid*., p. 39.

15 John R. Lampe, *Yugoslavia as History. Twice there was a country*, Cambridge-New York, Cambridge Univ. Press, 1996 (reprinted 1999), p. 315.

16 *Ibid*., p. 323.

Following the end of the recent cold war between Milosevic's Serbia and Djukanovic's Montenegro, a similar pattern of "boom-bust" Western assistance, coupled with a similar incapacity and unwillingness by the domestic elites to carry out reforms, appears to be emerging. More than a decade after the official demise of communist Yugoslavia both its constitutional and economic crisis remain unresolved in Montenegro.

III. MONTENEGRO: STATE OF THE STATE

1. Socialist legacies

Administrative cultures, the expectations of government officials about what is "normal" and "acceptable" in a given organisation, evolve in response to concrete problems and incentive structures over a long period of time. Even when such cultures become dysfunctional, it remains necessary to understand their roots if one wishes to improve governance in a durable way. In the case of Montenegro this requires an understanding of the incentive structures and the mental models about the role of government in society that the political elite inherited from past decades of socialist development.

The monopoly on political power of the Montenegrin League of Communists ended in 1990. However, the most important changes in the governing elite took place *before* the end of communism, as part of Montenegro's "anti-bureaucratic revolution" internal to its League of Communists. Both the governing DPS and the major opposition party, the SNP, who split from the DPS in 1998, are direct successors to the Montenegrin League of Communists. This holds true for the key figures in the Vujanovic administration as well as for the leading figures in today's SNP, such as Predrag Bulatovic and Zoran Zizic, who were DPS politicians.

The first multi-party elections also did not transform the role of the state in society. Government remained a guarantor for a specific form of economic development, based on a) a large, unaccountable public bureaucracy, b) an important, non-transparent security structure and c) an economy based on industrial "white elephants" in heavy industry, supported through direct and indirect public subsidies.

Another legacy from the former Yugoslavia is a peculiar "reform debate tradition". Outside observers not familiar with its history can easily mistake it for a sign of a genuine commitment to change the nature of government. This discourse is based on the idea of the eventual withering away of "the state" as part of a process of "de-etatisation" (*de-etatisacija*). At the heart of "de-etatisation" was the ideological obsession with the dangers of bureaucratic control. Following the break with orthodox Stalinism, Yugoslavia's chief ideologue and main constitutional authority, Edward Kardelj, focused on how to "safeguard the revolution from its own bureaucrats". For Kardelj, the Stalinist Soviet Union was controlled by a "bureaucratic caste" while Yugoslav socialism was based on "the constant strengthening of socialist democracy, in the sense of the increasing self-management of the common people, of their greater participation in the machinery of the state." Milovan Djilas, Kardelj's great rival, would soon argue (and go to jail for this) that this description of the Yugoslav reality was misleading. Self-management, according to Djilas, "legalised criticism of the bureaucracy … but it did not substantially influence the character of power or of political circumstance."[17] Instead, what followed were decades of reorganisation of government, party and economic structures, as well as a whole series of constitutional amendments, which produced an "esoteric institutional reality".[18]

The result of this process was twofold. On the one hand, there was a steady erosion of the federal institutions, balanced only by Tito's extra-constitutional influence and a united Yugoslav army. On the other hand, the bureaucratisation of Yugoslav society increased instead of decreasing. As one critic noted, the Yugoslav state was indeed dying, as the ideology of de-etatisation was urging, but "in

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17 Lenard Cohen, *The Socialist Pyramid: Elites and Power in Yugoslavia*, Oakville-New York-London, Mosaic Press, 1989, p. 48. This classic provides a detailed empirical analysis of bureaucratic power and political rule under Yugoslav socialism.

18 *Ibid.*, p. 60.

the wrong way. The state is losing its coordinating and planning function, while its repressive functions are growing, particularly at the republican level."[19] Debates about de-etatisation were accompanied by the growth of ever more opaque administrative structures. These debates were accompanied by an endless succession of "economic reform plans" since the 1960s, which shared the fate of de-etatisation in failing to break out of the contradictions of the Yugoslav system. In principle, "anti-statism, self-management, and a free and unified Yugoslav market (were) all officially endorsed objectives of party policy".[20] As observers remarked about the 1982 Programme of Economic Stabilisation prepared by a special commission, the only "long-term" feature about the reform programme was the time it took to implement it.[21]

The outcome of all this is known. The dominant "reform trend" of the 1970s remained the growth in strength (and cost) of republican bureaucracies. Instead of cutting spending on defence and security establishment (one of the highest per capita levels in Europe), reducing and rationalising the many layers of political bureaucracy or introducing hard budget constraints for inefficient heavy industry, Yugoslavia and its increasingly autonomous republics went on a spending and consumption spree based on borrowed money.

As long as the key policy objective in Montenegrin politics remains the preservation of a social system based on the powerful inherited triad of a huge (and expensive) security apparatus, a large and unaccountable state/party bureaucracy and the primacy of loss-making heavy industry, fundamental reform of the institutions of government will not take place. This continuity both in the political elite's vision of the role of government and in the concrete incentives embedded in the socialist economy is most apparent in the continuing central role of the "aluminium production chain" based around Montenegro's largest company, the Aluminium Kombinat in Podgorica (KAP).[22]

During 2000, the only sectors of industry which significantly increased their production were all linked to KAP (an increase of 21 percent at KAP itself, 38 percent at the bauxite mines, 46 percent in the metal processing industry linked to aluminium).[23] As all key prices which determine the production costs of aluminium are set by the government, the "profitability" of the company is a product of political decision-making. Other central policy objectives are subordinate to the fate of the plant: the control of the budget deficit, the privatisation of the Montenegrin electricity company, and the general enforcement of hard budget constraints on companies.

Against a background of an unsustainable fiscal deficit, the government continues to heavily subsidise electricity, the primary input to the production of aluminium. Considerable amounts of foreign assistance in the past years have been used to import electricity, directly linked to the fate of the plant which consumes around 40 percent of the country's total electricity supplies.[24]

There is an urgent need for investments in the electricity grid due to years of neglect and low maintenance. Already Montenegrins are beginning to suffer from shortages. However, plans to attract investments through privatisation are hostage to the government holding the price of electricity artificially low. Regional comparisons suggest that the electricity company would need to charge some 5 US cent per kilowatt hour to operate economically and maintain its basic infrastructure and essential investments, while KAP is supplied at some 2 cent per kilowatt hour. Monet noted:

> "if KAP were to be charged this price [5 cents/KWH] it would cease to be profitable. Current prices for aluminium in Europe are around US Dollar 1569/ton. The production cost of KAP three years ago, when world prices were lower, was US Dollar 1700/ton. Hence KAP lost money. Production costs have since been reduced to US Dollar 1410 (on a current cash basis), allowing for a surplus. The higher electricity price quoted above

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19 *Ibid.*, p. 65.
20 Harold Lydall, *Yugoslavia in Crisis*, Oxford, Clarendon Press, 1989, p. 95.
21 *Ibid.*, p. 69.
22 For background on KAP, see also: *Ibid.*, p. 14-15, and *Monet*, Nr. 5, April 2001, p. 61.
23 *Monet*, Nr. 4, January 2001, p. 5.
24 *Monet*, Nr. 5, April 2001, p. 63.

> would push the cost again above 1700/ton, making the plant nonviable. Note that aluminium smelters in the North West of the US are shutting down as prices have risen from 2,3 cents per KWH to four cents. The same would apply to KAP."[25]

To date, there is no public debate on the costs to society of such an industrial policy. It remains unclear what will happen once foreign subsidies for the import of electricity stop and budgetary pressures force the government to review this costly policy of subsidies. What is clear is that the "aluminium lobby" of state-controlled companies and private trading companies linked to this "industrial jewel in Montenegro's economy"[26] remains as strong in 2001 as it was when the plant was set up in 1972 as one of Yugoslavia's industrial "white elephants". Then, as the economist Harold Lydall noted, "much of the foreign loans raised in the 1970s had been misdirected or wasted. Huge sums had been poured into projects for the production of steel and non-ferrous metals which turned out to be either technically or economically inefficient".[27] What was not invested in this manner was consumed, to buy legitimacy for the regime of the day. As we will see, the use of international assistance in the last years mirrored this practice very closely.

The reality of the "withering away of the state" today is not the emergence of a lean and accountable public administration but the growth of the grey economy. One recent study estimates that the grey economy adds some 40-50 percent to official GDP.[28] In a survey of 5225 respondents, 21 percent of all adults admitted receiving monthly income from grey market activities, an estimated 92,000 compared to 114,000 in official employment.[29] In another study, 66 percent of 469 interviewed companies admitted to employing workers unofficially.[30]

2. Measuring governance

a. The size and shape of government

There are no universal models for a functioning public administration. There are no hard and fast rules on the right size of government, the right number of ministries, or the most appropriate way to measure a public administration's performance. Even within OECD countries there are widely different conceptions on the "proper" role and responsibilities of government beyond the basic tasks of keeping the peace and enforcing laws.

At the same time, a comparative perspective helps to identify concrete options how to improve the governance capacity of a given administration. It also helps to identify anomalies. The peculiar structure of Montenegro's apparatus becomes quickly apparent when it is compared to others.

