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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**DRAFT LAW
AMENDING THE LAW ON
THE STATE PROSECUTOR'S OFFICE
OF MONTENEGRO**

Article 1

In the Law on State Prosecutor ("Official Gazette of the Republic of Montenegro", No. 69/03), the words: "State Prosecutor" in the name of the Law and in Articles 1, 2, 4, 8, 10, 13, 14, 15, 16, 17 and 18, shall be replaced with the words: "State Prosecutor's Office".

Article 2

Article 2 shall be amended and it shall read as follows:

"State Prosecutor's Office shall be a single and autonomous state authority which shall perform its function on the bases of the Constitution, laws and ratified international treaties."

Article 3

The words "the Republic of" in Articles 10, 13, 14, 20, 24 and 31 shall be erased.

Article 4

In Article 17, the words: "represent the Republic in property law matters" shall be erased.

Article 5

Articles 20, 21, 22 and 23 shall be erased.

Article 6

In Article 25 paragraph 1, indent 3 shall be amended and it shall read as follows:
"- for the Basic State Prosecutor – six years, and for his/her Deputy – three years."

Article 7

In Article 26, the words: "and the Deputy" and "the Republic of" shall be erased.

In the same Article after paragraph 2, new paragraph 3 shall be added and it shall read as follows:

"Deputy State Prosecutors shall be appointed and removed from office by the Prosecutors Council".

Article 8

Article 28 shall be amended and it shall read as follows:

"The State Prosecutor shall be appointed for a term of five years and he/she may be reappointed.

The office of the Deputy State Prosecutor shall be permanent, except in case of the first appointment of a Deputy Basic Prosecutor."

Article 9

Heading and Article 29 shall be erased.

Article 10

In Article 32 paragraph 4 shall be amended and it shall read as follows:

“The decision of the Prosecutors Council on the complaint shall be final and an administrative dispute may be instituted against it.”

Article 11

New heading and Article 32a shall be added after Article 32 and they shall read:

“Standard Application Form

Article 32a

Application referred to in Article 32 paragraph 1 above shall be submitted, as a rule, in a form approved by the Prosecutors Council.”

Article 12

New heading and Article 33a shall be added after Article 33 and they shall read:

“Criteria

Article 33a

Criteria for appointment of the State Prosecutor and the Deputy State Prosecutor shall be as follows:

- specialized knowledge, working experience and working results;
- published research papers and other activities in their line of work;
- additional professional training;
- ability to perform the function for which he/she applies impartially, conscientiously, determinedly and responsibly;
- communication skills;
- relationship with colleagues, conduct outside work, professionalism, impartiality and reputation, and
- organizational skills necessary for the position of the State Prosecutor.”

More detailed criteria for the appointment of the State Prosecutor and the Deputy State Prosecutor shall be laid down by the Rules of Procedure of the Prosecutors Council.

Article 13

Article 35 shall be amended and it shall read as follows:

“The Prosecutors Council shall interview the applicants who have fulfilled the requirements for appointment.

Applicant does not need to be interviewed:

- if he was given positive assessment or
- negative assessment when interviewed for a post in a state prosecutor’s office of the same or higher jurisdiction during the last twelve months;
- he was given negative assessment several times when interviewed for a post in a state prosecutor’s office of the same or higher jurisdiction, regardless of when he was last interviewed.

Based on the interview and documentation received, the Prosecutors Council shall assess each candidate taking into account the criteria referred to in Article 33a of this Law.

The Prosecutors Council shall decide by a majority vote on the assessment of the candidates.

Immediately after the interview, the Prosecutors Council shall fill in a standard candidate assessment form which shall contain the assessment of each candidate and explanatory note.

The Prosecutors Council may conduct written testing of the candidates prior to the interview.

The method of assessment and the contents of the candidate assessment form shall be regulated by the Rules of Procedure of the Prosecutors Council.

Article 14

New Article **35a** shall be added after Article 35 and it shall read:

“Based on the interview, the assessment of the candidates and documentation received referred to in Article 35 of this Law, the Prosecutors Council shall draw up a list of candidates who achieved satisfactory results.

The list of candidates shall contain the assessment of each candidate who has been interviewed, and/or who was tested, as well as a summary of assessment results.

