



OSCE

Strasbourg, Vienna, 23 September 2003

Dear Deputy Prime Minister,

We would like to follow up on our letters of 2 July and 11 July, in which we accepted your invitation to the Council of Europe and to the OSCE to appoint a team of experts to look into the issue of human trafficking in Montenegro, including a recent case in which a Moldovan citizen was the victim. In this context, we also took note of the readiness of your government to accept and to implement the findings of the experts.

The team of experts visited Podgorica from 22 to 24 July, where an intensive schedule of interviews followed with government officials, as well as with police officers, prosecutors, judges, defence and victim attorneys and representatives of a non-governmental organisation.

We have pleasure in enclosing a copy of the report that the experts submitted to us. This report is addressed to you on a confidential basis, in order to enable your government to be informed thereof, and to express itself on the findings and the recommendations of the experts.

We would be grateful if you could let us have your Government's comments to the report at your earliest convenience; in this respect, you might wish to consider the date of 13 October 2003.

For the time being the report or parts thereof will not be disclosed to the Committee of Ministers of the Council of Europe, or the Permanent Council of the OSCE. Upon receipt of your written comments to the report we will decide how to inform the member States/participating States on the follow-up given by your authorities to the recommendations of the report.

Yours sincerely,

Walter SCHWIMMER

Jan KUBIS

Mr Dragan DJUROVIC
Deputy Prime Minister
Republic of Montenegro



CONFIDENTIAL

Independent Experts' Report
to the Secretaries-General of the OSCE and the Council of Europe
on their visit to Podgorica (Serbia and Montenegro)
from 22 to 24 July 2003

3 September 2003

I. INTRODUCTION

a. Background of the Report

1. On 16 June 2003 the Deputy Prime Minister of the Republic of Montenegro, Mr Dragan Djurovic, made a statement to the Permanent Council of the OSCE, in which he described the Republic's reform efforts, devoting particular attention to the challenges posed by the phenomenon of trafficking in human beings, and in particular in the light of international criticism levied at Montenegro concerning a case of trafficking in human beings which was reported in November 2002 by a Moldovan citizen (hereinafter "the witness S.C."). In an expression of Montenegro's standing as a responsible partner of the international community, willing to fulfil the responsibilities it entered into together with Serbia in joining the Council of Europe, the Deputy Prime Minister announced Montenegro's "readiness to enable an independent team of experts to assess the legal framework within which this case was conducted and to establish whether the case was processed from the legal point of view in compliance with legal standards of processing a case." The Deputy Prime Minister went on to state that the "Government of the Republic of Montenegro is ready to accept the findings of the expert team and, to the extent to which it is authorized, react to the report and undertake steps within the scope of its constitutional position so that any possible omissions are corrected."
2. The Deputy Prime Minister, on behalf of the Government of Montenegro, confirmed this initiative in letters of 27 June 2003, inviting the OSCE and the Council of Europe to appoint a team of independent experts to visit Montenegro in order to examine whether the case in question had been conducted in accordance with the law.
3. Together, the Secretaries-General of the two Organisations accepted this invitation by a letter to the Deputy Prime Minister dated 2 July 2003 and proceeded to appoint an international team of independent experts (TIE). By letter dated 11 July 2003, they further informed the Deputy Prime Minister of the composition of the TIE (see I. c below), and proposed dates for the visit (22-24 July 2003) and a mandate for the TIE (see I. b below), including conditions and modalities for the visit, and a request for a copy of the declaration of the charges filed and a brief chronology of the case.
4. The Deputy Prime Minister agreed to the dates and conditions of the visit, as well as the proposed mandate, by letter of 18 July 2003.

b. The mandate

5. In his letter of 27 June 2003, the Deputy Prime Minister stated that "Our common goal is to determine the legality of this case, which will, I am sure, contribute to our future cooperation and eliminate any doubts about the resolve of the Montenegrin Government to fight organised crime, in order to contribute to punishment of all the perpetrators of these dreadful acts."
6. The letter of 11 July 2003 by the Secretaries-General of the two Organisations proposed the following mandate for the TIE, which was agreed to by the Government of Montenegro by letter of 18 July 2003:

“The proposed mandate of the independent experts will be to assess the relevant facts of the trafficking case in question, to determine how the case was conducted, to assess the conformity of the proceedings with national and international standards in this field and also to make recommendations for future action in the fight against trafficking in human beings. While fully respecting the independence of the judiciary, this assessment will include a review of the evidence and the way in which it was gathered and handled. The independent expert team has been instructed to draft a report after their visit, outlining their findings, and making recommendations to the Montenegrin Government as to what action it should take in the fight against trafficking in human beings in general, including the case in particular.”

c. **Composition of the team of independent experts (TIE)**

7. The TIE was composed of four international experts, as follows:

Mr Goran KLEMENCIC, Professor of criminal law (Slovenia)

Ms Katjuša KODELE-KOS, former Inspector of the Criminal Police, President of NGO “KLJUC” (centre against trafficking in human beings) Ljubljana (Slovenia)

Mr Albrecht MENTZ, former Judge at the High Court in Hamburg (Germany)

Ms Marjolein VERWIEL, Senior Prosecutor, specialised in cases of trafficking in human beings, Zwolle (The Netherlands)

