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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW

ON

STATE PROSECUTION SERVICE

OF MONTENEGRO

Draft**LAW ON STATE PROSECUTION SERVICE****I BASIC PROVISIONS****Scope of the Law****Article 1**

This Law shall govern the establishment, organization and competences of the State Prosecution Service; organization of work of state prosecution offices and judicial management, composition, election, term of office, organisation and manner of operation of the Prosecutorial Council, as well as other issues of importance for the operation of the State Prosecution Service and Prosecutorial Council.

Compliance with the Constitution and Laws**Article 2**

State Prosecution Service shall carry out the activities of prosecution of perpetrators of criminal offences and other punishable acts that are prosecuted *ex officio*, and it shall carry out other activities stipulated in the law.

State Prosecution Service shall carry out its duties on the basis of the Constitution, law and ratified international agreements

Independence**Article 3**

Duties of the State Prosecution Service shall not be carried out under any influence and no person shall exert any influence on the State Prosecution Service in carrying out its duties.

Impartiality**Article 4**

State prosecutors shall carry out their duties in public interest for the purposes of application of the law, whereby respect for and protection of human rights and freedoms shall be ensured.

State prosecutors shall carry out their duties impartially and objectively.

Public Nature of Operations**Article 5**

Operations of the State Prosecution Service shall be public, unless this Law stipulates otherwise.

Professional Advancement**Article 6**

State prosecutors shall have the right to and the duty of professional advancement so that they can ensure more successful carrying out of the duties of their office.

Funds for Operation**Article 7**

Funds and conditions for the operation of the State Prosecution Service shall be ensured from the budget of Montenegro.

Salaries**Article 8**

Heads of state prosecution offices and state prosecutors shall have the right to salary and other emoluments according to the law.

Right to Association

Article 9

Heads of the state prosecution offices and state prosecutors shall have the right to professional association.

II ESTABLISHMENT, ORGANIZATION AND COMPETENCES OF THE STATE PROSECUTION OFFICES

Structure of the State Prosecution Service

Article 10

The following shall be established within the State Prosecution Service: Supreme State Prosecution Office, Special State Prosecution Office, high state prosecution offices and basic state prosecution offices.

Supreme State Prosecution Office shall be established for the territory of Montenegro with the seat in Podgorica.

Special State Prosecution Office shall be established for the territory of Montenegro with the seat in Podgorica.

High state prosecution offices shall be established for the territories of high courts.

Basic state prosecution offices shall be established for the territories of one or several basic courts.

Supreme State Prosecution Office

Article 11

Supreme State Prosecution Office shall proceed before the Supreme Court of Montenegro, Court of Appeals of Montenegro, Administrative Court of Montenegro and other state authorities, according to the law.

Supreme State Prosecution Office shall, according to the law, file the motions for protection of compliance with the law.

Supreme State Prosecution Office shall also perform other duties that are not stipulated as falling within the competences of other state prosecution offices.

Special State Prosecution Office

Article 12

Requirements for election of the head of Special State Prosecution Office and special prosecutors, as well as the organization of the Special State Prosecution Office and other issues of importance for the operation of the Special State Prosecution office shall be regulated in a separate law.

High State Prosecution Office

Article 13

High state prosecution offices shall be:

- 1) the High State Prosecution Office in Bijelo Polje, to proceed before the High Court in Bijelo Polje, and
- 2) the High State Prosecution Office in Podgorica, to proceed before the High Court in Podgorica.

High state prosecution offices shall be authorized to undertake all activities from within its competences before the court and other authorities with subject matter and territorial jurisdiction.

Basic State Prosecution Office
Article 14

Basic state prosecution offices shall be:

- 1) Basic State Prosecution Office in Bar, for the territory of the Basic Court in Bar;
- 2) Basic State Prosecution Office in Berane, for the territory of the Basic Court in Berane;
- 3) Basic State Prosecution Office in Bijelo Polje, for the territory of the Basic Court in Bijelo Polje;
- 4) Basic State Prosecution Office in Kolašin, for the territory of the Basic Court in Kolašin;
- 5) Basic State Prosecution Office in Kotor, for the territory of the Basic Court in Kotor;
- 6) Basic State Prosecution Office in Nikšić, for the territory of the Basic Court in Nikšić;
- 7) Basic State Prosecution Office in Plav, for the territory of the Basic Court in Plav;
- 8) Basic State Prosecution Office in Pljevlja, for the territory of the Basic Court in Pljevlja and Basic Court in Žabljak;
- 9) Basic State Prosecution Office in Podgorica, for the territory of the Basic Court in Podgorica and Basic Court in Danilovgrad;
- 10) Basic State Prosecution Office in Rožaje, for the territory of the Basic Court in Rožaje;
- 11) Basic State Prosecution Office in Ulcinj, for the territory of the Basic Court in Ulcinj;
- 12) Basic State Prosecution Office in Herceg Novi, for the territory of the Basic Court in Herceg Novi, and
- 13) Basic State Prosecution Office in Cetinje, for the territory of the Basic Court in Cetinje.

Basic state prosecution offices shall be authorized to undertake all activities from within their competences before courts with subject matter and territorial jurisdiction.

Subject Matter and Territorial Jurisdiction
Article 15

State prosecution office shall proceed in accordance with its subject matter and territorial jurisdiction, unless the law requires otherwise.

In order to discharge the duties of prosecution of perpetrators of criminal offences and other acts punishable according to the law the state prosecution offices shall, together with the authorities that have the jurisdiction, be authorized to impose and undertake the measures necessary for detecting criminal offences and other acts punishable according to the law, as well as their perpetrators.

Management
Article 16

State Prosecution Service shall be managed by the Supreme State Prosecutor.

Basic and high state prosecution offices shall be managed by the heads of state prosecution offices, Special State Prosecution Office shall be managed by the Head of the Special State Prosecution Office, while the Supreme State Prosecution Office shall be managed by the Supreme State Prosecutor.

Heads of the state prosecution offices and state prosecutors shall discharge their prosecutorial duties in the state prosecution office they are elected to, referred to, or reassigned to according to this Law.

III PROSECUTORIAL COUNCIL

1. Composition and Term of Office of the Prosecutorial Council

Composition of the Prosecutorial Council

Article 17

Prosecutorial Council shall have a president and ten members.

The Supreme State Prosecutor shall be the President of the Prosecutorial Council.

The following shall be the members of the Prosecutorial Council:

- five state prosecutors who hold permanent office and have at least five years of experience in discharging the prosecutorial duties; four of whom from the Supreme State Prosecution Office, Special State Prosecution Office and high state prosecution offices, and one from basic state prosecution offices elected and dismissed by the Prosecutorial Conference;
- four eminent lawyers elected and dismissed by the Parliament upon proposal of the relevant working body;
- one representative of the state administration body in charge of judicial affairs (hereinafter referred to as: "the Ministry of Justice") appointed by the Minister of Justice from among the employees of the Ministry of Justice.

No state prosecutor whose grade in the evaluation was unsatisfactory or who was imposed a disciplinary sanction shall be elected member of the Prosecutorial Council.

Composition of the Prosecutorial Council shall be promulgated by the President of Montenegro.

Administrative tasks for the Prosecutorial Council shall be carried out by the Secretariat of the Prosecutorial Council.

Term of Office of the Prosecutorial Council

Article 18

The term of office of the Prosecutorial Council shall be four years.

The term of office of the Prosecutorial Council member who was subsequently elected to a vacant post in the Prosecutorial Council shall expire with the expiry of the term of office of the Prosecutorial Council.

Upon termination of the term of office of a Prosecutorial Council member, the relevant body shall immediately elect a new member.

2. The Manner of Election and Termination of the Term of Office of the Prosecutorial Council Members

Prosecutorial Conference

Article 19

Prosecutorial Conference shall in a secret ballot elect and dismiss members of the Prosecutorial Council from among state prosecutors.

Prosecutorial Conference shall be composed of all heads of state prosecution offices and all state prosecutors.

Prosecutorial Conference shall adopt the Code of Prosecutorial Ethics.

Prosecutorial Conference shall elect President of the Commission for Monitoring the Compliance with the Code of Prosecutorial Ethics (hereinafter referred to as: the Commission for the Code of Prosecutorial Ethics)

Administrative tasks required for the operation of the Prosecutorial Conference and the Commission for the Code of Prosecutorial Ethics shall be performed by the Prosecutorial Council Secretariat.

Commission for the Code of Prosecutorial Ethics Article 20

The Commission for the Code of Prosecutorial Ethics shall have a president and two members. President of the Commission for the Code of Prosecutorial Ethics shall be elected from among the Prosecutorial Council members who are not state prosecutors; one member shall be elected by the extended session of the Supreme State Prosecution Office from among state prosecutors, while the other member shall be the president of the Association of State Prosecutors of Montenegro.

The Commission for the Code of Prosecutorial Ethics shall be elected for the term of office of four years.

Once a year the Commission for the Code of Prosecutorial Ethics shall submit the report on its work to the Prosecutorial Council. Such report shall be submitted by 31 March of the current year for the previous year.

The Commission for the Code of Prosecutorial Ethics shall adopt its Rules of Procedure stipulating in more details its manner of work and decision-making.

Decision Making in the Prosecutorial Conference Article 21

Prosecutorial Conference shall work and render its decisions in its sessions.

Prosecutorial Conference shall be convened and managed by the Supreme State Prosecutor.

Prosecutorial Conference session can take place if at least two third of its members attend the conference and the decisions shall be rendered by the majority of votes of the present Prosecutorial Conference members.

Prosecutorial Conference shall adopt the Rules of Procedure regulating in details the manner of operation and decision-making in the Prosecutorial Conference.

Election Commission Article 22

Election Commission shall conduct the procedure of preparing the lists of candidates for the election of the Prosecutorial Council members from among the state prosecutors and the procedure of election of the Prosecutorial Council members.

The Election Commission shall have a chairman and two members elected from among the heads of the state prosecution offices and state prosecutors by the extended session of the Supreme State Prosecution Office upon the proposal of the sessions of the state prosecutors of all state prosecution offices..

The Election Commission shall be elected at least three months before the expiry of the four-year term of office of the Prosecutorial Council.

Proposal for Election of the Prosecutorial Council Members from Among the State Prosecutors Article 23

The proposals of the candidates to be elected Prosecutorial Council members from among the state prosecutors in the Supreme State Prosecution Office, Special State Prosecution Office and high state prosecution offices shall be established:

- 1) in the session of the Supreme State Prosecution Office where three candidates from that prosecution office shall be proposed;
- 2) in the session of the Special State Prosecution Office where two candidates from that state prosecution office shall be proposed;
- 3) in the joint session of high prosecution offices where three candidates from those state prosecution offices shall be proposed.

On the basis of the notification on the proposed candidates the Election Commission shall compose a list of eight candidates referred to in paragraph 1 of this Article in an alphabetical order.

To establish the proposal of the candidates from basic state prosecution offices for the post of a Prosecutorial Council members elected from among the state prosecutors, the Election Commission shall obtain initial proposals from every head of the basic state prosecution office and every state prosecutor from the basic state prosecution offices. Such initial proposals shall contain two candidates each and shall be obtained in the way that will ensure secrecy.

The Election Commission shall form the list of four candidates with the largest number of initial proposals referred to in paragraph 3 of this Article. The list shall be formed in the alphabetical order.

If, after obtaining the initial proposals referred to in paragraph 3 of this Article, there are more than four candidates with the same number of initial proposals, the Election Commission will compose the list of all candidates with the largest i.e. the same number of initial proposals.

The form to be used for submitting the initial proposals referred to in paragraph 3 of this Article shall be defined in the Rules of Procedure of the Prosecutorial Council.

Election of the Prosecutorial Council Member from Among the State Prosecutors Article 24

The lists of candidates for the election of Prosecutorial Council members established in line with paragraphs 1, 2 and 4 of Article 23 of this Law shall be delivered to all state prosecution offices to be posted on their notice boards, not later than two months before the expiry of the term of office of the Prosecutorial Council members.

Prosecutorial Conference shall be convened by the Supreme State Prosecutor, not later than 30 days before the expiry of the term of office of the Prosecutorial Council members.

Prosecutorial Council members from among state prosecutors shall be elected by the Prosecutorial Conference from the lists of candidates referred to in paragraph 1 of this Article, whereby only one candidate can be elected from one state prosecution office.