Comparisons reveal the sheer relative size of the Montenegrin public sector. During the last 20 years government expenditure as a share of GDP rose in the more affluent OECD countries from 34 to almost 40 percent, and fell in the rest of the world from 28 to 26 percent. In Montenegro government expenditure in 2000 amounted to an estimated DM 920 million, or 71 percent of GDP.[31] Overall fiscal deficits declined almost across the board, from 4.9 to 3.8 percent in industrial countries and from 3.9 to 2.6 percent in the rest of the world.[32] The Montenegrin consolidated budget deficit in 2000 amounted to some 15 percent of GDP (DM 191 million).[33] This is considerably larger than in any

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[25] *Monet*, Nr. 5, April 2001, p. 63.
[26] *Monet*, No. 5, April 2001, p. 65.
[27] Harold Lydall, *Yugoslavia in Crisis*, Oxford, Clarendon Press, 1989, p. 67.
[28] OCHA Sub-Office Pdogorica, Economics Institute Belgrade, *Income & Expenditures in Montenegro. A personal income and household survey*, December 2000, p. 36.
[29] *Ibid*., p. 36. A similar figure is given by Monet, No. 3, October 2000, p. 7.
[30] Center for Entrepreneurship, *Barriers for SME development in Montenegro*, cited in Monet, No. 4, January 2001, p. 54.
[31] *Monet*, No. 5, April 2001, pp. 7, 28 and 31.
[32] Salvatore Schiavo-Campo and Pachampet Sundaram, *To Serve and To Preserve: Improving Public Administration in a Competitive World*, Manila, Asian Development Bank, 2001, p. 33.
[33] *Monet*, Nr. 5, April 2001, p. 31.

other transition country in South Eastern Europe, even in Albania, which experienced a collapse of state institutions in 1997 (see table 1). It is an indication of the size of the adjustment shock which beckons once international grants no longer finance such deficits.

Table 1: Fiscal revenues of selected countries (yearly average for 1995-1999, in percent of GDP)[34]

	Albania	**Bulgaria**	**Romania**	**Slovenia**	**Montenegro***
Total revenue	21.0	34.8	31.5	43.0	56.3
Expenditure	31.4	33.3	35.5	43.5	71.3
Overall budget deficit, including grants	-10.4	1.5	-4.1	-0.5	-15.0

* Montenegro data are for the year 2000 only

At the same time, Montenegro allows itself the luxury of an inordinately complex central government structure. One comparative study found that, broadly speaking, "most countries could manage very well with 12-18 central ministries".[35] A case study commissioned by ESI and the EastWest Institute noted that the average number of portfolios in most Central and East European countries is less than 16 (see Annex B).[36] Despite its small size, however, Montenegro boasts an active presidency, a prime minister, three deputy prime ministers, no less than 18 ministries and 19 additional governmental agencies.

Many of these executive institutions are very small, and eleven out of 37 have fewer than 20 employees. The average Montenegrin ministry employs 65 people. This proliferation of ministries and agencies makes co-ordination in key policy areas – and particularly administrative and economic reform – extremely difficult.

Beyond the basic size and number of ministries, it is useful to compare the performance of what the World Bank has called "tractable institutions": public expenditure management arrangements and budgetary processes, civil service pay and personnel management and legal and judicial arrangements. In its recent report on South Eastern European development the World Bank developed a list of concrete measures of institutional arrangements to assess the performance of these institutions (see Annex A). Once again, a systematic comparison makes apparent just how much Montenegro's public administration remains beholden to its socialist past.

b. Managing public expenditure

To date, despite substantial international financial assistance, no-one has undertaken an in-depth evaluation of public expenditure management in Montenegro.[37] There are, however, a number of very basic and visible problems in Montenegro's rudimentary public expenditure management.

– Submitted budgets are unrealistic. Government policy statements rarely correspond to actual expenditure. Throughout the government there is minimal capacity for analysis of the expenditure implications of policy decisions. One example of this is the double-digit deviation in percentage between planned and collected revenues from turnover tax and payroll tax, which make up about 80

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34 Sources: *Monet*, No. 5, April 2001, p. 7, 28 and 31 (for Montenegro; data for year 2000), World Bank, *Albania. Public Expenditure and Institutional Review*. Volume II, World Bank Report Nr. 21857-ALB, April 2001, p. 16 (for Albania, Bulgaria, Romania, and Slovenia; yearly average for 1995-99).

35 Salvatore Schiavo-Campo and Pachampet Sundaram, *To Serve and To Preserve: Improving Public Administration in a Competitive World*, Manila, Asian Development Bank, 2001, p. 35.

36 ESI-EWI case study, Romanian Academic Society, *Unrelenting transformation – the instability of central administrative structures as an obstacle for institutional reform*, p. 5.

37 An example of what would be useful is the *Public Expenditure and Institutional Review* the World Bank completed for Albania on 16 April 2001.

percent of total budget revenues. In 2000, the budget anticipated an income of DM 149 million in payroll taxes, but received only DM 88 million.[38] (See table 2).

Table 2: Planned and collected turnover and payroll taxes 1996 – 2000 in million DM[39]

Year	**Turnover tax revenues**			**Payroll tax revenues**		
	Plan	Executed	Deviation	Plan	Executed	Deviation
1996	128.6	137.6	+6.9 %	126.6	106.8	-15.6 %
1997	208.2	149.5	-28.2 %	209.2	180.6	-13.7 %
1998	171.6	122.1	-28.8 %	156.4	138.0	-11.8 %
1999	128.0	147.5	+15.2 %	105.8	69.4	-34.4 %
2000	170.4	193.2	+13.4 %	149.0	87.6	-41.2 %

– There is no integrated budget framework. More than half of public revenues and public expenditures are not included in the annual budgets submitted to parliament. Revenues of the social funds (social contributions, former federal revenues, revenues from privatisation), the municipalities, the army, the Ministry of Transport, the Directorate for Public Revenue, the payments bureau, the Chamber of Commerce and unions, railways, the *Automotorni Savez* are either totally or partly off-budget.[40] There is a corresponding lack of transparency in the use of such revenues.

– Revenues and expenditures are unpredictable for most spending units. Government ministries, social funds, public agencies and municipal administrations do not know whether in a given fiscal year they will actually receive what is allocated to them in the annual budget. This is a particular problem for municipalities, which depend on income transferred from the central government for more than half of their revenues.[41] Much of their revenue is collected centrally and fluctuates widely. As a result, there is no multi-year financial planning at the municipal level and almost no capital investment in municipal infrastructure. The four social funds, responsible for the pension system, the health system, employment programmes and development, are also unable to predict their revenues and expenditures. In 2000 the pension fund accumulated DM 20 million in arrears, bringing total arrears to DM 46 million.[42] Unpredictability is aggravated by "spontaneous" policy decisions, such as that of increasing the minimum wage from DM 50 in December 1999 to DM 80 in October 2000. This led to most salaries in the public sector to be increased in the same proportion.[43]

– The government is not effectively held accountable by the legislature for its spending. Although the parliament is responsible for approving the government's budget, ministries and individual agencies can change the budget substantially without further parliamentary approval. The Ministry of Finance has no effective means of monitoring expenditure across different government agencies. The execution of the budget in practice entails the transfer of funds from the Ministry of Finance to the accounts of individual ministries and administrative units, which should then report back on individual items of expenditure. In practice, this does not always occur. There is no treasury department or supreme auditing body. The parliamentary committee system is largely ineffective and thus the legislature exercises little or no control over public finances.[44] The government is able to change both the level and composition of tax revenues as well as redirect expenditures within the budget period by

38 *Monet*, Nr. 5, April 2001, p. 22-23.
39 Source: *Monet*, Nr. 5, April 2001, p. 23-24.
40 *Monet*, Nr. 5, April 2001, p. 28, and *Monet*, No. 4, January 2001, p. 23.
41 Local revenues consist of communal taxes and fees, building site charges and administrative taxes. Transferred revenues include 50 percent of property taxes, the tax on real estate transactions, the tax on inheritance and gifts, and 70 percent of residence tax. The municipal share of personal income tax varies according to the size and wealth of the municipalities, where the formula is set by the central authorities.
42 *Monet*, Nr. 5, April 2001, p. 33.
43 *Monet*, No. 4, January 2001, p. 14.
44 As one analyst noted: "It is axiomatic that if the national legislature is to be a significant political factor, then it must have specialized committees of limited membership and considerable scope of power." Joseph LaPalombara, *Politics within Nations*, New Jersey, Prentice-Hall, 1974, p. 121.

decree, without consulting the legislature. There is no consistent budget classification of revenues and expenditures.

– There is an almost complete lack of transparency related to security expenditures. The police force has seen the most dramatic growth of any government agency in recent years, motivated by security threats from the Yugoslav Army during Milosevic's rule. The build-up in recent years has been highly secretive, and little is known about reporting or command structures. Parliament has been unable to obtain information about police activities, numbers and budgets.[45] The build-up of the police places a major financial burden on the Montenegrin state, comprising at least 17.2 percent of total budgetary expenditures last year.[46] At the same time even basic information, such as the size of the police force, is not public. Estimates range between 10,000 and 15,000, up from 2,000 in 1997, including reservists hired on a contract basis. It remains impossible to get confirmation of these figures from the Ministry of Interior. Deputy Prime Minister Dragisa Burzan asserts that the number has now dropped to about 8,000.[47] Even the lowest estimate suggests that Montenegro has more police per capita than Serbia,[48] and that one employee in fourteen is on the police payroll.[49]

– Two thirds of the 2001 budget consist of running costs, another 19 percent of social benefits and subsidies, and only 8 percent are allocated for capital investments. There is almost no allowance for interest expenditures, budgeted at DM 1,7 million, 0.4 percent of the total 2001 budget.[50] As loans will increasingly replace grants, and as FRY resumes once again the servicing of its foreign debt this will need to change. Any further reduction of spending on operation and maintenance, however, would lead to an even more rapid depreciation of infrastructure.

– The budget is prepared on an annual basis. The one-year time horizon does not provide a forecast of the medium-term expenditure implications of different programs. There is no multi-year medium term macroeconomic framework (MTMF), unlike even in Albania.

In sum, unpredictable expenditure and revenue planning and a lack of auditing institutions sharply limit the accountability of the government to the parliament. Good budget execution – beginning with solid budget preparation and ending with a strong external audit – is as yet a distant goal.

c. Managing government employees

The Montenegrin public administration has significantly expanded in size and cost over the past few years and currently employs more than 34,000 people.[51] From late 1998 to September 2000, the number of employees in the central administration rose by more than 25 percent, from 2,910 to 4,055.[52] In total, the Republic employs 75,000 individuals in the public administration and in publicly controlled companies.[53] This is some 60 percent of the active labour force,[54] compared to 11.6 percent in the Netherlands, 15.4 percent in Germany or 32 percent in Sweden.[55]

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45 *Vijesti*, 14 November 2000, p. 4.

