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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW

**ON AMENDMENTS
TO THE LAW ON
THE STATE PROSECUTOR'S OFFICE**

OF

MONTENEGRO

Draft

LAW ON AMENDMENTS TO THE LAW ON THE STATE PROSECUTOR'S OFFICE

Article 1

In the Law on the State Prosecutor's Office (Official Gazette of the Republic of Montenegro 69/03 and Official Gazette of Montenegro 40/08) in Article 7 paragraph 2 shall be deleted.

Article 2

In Article 31 paragraph 1 after the word "announcement" the following words shall be added "except for the Special Prosecutor and Deputy Special Prosecutor".

Article 3

Article 33 shall be amended to read as follows:

"The Prosecutorial Council shall request an opinion on professional and working qualities for exercising prosecutor's office for each candidate from:

- (1) the Prosecutor's Office, other body, business organization or other legal entity where candidates exercise or had exercised his/her legal profession;
- (2) immediately superior State Prosecutor's Office for an advancing candidate.

If a candidate exercises or had exercised his/her legal profession in the Prosecutor's Office, the opinion under paragraph 1 of this Article shall be given by the State Prosecutor based on the opinion of the Prosecutors' Conference and available data on the work of the candidate.

Opinion under paragraph 1 of this Article shall contain justified information on the following:

- (1) working experience;
- (2) the type of work and working results;
- (3) attitude towards work and colleagues;
- (4) communication skills.

In addition to the information under paragraph 3 of this Article, the opinion for appointment of advancing Deputy State Prosecutor shall also contain justified information under Article 33v paragraph 1 item 2 indent 2 under this Law.

In addition to the information under paragraph 3 of this Article, the opinion on candidates for the State Prosecutor shall also contain justified information under Article 33g of this Law. Opinion form under par. 3, 4 and 5 of this Article shall be regulated by the Rules of Procedure of the Prosecutorial Council."

Article 4

Article 33a shall be amended as follows:

"The criteria for appointment of the State Prosecutor and Deputy State Prosecutor shall be the following:

- (1) acquired knowledge;
- (2) ability to execute prosecutor's office;
- (3) decency to execute prosecutor's office.

In addition to the criteria referred to in paragraph 1 of this Article, organization skills shall be particularly taken into account for the appointment of the State Prosecutor”.

Article 5

After Article 33a three new articles shall be added as follows:

“Closer criteria for the first appointment of Deputy Article 33b

Closer criteria for the appointment of a Deputy being appointed for the first time shall be the following:

- (1) acquired knowledge being assessed based on:
 - the average grade and length of studying;
 - professional development (successfully completed initial training, seminars, workshops);
 - scientific title awarded (postgraduate degree, master degree, PhD);
 - computer skills and foreign languages – additional criterion for acquired knowledge.
- (2) capacity to perform prosecutor's office being assessed based on:
 - the grade (result) for the written test (examination);
 - work experience (type of work that the candidate previously performed and the length of work experience and work results, advancement in the service (at work) and similar);
- (3) decency to execute prosecutor's office being assessed based on:
 - the fact that he/she has not been sentenced for criminal acts rendering him/her unfit to execute prosecutor's office, nor punished for minor offences;
 - reputation and chaste behaviour;
 - relationship with colleagues and clients;

Closer criteria for appointment of advancing Deputy State Prosecutor Article 33v

When appointing advancing Deputy State Prosecutor the following shall be particularly taken into account:

- (1) acquired knowledge being assessed based on:
 - professional development (continuous training and other forms of training);
 - scientific title awarded (postgraduate degree, master degree, PhD);
 - published scientific and expert papers and other activities in the line of work (participation in drafting laws, expert analyses, lecturing, mediation and similar);
 - computer skills and foreign languages.
- (2) capability of executing prosecutor's office being assessed based on:
 - work experience (length of years of service as a prosecutor and other work experience);
 - results of work in the last three years being assessed based on: the number and complexity of completed cases during the year; method of case processing (in regular, fast-track procedure, through application of an alternative method of case processing, financial investigations); quality of work (the number of

- indictments confirmed and legal remedies adopted); taking cases as they are received and respecting legal deadlines for procedural actions;
- communication skills and personal behaviour.
- (3) decency to execute prosecutor's office being assessed based on:
- the fact that he/she was not imposed a disciplinary measure for disciplinary offence for violation of respectability of prosecutor's office;
 - relationship with colleagues and clients;
 - reputation and chaste behaviour.