8. None of the experts resides in the Republic of Montenegro or is attached to any mission in Montenegro.

9. During the interviews in Podgorica, the TIE was assisted by the following OSCE and Council of Europe staff:

Council of Europe, Directorate-General of Legal Affairs:

Mr Manuel LEZERTUA, Head of the Economic Crime Division

Ms Caterina BOLOGNESE, Administrator, Department of Crime Problems

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Ms Jamie FACTOR, Head of Democratization, OSCE Office in Podgorica

Ms Almira POZDER, Interpreter, OSCE Mission in Bosnia and Herzegovina

II. METHODOLOGY OF THE WORK OF THE TIE

10. On very short notice, an intensive schedule of interviews was fixed by the OSCE Office in Montenegro, with the invaluable assistance of Mr Vesko Garcevic, Assistant Deputy Foreign Minister, the Montenegrin Government’s focal point for the organisation of the visit.

11. The TIE arrived in Podgorica on the evening of 21 July 2003 and departed again on the evening of 24 July 2003 and the early morning of 25 July. In the three days of its visit, the TIE held interviews with Government officials, as well as with police

officers, prosecutors, judges, defence and victim attorneys and representatives of a non-governmental organisation.

12. In advance of the visit, the TIE was provided with basic documentation on the background to the visit, including:
 - the exchange of letters between the Montenegrin Government and the two Organisations on the case and the planned visit
 - OSCE/ODIHR, Case Study Analysis. Trafficking in Women in Montenegro - Victim/Witness Protection Mechanisms, drafted by Ulrike Gatzke, December 2002/January 2003^{*}
 - OSCE/ODIHR, Preliminary Assessment on the Security of the Shelter "Safe House" for Victims of Trafficking, drafted by Ulrike Gatzke, December 2002^{*}
 - a Report on the "Moldovan trafficking case" in Montenegro" by the Chair of the Stability Pact Task Force on Trafficking in Human Beings, Ms Helga Konrad, 29 January 2003
 - a Montenegrin non-paper on action on THB (from early 2003)
 - the written submission by Montenegro of Deputy Prime Minister Dragan Djurovic's intervention of 16 June 2003 at the Permanent Council of the OSCE
 - The Council of Europe's First Quarterly Report on Serbia and Montenegro's compliance with obligations and commitments and implementation of the post-accession co-operation programme (SG/Inf (2003) 28, 7 July 2003).
13. Upon the TIE's arrival in Podgorica, the Montenegrin focal point provided the TIE with a brief chronology of the case, a copy of the statement of charges filed against the four suspects and a copy of the decision of 30 May 2003 of the Deputy Prosecutor at the Basic Court of Podgorica to abandon the prosecution against the four defendants.
14. During the interviews the TIE was given the opportunity to look into the court file and the available evidentiary material, including various photographs, the videotapes of the police interview with the witness S.C., and further videotapes concerning line-ups of suspected persons for the witness S.C. to identify.
15. The TIE wishes to extend its gratitude to the Government of Montenegro and the officials accepting to be interviewed. The TIE wishes to express particular appreciation to those persons interviewed who were willing to speak about the case and their role in it and are not under the authority of the Government, such as members of the judiciary and the prosecution service, legal practitioners and persons working for a non-governmental organisation.
16. Effort has been made to avoid naming individuals in the report. However, in order to give reasons for structural faults and in order to make recommendations so as to avoid them in the future, it was necessary to mention particular actions and positions.

* Access to this report may be requested directly from the OSCE Office for Democratic Institutions and Human Rights (office@odhr.pl).

III. CONDITIONS / LIMITATIONS OF WORK OF THE TIE

17. The TIE is of the opinion that the fulfilment of its mandate was challenged by numerous practical constraints, such as:
- i) The TIE could not familiarise itself with the case file in advance of the visit and, due to time constraints, was only able to examine selected documents from the file on the spot. Thus the TIE was not able to undertake a complete inspection of the case file;
 - ii) The visit lasted only three days;
 - iii) The TIE was unable to meet with the following persons: the former General Prosecutor (who refused to meet the TIE) and the former Minister of Interior, certain relevant police officers, the judges of the High Court, the High Court Prosecutor in Podgorica, the expert witnesses who had evaluated the medical condition of the witness S.C., and above all the witness S.C. herself;
 - iv) After hearing directly conflicting statements from some officials, the TIE did not have the opportunity to confront them once again;
 - v) As all interviews were pre-scheduled, there was not always sufficient time available for some of the meetings;
 - vi) The interviews were conducted in the offices of the person interviewed;
 - vii) The confidentiality and privacy of some interviews was not respected prior, during or after the interviews;
 - viii) The TIE encountered some resistance during interviews, such as the refusal to name certain police officers;
 - ix) The case examined by the TIE focused on the four defendants. It is possible that other preliminary investigations linked in some way to the witness S.C. were undertaken concerning persons other than the four defendants. If any such actions had been undertaken, they would also be relevant to the examination of the case in question.
18. The factors mentioned above should be taken into consideration when reading the present report. **The TIE considered the possibility of conducting a supplementary visit, but decided that, short of conducting an *investigation proper*, disposing of full police powers, having the whole file translated and speaking to the witness S.C. herself, a further visit would not make any substantial difference to the estimation of the case by the TIE.**

IV. CURRENT LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE FIGHT AGAINST THB

19. The TIE took note of, and welcomed, important efforts in the fight against trafficking in human beings undertaken in Montenegro in the past two years
20. In February 2001, as part of Montenegro's efforts within the Stability Pact Task Force on Trafficking, the Government appointed a National Coordinator for the fight against trafficking in human beings. The National Coordinator chairs a Project Board on Anti-Trafficking, on which national institutions, non-governmental organisations and international Organisations are represented. Special Task Forces on trafficking have also been created within the police service and training programmes on the subject of trafficking in human beings have been implemented.