46 *Monet*, No. 4, January 2001, p. 28 (data for January to November).

47 Interview with Deputy Prime Minister Dragisa Burzan, 6 May 2001.

48 Budimir Babic (*Police as a Tool of Milosevic's Autocratic Rule*, Belgrade, Helsinki Committee for Human Rights in Serbia, 2000) estimates the strength of Serbian police in 1997 at about 150,000. Current estimates usually refer to about 80,000 police, one policeman for every 100 citizens. In Montenegro, using the figure of 8,000 police, this ratio is one policeman per 81 citizens.

49 Based on a figure of 8,000 police, and data from the Statistical Office of Montenegro, putting the number of officially employed persons in December 2000 at 114,690 (*Monet*, Nr. 5, April 2001, p. 10).

50 "Budzet Republike Crne Gore za 2001. Godinu", in: *Sluzbeni list Republike Crne Gore, Year LVI, Nr. 59, Podgorica, 27 December 2000, p. 33.*

51 Using the lower estimate of 10,000 for the size of the Montenegrin police force.

52 Ministry of Justice, *Donors conference in support for the government of Montenegro. Public administration, judiciary and local government reform projects*, January 1999; and *Pregled broja zaposlenih u ministarstvima i organima uprave* (stanje na dan 30.09.2000 godine), manuscript obtained from the Ministry of Justice. This strong increase includes the roughly 300 employees of the customs administration, formerly part of the federal administration.

53 Including an estimated 40,000 in state-controlled companies.

Table 3: Public administration employees[56]

Institution	Number of employees
Central administration	4,000
Police force	10-15,000
Judiciary	1,200
Local government	2,000
Education sector	8,500
Health sector	7,600
Central Bank, Payments Bureau, social funds	900
Total	**34,200-39,200**

The overall costs of the public administration increased significantly during the last years. Civil service salaries are the biggest expenditure item in the Montenegrin budget, absorbing about half of the official budget. The budget for 2001 foresees DM 230 million for salaries and "compensations" (*naknada*), and 77 million for material costs and services, adding up to more than two thirds of the budget.[57]

Table 4: Planned expenditure in the 2001Montenegrin budget[58]

Expenditure item	million DM	%
Salaries	207.1	46.14
Other salary-related costs	22.9	5.11
Material costs and services	76.6	17.06
Social benefits	61.6	13.71
Subsidies	22.3	4.96
Capital investments	35.7	7.96
Other	22.7	5.05
Total	448.9	100.00

Monthly salaries in the state administration average around DM 200-250 for an ordinary civil servant, compared to about DM 500 for an assistant minister and DM 600-700 for a minister. While average civil service salaries are above the official Montenegrin average salary of about DM 200,[59] it remains difficult for a family to survive on a public sector salary, given that a monthly basket of basic food and hygiene items for a family of four cost DM 300 in April 2001.[60]

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54 In December 2000 there were 114,969 officially employed persons in Montenegro (*Monet*, No. 5, April 2001, p. 10). This figure did not include those working in the police or in the army.

55 Christopher Pollit and Geert Bouckaert, *Public Management Reform. A Comparative Analysis*, Oxford-New York, Oxford University Press, 2000, p. 105 (data for 1996).

56 Figures are based on data provided by the Ministry of Justice, the Central Bank, the Health Fund, the Development Fund and the statistical Yearbook of the Republic of Montenegro as well as on estimates by different officials in the government and the Ministry of Interior about the strength of the police forces.

57 "Budzet Republike Crne Gore za 2001. godinu", in: *Sluzbeni list Republike Crne Gore*, Nr. 59, Podgorica, 27 December 2000.

58 Source: *Sluzbeni list Republike Crne Gore, Year LVI, Nr. 59, Podgorica, 27 December 2000, p. 32-33.*

59 A new decree foreseeing even higher coefficients and therefore higher salaries was passed in 1997 ("Uredba o zaradama drzavnih sluzbenika", in: *Sluzbeni list Republike Crne Gore*, Nr. 41/97), but is currently not applied. The official average salary is lower than the estimated average total income (DM 310) referred to in chapter two, as the latter includes also income from the grey economy, asset sales, etc.

60 World Food Program, *Shopping Basket for a Family of Four in Montenegro*, Podgorica, April 2001.

Senior officials have opportunities to improve their income though positions as members of managing boards of public companies and travel allowances. There are also large discretionary allowances for civil servants, in particular in the form of apartments. It remains common for public servants, after a certain period of employment, to be allocated socially owned apartments, which they may inhabit at nominal rent and may purchase for a fraction of the market value. In 2000, the amount set aside for the "construction and purchase of apartments for the use of workers employed in the fields of education, administration and judiciary" was equal to 44 percent of total investments foreseen in the Republican budget.[61]

The selection process for civil servants lacks overall transparency. There is no central civil service commission. Employment of regular civil servants is done by each individual ministry. Following the advertisement of a vacancy, the ministry creates a selection panel, while final responsibility remains with the minister. While new employees are often hired on a one-year probation, once they become a civil servant they are unlikely ever to be dismissed. After the probationary period, termination of employment can occur only in extreme circumstances, such as criminal conviction or loss of Yugoslav citizenship.[62] The Assistant Minister of Justice responsible for public administration could not remember a single such case in 25 years.[63]

IV. THE MONTENEGRIN REFORM EXPERIENCE

1. From Strategy to Implementation

In 1998, the Montenegrin government announced reform plans across a number of areas of public administration. It produced strategy documents[64] and project proposals and set up working groups and expert teams, which in turn produced long lists of objectives. There was no lack of rhetorical flourish in these early texts, which refer to the need to transform the government from one "which controls to one which supports" market actors.[65] The objective was no less than a "change of legal and judicial culture". The plans were ambitious, if sketchy on details. However, apart from a few draft laws, the output until now has been negligible.

In the field of judicial reform, not one new law has been adopted since the reform process was launched in 1998. In the field of administrative reform, no action has been taken. In the field of local government reform, no substantial changes have taken place.[66] The most important "reform achievement" has been the setting up of a seriously under-resourced *Institute of Judiciary, Public Administration and Local Government* in Podgorica.

Shortly after taking office, the government of Prime Minister Filip Vujanovic established a *Council for Reform of Judiciary, Public Administration and Local Government* in October 1998, composed of eleven ministers and headed by then Minister of Justice, Dragan Soc.[67] The Council's function was to lead in inter-ministerial co-operation and to approve draft laws from expert working groups. In actual fact, it rarely met.[68]

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61 "Budget of the Republic of Montenegro for the year 2000", *Sluzbeni List Republike Crne Gore*, 30 December 1999, no. 51/688, pp. 1-12.

62 Stevan Lilic, Petar Kunic, Predrag Dimitrijevic, Milan Markbovic, *Upravno pravo*, Belgrade, Savremena administracija, 1999, pp. 216-218, 224-225.

63 Interview with Branislav Radulovic, Assistant Minister of Justice, 4 May 2001.

64 The primary strategy papers were: Expert Team in co-operation with the Ministry of Justice, *Upravna reforma u Crnoj Gori. Osnove*, Podgorica: manuscript, December 1998; Ministry of Justice/ Expert Team "Rezime Projekta reforme sistema lokalne samouprave u Crnoj Gori", reprinted in Ministarstvo pravde/ Ekspertski tim, *Dokumenti reforme lokalne samouprave u Crnoj Gori*, Podgorica, Ministry of Justice, January 2000, pp. 245-264; Ministry of Justice, *Predlog projekta reforme pravosudnog sistema Crne Gore*, Podgorica: manuscript, December 1998.

65 Expert Team in co-operation with the Ministry of Justice, *Urpava reforma u Crnoj Gori. Osnove*, Podgorica, manusript, December 1998, p. 3.

66 The most significant and most successful practical outcome has been a pilot project to make the municipal administration in Niksic more customer-friendly and accessible.

67 Vlada Republice Crne Gore (Government of Montenegro), Nr. 02-5755, Podgorica, 19 October 1998.

68 Branislav Radulovic, Assistant Minister of Justice, on telephone, 5 December 2000.

Daily responsibility for administration, judicial and local government reforms was given to the Ministry of Justice. Its capacity was limited: it employs a total of 63 people, of whom 18 are recent graduates. In March 2000, the Minister, Dragan Soc, became president of the Montenegrin People's Party, and became preoccupied with coalition politics. In December 2000, the People's Party left the ruling coalition and he resigned his portfolio.

In 1998 the Ministry commissioned a number of key strategy papers in the three areas of public administration reform, judicial reform and local government reform. Foreign consultants paid by USAID produced analyses of the state of the judiciary and the state of local government. This was followed by a small "donors conference" under the motto "*reforma – sve ili nista*" (reform – everything or nothing) on 27 and 28 January 1999 in the Hotel *Crna Gora* in Podgorica. Still in April 1999 the Ministry noted that "The proposed state administration reform requires significant financial resources, whose exact amount cannot be presently determined.[69]

Only by September 1999 the costs for judicial reform were given by the Ministry of Justice as DM 5,6 million (US$ 2,4 million) for the period 1999 to the end of 2001; for reform of local government DM 2,5 million (US$ 1 million); and for reform of public administration DM 1,3 million (US$ 567.000).[70] At the same time, the total annual budget of the Ministry of Justice dedicated to all three reforms was only DM 764,000 for 2000 and DM 1,4 million for 2001.[71] Thus, the government *itself* never budgeted more than 25 percent of what it calculated its own reform plans would cost. If foreign donors would not come to the rescue and pick up 75 percent of the reform bill, the calculation appears to have been, these reforms would simply not take place. This is, indeed, what happened.