Closer criteria for appointing of State Prosecutor
Article 33g

In addition to the criteria under Article 33v of this Law (depending on whether the candidate executed earlier the office of the State Prosecutor or not), when determining proposals for appointment of the State Prosecutor, the following shall also be taken into account:

- ability to organize work in the Prosecutor's Office;
- knowledge of Prosecutor's Administration affairs;
- commitment to keep the respectability of the Prosecutor's Office and prosecutors and deputies in the public.

Article 6

In Article 35 par. 2, 3 and 4 shall be deleted.

Article 7

Article 35a shall be amended to read as follows:

"The Prosecutorial Council may conduct written testing of the candidates being appointed for Deputy Basic State Prosecutor for the first time prior to the interview.

The Prosecutorial Council shall form a Commission of Appointment composed of three members of the Prosecutorial Council.

The Commission of Appointment shall create a test, conduct anonymous testing and assess the test.

The written test shall be composed of a group of questions published on the website of the Prosecutorial Council.

A copy of the graded test shall be submitted to all members of the Prosecutorial Council.

Article 8

After Article 35a two new articles shall be added to read as follows:

"Scoring
Article 35

A candidate being appointed for the State Prosecutor or the Deputy may achieve 100 points in total based on:

- acquired knowledge up to 30 points;
- ability to execute prosecutor's office up to 40 points;
- decency to execute prosecutor's office up to 30 points.

A candidate who achieves less than 60 points shall be graded with "unsatisfactory" grade.

Assessment of candidates
Article 35v

Based on the conducted interview, the obtained documentation and the opinion under Article 31 of this Law, the members of the Prosecutorial Council shall assess the candidates according to the criteria under Art. 33a, 33b and 33v of this Law.

Members of the Prosecutorial Council shall complete the form for assessment of candidates determining the total number of points that the candidate achieved.

Members of the Prosecutorial Council shall submit the form with the total number of points of the candidates to the Commission of Appointment to determine the average number of points.

Based on the determined average number of points, the Commission of Appointment shall create a ranking list of the assessed candidates and shall submit it to the Prosecutorial Council.

The content of the form for assessment of the candidates under paragraph 2 of this Article shall be regulated by the Rules of Procedure of the Prosecutorial Council.

Article 9

The previous Article 35b shall be deleted.

Article 10

In Article 36 after the words “the Prosecutorial Council” the following words are added “based on the list”.

Paragraph 2 shall be amended to read as follows:

“The Prosecutorial Council shall submit to the Assembly the justified proposal for appointment of the State Prosecutor, containing as many candidates as being appointed, with basic information and assessment for all candidates who applied.”

Article 11

In Article 36b after the word “in” the word “entire” is added.

Article 12

In the title of the Chapter IV the word “DISCIPLINARY” shall be deleted.

In Chapter IV two new Articles shall be added as follows:

“1. Code of Ethics

Prosecutorial Code of Ethics

Article 38a

The Prosecutorial Code of Ethics shall be determined by the extended session of the Supreme State Prosecutor’s Office, upon previously obtained opinion from the session of State Prosecutor’s Offices.

Extended session of the Supreme State Prosecutor’s Office shall elect the Prosecutorial Code of Ethics Commission which shall have a president and two members selected from state prosecutors and deputies for the period of four years.

Code of Ethics Commission

Article 38b

“Prosecutorial Code of Ethics Commission shall monitor application of the Prosecutorial Code of Ethics.

Prosecutor, deputy prosecutor and/or the person authorized to initiate disciplinary proceedings may submit the request to the Commission under paragraph 1 of this Article for the opinion whether certain conduct is in accordance with the Prosecutorial Code of Ethics. The Commission under paragraph 1 of this Article shall report on its work to the Prosecutorial Council at least once a year. The Commission under paragraph 1 of this Article shall pass the rules of procedure on its work regulating closer the manner of work and decision making”.

Article 13

After Article 38b the heading of the chapter shall be added to read as follows:
“2. Disciplinary Responsibility“.