21. With effect from June 2002, amendments to the Criminal Code of Montenegro include a specific article which criminalizes the act of trafficking in human beings, punishable by imprisonment for a minimum of 1 year and a maximum of 10 years. Although this change is significant and rather progressive, considering the situation in the region, the TIE is of the opinion that more remains to be done to reform both the substantive and especially the procedural criminal law, so that the law in this area will be fully in compliance with international standards. Indeed the reform of both is currently under way.
22. In addition to Montenegro's openness towards international cooperation in this area, important initiatives have also been undertaken at various levels to raise people's awareness of the phenomenon of trafficking in human beings.

V. THE CASE CONCERNING THE WITNESS S.C.

a. Summary of the case

23. According to the information made available to the TIE, the chronology of the case is as follows:
 - i. November 2002: The witness S.C. reports herself to the Police Station in Podgorica; Later on, the witness S.C is taken to the shelter "Safe Women's House";
 - ii. End of November 2002: The first two defendants (I.K. and E.J.) are arrested and taken to the investigative judge of the Basic Court in Podgorica; They are questioned; Pre-trial detention is ordered by the investigative judge;
 - iii. Beginning of December 2002: The second two defendants (Z.P. and B.O.), one of whom was at the time Deputy General Prosecutor, are arrested and taken to the investigative judge of the Basic Court in Podgorica; They are questioned; Pre-trial detention is ordered by the investigative judge;
 - iv. Beginning of December 2002: A judicial investigation is opened on the request of the Deputy Basic Prosecutor of Podgorica against all four defendants for "Trafficking in human beings" and "Forcing to prostitution";
 - v. End of December 2002: Pre-trial detention is extended for all four defendants by the pre-trial panel of three judges of the Basic Court in Podgorica, on the request of the investigative judge;
 - vi. End of December 2002 until end of January 2003: The defence lawyers appeal to the High Court of Podgorica against the extension of detention by the Basic Court (the extension having been requested by the investigative judge); The High Court sends the decision back to Basic Court for procedural reasons; The pre-trial panel of three judges of the Basic Court issues a new ruling on the extension of detention; The defence again appeals; The High Court of Podgorica rejects the decision of the Basic Court and orders the termination of detention for all four of the defendants on 27 January 2003;
 - vii. 25 January 2003: The witness S.C. leaves the Republic of Montenegro;
 - viii. April 2003: The investigative judge completes the investigation and sends the file to the Basic Prosecutor for a decision whether to file the indictment; The prosecutor requests further investigation to the investigative judge; The investigative judge disagrees on the need for further investigation and decides against the continuation; The pre-trial panel of three judges of the Basic Court supports the decision of the investigative judge;

- ix. 30 May 2003: The Basic Prosecutor issues a decision to dismiss the case;
- x. 2 June 2003: The investigative judge issues a declaratory ruling that the investigation is terminated;
- xi. From January-February 2003 onwards: The defence lawyers file a complaint for perjury against the witness S.C.; The Basic Prosecutor dismisses the complaint; The defence lawyers file an indictment as subsidiary prosecutors; The Basic Court of Podgorica dismisses the indictment; The defence lawyers appeal the decision; The High Court of Podgorica upholds the indictment and the proceedings are currently pending.

b. Assessment of the legal framework within which the case was processed

24. For the benefit of readers of this report unfamiliar with Montenegrin criminal procedure, it is necessary to present it briefly here, in particular as regards the distribution of powers and responsibilities between different actors in the pre-trial proceedings (police, prosecution, court) and in terms of the relevance of the action or inaction of certain parties:

- i. The Criminal Procedure Code (hereafter: CPC) in force in the Republic of Montenegro is basically an unrevised procedural code of the former Socialist Federal Republic of Yugoslavia, of 1977. In many aspects it falls short of European standards of fair trial and at the same time has serious deficiencies with regard to the effectiveness of investigation of new types of serious crime (such as trafficking in human beings, and organised crime and corruption in general).
- ii. The criminal justice system of Montenegro is based on the principle of mandatory prosecution, the “legality” principle. The police authorities are obliged to take all necessary measures aimed at discovering the perpetrator, discovering and securing traces of the offence and objects of evidentiary value, as well as gathering information which could be useful for conducting successful criminal proceedings. To fulfil this obligation the CPC attributes to the police a number of powers during the so-called preliminary investigation (“preliminary” as opposed to “judicial” investigation). However, while gathering information, the police are prohibited from examining individuals as defendants, witnesses or expert witnesses, and such information cannot be used as evidence in Court (the Court cannot base its decision on any of the testimonial evidence collected by the police). The preliminary investigation ends with the Crime Complaint which the police submit to the public prosecutor, who, after evaluating it, files a request for investigation with the investigation judge. After the submission of the Crime Complaint, the police investigation ends. They normally only perform further actions on the explicit request of the public prosecutor or the investigation judge.
- iii. According to the CPC, the Public Prosecutor is competent to undertake the necessary measures aimed at discovering the commission of offences and perpetrators, and to request that a judicial investigation, specific investigative actions and pre-trial detention be ordered and carried out. The Public Prosecutor is empowered to demand explanations at any time on any case from the police, and to request them to undertake certain