Article 15

In Article 36, the words “or the Deputy” shall be erased.

Article 16

New headings and new Articles 36a, 36b and 36c shall be added after Article 36 and they shall read as follows:

Article 36a

The Prosecutors Council shall pass the decision on the appointment of a Deputy State Prosecutor at a session closed to the public based on the list of candidates.

The decision on appointment of a Deputy State Prosecutor must contain a written statement of reasons.

The Prosecutors Council shall notify the candidate appointed, the Prosecutor’s Office to which he/she has been appointed and the Ministry of Justice of its decision on appointment.

The decision on the appointment of a Deputy State Prosecutor shall be published in the “Official Gazette of Montenegro”.

Candidate’s Rights

Article 36b

Candidate shall be entitled to have an insight into his/her documentation and documentation of other candidates who applied for announced appointment of the Deputy State Prosecutor, the results of written tests, assessments of the candidates and opinions on candidates and to deliver a written statement thereon to the Prosecutors Council, within three days as of the date of such insight.

Legal redress

Article 36c

Decision of the Prosecutors Council on the appointment of the Deputy State Prosecutor shall be final and an administrative dispute may be instituted against it.”

Article 17

In Article 37 in paragraph 3, the words: "and Deputies" shall be erased.

After paragraph 3, new paragraph shall be added and it shall read as follows:

"Deputy Prosecutor shall take an oath before the Prosecutors Council no later than 15 days after the date of appointment."

Article 18

In Article 41 in paragraph 1 subparagraph 3, the words: "hearings or" shall be erased.

New subparagraphs 4 and 5 shall be added after subparagraph 3 and they shall read as follows:

"4) is absent from the sessions of the Prosecutor's Office;

5) is absent from work;"

Previous subparagraph 4 shall become subparagraph 6.

Article 19

New heading and Article 48a shall be added after Article 48 and they shall read as follows:

"Legal Remedy

The decision of the Prosecutors Council establishing disciplinary responsibility of a State Prosecutor and of a Deputy State Prosecutor shall be final and an administrative dispute may be instituted against it."

Article 20

In Article 51, paragraph 2 shall be amended and it shall read as follows:

"The Prosecutors Council shall notify the Assembly without delay that the conditions for termination of office of a State Prosecutor have been fulfilled."

In the same Article in paragraphs 3 and 4, the words: "or Deputy" shall be erased.

After paragraph 4, three new paragraphs shall be added and they shall read:

"The decision on termination of office of a Deputy State Prosecutor shall be passed by the Prosecutors Council within 30 days as of the date of receipt of notification at latest.

The office of the Deputy State Prosecutor shall terminate on the date of passing of the Prosecutors Council's decision on termination of office.

The decision on termination of office of a Deputy State Prosecutor shall be delivered by the Prosecutors Council to the Deputy State Prosecutor whose office terminated and to the State Prosecutor with whom he/she exercised the office of the Deputy."

Article 21

In Article 54, in the third paragraph after the word "relates" full stop shall be replaced with coma and the following words shall be added: "together with the notification that he/she is entitled to engage a defence attorney in the proceedings conducted before the Prosecutors Council".

Article 22

In Article 58, paragraph 3 shall be amended and it shall read as follows:

“The Commission shall submit a report on its work to the Prosecutors Council within a deadline fixed by the Prosecutors Council.”

Article 23

After Article 58, new heading and Article 58a shall be added and they shall read as follows:

“Opinion

Article 58a

If a proposal for removal of the Chief State Prosecutor from office has been filed on account of incompetent or unconscientious performance of the function, the Prosecutors Council shall obtain the opinion of the session of prosecutors of the Chief State Prosecutor’s Office.

If a proposal for removal of a State Prosecutor or of a Deputy State Prosecutor from office has been filed on account of permanent loss of work capacity required to perform the function, the Prosecutors Council shall obtain the opinion of the competent authority.”

Article 24

In Article 60, subparagraph 3 shall be added and it shall read as follows:

“3) pass the decision on removal of the Deputy State Prosecutor from office.”

Article 25

Article 61 shall be erased.

Article 26

In Article 63 in paragraph 1, after the word “removal” the words: “of the State Prosecutor” shall be added.

