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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**MONTENEGRO**

**DRAFT AMENDMENTS**

**TO THE LEGISLATION ON THE PROSECUTION SERVICE**

**(THE LAW ON THE STATE PROSECUTION SERVICE  
AND THE LAW ON THE SPECIAL STATE PROSECUTOR'S OFFICE)**

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# **THE LAW ON THE STATE PROSECUTION SERVICE (CURRENT VERSION)**

**(Official Gazette of Montenegro no. 11/2015, 42/2015, 80/2017, 10/2018 and 76/2020)**

## **I BASIC PROVISIONS**

### **Scope of the Law**

#### **Article 1**

This Law shall govern the establishment, organization and competences of the State Prosecution Service; 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 that are prosecuted *ex officio* and of misdemeanours 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**

Duties of the state prosecutor shall be carried out impartially and objectively and in line with the principles of legality and equality before the law.

### **Public Nature of Operations**

#### **Article 5**

Public nature of the work of the State Prosecution Service shall be ensured in the manner stipulated by the law.

### **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 Work**

#### **Article 7**

Funds for the work of the State Prosecution Service shall be ensured in the budget of Montenegro.

### **Salaries**

#### **Article 8**

Heads of state prosecution offices and state prosecutors shall have the right to salary and other labour rights and labour-based rights 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.

**Use of Gender-Sensitive Language****Article 10**

Terms used in this Law for physical entities in male gender shall also assume the same in female gender.

**II ESTABLISHMENT, ORGANIZATION AND COMPETENCES OF THE STATE PROSECUTION OFFICES****Structure of the State Prosecution Service****Article 11**

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 office shall be established for the territories of high court.

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

**Supreme State Prosecution Office****Article 12**

Supreme State Prosecution Office shall proceed before the Supreme Court of Montenegro, Court of Appeals of Montenegro, Administrative Court of Montenegro, other courts 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 13**

The Special State Prosecution Office shall carry out its duties in accordance with the special law regulating the requirements for election of the heads of the Special State Prosecution Office and state prosecutors in the Special State Prosecution Office, its competences and organization, as well as other issues important for its work.

**High State Prosecution Office****Article 14**

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 undertake all activities from within its competences before the court and other authorities with subject matter and territorial jurisdiction.

## **Basic State Prosecution Office**

### **Article 15**

#### **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 undertake all activities from within their competences before courts with subject matter and territorial jurisdiction.

## **Subject Matter and Territorial Jurisdiction**

### **Article 16**

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

In order to discharge the duties of prosecution of perpetrators of criminal offences and misdemeanours 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.

## **Jurisdiction within the framework of judicial cooperation in criminal matters with Member States of the European Union**

### **Article 16a**

The State Prosecutor's Office shall be responsible for filing a request for the issuance of a European arrest warrant and a request for the issuance of a European Investigation Order, in accordance with the law governing judicial cooperation in criminal matters between Montenegro and Member States of the European Union."

## **Management**

### **Article 17**

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 chief special prosecutor, 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. Compositions and Term of Office of the Prosecutorial Council**

##### **Composition of the Prosecutorial Council**

###### **Article 18**

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:

- 1) 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;
- 2) four eminent lawyers elected and dismissed by the Parliament of Montenegro (hereinafter referred to as "the Parliament") upon proposal of the relevant working body;
- 3) one representative of the state administration body responsible for 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.

The state prosecutor who was given the grade unsatisfactory or the state prosecutor who has been imposed a disciplinary sanction cannot be elected to the position of a member of the Prosecutorial Council from among the state prosecutors.

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 19**

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 body that elected him/her 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 20**

In a secret vote the Prosecutorial Conference shall 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 Ethics of the state prosecutors.

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

Administrative - technical 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 21**

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

Commission for the Code of Prosecutorial Ethics is elected for the term of office of four years.

Any person can apply to the Commission for the Code of Prosecutorial Ethics for opinion of whether certain behaviour of the state prosecutor is in compliance with the Code of Prosecutorial Ethics.

Commission for the Code of Prosecutorial Ethics shall submit the report on its work to the Prosecutorial Council once a year, not later than 31 March of the current year for the previous year.

Commission for the Code of Prosecutorial Ethics shall adopt rules of procedure for its work regulating in details the manner of work and decision making.

## **Decision-Making in the Prosecutorial Conference**

### **Article 22**

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

Supreme State Prosecutor shall convene the sessions of the Prosecutorial Conference and moderate its work.

Session of the Prosecutorial Conference can take place if at least two thirds of its members are present, while the decisions of the Prosecutorial Conference shall be made by the majority of votes of the members present in the session.

Prosecutorial Conference shall adopt rules of procedure for its work regulating in details the manner of work and decision-making.

## **Election Commission**

### **Article 23**

- Election Commission shall conduct the procedure for preparation of the lists of candidates for the election of the Prosecutorial Council members from among the state prosecutors and the procedure for election of members of the Prosecutorial Council.
- The Election Commission shall have a chairman and two members elected from among the state prosecutors by the extended session of the Supreme State Prosecution Office upon the proposal of the session of 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 24**

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 sessions of high prosecution offices where two 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 nine candidates referred to in paragraph 1 of this Article in an alphabetical order.

To establish the proposal of candidates to be elected Prosecutorial Council members from among the state prosecutors from basic state prosecutor offices, the Election Commission shall obtain initial proposals from every head and state prosecutor from the basic state prosecution offices. Such initial proposals shall contain two candidates each.

The initial proposal referred to in paragraph 3 of this Article shall be submitted in the required form in the way which ensures secrecy of the initial proposal.

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 for initial proposals referred to in paragraph 3 of this Article shall be established in the Rules of Procedure of the Prosecutorial Council.

### **Election of the Prosecutorial Council Member from Among State Prosecutors**

#### **Article 25**

The lists of candidates for the election of Prosecutorial Council members composed in line with Article 24 paragraphs 2 and 5, i.e. paragraph 6 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.

Four candidates from the list referred to in Article 24 paragraph 2 of this Law who receive the largest number of votes shall be elected members to the Prosecutorial Council, provided that only one candidate can be elected from one state prosecution office and one candidate can be elected from the list referred to in Article 24 paragraph 5, i.e. 6 of this Law.

- 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 Article 24 paragraph 2 of this Article, i.e. for the two candidates from the list referred to in Article 24 paragraph 5, i.e. paragraph 6 of this Law, who receive 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. Only one candidate can be elected from one state prosecution office.

### **Election of the Prosecutorial Council Members from Among Eminent Lawyers**

#### **Article 26**

A person with at least ten years of experience in law who has earned personal and professional reputation and if he/she is not convicted of an offence that makes him/her unworthy of discharging prosecutorial duties in accordance with this Law can be elected a Prosecutorial Council member from among eminent lawyers.

Relevant working body of the Parliament of Montenegro shall advertise the procedure for election of the Prosecutorial Council member from among eminent lawyers in the Official Gazette of Montenegro and at least in one printed media with the registered office in Montenegro.

The relevant working body shall publish the public invitation for the election of the Prosecutorial Council member from among eminent lawyers in the website of the Parliament. The time period set for application of the candidates shall be 15 days from the day of publishing the advertisement.

The relevant working body of the Parliament shall publish the list of the applied candidates in the Parliament website and it shall be available to the public in the period of at least ten days after its publishing.



The relevant working body of the Parliament submits to the Parliament the proposal for election of the Prosecutorial Council members from among eminent lawyers.

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

If the proposal for election referred to in paragraph 6 of this Article contains fewer candidates than the number to be elected, the election procedure shall be repeated for the number of members not proposed by the relevant working body of the Parliament.

### **Prohibition of Election to the Prosecutorial Office**

#### **Article 27**

During the term of office in the Prosecutorial Council no Prosecutorial Council member from among state prosecutors shall be elected to the state prosecution office of a higher level or for a head of the state prosecution office, while no member of the Prosecutorial Council elected from among eminent lawyers shall be elected state prosecutor or head of the state prosecution office.

### **Re-election**

#### **Article 28**

Prosecutorial Council members elected from among state prosecutors and eminent lawyers can be re-elected after the expiry of the period of four years from the termination of their previous term of office in the Prosecutorial Council.

### **Termination of the Term of Office**

#### **Article 29**

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 the office that was the basis for his/her election to the Prosecutorial Council
- 2) if he/she resigns;
- 3) if 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 be terminated on the day on which the office that was the basis for his/her election to the Prosecutorial Council is terminated.

In the case referred to in paragraph 1 item 2 of this Article the term of office of the Prosecutorial Council shall be terminated after the Prosecutorial Council has noted the written resignation.

In the case referred to in paragraph 1 item 3 of this Article the term of office of the Prosecutorial council shall be terminated on the day on which the convicting judgment becomes final.

The Prosecutorial Council shall note the termination of the term of office of the Prosecutorial Council member and inform the body that elected him/her thereof.

### **Dismissal**

#### **Article 30**

Prosecutorial Council member shall be dismissed if

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

Unconscientious and unprofessional discharge of duties referred to in paragraph 1 item 1 of this Article shall be the conduct of the Prosecutorial Council member that is contrary to his/her powers defined in the law, and the failure to meet the duties defined in the law.

The offence referred to in paragraph 1 item 2 of this Article shall be the criminal offence prosecuted *ex officio* and punishable by imprisonment.

Prosecutorial Council member elected from among the state prosecutors shall also be dismissed when 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.

The provisions that regulate the procedure for establishing disciplinary liability of the state prosecutors shall be applied accordingly to the procedure of dismissal of the Prosecutorial Council members.

### **Term of Office in Case of Termination and Dismissal**

#### **Article 31**

In case of termination of the term of office of the Prosecutorial Council member elected from among state prosecutors before the expiry of the term of office he/she was elected to, the procedure of proposing the candidate to fill in the vacant position shall be conducted according to Articles 24 and 25 of this Law.

In case of termination of the term of office of the member of the Prosecutorial Council elected by the Parliament before the expiry of the term of office he/she was elected to, the Parliament shall elect the new member according to Article 26 of this Law.

In case of termination of the term of office of the member of the Prosecutorial Council that is a representative of the Ministry of Justice, the Minister of Justice shall appoint a new representative within 15 days from the day of termination of office of such a member.

The term of office of a member of the Prosecutorial Council elected in accordance with paras. 1, 2 and 3 of this Article shall terminate on the day of termination of the term of office of the Prosecutorial Council.

### **Temporary Removal**

#### **Article 32**

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 duty, i.e. the activities on the basis of which he/she was elected into 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 conclusion 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 33**

Prosecutorial Council members that are employed shall be entitled to absence from work 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 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. Rendering such decision the Prosecutorial Council shall establish the activities that the Prosecutorial Council members are to perform in the Prosecutorial Council.

In the case referred to in paragraph 3 of this Article the scope of work of the state prosecutor in the state prosecution office he/she works in can be reduced appropriately.

Prosecutorial Council members are entitled to emolument for their work in the Prosecutorial Council in the amount of 80% of the average gross salary in Montenegro from the previous year, and the President of the Prosecutorial Council in the amount of 120% of the average gross salary in Montenegro from the previous year.

### **3. Organization and the Manner of Work**

#### **Sessions of the Prosecutorial Council**

##### **Article 34**

Prosecutorial Council shall work and decide in its sessions.

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

Sessions of the Prosecutorial Council shall be convened and chaired by the President of the Prosecutorial Council.

#### **President of the Prosecutorial Council**

##### **Article 35**

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

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 the President's absence or if the President cannot attend a session and to discharge other duties provided for in the Rules of the Procedure of the Prosecutorial Council.

#### **Commissions**

##### **Article 36**

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

The President of the Prosecutorial Council may not be the President or a member of the commissions referred to in paragraph 1 of this Article.

Members of the commissions referred to in paragraph 1 of this Article 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 40% of the average gross salary in Montenegro in the previous year.

The manner of operation of the commissions referred to in paragraph 1 of this Article shall be governed by the Rules of Procedure of the Prosecutorial Council.

#### **Competences of the Prosecutorial Council**

##### **Article 37**

In addition to the duties stipulated in the Constitution, the Prosecutorial Council shall also carry out the following duties:

- 1) establishing the number of state prosecutors;
- 2) establishing the proposal for dismissal of the Supreme State Prosecutor;
- 3) rendering decisions on disciplinary liability of the state prosecutors and heads of state prosecution offices;
- 4) being responsible for training of the state prosecutors and heads of the state prosecution offices;
- 5) ensuring use, functioning and uniformity of the Judicial Information System in its part that is related to the State Prosecution Service;
- 6) keeping records of data related to the state prosecutors and heads of state prosecution offices;
- 7) adopting the Rules of Procedure of the Prosecutorial Council;
- 8) issuing opinions on incompatibility of certain activities with the office of a state prosecutor;

- 9) considering complaints of the work of the state prosecutors and heads of state prosecution offices and take positions regarding any jeopardy to their independence;
- 10) considering complaints against the work of the state prosecutors and heads of state prosecution offices regarding the lawfulness of their work;
- 11) forming the Commission for Evaluation of Performance of State Prosecutors;
- 12) electing the disciplinary plaintiff;
- 13) adopting the methodology for developing the report on the operation of the State Prosecution Service and annual schedule of activities;
- 14) issuing official identity cards to state prosecutors and the heads of state prosecution offices and keeping records of the official identity cards;
- 15) carrying out other duties as required by the law.

### **Decision on the Number of State Prosecutors**

#### **Article 38**

The number of state prosecutors shall be established on the basis of the framework criteria defined in Article 151 of this Law.

The number of the state prosecutors in each of the state prosecution offices shall be established by the Prosecutorial Council.

The initiative for the establishment of the number of the state prosecutors referred to in paragraph 2 of this Article shall be given by the Supreme State Prosecutor.

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 39**

Prosecutorial Council shall adopt the Rules of Procedure to regulate the issues defined 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 40**

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 41**

Prosecutorial Council shall compose the annual report containing data on the work of the Prosecutorial Council 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 flaws in their work, as well as the measures to be undertaken to eliminate the identified flaws.