measures. However, in practice the powers of the Public Prosecutor to direct police investigations are extremely limited, as both organisations are subject to totally separated hierarchical structures and there is no culture of cooperation between the two institutions. In reality, the Public Prosecutor is not engaged in the process of collecting information and evidence in the preliminary investigation and does not oversee or direct the work of the police.

- iv. Judicial investigation is ordered and conducted by the Investigation Judge, upon the request of the public prosecutor. During the investigation, the Investigation Judge collects information and evidence necessary for a decision on whether to file an indictment or to discontinue the proceedings, and also secures evidence that it may not be possible to repeat at the trial. The Investigation Judge is bound to investigate and collect both incriminating and exonerating evidence. The public prosecutor and the defence can request the Investigation Judge to carry out specific actions and can attend the proceedings. The Investigation Judge also decides on the ordering of pre-trial detention (normally on the request of the prosecutor). Actions of the Investigation Judge during the investigation, such as ordering of pre-trial detention, can be appealed to the pre-trial panel of three judges. In some cases, an appeal can be lodged against the decision of the pre-trial panel to the High Court. At any time during the investigation, the Investigation Judge, the pre-trial panel or the High Court must *ex officio* stop the proceedings if they establish that there is not enough evidence to suspect that the defendants have committed the alleged offence. After the Investigation Judge completes the investigation, he/she returns the file to the public prosecutor for a decision whether to file an indictment. If the indictment is filed (which happens in the vast majority of cases), the defence can challenge it before the panel of three judges of the Basic Court. If the appeal is unsuccessful, the case goes to trial.

25. The TIE identified the following shortcomings within Montenegrin criminal procedure that are relevant for the specific case concerning the witness S.C., but also for any investigation and prosecution of serious crimes (including trafficking in human beings):

- i. The relations and distribution of competencies between the responsible authorities involved in the pre-trial stage of criminal proceedings (the police, prosecutors and the court) are complicated and the level of co-operation not always satisfactory;
- ii. Testimonial evidence gathered by the police does not have probative value in Court. Items such as the deposition of a victim's testimony would have to be repeated in Court (first before the investigative judge and often again before the trial panel). This leads to duplications and, particularly in cases of trafficking in human beings, to the re-traumatization of the victim;
- iii. The current law does not provide for the use of special investigative means to detect and investigate serious crimes, including trafficking in human beings;
- iv. No clear rules exist on witness protection or the general handling of otherwise vulnerable witnesses/victims, including the manner in which the questioning of traumatised witnesses is to be conducted¹;

¹ See OSCE/ODIHR, Case Study Analysis. Trafficking in Women in Montenegro - Victim/Witness Protection Mechanisms, drafted by Ulrike Gatzke, December 2002/January 2003.

- v. No clear rules are in place on identification and line-up procedures. Facilities to conduct such identification procedures are also inexistent or inadequate;
 - vi. The rights of the defence during the investigation procedure do not live up to standards laid down by the European Convention on Human Rights and Fundamental Freedoms (access to files, contact with detainees, etc.).
- c. Critical assessment of the conduct of different institutions, bodies and actors involved in the case

i) *General comments*

26. **Due to the complexity of the case and the position of certain persons named by the witness S.C. and/or arrested during the police and judicial investigation, it is reasonable to state that the case concerning the witness S.C. was not a normal criminal case. On the basis of its evaluation, the TIE is of the firm opinion that the case was mishandled to different degrees by almost all actors involved in the process. For the reasons described below, the handling of the case also reveals structural flaws which could affect or undermine the administration of justice in any difficult case allegedly involving high-ranking officials. In addition, the small size of the Republic of Montenegro, the fact that many family and personal ties link people together, the media attention accorded to such cases and the nature of the involvement of the international community are all factors which make this type of case even more difficult.**

ii) *The Police*

27. At the very outset of the case, the police acted in a way one can expect a professional police service to act. However, once the statements of the witness S.C. indicated the possible proportions of the case and the persons involved, the police proceedings became more complex and the advice (or permission) from the Minister of the Interior to proceed with the case was sought. This might be understandable, given the organisation of the Montenegrin police, but it is structurally problematic. The TIE accepts the possibility that the involvement of the different high-ranking officials of the Ministry of Interior did not have an entirely healthy effect on the manner in which the police proceeded in the case. Whereas it was normal for the Ministry of the Interior to set up a steering group within the Ministry to handle this very sensitive case, it seems that a number of people who did not have any role in the investigation itself were informed of the case at a very preliminary stage. Although the TIE was not told the names of people present at the original meeting setting up the steering group, it was informed that certain members of the Anti-trafficking Board were present. This kind of action can jeopardise the outcome of a case and compromise the requisite confidentiality of the preliminary investigation.
28. It was alleged to the TIE that the witness S.C. had been threatened by one of the police officers who took her to the Safe Women's House. It was confirmed that one of the police officers who took her to the shelter was a brother of one of the suspects who were later arrested. To the knowledge of the TIE, this issue was

never investigated by the police and the officer in question was never questioned about that allegation. The TIE finds this omission highly problematic.