If no candidate from the list receives the required majority of votes, the voting shall be repeated for the five candidates from the list referred to in paragraph 2 of Article 23, i.e. for the two candidates from the list referred to in paragraph 4, i.e. paragraph 5 of Article 23 of this Law, who received the largest number of votes.

If there are several candidates with the same number of votes on the basis of which they can enter the second round of elections, a list of these candidates is composed and the voting is repeated, provided that only one candidate can be elected from one state prosecution office.

Four candidates from the list referred to in paragraph 2 of Article 23 of this Law, provided that only one candidate can be elected from one prosecution office, and one candidate from the list referred to in paragraph 4 i.e. paragraph 5 of Article 23 of this Law who received the

largest number of votes in the Prosecutorial Conference shall be elected members to the Prosecutorial Council.

**Re-election
Article 25**

Members of the Prosecutorial Council elected from among state prosecutors and eminent lawyers can be re-elected to the position of a Prosecutorial Council Member after the expiry of four years from the termination of their previous term of office in the Prosecutorial Council.

**Election of the Prosecutorial Council Members from Among Eminent Lawyers
Article 26**

A person with at least 10 years of experience in law who has earned personal and professional reputation can be elected a Prosecutorial Council member from among eminent lawyers.

Relevant working body of the Parliament of Montenegro (hereinafter referred to as: "the Parliament") shall advertise the public call for election of the Prosecutorial Council member from among eminent lawyers in the Official Gazette of Montenegro and in at least one of the printed media with the headquarters in Montenegro.

Public call for the election of the Prosecutorial Council member from among eminent lawyers shall be published by the relevant working body of the Parliament in the Parliament website. Deadline for application of candidates shall be 15 days from the day of publishing the public call.

The list of applied candidates shall be published by the relevant working body of the Parliament in the website of the Parliament and it shall be accessible to the public in the period of at least ten days from the day of its publication.

Proposal for election of the member of the Prosecutorial Council from among eminent lawyers shall be submitted to the Parliament by the relevant working body of the Parliament.

Proposal for election referred to in paragraph 6 of this Article shall contain as many candidates as are to be elected members of the Prosecutorial Council.

**Termination of the Term of Office
Article 27**

The term of office of a Prosecutorial Council member shall be terminated before the expiry of the term of office he/she was elected for

- 1) in case of termination of his/her office that was the basis for his/her election to the Prosecutorial Council
- 2) if he/she is elected to the office of a state prosecutor in the state prosecution office of higher rank or if he/she becomes a manager of the state prosecution office in case of a Prosecutorial Council member from among state prosecutors;
- 3) if he/she is elected to a prosecutorial office (office of a state prosecutor or head of the state prosecution office) in case of a Prosecutorial Council member not elected from among state prosecutors;
- 4) if he/she resigns
- 5) he/she is convicted and imposed an unconditional prison sentence.

In the case referred to in paragraph 1 item 1 of this Article, the term of office of the Prosecutorial Council member shall terminate on the day of termination of the office on the basis of which he/she was elected to the Prosecutorial Council.

In the cases referred to in paragraph 1 items 2, 3 and 4 of this Article, the Prosecutorial Council member's term of office shall be terminated on the day of the decision about the election to the position of the state prosecutor in the state prosecution office of a higher rank or a head of the state prosecution office, or a state prosecutor or after the Prosecutorial Council has received a written resignation.

In the case referred to in paragraph 1 item 5 of this Article, the Prosecutorial Council member's term of office shall be terminated on the day on which the convicting judgment becomes final.

Prosecutorial Council shall note the termination of the term of office of a Prosecutorial Council member and inform thereof the authority that had elected him/her.

Dismissal Article 28

Prosecutorial Council member shall be dismissed if

- 1) he/she discharges his/her duties unconscientiously and unprofessionally;
- 2) he/she is convicted of an offence that makes him unworthy of discharging duties of a Prosecutorial Council member.

Prosecutorial Council member elected from among the state prosecutors shall also be dismissed if imposed a disciplinary sanction.

In cases referred to in paragraph 1 of this Article, the proposal for dismissal of a Prosecutorial Council member shall be submitted by the Prosecutorial Council to the body that elected the member.

The term of office of the Prosecutorial Council member shall be terminated on the day on which the member is dismissed by the body that elected him/her.

Term of Office in Case of Termination and Dismissal Article 29

In case of termination of the term of office of a Prosecutorial Council member from among state prosecutors before the expiry of term he/she was elected to, the process of proposing candidates shall be repeated according to Articles 23 and 24 of this Law.

In case of termination of the term of office of the Prosecutorial Council member elected by the Parliament before the expiry of the term of office he/she was elected to, the Parliament shall elect a new member.

Term of office of the Prosecutorial Council member who was elected according to paragraphs 1 and 2 of this Article shall be terminated on the day of termination of the term of office of the Prosecutorial Council.

Temporary Removal Article 30

A Prosecutorial Council member shall be temporarily removed from duty:

- 1) if he/she is detained - for the duration of the detention;
- 2) if he/she is temporarily removed from his/her office, i.e. the activities on the basis of which he/she was elected to the Prosecutorial Council;

- 3) if indictment against him/her for the offence that makes him/her unworthy of the position in the Prosecutorial Council is confirmed - by the time of final conclusion of the criminal proceedings;
- 4) if he/she submits the proposal for resignation - by the end of the procedure for resignation.

A Prosecutorial Council member elected from among the state prosecutors can be temporarily removed from duty if the procedure of establishing disciplinary liability is initiated against him/her. Such temporary removal shall be in force by the time of final conclusion of the disciplinary procedure.

The Prosecutorial Council shall render the decision on temporary removal from office and deliver it to the Prosecutorial Council member who is temporarily removed from office and to the body that elected him/her to be a member of the Prosecutorial Council.

Absence from Work and Emoluments

Article 31

Prosecutorial Council members employed in state authorities shall be entitled to absence from their office in order to discharge their duties in the Prosecutorial Council.

During the absence referred to in paragraph 1 of this Article the Prosecutorial Council members whose salaries are secured from the budget shall receive salaries and other emoluments based on the employment in the state authority they are employed in.

On the basis of the decision of the Prosecutorial Council, Prosecutorial Council members elected from among the state prosecutors can work up to 70% of their annual working hours in the Prosecutorial Council while the scope of their prosecutorial activities shall be reduced appropriately. Rendering such decision the Prosecutorial Council shall establish the activities that the Prosecutorial Council members are to perform in the Prosecutorial Council.

Prosecutorial Council members are entitled to emolument for their work in the Prosecutorial Council in the amount established by the Prosecutorial Council.

3. Organization and manner of work

Sessions and Voting

Article 32

Prosecutorial Council shall work and render its decisions in its sessions.

Prosecutorial Council session can take place if attended by a majority of the total number of members of the Prosecutorial Council.

President of the Prosecutorial Council

Article 33

President of the Prosecutorial Council shall convene and chair the sessions of the Prosecutorial Council and shall be responsible for the efficient and timely operations of the Prosecutorial Council.

With the view to ensuring efficiency in the operation of the Prosecutorial Council and upon the proposal of its President, the Prosecutorial Council shall appoint a member of the Prosecutorial Council from among the state prosecutors to replace the President in case of his absence or if he/she cannot attend a session and to discharge other duties provided for in the Rules of the Procedure of the Prosecutorial Council.

Commissions

Article 34

Prosecutorial Council can establish commissions in order to ensure higher efficiency in discharging duties from within its competences.

President of the Prosecutorial Council can neither chair the commissions referred to in paragraph 1 of this Article nor be their member.

The manner of operation of the commissions shall be governed by the Rules of Procedure of the Prosecutorial Council.

Members of the commissions and members of the Commission for the Code of Prosecutorial Ethics shall be entitled to remuneration for their work in the amount established by the Prosecutorial Council of up to 50% of the average salary in Montenegro.

Competences of the Prosecutorial Council

Article 35

On top of the competences stipulated in the Constitution the Prosecutorial Council shall:

- 1) establish the number of state prosecutors;
- 2) establish the proposal for dismissal of the Supreme State Prosecutor to be submitted to the Parliament;
- 3) render decisions on disciplinary liability of the heads of state prosecution offices and state prosecutors;
- 4) cooperate with the Prosecutorial Council in arranging training for the persons holding prosecutorial offices;
- 5) ensure use, functionality, and uniformity of the Judicial Information System in its part that is related to the State Prosecution Service;
- 6) keep records of data related to the heads of state prosecution offices and state prosecutors;
- 7) adopt the Rules of Procedure of the Prosecutorial Council;
- 8) issue opinions on incompatibility of certain activities with the office of a state prosecutor;
- 9) consider complaints of the heads of state prosecution offices and state prosecutors and take stands related to the situations where their independence might be jeopardized;
- 10) consider complaints against the work of the heads of state prosecution offices and state prosecutors it is submitted;
- 11) form the Commission for Evaluation of Performance of State Prosecutors;
- 12) elect disciplinary plaintiff;
- 13) adopt the methodology for developing the report on operation of the State Prosecution Service and annual schedule of tasks;
- 14) issue official identity cards to the heads of state prosecution offices and state prosecutors and keep the records of official identity cards;
- 15) carry out other duties defined in the law.

The form and the manner of issuing official identity cards to state prosecutors and heads of the state prosecution offices, as well as the manner of keeping the records of the issued official identity cards shall be stipulated by the Ministry of Justice.

Decision on the Number of State Prosecutors

Article 36

The number of state prosecutors for every state prosecution office shall be established by the Prosecutorial Council upon the proposal of the Minister of Justice and on the basis of the initiative of the Supreme State Prosecutor.

The number of the state prosecutors shall be established on the basis of the framework criteria defined according to this law.

If the Minister of Justice fails to comply with the initiative of the Supreme State Prosecutor within 30 days, the Supreme State Prosecutor shall submit the initiative to the Prosecutorial Council.

The decision on the number of state prosecutors shall be published in the Official Gazette of Montenegro.

Rules of Procedure of the Prosecutorial Council

Article 37

Prosecutorial Council shall adopt the Rules of Procedure to regulate the issues stipulated in this Law as well as other issues of importance for the organization of work of the Prosecutorial Council.

The Rules of Procedure of the Prosecutorial Council shall be published in the Official Gazette of Montenegro.

Decision

Article 38

Decisions of the Prosecutorial Council shall be final and administrative dispute may be initiated against them, unless this Law requires otherwise.

In rendering its decisions on the election of the heads of the state prosecution offices and state prosecutors, the Prosecutorial Council shall take into account the proportionate representation of the members of minority nations and other national communities as well as gender balance.

Annual Report

Article 39

Prosecutorial Council shall compose the annual report that shall contain the data on the work of the Prosecutorial Council, description and analysis of the state of affairs in the State Prosecution Service, detailed data for every state prosecution office about the number of received and solved cases in the year the report is composed for, data about problems and deficiencies in their work as well as about measures to be undertaken to remove the identified deficiencies.

The Annual Report shall also contain data about the state of affairs and trends in crime in the previous year.

Draft Annual Report shall be submitted by the Prosecutorial Council to all state prosecutors to obtain opinion.

The annual report shall be submitted to the Parliament by 31 March of the current year for the previous year.

The Parliament shall discuss the Annual Report referred to in paragraph 3 of this Article that is presented to the Parliament by the President of the Prosecutorial Council.

The report shall be published in the website of the Supreme Prosecution Office and Prosecutorial Council.

Relations of the Prosecutorial Council and the State Prosecution Offices

Article 40

Upon request of the Prosecutorial Council state prosecution offices shall make available all the data and information from within their competences.

If a state prosecution office does not comply with the request of the Prosecutorial Council within the set deadline it shall promptly present reasons for such non-compliance.

Upon request of the Prosecutorial Council state prosecution offices shall ensure the Prosecutorial Council with a direct insight into official records, documentation, data and submit to it the copies of the requested documents and writs.

Heads of the state prosecution offices, state prosecutors and employees of the state prosecution offices shall attend the sessions of the Prosecutorial Council as requested by the Prosecutorial Council.

Expert Assistance

Article 41

In the procedures of election and evaluation in the candidate interview the Prosecutorial Council may use expert assistance of a psychologist.

IV. ELECTION OF HEADS OF STATE PROSECUTION OFFICES AND STATE PROSECUTORS

1. *Election of Supreme State Prosecutor*

Requirements for Election of Supreme State Prosecutor

Article 42

To be elected Supreme State Prosecutor a candidate shall meet the general requirements for election to the position of the state prosecutor in the Supreme State Prosecution Office and shall be characterized by professional impartiality, high professional and moral qualities.