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

Prosecutorial Council shall submit the draft of the annual report on work of the Prosecutorial Council to all state prosecution offices so that they can express their opinion thereon.

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

The President of the Prosecutorial Council shall present the Annual Report on work in the Parliament.

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

**Relations between the Prosecutorial Council and the State Prosecution Offices**

**Article 42**

State prosecution offices shall submit to the Prosecutorial Council, upon its request, all the data and information from within their competences, within the term set by the Prosecutorial Council.

If a state prosecution office does not comply with the request of the Prosecutorial Council referred to in paragraph 1 of this Article, it immediately has to give reasons for such non-compliance.

Upon the request of the Prosecutorial Council the state prosecution office shall provide the Prosecutorial Council with a direct insight into the official files, documents and data, and it shall submit the Prosecutorial Council the copies of the requested files and documents.

Heads of the state prosecution offices, state prosecutors and employees of the state prosecution offices shall attend sessions of the Prosecutorial Council upon the request of the Prosecutorial Council.

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

**1. Election of Supreme State Prosecutor**

**Requirements for Election of the Supreme State Prosecutor**

**Article 43**

- To be elected Supreme State Prosecutor, a candidate shall:
- 1) meet general requirements for the office of a state prosecutor;
- 2) to have work experience of at least 15 years as a state prosecutor or judge, or 20 years in other duties in the field of law; and
- 3) to be characterised by professional impartiality, high professional and moral qualities.

**Public Advertisement**

**Article 44**

Two months before the expiry of the term of office of the Supreme State Prosecutor, i.e. immediately after termination of office or dismissal of the Supreme State Prosecutor, the Prosecutorial Council shall advertise the vacant position of the Supreme State Prosecutor in the Official Gazette of Montenegro and in one of the printed media with the headquarters in Montenegro.

The time-limit for application of candidates shall be 15 days from the day of publishing the advertisement referred to in paragraph 1 of this Article.

**Procedure upon Applications**

**Article 45**

The applications to the public advertisement with the evidence that the applicant meets the requirements for the election to the position of the supreme state prosecutor shall be submitted to the Prosecutorial Council within 15 days from the day of the advertisement.

The Prosecutorial Council shall reject untimely and incomplete applications.

The applicant may initiate an administrative dispute against the decision on the rejection of an untimely or incomplete application.

**List of candidates**

**Article 46**

Prosecutorial Council shall compose the list of candidates who meet the requirements defined in the law for the election to the position of the Supreme State Prosecutor.

The list of candidates referred to in paragraph 1 of this Article shall be submitted to the extended session of the Supreme State Prosecution Office.

The extended session of the Supreme State Prosecution Office shall give its reasoned opinion referred to in paragraph 2 of this Article for each of the candidates within eight days from the day on which they are submitted the list.

### **Proposal for Election of the Supreme State Prosecutor**

#### **Article 47**

In its closed session the Prosecutorial Council shall establish the proposal for the election of the Supreme State Prosecutor. Such proposal shall be based on the list of candidates referred to in Article 46 paragraph 1 of this Law, the opinion of the extended session of the Supreme State Prosecution Office about the applied candidates and the candidate interview.

The proposal for the election of the Supreme State Prosecutor shall contain one candidate and it has to be reasoned.

The Prosecutorial Council shall submit to the Parliament of Montenegro the reasoned proposal for the election of the Supreme State Prosecutor with the list of candidates referred to in Article 46 paragraph 1 of this Law.

### **Termination of the Term of Office**

#### **Article 48**

The same person can be elected Supreme State Prosecutor two times at most.

After the expiry of the term of office and upon termination of office upon his/her own request, the Supreme State Prosecutor shall remain a state prosecutor in the Supreme State Prosecution Office.

In the case from the paragraph 2 of this Article, as in the case of resignation or dismissal Prosecutorial Council shall determine Acting Supreme State Prosecutor among the state prosecutors in the Supreme State Prosecution Office.

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

### **General Requirements**

#### **Article 49**

To be elected state prosecutor or head of a state prosecution office a person shall:

- 1) be a Montenegrin citizen;
- 2) shall have graduated from the faculty of law - level VII 1 of education qualifications ,
- 2) shall have passed bar exam.

### **Specific Requirements for State Prosecutors**

#### **Article 50**

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

To be elected to the position of the state prosecutor in the high state prosecution office a person has to have the experience of working as a state prosecutor or a judge for at least eight years;

To be elected to the position of the state prosecutor in the supreme state prosecution office a person has to have the experience of working for at least 15 years as a state prosecutor or a judge.

Notwithstanding paras. 2 and 3 above, to be elected to three positions of the state prosecutor in the high state prosecution office or supreme state prosecution persons have to have the experience of working as judges, state prosecutors, attorneys-at-law, notaries, and professors of law science or other jobs in the field of law for at least 12 years.

Notwithstanding paras. 2 and 3 above, if the state prosecutor has been elected to the high state prosecution or supreme state prosecution in accordance with para. 4 above for a period of four years, he or she may be elected to the permanent function in the high state prosecution or supreme state prosecution if his or her performance evaluation after the expiry of term of office was graded good or excellent.

The provisions of the present Law governing the procedure for election of state prosecutors to the basic state prosecution for the permanent function shall be applied accordingly to the procedure of election of the state prosecutor referred to in para. 5 above.

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

#### **Article 51**

In addition to the general requirements referred to in Article 49 of this Law, to be elected head of the state prosecution office a candidate shall have the following work experience:

- 1) for the basic state prosecution office - 10 years of experience in the field of law, at least five of which as a state prosecutor or a judge;
- 2) for the high state prosecution office - 12 years of experience in the field of law, at least eight of which as a state prosecutor or a judge.

Only the state prosecutor or the judge who earned the grade good or excellent in the procedure of evaluation of their work according to the law can be elected head of state prosecution offices.

### **3. Procedure for Election of the Head of State Prosecution Office**

#### **Programme of Work**

##### **Article 52**

With their application to the public advertisement the candidates for the position of a head of the 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 53**

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

- 1) evaluation of the Programme of Work,
- 2) evaluation of his/her work in the position of a state prosecutor, i.e. a judge or a head of the state prosecution office, i.e. president of the court; 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. It shall be given on the basis of the proposed vision of work in the state prosecution office.

On the basis of the evaluation of work the candidate for the head of the state prosecution office can earn 30 points if his/her grade is good, and 40 points if his/her grade is excellent.

On the basis of the interview the candidate for the position of the head of the state prosecution office can be given maximum 20 points according to Article 61 of this Law.

If two candidates have the same score, the candidate with a higher number of points earned in the process of evaluation of his/her work shall have the advantage.

#### **Election of a Head of the State Prosecution Office**

##### **Article 54**

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

Head of the state prosecution office shall remain a state prosecutor in the state prosecution office after the expiry of the term he/she is elected for as the head of the state prosecution office, after termination of the office of the head of the state prosecution office upon his/her

request or due to closing or merging of state prosecution offices and in case of dismissal of the head of the state prosecution office.

### **Appropriate Application**

#### **Article 55**

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

### **4. Plan of Vacant Prosecutorial Posts**

#### **Contents and Manner of Adoption**

##### **Article 56**

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

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

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

The plan of vacancies shall be adopted by the Prosecutorial Council at latest by the end of the calendar year for the next two years.

The plan of vacancies may be amended if during the year there are changes in the circumstances which served as the basis for the assessment of the needs to fill in the vacant positions of the state prosecutors referred to in paragraph 2 of this Article.

### **5. Procedure for the First Election of the State Prosecutors in the Basic State Prosecution Offices**

#### **Advertising Vacancies**

##### **Article 57**

Vacant posts of state prosecutors in basic state prosecution office shall be filled in on the basis of the internal advertisement for voluntary reassignment of state prosecutors from one basic state prosecution office to another.

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

Vacancies of the state prosecutors in the basic state prosecution offices on the level of Montenegro shall be advertised by the Prosecutorial Council in the Official Gazette of Montenegro and in one of the printed media with the headquarters in Montenegro.

#### **Application Procedure**

##### **Article 58**

Applications to the public advertisement with the proof that the candidate meets the requirements for the election to the position of the state prosecutor in the basic state prosecution office shall be submitted to the Prosecutorial Council within 15 days from the day of advertisement. They shall be submitted on the form set by the Prosecutorial Council.

Prosecutorial Council shall reject untimely and incomplete applications.

The candidates shall be entitled to conduct administrative dispute against the decision of the Prosecutorial Council rejecting untimely and incomplete applications.

### **Criteria for the First Election of the State Prosecutor**

#### **Article 59**

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



- 1) the grade given in written examination referred to in Article 60 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.

### **Written Examination Article 60**

Prosecutorial Council shall administer written examination of the candidate to be elected a state prosecutor for the first time, if he/she has met the requirements defined in the law, and has submitted a timely and complete application. The written examination shall be administered by the Commission consisting of three Prosecutorial Council members, two of whom from among state prosecutors and one from among eminent lawyers.

The candidate who has been given a grade in judicial examination shall not take the exam referred to in paragraph 1 of this Article.

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

Written test shall be taken under a code.

The grading of the written test shall be done by using a number of points for the form of the enactment, application of law and the reasoning for adoption of the enactment. The maximum number of points is 80:

- 1) 40 points for drawing up the investigation document;
- 2) 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 with the proposed grade.

The Prosecutorial Council shall establish the final grade of the written text.

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

### **Candidate Interview Article 61**

The Prosecutorial Council shall conduct interview with the candidates who achieved more than 60 points in written examination, i.e. judicial examination. The following shall be evaluated during the interview:

- 1) motivation of the candidate to work in the State Prosecution Service;
- 2) communication competence;
- 3) ability to make decisions and resolve conflicts;
- 4) understanding of the role of the State Prosecutor in the society.

Grading based on the criteria referred to in paragraph 2 of this Article shall be done in such a way that each member of the Prosecutorial Council shall give a certain number of points to each of the candidates, where the maximum number for the interview can be 20.

Final grade in the interview is the average number of points calculated on the basis of the number of points given by each member of the Prosecutorial Council.

The person that earns less than 15 points in the interview shall not be put on the ranking list of the candidates for the office of the state prosecutor.

Prosecutorial Council may use the professional assistance of psychologists when conducting interview.

### **Ranking List of the Candidates for the Office of the State Prosecutor Article 62**

The ranking list of the candidates for the office of the state prosecutor (hereinafter referred to as: the ranking list) shall be drawn on the basis of the grade in the written test, i.e. judicial exam based of the number of points earned by each candidate.

If two candidates in 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 written tests i.e. judicial exams, 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 manner referred to in paragraph 2 of this Article, the Prosecutorial Council shall decide by drawing lots.

### **Election and Assignment of the Candidates for the Office of the State Prosecutor**

#### **Article 63**

The Prosecutorial Council shall render its decision on election of the number of candidates for the office of the state prosecutor that matches the number of advertised vacancies according to their order on the ranking list and decision on transfer of candidates for the office of the state prosecutor on initial training in the Basic State Prosecutor's Office in Podgorica.

### **Rights of Applicants**

#### **Article 64**

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

Persons referred to in paragraph 1 of this Article can initiate an administrative dispute against the decision of the Prosecutorial Council referred to in Article 63 paragraph 1 of this Law.

### **Rights and Duties of State Prosecutor Candidates**

#### **Article 65**

**State prosecutor candidate** shall be employed in the 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 in the field of labour and stemming from labour shall be applied to state prosecutor candidates unless this Law requires otherwise.

### **Initial Training**

#### **Article 66**

State prosecutor candidates shall complete initial training that consists of theoretical and practical part and takes at least 18 months.

Theoretical part of the initial training shall be conducted by the legal entity authorized to train state prosecutors, while the practical part of the initial training shall be conducted in the Basic State Prosecutor's Office in Podgorica.

The initial training shall be implemented according to the initial training curriculum.

The practical part of the initial training shall be implemented under the supervision of the mentor assigned by the Prosecutorial Council.

Grade of the state prosecutor candidate from the initial training shall be established by the Prosecutorial Council on the basis of the report on the implemented training issued by the mentor and legal entity authorised to train state prosecutors.

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

Initial training curriculum and the manner of grading of the state prosecutor candidates shall be done and the selection of mentors shall be regulated according to the law that governs education of the state prosecutors.

### **Decision on Election**

#### **Article 67**

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

The candidate for state prosecutor exercises the right to choose the basic state prosecutor's office to which he/she will be assigned, according to the order on the ranking list referred to in Article 62 of this Law.

The Prosecutorial Council shall make a decision on deployment to the basic prosecution office of elected state prosecutors based on the right to of candidate the election referred to in para. 2 above.

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.

The employment of state prosecutor candidate who refuses the deployment referred to para. 3 above shall be terminated by virtue of law.

## **6. Procedure of Election of the State Prosecutors to Permanent Office in Basic State Prosecution Offices**

### **Public Advertisement**

#### **Article 68**

Upon expiry of the term of office of the state prosecutor who was elected for the term of office of four years, the Prosecutorial Council shall advertise the vacancy in line with the plan of vacancies.

The state prosecutors who were elected for the term of office of four years and were given the grade satisfactory, good or excellent for their work after the expiry of that term of office shall have the right to apply to the advertisement.

Provisions of Articles 57, 58 and 64 of this Law shall apply accordingly to the procedure of public advertisement, application, and proceeding upon applications, as well as to the rights of the applicants.

### **Criteria for Election of State Prosecutor to Permanent Office**

#### **Article 69**

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

- 1) evaluation of performance of the state prosecutor during the four-year term of office that he/she was elected to for the first time; and
- 2) grade in the candidate interview.

On the basis of the criteria referred to in paragraph 1 item 1 of this Article the candidate shall be entitled to 60 points for the grade satisfactory, 70 points for the grade good and 80 points for the grade excellent.

### **Rendering decision on the election of state prosecutors**

#### **Article 70**

Prosecutorial Council shall conduct interviews with the applied candidates.