29. On the basis of the information gathered, the TIE cannot exclude the possibility of the personal involvement of certain police officers in the case concerning the witness S.C. or the possibility of pressure exerted on the police officers responsible for the investigation. Any such involvement may have affected the good handling of the case.
30. In some instances, the Police gave inconsistent statements or did not give proper answers to the questions of the TIE. Certain inconsistencies between statements to the TIE indicate a certain degree of foul-play:
 - There were allegedly more incriminating photographs collected during the preliminary investigation than were handed to the court;
 - Conflicting statements were made or evasive answers were given on who was informed when about the case, when the case became a "hot issue";
 - It appears from the videotapes that the police interview of the witness S.C. was incomplete, i.e. that the police stopped the witness from continuing on a particular line of testimony;
 - It remains unclear how the Minister of Interior was informed about the case. The TIE was shown a typed message from the police officer in charge (Head of the Anti-Trafficking Group) explaining briefly that "certain police officials" might be involved in the case. This document contained the Minister's handwritten "green light" to proceed with the police investigation. However, the TIE obtained information about a longer, earlier, hand-written letter by the same officer to the Minister explaining in greater detail the possible magnitude of the case and persons involved. This letter was allegedly later replaced in the official files by a shorter "censored" version.
 - The TIE has good reasons to believe that the photo identification procedure during the police proceedings was flawed. The witness S.C. had described a person called Zoran Brko (the "moustache") who met the features (at the time) of the Chief Basic Prosecutor of Podgorica. However, for undisclosed reasons, his photograph was never shown to the witness S.C. The Chief Basic Prosecutor himself claimed to the TIE that the police were trying to set him up.
31. Investigative actions were undertaken by the police even after the judicial investigation had begun, which the TIE found unusual for the Montenegrin criminal justice system, especially since those actions were not taken exclusively on the basis of a written request either by the judge or by the prosecutor.
32. The TIE is of the opinion that the protection of the witness S.C. and the Shelter, which was the responsibility of the police, may not have been implemented professionally. This might simply be a result of the lack of practical experience with witness/victim protection in Montenegro in general. However, in the opinion of the TIE after the very initial phase of the proceedings, the witness S.C. should have been moved to another location, and not kept in the Shelter.²
33. The TIE took note that the Security Police was involved in the case (the Security Police officer first entered the scene just before the witness S.C. went to the police). This is highly extraordinary for legal proceedings. However, the TIE could

² See OSCE/ODIHR, Case Study Analysis. Trafficking in Women in Montenegro - Victim/Witness Protection Mechanisms, drafted by Ulrike Gatzke, December 2002/January 2003, at para 32.

not establish the nature, reasons and scope of the involvement of the Security Police.

iii) *Public Prosecution Service*

34. The TIE observed that the Public Prosecution Service (PPS) in general attempted to remain unusually and improperly detached from the case concerning the witness S.C., in an apparent effort not to find itself in a compromised position. On the other hand this resulted in a lack of transparency in the whole process and raises concerns as to the lack of impartiality and the possible ulterior motives of some members of the PPS, including the Prosecutor-General and the Chief Basic Prosecutor of Podgorica.
35. In spite of his apparent detachment from the case, the TIE established that the Chief Basic Prosecutor of Podgorica was very much involved in dealing with the case and in taking and writing the decision to drop the case. In principle the TIE does not find anything wrong with this, bearing in mind that his prosecution service was working on such a high-profile case as this one.
36. Nevertheless, despite stating to the TIE that he is strongly convinced that the witness S.C. was unreliable, the Chief Basic Prosecutor made no effort to establish for himself the reliability of the witness. On numerous occasions he also made public statements to the press on the unreliability of the witness, appearing to use the press as a vehicle for his own personal opinions.
37. Although the Chief Basic Prosecutor did not attend any hearings himself, he complained twice in writing to the investigating judge that she was not performing her tasks in a proper manner or that she was progressing too slowly. The TIE finds it peculiar that these letters of complaint were addressed directly to the investigating judge, since the law states that such letters should be addressed to the President of the Court and not the "judge on the case".
38. During the interview with the TIE and without being asked his opinion on the matter, the Chief Basic Prosecutor made disparaging remarks about the witness S.C. with regard to her gender, origin, and profession. These comments, which the TIE found highly improper and unprofessional, demonstrate a complete lack of sensitivity towards the victims of such crimes as trafficking in human beings in general.
39. The Deputy Basic Prosecutor assigned to this case played, as the TIE established, a rather passive role. She did not act on both occasions when a request for the extension of the custody of the defendants was required. She also failed to attend some of the important hearings. She demonstrated a lack of initiative in proposing different investigative actions; the TIE also finds it peculiar that most actions she proposed to the investigative judge turned out to suggest exonerating evidence for the defendants.
40. The TIE finds these (in)actions of the Deputy Basic Prosecutor inadequate from a professional point of view. They are all the more concerning since the case was so sensitive and a member of the PPS was one of the defendants. Nevertheless, the TIE acknowledges that some of the shortcomings demonstrated by her might be attributed to control by her superior (the Chief Basic Prosecutor). This case was far too complex to be dealt with by just one prosecutor. At least two very experienced

prosecutors should be assigned to such a case, preferably backed up by a group of senior colleagues for reflection or assistance when difficult decisions must be taken.