Even more than by the lack of human or financial resources, however, the execution of reforms was hindered by the absence of a clear understanding of what the reforms of the judiciary, of public administration or of local government *were all about* in the first place. Who was the constituency, aside from the international public? Who would gain influence as a result of these reforms and who would lose? How would losers be compensated or persuaded to go along? From the outset, none of these questions were answered.

In the case of local government reform, one observer noted early on that it was somewhat unusual that in Montenegro it was initiated by the Republican Ministry of Justice: it appeared that the Republican level "is pushing resources and responsibilities down to municipalities that seem, in some cases, reluctant to accept full responsibility". A US State Department report notes that the USAID-contractor International City/County Management Association (ICMA) "brokered an agreement between the Union of Municipalities and the Ministry of Justice, which is responsible for the reform legislation, allowing (sic!) for the direct participation of Union of Municipalities' members in 16 key areas of local government reform."[72] The similarity to the top-down constitutional reforms of Edward Kardelj appears obvious.

Was the objective to provide better services with the same inputs, to reduce costs, or to expand administrations to meet new challenges? Would the Ministry of Justice, without any popular pressure or debate, limit its own power (and that of the central government in general) through devolution of authority to judges and municipalities? Who would care if nothing came of any of these reforms?

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69 Ministry of Justice, Administrative Sector, *Ways of Realization of the State Administration Reform Project in the Republic of Montenegro*, Podgorica, April 1999, p. 7 (emphasis added).

70 Government of Montenegro, Public Administration, judiciary and local government reform projects, September 1999.

71 It should be pointed out that it is **not** certain and indeed extremely hard to verify whether DM 764,000 budgeted for reform in 2000 were actually **spen**t on this purpose; in November 2000 high level officials in the Ministry told ESI that they did not know what (if) the money was spent on.

72 US State Department, SEED Act Implementation Report Fiscal Year 2000, Washington, March 2001, p. 164.

2. Case study: Judicial reform since 1998

In almost all aspects, the Montenegrin judiciary remains a child of the socialist judicial system of the former Yugoslavia. Since the 1950s Yugoslav constitutions, like the present Montenegrin constitution, had provisions for an independent judiciary. The 1974 constitution enshrined the independence of the judiciary in a number of articles (210, 230, 231), and stated unambiguously that "courts shall be independent in the performance of their judicial functions"[73]. Simultaneously, Yugoslav legal scholars emphasised that judicial independence in no way implied that judges should function without regard to the regime's core political values. As one put it: "independence does not mean, by any means, that the court stands beyond and outside the socio-political system, or above this system".[74] A key link between the regime and the judicial system was provided through the close relationship between prosecutors and state security.

In Montenegro today the judicial branch remains subordinate to the executive. The Ministry of Justice exercises financial and administrative control of the courts, determines the number of courts, the number of sitting judges and budgetary allocations. Judicial appointments are made by Parliament, on the recommendation of a Judicial Council. Established under the Law on Courts of 1994, the Judicial Council consists of the Minister of Justice, two members of parliament, two legal scholars and two judges, all selected by the parliament. There is no independent supervision, and in practice the Minister of Justice exercises substantial control over the appointment process. The Judicial Council also recommends the appointment of the presidents of the courts, for approval by the parliament. The court presidents are highly influential. They have the right to assign and reassign cases, transfer judges and initiate disciplinary proceedings.

Public confidence in the legal system remains weak, as evidenced by falling demand for the services of the courts. The director of the legal aid office in Podgorica and president of the Bar Association even suggested that the number of court cases had decreased since the early 1990s because "people have lost faith in the courts".[75]

In 1998, the Vujanovic administration proposed to overhaul the judiciary. It set out an ambitious legislative reform program: 13 new laws were to be drafted, including a new Law on Courts, a new Law on the Public Prosecutor and a new Law on the Enforcement of Criminal Sanctions. An initial paper by a government expert team pointed out inadequacies in existing legislation.[76] A second paper, drafted by two USAID consultants following five weeks of field research, noted a whole array of additional challenges. Some were constitutional: the still applicable procedure codes of the Federal Republic of Yugoslavia (criminal, administrative and civil procedure codes) were incompatible with a modern legal system and needed to be completely redrafted. Other problems concerned the basic structure of the judiciary:

> "core legal institutions must be up to the task of implementing and executing the laws and regulations that define the legal system. It is not clear that the current structure of the judiciary can handle the types of cases facing Montenegro today … the most critical problems include overburdened basic courts, under-experienced commercial courts, ill-defined petty crime courts and a problematic system of juror-judges".[77]

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73 Lenard Cohen, *The Socialist Pyramid: Elites and Power in Yugoslavia*, Oakville-New York-London, Mosaic Press, 1989, p. 278.

74 *Ibid.*, p. 280.

75 USAID assessment report on the Montenegrin judicial system, p. 15.

76 Ministarstvo Pravde Republike Crne Gore, *Predlog Projekta Pravosudnog Sistema Crne Gore*, Podgorica, December 1998.

77 USAID assessment report on the Montenegrin judicial system, p. 9. The system of juror-judges dates back to early phase of "revolutionary justice" in the 1940s, when people's courts were composed of permanent personnel and "lay" judges. In major criminal offenses two juror-judges join a professional judge. Since decisions are made by majority vote, they can outvote the professional judge. Most juror-judges are pensioners. However, already in 1954 the Law on Courts made it a punishable offence to subject judges or judge-jurors to any extra-judicial pressure. See: Lenard Cohen, p. 268.

The assessment concluded that problems that still needed to be addressed were the overall inadequate resources and the potential of "domestic resistance to reform". As to the former:

> "Significant investment of already squeezed government resources will be necessary to implement much of the programme. It is not at all clear that such resources are currently available via the Ministry of Justice. The process of open debate of reform priorities has led to raising expectations among the judges. Their primary recommendation to the Ministry of Justice is to improve the material status of judges."[78]

Aside from the drafting of new legislation, the majority of other reforms will require "significant resources": "judicial prestige is low and the material status of judges needs to be improved"[79]; "Improvements at the law school will require a significant financial investment, one which will only pay off in the long term and therefore may be of lower priority to the government of Montenegro"[80]; "The massive training and development of continuing legal education for legal professions is an enormous task. The associations involved are very nascent and do not have a strong record of being able to deliver the types of services necessary".[81] These resources were never identified. At the same time, the problem of vested interests opposed to reforms was not addressed. As the USAID report noted, a "fully functioning judiciary, with more transparent procedures and clear standards of conduct could prove threatening to those who currently thrive with the status quo".[82]

The paper on judicial reform in December 1998 had called for an ambitious legislative reform programme of 13 new laws and the amendment of regulations across five sectors within the year 1999 alone.[83] Some new laws were indeed drafted. However, so far not one new law has been adopted by parliament.

3. Case study: the Institute for Judiciary, Public Administration and Local Government

The absence of a realistic assessment of ends and means, and even more importantly of a clear overall objective, is equally striking in the field of public administration reform.

The administrative reform strategy adopted by the government in January 1999 outlined key steps to overhaul the Montenegrin civil service: a) constituting a separate governmental body to organise and supervise activities aimed at the fulfilment of administrative reform targets, and b) establishing a non-governmental institute, the *Mediterranean Institute for Public Administration and Judiciary*.[84] Nothing ever came of the first idea. The second idea soon became the flagship effort of Montenegrin public administration reform. Renamed *Institute of Public Administration, Judiciary and Local Governance,* this was to be a major change agent, promoting research, consulting, carrying out comparative analysis of administrative reform strategies in other countries and establishing specialised training. It initially even aimed to offer its services to "foreign users" and link itself up with similar organisations in market-oriented economies.[85]

When these plans were drawn up, it was completely unclear how this institute was to be financed. After all, setting up specialised institutions, academies or colleges for training of public servants, police or judiciary is the first idea in almost every early reform effort in South Eastern Europe, generally abandoned once the first cost calculations are made. What was different in Montenegro was

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78 USAID assessment report on the Montenegrin judicial system, p. 23.
79 *Ibid*., p. 14.
80 *Ibid*., p. 19.
81 *Ibid*., p. 19.
82 *Ibid*., p. 23.
83 Ministarstvo pravde republike Crne Gore, *Predlog projekta reforme pravosudnog sistema Crne Gore*, Podgorica: manuscript, December 1998, pp. 80/81 (see also pp. 87/88).
84 Expert team in co-operation with the Montenegrin Ministry of Justice, *Upravna Reforma u Crnoj Gori*, Podgorica, December 1998, p. 3.
85 Expert team in co-operation with the Montenegrin Ministry of Justice, *Upravna Reforma u Crnoj Gori*, Podgorica, December 1998, p. 16.

not the fact that resources were not identified; it was rather that this did not stop the project from going ahead.

In January 2000, a UK consultant from the UK Civil Service College came to Podgorica and, on the basis of two days of meetings with the Minister of Justice, the Secretary of the Ministry, the Institute's constituted managing board and the newly appointed Director of the Institute, drew up a mission statement for the to-be-established Institute. It was adopted without modification:

> "The Institute exists to meet the management and professional development needs of public servants so that they may deliver continuous improvement in public services for the benefit of all in Montenegro".

The consultant noted at the time that "the funds available to the Institute and the capacity of staff will limit the options and speed at which the Institute will be able to establish itself." In late 1999 estimated operating costs for a professional staff of 8 from 1999 until the end of 2001 were DM 1,6 million.[86] In early 2000 the staff consisted of the director only and it remained completely unclear how operating costs would be financed.

This had not changed by the time the director drew up a "Proposed 2000-2005 Strategic Plan". It suggested that the Institute could actually be a profit-making institution: "Lucrative activities of the Institute in the initial phase of work could be consulting and publishing."[87] Although the government as a founding member supplied the premises and various foreign NGOs (the American Bar Association [ABA/CEELI], a USAID-grantee, as well as the Open Society Institute) provided some equipment and limited start-up funds, the Institute's financial future remained clouded. By the end of the year 2000, the director was still not aware how much of that years annual reform budget of the Ministry of Justice it was to receive. By June 2001 the Institute had obtained some DM 70.000 in government funding for the year, with another DM 30.000 still due.