To be elected Supreme State Prosecutor the candidate shall have work experience of at least 15 years as a state prosecutor, or 20 years in other duties in the field of law.

Public Advertisement

Article 43

Prosecutorial Council shall advertise the vacant position of Supreme State Prosecutor two months before the expiry of his/her term of office in the Official Gazette of Montenegro and in one of the printed media with the headquarters in Montenegro.

Deadline for application of candidates shall be 15 days from the day of publishing the advertisement.

After the expiry of the deadline referred to in paragraph 2 of this Article, the Prosecutorial Council shall compose a list of candidates eligible to be elected Supreme State Prosecutor.

Proposal for Election of the Supreme State Prosecutor
Article 44

In its closed session the Prosecutorial Council shall establish the proposal for the election of the Supreme State Prosecutor on the basis of the list of candidates referred to in Article 43 paragraph 3 of this Law, the opinion of the extended session of the Supreme State Prosecution Office about the applied candidates and the candidate interview.

The Prosecutorial Council shall submit to the Parliament the reasoned proposal for the election of the Supreme State Prosecutor with the list of candidates referred to in Article 43 paragraph 3 of this Law.

**2. Requirements for Election of State Prosecutors
and Heads of State Prosecution Offices**

General Requirements
Article 45

To be elected state prosecutor or head of a state prosecution office a person shall be a citizen of Montenegro, who graduated from the faculty of law (higher education with 240 ETCS credits, education level eight), passed judicial exam, and has experience as required under this Law.

Specific Requirements for State Prosecutors
Article 46

To be elected state prosecutor in the basic state prosecution office a person shall have the experience of working for at least two years after passing judicial exam as an adviser in the state prosecution office or in the court, or as an attorney-at-law, notary or deputy notary of professor of law; or have the experience of working for at least four years in other jobs in the field of law.

To be elected state prosecutor in the high state prosecution office a person shall have the experience of working as a state prosecutor for at least eight years.

To be elected state prosecutor in the Supreme Prosecution Office a candidate shall have the experience of working for at least 15 years as a state prosecutor.

**Specific Requirements for the Position
of Head of Basic and High State Prosecution Offices**
Article 47

In addition to meeting the general requirements referred to in Article 45 of this Law, to be elected head of basic or high state prosecution office a person shall have the following work experience:

- for the position of the head of a basic state prosecution office - 10 years of experience working in the field of law, at least five of which as a state prosecutor;
- for the position of the head of a high state prosecution office - 12 years of experience working in the field of law, at least eight of which as a state prosecutor.

Only the state prosecutor who earned the grade good or excellent in the procedure of performance evaluation under this Law can be elected head of prosecution office.

3. Procedure for Election of Head of State Prosecution Office

Programme of Work

Article 48

With their application to the public advertisement the candidates for the position of the head of a state prosecution office shall submit the Programme of Work containing the vision of the organization of work in the state prosecution office for the five-year term of office.

The contents of the Programme of Work referred to in paragraph 1 of this Article shall be defined by the Prosecutorial Council.

Criteria for Election to the Position of Head of State Prosecution Office

Article 49

The criteria for election to the position of the head of a state prosecution office shall comprise:

- 1) evaluation of the Programme of Work,
- 2) evaluation of performance in the position of a state prosecutor, i.e. head of the prosecution office and
- 3) evaluation in the candidate interview.

The maximum number of points a candidate can be given shall be 40 for the Programme of Work, 30 for his/her work in the position of a state prosecutor if given the grade good in the evaluation and 40 if given the grade excellent; and 20 for the interview.

If two candidates have the same score, the candidate with a higher number of points in performance evaluation shall have the advantage.

Election of Head of State Prosecution Office

Article 50

The same person can be elected to the position of the head of the same state prosecution office two times at most.

Head of the state prosecution office shall remain a state prosecutor in the state prosecution office he/she is the head of even after the expiry of the term he/she was elected for, after termination of the office of the head of the state prosecution office, upon his/her request, in case of closing the state prosecution office or merging state prosecution offices and after dismissal from the office of a head of the state prosecution office.

Appropriate Application

Article 51

The provisions of this Law that govern the procedure for election of state prosecutors to the basic state prosecution offices shall apply accordingly to the procedure of advertising the post, as well as to the procedures of application of candidates, interviews, establishing the ranking list of candidates and rendering of the decision on election.

4. Plan of Prosecutorial Vacancies

Contents and Manner of Adoption of the Plan

Article 52

Vacant posts of state prosecutors in the state prosecution offices shall be filled in according to the Plan of vacant posts of state prosecutors on the level of Montenegro (hereinafter referred to as: "the Plan of Vacancies")

Plan of vacancies shall contain the posts of state prosecutors in all state prosecution offices that will be vacant in the period of the next two years.

The plan of vacancies shall be made on the basis of the assessment of the need for filling the vacancies by voluntary reassignment, promotion and public advertisements for the first election of state prosecutors in basic state prosecution offices.

The plan of vacancies shall be adopted by the Prosecutorial Council not later than by the end of the calendar year for the next two years.

The plan of vacancies may be amended if during the year there is a change in the facts on the basis of which the assessment of the need for filling the vacant posts of state prosecutors referred to in paragraph 2 of this Article was made.

3. Procedure of Election of State Prosecutors in the Basic State Prosecution Offices

Advertising Vacancies Article 53

Vacant posts of state prosecutors in basic state prosecution offices shall be filled in the procedure of permanent voluntary reassignment of state prosecutors from onestate prosecution office to another basic state prosecution office on the basis of an internal advertisement.

If a vacant post of the state prosecutor is not filled in accordance with paragraph 1 of this Article, state prosecutors in basic state prosecution offices shall be elected on the basis of a public advertisement.

The Prosecutorial Council shall advertise vacancies in basic state prosecution offices on the level of Montenegro in the Official Gazette of Montenegro and in one of the printed media with the headquarters in Montenegro.

Application Procedure Article 54

Applications shall be submitted to the Prosecutorial Council within 15 days from the day of advertisement of vacant posts of state prosecutors in basic state prosecution offices. The applications shall be submitted on the form defined by the Prosecutorial Council.

Prosecutorial Council shall reject untimely and incomplete applications.

The applicants may initiate administrative dispute against the decision of the Prosecutorial Council rejecting untimely and incomplete applications.

Criteria for the First Election of the State Prosecutor Article 55

The following shall be the criteria for election of the state prosecutor to be elected for the first time:

- 1) the grade given in the written examination referred to in Article 57 of this Law, i.e. the grade given in the judicial examination in line with the law regulating the judicial examination, and
- 2) the grade given in the candidate interview.

Criteria for Election of State Prosecutor to Permanent Office
Article 56

Criteria for election of state prosecutors to permanent office shall be:

- grade in the evaluation of performance of the state prosecutor during the four-year term of office; and
- grade in the candidate interview.

Grade in the evaluation of performance referred to in item 1 of this Article shall be 60 points for the grade satisfactory, 70 points for the grade good and 80 points for the grade excellent.

Written Examination
Article 57

The Prosecutorial Council shall administer written examination of the persons to be elected state prosecutors for the first time, whose applications are timely and complete. The written examination shall be conducted by the Commission consisting of three Prosecutorial Council members, at least two of whom shall be from among state prosecutors.

The written examination shall not be conducted for the persons referred to in paragraph 1 of this Article who were given grades in the judicial exam.

The Commission referred to in paragraph 1 of this Article shall prepare the test for written examination and it will contain drawing up of an investigation document and a motion to indict or any other document that falls within jurisdiction of the state prosecution office.

The written examination is done under a code.

Grading is done using certain number of points for the form of the enactment, application of the law and explanation of the reasons for issuing the enactment in such a way that the maximum is 80 points of which 40 points for drawing up of an investigation document and 40 points for drawing up a motion to indict or any other document that falls within jurisdiction of the state prosecution office

The written test shall be graded by the Commission referred to in paragraph 1 of this Article and it shall be submitted to all Prosecutorial Council members.

The manner in which written examination is administered shall be regulated by the Rules of Procedure of the Prosecutorial Council.

Interview
Article 58

The Prosecutorial Council shall conduct interview with the persons who achieved more than 60 points in written examination, i.e. judicial examination.

The following shall be evaluated during the interview:

- motivation to work in the State Prosecution Service;
- communication competence;
- ability to make decisions and resolve conflicts;
- understanding of the role of the state prosecutor in the society.

Evaluation referred to in paragraph 2 of this Article shall be done by each member of the Prosecutorial Council giving a number of points to each of the interviewed persons.

The maximum number of points shall be 20.

Final grade in the interview shall be the average number of points established on the basis of the number of points given by each member of the Prosecutorial Council.

The person who achieves less than 15 points in the interview shall not be put on the ranking list of candidates for the post of a state prosecutor

Ranking List of Candidates for the Post of a State Prosecutor

Article 59

The ranking list of candidates (hereinafter referred to as: "the ranking list") shall be drawn on the basis of the grades obtained in the written examination i.e. judicial exam and the interview; the ranking shall be based on the number of points earned which cannot exceed 100.

If two candidates on the ranking list have the same score, the advantage is given to the candidate with a higher score in the written test i.e. judicial exam, and if the candidates have the same score in the written test, the advantage is given to the member of a minority nation or other minority community.

If the advantage between the candidates cannot be determined in the way described in paragraph 2 of this Article, the Prosecutorial Council shall decide by drawing lots.

Election and Assignment of Candidates for the Post of a State Prosecutor

Article 60

The Prosecutorial Council shall elect the number of candidates that matches the number of advertised vacant posts of state prosecutors according to their order on the ranking list and render the decision on the assignment of the candidate after the candidate for a state prosecutor has chosen the state prosecution office to be assigned to.

The candidate for a state prosecutor shall exercise the rights to choose the state prosecution office he/she will be assigned to according to the order on the ranking list.

The candidate for the post of a state prosecutor who refuses the assignment referred to in paragraph 1 of this Article shall lose the status of a candidate for the post of a state prosecutor he applied to based on the public advertisement.

In the case referred to in paragraph 3 of this Article a new candidate for the post of the state prosecutor shall be elected according to paragraph 1 of this Article.

Rights of Applicants

Article 61

In the period of 15 days from the day on which the decision on assignment of candidates to the posts of state prosecutors was rendered, every person who applied to the public advertisement for election to the post of a state prosecutor in basic state prosecution offices shall be entitled to make an insight into the documents, written tests and grades given to all persons who applied for the advertised vacancy.

Rights and Duties of State Prosecutor Candidates

Article 62

State prosecutor candidate shall be employed in the basic state prosecution office where he/she is assigned for a limited period of time waiting for the decision on his/her election.

State prosecutor candidate shall be entitled to salary in the amount of 70% of the salary of a state prosecutor in the basic state prosecution office.

Regulations governing the rights and obligations of civil servants shall be applied to state prosecutor candidates' rights and duties in the field of labour and stemming from labour unless regulated in this Law.

Initial Training

Article 63

State prosecutor candidates shall complete initial training that consists of theoretical and practical part and takes at least a year.

Theoretical part of the initial training shall be conducted by the Judicial Training Centre, while the practical part of the initial training shall be conducted in the state prosecution office to which the candidate state prosecutor is assigned.

Initial training shall be conducted according to the Initial Training curriculum.

Practical part of the initial training shall be conducted under the supervision of a mentor who shall be assigned in the meeting of the state prosecutors in the basic state prosecution office the state prosecutor candidate is assigned to and he/she shall be selected from among the state prosecutors who hold prosecutorial office for at least five years.

Grade of the state prosecutor candidate from the initial training shall be given by the Prosecutorial Council on the basis of the report on the training issued by Judicial Training Centre and the mentor.

The grade can be satisfactory and unsatisfactory and it shall be reasoned.

Initial training curriculum shall be adopted and the initial training and the manner of grading shall be regulated by the law that governs education of the holders of judicial office.

Decision on Election

Article 64

The state prosecutor candidate who was given the grade satisfactory in the initial training shall be elected by the Prosecutorial Council to the post of the state prosecutor in the basic state prosecution office to which he/she was assigned.

The employment of the state prosecutor candidate who was given the grade unsatisfactory in the initial training shall be terminated by virtue of law on the day on which the decision on the grade becomes final.