41. The TIE identified a serious lack of transparency within the PPS: The Deputy Prosecutor-General had been arrested; the Prosecutor-General had been called as a witness under allegations by the witness S.C. (such allegations, if substantiated, should have placed him in the position of a defendant and not of a witness); the Chief Basic Prosecutor of Podgorica is rumoured to have been involved. Furthermore, the procedures and circumstances regarding the suspension of the arrested Deputy Prosecutor-General were unclear.
42. In spite of all these elements, transparency and impartiality were not guaranteed. Considering all the circumstances, the TIE cannot dismiss the strong impression that the Deputy Basic Prosecutor assigned to this case served primarily as a cover for interests and influences which had nothing to do with the proper administration of justice.
43. In case of incompatibility, prosecutors should step down from a case. In case too many prosecutors are, or even appear to be, involved in a case, the case should be moved out of the jurisdiction and to a different Court. In the particular case concerning the witness S.C. the case should probably have been moved out of Podgorica or handled by a different prosecution service (from another Region or from a Higher Prosecution Office of Podgorica. The TIE was advised that such possibilities exist under the applicable law, but were not applied or implemented.
44. After seeing some of the videotaped testimony of the witness S.C. and some of the evidence in the file, the TIE finds it surprising that the PPS did not charge other persons (or at least commence preliminary investigations against them) alleged by the witness S.C. to have abused her, but only called them as witnesses (and thus they never became defendants). Furthermore, the TIE finds it unacceptable that nobody was prosecuted for numerous breaches of the confidentiality order given by the investigative judge in order to preserve the integrity of the proceedings (the TIE took note that such a breach is an explicit crime in the Criminal Code of Montenegro).
45. Finally, the TIE established that the PPS never made any serious efforts towards victim/witness protection in the case. In the opinion of the TIE there is a general lack of awareness among the members of the PPS regarding the special requirements for the prosecution of trafficking in human beings. This is also a structural problem which evidently exists above and beyond the case at hand.

iv) *The Courts*

46. The investigation was conducted by the judge under extremely difficult conditions, both of a practical and a legal nature (see comments under part V b.). The TIE is of the opinion that, despite these conditions, the investigating judge generally performed well. Although the Chief Basic Prosecutor of Podgorica complained (see above, under part V c iii) and the defence lawyers assert that the investigating judge directed the investigation in a manner that was “confused and without a plan”, it nevertheless appears to the TIE that she acted economically, to the extent possible in a highly complicated situation.

47. During the investigation, various witnesses were questioned, identification line-ups and on-site inspections were conducted and evidence was gathered from other countries. The investigating judge heard the witness S.C.'s testimony over 12 meetings, the minutes of which were 110 pages long. This indicates that, considering the amount of material gathered, the investigating judge conducted the proceedings quite speedily.
48. However, the TIE observed that the following inter-related, problematic issues resulted from the difficult conditions of the case:
- The investigating judge developed a personal attachment to the witness S.C.;
 - Even for the Montenegrin system, in which during the investigation phase investigating judges generally take more initiative than prosecutors, in this case the judge was, due to the passivity of the prosecutor (see above, at V c iii, para 39), forced to play, in part, the role of the prosecutor;
 - The investigating judge's frequent consultations with the President of the Basic Court are understandable for such a complicated case, but legally problematic, since he was the presiding judge of the three-judge panel responsible for issuing rulings on her actions;
 - In terms of the rights of the defence, the investigating judge may have gone too far in prohibiting the lawyers to see the files throughout the proceedings; most other relevant complaints made by the defence lawyers to the TIE regarding the rights of the defence and the conducting of the investigation (questioning in the Shelter; presence of the witness S.C.'s mother during questioning, etc.) were in the TIE's opinion primarily a result of the deficiencies in the applicable law rather than serious misconduct or error on the part of the investigating judge.
49. Considering all the circumstances of the case and the health and safety of the witness S.C., the TIE is of the opinion that the decision to allow the witness S.C. to leave the Republic of Montenegro was not substantially wrong. Even under the current law, she could not be prevented from leaving once she had finished giving her testimony during the investigation. The TIE was also assured of the possibility for the witness S.C. to be reached if she were required for further questioning or for the main trial. Video-link testimonies would also have been a possibility. All in all, the TIE is of the opinion that her departure did not have (or should not have, considering the different legal and practical options available) detrimental implications for the proceedings.
50. The disagreement between the presidents of the Basic Court and the High Court of Podgorica on the issue of pre-trial detention, as well as the – in the opinion of the TIE – unacceptable press conferences held on this issue by both presidents (see also V d i. regarding the use of the media), also puts into question the impartiality and transparency of the proceedings.
51. Finally, the TIE finds it surprising that the High Court would take a decision regarding the perjury complaint against the witness S.C. at a time when the investigation of the case concerning the witness S.C. was still pending.