Once again, the inescapable impression is that the Montenegrin founders (the Government of Montenegro, the Lawyer's Association, the Judge's Association, the Law School of Podgorica) counted on foreign assistance to keep the Institute operating. In the absence of a serious Montenegrin engagement, however, outsiders remained wary. What was supposed to be the motor for transforming the administrative culture of Montenegro within three years turned into something that has to date had no impact on the state of public administration.

4. Case study: defining the function of public administration

In the course of 2000 the Institute did, however, draw up 10 *priority projects* to advance the cause of public administration reform. Although until now not one of these projects had obtained the funding it sought, or had therefore been implemented as planned, it is useful to analyse one of them more carefully to get a better understanding of the dynamics of the present reform effort, the motivation of its key actors and the reasons for its disappointments.

The first thing to note is that these 10 project drafts are the *core* of the Montenegrin public administration reform project, as managed by the Ministry of Justice. Four of them are to focus on the organisation of public administration, and six on the status of civil servants. They have titles such as "the control functions of public administration", "recruitment and protection of civil servants", the "responsibility of civil servants" or the "professional development of civil servants". Each project foresees the setting up of a multi-member working group and has as its objectives the drafting of some form of legislation.

86 Interestingly, the initial proposal foresaw a total of 9 desks as basic furniture for a professional staff of 8 (plus driver and office cleaning person), but 10 desk telephones *plus* 11 mobile telephones. See: Government of Montenegro, Public Administration, judiciary and local government reform projects, September 1999.

87 Vesna Rakic-Vodinelic, "Proposed 2000 – 2005 Strategic Plan", English translation, p. 9.

One of the more ambitious projects is called simply "Project on the functions of public administration" (*poslovi drzavne uprave*). This project is to be implemented by the Institute of Public Administration. It foresees the formation of a working group of 8 individuals, has a duration of 5-6 months (September 2000 to 15 January 2001) and a price tag of DM 109,050. The proposal explicitly notes that "the project is in conformity with the general orientation of the Stability Pact for Southeast Europe".

The project description includes a project *aim*, project *objectives*, and a *plan of activities*. The project aim is given in two sentences: "Define the function of public administration. Define the function of public administration to be performed by subjects outside the public administration." The "objectives" are as follows: "Determine which functions public administration should perform and finance. Determine which functions public administration should not perform but should finance. Determine which functions public administration should not perform and should not finance. Prepare the working version of the Draft Law on the Principles of Organisation of Public Administration in the part which covers the functions of public administration." The "plan of activities" foresees four project stages:

- a study tour "of a EU country and a CEEC country in order to acquire knowledge concerning the functions of public administration (a week in each country)"
- preparation of the working version of a draft law on the Principles of Organisation of Public Administration
- organisation of expert discussions of the draft law
- production and delivery of the draft law to the Government of Montenegro for debate by 15 January 2001

More than 70 percent of the budget is allocated for the fees of the working group members and the two week-long study tours.[88] The complete proposal is no longer than a few pages. It is not surprising that neither this project, nor the other projects, have obtained the funding they have sought from international donors. Nor has the Ministry of Justice allocate any funding. As a result, the working group has not drafted the legislation on the "functions of public administration".

Table 5: Costs of project to define the functions
of public administration in Montenegro[89]

Purpose	**DM**
authorial fees for the working group members and the project co-ordinator	28,000
renting space for the activities of the working group	3,500
study tour of one EU country and one CEEC country	50,000
authoral fees for foreign experts (five persons for two days each)	8,000
costs of boarding and lodging foreign experts	2,000
other costs	17,550
TOTAL COSTS	109,050

All of this would matter little if there were other efforts ongoing elsewhere in the Montenegrin government. That there are *not* suggests that the Montenegrin administrative reform process is a mirage. There is a new *Council* on administrative reform, a new *Institute* for administrative reform, there are *projects* for administrative reform and there are *speeches* about administrative reform. The conclusion is inescapable that the reason there is an administrative reform agenda at all is the need – for a domestic and more importantly international audience – to appear to be doing something.

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88 Institute for Public Administration, Judiciary and Local Government, *Project Function of Public Administration*, 6 July 2000.

89 Source: Institute for Public Administration, Judiciary and Local Government, *Project Function of Public Administration*, 6 July 2000.

What is missing is a sense of urgency about the clearly unsustainable cost of the Montenegrin government: there is a lack of proposals as to how the structure of its ministries and agencies could be rationalised or the quality of decision-making at the centre of government improved; of analysis of personnel policies across government, of pay schemes and incentives; and finally, of any idea how the accountability of the executive towards parliament and the electorate could be strengthened. There is no preparation of short term emergency steps to contain the cost and size of the public sector, or of longer term efforts to bring about sustained management improvements in the civil service. What all of this means for the political project of an independent Montenegro is never spelt out.

5. New legislation and economic reform

Although the economic reform agenda proper is not the focus of this report, the link between judicial and administrative reforms on the one hand and economic reforms on the other is obvious. Administrative reform is a subset of overall policy performance, not a separable set of technical efforts. Without effective decision making at the centre of the executive, developing and implementing complex policies, such as privatisation, is difficult if not impossible. Without reducing the weight of the state in the economy, by controlling its cost and shrinking its size, the private sector will be crowded out. In the absence of functioning regulatory bodies, transparent tax and customs administrations, auditing institutions and – ultimately – a performing and respected judiciary, the fight against corruption will yield few results. For all these reasons a concern with "good governance" has moved to the heart of the development and transition agenda.

It is thus surprising to find that there is an almost complete divorce between the two Montenegrin reform efforts – administrative reform delegated to the Ministry of Justice and an overall economic reform carried out by a myriad of other agencies. Since 1998, the Montenegrin government announced its intention to tackle a broad range of economic transition goals simultaneously, including reform of the banking sector, the payments bureau, customs and tax administration, pension reform, privatisation, an overhaul of business regulation, public procurement and statistical data processing. No single ministry or administrative agency was given responsibility for co-ordinating this complex set of inter-locking reforms.

The initial reform agenda was set by the government under the influence of G-17, the Belgrade-based group of economists. Various ideas for "radical economic reform"[90], including the introduction of the German Mark as a parallel currency and various tax reform initiatives, originated with G-17. Veselin Vukotic, often seen as the intellectual father of Montenegrin economic reform and one of the founding leaders of G-17, is now vice-president of the Privatisation Council and heads up two NGOs (the Institute for Strategic Studies and Prognoses, ISSP, and the Centre for Entrepreneurship) active in economic analysis and private sector development.

Relations between the Serbian members of G-17 and the Montenegrin government deteriorated after leading figures within G-17 advocated Montenegrin participation in the September 2000 federal elections through an independent list.[91] While G-17 members have entered the new Federal and Serbian governments, moving from analysis to implementation, the importance of foreign advisers in Montenegro has grown. The leading roles have been played by USAID-contractors, first *Barents* and then *PricewaterhouseCoopers*. Consultants have been involved in the development of the privatisation process and are increasingly active in all areas of macro-economic reform. There are at present some 40 foreign consultants working in Montenegro, including about seven financed by the European Commission.

The presence of foreign consultants has increased the efficiency of drafting key economic reform legislation. Many drafts are under development, and a few – on the Central Bank, the banking sector and telecommunications – were adopted late in 2000. Working drafts of laws on customs, public

90 *Monitor*, "Reforma na dnevnom redu", 10 October 1997, p 18-19.
91 *Monitor*, "Necu protiv Crne Gore" (interview with Zeljko Bogetic), 8 September 2000, pp. 21-22, p. 22.

procurement, bankruptcy and an organic budget law have been developed. Efforts to develop a new, common framework for public finance are under way, envisaging a treasury department and a supreme auditing unit.[92] On the surface, it appears that the reform of "tractable institutions" such as budgetary management across different levels of government is advancing as part of the general economic reform process.

There are, however, three problems. First, with the exception of the Montenegrin Central Bank (the establishment of which was supported by the Montenegrin government as it marked a step towards greater autonomy from Belgrade), none of the other institutional reforms envisaged has yet reached the stage of implementation. It is likely that most individual foreign consultants developing reform plans in different sectors will leave Montenegro before the implementation phase actually begins (USAID reviews and extends contracts on a yearly basis). The impact of legislation establishing a treasury system will be limited unless it is accompanied by serious capacity building efforts in different spending units. The effectiveness of an independent audit entity will depend on improving management controls and internal audit within government ministries and agencies. The experience of Albania, which has transformed its old State Control Commission into an independent Supreme Audit Institute (SAI) that reports directly to parliament, is instructive. In accordance with the new 1999 constitution, the SAI audits the government's budget every year and presents a report to the parliament at the same time that the Ministry of Finance reports on the execution of the budget for the previous year. However, as the World Bank recently noted, the legislation alone was insufficient: "real progress will depend significantly on the actual implementation of the mandate given by the constitution and on improvements in auditing practices and staff skills." The overwhelming evidence is that change affected by decree is transitory.

Second, without effective enforcement even the best legislation is unlikely to change behaviour. Unenforced rules are no rules at all. As the economic reform agenda builds on new legislation as the principal reform tool, improving the judiciary becomes a precondition for its success. The key issue in many areas, even at present, is less the quality of regulations than their lax and erratic enforcement. Monitoring and enforcement mechanisms, however, again take time and a commitment of significant resources to become operational.

Third, the issue of political will to reshape the inherited structures of Montenegro's political economy remains. Specific economic policies – from arbitrarily raising public sector wages to increasing the amount of credits given by the Republican development fund - suggest that such a commitment to sound economic policies is lacking. A key issue is also to what extent the work of foreign consultants can contribute to the wider policy debate, at the very least by spreading of information among interested parties within and outside government about the nature of Montenegro's governance problems. Without publicly available information and increased accountability of the reformers to a wider public opinion, reform efforts risk being captured by specific vested interest.