6. Promotion of State Prosecutors

Requirements for Promotion

Article 65

State prosecutor shall be entitled to promotion to a hierarchically higher state prosecution office if in performance evaluation he/she is given the grade excellent or good according to this Law and if he/she meets the requirements for the election to that state prosecution office.

State prosecutor can be promoted to the Supreme State Prosecution Office if in the performance evaluation he/she was given the grade excellent and if he/she meets the special requirement for the election to the Supreme State Prosecution Office referred to in Article 46 paragraph 3 of this Law.

Public Advertisement
Article 66

In the procedure of promotion the vacant posts of state prosecutors in high and Supreme State Prosecution Office shall be advertised in line with the Plan of posts of state prosecutors.

Provisions of Articles 53 and 54 of this Law shall be applied accordingly to the procedure of advertisement of vacant posts, application and procedure upon applications.

7. Oath and Taking of Office

Oath and Taking of Office
Article 67

State prosecutor shall take his/her office on the day on which he/she has taken an oath. State prosecutors shall take the oath before the Prosecutorial Council, not later than 15 days from the day of election.

Wording of the Oath
Article 68

The wording of the oath shall be as follows: "I do solemnly swear to perform prosecutorial office in a conscientious, independent, impartial and accountable manner under the Constitution and the law."

The oath shall be taken by reciting it and by signing the text of the oath.

If the state prosecutor does not take the oath, i.e. refuses to take the oath, he/she shall be deemed not elected.

The state prosecutor elected in the procedure of promotion to a hierarchically higher state prosecution office shall not recite the wording of the oath referred to in paragraph 1 of this Article, but symbolically signs the wording of the oath.

V. REASSIGNMENT AND TRANSFER OF STATE PROSECUTOR

Reassignment to Other State Prosecution Office
with the Consent of the State Prosecutor
Article 69

State prosecutor shall discharge the duties of prosecutorial office in the state prosecution office to which he/she was elected.

The Prosecutorial Council may, with the consent of the state prosecutor, reassign the state prosecutor to another state prosecution office of the same or lower instance for a period not longer than one year if the timely performance of duties in that state prosecution office is called into question as a result of a state prosecutor of that state prosecution office being recused or prevented from discharging duties of prosecutorial office or due to a massive case backlog that cannot be reduced with the existing number of state prosecutors or due to some other justified reasons.

In the cases referred to in paragraph 2 of this Article, the state prosecutor shall earn salary in the state prosecution office he/she is reassigned to. The costs incurred as a result of reassignment of the state prosecutor to another state prosecution office shall be borne by the state prosecution office the state prosecutor is reassigned to in accordance with the legislation on compensation of the costs of civil servants and state employees.

Procedure for Temporary Reassignment to another State Prosecution Office

Article 70

Prosecutorial Council shall render decision to reassign temporarily the state prosecutor referred to in Article 69 of this Law, upon the request of the head of the state prosecution office the state prosecutor is reassigned to.

Prior to rendering the decision on temporary reassignment of the state prosecutor referred to in Article 69 of this Law, the Prosecutorial Council shall consult the head of the state prosecution office that submitted the request, the state prosecutor being reassigned temporarily and the head of the state prosecution office where the state prosecutor discharges his/her duties.

Reassignment to Other Authority

Article 71

Prosecutorial Council may, with the consent of the state prosecutor, reassign him/her for the period of up to three years, to the Ministry of Justice, Judicial Training Centre or to the Secretariat of the Prosecutorial Council where he/she shall participate in the activities of such authorities related to the promotion of operation of the State Prosecution Service, and particularly related to the introduction of international standards in the work of the State Prosecution Service.

Reassignment referred to in paragraph 1 of this Article shall be done at the proposal of the head of the authority the state prosecutor is reassigned to, and after obtaining the opinion of the head of the state prosecution office where the state prosecutor discharges the duties of his/her prosecutorial office and the consent of the state prosecutor.

While working in the authority he/she is reassigned to the state prosecutor shall not discharge the duties of his/her prosecutorial office.

In the case referred to in paragraph 1 of this Article, the state prosecutor shall keep the salary of a state prosecutor, while the costs incurred as a result of his/her reassignment to another authority shall be borne by the authority the state prosecutor is reassigned to.

Reassignment to another State Prosecution Office without Consent of State

Prosecutor Article 72

In the event of restructuring of the State Prosecution Service which leads to decreasing or dissolving the number of posts of the state prosecutors, the Prosecutorial Council may transfer or reassign the state prosecutor to another state prosecution office without his/her consent.

The costs incurred as a result of the transfer or reassignment of the state prosecutor to another state prosecution office without his/her consent shall be borne by the state prosecution office the state prosecutor is transferred or reassigned to, except for the salary that the state prosecutor shall be receiving from the state prosecution office he/she is transferred or reassigned from.

Permanent Voluntary Transfer of the State Prosecutor

Article 73

Prosecutorial Council shall advertise vacancies for state prosecutors internally in the website. State prosecutors wishing to be transferred permanently to another state prosecution office of the same or lower instance are entitled to apply for the internally advertised vacancies. Prosecutorial Council shall draw up a list of transfer candidates based on the results of work over the last three years, i.e. grade in the evaluation of his/her performance carried out in accordance with this Law.

On the basis of the list of candidates referred to in paragraph 3 of this Article, the Prosecutorial Council shall render the decision on transferring the state prosecutor to another state prosecution office, taking into account the needs of the state prosecution office the state prosecutor discharges the duties of his office in and the needs of the state prosecution office he/she is to be transferred to.

VI PERFORMANCE EVALUATION OF STATE PROSECUTORS

Aim of Performance Evaluation

Article 74

Performance evaluation of state prosecutors who hold permanent office, with the exception of the state prosecutors from the Supreme State Prosecution Office and Special State Prosecution Office, shall be carried out every three years in order to assess their competence and ethics and their training needs, as well as for the purpose of promotion to a hierarchically higher state prosecution office.

Performance evaluation of the state prosecutors who hold the office for a four-year term shall be carried out after two years in the office and in the end of the term of office.

T

he grades in the performance evaluation of the state prosecutors shall be excellent, good, satisfactory and unsatisfactory.

Performance evaluation of the state prosecutors shall be carried out before the expiry of the time-limit referred to in paragraphs 1 and 2 of this Article and it shall be carried out as follows:

- performance evaluation of the state prosecutor who was given the grade unsatisfactory shall be carried out one year from the day on which the decision on establishing such a final grade became final.
- Performance evaluation of the state prosecutor who applied to the advertisement for promotion to a hierarchically higher state prosecution office, if he/she does not have any grade or if his/her previous grade was established more than two years earlier.
- Performance evaluation of the state prosecutor shall not be carried out if in the period that is to be evaluated referred to in paragraphs 1 and 2 of this Article the state prosecutor was absent for at least a year.

Evaluation Commission

Article 75

Performance evaluation of state prosecutors shall be done by the Commission for Evaluation of Performance of State Prosecutors established by the Prosecutorial Council (hereinafter referred to as: "the Evaluation Commission").

The Evaluation Commission shall be composed of the Supreme State Prosecutor and five members of the Prosecutorial Council elected from among the state prosecutors.

The decision on the evaluation of performance of a state prosecutor shall be rendered by the Evaluation Commission upon the proposal of the panel of state prosecutors for performance evaluation composed of the head of the state prosecution office where the state prosecutor is evaluated and four state prosecutors from the hierarchically higher state prosecution offices (hereinafter referred to as: the evaluation panel of state prosecutors).

The evaluation panel of state prosecutors shall be established by the Prosecutorial Council. Prosecutorial Council can render a decision on the recusal of the members of the Evaluation Commission and the evaluation panel of state prosecutors.

Rules of Procedure of the Prosecutorial Council shall regulate the manner of operation of the Evaluation Commission and the panel of state prosecutors for evaluation as well as the cases of recusal and the manner of recusing members of the Evaluation Commission and the evaluation panel of state prosecutors.

Criteria for Performance Evaluation

Article 76

The criteria for evaluation of performance of the state prosecutors shall be as follows:

- expert knowledge, and
- general competences for discharging the duties of the prosecutorial office.

Expert Knowledge of the State Prosecutor

Article 77

Expert knowledge of a state prosecutor shall be evaluated on the basis of the following sub-criteria:

- the quantity and quality of his/her work;
- ability to plan and effectively conduct procedural actions
- skills for preparing and keeping case files;
- skills for using prosecutorial knowledge;
- skills for conducting proceedings and
- professional advancement.

Quantity and quality of work shall be evaluated on the basis of the number of pending cases, number of completed cases, number of confirmed indictments, number of convicting judgements and number of adopted appeals.

State prosecutor shall be given the grade unsatisfactory for the quantity of work if his/her results are more than 20% below average benchmark values for the quantity of work in certain type of cases set by the Prosecutorial Council based on the size of the state prosecution office, if the state prosecutor fails to provide justified reasons for that.

Ability to plan and effectively conduct procedural actions shall be evaluated on the basis of the ability of the state prosecutor to organize and effectively implement procedural and administrative actions in line with the principle of efficiency and cost-effectiveness of the procedure.

The skill for preparing and keeping the case file shall be evaluated on the basis of the ability of the state prosecutor to prepare a prosecutorial case file and to identify all the documents of which it consists, which should be user-friendly for all the interested parties.

The skill for using prosecutorial knowledge shall be evaluated on the basis of the ability of the state prosecutor to make assessments to define the case accurately and to collect properly the evidence needed for rendering a prosecutorial decision, i.e. for rendering of a fair judgment.

The skill for conducting proceedings shall be evaluated on the basis of the state prosecutor's ability to manage preliminary investigation and investigation and to represent the motion to indict before the court.

Professional advancement shall be evaluated on the basis of all the activities the state prosecutor undertakes to improve and implement his/her knowledge and methods in his/her work.

General Competences

Article 78

General competences for discharging the duties of the state prosecutor's office shall be evaluated on the basis of the following sub-criteria:

- ability to communicate,
- ability to adjust to changed circumstances,
- ability to organize and to coordinate prosecutorial staff,
- participation in various professional activities.

Ability to communicate shall be evaluated on the basis of the state prosecutor's attitude of respect for parties, co-workers and employees of the state prosecution office in discharging the duties of the prosecutorial office.

Evaluation of the ability to adjust to circumstances shall be carried out on the basis of the state prosecutor's ability to adjust to structural and organisational changes within the state prosecution office where he/she discharges his/her duties, as well as to the legislative and procedural changes and use of new technology and rules of work.

Ability to organize and coordinate prosecutorial staff shall be evaluated on the basis of the ability of the state prosecutor to cooperate, organise and control the work of advisers, trainees and employees working with him/her.

Participation in various professional activities shall be evaluated on the basis of the state prosecutor's participation in professional activities and trainings organised within the State Prosecution Service or in the framework of training programmes.

Sources of Evaluation

Article 79

Performance evaluation of the state prosecutors according to the criteria referred to in Article 76 of this Law shall be carried out through an insight into:

- five randomly selected cases that were closed with final judgments,
- five cases of the state prosecutor's own choice that were closed with final judgments,
- three randomly selected motions to indict on the basis of which final judgments of acquittal have been given,
- three randomly selected cases from the criminal ("Ktr") registry;
- three randomly selected rejected criminal charges;
- statistic report on the performance of the state prosecutor that shall contain the data about the work of the state prosecutor, data from the records on state prosecutors, data on the number of complaints and decisions upon complaints against work of the state prosecutor;
- records obtained in the process of control of the work of the state prosecution office,
- report on training courses attended by the state prosecutor issued by the Judicial Training Centre.

If due to his/her specialization the state prosecutor does not have in his file the cases referred to in paragraph 1 of this Article, the provisions on the type of cases that state prosecutor proceeds in shall be applied accordingly.

Rules on Selection of Cases

Article 77

In the process of selection of the cases referred to in Article 79 paragraph 1, items 1 to 5 of this Law that are to be subject to evaluation the cases shall be selected among the cases that ended in final judgments in the period for which the evaluation is done and in which the state prosecutor proceeded; taking into account not only the cases in which the state prosecutor proceeded in the state prosecution office where he/she discharges the duties of his/her prosecutorial office, but also the cases in which he/she proceeded in the state prosecution offices he/she was reassigned to according to this law.

Selection of cases shall be carried out after the performance evaluation has commenced and the presence of the state prosecutor is compulsory.

Random selection procedure shall be regulated in more details in the Rulebook of the Prosecutorial Council.