v) *Shelter: "Safe Women's House"*

52. Recognition must be given to the general role of the Safe Women's House in the fight against trafficking in human beings in Montenegro. The staff there provided immense support to the witness S.C. by giving her shelter and advice. However, the TIE concluded that after the initial stages of the proceedings the representatives of the Shelter became too involved in the case itself and in particular too vocal with the media. Although the wish to raise awareness of the problem of trafficking in human beings is understandable, such actions can undermine the security of the witness and the confidentiality of the proceedings.
53. As was mentioned above, it is the opinion of the TIE that once the case had become notorious, the Shelter was no longer a good or safe place in which the witness S.C. should stay.³ Despite the guarding of the Shelter by the police, there was largely free access to the premises. Too many people had access to the witness S.C.

d. **Other relevant factors**

i) *Use of the Media*

54. The use of the media was a very important factor in the whole case concerning the witness S.C. Although it could hinder possible attempts to cover up the case, the media coverage had a largely negative impact on the case, irrespective of the party favoured by a given newspaper.
55. Insufficient effort was made during the case concerning the witness S.C. to prevent the leaking of information to the press. Under the law, a judicial investigation is confidential *per se*. The investigating judge can issue an additional confidentiality order, as was done in this case. It is peculiar that no-one was charged with the breach of the confidentiality order, which is a rather serious offence.
56. The overzealous tendency of officials, justice operators and other parties involved in the case, to give statements to the press, especially while an issue is still under examination, is a matter of serious concern. Even during the visit of the TIE, on which it was agreed by the Government that there was to be no press coverage until the end of the visit, reports on interviews with certain persons were made to the press.

ii) *International community*

57. It is normal and necessary for the international community to follow developments in emerging democracies and, in particular, crucial and sensitive events, such as the case concerning the witness S.C. The TIE also welcomed the help of the international community in the relocation and protection of the witness S.C. However, direct open and public comments, through press releases and press conferences, regarding a case which is still the subject of judicial investigation, can have a negative impact. In the opinion of the TIE, they did, to some extent, have a negative impact in the case concerning the witness S.C. Such comments further divided opposing domestic stakeholders in the case and contributed to the feeling

³ see OSCE/ODIHR, Preliminary Assessment on the Security of the Shelter "Safe House" for Victims of Trafficking, drafted by Ulrike Gatzke, December 2002.

of “conspiracy” and bias. The international community should avoid interfering in an ongoing case, unless such interference is part of a structured, convention-based, pre-established monitoring mechanism.

iii) *Small country & family and other personal relationships*

58. Numerous family and personal ties among different actors (including ties between the defendants, certain police officers, certain prosecutors, the National Anti-Trafficking Coordinator, even staff of the Safe Women’s House), observed by the TIE during the visit, clearly did not have a healthy effect on the way this case was conducted at different stages, in particular when certain persons did not exclude themselves, or were excluded, from the proceedings and the information-flow.

iv) *Promotions, dismissals and new functions*

59. The TIE took note of the fact that, recently, a number of people involved directly or indirectly in the case were either promoted (certain police officers), appointed to important new posts (former National Coordinator against trafficking in human beings), or, on the other hand, removed from, or not reappointed to, previous positions (former Minister of Interior, former President of the Basic Court of Podgorica).

60. In the context of cases such as this one concerning the witness S.C., appointments which lack transparency damage public opinion on, and confidence in, the proper administration of justice. Unjustified promotions may be seen as rewards for silence or inaction. Abrupt transfers may also be seen as an effort to “sweep an unfortunate incident under the carpet”. Although the wish to overcome an unpleasant affair is understandable, such measures do, however, exacerbate the public's feeling that justice has not been done.

e. **The Prosecutor’s decision to dismiss the case**

61. The decision, signed by the Deputy Basic Prosecutor, to dismiss this particular case was allegedly made by the collegium of all prosecutors in Podgorica and with the green light of the High Court Prosecutor in Podgorica. The reasoning given for the decision was also extremely long (40 pages).

62. The TIE established that in a “normal” case it is highly unusual for a Montenegrin prosecutor to dismiss a case after the judicial investigation had been completed, as he/she is bound by the principle of legality and must prosecute if there is probable cause. Moreover, the applicable law requires the investigation judge, the pre-trial panel of three judges and the High Court to terminate the proceedings or investigation *ex officio* if they establish that there is insufficient evidence to proceed with the case. In the case concerning the witness S.C. none of the mentioned institutions took this step, so they obviously believed that there are grounds to proceed; even when the High Court terminated the detention for all the defendants, this was done not because it did not find probable cause, but because it was not satisfied that detention was necessary.