Article 61 of this Law shall apply accordingly to the procedure of conducting the interview and grading the state prosecutor candidates.

On the basis of the evaluation of performance and the grade given in the interview referred to in Article 69 of this Law, a ranking list shall be composed.

If two candidates in the ranking list have the same score, the advantage is given to the candidate with a higher score given in the evaluation of performance and if the candidates have the same score in the evaluation of performance, 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 manner referred to in paragraph 4 of this Article, the Prosecutorial Council shall decide by secret ballot.

Prosecutorial Council shall render the decision on the election of the state prosecutor to the permanent office in the basic state prosecution office on the basis of the ranking in the ranking list composed according to paragraphs 3, 4 and 5 of this Article.

## **7. Election of Three State Prosecutors to a High i.e. Supreme State Prosecution Office**

### **Public Advertisement**

#### **Article 71**

On the basis of the plan of vacancies the Prosecutorial Council shall advertise posts of the state prosecutor in the high, i.e. Supreme State Prosecution Office referred to in Article 50 paragraph 4 of this Law.

Provisions of Articles 57, 58 and 64 of this Law shall apply accordingly to the procedure of public advertisement, application and proceeding upon applications, as well as to the rights of the applicants.

### **Criteria for Election of the State Prosecutor**

#### **Article 72**

Criteria for election of the state prosecutor in the high, i.e. Supreme State Prosecutor shall be:

- 1) grade in the written test;
- 2) grade in the candidate interview.

Articles 60, 61 and 62 of this Law shall be applied accordingly to the implementation and grading of the written test and the interview referred to in paragraph 1 of this Article as well as on the establishment of the ranking list.

### **Decision on the Election**

#### **Article 73**

Prosecutorial Council shall adopt the decision on the election of the state prosecutor in the high i.e. Supreme State prosecution office on the basis of the ranking in the ranking list composed on the basis of Article 72 of this Law.

The state prosecutor referred to in paragraph 1 of this Law shall be elected for the term of four years if elected for the first time to the office of the state prosecutor.

### **Appropriate Application**

#### **Article 74**

Articles 68, 69 and 70 of this Law shall be applied accordingly to the procedure of election of the state prosecutor referred to in Article 73 of this Law.

## **8. Promotion of State Prosecutors**

### **Requirements for Promotion**

#### **Article 75**

State prosecutor, i.e. judge shall be entitled to promotion to the state prosecution of a higher rank if given the grade excellent or good in the performance evaluation and if he/she meets the specific requirements stipulated for the election to that state prosecution office.

State prosecutor, i.e. judge shall be entitled to be promoted to the Supreme State Prosecution Office if given the grade excellent and if he/she meets the specific requirements for the election to the Supreme State Prosecution Office referred to in Article 50 paragraph 3 of this Law.

### **Public Advertisement**

#### **Article 76**

In the procedure of promotion vacant positions of the state prosecutors in high and Supreme state prosecution office shall be advertised according to the plan of vacant posts of the state prosecutors.

Provisions of Articles 57, 58 and 64 of this Law shall apply accordingly to the procedure of public advertisement, application and proceeding upon applications, as well as to the rights of the applicants.

## **Criteria for Promotion of a State Prosecutor**

### **Article 77**

Election of the state prosecutor in the state prosecution office shall be done on the basis of the performance evaluation of the state prosecutor, i.e. judge who applied to the advertisement and the grade in the interview.

If given the grade good in the performance evaluation the state prosecutor, i.e. judge can be given 60 points, if given the grade excellent in the performance evaluation he/she can be given 80 points, while in the interview he/she can be given 20 points.

Article 70 of this Law shall be applied accordingly to the procedure of the interview, composing of the ranking list and rendering the decision on the election in the promotion procedure.

### **9. The Oath and Taking the Office**

#### **The Oath and Taking the Office**

##### **Article 78**

The state prosecutor shall take his/her office on the day on which he/she has taken an oath. The oath shall be taken in front of the Prosecutorial Council, not later than 15 days from the day of election of the state prosecutor.

#### **Wording of the Oath**

##### **Article 79**

Wording of the oath shall be as follows: "I do solemnly swear to perform prosecution function in a conscientious, 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 who was elected in the procedure of promotion to the state prosecution office of a higher rank shall not recite the wording of the oath referred to in paragraph 1 of this Article, but symbolically sign the text.

#### **Official Identity Card**

##### **Article 80**

State prosecutors and heads of the state prosecution offices shall have their official identity cards.

Prosecutorial Council shall issue the official identity cards on the stipulated form and shall keep records of the issued official identity cards.

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

## **V. REASSIGNMENT AND TRANSFER OF STATE PROSECUTOR**

### **Reassignment to Other State Prosecution Office with the Consent of the State Prosecutor**

#### **Article 81**

State Prosecutor shall perform prosecutorial function 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 the state prosecutors of that state prosecution office being recused or prevented from performing prosecutorial function 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 82**

Prosecutorial Council shall render decision to reassign the state prosecutor temporarily as referred to in Article 81 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 81 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.

The costs incurred due to the reassignment of the state prosecutor according to paragraph 1 of this Article shall be borne by the state prosecution office to which the state prosecutor is temporarily reassigned.

**Reassignment to Other Authority**  
**Article 83**

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, legal entity authorized to train state prosecutors 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 in the activities of introducing international standards in the operation 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.

**Transfer to another State Prosecution Office without Consent of State Prosecutor**  
**Article 84**

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

**Permanent Voluntary Transfer of the State Prosecutor**  
**Article 85**

Prosecutorial Council shall advertise vacancies for state prosecutors internally on its 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 referred to in paragraph 2 of this Article, according to the work results achieved over the past three years and 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 decision on transferring the state prosecutor to another state prosecution office of the same level, while taking into account the needs of the state prosecution office the state prosecutor applied to be transferred from 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 86**

Performance evaluation of state prosecutors who hold permanent office, with the exception of the Supreme State Prosecutor and the state prosecutors from the Supreme State Prosecution Office, shall be carried out every three years in order to assess their competence, quality and quantity of their work, their ethics, training needs and in the event of a 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.

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

Performance evaluation shall be carried out before the expiry of the terms referred to in paragraphs 1 and 2 of this Article in the following cases:

1) Performance evaluation of the state prosecutor who was given the grade unsatisfactory shall be carried out one year from the day of establishing such final grade;

2) Performance evaluation of the state prosecutor who applied for promotion to a hierarchically higher state prosecution office, if he/she does not have any grade or if more than two years passed since his/her last performance evaluation.

Performance evaluation shall not be carried out if in the period that is to be evaluated as defined in paragraphs 1 and 2 the state prosecutor was absent for at least a year.

### **Evaluation Commission**

#### **Article 87**

Performance evaluation of state prosecutors shall be done by the Evaluation Commission 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, three of whom elected from among the state prosecutors and two from among eminent lawyers.

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; where such panel is composed of the head of the state prosecution office where the state prosecutor is evaluated and four state prosecutors from hierarchically higher state prosecution offices (hereinafter referred to as: panel of state prosecutors for performance evaluation)

Panel of state prosecutors for performance evaluation shall be formed by the Prosecutorial Council.

Prosecutorial Council may decide to recuse members of the Evaluation Commission and of the panel of state prosecutors for performance evaluation.

The Rules of Procedure of the Prosecutorial Council shall govern the manner of work of the Evaluation Commission and the panel of state prosecutors for performance evaluation, as well as the cases and manner of recusal of the members of the Evaluation Commission and the evaluation panel of state prosecutors.

### **Criteria for Performance Evaluation**

#### **Article 88**

Performance evaluation of state prosecutors shall be based on the following criteria:

- 1) expert knowledge, and
- 2) general competences for performing the duties of the prosecutorial office.

### **Expert Knowledge of the State Prosecutor**

#### **Article 89**

Expert knowledge of the state prosecutor shall be evaluated on the basis of the sub criteria as follows:

- 1) the quantity and quality of his/her work;
- 2) ability to plan and effectively conduct procedural actions
- 3) skills for preparing and keeping case files;
- 4) skills for using prosecutorial knowledge;
- 5) skills for conducting proceedings and
- 6) 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.

On the basis of the quantity, the state prosecutor shall be given the grade unsatisfactory if he/she fails to provide justified reasons for having results that are more than 20% below average benchmark values in certain type of cases established by the Prosecutorial Council depending on the size of the state prosecution office.

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

The skill for preparing and keeping the case files 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 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 training activities of the state prosecutor that he/she undertakes to improve and implement his/her knowledge and methods in his/her future work.

## **General Competences**

### **Article 90**

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

- 1) communication skills,
- 2) ability to adjust to changed circumstances,
- 3) ability to organize and coordinate prosecutorial staff,
- 4) participation in various professional activities,

Communication skill shall be evaluated on the basis of the skills of the state prosecutor related to showing respect for parties, co-workers, and employees in the state prosecution office in the course of discharging his/her duties.

Evaluation of the ability to adjust to changed 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 supervise 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 trainings and other professional activities.

## **Sources of Performance Evaluation**

### **Article 91**

Performance evaluation of the state prosecutors in line with the criteria referred to in Article 88 of this Law shall be conducted by an insight into:

- 1) five randomly selected cases that were closed with final judgments,
- 2) five cases of the state prosecutor's own choice that were closed with final judgments,



- 3) three randomly selected motions to indict on the basis of which final judgments of acquittal have been given,
- 4) three randomly selected cases from the criminal register of various cases;
- 5) three randomly selected cases of rejected criminal charges;
- 6) statistic report on the performance of the state prosecutor that shall contain the data on the work of the state prosecutor, data from the records on the state prosecutors, data on the number of complaints and decisions upon complaints against the work of the state prosecutor;
- 7) records obtained in the process of control of the work of the state prosecution office, and
- 8) report of the legal entity authorized to train state prosecutors.

If due to specialization the state prosecutor does not have any case referred to in paragraph 1 of this Article, for the purposes of evaluation of his/her performance, the Prosecutorial Council shall define the type of the case to make an insight in.

### **Rules for Selection of Cases**

#### **Article 92**

In selecting the cases referred to in Article 91 paragraph 1 item 1 to 5 of this Law, in addition to the cases the state prosecutor dealt with in the state prosecution office where he/she discharges his duties, the cases he/she dealt with in the state prosecution offices he/she was reassigned to shall also be taken into account in accordance with the Law.

Selection of cases shall be carried out after the performance evaluation has commenced and the state prosecutor shall be present during the random selection procedure.

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

### **Report of the State Prosecutor**

#### **Article 93**

The state prosecutor whose performance is evaluated shall fill in the required form, describing his/her prosecutorial activities against the criteria and sub-criteria stipulated in this Law which is followed by his/her self-evaluation and specification of the cases the state prosecutor himself/herself selected to be subject to evaluation.

Within eight days from the day of the beginning of the evaluation, the report referred to in paragraph 1 of this Article shall be submitted by the state prosecutor to the head of the state prosecution office in which he/she discharges his/her duties.

Within five days from receiving the report of the state prosecutor the head of the state prosecution office in which the state prosecutor discharges the duties of his office shall submit the report referred to in paragraph 1 of this Article and the documents needed for evaluation of the state prosecutor referred to in Article 91 of this Law to the panel of state prosecutors for performance evaluation.

### **Report and Proposal of the panel of state prosecutors for performance evaluation**

#### **Article 94**

Within 30 days from the day of delivery of documentation referred to in Article 91 the panel of state prosecutors for performance evaluation shall compose a report on evaluation of the state prosecutor against all evaluation 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 93 of this Law, the panel of state prosecutors for performance evaluation shall make a draft grade for the state prosecutor that is to be sent to the Evaluation Commission.

### **Opinion on the Draft Grade**

#### **Article 95**

The Evaluation Commission shall submit draft grade referred to in Article 94 of this Law to the state prosecutor whose performance is evaluated and he/she shall be entitled to give his/her opinion on the draft grade within five days from the day of being submitted the draft grade.

The Evaluation Commission may request additional data and explanations from the panel of state prosecutors for performance evaluation.

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

### **Establishing the Grade**

#### **Article 96**

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

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

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

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

### **Grade**

#### **Article 97**

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 the records of state prosecutors.

### **Consequences of the Grade**

#### **Article 98**

The state prosecutors given the grades satisfactory or unsatisfactory shall be referred to the programme of mandatory continuous training according to the law regulating the training of state prosecutors.

The state prosecutors given the grade excellent or good shall be entitled to promotion into a hierarchically higher state prosecution office.

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

### **Performance Evaluation of the Heads of State Prosecution Offices**

#### **Article 99**

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

Performance evaluation of the heads of state prosecution offices shall be carried out on the basis of the draft grade given by the panel of state prosecutors for performance evaluation composed by the state prosecutors referred to in Article 87 paragraph 3 of this Law and the head of an immediately higher state prosecution office from the territory of that state prosecution office.

The draft grade referred to in paragraph 2 of this Article shall contain the evaluation of performance of the head of the state prosecution office as the head of the office and as the state prosecutor.

When evaluated as the head of office the 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.

Performance evaluation of the head of state prosecution office as state prosecutors shall be carried out according to the procedure and in the manner stipulated in this Law.

### **Special Rules**

#### **Article 100**

Prosecutorial Council shall adopt special rules to regulate the procedure of evaluation and the indicators for composing the report and the draft grade on the basis of the criteria defined for

state prosecutors, as well as the criteria for evaluation and indicators for composing the report and draft grade for the heads of the state prosecution offices.

## **VII INCOMPATIBILITY AND TERMINATION OF OFFICE**

### **Opinion on Other Activities**

#### **Article 101**

Head of the state prosecution office and the state prosecutor may request opinion of the Prosecutorial Council about whether certain activities are incompatible with performance of the prosecutorial function, of which the Prosecutorial Council shall render its decision.

### **Liability for Damage**

#### **Article 102**

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 prosecutorial duties 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 the caused 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 net salary.