Article 14

In article 39 the heading above the Article is changed and reads as follows:
“Conditions for disciplinary responsibility”

Article 15

In Article 40 after paragraph 2 a new paragraph shall be added to read as follows:
“The State Prosecutor or the Deputy State Prosecutor who have been imposed a disciplinary measure of salary reduction, may not be appointed into the State Prosecutor’s Office of a higher level prior to expiry of the period of two years from the date of coming into force of the decision imposing the disciplinary measure“

Article 16

In Article 41 paragraph 1 after item 5, six new items shall be added as follows:

- (6) fails to ask to be excused in cases where there is reason for his/her exclusion;
- (7) does not meet deadlines under procedural laws or in other manner stalls the procedure;
- (8) does not inform the State Prosecutor of the cases where the procedure is taking longer;
- (9) does not allow supervision by the Prosecutorial Council or by immediately superior prosecutor’s office;
- (10) does not attend mandatory training programs;
- (11) does not act according to the instructions given by the State Prosecutor.”

Previous item 6 shall become item 12.

Paragraph 2 shall be amended as follows

“The State Prosecutor or the Deputy shall be considered as harming the reputation of the prosecutorial office if:

- (1) in executing prosecutor’s office or in public he/she behaves in a manner that is not appropriate for the exercise of prosecutor’s office
- (2) gives incomplete or false information on the property to the Commission for Conflict of Interest pursuant to a special law;
- (3) accepts gifts contrary to regulations regulating the conflict of interest;
- (4) behaves in an improper or insulting manner towards individuals, state authorities or legal persons in connection with the exercise of his/her office;
- (5) discloses outside the proceedings what he/she learnt about clients, their rights and obligations and legal interests within exercise of his/her prosecutor’s office;

- (6) discloses information obtained in exercising his/her prosecutor's office for any other purposes apart from the purpose in connection with exercising his/her prosecutor's office;
- (7) uses prosecutor's office to exercise his/her private interests and interests of his/her family or close persons;
- (8) performs activities or undertakes activities incompatible with exercising of prosecutor's office“.

Article 17

In Article 44 paragraph 2 the words: “amongst the members” shall be deleted.

After paragraph 1 two new paragraphs shall be added to read as follows:

“The Disciplinary Committee shall have a Chairman and two members with their deputies.

The Chairman of the Disciplinary Committee and his/her Deputy shall be appointed amongst the members of the Prosecutorial Council, and the members and their deputies amongst the State Prosecutors and Deputies who are not members of the Prosecutorial Council.“

Article 18

In Article 47 after paragraph 1 two new paragraphs shall be added to read as follows:

“After coming into force of the decision under paragraph 1 item 3 of this Article the proposal for determination of disciplinary responsibility shall be considered a proposal for termination of office and pursuant to it procedure for termination of office shall be conducted if the authorized proponent does not withdraw the proposal.

In the case under paragraph 2 of this Article the final decision of the Disciplinary Committee on termination of the procedure under paragraph 1 item 3 of this Article shall be deemed as the report under Article 58 paragraph 3 of this Law.”

Paragraph 2 becomes paragraph 4.

Article 19

In Article 48 paragraph 4 the words: “members of the Disciplinary Council” shall be replaced by the words: “the Chairman of the Disciplinary Council and his/her Deputy”.

Article 20

After Article 52 a new article shall be added to read as follows:

“Unprofessional and negligent exercise of prosecutor's office
Article 52a

Unprofessional and negligent exercise of prosecutor's office shall particularly include when the State Prosecutor or Deputy without justified reasons:

- significantly fails to achieve the expected results in terms of quantity and quality of work in last three years;
- stalls the proceedings or does not take cases for processing thus causing stalling or interruption of the proceedings or statute of limitation in criminal proceedings;
- during the criminal proceedings does not comply with the principle of truth and fairness;
- fails to successfully exercise the leading role in a pretrial procedure;

- has a significant number of unconfirmed indictments, unaccepted legal remedies compared to the total number of indictments or legal remedies filed in the last three years;
- does not proceed in a large number of cases for a longer time period.”

Article 21

In Article 64a the words “exemption in the disciplinary proceedings” shall be replaced by the words: “disciplinary proceedings”.

Article 22

Title of article 71 and article 71 shall be amended to read as follows:

“Appointment of Special Prosecutor

A person who meets the requirements for appointment of the Supreme State Prosecutor may be appointed as the Special Prosecutor.