Report

Article 81

The state prosecutor whose work is evaluated shall use a standardised form to compose a report that will contain a description of his/her prosecutorial activities against the criteria and sub-criteria stipulated in this Law, which is followed by a general grade of his/her performance and specification of the cases the state prosecutor himself/herself selected to be subject to evaluation.

The state prosecutor shall submit the report referred to in paragraph 1 of this Article to the head of the state prosecution office where he/she discharges the duties of the prosecutorial office within eight days from the day of the beginning of the evaluation.

Head of the state prosecution office where the state prosecutor discharges the duties of the prosecutorial office shall submit the report referred to in paragraph 1 of this Article and the documentation needed for evaluation of the state prosecutor referred to in Article 79 of this Law to the evaluation panel of state prosecutors within five days from the day of receiving the report from the state prosecutor.

Report and Proposal of the Evaluation Panel

Article 82

Within 30 days from the day of delivery of the documentation referred to in Article 79 of this Law the evaluation panel shall compose a report on evaluation of the state prosecutor against the criteria and sub-criteria stipulated in this Law.

On the basis of the report referred to in paragraph 1 of this Article and the report of the state prosecutor referred to in Article 81 of this Law, the evaluation panel of state prosecutors shall make a draft grade for the state prosecutor that is subject to evaluation and send it to the Evaluation Commission.

Statement Regarding the Draft Grade

Article 83

The Evaluation Commission shall submit the draft grade referred to in Article 82 of this Law to the state prosecutor that is subject to evaluation and he/she shall be entitled to make a statement thereon within five days from the day of being submitted the draft grade.

The Evaluation Commission may request additional data and explanations from the evaluation panel.

The Evaluation Commission may invite the state prosecutor for an interview before establishing the final grade in order to clarify certain issues.

Establishing the Grade

Article 84

The state prosecutor shall be given the grade excellent if his/her performance is evaluated as excellent according to all the sub-criteria, i.e. good according to three sub-criteria and excellent according to other sub-criteria.

The state prosecutor shall be given the grade good if his/her performance is evaluated as good according to at least five sub-criteria.

The state prosecutor shall be given the grade satisfactory if his/her performance is evaluated as satisfactory according to at least four sub-criteria.

The state prosecutor shall be given the grade unsatisfactory if his/her performance is evaluated as unsatisfactory according to at least two criteria.

Grade

Article 85

Decision of the Evaluation Commission shall be final and administrative dispute may be initiated against it.

Final decision on the grade given to the state prosecutor shall be registered in his/her personal file.

Consequences of the Grade

Article 86

The state prosecutors given the grades satisfactory or unsatisfactory shall be referred to the programme of mandatory continuous training in line with the law governing education of judges and prosecutors.

The state prosecutors given the grade excellent or good may be promoted to a hierarchically higher prosecution office.

If the state prosecutor who was given the grade excellent is not promoted to a hierarchically higher prosecution office within a year from getting the grade excellent he/she shall be entitled to the salary on the level of that of the head of the state prosecution office where he/she discharges the duties of his /her prosecutorial office.

Evaluation of the Heads of State Prosecution Offices

Article 87

Evaluation of the heads of state prosecution offices shall be performed by the Evaluation Commission.

Evaluation of the heads of basic state prosecution offices shall be carried out on the basis of the proposal of grade given by the head of high state prosecution office from the area where that state prosecution office is located, while performance evaluation of the heads of high state prosecution offices shall be carried out on the basis of the proposal of grade given by the Supreme State Prosecutor.

Head of state prosecution office shall be evaluated two years after being elected to the position of the head of the state prosecution office and after the expiry of the term of office of five years, while after that he/she shall be evaluated after five years if he/she is re-elected to the position of the head of the state prosecution office.

Head of the state prosecution office shall be given the grades good or unsatisfactory. If the head of the state prosecution office is given the grade unsatisfactory he/she shall be dismissed from the office of the head of the state prosecution office.

Evaluation of the heads of state prosecution offices as state prosecutors shall be carried out according to the procedure and in the manner stipulated in this Law.

Special Rules

Article 88

The Prosecutorial Council shall regulate in more details in special rules and according to this Law the procedure for evaluation and indicators for evaluation of the criteria for evaluation of performance of state prosecutors, as well as the criteria and indicators for evaluation of the criteria for evaluation of the heads of state prosecution offices.

VII INCOMPATIBILITY, IMMUNITY AND TERMINATION OF OFFICE

Opinion on Other Activities

Article 89

Upon the request of the head of the state prosecution office, i.e. the state prosecutor the Prosecutorial Council shall issue its opinion about whether certain activities are incompatible with discharging the duties of prosecutorial office.

Decision on immunity

Article 90

If the court with jurisdiction finds that there are reasons to impose detention on the public prosecutor for a criminal offence committed in discharging the duties of his/her prosecutorial office, the court shall promptly request the opinion of the Prosecutorial Council on whether the Prosecutorial Council approves of such a detention.

Liability for Damage

Article 91

The state shall be liable for any damage inflicted on any party in the proceedings by the state prosecutor as a result of his/her performing of the duties of his/her prosecutorial office unlawfully, unprofessionally or unconscientiously.

The state shall be entitled to request from the state prosecutor to compensate the amount paid to the party in the proceedings on the basis of the damage referred to in paragraph 1 of this Article if the state prosecutor deliberately caused the damage.

The state shall be entitled to request from the state prosecutor to compensate the amount it paid to the party in the proceedings if the state prosecutor caused the damage referred to in paragraph 1 of this Article by ultimate negligence. The amount the state is entitled to request from the state prosecutor in such a case shall not be higher than 1/3 of his/her annual salary.

Reasons for Termination of the Office of State Prosecutor

Article 92

The office of the state prosecutor shall be terminated in the following cases:

- 1) upon expiry of the term of office;
- 2) by resignation;
- 3) by fulfilment of requirements for old age pension;
- 4) by termination of citizenship.

Reasons for Termination of the Office of the Head of State Prosecution Office
Article 93

The office of the head of the state prosecution office shall be terminated in the following cases:

- 1) upon expiry of the term he/she was elected for;
- 2) upon termination of his prosecutorial office;
- 3) upon his/her own request or in the case of closing or merging of state prosecution offices.

Termination of Prosecutorial Office
Article 94

Should any reason for termination of prosecutorial office occur, the Prosecutorial Council shall be notified thereof without any delay: by the head of the state prosecution office for the state prosecution, by the head of an immediately higher state prosecution office for the head of the state prosecution office and by the Session of the Supreme State Prosecution Office for the Supreme State Prosecutor.

Decision on termination of office of the head of the state prosecution office or state prosecutor shall be rendered by the Prosecutorial Council not later than 30 days from the day of receiving the notification.

The office of the person referred to in paragraph 2 of this Article shall be terminated on the day on which the decision on termination is rendered by the Prosecutorial Council, except in the event of termination of office resulting from expiry of the term, in which case the office shall be terminated on the day on which the term expires.

The decision on termination of office shall be submitted by the Prosecutorial Council to the person whose office is terminated and to the state prosecution office where he/she discharged the duties of his/her prosecutorial office and it shall be published in the Official Gazette of Montenegro.

Termination of Office of the Supreme State Prosecutor
Article 95

The Prosecutorial Council shall notify the Parliament, without any delay, that the requirements for termination of office of the Supreme State Prosecutor are met.

If the Parliament fails to adopt the decision on termination of office of the Supreme State Prosecutor within 30 days from the day of receiving the notification thereon, his/her office shall be terminated upon expiry of that time-limit.

The office of the Supreme State Prosecutor shall be terminated on the day of adoption of the decision on termination of the office by the Parliament or upon expiry of the time-limit referred to in paragraph 3 of this Article, except in the event of termination of office resulting from expiry of the term, in which case the office shall be terminated on the day on which the term expires.

Proclaiming the Decision on Election Null and Void
Article 96

The Prosecutorial Council shall proclaim the decision on election of state prosecutor null and void if it proves that, at the time of the election, the state prosecutor had not meet the election requirements or if the Prosecutorial Council receives the information that, had they been known at the time of the election, would have given the Prosecutorial Council reason not to render the decision on the election.

The Prosecutorial Council may delay commencement of the performance of prosecutorial duties in order to verify information referred to in paragraph 1 of this Article.

If the Prosecutorial Council proclaims the decision on election null and void, the second ranking candidate on the list shall be elected for that post or the election procedure shall be repeated if there are no other candidates.

VIII DISCIPLINARY LIABILITY AND DISMISSAL

1. Disciplinary procedure

Disciplinary Offences

Article 97

State prosecutor and head of the state prosecution office as a state prosecutor shall be disciplinary liable for minor, severe and the most severe disciplinary offences.

State prosecutor shall be considered to have committed a minor offence if:

- 1) without justified reason he/she fails to take up cases in the order in which they were received according to the Law and the Rules of Procedure on Internal Operation of the State Prosecution Service;
- 2) he/she is unjustifiably absent from or late for the scheduled hearings;
- 3) he/she fails to attend mandatory training programmes without any justified reason;
- 4) he/she fails to fulfil mentoring responsibilities within the initial training and training of trainees;

State prosecutor shall be considered to have committed a severe disciplinary offence if:

- 1) he/she unjustifiably fails to proceed in the cases within the time-limits defined in the law, in case of occurrence of the consequences stipulated in the law for such situations;
- 2) he/she fails to recuse himself/herself in cases in which there is a reason for his/her recusal;
- 3) he/she renders impossible the supervision which is required under the law;
- 4) while discharging duties of the prosecutorial office or while in a public place, he/she brings himself/herself into condition or behaves in a manner which is inappropriate for the prosecutorial office;
- 5) he/she treats participants in proceedings and employees of the state prosecution office in an inappropriate manner;
- 6) he/she discloses information he/she learnt while handling cases or in discharging duties of the prosecutorial office;
- 7) he/she uses prosecutorial office to act in his/her private interests and interests of his/her family and persons close to him/her;
- 8) he/she accepts gifts or fails to disclose data on property and income in accordance with the legislation governing prevention of conflict of interests;
- 9) he/she is unjustifiably absent from the office for five consecutive days;
- 10) he/she discloses confidential information from the cases that he/she learnt in the course of discharging the duties of the prosecutorial office and if he/she publicly expresses his/her opinion about the case which has not become final;
- 11) he/she repeats minor disciplinary offences.

State prosecutor shall be considered to have committed the most severe disciplinary offence if:

- 1) he/she is convicted of an offence which makes him/her unworthy of prosecutorial office;

2) he/she discharges duties of his/her prosecutorial office unprofessionally or unconscientiously.

It shall be deemed that the state prosecutor discharges the duties of prosecutorial office unprofessionally and unconscientiously if:

- 1) he/she unjustifiably fails to achieve at least 50% of the results in terms of quantity of the work done which is measured against average quantity benchmarks in specific types of cases set by the Prosecutorial Council;
- 2) contrary to the Constitution, he/she starts holding the office of a Member of Parliament or any other public office or starts professionally dealing in some other activity;
- 3) he/she received the grade unsatisfactory two times in a row; and
- 4) he/she was imposed disciplinary sanctions for severe disciplinary offences two times.

Disciplinary Sanctions

Article 98

Disciplinary sanctions shall include reprimand, fine, prohibition of promotion and dismissal. Disciplinary sanctions of reprimand and fine in the amount of 20% of the state prosecutor's salary for the period of up to three months shall be imposed for minor disciplinary offences.

The fine in the amount of 20% to 40% of the state prosecutor's salary for the period of three to six months and prohibition of promotion shall be imposed for severe disciplinary offences. Dismissal shall be imposed for committing the most severe disciplinary offences.

Prohibition of promotion is a disciplinary sanction where the state prosecutor shall not be appointed to the state prosecution office of a higher instance before expiry of the period of two years from the day on which the decision imposing the disciplinary sanction on him/her became final.

Motion for Establishing Disciplinary Liability

Article 99

If there is a reasonable doubt that the state prosecutor has committed disciplinary offence, the motion for establishing disciplinary liability of the state prosecutor may be filed by the head of the state prosecution office, head of an immediately higher state prosecution office, Supreme State Prosecutor, Minister of Justice and Commission for Monitoring the Compliance with the Code of Prosecutorial Ethics.

The motion for establishing disciplinary liability of the Supreme State Prosecutor may be filed by the session of the Supreme State Prosecution Office, Minister of Justice and Commission for Monitoring the Compliance with the Code of Prosecutorial Ethics.