### **Reasons for Termination of State Prosecutor's Function**

#### **Article 103**

State prosecutor's function 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 Function of the Head of the State Prosecution Office**

#### **Article 104**

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

- 1) upon expiry of the term of office he/she was elected to;
- 2) if his function of the state prosecutor is terminated;
- 3) upon his/her request or due to closing or merging of state prosecution offices.

### **Termination of Function of the State Prosecutor**

#### **Article 105**

Should any reason for termination of the state prosecutor's term of office occur, the Prosecutorial Council shall be notified thereof without any delay: by the head of the state prosecution office for the state prosecutor, 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 the term 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 notification.

The functions of persons 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 expiry of the term, in which case the term of office shall be terminated on the day on which the term expires.

The decision on termination of the term of office shall be submitted by the Prosecutorial Council to the head of the state prosecution office, state prosecutor whose function has been terminated, to the state prosecution office where he/she performed his/her prosecutorial function and it shall be published in the Official Gazette of Montenegro.

### **Termination of Function of the Supreme State Prosecutor**

#### **Article 106**

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

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

The function of the Supreme State Prosecutor shall be terminated on the day of adoption of the decision on termination of the function or upon expiry of the time-limit referred to in paragraph 2 of this Article, except in the event of termination of function resulting from expiry of the term of office, in which case the function shall be terminated on the day on which the term expires.

### **Proclaiming the Decision on Election Null and Void**

#### **Article 107**

The Prosecutorial Council shall proclaim the decision on election of the state prosecutor null and void if it proves that, at the time of the election, he/she did 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**

### **1. Disciplinary Procedure**

#### **Disciplinary Offences**

##### **Article 108**

State prosecutors and heads of state prosecution offices as state prosecutors shall have disciplinary liability for committing minor, severe and the most severe disciplinary offences.

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

- 1) without any justified reasons he/she fails to take up cases according to the order in which they were received according to the Rulebook on the internal operations of the State Prosecution Services;
- 2) he/she unjustifiably fails to appear or is 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 in 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, and due to that the case is barred by time, the procedure cannot be conducted or there are other consequences stipulated in the law;
- 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 performing prosecutorial function or while in a public place, he/she brings himself/herself into condition or behaves in a manner which is inappropriate for the prosecutorial function;
- 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 has learnt while handling cases or in discharging duties of the prosecutorial office;
- 7) he/she uses prosecutorial function 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 on prevention of conflict of interests;
- 9) he/she is unjustifiably absent from the office for five consecutive days;
- 10) he/she expresses in public his/her opinion about the case that has not become final.

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 performing prosecutorial function;
- 2) he/she performs prosecutorial function unprofessionally or unconscientiously.

The offence referred to in paragraph 4 item 1 of this Article shall be the criminal offence prosecuted *ex officio* and punishable by imprisonment.

It shall be deemed that the state prosecutor performs prosecutorial function 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 a specific type of cases set by the Prosecutorial Council; unless the state prosecutor can provide valid reasons for not achieving the quantitative results;
- 2) 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 twice in a row;
- 4) he/she was imposed disciplinary sanctions for severe disciplinary offences two times;

### **Disciplinary Sanctions**

#### **Article 109**

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 up to three months shall be imposed for minor disciplinary offences.

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

If the proceeding is conducted for two or several disciplinary offences, the state prosecutor may be imposed disciplinary sanction provided for a serious disciplinary offence.

Dismissal shall be imposed for committing the most severe disciplinary offences.

Prohibition of promotion is a disciplinary sanction where the state prosecutor may not be appointed to the state prosecution office of a higher instance before expiry 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 110**

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 Application of the Code of Prosecutorial Ethics.

In the cases referred to in para. 1 above, the head of the state prosecution office, head of the immediately higher state prosecution office, Supreme State Prosecutor and the Minister of

Justice may address the Commission for Monitoring the Application the Code of Prosecutorial Ethics requesting an opinion on whether a particular conduct of the state prosecutor is in accordance with the Code of Prosecutorial Ethics.

The motion for establishing disciplinary liability of the state prosecutor shall be submitted immediately after learning that a disciplinary offence has been committed.

The initiative for dismissing the supreme state prosecutor may be filed by the extended Session of the Supreme State Prosecution Office, Minister of Justice and 25 Members of Parliament.

The Supreme State Prosecutor may be dismissed due to unconscious or unprofessional performance of function.

The provisions of the present Law governing the proceeding conducted based on the motion for establishing disciplinary liability of state prosecutors for the most serious disciplinary offences will be applied accordingly on the proceeding conducted based on the initiative referred to in para. 4 above.

The Prosecutorial Council shall determine the substantiated motion for dismissing the supreme state prosecutor based on the conducted proceeding in accordance with para. 6 above and submit it to the Parliament.

### **Contents of the Motion**

#### **Article 111**

The motion for establishing disciplinary liability shall be filed 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 present the basis of the reasonable doubt that the state prosecutor committed the disciplinary offence.

Prosecutorial Council shall submit the motion for establishing disciplinary liability to the disciplinary plaintiff, at latest within five days from the day of receiving the motion.

### **Disciplinary Plaintiff**

#### **Article 112**

Disciplinary plaintiff shall conduct the investigation upon a 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.

Disciplinary plaintiff has a deputy.

Prosecutorial Council shall elect the disciplinary plaintiff and his deputy for the term of two years from among the state prosecutors with at least ten years of work experience as a state prosecutor upon the proposal of the session of the Supreme State Prosecutor's Office.

### **Completing of Investigation by Disciplinary Plaintiff**

#### **Article 113**

Disciplinary plaintiff shall complete the investigation referred to in Article 112 paragraph 1 of this Law within 45 days from the day of receiving 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 submit to the Disciplinary Panel i.e. Prosecutorial Council:

- 1) a proposal to reject the motion for establishing disciplinary liability
  - a) because the motion was filed for an activity that is not defined as a disciplinary offence;
  - b) because the motion is bared by time; or
  - c) because the motion was filed by an unauthorized person;
- 2) a proposal 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) a proposal to file a motion to indict the state prosecutor for disciplinary offence.

If the Disciplinary Panel i.e. Prosecutorial Council does not agree with the proposal of the disciplinary plaintiff referred to in paragraph 3 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 114**

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

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

Supreme State Prosecutor may not be a member of the Disciplinary Panel.

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 of the Disciplinary Plaintiff.

#### **Defence**

#### **Article 115**

The State Prosecutor whose liability is investigated shall be entitled to a defence counsel.

During the hearing, he/she 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 116**

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 accurate and full establishment of facts.

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

#### **Decision**

#### **Article 117**

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.

Disciplinary Panel i.e. Prosecutorial Council have to finish the procedure for establishing disciplinary liability of the state prosecutor within 60 days from the day of receiving the motion from the disciplinary plaintiff.

### **Time-limit for Writing of the Decision**

#### **Article 118**

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 are entitled to file complaint to the panel of three Supreme Court judges against the decision referred to in paragraph 1 of this Article.

The panel referred to in paragraph 2 of this Article must decide on the complaint within 30 days from the day of receipt of the complaint.

### **Statute of Limitations**

#### **Article 119**

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

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 4 of this Law.

### **Recusal**

#### **Article 120**

Members of the Disciplinary Panel and Prosecutorial Council members for whom there are circumstances that provoke suspicion into their impartiality shall not participate in Disciplinary Panel and Prosecutorial Council while 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.

### **Temporary Removal**

#### **Article 121**

A state prosecutor shall be temporarily removed from his/her office if:

- 1) he/she is imposed detention, for the duration of such detention;
- 2) a criminal procedure is initiated against him/her for the criminal offence that makes the state prosecutor unworthy of performing prosecutorial function.

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.

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

Request for temporary removal from office referred to in paragraphs 1 and 2 of this Article shall be filed by the disciplinary plaintiff.

### **Effect of Decision**

#### **Article 122**

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



**Costs of Proceedings**

**Article 123**

If the motion for establishing disciplinary liability is rejected the costs of the disciplinary proceedings shall be borne by the Prosecutorial Council.

**Appropriate Application of the Law**

**Article 112**

Provisions of the Criminal Procedure Code shall be applied accordingly to the disciplinary proceedings, unless this Law requires otherwise.

**2. Dismissal of the Head of State Prosecution Office**

**Reasons for Dismissal**

**Article 125**

Head of a state prosecution office shall be dismissed from office of the head if:

- 1) he/she changes annual allocation 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 activity reports 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 state prosecution management duties identifies unlawfulness and irregularities in performance of the state prosecution office management duties which are harmful to the regular and timely discharge of duties and to the function of the state prosecution office;
- 8) he/she fails to file motion for establishing disciplinary liability of the state prosecutor in cases for which that is prescribed by the law, although he/she is aware or should have been aware that there are reasons for disciplinary liability;
- 9) he/she is temporarily removed from the office of the state prosecutor;
- 10) he/she is given the grade unsatisfactory.

**Motion for Dismissal**

**Article 126**

Motion for dismissal of the head of the state prosecution office may be filed by the head of an immediately higher state prosecution office, supreme state prosecutor or Minister of Justice.

The motion for dismissal referred to in paragraph 1 of this Article shall be filed immediately upon learning that disciplinary offence has been committed.

**Appropriate Application**

**Article 127**

Provisions of this Law that govern the procedure of establishing disciplinary liability of the state prosecutor shall be applied accordingly to the procedure of dismissal of the head of the state prosecution office.

**3. Dismissal due to the permanent loss of ability to discharge duties of prosecutorial office**

## **Procedure and Decision**

### **Article 128**

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

Motion for dismissal in case of permanent loss of the ability to discharge the duties of the prosecutorial office shall be filed on the basis of the final court judgment depriving the state prosecutor of legal capacity or the decision of the relevant authority establishing that the physical or psychological characteristics of the state prosecutor are such that he/she is unable to perform the duties of the prosecutorial office.

If the behaviour of the state prosecutor or his/her attitude to work lead to the suspicion that he/she might have permanently lost the ability to perform the duties of the prosecutorial office, Prosecutorial Council may, at its own initiative or upon a motion of the head of the state prosecution office, decide that the state prosecutor shall undergo specialist doctor's examination.

The motion for dismissal of the state prosecutor due to the permanent loss of his/her ability shall be filed by the head of the state prosecution office for the state prosecutor, and by the head of an immediately higher state prosecution office and supreme state prosecutor for the head of the state prosecution office; and 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 perform the duties of 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 perform the duties of prosecutorial office shall be rendered by the Prosecutorial Council and administrative dispute may be initiated against it.

## **IX. INTERNAL ORGANISATION OF WORK OF THE STATE PROSECUTION SERVICE**

### **1. *Relations within the State Prosecution Service***

#### **Duty of the Supreme State Prosecutor**

##### **Article 129**

Supreme State Prosecutor shall be responsible for performing the tasks of the State Prosecution Service and for taking measures and activities for the purpose of ensuring efficient and lawful operation of the State Prosecution Service.

#### **Independence in the Work of State Prosecutors**

##### **Article 130**

The state prosecutor shall be accountable for the work on the case he/she has been assigned and shall be independent in his/her work and decision-making, except in the cases set out in Article 131 of this Law.

The state prosecutor shall introduce the head of the state prosecution office, at his/her request, to the work on a specific case and the decision he/she intends to make, as well as to the work on a specific case in which complex factual and legal issues are raised.

#### **Mandatory Operating Instructions**

##### **Article 131**

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

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

The instructions of general nature shall be issued by the supreme state prosecutor, while the head of the state prosecution office may initiate their adoption as he/she considers needed.

The instruction of general nature shall be issued in written form.

The instruction for proceeding in an individual case shall be issued by:

- 1) supreme state prosecutor for state prosecutors from the Supreme State Prosecution Office and for the chief special prosecutor, as well as for the heads of high and basic state prosecution offices;
- 2) chief special prosecutor for special prosecutors from that prosecution office;
- 3) head of the high state prosecution office for state prosecutors from that prosecution office and for heads of basic state prosecution offices from its territory;
- 4) heads of basic state prosecution offices for state prosecutors from these prosecution offices.

State prosecutors, and heads of prosecution offices, may initiate issuance of the instructions referred to in paragraph 4 of this Article if they consider it is needed for their work.

### **Manner of Issuing Instruction for Proceeding in an Individual Case**

#### **Article 132**

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

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

If the instruction for proceeding in an individual case is repeatedly issued 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 his/her 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 assign the case to another head of the state prosecution office, i.e. state prosecutor.

The state prosecutor may not be liable for the opinion expressed referred to in paragraph 2 of this Article and for a request submitted in accordance with paragraph 3 of this Article.

### **Relations in the State Prosecution Office**

#### **Article 133**

Supreme state prosecutor can directly exercise all the authorities and undertake all the actions for which the head of the Special State Prosecution Office, of the high state prosecution office, i.e. head of the basic state prosecution office are authorised by law.

Supreme state prosecutor can, due to recusal or for other justified reasons that may have impact on further conduct of the proceedings, delegate certain cases or actions taken in relation to these cases that fall within competence of the high state prosecution office or basic state prosecution office to the other state prosecution office with subject-matter jurisdiction.

Supreme state prosecutor can, due to recusal or for other justified reasons that may have impact on further conduct of the proceedings, delegate certain cases or certain actions taken in relation to these cases that fall within competence of the Special Prosecution Office to the Supreme State Prosecution Office.

Head of the high state prosecution office can directly exercise all the authorities and undertake all the actions for which the head of the basic state prosecution office from his/her territory is authorised by law.

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

The decision on taking over the authorities or actions or on delegating them to the other state prosecutor in terms of paras. 1 through 5 of this Article shall be adopted in written form.

## **Supervision over Work**

### **Article 134**

Supreme State Prosecution Office shall exercise supervision over work of the Special State Prosecution Office, high prosecution office and basic prosecution office.

High state prosecution office shall exercise supervision over work of the basic prosecution office from its territory.

The Supreme State Prosecution Office shall exercise supervision over work of state prosecution offices by gaining direct insight into the work of each individual state prosecution office and by taking other appropriate measures for ensuring efficient and lawful work of the State Prosecution Service.