63. In addition, the TIE took note of the fact that, under the applicable Montenegrin law, every indictment filed by the prosecutor is subject to a special appeal (objections to the indictment) so the special panel of the Court must re-examine the existence of *prima facie* evidence before sending the case to trial.
64. All the above-mentioned factors indicate that the decision by the PPS to dismiss the case at that particular stage was highly unusual. The TIE is of the opinion that these were all reasons to send the case to the court.
65. The prosecutor's decision to dismiss the case rests on the following basic premises:
- The witness S.C. was not a credible witness, due to certain conflicting statements made by her, regarding the time and place of the events described by her. The TIE is of the opinion that such a conclusion overlooks the fact that such confusion is a common condition of victims of trafficking in human beings, especially if the testimony covers a period of several years.
 - None of the witnesses confirms the testimony of the witness S.C. The TIE would like to point out that, considering that almost all the witnesses were allegedly involved with the witness S.C. in an allegedly questionable if not criminal manner, thus the credibility of some of these witnesses could be questionable;
 - "Material" evidence in the form of hotel registrations, work permits, etc. contradict the witness S.C.'s testimony. The TIE notes that, besides the fact that falsifying work permits is a common *modus operandi* for traffickers, no graphology expertise was conducted to establish whether those hotel registrations were indeed filled out by the witness S.C.

VI FINAL OBSERVATIONS AND RECOMMENDATIONS

a. Legal and institutional framework for the fight against trafficking in human beings

66. The Republic of Montenegro should reform its criminal procedure so that it is in conformity with international standards of human rights and efficiency of justice. Topics requiring attention are outlined under point V b. In particular, it should be possible to avoid repetitive hearings of witnesses who are potentially vulnerable, by giving defence lawyers the opportunity to examine them at the hearing. Witness protection programmes, structures and awareness must also be developed.
67. Montenegro should reform the Law on Prosecutors. It is imperative that the legal and institutional framework offer bodies in charge of detection, investigation, prosecution and adjudication of serious crimes (including trafficking in human beings) sufficient financial and human resources as well as safeguards to be free from undue influence. In Montenegro this is especially difficult to achieve due to the size and population of the country. A step in the right direction would be to establish a Specialised Prosecutor's Office to deal with all serious cases of crimes such as trafficking in human beings, organised crime and corruption, which should work closely with similar structures within the police.

68. Trafficking in human beings is a subject matter of which there is some degree of public awareness in Montenegro, not least through the extensive coverage of the case by the media. Nevertheless, much remains to be done in order to influence attitudes constructively in this area. The TIE encountered a certain defensiveness during the interviews that indicated a type of wilful blindness towards the issue. Parts of the government are not aware enough that Montenegro may be more than a transit country for trafficking in human beings.
69. In terms of professional training, general training programmes are necessary for the police, prosecutors, judges and NGOs in the area the fight against trafficking in human beings. Specific training should also be available in the area of witness protection and dealing with vulnerable witnesses (how to handle questioning, etc.).
70. The Government should give further support for the National Coordinator against trafficking in human beings and the Project Board on Anti-Trafficking.
71. Officials, law enforcement officers and members of the judiciary and prosecution bodies require strict rules and useful guidance on how to deal with the press while a case is under judicial process. Basic concepts such as the presumption of innocence, the protection of the rights of victims and witnesses, need to be covered in such dealings with the press.
72. A network of Shelters in the region should be supported, so that persons needing protection might be given shelter in a less exposed location.
- b. **The case concerning the Moldovan citizen, the witness S.C.**
73. A number of courses of action remain open with regard to the case concerning the witness S.C. :
- i) Until 2 September 2003 the witness S.C. herself had the option to take over the proceedings as subsidiary prosecutor.
 - ii) It would be possible for the case to be re-examined. Under Art. 403 of the Code of Criminal Procedure, the Court can re-open proceedings (on the request of the prosecutor, the defence lawyer or the victim) if: (a) new evidence arises, or (b) it is established that the prosecutor dismissed the case by committing a crime (abuse of authority). The latter option is unrealistic as the law demands that the abuse of authority must be proven by a final verdict of the court (i.e. the prosecutor must first be found guilty of a crime). The first option is a more realistic avenue, requiring e.g. one new witness to surface, additional medical evidence or a graphology analysis.
74. **If the case were re-opened in the same setting, however, the TIE seriously doubts whether justice could ever be done, given how tainted the whole process already was.** One possibility would be for the case to be moved to another jurisdiction in Montenegro. The Code of Criminal Procedure provides for the possibility of “delegation of jurisdiction”. The case would therefore be handled by another prosecutor’s office and another Basic Court. As a safeguard, the new process could be internally followed by an international “observer” or “adviser”, e.g. a prosecutor attached to the new principal prosecutor of the case. A similar measure was, for example, taken by Albania in 2001, following the assassination of a high-ranking opposition politician.

75. Certain criminal acts connected to the case allegedly took place on the territory of the Republic of Serbia or the State of Bosnia and Herzegovina. Technically, the part of the case which allegedly took place outside of Montenegro could therefore be tried *de novo* in the relevant jurisdiction. This would be complicated, to say the least.
76. The Union of Serbia and Montenegro is not a party to the European Convention on Human Rights (although the Union has signed on 3 April 2003, it has not yet ratified the Convention). There is therefore no possibility for the witness S.C. to complain of a breach by Serbia and Montenegro of one of the rights enshrined in the Convention, even if she were to exhaust all domestic remedies. Technically, this would, however, be possible if domestic remedies were exhausted in another country which can claim jurisdiction over the case and which *is* a state party to the Convention.