The Prosecutorial Council, upon proposal from the Supreme State Prosecutor, shall appoint the Special Prosecutor, with his /her written consent, among the State Prosecutors and Deputies.

The Special Prosecutor shall at the same time be appointed for the Deputy Supreme State Prosecutor.

The Special Prosecutor shall be appointed for the period of five years and may be re-appointed.”

Article 23

The title of the Article 72 and Article 72 shall be changed to read as follows:

“Appointment of Deputy

A person who meets the requirements for appointment of the High State Prosecutor may be appointed as the Deputy Special Prosecutor.

The Deputy Special Prosecutor, with his/her written consent, upon proposal from the Special Prosecutor, shall be appointed by the Prosecutorial Council amongst the State Prosecutors and Deputies.

The Deputy Special Prosecutor shall be appointed for a period of five years and may be re-appointed.”

Article 24

In Article 73 paragraph 1 shall be amended to read as follows:

The Supreme State Prosecutor before proposing a special prosecutor and special prosecutor before proposing a deputy shall obtain the opinion on his/her performance. “

In paragraph 2 after the words: “Supreme State Prosecutor” the following words are added: “or special prosecutor”.

In paragraph 3 the words: “particularly contain“ shall be replaced by words: “in addition to the information under Article 33 of this Law shall also contain“.

Article 25

Article 74 shall be deleted.

Article 26

Article 75 shall be amended as follows:

“Upon expiry of the term of office or when submitting a resignation, the Special Prosecutor shall be entitled to continue to perform the function of the Deputy Supreme State Prosecutor. Upon expiry of the term of office or when submitting a resignation the Deputy Special Prosecutor shall be entitled to return to the position of the Deputy in the State Prosecutor’s Office where he/she had exercised the office prior to appointment. Should the Deputy, in the event of expiry of the term of office or upon resignation, refuse to return to the State Prosecutor’s Office where he/she had exercised the office prior to appointment, his/her term of office shall cease.”

Article 27

In Article 76 after the word “office” the words: “the State Prosecutor or Deputy” shall be deleted.

Article 28

Article 79 shall be amended as follows:

“Confidentiality of Information

Article 79

Special Prosecutor, Deputy Special Prosecutor, civil servants and public employees in the Department, employees in court, police or with other entities that have undertaken certain actions upon request of the Special Prosecutor shall be under a duty to keep, as confidential information, the information determined under the Law on Confidentiality of Information as confidential, regardless of the manner they became aware of the information.

In addition to the information classified as confidential under the law or other regulation, the information from pre-trial proceedings for criminal acts falling within the competence of the Department shall also be deemed confidential.”

Article 29

In Article 82 after the word “prosecutor”, the following words shall be added “and deputy special prosecutor”.

Article 30

In Article 83 paragraph 1 item 1 after the word “Deputy”, the following words shall be added: “the Special Prosecutor and deputy special prosecutor”.

Item 5 is amended and reads as follows:

- (5) propose the budget line necessary for financing of the work of the Prosecutorial Council.

Items 6, 7, 9, 10 and 11 shall be erased.

Article 31

In Article 84 paragraph 2 shall be amended as follows:

“The Supreme State Prosecutor shall be a member of the Prosecutorial Council by virtue of his/her office and may not be the Chairman of the Prosecutorial Council.”

In paragraph 3 item 1 after the word “deputy” the following words are added: “of which at least four deputies with at least eight years of experience”.

In item 2 the words “Faculty of Law in Podgorica” shall be replaced by the words: “legal science”.

After paragraph 3 a new paragraph is added and reads as follows:

“The Chairman of the Prosecutorial Council shall be elected among State Prosecutors and Deputy members of the Prosecutorial Council.”

Article 32

After Article 97 a new Article shall be added as follows:

“Session of the Supreme State Prosecutor’s Office
Article 97a

Apart from the affairs under Article 97 of this Law, the Session of the Supreme State Prosecutor’s Office shall conduct the following affairs:

- (1) give opinions on the regulations relevant for exercise of prosecutor’s office;
- (2) initiate passing of relevant laws from other regulations in the field of judiciary;
- (3) consider reports submitted to the Assembly;
- (4) consider issues of relevance for ensuring application, sustainability and uniformity of the Judicial Information System regarding the part relating to the State Prosecutor’s Office;
- (5) determine the methodology of reporting on the work of the State Prosecutor’s office and the annual work schedule.