The supervision referred to in paragraph 3 of this Article shall be exercised in accordance with the supervision plan established by the supreme state prosecutor.

High state prosecution offices shall once in every two years exercise supervision over the overall work of the state prosecution offices in its territory in accordance with the special supervision plan established by the head of the high prosecution office.

## **Public Relations**

### **Article 135**

Information about the work of the State Prosecution Service shall be provided by the supreme state prosecutor or by a person he/she has authorised, whereas information about the work of state prosecution offices shall be provided by the heads of state prosecution offices or by the persons they authorised.

In informing the public about the work on a specific case, it is only the information about the actions that were taken or are taken that may be provided, without mentioning the names of participants in proceedings or content of the actions taken.

Information that may have impact on the conduct of proceedings may not be available to the public.

A special public relations service may be set up at the state prosecution offices for the purpose of informing the public.

## **2. Prosecutorial Management**

### **Organisation of the Work**

#### **Article 136**

Organisation of the work of the state prosecution office shall mean management of the state prosecution office, organisation of prosecutorial divisions and session of the state prosecution office, as well as internal operation of the state prosecution office.

Organisation of the work of the state prosecution office referred to in paragraph 1 of this Article shall be regulated by the Rulebook on internal operation of the state prosecution office which is adopted by the Ministry of Justice after having previously obtained opinion of the Prosecutorial Council.

### **Management**

#### **Article 137**

Head of the state prosecution office shall be accountable for carrying out tasks of the state prosecution office and shall take measures and actions to ensure efficient and lawful performance of tasks by the state prosecution office.

Head of the state prosecution office shall organise work at the state prosecution office, allocate tasks and take measures to ensure regular and timely performance of tasks at the state prosecution office.

In the event of absence, being prevented to discharge duties or upon expiry of the term of office, the head of the state prosecution office shall be replaced by the state prosecutor appointed by the session of the state prosecution office for each calendar year, upon the proposal by the head of the state prosecution office.

## **Internal Operation of the State Prosecution Office**

### **Article 138**

Internal operation of the State Prosecution Office shall include tasks of the prosecutorial management and tasks involving use of the judicial information system.

Prosecutorial management shall include tasks which ensure regular and timely operation of the state prosecution office, and particularly the following: internal allocation of tasks; examination of complaints and applications; keeping written records and reports; work of the clerk's office and archives office; financial and material operations, technical, administrative, IT, analytical and other tasks required for operation of the State Prosecution Service.

Judicial information system is a unique electronic system for case management into which data from registries of the state prosecution offices are entered, stored and transmitted.

### **Allocation of Tasks**

#### **Article 139**

Head of the state prosecution office shall establish annual allocation of tasks for the current year at the latest by 15 January, which ensures equitable allocation of tasks and necessary specialisation of state prosecutors.

### **Case Assignment**

#### **Article 140**

Cases shall be assigned in a manner which ensures impartiality, independence and efficiency of work.

### **Withdrawal the Assigned Cases**

#### **Article 141**

The assigned case shall be withdrawn from the state prosecutor if it is established that he/she is unjustifiably proceeding in the case, due to recusal or if he/she is prevented from discharging duties 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 duties he/she cannot proceed in such cases in a timely manner and within the time-limit set by the law.

Head of the state prosecution office shall render a decision on case withdrawal.

Decision on case withdrawal shall be submitted to the state prosecutor whose case is withdrawn.

A complaint against the decision on case withdrawal shall be permitted and it shall be filed with the head of an immediately higher state prosecution office, whereas against the supreme state prosecutor's decision it shall be filed with session of the Supreme State Prosecution Office, within three days from the day of receiving the decision.

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

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

If the complaint is accepted, the case shall be assigned to the state prosecutor from whom it has been withdrawn.

### **Stand-by and On-call Duty**

#### **Article 142**

Head of the state prosecution office shall organise permanent stand-by and on-call duty for the purpose of ensuring efficient operations, and particularly for the purpose of carrying out preliminary investigation tasks and other urgent tasks related to possible commission of criminal offences and other punishable acts.

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

### **Session of the State Prosecution Office**

#### **Article 143**

To consider certain matters that are important for operation, the head of the state prosecution office shall convene a session of the state prosecution office and chair the session.

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 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 state prosecutors, whereas decision shall be adopted if the majority of the state prosecutors present in the session votes for it, unless this Law requires otherwise for certain matters.

### **Scope of Work of the Session**

#### **Article 144**

Session of the state prosecution office shall:

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

### **Session of the Supreme State Prosecution Office**

#### **Article 145**

In addition to the activities referred to in Article 144 of this Law, session of the Supreme State Prosecution Office shall also:

- 1) issue opinions on draft pieces of legislation that are important for performing prosecutorial function;
- 2) indicate problems in the implementation of draft pieces of legislation that are important for performing prosecutorial function;
- 3) decide on recusal of the supreme state prosecutor;
- 4) consider report on the work 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 146**

In order to discuss certain issues of particular importance for 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 head of the Special State Prosecution Office.

### **Report on Work**

#### **Article 147**

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

Upon the Prosecutorial Council's request, the head of the state prosecution office shall submit special, i.e. periodic reports within the time-limit set by the Prosecutorial Council.

State prosecution offices shall submit special reports that are required for reporting to the European Union and to the international organisations, as well as for monitoring the implementation of regulations.

Head of the state prosecution office shall be accountable for accuracy of the data in the reports.

Upon the request of the Parliament of Montenegro and the competent working body, the supreme state prosecutor and chief special prosecutor shall submit special or periodical reports on their performance within the time limit provided for by the Parliament of Montenegro or competent working body.

The supreme state prosecutor and chief special prosecutor will take part in the sessions at the initiative of the Parliament of Montenegro and competent working bodies.

### **3. Relations and Cooperation**

#### **Relations with Courts and Other Public Authorities**

##### **Article 148**

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

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

#### **Cooperation with the Police and Other Authorities**

##### **Article 149**

Head of the state prosecution office may organise advisory meetings with the police officers and employees of other authorities for the purpose of clarifying disputable matters or giving detailed instructions on how to act in certain cases.

In the advisory meeting, the manner of cooperation shall be determined, collected data shall be exchanged and joint action of state prosecutors and police officers and officers of other authorities shall be guided.

Advisory meetings may be organised on the initiative of state prosecutors, or police officers or employees from other authorities.

#### **International Cooperation**

##### **Article 150**

State Prosecution Service may establish 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 Prosecution Office.

### **4. Internal Organisation and Job Description**

#### **Indicative Benchmarks**

##### **Article 151**

Necessary number of state prosecutors, civil servants and state employees in state prosecution offices shall be established on the basis of indicative benchmarks of work which are prescribed by the Ministry of Justice upon the proposal by the Prosecutorial Council.

#### **Rulebook on Internal Organisation**

##### **Article 152**

Necessary number of advisers, other civil servants and state employees shall be established in the rulebook on internal organisation and job descriptions in accordance with indicative benchmarks referred to in Article 151 of this Law.

The rulebook on internal organisation and job descriptions shall be adopted by the head of the state prosecution office with the consent of the Government of Montenegro, after having previously obtained opinion of the Prosecutorial Council, Ministry of Justice and competent authorities, in accordance with the law governing rights and obligations of civil servants and state employees.

**Secretary**  
**Article 153**

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

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

**Advisers**  
**Article 154**

An adviser may be a person who meets general requirements referred to in Article 49 of this Law, as well as specific requirements set by the rulebook on internal organisation and job description of the state prosecution office.

Advisers shall support state prosecutor in his/her work, prepare draft documents, enter into records the citizens` reports, briefs and statements, and carry out other technical tasks prescribed by the law and regulations adopted under the law either autonomously or under the supervision and by following instructions of the state prosecutor.

If they are authorised by the state prosecutor, advisers may also conduct certain evidentiary procedures.

Records on the delegated task that has been carried out shall be certified by the state prosecutor by his/her signature within 48 hours from the hour it has been carried out.

Head of the basic prosecution office may authorise adviser to represent bills of indictment before the court.

**Civil Servants with Special Technical Knowledge**  
**Article 155**

State prosecution office may have employees such as special educational needs teachers, sociologists, pedagogues, accountants-financial officers or members of other relevant professions with relevant work experience in these areas who shall assist the head of the state prosecution office or the state prosecutor in working on the matters for which technical knowledge of these areas is required.

**Prosecutorial Trainee**  
**Article 156**

Prosecutorial trainee can be a person who graduated from the faculty of law with the VII1 level of educational qualification and who meets general requirements for employment in public authorities.

A separate law shall be applicable to the specific requirements and procedure for employment, duration of the traineeship and training during the traineeship.

**Application of Other Laws**  
**Article 157**

Unless otherwise provided for by this Law, the regulations governing rights, obligations and duties of civil servants and state employees shall apply to the employment and termination of employment of advisers, other civil servants and state employees, salaries and other rights, obligations and duties, employment requirements and requirements for taking the state exam.



## **5. Supervision over Prosecutorial Management**

### **Supervision Article 158**

Supervision over the performance of prosecutorial management tasks shall be exercised by the Ministry of Justice.

While exercising supervision, the Ministry of Justice may not take actions that have impact on the state prosecutor`s decision on the case.

### **Inspection Supervision Article 159**

The Ministry of Justice shall exercise, through the judicial inspection, an inspection supervision over state prosecution offices with regard to organisation of the work in state prosecution offices in accordance with this Law and over implementation of the Rulebook on internal operation of the State Prosecution Service with regard to prosecutorial management, and particularly with regard to:

- 1) work of the clerk`s office and archives office;
- 2) keeping the required official records;
- 3) other tasks related to proper work and operation of the prosecutorial management.

### **Judicial Inspection Article 160**

Judicial inspection shall be performed by the Chief Judicial Inspector and the Judicial Inspector.

A person who has passed the bar exam and having at least eight years of work experience in legal affairs, out of which five years at least after passing the bar exam, may be appointed Chief Judicial Inspector.

A person who has passed the bar exam and having at least six years of work experience in legal affairs, out of which at least three years after passing the bar exam, may be appointed as a judicial inspector.

The Chief Judicial Inspector is classified in the category of expert-managerial staff level 1 in terms of the law governing the rights, obligations and responsibilities of civil servants and employees.

The Judicial Inspector is classified in the category of expert staff level 1, the title of Inspector I in terms of the law governing the rights, obligations and responsibilities of civil servants and employees.

### **Exercising Inspection Supervision Article 161**

Inspection supervision shall be exercised in line with annual supervision plan adopted by the minister of justice by the end of the calendar year for the next year (regular inspection supervision).

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

Annual supervision plan shall be submitted to the state prosecution offices where supervision will take place at the latest by 31 January of the current year.

Extraordinary inspection supervision shall be ordered by decision of the minister of justice, upon the proposal by the supreme state prosecutor, head of an immediately higher state prosecution office or president of the Prosecutorial Council.

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

The Ministry of Justice shall exercise inspection supervision in relation to the citizens` complaints and applications filed with regard to the prosecutorial management tasks.

### **Carrying out Inspection Supervision**

#### **Article 162**

The inspection supervision shall be carried out by gaining direct insight into the documentation, data and the manner of work of the state prosecution office, or by gaining insight into the submitted documentation and data of the state prosecution office.

The head of the state prosecution office shall ensure undisturbed inspection supervision at the state prosecution office or submit requested documentation and data.

#### **Minutes**

#### **Article 163**

Minutes shall be taken on the inspection supervision which shall contain the data on the established facts, irregularities and measures to be taken to remedy the established irregularities and time-limits for taking such measures.

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

If irregularities are established during the inspection supervision, the head of the state prosecution office may submit a written statement concerning the minutes not later than eight days from the day of receiving the minutes.

Minutes on the inspection supervision that has been exercised and statement of the head of the state prosecution office referred to in paragraph 3 of this Article shall be submitted to the head of an immediately higher prosecution office, supreme state prosecutor and Prosecutorial Council.

Head of the state prosecution office shall remedy the established irregularities in the work of the prosecutorial management within the time-limits set in the minutes on the supervision that has been exercised.

Head of the state prosecution office shall inform in writing the Ministry of Justice, head of an immediately higher state prosecution office, supreme state prosecutor and Prosecutorial Council about the taken measures referred to in paragraph 5 of this Article.

## **X DATA PROTECTION**

### **Obligation to Preserve Confidential Data**

#### **Article 164**

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

#### **Data Protection**

#### **Article 165**

Persons referred to in Article 164 of this Law shall not disclose any data on personal, family or property circumstances of physical persons, or on property circumstances of legal entities that they have learnt during the proceedings.

### **Obligation after Termination of Employment**

#### **Article 166**

Obligation to preserve secrecy of data referred to in Articles 164 and 165 of this Law shall also be effective after termination of employment in the state prosecution office.

## **XI SECRETARIAT OF THE PROSECUTORIAL COUNCIL**

### **Secretariat Article 167**

The Secretariat of the Prosecutorial Council shall be set up to carry out technical, financial, administrative, IT, analytical and other tasks of the Prosecutorial Council and tasks of common interest for all state prosecution offices (hereinafter referred to as: the Secretariat).

### **Secretary of the Secretariat Article 168**

The Secretariat shall be managed by the secretary.

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

The secretary of the Secretariat shall be appointed for the term of office of five years.

Proposal for appointment of the secretary of the Secretariat shall contain: name of the candidate, short curriculum vitae and an explanation.

The person to be appointed secretary of the Secretariat shall in addition to general requirements for employment in public authorities also meet the following specific requirements:

- 1) to have graduated from the faculty of law with the VII1 level of educational qualification,
- 2) to have passed judicial exam,
- 3) to have at least ten years of experience,
- 4) to possess organisational skills.

### **Accountability Article 169**

Secretary of the Secretariat shall report to the Prosecutorial Council.

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

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

Appropriate Application

### **Article 170**

Provisions of the law on civil servants and state employees governing senior management staff shall apply accordingly to the employment, rights, obligations and duties of the secretary of the Secretariat.

Regulations governing civil servants and state employees shall apply accordingly to the employment, rights, obligations and duties of the other Secretariat employees.