V. THE IMPACT OF FOREIGN ASSISTANCE

1. Trends of assistance

Over the past three years, Montenegro has received a tremendous injection of financial support as part of Western efforts to isolate the Belgrade regime of Slobodan Milosevic. The primary objective of this assistance was to support an ally in the wake of the Kosovo war and to prevent further destabilisation. The sums involved were significant, with a total of nearly DM 765 million pledged by the United States and the European Union for 1999-2001.

Almost all of this assistance was given unconditionally. Of some DM 485 million committed by the European Union and the United States in 1999 and 2000, nearly two thirds were spent on financial support and the rest on infrastructure projects and humanitarian aid. Given the perception of an urgent

[92] Interview with Predrag Markovic, Director of the Direction of Public Revenues, 8 December 2000.

security threat a premium was put on quick disbursement, with no time for a more sophisticated assistance strategy. In evaluating the impact of this assistance one must bear in mind the specific circumstances which persisted until the fall of Milosevic: during most of the year 2000 USAID advisers, for instance, were not authorised to work in Montenegro for reasons of security and operated instead out of Dubrovnik.

Table 6: Pledged EU and US assistance to Montenegro 1999 to 2001 according to assistance category[93]

Category	Million DM	%
Humanitarian aid	**103.6**	13.5
EU (ECHO)	68.6	
USAID (Food for Peace)	35.0	
Infrastructure	**97.0**	12.7
EU (Obnova/Cards ; incl. education)		
Economic restructuring	**54.1**	7.1
USAID (including private sector development)		
Democracy Aid	**43.2**	5.6
USAID	40.2	
EU (Obnova 98-99 – Media)	3.0	
Financial support	**467.0**	61.1
US (SEED, ESF, etc. – special initiatives)	255.8	
US Dept. for Agriculture (in commodities to be monetised)	45.8	
EU (exceptional assistance)	78.4	
EU (Food Security)	61.5	
EU (Obnova for refugees)	25.5	
Total aid pledged	**764.9**	**100.0**

Assuming a total population of some 710,000 including refugees, the per capita amount of assistance pledged to Montenegro by the United States and the European Union alone from 1999 to 2001 amounted to DM 359 *per capita* annually. In the near future the amount of assistance pledged to Montenegro is likely to be sharply reduced.

On the eve of the Yugoslav donor conference the World Bank identified the minimum external financing requirement to support the Yugoslav *Economic Transition and Recovery Program* (ERTP) for the next four years as DM 8.97 billion (US$ 3.9 billion). Assuming that donors can be mobilised this would in per capita terms amount to a considerable commitment for the 8.7 million citizens of Serbia and Montenegro, some *DM 323 per capita annually.*

The reality is that such sums are unlikely to be forthcoming and it is already apparent that a disproportionate share of this will be spent in Serbia. The European Commission at present plans to spend some DM 2,2 billion on Serbia until the end of 2006, compared to DM 145 million (Euro 15 million annually) on Montenegro. While it is not yet clear how much US assistance will go to Montenegro starting with fiscal year 2002, the State Department recently announced that it will stop treating Montenegro as a separate unit in its aid programmes, including it instead with Serbia under a budget for Yugoslavia.[94] A substantial reduction looks certain: 79 percent of the 2000 budget for Montenegro was in the category of "special initiatives", compared to 3 percent for Albania and 13

93 Sources: EC web-page (http://www.europa.eu.int/comm/external_relations/see/fry/index.htm: assistance to FRY); European Council Decision (22 May 2000, 2000/255/EC); EU official in Montenegro; "A brief synopsis of the USAID/Montenegro Program" (unpublished manuscript); Larry Napper, U.S. Coordinator for East European Assistance (FRY donor coordination meeting in Brussels, 12 December 2000); USAID official in Montenegro; Monet No. 4. Calculations are based on the following exchange rates: 1 Euro = DM 1.96, and US$ 1 = DM 2.30 (10 June 2001). Note: Not included in the table are funds and investment guarantees pledged under the Stability Pact, contributions to other humanitarian donors and agencies, and bilateral aid of EU member states.

94 VIP News Report, No. 2027, 14 May 2001.

percent for Bosnia and Croatia.[95] In 2000 alone the US disbursed US$ 40 million of grants as balance-of-payments support to the government in Podgorica.

Table 7: Pledged EU and US assistance to Montenegro in million DM[96]

Donor	1999 + 2000	2001	2002
European Union	216.4	117.6	29.4 + ? humanitarian aid
United States	268.9	162.0	333.5 for Serbia **and** Montenegro
Total	485.3	279.6	**?**

2. Central government reform and the democratisation template

Some facts stand out when assessing assistance efforts to the process of Montenegrin institutional reform:

a) compared to the total sums of money disbursed, the resources devoted to issues of governance were very modest;

b) most democratisation assistance to Montenegro was based on what Thomas Carothers has called the strategy of "institutional modelling", the idea that if each major political institution in a transition country can become like counterpart institutions in western democracies then society as a whole will become democratic.[97] The institutions chosen for this modelling were those of the traditional "democracy template": political parties, independent media, advocacy-oriented NGOs, local governments and the judiciary [98];

c) given the very limited resources and wide range of objectives the impact of assistance on *any one specific* institution, not to mention the overall system of administration, remained limited. Only very little aid was targeted at the executive branch of government.

There were three main categories of democratisation aid to Montenegro: help in drafting new legislation; the organisation of seminars and study trips; and the provision of technical equipment, in particular computers. Thus, the British Council provided training for government officials in co-operation with various British institutions between 1996 and 1999, focusing on finance, general management and English language skills. Currently only English language courses are ongoing. The OSCE/ODIHR office – with one permanent, foreign legal expert – has reviewed laws, has provided general advice to the Ministry of Justice and the Institute for Public Administration, Judiciary and Local Governance and has supported the eventual establishment of an Ombudsman Institution. It remains involved in a prison reform project, under the auspices of the Stability Pact, and in various low-intensity programmes on anti-corruption and anti-trafficking. The Council of Europe – with one permanent representative – also played a leading role in the review of the Law on Courts and provided foreign experts for human rights workshops organised by CEDEM, a local NGO. The European Commission had one expert from EUROSTAT seconded to the Statistical Office of Montenegro from April to November 2000 (10 days/month). Another consultant of the European Commission conducted short-term visits to the Ministry of Justice and the Commission is now providing

95 United States State Department, *Support for East European Democracy Fiscal Year 2000*, Washington, March 2001, p. 168.

96 See footnote 96.

97 See: Thomas Carothers, Democracy Assistance: the Question of Strategy, Democratisation, Vol. 4, No. 3, Autumn 1997, p. 116.

98 Thomas Carothers, *Aiding Democracy Abroad: The Learning Curve*, Washington, Carnegie Endowment, 1999, p. 88.

DM 1.2 million for the computerisation of the Ministry of Justice, the Courts and the Prosecutors' Offices.

The most important work in the public administration reform field has to date been carried out by US NGOs, such as the *Central and East European Law Initiative of the American Bar Association* (ABA/CEELI) and the *International City/County Management Association* (ICMA). ABA/CEELI, employing three Americans and one Montenegrin expert on a permanent basis, has reviewed draft laws (such as the Law on Courts), provided training seminars for judges, prosecutors and defence lawyers, and supported the Judges' Association, the Judicial Training Centre and curriculum reform at the Law Faculty. The International City/County Management Association (ICMA), another USAID grantee, has offered advise to the Ministry of Justice on local governance reform and provided technical assistance and management training to municipalities. ICMA has also provided assistance to the Association of Municipalities of Montenegro.

It should be noted just how limited the resources for these efforts have been: the total budget for ABA/CEELI's rule of law activities in Montenegro in 2000 was US$ 105.000.[99] German political foundations, such as the *Konrad Adenauer Stiftung,* with one local administrative officer in Podgorica, also organised occasional seminars with German experts on local governance as well as study visits to Germany for local administration officials.

The most important technical assistance programmes – USAID's macro-economic restructuring programme and the European Union Technical Assistance programme – rely mainly on foreign consultants.[100] For the implementation of its macroeconomic restructuring programme, USAID has first contracted *Barents* and then *PricewaterhouseCoopers*, which presently has more than 30 consultants working in 35 sub-programmes in Montenegro. The European Commission fields some seven consultants, whose projects target the Central Bank, the treasury law, budget law and tax and customs reform.

An increasingly important actor on the ground is likely to be the new branch-office of the European Agency for Reconstruction in Podgorica. It is to be staffed by eight foreigners and twelve Montenegrins, including specialists in infrastructure, private sector development and banking. Its focus will lie in areas in which the European Union is already active, especially infrastructure, utilities, agriculture, and economic/public sector reform.[101] Overall programme co-ordination for these programmes has been transferred from the *European Commission Advisory Unit to the Montenegrin Prime Minister's Office* to a newly established government agency, *the National Aid Co-ordination and Planning Unit* within the Ministry of Finance. A long-term consultant supports the Montenegrin head of the office, a young official of the Ministry of Finance.[102]

In sum, outside democratisation assistance has supported a variety of useful efforts with overall modest impact. There has been some training and technical assistance, though the lack of a clear idea of the functions of a reformed government has made these difficult to target. In the absence of a genuine commitment by the Montenegrin authorities to question the present core activities of government, the impact of classical democratisation assistance could never be more than tinkering at the edges.

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99 United States State Department, *Support for East European Democracy Fiscal Year 2000*, Washington, March 2001, p. 168.

100 The EC describes its technical assistance programme for Montenegro as assistance to "economic reform" (EC web-page (http://www.europa.eu.int/comm/external_relations/see/fry/index.htm; pdf document: assistance to Montenegro). USAID is focused on macro-economic and structural adjustment measures, privatisation, and private sector development that "will encourage investment and support a more independent and democratic form of governance." (www.usaid.gov/country/ee/yu/montenegro_ads.html [USAID, "Montenegro: FY 2001 Program Description and Activity Data Sheets"]).