In cases referred to in paragraphs 1 and 2 of this Article head of the state prosecution office, head of an immediately higher state prosecution office, Supreme State Prosecutor and Minister of Justice may address the Commission for Monitoring the Compliance with the Code of Prosecutorial Ethics requesting an opinion on whether a particular conduct of the state prosecutor is in line with the Code of Prosecutorial Ethics.

Motion for establishing disciplinary liability of the state prosecutor shall be submitted immediately after learning of the committed disciplinary offence.

Contents of the Motion

Article 100

The motion for establishing disciplinary liability shall be submitted to the Prosecutorial Council in writing and shall contain personal data on the state prosecutor, factual and legal description of the disciplinary offence, proposed disciplinary sanction to be imposed and

statement of reasons which reasonable doubt that the state prosecutor committed a disciplinary offence is derived from.

The Prosecutorial Council shall submit the motion for establishing disciplinary liability to the disciplinary plaintiff not later than five days after receiving it.

Disciplinary Plaintiff

Article 101

Disciplinary plaintiff shall conduct the investigation started upon the motion for establishing disciplinary liability and he/she shall represent the motion to indict in the procedure of establishing disciplinary liability of a state prosecutor.

Prosecutorial Council shall elect the disciplinary plaintiff from among the state prosecutors of the Supreme State Prosecution Office after obtaining the opinion of the session of the Supreme State Prosecution Office and the disciplinary plaintiff shall be elected for the term of office of two years.

Completion of Investigation by Disciplinary Plaintiff

Article 102

Disciplinary Plaintiff shall complete the investigation referred to in Article 101 of this Law within three months from the day on which he/she was submitted the motion for establishing disciplinary liability.

Disciplinary plaintiff shall be bound by the factual description of the disciplinary offence given in the motion for establishing disciplinary liability.

After completing the investigation upon the filed motion the disciplinary plaintiff may propose to the Disciplinary Panel i.e. Prosecutorial Council:

- 1) to reject the motion for establishing disciplinary liability
 - because the motion was filed for an activity that is not defined as a disciplinary offence;
 - because the motion is bared by time;
 - because the motion was filed by an unauthorized person;
- 2) to reject the motion for establishing disciplinary liability as ill-founded because there are no evidence that the state prosecutor committed the disciplinary offence; or
- 3) to file a motion to indict for establishment of the disciplinary liability of the state prosecutor.

If the Disciplinary Panel i.e. Prosecutorial Council does not agree with the proposal of the disciplinary plaintiff referred to in paragraph 1 items 1 and 2 of this Article the Disciplinary Panel i.e. Prosecutorial Council may oblige the disciplinary plaintiff to conduct the investigation and to file the motion to indict.

Authorities in Charge of Establishing Disciplinary Liability

Article 103

The procedure for establishing disciplinary liability for minor and severe disciplinary offences shall be conducted by Disciplinary Panel upon the motion to indict issued by the disciplinary plaintiff.

Disciplinary Panel shall be composed of three members, two of them from among the state prosecutors who are Prosecutorial Council members and one from among eminent lawyers who are Prosecutorial Council members.

Members of the Disciplinary Panel and their deputies shall be appointed by the Prosecutorial Council upon the proposal of the Prosecutorial Council President.

The procedure for establishing disciplinary liability for the most severe disciplinary offences shall be conducted before Prosecutorial Council upon the motion to indict issued by the disciplinary plaintiff.

Defence
Article 104

The state prosecutor whose liability is investigated shall be entitled to a defence counsel.

During the hearing, the state prosecutor shall be afforded the opportunity to present his/her defence in person, in writing or through the defence counsel of his/her own choice.

Hearing
Article 105

In the procedure for establishing disciplinary liability, the Disciplinary Panel i.e. Prosecutorial Council shall hold a hearing.

The disciplinary plaintiff, state prosecutor and his/her defence counsel shall be summoned to the hearing.

The Disciplinary Panel i.e. Prosecutorial Council shall present evidence it considers necessary for proper and full establishment of facts.

If the state prosecutor whose disciplinary liability is investigated fails to appear after being summoned by the Disciplinary Panel i.e. Prosecutorial Council, the procedure shall be carried out in his/her absence.

Decision
Article 106

In the procedure for establishing disciplinary liability of a state prosecutor, the Disciplinary Panel i.e. Prosecutorial Council may decide to:

- 1) reject the motion to indict as ill-founded;
- 2) grant the motion to indict and impose a disciplinary sanction.

In rendering its decision on disciplinary liability and imposing a disciplinary sanction the Disciplinary Panel i.e. Prosecutorial Council shall not be bound by the proposal of the disciplinary plaintiff.

Time-limit for Writing of the Decision
Article 107

The decision establishing disciplinary liability of a state prosecutor and imposing a disciplinary sanction shall be written and served on the state prosecutor whose disciplinary liability is being established and to the disciplinary plaintiff within 15 days from the day on which it was rendered.

The disciplinary plaintiff and the state prosecutor whose disciplinary liability is being established shall be entitled to file an appeal against the decision referred to in paragraph 1 of this Article to the panel of three Supreme Court judges.

Statute of Limitations
Article 108

The statute of limitations for conducting the procedure for establishing disciplinary liability of a state prosecutor shall be one year from the day of committing a minor disciplinary offence, i.e. two years from the day of committing a severe disciplinary offence and three years from the day of committing the most severe disciplinary offence.

As an exception to paragraph 1 of this Article, the statute of limitations for conducting the procedure for establishing disciplinary liability in case of conviction for a criminal offence that makes the state prosecutor unworthy of performing the duties of the prosecutorial office shall start running on the day on which the judgment convicting the state prosecutor of such an offence became final.

The statute of limitations for enforcement of disciplinary sanction shall be one year from the day on which the decision on imposing the disciplinary sanction became final.

The statute of limitations for conducting the procedure for establishing disciplinary liability in case of a final conviction for a criminal offence shall start running on the day on which the convicting judgment against the state prosecutor became final.

Imposed disciplinary sanctions shall be deleted from the records kept on the state prosecutor four years after the day on which disciplinary sanction became final.

Prosecutorial Council shall delete the data on the imposed disciplinary sanctions *ex officio* after the expiry of the term referred to in paragraph 5 of this Article.

Recusal Article 109

Members of the Disciplinary Panel i.e. Prosecutorial Council for whom there are circumstances that provoke suspicion into their impartiality shall not participate in the work of the Disciplinary Panel i.e. Prosecutorial Council when they decide on liability of the state prosecutor.

The recusal referred to in paragraph 1 of this Article shall be decided upon by the president of the Prosecutorial Council, while the Prosecutorial Council shall decide on the recusal of the President of the Prosecutorial Council.

Appropriate Application of the Law Article 110

Criminal Procedure Code shall be accordingly applied to disciplinary procedure, unless this Law regulates otherwise.

No fees shall be charged within disciplinary procedures, while the costs of the procedure shall be borne by the state prosecution office in which the state prosecutor discharges the duties of his/her prosecutorial office.

Temporary Removal Article 111

Decision on temporary removal of a state prosecutor from his/her office shall be rendered by the Prosecutorial Council.

- 1) A state prosecutor shall be temporarily removed from his/her office if he/she is imposed detention, for the duration of such detention; or
- 2) if a criminal procedure is initiated against him/her for a criminal offence that makes him/her unworthy of discharging duties of the prosecutorial office.

A state prosecutor can be temporarily removed from the office after the motion for initiating disciplinary procedure regarding the most severe disciplinary offence has been filed.

Request for temporary removal from office referred to in paragraphs 2 and 3 of this Article shall be filed by the disciplinary plaintiff.

Effect of the Decision
Article 112

The activities undertaken by the state prosecutor in any cases after he/she has been temporarily removed, dismissed or his office as the prosecutor has been terminated shall have no legal effect.

2. Dismissal of the Head of State Prosecution Office

Reasons for Dismissal
Article 113

Head of a state prosecution office shall be dismissed from his/her managerial office if:

- 1) he/she changes annual schedule of tasks in the state prosecution office contrary to the law;
- 2) he/she renders impossible the supervision in the state prosecution office that is required under the law;
- 3) he/she treats parties and employees in the state prosecution office in an inappropriate manner;
- 4) he/she fails to deliver or delivers incomplete and inaccurate reports on work and other data required under the law;
- 5) he/she fails to handle complaints against work of state prosecutors according to legislation;
- 6) he/she withdraws randomly assigned cases contrary to the law;
- 7) supervision of the prosecutorial management duties identifies unlawfulness and irregularities in the performance of prosecutorial management duties which are harmful to the regular and timely performance of tasks and to the operation of the state prosecution office;
- 8) he/she fails to file motion for initiating the procedure for establishing disciplinary liability of the state prosecutor in cases stipulated under this Law, although he/she is aware or should have been aware that there are the reasons for disciplinary liability;
- 9) he/she is temporarily removed from the office of state prosecutor;
- 10) he/she is given the grade unsatisfactory.

Motion for Dismissal
Article 114

Motion for dismissal of a head of the state prosecution office can be filed by the head of an immediately higher state prosecution office, Supreme State Prosecutor, Minister of Justice or the Commission for Monitoring the Compliance with the Code of Prosecutorial Ethics.

The motion for dismissal referred to in paragraph 1 of this Article shall be filed without any delay, immediately after learning of the committed disciplinary offence.

Appropriate Application
Article 115

Provisions of this Law that govern the procedure for establishing disciplinary liability of state prosecutors shall be applied accordingly to the procedure of dismissal of heads of state prosecution offices.

**3. Dismissal due to Permanent Loss of Ability
to Discharge Duties of Prosecutorial Office**

Procedure and Decision-Making
Article 116

State prosecutor shall be dismissed if he/she permanently loses the ability to discharge the duties of prosecutorial office.

Motion for dismissal in case of permanent loss of the ability to discharge the duties of prosecutorial office shall be filed on the basis of the final judgment of the court depriving the state prosecutor of legal capacity or on the basis of the decision of the relevant authority establishing that the physical or psychological features of the state prosecutor are such that they render impossible discharging of the duties of the prosecutorial office.

If the conduct of the state prosecutor or his/her attitude to work lead to the doubt that he/she permanently lost the ability to discharge the duties of the prosecutorial office, the Prosecutorial Council can at its own initiative or upon a proposal filed by the head of the state prosecution office order to the state prosecutor to undergo medical examination.

Motions for dismissal due to permanent loss of ability shall be filed by the head of the state prosecution office for state prosecutors, and by the head of an immediately higher state prosecution office and Supreme State Prosecutor for the head of the state prosecution office, while such motions shall be filed by the Session of the Supreme State Prosecution office for the Supreme State Prosecutor.

In the procedure of dismissal due to permanent loss of ability to discharge the duties of the prosecutorial office the state prosecutor shall be entitled to make a statement regarding the motion for dismissal.

Decision on dismissal due to permanent loss of ability to discharge the duties of the prosecutorial office shall be rendered by the Prosecutorial Council and administrative dispute can be initiated against such decision.

IX. RECORDS

Contents of the Records

Article 117

Secretariat of the Prosecutorial Council shall keep the records of data on state prosecutors and heads of state prosecution offices which shall contain in particular the data on:

- 1) personal name, nationality if stated by the state prosecutor, address, date and place of birth and gender;
- 2) date of election to the office;
- 3) work experience;
- 4) title (master, LLM, PhD);
- 5) data on professional advancement;
- 6) data on foreign language skills;
- 7) published research and expert papers and other activities in the professional field;
- 8) records on work (number of cases, quantity and quality of work, exceeding time-limits defined in the law);
- 9) performance evaluations;
- 10) data on promotions;
- 11) data on disciplinary liability and dismissal;
- 12) data on termination of office;
- 13) permission for access to and storage of secret data.

State prosecutor shall have the right to propose other data to be entered into the records referred to in paragraph 1 of this Article and the right to have an insight into the records and the documents on the basis of which the records on him/her are kept.

The manner of keeping the records referred to in paragraph 1 of this Article shall be defined in the Rules of Procedure of the Prosecutorial Council.

X. FUNDS

Funds for Operation

Article 118

Funds for operation of the State Prosecution Service and the Prosecutorial Council shall be allocated in a separate item of the budget of Montenegro.

Prosecutorial Council shall propose the item of the annual budget for the operations of each state prosecution office individually and for the Prosecutorial Council.

Prosecutorial Council shall submit the proposal of its annual budget to the Government.