### **Rulebook on internal organisation and job descriptions' Article 171**

Internal organisation of the Secretariat, number of civil servants and state employees and their job descriptions shall be regulated by the rulebook on internal organisation and job descriptions, in accordance with this Law and regulations governing state administration.

The rulebook referred to in paragraph 1 of this Article shall be adopted by the Prosecutorial Council, upon the proposal by the secretary of the Secretariat, after having previously obtained opinion of the Ministry of Justice and competent authorities in accordance with the law governing rights and obligations of civil servants and state employees.

## **XII RECORDS**

### **Contents of the Records**

#### **Article 172**

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

- 1) personal name, ethnic background if the state prosecutor declares it, address, date and place of birth, gender;
- 2) date of appointment to the office;
- 3) work experience;
- 4) academic title (Master, magistar, doctor of science);
- 5) professional advancement;
- 6) knowledge of a foreign language;
- 7) published scientific and professional papers and other activities in the field of profession;
- 8) report on his/her work (number of cases, quantity and quality of work, exceeding time-limits set by the law);
- 9) score given for his/her work;
- 10) promotion;
- 11) disciplinary liability and dismissal;
- 12) termination of office;
- 13) permission to access confidential data.

State prosecutor shall be entitled to propose that the other data as well be entered into the records referred to in paragraph 1 of this Article and to gain insight into the records and documents on the basis of which the records are kept on him/her.

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.

## **XIII SECURITY TASKS**

### **Organising Security Tasks**

#### **Article 173**

Tasks that involve securing persons, property and facilities of state prosecution offices shall include prevention of illegal actions directed towards persons, facility or property of the state prosecution office, preserving order, prevention of carrying inside the cold weapon and firearms, explosive devices and other hazardous items and substances, as well as destruction or alienation of property.

The tasks referred to in paragraph 1 of this Article shall be carried out by employees at the state prosecution office responsible for security and legal entities authorised to carry out protection and security tasks.

The service for prosecutorial security tasks may be set up for all the state prosecution offices at the Supreme State Prosecution Office.

### **Requirements for Carrying out Security Tasks**

#### **Article 174**

Tasks that involve securing the state prosecution offices may be carried out by the person who, in addition to general requirements prescribed for employment in public authorities, also meets the following requirements:

- 1) he/she has the III and IV levels of educational qualification and meets requirements for holding and carrying weapons in accordance with the law governing weapons;
- 2) he/she completed the training programme for carrying out protection tasks;
- 3) in the year preceding the year in which he/she is employed, he/she was not sanctioned for the misdemeanour that involves disturbing public order with elements of violence, the misdemeanour prescribed by the law governing weapon

or misdemeanour prescribed by the law governing protection of persons and property;

- 4) there are no other circumstances that would indicate that there is abuse or unlawful carrying out of the protection tasks (frequent or excessive consumption of alcohol, psychoactive substances, and conflict or incident prone behaviour).

Prior check of whether the requirements referred to in paragraph 1 of this Article are met shall be conducted by the administrative authority competent for police affairs, and, if necessary, in cooperation with the National Security Agency, subject to consent of the person for which the check is performed.

### **Security Tasks and Authorisations**

#### **Article 175**

Security tasks shall be carried out by using the following coercion means: physical strength, batons, means of restraint, chemical substances and firearms (gun), under the conditions laid down by the law governing protection of persons and property.

While carrying out security tasks, the person who carries out security tasks shall be authorised to:

- 5) establish identity of persons coming in and out of the state prosecution office;
- 6) carry out inspection of persons coming in and out of the state prosecution office and of their belongings;
- 7) give warnings and issue orders;
- 8) prohibit entry to the persons carrying cold weapon or firearms or to those for whom there is reasonable suspicion that they carry the hazardous substances inside, except for the employees who come to the state prosecution office for the purpose of executing work orders and who need to have weapon or other hazardous substances in order to be able to execute the tasks they have been given;
- 9) detain the person caught in committing a criminal offence until surrendering him/her to the administrative authority competent for police affairs;
- 10) remove from the state prosecution office the persons who disturb operation of the state prosecution office;
- 11) carry out other tasks and execute orders given by the head of the state prosecution office in relation to securing persons, property and facility of the state prosecution office.

Security tasks and authorisations referred to in paras. 1 and 2 of this Article shall be carried out in accordance with the law governing protection of persons and property.

### **Acquisition of Weapon**

#### **Article 176**

If the security tasks are carried out by the security officer referred to in Article 174 of this Law, the state prosecution office shall obtain the permit to acquire weapon in accordance with provisions of the law governing weapon which regulate issuance of the permit to acquire weapon to the legal entity.

Provisions of the regulations governing maintenance, keeping and registration of the weapon shall apply to the maintenance, keeping and registration of the weapon acquired in accordance with paragraph 1 of this Article.

### **Official Identity Card and Uniform**

#### **Article 177**

Security officer referred to in Article 174 of this Law shall have an official identity card issued by the state prosecution office and an official uniform.

The manner of issuing the official identity card and the form of official identity card referred to in paragraph 1 of this Article, as well as the appearance of the uniform shall be prescribed by the Ministry of Justice.

**Joint Security**  
**Article 178**

Joint performance of these tasks may be organised in order to secure persons, property and facilities referred to in Article 173 paragraph 1 of this Law for the state prosecution offices that are located in the same building, as well as for the state prosecution offices and courts that are located in the same building.

**XIV FUNDING**

**Funds for Operations**  
**Article 179**

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

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

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

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 operations of the State Prosecution Service and Prosecutorial Council is debated.

**Issuer of Orders for Disbursement of Funds**  
**Article 180**

Supreme state prosecutor shall issue orders for disbursement of funds at the Supreme State Prosecution Office, whereas heads of state prosecution offices shall do so at the state prosecution offices.

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

The authorisation referred to in paragraph 2 of this Article may be delegated by the president of the Prosecutorial Council to the secretary of the Secretariat of the Prosecutorial Council.

**XV TRANSITIONAL AND FINAL PROVISIONS**

**Time-limit for Adoption of Secondary Legislation**  
**Article 181**

Secondary legislation for implementation of this Law shall be adopted at the latest within six months from the day on which this Law enters into force.

**Time-limit for Public Advertisement**  
**Article 182**

Public advertisement for appointment of the secretary of the Secretariat shall be published at the latest within 30 days from the day on which this Law enters into force.

The rulebook on internal organisation and job descriptions shall be adopted within 30 days from the day of appointment of the secretary of the Secretariat.

**Take-over of Tasks**  
**Article 183**

Within 30 days from the day of appointment of the secretary, the Secretariat shall take over tasks from the Supreme State Prosecution Office, employees carrying out these tasks, as well as the equipment, funds and official documentation.

**Term of Office of the Prosecutorial Council**  
**Article 184**

Prosecutorial Council elected in accordance with 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 continue its work until expiry of its term of office.

**Time-limit for Election of State Prosecutors**

**Article 185**

State prosecutors shall be elected at the latest by 1 July 2015 in accordance with Article 135 paras. 3 and 4 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).

**Postponement of Implementation**

**Article 186**

Implementation of the provisions of Articles 49 through 79 and Articles 86 through 100 of this Law shall begin on 1 January 2016.

Until the day of the beginning of implementation of the provisions referred to in paragraph 1 of this Article, Articles 24 through 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 implemented.

**Deferred application**

**Article 186a**

Article 16a of this Law shall start to apply as of the day of accession of Montenegro to the European Union.

**Beginning of Carrying out Security Tasks**

**Article 187**

Performance of the tasks that involve securing of persons, property and facilities in accordance with Articles 173 through 178 of this Law shall start on 1 July 2015.

**Repealing**

**Article 188**

On the day this Law enters into force 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.

**Entry into Force**

**Article 189**

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

## **DRAFT AMENDMENTS TO THE LAW ON THE STATE PROSECUTION SERVICE (PROPOSED BY MEMBERS OF PARLIAMENT OF MONTENEGRO)**

### **Article 1**

In the Law on State Prosecution Office (“Official Gazette of Montenegro” no. 11/2015, 42/2015, 80/2017, 10/2018 and 76/2020) in the article 11 paragraph 1 words: “Special State Prosecution Office” are replaced with words: “Prosecution Office for Organized Crime and Corruption”.

In paragraph 3 words: “Special State Prosecution Office” are replaced with words: “Prosecution Office for Organized Crime and Corruption”.

### **Article 2**

Article 13 is changed as follows:

“Prosecution Office for Organized Crime and Corruption”

Prosecution Office for Organized Crime and Corruption performs activities in accordance with special law which regulates conditions for election of the head and state prosecutors in the Prosecution Office for Organized Crime and Corruption, competence and organization of the Prosecution Office for Organized Crime and Corruption and other matters of significance for the work.”

### **Article 3**

In article 17 paragraph 2 is changed as follows:

“Work of the basic and high State prosecution offices is managed by heads of State prosecution offices, Prosecution Office for Organized Crime and Corruption is managed by the Head of the Prosecution Office for Organized Crime and Corruption, and work of the Supreme State Prosecution Office is managed by Supreme State Prosecutor.”

### **Article 4**

In article 18 paragraph 3 point 1 is changed as follows:

“1) four state prosecutors who have permanent function and at least five years of work experience in performing prosecutorial function and meaning one each from the Supreme State Prosecution Office and high State Prosecution Offices, and two from basic State Prosecution Offices, who are elected and dismissed by the Conference of State prosecutors;”.

In point 2 word: “four” is replaced by the word: “five”.

Paragraph 5 is changed as follows:

“The composition of the Prosecutorial Council is proclaimed by the President of Parliament of Montenegro”.



### **Article 5**

In article 20 paragraph 4 is deleted.

Earlier paragraph 5 is becoming paragraph 4.

### **Article 6**

In article 21 paragraph 1 is changed as follows:

“Commission for ethical codex of the state prosecutors has president and two members. Prosecutorial Council is electing president and one member of the Commission for ethical codex of the state prosecutors among the members of Prosecutorial Council who are not state prosecutors, and one member is elected by expanded session of the Supreme State prosecution office among state prosecutors.”.

### **Article 7**

In article 24 paragraph 1 is changed as follows:

“Proposal of the candidate for the election of the members of the Prosecutorial Council among state prosecutors in the Supreme State Prosecution Office and high State prosecution offices is determined:

- 1) on the session of the Supreme State Prosecution Office on which three candidates from that Prosecution office are proposed;
- 2) on the sessions of the high State Prosecution Offices where two candidates each from those prosecution offices are being proposed.”.

In paragraph 2 word: “nine” is replaced with word “seven”.

### **Article 8**

In article 25 paragraph 3 is changed as follows:

“For the members of the Prosecutorial Council two candidates from the list referred to in article 24 paragraph 2 of this Law are being elected, meaning one from the Supreme State Prosecution Office, one from the high State prosecution offices and two candidates from the list referred to in article 24 paragraph 5, meaning paragraph 6 of this Law, who get the highest number of votes.”

In paragraph 4 word: “five” is replaced with word: “four”, and word: “two” is replaced with word: “three”.

Paragraph 5 is changed as follows:

“If there are several candidates with the same number of votes, based on which they can go to the second round of voting, list of those candidates is being made, where the voting is being repeated, and from one State Prosecution Office only one candidate can be elected, with the exception of the basic State Prosecution Offices from which two candidates are being elected.”

### **Article 9**

In article 26 paragraph 1 word: “ten” is replaced with word: “eight”.

**Article 10**

In article 30 paragraph 7 is deleted.

**Article 11**

In article 34 after paragraph 3 another paragraph is being added as follows:

“Upon the request of at least three members of the Prosecutorial Council president of the Prosecutorial Council is obliged to convoke the session with proposed agenda, at the latest within seven days from the day of filing the request.”

**Article 12**

In article 48 paragraph 3 after words: “Supreme state prosecutor” full stop is inserted, and the words: “among state prosecutors from the Supreme State Prosecution Office.”, are deleted.

After paragraph 3 three new paragraphs are added as follows:

“Person that fulfils the conditions from the article 43 of this Law may be determined as acting Supreme state prosecutor.

Acting Supreme state prosecutor is determined for the period of six months.

In case that within the deadline referred to in paragraph 5 of this article Supreme state prosecutor is not elected, same person may be determined as acting Supreme state prosecutor one more time.”

**Article 13**

In article 108 paragraph 6 at the end of the point 4 full stop is deleted and semicolon is inserted.

After point 4 another point is being added as follows:

“5) acts on the contrary to legally prescribed competences, as well as when he/she does not fulfil legally prescribed obligations.”

**Article 14**

In article 125 at the end of point 10 full stop is deleted and semicolon is inserted.

After point 10 another point is added as follows:

“11) acts in the contrary to legally prescribed competences, as well as when he/she is not fulfilling obligations prescribed by the law.”

**Article 15**

In article 131 paragraph 4 point 1 words: “Chief special prosecutor” are replaced with words: “Head of Prosecution Office for Organized crime and Corruption”.

Point 2 is changed as follows:

“2) Head of Prosecution Office for Organized crime and Corruption for state prosecutors from that Prosecution office;”

### **Article 16**

In article 133 paragraph 1 words: "Special state prosecution office" are replaced with words: "Prosecution Office for Organized crime and Corruption".

In paragraph 3 words: "Special state prosecution office" are replaced with words: "Prosecution Office for Organized crime and Corruption".

### **Article 17**

In article 134 paragraph 1 words: "Special state prosecution office" are replaced with words: "Prosecution Office for Organized crime and Corruption".

### **Article 18**

In article 146 words: "Special State prosecution office" is replaced with words: "Prosecution Office for Organized Crime and Corruption".

### **Article 19**

In article 147 paragraph 5 words: "Chief special prosecutor" are replaced with words: "Head of Prosecution Office for Organized Crime and Corruption".

Paragraph 6 is changed as follows:

"Supreme state prosecutor and Head of Prosecution Office for Organized crime and Corruption are obliged to participate in the work of the session upon the invitation of the Parliament of Montenegro, inquiry committee and competent working bodies for matters of judiciary, corruption and security."