101 Questions to the Agency director by *Pobjeda*, 13 February 2001.

102 Interview with Tanja Krivokapic, Head of Office, 9 November 2000.

VI. CONCLUSIONS AND RECOMMENDATIONS

1. Montenegrin stability

As one close observer of Montenegro noted, “the welfare of a small country is determined essentially by its openness and the quality of its administration”.[103] Increasingly, from Kosovo to Macedonia, from Bosnia to Montenegro, the weakness and low legitimacy of *domestic* institutions – not fear of outside military intervention – are the greatest threat to peace and stability. As the searchlight of international political attention moves away from Montenegro, its prospects for stability are more clouded than most outside observers want to believe.

Today, to echo what James Gow has written about Yugoslavia in 1989, Montenegro no longer belongs to the “have to do” category: “Whatever importance it has was no longer important enough to warrant serious attention – there was no critical reason for any external agent to ensure, or prevent, a particular situation (in Yugoslavia).”[104] At the same time Western involvement in the small Republic is increasingly viewed through the prism of its status within the FRY. As the Council of the European Union’s conclusions put it in May 2001:

> “The Council … called for the immediate resumption of dialogue between Belgrade and Podgorica with a view to the redefinition of the constitutional arrangements of their relations in a renewed federal framework, according to democratic principles and under conditions promoting regional stability. The successful outcome of this dialogue, which should exclude any unilateral actions, *would enable the EU to continue with its political, economic and financial support to Montenegro*.”[105] (emphasis added)

Such a policy of benign neglect and blunt conditionality is short-sighted. It foregoes the opportunity to draw lessons for Serbia from the experience of the last years in Montenegro. It ignores the “urgent need to undertake strategic evaluations of specific reform experiences under different institutional arrangements.”[106] It fails to send the right signals to a Montenegrin political establishment which now confronts the task of radical reform at the helm of a dysfunctional government apparatus, against a background of an unresolved constitutional debate and tensions in the wider region.

The present political economy of Montenegro, including its oversized government apparatus, has been built on outside assistance, from the former Yugoslav development fund (FADURK) to the international credits in the 1970s. Recently, the European Union and the United States played this role in the interest of regional stability. Unconditional budget support has distorted the incentives for the political establishment. Unsurprisingly, the Montenegrin government has stuck to concepts of socialist development it was familiar with and which preserved its influence in the short term: increasing the police, expanding the bureaucracy and mobilising implicit and explicit subsidies for the inherited heavy industrial complex.

This is not the product of criminality and secret dealings, as opponents of the Podgorica regime would suggest. It takes place in plain daylight and under the eyes of domestic and international observers. There is the huge non-fiscal deficit, growing arrears accumulated by the social funds, state credits to companies which cannot be returned, a public banking and enterprise sector burdened by mountains of bad debt. A consolidated budget deficit equivalent to some 15 percent of GDP is unsustainable. Soon Montenegro will have to assume its share of the foreign debt of the former SFRY, with some projections that public debt service payment will rise from almost zero to an average of over 5 percent of GDP in 2001-2003.[107] The prospect of attracting significant investment in the short-term, with a weak banking sector, continuing uncertainty about the privatisation process and a generally unfriendly

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103 Daniel Gros, *Montenegro 2010*, in: *Monet*, April 2001, January 2001, p. 50.

104 James Gow, *Triumph of the lack of will*, London, Hurst, 1997, p. 26.

105 Council of the European Union, *Western Balkans – Council Conclusions*, Brussels, 14/15 May 2001.

106 Edouardo Wieser, in: *Evaluation and Development – The Institutional Dimension*, World Bank, Washington, 1998, p. 118.

107 World Bank, economic recovery and transition program, p. 7.

business environment, is also limited.[108] There is no serious debate about the future of Montenegro's expensive "industrial jewel", the aluminium kombinat (KAP) in Podgorica.

The political class, in the meantime, concentrates on the prospects for Montenegrin independence.[109] The new DPS-SDP minority government is weak, holding on to power with the conditional support of the Liberal Alliance in return for a commitment to hold a referendum on independence.[110] The small SDP has been most consistent in the past in calling for a rationalisation of the state apparatus, a decrease in the number of ministries and increased transparency; but with little clout, its record in government has been modest. The opposition SNP focuses mainly on opposing co-operation with The Hague tribunal and the preservation of the Yugoslav Federation.[111] The pro-Yugoslav People's Party of Dragan Soc prefers to allege, as it did in its recent election campaign, that a major source of Montenegro's problems are its minorities.

2. Lessons for Serbia

As the international community prepares the first donors' conference in post-Milosevic Yugoslavia on 29 June 2001, questions are raised about the challenges before the "new Serbia", the most appropriate way to sequence reforms and the best way for international actors to deliver assistance.

What is missing from this debate is a serious examination of the Montenegrin record of reform and assistance in the past three years. In the World Bank report prepared for the conference the only reference to Montenegro in the chapter on "Governance" is cursory: "public sector reform in Serbia is at a slightly less advanced stage than in Montenegro. For these reasons, the discussion in this chapter focused almost exclusively on governance challenges in Serbia".[112] There is almost no reference to Montenegro in the crucial discussion of "fiscal policy and management" except to note that "the central government is defined here as the Federal government of FRY and the governments of the Republic of Serbia and of the Republic of Montenegro."[113]

There are lessons in the Montenegrin story for Serbia on the eve of an international donors' conference. There *appears* to be an important difference between Montenegro in 1998 and Serbia in 2001: in Belgrade today many recognise the importance of addressing the weakness of inherited administrative structures as a priority issue. Some of the first steps of the new Serbian government, such as the establishment of a Civil Service Council to prepare a strategy for administrative reform, go in this direction, as do plans to set up a Public Administration Institute.

But this recognition, the Montenegrin experience clearly suggests, is not enough. Indeed, the government in Podgorica also formed an inter-ministerial *Council for the Reform of the Judiciary, Public Administration and Local Government* in 1998. A Montenegrin *Institute for Public Administration* was likewise set up in January 2000. Neither the Council nor the Institute obtained the resources to make any significant impact, in the face of a general lack of interest from domestic elites and international donors alike.

It is conceivable that this experience will be repeated in Serbia, undercutting promising initiatives, such as the formation of a *Capacity Building Fund* in March 2001[114] to focus and co-ordinate donor

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108 Faced with enormous challenges and diminishing resources it is not surprising that some Montenegrins place most of their hopes in sudden national wealth through oil discoveries off the Adriatic coast. See: IWPR, *Montenegrin Oil Boom*, 20 June 2001. One café owner is quoted: "This is the dream of all Montenegrins – to sit in coffee shops all day, not doing anything, while money falls out of the skies. I'm sure it's going to be just like that."

109 See also ESI Discussion Paper, *Sovereignty, Europe and the Future of Serbia and Montenegro*, 12 February 2001.

110 See: Co-operation Agreement on Performing legislative and executive Authority, between the Coalition "Victory is Montenegro's" and the "Liberal Alliance of Montenegro", 28 May 2001.

111 At a recent internal meeting in Montenegro, only 2 out of 178 SNP Main Board members argued that the draft law on co-operation with the Hague Tribunal, which required SNP consent at the FRY level, was acceptable.

112 World Bank, *Breaking with the Past*, 12 June 2001, Vol. 2, p. 68.

113 *Ibid*., p. 16.

114 It has received the support of the United Nations Development Programme and the Open Society Fund. The basic

activities in the fields of administrative reform. In the absence of a serious commitment by the Serbian government and international donors, Serbian "governance reform" could easily meet a Montenegrin fate. Issues of governance and long-term assistance to capacity and institution building must be genuinely at the heart of the international assistance effort to Serbia.

3. Recommendations to improve governance in Montenegro

Fundamental administrative change, of the type which is now required, cannot be implemented by outsiders on the basis of benign neglect of the local political class or over their opposition. It is up to the Montenegrin government to show that it is indeed seriously committed to reform. Experience over the last few years shows that foreign technical assistance programs which are isolated from domestic efforts produce limited results. In the absence of credible domestic implementation strategies, outside the case for continued outside assistance should be reviewed.

If, on the other hand, the Montenegrin government develops a coherent and long-term *public* vision of administrative reform, fleshing out in concrete detail the goal of a smaller, efficient and responsive administration, it deserves continued significant support.

Technical assistance to reform efforts should focus on a number of core areas, rather than spread itself too thinly as it does at present. *Public administration reform*, starting from a review of the structure of the central government and developing steps to move towards a smaller and more professional civil service is a prerequisite across a range of reform goals. While a well-structured administration does not guarantee successful reforms where political support is lacking, the current dysfunctional administration seems to guarantee failure. Institutions with the relevant experience, such as the OECD/Sigma and the World Bank, should be given the resources by donors to play a prominent role in addressing these issues. A refocused Institute for Public Administration, Judiciary and Local Government could play an important role within such an effort, initiating serious factual and analytical work.

The *reform of revenue administration* is an obvious priority. USAID and the European Commission are already engaged in developing a legal framework, but significant attention needs to be paid to the implementation of any new legislation. A high-intensity institution-building program such as that of the Customs and Fiscal Assistance Organisation in Bosnia should be considered for both Montenegro and Serbia, under the conditions that the governments themselves also show a willingness to invest in such reforms.

Reform of the Montenegrin police forces is the third immediate priority, both to reduce the pressures on the republican budget and to increase the effectiveness of law enforcement. The militarised police forces developed to meet the threat from Belgrade must be dismantled in favour of forces with the structures, equipment and training to fight organised crime – an issue in which in particular the European Union and its member states have a very direct interest.