Article 27

In Article 64, paragraph 2 shall be amended and it shall read as follows:

“State Prosecutor or Deputy State Prosecutor may be temporarily suspended from his/her office after the Prosecutors Council has accepted the proposal to initiate the procedure for removal from office.”

Article 28

After Article 64, new heading and new Articles 64a and 64b shall be added and they shall read as follows:

“Corresponding applicability of the provisions regulating disciplinary proceedings

Article 64a

The provisions of this Law governing lapse of time and disqualification in disciplinary proceedings shall apply accordingly to the procedure for removal from office.

Article 64b

The decision of the Prosecutors Council on removal of the Deputy State Prosecutor from office shall be final and an administrative dispute may be instituted against it."

Article 29

Heading and Article 65 shall be amended and they shall read as follows:

"Delivery of Decision

Article 65

The Assembly shall deliver the decision on removal from office to the State Prosecutor who has been removed from office and to the Prosecutors Council.

The Prosecutors Council shall deliver the decision on removal from office to the Deputy State Prosecutor who has been removed from office and to the State Prosecutor's Office in which he/she exercised his/her office."

Article 30

In Article 71, paragraph 2 shall be added and it shall read as follows:

"A person fulfilling the requirements for the position of High State Prosecutor may be appointed as the Deputy Special Prosecutor."

Article 31

In Article 77, paragraph 2 shall be amended and it shall read as follows:

"Exceptionally, the Chief State Prosecutor may second a State Prosecutor or a Deputy State Prosecutor, without his/her consent, to work with the Special Prosecutor if, due to disqualification or absence of the Special Prosecutor or his/her Deputy or for other justified reasons, regular discharge of duties has become uncertain in the Special Prosecutor's Office".

Article 32

In Article 83 subparagraph 1, after the word "prosecutor", coma and the words: "and his/her Deputy" shall be replaced with the words: "appoint Deputy State Prosecutor, remove from office and decide on termination of office of the Deputy State Prosecutor."

In the same Article, subparagraph 4 shall be amended and it shall read as follows:

"4) ensure the training of prosecutors and deputy prosecutors in cooperation with the Judicial Council;".

After subparagraph 4, new subparagraphs 5, 6, 7, 8 and 9 shall be added and they shall read as follows:

"5) give opinion of draft laws and bylaws in the field of justice and initiate enactment of relevant laws and of other regulations in this field;

6) ensure implementation, sustainability and uniformity of the Judicial Information System in the part related to the prosecutors' offices;

7) keep records containing information about State Prosecutors and their Deputies;

8) propose framework guidelines on necessary number of state prosecutors and their deputies and of other officers and administrative staff in prosecutors' offices;

9) adopt methodology for development of work reports of the State Prosecutor's Office and annual allocation of tasks."

Previous subparagraphs 5, 6, 7 and 8 shall become subparagraphs 10, 11, 12 and 13.

Article 33

In Article 84 in paragraph 3, indents 3 and 4 shall be erased and they shall be replaced with indent that shall read:

- “two from amongst renowned lawyers in Montenegro, at the proposal of the President of Montenegro”;

Article 34

In Article 85, in paragraph 1, the word “appointed” shall be replaced with the word “elected”.

Article 35

In Article 87 in paragraph 1, the word “Prosecutor” shall be replaced with the word “Prosecutor’s Office”; and in paragraph 3 the words: “in the Republic” shall be erased.

Article 36

In Articles 88, 91, 100 and 102, the word “Prosecutor” shall be replaced with the words “Prosecutor’s Office”.

Article 37

In Article 89 in paragraph 1, the word “appointed” shall be replaced with the word “elected”.

Article 38

Article 99 shall be erased.

Article 39

Article 103 shall be amended and it shall read as follows:

“The Chief State Prosecutor shall submit to the Assembly the annual report on the work of the State Prosecutor’s Office and of the Prosecutors Council.

The annual work report shall also contain the information on the work of the Prosecutors Council and the proposal for measures aimed at improvement of performance of the State Prosecutor’s Office and of the Prosecutors Council.

The annual report shall be submitted to the Assembly by 31 March of the current year for the preceding year at latest.

The report shall be published on the web page of the Prosecutors Council.

The Chief State Prosecutor shall set out the annual work report of the State Prosecutor’s Office and of the Prosecutors Council in the Assembly.”