### **Article 20**

Article 164 is changed as follows:

"Obligation of keeping secret data

Heads of State prosecution offices, state prosecutors, civil servants and employees in the State Prosecution Office are obliged to keep secret data, regardless of the manner they found out about them, in accordance with the law that regulates data secrecy."

Mandate of the Prosecutorial Council

### **Article 21**

On the day of entering into force of this Law, mandate of the existing members of the Prosecutorial Council terminates.

Exceptionally from the deadlines stated in articles 23, 24 and 25 of this Law, election of the members of the Prosecutorial Council among the state prosecutors will be enforced within 45 days from the day of entering into force of this Law.

Competent working body of the Parliament will announce public call for the election of the members of the Prosecutorial Council among distinguished lawyers within eight days from the day of entering into force of this Law.

**Article 22**

This Law will enter into force on the eighth day form the da of being published in the "Official Gazette of Montenegro".

## **ADDITIONAL DRAFT AMENDMENTS TO THE LAW ON THE STATE PROSECUTION SERVICE (PROPOSED BY THE GOVERNMENT OF MONTENEGRO)**

After Article 6, a new Article is proposed, reading as follows:

Article\_\_\_\_\_

In Article 22, after paragraph 3, a new paragraph shall be added, reading as follows:  
„The session referred to in paragraph 3 of this Article may be held by determining the electronic presence of members and reaching decisions electronically. "  
The present paragraph 4 shall become paragraph 5.“

Article\_\_\_\_\_

In Article 8 of the Proposal for the Law, so as for paragraph 5 to be more precise it is proposed to read as follows:

"If there are several candidates with the same number of votes, which make them eligible for the second round of voting, a list of those candidates shall be made, where the voting is repeated with possibility of only one candidate elected from one state prosecutor's office, with the exception of basic prosecutor's offices where two candidates shall be selected, provided that they are not from the same basic state prosecutor's office ”.

Article 9 of the Proposal for the Law is to be more precise reading as follows:

Article 26 shall be replaced by the following:

“A person with at least eight years of experience in law and who has earned personal and professional reputation, if he/she is not convicted of an offence that makes him/her unworthy of discharging prosecutorial duties in accordance with this Law and is not a pension beneficiary may be elected a Prosecutorial Council member from among eminent lawyers. “

In relation to Article 10, the need to delete paragraph 7 in Article 30 of present Law should be considered, in terms of existence of an appropriate procedure in which a member of the Prosecutorial Council should be dismissed for unprofessional and unconscientious work, in order to provide him/her with the right to defense and remedy.

After Article 11 a new Article is proposed, wording as follows:

Article\_\_\_\_\_

In Article 43 paragraph 1, item 2 shall be amended by the following:

“2) to have work experience of at least 10 years as a state prosecutor or judge, or at least 15 years in other duties in the field of law;

Article 12 of the Proposal for the Law is to be precised so as to read as follows:

Article 12

In Article 48, paragraph 3 shall be amended reading as follows:

“In the case of termination of function or dismissal of the Supreme State Prosecutor Prosecutorial Council shall determine Acting Supreme State Prosecutor among the heads of the state prosecutors or state prosecutors meeting the requirements from the Article 43 of this Law.”

After paragraph 3, three new paragraphs shall be added reading as follows:

„The Prosecutorial Council shall publish a public call to all state prosecutor's offices for the application of candidates for the position of acting Supreme State Prosecutor within five days from the day of issuing the public call.

The Prosecutorial Council shall conduct an interview with candidates who meet the requirements referred to in paragraph 4 of this Article within five days from the day the application deadline expires.

The Acting Supreme State Prosecutor shall be appointed for a period of six months, with the same person being appointed Acting Supreme State Prosecutor no more than twice. ”

After Article 12, we propose three new articles, reading as follows:

Article \_\_\_\_\_

In Article 50 paragraph 3, the words “15 years“ shall be replaced by the following: „12 years“.

Paragraph 4 shall be amended as follows:

“Notwithstanding paras. 2 and 3 above, to be elected to three positions of the state prosecutor in the high state prosecution office or supreme state prosecution persons have to have the experience of working as judges, state prosecutors, attorneys-at-law, notaries, and professors of law science or other jobs in the field of law for at least 12 years for the supreme state prosecution office or if elected to the high state prosecution office persons with experience of working as judges, state prosecutors, attorneys-at-law, notaries, and professors of law science or other jobs in the field of law for at least 10 years. “

Article \_\_\_\_\_

Article 84 shall be amended reading as follows:

“In the event of restructuring of the State Prosecution Service which leads to decreasing or dissolving a number of state prosecutors` post, the Prosecutorial Council may transfer the state prosecutor to another state prosecution office without his/her consent, especially taking into account the evaluation of his/her work by the public prosecutor in accordance with this law, the length of the performance of prosecutorial office, his/her place of residence and family situation of the State Prosecutor. “

Article \_\_\_\_\_

In Article 103 paragraph 1, point 3 shall be amended reading as follows:

“by fulfilment of requirements for old age pension, in accordance with the Article 17 of the Law on Pension and Disability Insurance.”

At the end of point 4, the full stop shall be deleted and replaced by a semicolon.

After point 4 a new point shall be added reading as follows:

“5) in case of termination of the state prosecutor's office or decreasing of the number of state prosecutors refuses to be transfered ”.

Article 13 of the Proposal for the Law is to be precised so as to read as follows:

Article 13

In Article 108, paragraph 6, a full stop shall be deleted at the end of point 4 and a semicolon inserted.

"5) clearly, contrary to the law, he/she takes or does not take action in a specific case, even though he/she knew or could have known and was obliged to know that such actions would seriously violate the rights of others. "

Article 14 of the Proposal for the Law is to be precised so as to read as follows:

Article 14

In Article 125, a full stop shall be deleted at the end of point 10 and a semicolon inserted.

A new point shall be added after point 10 wording as follows:

"11) clearly contrary to the law, he/she takes or does not take action in a specific case, even though he/she knew or could have known and was obliged to know that such actions would seriously violate the rights of others or the reputation of the state prosecutor's office "

Article 21 of the Proposal for the Law is to be precised so as to read as follows:

Article 21

After Article 184, five new articles shall be added reading as follows:

„Time -limit for election of the Prosecutorial Council  
Article 184a

The term of office of the present members of the Prosecutorial Council shall cease on the day this Law enters into force.

The members of the Prosecutorial Council referred to in paragraph 1 of this Article shall continue to perform their duties until the election and proclamation of new members of the Prosecutorial Council.

Notwithstanding the deadlines specified in Articles 23, 24 and 25 of this Law, the election of members of the Prosecutorial Council from among state prosecutors shall be made within 45 days from the day this Law enters into force.

The competent working body of the Parliament shall announce a public call for the election of members of the Prosecutorial Council from among eminent lawyers within eight days from the day this Law enters into force.

The procedures for the election of the heads of state prosecutor's offices and state prosecutors initiated but not completed by the entry into force of this law, shall be suspended.

Time-limit for election of the Acting Supreme State Prosecutor  
Article 184b

The decision on appointing the acting Supreme State Prosecutor shall be made within 15 days from the day of the election of the Prosecutorial Council in accordance with this Law.

Deadline for election of the Commission for the Code of Ethics of State Prosecutors  
Article 184c

The Commission for the Code of Ethics of State Prosecutors shall be elected within 15 days from the day of the election of the Prosecutorial Council in accordance with this Law.

# THE LAW ON THE SPECIAL STATE PROSECUTOR'S OFFICE (CURRENT VERSION)

(Official Gazette of Montenegro no. 10/2015 and 53/2016)

## I BASIC PROVISIONS

### Scope of the Law

#### Article 1

This Law shall govern organisation and jurisdiction of the Special State Prosecutor's Office, requirements and procedure for election of the chief special prosecutor and special prosecutors and relationship with other state authorities and state administrative authorities, as well as the other matters relevant for operation of the Special State Prosecutor's Office.

### Special State Prosecutor's Office

#### Article 2

The Special State Prosecutor's Office shall be established for the territory of Montenegro within the State Prosecution Service which is a unique and autonomous authority.

The Special State Prosecutor's Office shall take all the actions falling within its jurisdiction before the Special Division of the High Court in Podgorica.

The seat of the Special State Prosecutor's Office shall be in Podgorica.

### Jurisdiction

#### Article 3

The Special State Prosecutor's Office shall have jurisdiction for the prosecution of criminal perpetrators as follows:

- 1) organised crime, regardless of duration of the prescribed punishment;
- 2) high-level corruption;
  - a) if a public official committed the following criminal offences:
    - abuse of office,
    - fraud in the conduct of an official duty,
    - trading in influence,
    - inciting to engage in trading in influence,
    - passive bribery,
    - active bribery,
  - b) if the proceeds of crime exceeding the amount of EUR 40,000 have been obtained by committing the following criminal offences:
    - abuse of position in business undertakings,
    - abuse of authority in economy,
  - 3) money laundering;
  - 4) terrorism and
  - 5) war crimes.
  - 6) breach of electoral rights prescribed in Title sixteen of the Criminal Code of Montenegro.

A public official, within the meaning of this Law, shall be a person who is elected, nominated or appointed to a state authority, state administrative authority, local self-government authority, local administration authority (hereinafter referred to as: official authority), independent authority, regulatory authority, public institution, public enterprise or to any other business organisation or legal entity that exercises public powers or undertakes activities of public interest or is owned by the state, as well as a person whose election, nomination and appointment are subject to the consent of the official authority.



## **Managing the Special State Prosecutor`s Office**

### **Article 4**

The tasks involving prosecution of the perpetrators of criminal offences referred to in Article 3 of this Law shall be carried out by the chief special prosecutor as the head of the state prosecutor`s office and special prosecutors as state prosecutors, whose number shall be established by the Prosecutorial Council in accordance with the Law on State Prosecution Service.

The chief special prosecutor shall be accountable for his/her work and work of the Special State Prosecutor`s Office to the supreme state prosecutor, whereas special prosecutors shall be accountable for their work to the chief special prosecutor.

## **Institutional Supervision**

### **Article 5**

Supervision over operation of the Special State Prosecutor`s Office shall be exercised by the Supreme State Prosecutor`s Office in accordance with the supervision plan established by the supreme state prosecutor in accordance with the Law on State Prosecution Service.

## **Funds for Operation**

### **Article 6**

Funds for operation of the Special State Prosecutor`s Office shall be allocated in a budget item envisaged for the State Prosecution Service.

## **Relationship between Laws**

### **Article 7**

Provisions of the Law on State Prosecution Service shall apply accordingly to the matters that are not regulated under this Law.

## **Use of Gender Sensitive Language**

### **Article 8**

The terms used in this Law for physical entities in masculine gender shall mean the same terms in feminine gender.

## **II ORGANISATION OF THE SPECIAL STATE PROSECUTOR`S OFFICE**

### **Internal Organisation**

#### **Article 9**

The Special State Prosecutor`s Office shall have divisions and services.

Divisions shall be organised to carry out tasks involving criminal prosecution, financial investigations, analytics and research and international cooperation.

Services may be set up for public relations, as well as for the purpose of carrying out professional, administrative and technical tasks.

### **Divisions**

#### **Article 10**

The Division for Criminal Prosecution Tasks shall carry out tasks involving preliminary inquiry, investigation, as well as the tasks involving cooperation with other authorities.

The Division for Financial Investigations shall carry out tasks involving collection of data and their analysis for the purpose of establishing the exact value of the proceeds of crime, detecting assets obtained by committing a criminal offence, while it also takes measures to ensure that the assets are confiscated.

The Division for Analytics and Research shall carry out tasks involving creation and maintenance of technical conditions for the exchange of and access to data in the databases of other state authorities, as well as statistical reporting and monitoring of cases.

The Division for International Cooperation shall carry out tasks involving cooperation with the competent authorities and bodies of other states and international organisations, appointment of members of the joint investigative team which is set up on the basis of an international treaty for the purpose of criminal prosecution for the criminal offences that fall within jurisdiction of the Special State Prosecutor's Office.

### **Activity Report**

#### **Article 11**

The chief special prosecutor shall submit a six-month activity report on the Special State Prosecutor's Office to the supreme state prosecutor.

The chief special prosecutor shall submit activity report on the Special State Prosecutor's Office to the Prosecutorial Council at the latest by 10 February of the current year for the previous year and shall post it, within the same time-limit, on the website of the Special State Prosecutor's Office.

At the request of the supreme state prosecutor, or of the Prosecutorial Council, the chief special prosecutor shall submit separate or periodic reports within the time-limit set by the supreme state prosecutor or by the Prosecutorial Council.

The chief special prosecutor shall be accountable for accuracy of the data contained in the reports.

Report referred to in paragraph 2 of this Article is an integral part of the annual report on work which Prosecutorial Council shall submit to the Parliament, in accordance with the law.

### **III ELECTION OF THE CHIEF SPECIAL PROSECUTOR AND SPECIAL PROSECUTOR**

#### **Requirements for Election of the Chief Special Prosecutor**

##### **Article 12**

To the position of the chief special prosecutor may be elected a person who meets general work requirements for state administration, and who:

- 1) graduated from law school with the VII1 level of educational qualification;
- 2) passed judicial exam; and
- 3) has at least 12 years of work experience as state prosecutor, judge or attorney.

#### **Requirements for Election of the Special Prosecutor**

##### **Article 13**

To the position of the special prosecutor may be elected a person who meets general work requirements for state administration, and who:

- 1) graduated from law school with the VII1 level of educational qualification;
- 2) passed judicial exam; and
- 3) has at least ten years of work experience as state prosecutor, judge or attorney.

#### **Public Advertisement**

##### **Article 14**

The Prosecutorial Council shall elect the chief special prosecutor and special prosecutors on the basis of a public advertisement.

The Prosecutorial Council shall advertise vacancies for the chief special prosecutor, i.e. special prosecutor in the Official Gazette of Montenegro and in one print media with the head office in Montenegro.