In these efforts, donors must insist much more successfully on transparency on the part of the Montenegrin administration. Functional audits of different ministries and funding for a public expenditure and institutional review are obvious first steps, followed by serious technical support to the setting up of auditing institutions, drawing on the experiences of other countries in the region. Publication of audit results and budget accounts would improve transparency in the way budgets are formulated and executed and would change the incentives that drive resource allocation and the management of budget programs.

Support to *civil society* must an important part of such a broad reform of government and its role. Public administration reform rests on sand if it is elaborated without consulting those who have

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document of the two governments of Yugoslavia and Serbia was published in March 2001: *Capacity building fund – an international public-private partnership in support of institutional reform.*

relevant information and those whose co-operation will be needed to implement the program. Civil society organisations can play an important role by helping to increase the transparency of the political process, diversifying the sources of advise available to the authorities and participating in a wider public debate. There are institutions which have successfully played such a public and advisory role in Montenegro in recent years: the *Centre for Democracy and Human Rights* (CEDEM), which publishes regular analysis of parliamentary life, Montenegrin foreign policy and developments in the media, privatisation and human rights, as well as conducting regular opinion polls; the *Institute for Strategic Studies and Prognoses* (ISSP), which, in co-operation with the Brussels-based *Centre for European Policy Studies* (CEPS), publishes the most useful economic data presently available on Montenegro; the *Centre for Transition* in Montenegro, working on privatisation and corruption; and the *Centre for Entrepreneurship*, devoted to encouraging private enterprise.

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ANNEX A: MEASURING INSTITUTIONAL PROGRESS

Table: Selected indicators for measuring institutional progress[115]

- The budget should be a credible signal of government's policy intentions. Radical variations indicate that there is no coherent set of policy priorities and that officials charged with implementation will not take policy statements seriously because they are likely to change. **Volatility can be calculated as percentage difference from year to year in approved budgets.**

- Spending units (different ministries and agencies) should know in advance what their budget funding would be as a prerequisite for operational efficiency and managerial accountability. **"Variance by spending unit" is the total of the absolute deviations between (i) budgeted allocations for non-personnel costs and (ii) actual expenditures under these appropriations.**

- Unplanned revenue shortfalls reflect low administrative capacity and/or deliberate overestimates to avoid difficult spending reductions. **"Revenue predictability" will be measured as the average annual difference between central government revenues and those projected in the budget.**

- The government should be held accountable by the legislature for its policy actions. **"Delays in auditing" indicate lacking accountability and will be measured as the elapsed time between the end of the financial year and the tabling of externally audited financial statements in the legislature.**

- Lack of compliance with auditing standards for security expenditures indicates lack of accountability and suggests that security spending is not used for legitimate purposes.

- Government should be a responsible employer, restraining employment costs while ensuring that remuneration arrangements do not establish perverse incentives.

- Differences in civil service pay between the lowest and the highest civil servant ranks should not fall outside the range of 1:7 and 1:20, as this would undermine incentives for public officials to pursue a career and take disciplinary threats seriously.

- Discretionary allowances over and above base salaries in excess of 1:1.2 provide opportunities for excessive managerial discretion, facilitating organised corruption and rent seeking.

- Government employees should be held in some respect by business and the general public, partly on the basis that they have been transparently appointed on merit. **"Political appointees" will be measured as the ratio of public officials who are appointed by a politician, without a formal merit-based selection procedure, to all public officials, in excess of 1:400.**

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115 Adapted from: World Bank, *The Road to Stability and Prosperity in South Eastern Europe. A Regional Strategy Paper,* Washington, March 2000, p. 116-17. See also: www.worldbank.org/publicsector/civilservice/service.htm

ANNEX B: COMPARATIVE CENTRAL GOVERNMENT STRUCTURES

The central government structure in Montenegro
and EU candidate or member countries – April 2001[116]

Ministries		MONTE-NEGRO	HUNGARY	CZECH R.	BULGARIA	POLAND	ESTONIA	LITHUAN.	FINLAND	FRANCE
a) Line	Finance	X	X	X[4]	X	Xx[6]	X	X	X	
	Foreign Affairs	X	X	X	X	X	X	X	X	Xx[8]
	Defence		X	X	X	X	X	X	X	X
	Home Affairs	X	X	X	X	X[7]	X	X	X	X
	Justice	X	X	X	X	X	X	X	X	X
	Health	X	X	X	X	X		X	X	
	Labour-Welfare	X	X	X	X	X	X	X	X	X
	Agriculture	X	X[1]	X	X	X[1]	X	X	X	X
	Industry-Trade	X		X					X	
	Environment	X	X	X	X	X	X	X	X	X
	Culture	X	X	X	X	X	X	X		X
	Education-Science	X	X	X	X	X	X	X	X	Xx[9]
	Youth-Sport	X								X
	Transportation	X	X	X	X	X	X	X	X	X
	Public works	X								
	Communications/IT					X				
	Tourism	X								
	Minorities	X					X			
	Religion	X								
b) Coordinat.	PM	X	X	X	X	X	X	X	X	X
	Chancellery	X	Xx[2]	X	X					
Economy - Development	Economic coordination	X	X		X	X	X	X		X[10]
	Local/reg. development		X[3]	X	X		X			
Administrativ	"Public Function"									X
	Relations with Parliament			X[5]						X
	No. portfolios	**20**	**17**	**17**	**16**	**16**	**15**	**14**	**13**	**17**

1 Agriculture and rural development
2 National security
3 Coordinates Phare programs
4 Finance and economic policy
5 Legislation
6 State treasury separate from Finance
7 Home affairs and administration
8 EU affairs
9 Research as a separate portfolio
10 Super-ministry of economy, finance and industry

[116] Adopted from: ESI-EWI case study, Romanian Academic Society, *Unrelenting transformation – the instability of central administrative structures as an obstacle for institutional reform*, p. 5.

ANNEX C: MONTENEGRIN STATE ADMINISTRATION

Structure of Central Public Administration

	Organisation	Employees	Planned budget expend. 2001 (DM)
MINISTRIES			
1	Ministry of Education and Science	149	137,356,125
2	Ministry of Interior	?	54,293,428
3	Ministry of Labour and Social Affairs	122	52,760,899
4	Ministry of Finance	47	20,237,691*
5	Ministry of Agriculture, Forestry and Water Management	114	17,155,624
6	Ministry of Justice (including Judiciary)	63	16,972,436
7	Ministry of Culture	15	10,970,923
8	Ministry of Maritime Affairs and Traffic	78	10,758,472
9	Ministry of Health	180	5,637,663
10	Ministry of Foreign Affairs	57	5,546,130
11	Ministry of Sports	11	2,805,731
12	Ministry of Tourism	15	2,514,825
13	Ministry of Economy	36	2,502,577
14	Ministry for the Protection of the Environment	20	2,138,902
15	Ministry of Trade	85	1,662,777
16	Ministry of Urban Planning	98	1,624,581
17	Ministry for the Protection of the Rights of National and Ethnic Groups	8	736,186
18	Ministry of Religions	9	652,393
	Subtotal	***1,107****	***346,327,363***
SECRETARIATS			
19	Secretariat for Information	40	16,535,065
20	Secretariat for Development	121	5,380,588
21	Secretariat for Legislation	16	254,705
	Subtotal	***177***	***22,170,358***
ADMINISTRATION OFFICES			
22	Office for Public Revenues (incl. financial police)	923	8,865,188
23	Office for Real Property	460	5,895,514
24	Customs Administration of Montenegro	294	4,039,262
	Subtotal	***1,677***	***18,799,964***
OTHER ADMINISTRATIVE INSTITUTIONS			
25	Bureau for Overall Services of State Organs	259	19,634,439
26	Bureau for Public Works	29	12,522,051
27	Bureau for the Execution of Criminal Sanctions	272	5,476,086
28	Bureau for Commodity Reserves	45	3,472,668
29	State Archive Montenegro	165	1,807,331
30	Republican Statistical Bureau	106	3,000,637
31	General Secretariat of the Government	49	2,063,186
32	Republican Hydro-meteorological Bureau	124	1,127,901
33	Bureau for International Scientific, Educational, Cultural and Technical Co-operation	16	1,055,053
34	Republican Seismological Bureau	12	226,698
35	Commissariat for Displaced Persons	3	364,218
36	Republican Protocol	13	174,269
37	Bureau for Motorway Construction	9	(not in budget)
	Subtotal	***1,102***	***50,924,537***
	TOTAL	**4,063****	**438,222,222**

* including reserves (DM 9,613,228), credits and credit payments (DM 5,185,834)

** excludes Ministry of Interior

Sources: Ministry of Justice, Department for Public Administration, Ministry for the Protection of the Rights of National and Ethnic Groups, Sluzbeni List Republike Crne Gore, 27 December 2000, nr. 59/575.

Other government institutions financed by the budget

	Organisation	Employees estimate	Planned budget expend. 2001 (DM)
1	Presidency	N/A	490,852
2	Parliament	N/A	4,699,998
3	Constitutional Court of Montenegro	N/A	385,959
4	Montenegrin Academy of Science and Arts	N/A	537,425
5	Agency for restructuring of the economy	17	1,673,373
6	Red Cross	N/A	160,000
	TOTAL		**7,947,607**

Sources: Ministry of Justice, Department for Public Administration, Sluzbeni List Republike Crne Gore, 27 December 2000, nr. 59/575.

Public agencies financed though independent revenues (outside the budget)

	Organisation	Employees estimate	Planned budget expend. 2000 (DM)
1	Pension Fund	N/A	222,765,000
2	Health Fund	N/A	115,000,000
3	Employment Fund	N/A	10,800,000
4	Development Fund	16	2,303,000
5	Central Bank	130	2,450,000
6	ZOP	~530	10,820,000
	TOTAL		**365,645,315**

Sources: MONET, Nr. 2, June 2000, p. 19, Sluzbeni List Republike Crne Gore, 17 March 2000, nr. 14/157 (Odluka o finansijskom planu narodne banke Crne Gore za 2000. godinu), Central Bank of Montenegro, Development Fund.