President of the Prosecutorial Council shall be entitled to take part in the work of the Parliament session where the proposal of the budget for the work of the State Prosecution Service and the Prosecutorial Council is discussed.

Issuing Orders for Disbursement of Funds

Article 119

The Supreme State Prosecutor shall issue orders for disbursement of funds in the Supreme State Prosecution Office, and orders for disbursement of funds in the state prosecution offices shall be issued by heads of state prosecution offices

President of the Prosecutorial Council shall issue orders for disbursement of the funds in the Prosecutorial Council.

President of the Prosecutorial Council can delegate the authority referred to in paragraph 1 of this Article to the Director of the Secretariat.

XI. SECRETARIAT OF THE PROSECUTORIAL COUNCIL

Secretariat

Article 120

The Secretariat of the Prosecutorial Council (hereinafter referred to as: "the Secretariat" shall be established for the purposes of performing professionally the expert, financial, administrative, IT, analytical and other tasks of the Prosecutorial Council and the tasks of common interest for all state prosecution offices.

Director of the Secretariat

Article 121

The Secretariat shall be managed by the Director.

The Director of the Secretariat shall be appointed and dismissed by the Prosecutorial Council, upon the proposal of the President of the Prosecutorial Council, and on the basis of a public advertisement.

Director of the Secretariat shall be appointed for the time period of five years.

Proposal for appointment of the Director of the Secretariat shall contain: name and surname of the candidate, curriculum vitae and explanation.

The person to be appointed Director of the Secretariat shall meet general requirements for employment in public authorities and the following particular requirements:

- 1) to have graduated from the faculty of law (higher education with 240 ETCS credits, education level eight),
- 2) to have passed judicial exam,
- 3) to have at least ten years of experience,
- 4) to possess organisational skills.

Accountability

Article 122

Director of the Secretariat shall report to the Prosecutorial Council.

The office of the Director of the Secretariat shall be terminated before expiry of the period for which he/she was appointed if he/she resigns or if he/she is dismissed.

Director of the Secretariat can be dismissed upon a reasoned proposal of the president or member of the Prosecutorial Council.

Rights and Duties

Article 123

Director of the Secretariat shall be entitled to salary in the amount that is set for the Secretary General of the Parliament

Director of the Secretariat shall exercise other employment rights according to the legislation regulating such issues for persons referred to in paragraph 1 of this Article.

Legislation that applies to civil servants and state employees shall apply accordingly to other employees of the Secretariat.

Rulebook on Internal Organisation of the Secretariat

Article 124

Performing tasks and duties of the Secretariat, its internal organisation, number of civil servants and state employees and other issues shall be regulated in the rulebook on internal organisation and job description in line with this law and legislation on state administration.

The rulebook referred to in paragraph 1 of this Article shall be adopted by the Prosecutorial Council upon a proposal of the Director of the Secretariat.

XII. ORGANIZATION OF WORK OF THE STATE PROSECUTION SERVICE

1. Relations in the State Prosecution Service

Duty of the Supreme State Prosecutor

Article 125

Supreme State Prosecutor shall be responsible for performing the tasks of the State Prosecution Service and he/she shall undertake measures and activities for the efficient and lawful operation of the State Prosecution Service.

Independence in Work of the State Prosecutors

Article 126

State prosecutor shall be responsible for the work in the case he/she is allocated and he/she shall be independent in his/her work and decision making, except in the cases stipulated in Article 127 of this Law.

Upon request of the head of the state prosecution office state prosecutor shall inform him/her about the work in the individual case and the decision he/she intends to render, as well as about the work in the individual case with complex factual and legal issues.

Mandatory Instructions for Work
Article 127

For the purposes of uniform application of the law mandatory instructions for work may be issued in the operations of the State Prosecution Service.

The mandatory instruction for work, in terms of this law, shall mean the instructions of general nature and instruction to proceed in individual cases.

The instruction of general nature shall be issued by the Supreme State Prosecutor, while heads of state prosecution offices may initiate their adoption as they consider needed. The instruction of general nature is given in written form.

The instruction for proceeding in an individual case shall be issued by the Supreme State Prosecutor for the state prosecutors from the Supreme State Prosecution Office and for the heads of high and basic state prosecution offices; it shall be issued by the head of the high state prosecution office for the state prosecutors of that office and heads of the basic state prosecution offices in their territory and by the heads of the basic state prosecution offices for the state prosecutors from basic state prosecution offices. Heads of state prosecution offices can initiate issuance of the instructions for proceeding in individual cases if they consider it needed.

Manner of Issuing Instruction for Proceeding in an Individual Case
Article 128

Instruction for proceeding in an individual case shall be issued in written form with explanation. Exceptionally, when the circumstances do not allow for that, the instruction may be issued in an oral form, provided that it is issued also in written form within the appropriate time.

Head of the state prosecution office and the state prosecutor who is issued the instruction for proceeding in an individual case shall have the right to note if such instruction is not in compliance with the law and if it is ill-founded and to request it is issued in written form, if it was given orally and to request it is repeated in the same form if it was issued in writing.

If the instruction for proceeding in an individual case is repeated in terms of paragraph 2 of this Article, and the head of the state prosecution office or state prosecutor still consider the instruction non-compliant with the law or ill-founded, the head of the state prosecution office can, upon a written and reasoned request, release him/her of the duty to proceed in that particular case, if there is no danger of delay, and he/she can allocate the case to another head of the state prosecution office i.e. state prosecutor.

State prosecutor cannot be held liable either for expressed opinion referred to in paragraph 2 of this Article or for the request filed according to paragraph 3 of this Article.

Relations in the State Prosecution Service
Article 129

Supreme State Prosecutor can directly exercise all the authorities and undertake all the actions that the heads of the Special State Prosecution Office, high state prosecution office i.e. basic state prosecution office are by law authorized to undertake.

Supreme State Prosecutor can, for justified reasons, delegate certain cases or actions within such cases that fall within the competences of the high state prosecutor office, i.e. the basic state prosecution office to other state prosecution office with subject matter jurisdiction.

Supreme State Prosecutor can take over the case from within the jurisdiction of the Special Prosecution Office if there are grounds of suspicion that the head of the Special State Prosecution Office or a state prosecutor in the Special State Prosecution Office committed a criminal offence that falls within the jurisdiction of the Special State Prosecution Office, or if there are reasons for recusal.

Head of the high state prosecution office can directly exercise all the authorities and undertake all the actions that the head of the basic state prosecution office from his/her territory is authorized by law to do.

If there are justified reasons, head of the high state prosecution office may delegate certain cases or certain actions in such cases that are within the jurisdiction of the basic prosecution office in his/her territory to other basic prosecution office in his/her territory.

The decision on taking over the authorities or actions or on delegating them to other state prosecutor in terms of paragraphs 1 to 4 of this Article shall be adopted in written form.

Supervision of Work
Article 130

Supreme State Prosecution Office shall perform supervision of the work of the Special State Prosecution Office, high state prosecution offices and basic state prosecution offices.

High state prosecution office shall perform supervision of the work of the basic state prosecution offices in its territory.

In supervising the work of state prosecution offices the Supreme State Prosecution Officeshall undertake appropriate measures, and it shall in particular make a direct insight into the overall work and operations of every state prosecution office.

Supreme State Prosecution Office shall perform supervision of the work of state prosecution offices according to the plan of supervision adopted by the Supreme State Prosecutor.

High public prosecution office shall once in two years perform the overview of the overall work of the state prosecution offices in its territory.

Report on work of the state prosecution offices, heads of state prosecution offices and state prosecutors shall be submitted to the Prosecutorial Council and Supreme State Prosecution Office.

Public Relations
Article 131

Information on the work of the State Prosecution Service shall be given by the Supreme State Prosecutor or the person he/she authorizes.

The information on work in individual cases and on the work of state prosecution office shall be given by the head of the state prosecution office or the person he/she authorizes.

For the purposes of imparting information to the public state prosecution offices may establish special public relations services.

The information that might have an impact on conducting the proceedings cannot be disclosed to the public.

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f required in the interest of the public, state prosecutor may inform the public about the course of preliminary investigation. In such a case the public shall be informed only about the actions that have been undertaken or are being undertaken and no names of the participants in the procedure or contents of the undertaken actions shall be disclosed.

2. Prosecutorial Management

Organization of work

Article 132

Organization of work shall include management in the state prosecution office, organization of divisions and session of the state prosecution office, as well as the internal operation of the state prosecution office.

Organization of work of the state prosecution office referred to in paragraph 1 of this Article shall be governed in the Rulebook on Internal Operations of the State Prosecution Service adopted by the Ministry of Justice with the opinion of the Prosecutorial Council secured beforehand.

Management

Article 133

Operation of the state prosecution office shall be managed by the head of the state prosecution office.

Head of the state prosecution office shall be responsible for performing the tasks of the state prosecution office and he/she shall undertake measures and actions for the efficient and lawful performing of tasks in the state prosecution office.

Head of the state prosecution office shall organize the work in the state prosecution office, make schedule of tasks and undertake measures to ensure regular and timely performance of tasks in the state prosecution office.

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If the head of the state prosecution office is absent or cannot perform his duties or if his/her term of office expires, he/she shall be replaced by the state prosecutor appointed by the session of the state prosecution office for each calendar year upon a proposal of the head of the state prosecution office.

Internal Operations of State Prosecution Offices

Article 134

Internal operations in terms of this Law shall include the tasks of the prosecutorial management and the tasks of using the Judicial Information System.

Prosecutorial management shall include the activities that ensure proper and timely operation of the state prosecution office and in particular: internal distribution of tasks; consideration of complaints and applications; keeping required records and reports; work of

the clerk's office and archive; financial and material operations, expert, administrative, information, analytical and other tasks for the work of the State Prosecution Service.

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udicial Information System is a unique electronic system for handling cases in which the data from the registries in the state prosecution offices are entered, stored and transferred.

Schedule of Tasks

Article 135

Annual Schedule of Tasks shall be established by the head of the state prosecution office not later than on 15 January for the current year. The Annual Schedule of Tasks shall ensure equal distribution of tasks and the necessary specialization of state prosecutors.

Allocation of Cases

Article 136

Allocation of cases shall be done in such a way as to ensure impartiality, independence and efficiency.

Withdrawal of Allocated Cases

Article 137

The allocated case shall be withdrawn from the state prosecutor if it is established that he/she is unjustifiably not proceeding in the case, due to recusal or if he/she is prevented from discharging the duties of the office for longer than a month.

The cases the urgent nature of which is stipulated in the law can be withdrawn from the state prosecutor if due to his/her absence or because he/she is prevented from discharging the duties of his office he/she cannot proceed in such cases timely and within the time-limit defined in the law.

Head of the state prosecution office shall issue a decision ordering withdrawal of the case. Decision on withdrawal of the case shall be served on the state prosecutor whose case is withdrawn.

A complaint against the decision on withdrawal of the case shall be permitted and it shall be filed with the head of an immediately higher state prosecution office, while complaint against the decision on withdrawal of case rendered by the Supreme State Prosecutor shall be filed with the session of the Supreme State Prosecution Office. The complaint shall be filed within three days from the day of receiving the decision on withdrawal.

Decision upon the complaint shall be rendered within two days from the day of receiving the complaint.

The complaint shall not stay the enforcement of the decision only in detention cases.

If the complaint is accepted, the case shall be allocated to the state prosecutor it was withdrawn from.

Stand-By and On-Call Duty

Article 138

Head of the state prosecution office shall organize continuous stand by i.e. on-call duty for the purposes of efficient operations, and particularly for performing the tasks of preliminary investigations and other urgent tasks related to possible commitment of criminal offences and other punishable acts.

The manner of performing and duration of the stand by i.e. on-call duty shall be decided upon by the head of the state prosecution office.

Session of the State Prosecution Office Article 139

To consider certain issues that are of importance for operation, the head of the state prosecution office shall convene a session of the state prosecution office and chair its work.

The session of the state prosecution office shall be composed of the head of the state prosecution office and state prosecutors from that state prosecution office.

The head of the state prosecution office shall have the duty to convene the session upon the request of at least one third of the state prosecutors.

In the session of the state prosecution office decisions may be rendered if the session is attended by at least two thirds of the state prosecutors, and the decision shall be final if the majority of the state prosecutors present in the session votes for it, unless this Law requires otherwise for certain issues.