In order to consider particular issues of relevance for the work of the State Prosecutor’s Office and in other cases determined by this Law, the Supreme State Prosecutor shall convene an expanded session of the Supreme State Prosecutor’s Office comprised of the Supreme State Prosecutor, his/her deputies, High State Prosecutors and the Special Prosecutor.“

Article 33

In Article 98 paragraph 2 after the words: "financial and material management" instead of full stop a comma shall be put and the following words added "professional, administrative, IT, analytical and other activities of the Prosecutorial Council."

After paragraph 2 a new paragraph shall be added:

- (2) The state prosecutor may delegate administrative prosecutorial affairs in written form to a deputy or to a clerk in the state prosecution.

Paragraphs 3 and 4 shall become paragraphs 4 and 5.”

Article 34

In Article 103 paragraph 2 shall be amended as follows:

“The annual work report shall also contain the information on the position and development of the reported criminal activity in the previous year, as well as a proposal of the measures aimed at improvement of performance of the State Prosecutor’s Office.“

Paragraph 4 shall be changed as follows:

“The annual work report shall be published on the website of the Supreme State Prosecutor’s Office.”

Article 35

After Article 103 a new article shall be added reading as follows:

“Report of the Prosecutorial Council
Article 103a

The Prosecutorial Council shall submit to the Assembly a report on its work not later than 31st March of the current year for the previous year.

The work report shall be published on the website of the Prosecutorial Council.”

Article 36

In Article 106 paragraph 1 after the words "Prosecutor's Office" the following words shall be added "of the same ranking".

Article 37

In Article 108 paragraph 1 the word "examination" shall be replaced by "inquest, investigation".

Article 38

After Article 109 a new Article 109a shall be added as follows:

"Withdrawal of the assigned cases

An assigned case shall be taken from a deputy solely if it is found that the deputy was acting inappropriately in the case, because of the exemption or if he/she is unable to perform prosecutorial function for more than three months.

Cases which urgent nature is provided for in law, may be taken from a deputy if the deputy, due to his/her absence or disability, is unable to act in a timely manner and in the prescribed timeframes.

The state prosecutor shall take the case from the deputy by passing a decision.

The decision on withdrawal shall be submitted to the deputy who has the case taken of.

The objection against the decision on withdrawal shall be filed to directly superior High State Prosecutor, and the objection against the decision of the Supreme State Prosecutor to the Session of the Supreme State Prosecutor's Office within three days of receiving the decision.

The decision shall be passed within two days of the receipt of objection.

The objection shall not terminate the execution of the decision.

Should the objection be accepted, the case stays with the deputy from whom it was taken."

Article 39

In Article 115 the words "the Prosecutorial Council" shall be replaced by "the session of the Supreme State Prosecutor's Office".

Article 40

In the title of the Chapter IX the words: "OFFICIAL SECRET" shall be replaced by "CONFIDENTIAL INFORMATION".

In Chapter IX the words: "official secret" shall be replaced by "confidential information" in the adequate case.

In Article 125 paragraph 1 item 2 shall be deleted.

In paragraph 1 item 3 the words "official or business secret" shall be replaced by "confidential information".

Article 41

In Article 128 paragraph 2 the words "the Prosecutorial Council" shall be replaced by "the Supreme State Prosecutor".

In paragraph 3 the words: "the Chairman of the Prosecutorial Council" shall be replaced by "the Supreme State Prosecutor".

Article 42

The procedures for appointment, termination of office, disciplinary proceedings and dismissal that have been instituted under the Law on Public Prosecutor's Office (Official Gazette of Republic of Montenegro 69/03 and Official Gazette of Montenegro 40/08) shall be completed under the provisions of this law.

Article 43

The Rules of Procedure of the Prosecutorial Council shall be adopted within 30 days, and other documents prescribed by this Law within 60 days after the entry into force of this Law.

Article 44

Prosecutorial Council elected in accordance with the Law on Public Prosecutor's Office (Official Gazette of Republic of Montenegro 69/03 and Official Gazette of Montenegro 40/08), shall continue to work until the expiry of its term of office.

Article 45

Special Prosecutor and a Deputy Special Prosecutor under the provisions of this Law shall be appointed within 60 days following that of the entry into force of this Law.