Article 40

Article 104 shall be erased.

Article 41

In Article 105 paragraph 2 shall be amended and it shall read as follows:

“Information that could affect the conduct of the proceedings may not be made available to the public.”

Article 42

In Article 106, paragraphs 1 and 2 shall be amended and they shall read as follows:

“Deputy State Prosecutor may, with his/her consent, be temporarily seconded to another State Prosecutor’s Office.”

Exceptionally, the Chief State Prosecutor may second a Deputy State Prosecutor, without his/her consent, to another State Prosecutor’s Office, if, due to disqualification or absence of the State Prosecutor or his/her Deputy or for other justified reasons, regular discharge of duties in the prosecutor’s office to which he/she has been seconded has become uncertain”.

Article 43

After Article 106, new heading and new Article 106a shall be added and they shall read as follows:

“Secondment to another Prosecutor’s Office of the State Prosecutor and his/her Deputy without their consent

Article 106a

In case of reorganization of the State Prosecutor’s Office by which the number of prosecutor posts is decreased or terminated, the Prosecutors Council may transfer or second a State Prosecutor or his/her Deputy to another Prosecutor’s Office without his/her consent.

Benefits and other costs incurred by transfer or secondment of a State Prosecutor or his/her Deputy to another State Prosecutor’s Office, without his/her consent, shall be borne by the State Prosecutor’s Office to which he/she is transferred or seconded.”

Article 44

In Articles 112, 117, 118 and 119, the word “Prosecutor” shall be replaced with the word “Prosecutor’s Office”.

Article 45

Article 113 shall be erased.

Article 46

Heading and Article 120 shall be amended and they shall read as follows:

“Advisors

Article 120

“State Prosecutor’s Office may have advisors.

Advisors shall assist a State Prosecutor or his/her Deputy in their work, draft decisions, make records of citizens’ complaints, petitions and statements, perform other professional duties prescribed by law or regulations adopted on the basis of the law, independently or under the supervision of and according to the instructions of the State Prosecutor or his/her Deputy.

A law graduate who has passed bar exam and who meets the general and special requirements for a specific post in state authorities, in accordance with the law, shall be eligible for the post of an advisor.

Exceptionally, the Basic State Prosecutor may authorise the advisor to represent indicting proposals in proceedings before the court.”

Article 47

In Article 123, the words: “the expert associate” shall be replaced with the word “associate”.

Article 48

Article 124 shall be amended and it shall read as follows:

“Commencement and termination of the employment of court officers and administrative staff, salaries and other rights, obligations and responsibilities stemming from employment, required level of education, the length and undertaking of traineeship, requirements for taking of professional examination, curriculum and manner of taking of this examination and other related issues, shall be regulated by legislation applicable to civil servants and state employees.”

Article 49

In Articles 125 and 126, the words: “official secret” shall be replaced with the words: “confidential information”.

Article 50

In the heading of Chapter X, the word “PROSECUTOR” shall be replaced with the word “PROSECUTOR’S OFFICE”.

Article 51

Article 128 shall be amended and it shall read as follows:

“Funds for the work of the Prosecutors Council shall be allocated in a special line of the Budget of Montenegro.

The Prosecutors Council shall propose the amount of the annual budget for the work of the Prosecutors Council.

The Prosecutors Council shall submit the proposal for the annual budget to the Government.

The President of the Prosecutors Council shall be entitled to participate in the work of the session of the Assembly at which the proposal for the budget of the Prosecutors Council is discussed.”

TRANSITIONAL AND FINAL PROVISIONS

Article 52

State Prosecutors and Deputy State Prosecutors appointed in accordance with the Law on State Prosecutor (“Official Gazette of the Republic of Montenegro”, No. 69/03), shall remain in office until the expiry of the term of office for which they have been appointed.

Article 53

The Committee for Constitutional Affairs and Legislation shall establish consolidated version of the Law on State Prosecutor's Office, within three months as of the date of coming into force of this Law.

Article 54

The provisions of this Law regarding the representation of Montenegro in property law matters shall cease to be valid on the date of appointment of the Legal Representative of Montenegro in property law matters.

Article 55

The present Law shall come into force on the eighth day as of the date of its publication in the "Official Gazette of Montenegro".