Scope of Work of the Session Article 140

Session of state prosecution office shall:

- 1) discuss the programme of work and the report on work of the state prosecution office;
- 2) take positions on the general issues from within the scope of work of the state prosecution office;
- 3) adopt the Rules of Procedure for its work;
- 4) discuss the issues of importance for professional advancement, organization of work and the overall operation of the state prosecution office;
- 5) discuss the proposal of the annual schedule of tasks;
- 6) decide on other issues of importance for the operation of the state prosecution office.

Session of the Supreme State Prosecution Office Article 141

In addition to the activities defined in Article 140 of this Law, the session of the Supreme State Prosecution Office shall:

- 1) issue opinions regarding draft legislation of importance for performing prosecutorial function;
- 2) indicate to problems in the implementation of legislation that is of importance for performing prosecutorial function;
- 3) decide on the recusal of the Supreme State Prosecutor;
- 4) discuss the report on the operation of the State Prosecution Service.

The session of the Supreme State Prosecution Office shall be composed of the Supreme State Prosecutor and state prosecutors from the Supreme State Prosecution Office.

**Extended Session
Article 142**

In order to discuss certain issues of particular importance for the operation of the State Prosecution Service and in other cases required in this law, the Supreme State Prosecutor shall convene an extended session of the Supreme State Prosecution Office, composed of the Supreme State Prosecutor, state prosecutors from the Supreme State Prosecution Office, heads of high state prosecution offices, and the head of the Special State Prosecution Office.

**Report on Work
Article 143**

Head of the state prosecution office shall submit the report on work of the state prosecution office to the Prosecutorial Council and the Ministry of Justice by 10 February of the current year for the previous year and publish it in the website of the state prosecution office within the same time-framework.

The report on work referred to in paragraph 1 of this Article shall be taken from the Judicial Information System.

Upon the request of the Prosecutorial Council the head of the state prosecution office shall submit special, i.e. periodic reports within the deadline defined by the Prosecutorial Council.

Upon the request of the Ministry of Justice state prosecution offices shall submit special reports necessary for reporting to the European Union and international organizations and for monitoring the implementation of the legislation from within the scope of competences of the Ministry of Justice.

Head of the state prosecution office shall be responsible for accuracy of data in the report

**Dress Code
Article 144**

Heads of state prosecution offices and state prosecutors shall discharge the duties of their offices in the official clothes - robes.

The appearance of the robe and the rules of wearing it shall be established in the Rulebook on Internal Operations of the State Prosecution Service.

4. Relations and Cooperation

**Relations with Courts and Other State Authorities
Article 145**

Head of the state prosecution office or state prosecutor shall be authorized to request from courts and other public authorities to submit files, information and notifications necessary for him to undertake actions from within his/her jurisdiction and the courts and other public authorities shall comply with his/her request.

Upon request of courts or other public authorities the head of state prosecution office or state prosecutor shall submit files, information and notifications, when the court or other state authorities need them in discharging their duties.

International Cooperation
Article 146

State Prosecution Service may have direct cooperation with the prosecution services of other countries based on international agreements and other international documents.

The manner and terms of cooperation referred to in paragraph 1 of this Article shall be established by the session of the Supreme State Prosecutor.

4. Internal Organization and Job Description

Framework Criteria
Article 147

The required number of state prosecutors and civil servants and state employees shall be established according to the framework criteria (quota) set by the Ministry of Justice upon a proposal of the Prosecutorial Council.

Rulebook on Internal Organization
Article 148

State prosecution office shall have a required number of advisers, other civil servants and state employees in line with the framework criteria referred to in Article 147 of this Law.

Rulebook on Internal Organization and Job Description shall be adopted by the head of the state prosecution office with the consent of the Government with the opinions of the relevant authorities and the Prosecutorial Council obtained beforehand

Secretary
Article 149

Supreme State Prosecution Office shall have a secretary to support the Supreme State Prosecutor in discharging the duties of the prosecutorial management.

State prosecution office with at least 10 state prosecutors shall have a secretary of the state prosecution office to support the head of the state prosecution office in discharging the duties of prosecutorial management.

The secretary shall meet the requirements stipulated to be met by advisers in that state prosecution office.

Advisers
Article 150

An adviser may be a person who graduated from the faculty of law (higher education with 240 ETCS credits, education level eight), passed judicial exam, and has met general and specific requirements provided for in the rulebook on internal organization and job description of the state prosecution office in line with the law.

Advisers shall support state prosecutor in his/her work, prepare draft enactments, make minutes of applications, writs and statements of citizens, and perform independently or under supervision and according to instructions of the state prosecutor other expert tasks provided for in the law and regulations adopted on the basis of the law.

Upon authorization issued by the state prosecutor advisers may perform certain evidence collection activities.

Minutes on the entrusted activity shall be verified by the state prosecutor not later than within 48 hours from the time of undertaking the activity.

Head of basic prosecution office may authorize the adviser to represent motions to indict before courts.

Expert Associates Article 151

State prosecution office can have civil servants with higher education of 180 to 240 ETCS credits in the field of special education, sociology, pedagogy, economy, bookkeeping and finances or other appropriate expertise and certain work experience in such areas.

Civil servants referred to in paragraph 1 of this Article, as expert associates, shall assist heads of the state prosecution office or state prosecutors in working on the issues where they need particular expertise.

Experts Article 152

State prosecution office can hire a person with necessary expert knowledge or establish an expert team or an expert working body to clarify certain expert issues it comes across in its work.

State prosecution office can determine the compensation for the persons referred to in paragraph 1 of this Article.

Trainee Article 153

Trainee can be a person who graduated from the faculty of law (higher education of 240 ETCS credits, education level eight), and has met the general requirements for working in public authorities

Particular requirements and the procedure for employment of trainees, as well as the duration of the internship and training within the internship shall be regulated in a separate law.

Application of Other Laws Article 154

Unless this Law requires otherwise the legislation that regulates rights, duties and responsibilities of civil servants and state employees shall apply to the employment and termination of employment of advisers, other civil servants and state employees and their salaries and other rights, duties and responsibilities, as well as to conditions for employment and conditions for taking expert exam.

XIII PROSECUTORIAL MANAGEMENT

Supervision Over Prosecutorial Management Article 155

Supervision over the activities of the prosecutorial management shall be carried out by the Ministry of Justice.

In carrying out the supervision the Ministry of Justice cannot undertake any actions that have any impact on decision making of the state prosecutor in the case

Submitting Data to the Ministry of Justice

Article 156

Upon request of the Ministry of Justice, the Supreme State Prosecutor shall submit the data and information needed for monitoring of the organization and operations of the State Prosecution Service, application of the Rulebook on Internal Operations of the State Prosecution Service, proceeding upon applications and complaints of citizens and general data on prosecution of perpetrators of criminal offences and other acts punishable according to the law.

Inspection Supervision

Article 157

Ministry of Justice shall perform inspection supervision in state prosecution offices in the following fields:

- 1) organization of work in the state prosecution offices in line with this Law and the Rulebook on the Internal Operations of the State Prosecution Service;
- 2) proceeding upon applications and complaints against the work of state prosecutors;
- 3) work of the Secretariat in terms of the activities related to prosecutorial management;
- 4) work of the clerk's office and archives;
- 5) keeping the required official records;
- 6) other tasks related to the proper work and operation of the prosecutorial management.

In performing supervision referred to in paragraph 1 item 2 of this Article the authorized officer shall request the report of the Special State Prosecution Office.

Judicial Inspector

Article 158

Inspection supervision over the tasks of prosecutorial management in state prosecution offices shall be performed by the judicial inspector.

To be appointed judicial inspector a person shall have to meet the requirements for the position of a judge of the Administrative Court.

Carrying out Inspection Supervision

Article 159

Inspection supervision shall be carried out in line with an annual supervision plan, adopted by the Minister of Justice by the end of the calendar year for the next year (regular inspection supervision).

Annual plan of supervision shall also include state prosecution offices that, based on the results of the supervision during the calendar year, need to be re-supervised during the next calendar year (control inspection supervision).

By 31 January of the current year the annual plan of supervision shall be submitted to the state prosecution offices where supervision will take place.

Extraordinary inspection supervision shall be ordered by a decision of the Minister of Justice upon a proposal of the Supreme State Prosecutor, head of an immediately higher state prosecution office or the president of the Prosecutorial Council.

Not later than one the day before the commencement of the supervision the decision on extraordinary inspection supervision shall be submitted to the state prosecution office where the supervision is to take place.

The Ministry of Justice shall perform inspection supervision upon complaints and applications of citizens that refer to the activities of the prosecutorial management.

Carrying out the Supervision

Article 160

The inspection supervision is carried out by a direct insight into the documentation, data, conditions and the manner of work in the state prosecution office, or by an insight into the submitted documentation and data of the state prosecution office.

The head of the state prosecution office shall ensure undisturbed carrying out of the inspection supervision in the state prosecution office or submit the required documentation and data.

Minutes

Article 161

The carried out inspection supervision shall be recorded in the minutes that shall contain the data on the established facts, irregularities and measures to be undertaken to remedy the established irregularities and time-limits for undertaking the measures.

The minutes on the inspection supervision shall be submitted to the head of the state prosecution office.

If the inspection supervision establishes any irregularities the head of the state prosecution office may submit a written statement on the minutes not later than eight days from the day of receiving the minutes.

The minutes on the carried out inspection supervision and the statement of the head of the state prosecution office in the case referred to in paragraph 3 of this Article shall be submitted to the Minister of Justice, the head of an immediately higher prosecution office, Supreme State Prosecutor and the Prosecutorial Council.

The head of the state prosecution office shall remedy the established irregularities in the work of the prosecutorial management within the time limits defined in the minutes on the conducted inspection supervision. The head of the state prosecution office shall inform in written form the head of the immediately higher prosecution office, the Supreme State Prosecutor and the Prosecutorial Council about the undertaken measures.

XIIV. DATA PROTECTION

Obligation to Preserve Secret Data

Article 162

Heads of state prosecution offices, state prosecutors, head of the Special State Prosecution Office and special state prosecutors, civil servants and state employees in the State Prosecution Service shall preserve secret data according to the law governing the secrecy of data regardless of how they learnt of them.

Availability of Data on the Proceedings

Article 163

Persons referred to in Article 162 of this Law shall not disclose certain facts, data or contents of the documents in cases the investigation is conducted in.

The public shall be informed by the person authorized for public relations on official activities undertaken, only if that does not have any impact on the proceedings.

The manner of handling the documents referred to in paragraph 1 of this Article shall be defined in the Rulebook on Internal Operations of the State Prosecution Service.

Data Protection

Article 164

Persons referred to in Article 162 of this Law shall not disclose to unauthorized persons any data on personal, family or property circumstances of physical persons, or on the property circumstances of legal entities that they have learnt of during the proceedings.

The obligation of these persons to preserve secrecy of data shall also be effective after the termination of their employment in the state prosecution office.

XIV. TRANSITIONAL AND FINAL PROVISIONS

Article 165

Secondary legislation in line with this Law shall be passed within six month from the day of entering of this Law in force.

Article 166

The Secretariat of the Prosecutorial Council shall be established within four months from the day of entering of this Law in force.

Article 167

Articles 1 to 41 and Articles 69 to 73 and Articles 89 to 168 shall be applied from the day of entering of this Law in force.

Article 168

Articles 42 to 68 and Articles 74 to 88 of this Law shall be applied from 1 January 2016.

Article 169

Articles 1 to 23, Articles 39 to 65 and Articles 83 to 137 of the Law on State Prosecution Service (Official Gazette of the Republic of Montenegro 69/03 and Official Gazette of Montenegro 40/08, 39/11 and 46/13) shall be repealed on the day of entering of this Law in force.

Article 170

Articles 24 to 38 of the Law on State Prosecution Service (Official Gazette of the Republic of Montenegro 69/03 and Official Gazette of Montenegro 40/08, 39/11 and 46/13) shall be repealed on the day of the beginning of implementation of Articles 42 to 68 and Articles 74 to 88 of this Law.

Article 171

This Law shall enter into force on the eighth day following its publication in the Official Gazette of Montenegro.

Alternative for Articles 167 to 171

Article 167

The Law on State Prosecution Service (Official Gazette of the Republic of Montenegro 69/03 and Official Gazette of Montenegro 40/08, 39/11 and 46/13) shall be repealed on the day of the beginning of implementation of this Law.

Article 168

This Law shall enter into force on the eighth day following its publication in the Official Gazette of Montenegro and its implementation shall begin on 01 January 2016.