The time-limit for candidates to file their applications shall be 15 days from the day of publishing the advertisement referred to in paragraph 2 of this Article.

#### **Acting upon Applications**

##### **Article 15**

Applications to the public advertisement shall be submitted together with the proofs of fulfilling the requirements for election to the position of the chief special prosecutor, i.e. special prosecutor to the Prosecutorial Council within 15 days from the day the advertisement has been published.

The Prosecutorial Council shall dismiss untimely and incomplete applications.

The applicant may initiate administrative dispute against the decision to dismiss untimely and incomplete application.

### **List of Candidates**

#### **Article 16**

The Prosecutorial Council shall compile the list of candidates who meet the requirements set out by the law for election to the position of the chief special prosecutor, i.e. special prosecutor.

### **Criteria**

#### **Article 17**

The criteria for election to the position of the chief special prosecutor and special prosecutors shall be expert knowledge and competence to discharge prosecutorial functions.

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

- 1) professional development (continuous training and other forms of training);
- 2) published scientific and professional papers and other activities in the field of profession.

Competence to discharge prosecutorial function shall be evaluated on the basis of the following sub-criteria:

- 1) work experience to work in criminal cases;
- 2) quantity and quality of work;
- 3) motivation to work in the Special State Prosecutor`s Office;
- 4) good communication skills;
- 5) ability to make decisions;
- 6) understanding the role of state prosecutor in society.

### **Criteria Evaluation**

#### **Article 18**

Expert knowledge of the candidate for the chief special prosecutor i.e. special prosecutor shall be evaluated on the basis of proofs submitted along with the candidate`s application.

Competence to discharge prosecutorial function of the candidate for the chief special prosecutor, i.e. special prosecutor shall be evaluated on the basis of the opinion and the interview.

### **Opinion**

#### **Article 19**

The Prosecutorial Council shall obtain opinion on professional competences of the candidate referred to in Article 16 of this Law for discharging prosecutorial function, as follows:

- from the enlarged session of the Supreme State Prosecutor`s Office for the state prosecutor;
- from the enlarged session of the Supreme Court of Montenegro for the judge;
- from the steering board of the Bar Association of Montenegro for the attorney.

The opinion referred to in paragraph 1 of this Article shall contain data on work experience, quantity and quality of work of the candidate for chief special prosecutor, i.e. special prosecutor.

### **Interview**

#### **Article 20**

The Prosecutorial Council shall conduct interview with candidates for the chief special prosecutor, i.e. special prosecutor during which the following shall be evaluated:

- 1) motivation to work in the Special State Prosecutor`s Office;
- 2) good communication skills;
- 3) ability to make decisions;
- 4) understanding the role of state prosecutor in society.

### **Decision Article 21**

After the interview referred to in Article 20 of this Law, on the basis of the documents submitted along with the application and opinion referred to in Article 19 of this Law, the Supreme State Prosecutor shall submit to the Prosecutorial Council a written proposal which must be explained for the election of the chief special prosecutor.

In proposing a candidate for the chief special prosecutor Supreme State Prosecutor will take into account the criteria referred to in Article 17 of this Law.

The Prosecutorial Council shall elect the chief special prosecutor by the majority of votes of all members.

Should the Prosecutorial Council in accordance with paragraph 1 of this Article fails to elect a proposed candidate for the chief special prosecutor or in case the Supreme State Prosecutor fails to propose any of the candidates, the vacancy public advertisement shall be repeated.

On the basis of the documents submitted along with the application, the opinion referred to in Article 19 of this Law and the interview referred to in Article 20 of this Law, the Prosecutorial Council shall elect special prosecutors in accordance with the criteria referred to in Article 17 of this Law.

### **Term of Office Article 22**

The chief special prosecutor shall be elected for a term of office of five years.

The special prosecutor shall be elected to serve life tenure if he/she has worked for at least four years as the state prosecutor or as the judge.

The special prosecutor who has not worked as the state prosecutor or as the judge for at least four years shall be elected for a period of four years.

Provisions of the Law on State Prosecution Service governing election of state prosecutors to serve life tenure shall apply accordingly to the procedure for election of the special prosecutor referred to in paragraph 3 of this Article to serve life tenure.

### **Termination of the Term of Office Article 23**

The same person may be elected to the position of the chief special prosecutor two times at the most.

The chief special prosecutor shall continue to work as special prosecutor at the Special State Prosecutor's Office upon expiry of the period which he/she has been elected for and upon termination of office of the chief special prosecutor when he/she so requested himself/herself.

### **Reassignment of State Prosecutors Article 24**

The Prosecutorial Council may, at the chief special prosecutor's request, reassign the state prosecutor to the Special State Prosecutor's Office for a certain period of time in order for him/her to carry out tasks of urgent nature or in the event of an increased workload.

The reassignment referred to in paragraph 1 of this Article shall be carried out subject to the written consent of the state prosecutor being reassigned and may last up to two years.

The Prosecutorial Council may, at the chief special prosecutor's request, reassign the state prosecutor to the Special State Prosecutor's Office for a certain period of time in order for him/her to work on a specific case.

Reassignment to the Special State Prosecutor's Office referred to in paragraph 3 of this Article shall last up to one year and may be extended under the same conditions.

During the work in the Special State Prosecutor's Office, the reassigned state prosecutor referred to in paras. 1 and 3 of this Article shall be entitled to the salary that equals the special prosecutor's salary and also to the housing and travel expenses.

The salary and housing and travel expenses incurred as a result of reassignment to the Special State Prosecutor's Office shall be paid by the Special State Prosecutor's Office.

**Appropriate Application**  
**Article 25**

Provisions of the Law on State Prosecution Service shall apply accordingly to taking an oath and taking an office, rights of the candidate and court protection of the candidate.

**IV RELATIONSHIP BETWEEN THE SPECIAL STATE PROSECUTOR` S OFFICE AND POLICE DIRECTORATE**

**Police Department**  
**Article 26**

Police tasks related to the criminal offences referred to in Article 3 of this Law shall be carried out by police officers employed in a special organisational unit of the administrative authority responsible for police work with the Special State Prosecutor` s Office (hereinafter referred to as: Police Department).

The head of the Police Department may be a person who holds the VII1 level of educational qualification and has at least eight years of work experience in the positions in police profession for which a university degree is required.

The head of the Police Department shall be appointed by the director of the administrative authority responsible for police affairs (hereinafter referred to as: Police Directorate) subject to the consent of the chief special prosecutor.

Police officer in the Police Department may be a person who holds the VII1 level of educational qualification and has at least four years of work experience in the positions in police profession for which a university degree is required.

Exceptionally from paragraph 4 of this Article, the police officer that holds the: VII1 level of educational qualification, who has at least two years of work experience in the positions for which a university degree is required and who passed state exam to be eligible to work in state authorities may also be employed in the Police Department.

**Accountability of the Police Officer**  
**Article 27**

The head and police officer from the Police Department shall execute order given by the chief special prosecutor, i.e. special prosecutor.

If the police officer fails to execute order given by the special prosecutor in the case he/she has been assigned, the chief special prosecutor shall file a motion to initiate disciplinary proceedings against him/her in accordance with the law governing interior affairs.

The head and police officer may not be reassigned to another position or to carry out other tasks in the Police Directorate without the chief special prosecutor` s consent.

**V INVESTIGATORS**

**Investigators**  
**Article 28**

For the purpose of investigating criminal offences that fall within jurisdiction of the Special State Prosecutor` s Office, the chief special prosecutor may delegate certain tasks to the civil servants employed in administrative authorities responsible for tax affairs, customs affairs, affairs involving prevention of money laundering and terrorist financing and inspection affairs (hereinafter referred to as: investigators).

At the chief special prosecutor` s request, the heads of authorities referred to in paragraph 1 of this Article shall submit the list of civil servants who have relevant work experience and competences for carrying out tasks of supervision and control and have other technical knowledge that is relevant for investigation into criminal offences falling within jurisdiction of the Special State Prosecutor` s Office.

Upon the chief special prosecutor's proposal, the supreme state prosecutor shall compile the list of investigators and submit it to the heads of authorities referred to in paragraph 1 of this Article and to the chief special prosecutor.

The chief special prosecutor may conduct interview with the civil servants referred to in paragraph 2 of this Article before making the proposal referred to in paragraph 3 of this Article.

### **Powers and Accountability of Investigators**

#### **Article 29**

The investigator shall take actions by executing the special prosecutor's order and following his/her instructions, in accordance with the rules of his/her profession, as well as in accordance with the Criminal Procedure Code.

The investigator shall take actions referred to in paragraph 1 of this Article within the time-limit set by the special prosecutor and he/she may not notify his/her immediate superior about the actions taken.

If the investigator, without any justifiable reason, fails to act in accordance with or acts in contravention of the special prosecutor's order and instructions, the special prosecutor shall notify the investigator's immediate superior thereof.

Failure to execute the special prosecutor's order and acting in contravention of the special prosecutor's order and instructions within the meaning of paragraph 3 of this Article shall constitute severe breach of official duty by the investigator.

In the event referred to in paragraph 3 of this Article, the immediate superior shall initiate disciplinary proceedings against the investigator.

The investigator shall submit his/her assets and income, as well as the assets and income of his/her spouses and common law partners and children (hereinafter referred to as: asset declaration sheet) in accordance with the law governing prevention of corruption.

### **Special Investigative Team**

#### **Article 30**

In particularly complex cases the chief special prosecutor may form a special investigative team which, besides special prosecutor, may also comprise police officers from the Police Department, investigators and civil servants from another competent authority.

The head of investigation team shall be special prosecutor, while members of investigative team shall execute his/her order and act under his/her supervision.

### **Relationship with Administrative Authorities**

#### **Article 31**

When, in carrying out the tasks falling within his/her jurisdiction, the special prosecutor deems it necessary he/she may request from administrative authorities responsible for tax affairs, customs affairs, affairs involving money laundering and terrorist financing and inspection affairs as well as from the other state administrative authorities to control operations of a legal or physical entity, obtain certain documents, data and to take other actions falling within their mandate, in accordance with the regulations governing the mandate of these authorities.

### **Obligation to Submit Data**

#### **Article 32**

When, in carrying out the tasks falling within its jurisdiction, the administrative authority responsible for the prevention of money laundering and terrorist financing has established on the basis of the data, information and documents obtained in accordance with the law that there are grounds for suspicion that funds, income and assets have been obtained by committing a criminal offence referred to in Article 3 of this Law it shall submit these data to the Special State Prosecutor's Office within three days.

### **Obligations of the Banks**

#### **Article 33**

If there are grounds for suspicion that a person disposes of or has disposed of an income in his/her bank accounts which was generated by committing criminal offences referred to in Article 3 of this Law, while such income is relevant for preliminary inquiry and investigation

and is subject to seizure, the special prosecutor shall request from the bank to submit data on these accounts and on the account balance.

The bank shall submit the data referred to in paragraph 1 of this Article within the time-limit set by the special prosecutor.

The request referred to in paragraph 1 of this Article shall contain statutory title of the criminal offence, short factual description and data on physical or legal entity in relation to which the request is submitted, as well as a more detailed description of the measure or action which is requested.

### **Binding Nature of the Investigative Judges` Decisions on Banks** **Article 34**

If there are grounds for suspicion that a person disposes in his/her bank account of an income generated by committing criminal offences referred to in Article 3 of this Law the investigative judge may, at the special prosecutor`s request, bind the bank by a decision to monitor payment transactions in a person`s accounts and to report on a regular basis, during the period determined for monitoring payment transactions, to the special prosecutor about the transactions effected in the account which is monitored.

For failure to enforce the decision referred to in paragraph 1 of this Article, the investigative judge may fine a responsible person in the bank by up to EUR 5,000, and the bank by up to EUR 50,000.

If even after the fine referred to in paragraph 2 of this Article has been imposed the bank still fails to enforce the investigative judges` decision, the imprisonment sentence may be imposed on a responsible person in the bank until such decision is enforced, and for the period of up to two months.

An appeal may be lodged against the decision referred to in paras. 1, 2 and 3 of this Article within 48 hours from the hour when the decision has been received.

The panel of the competent court referred to in Article 24 paragraph 7 of the Criminal Procedure Code shall decide on the appeal referred to in paragraph 4 of this Article. An appeal against the decision to impose imprisonment sentence does not stay enforcement of the decision.

### **Submission of Data** **Article 35**

The data from the records of state authorities and state administrative authorities that are relevant for initiating and conducting criminal proceedings for criminal offences referred to in Article 3 of this Law shall be submitted at the request of the Special State Prosecutor`s Office through the information system for electronic data exchange in accordance with the law governing electronic government.

In submission of the classified data that are relevant for initiating and conducting criminal proceedings for criminal offences referred to in Article 3 of this Law by electronic means, the IT protection of such data shall be ensured in accordance with the law governing data secrecy. Information about the requested and submitted data referred to in paras.1 and 2 of this Article shall be inaccessible to the persons they refer to until the investigation order is issued or until the direct indictment is brought or until the bill of indictment is submitted.

### **Access to Data** **Article 36**

The Special State Prosecutor`s Office has access to the data in the databases of information systems of other state authorities and state administrative authorities.

With the aim of ensuring access to data referred to in paragraph 1 of this Article, the Special State Prosecutor`s Office shall create technical conditions for IT protection of such data.

## **VI EMPLOYEES IN THE SPECIAL PROSECUTOR`S OFFICE**

### **Employees Article 37**

The Special State Prosecutor`s Office shall have a necessary number of advisors, other civil servants and state employees which shall be established in the act on internal organisation and job descriptions of the Special State Prosecutor`s Office.

Background check of advisors, civil servants and state employees shall be carried out in case of employing them in the Special State Prosecutor`s Office in accordance with the law governing data secrecy.

### **Advisor Article 38**

Advisor may be a person who graduated from law school and attained the VII1 level of educational qualification, passed judicial exam and has at least five years of work experience. Advisors shall assist the special prosecutor in his/her work, prepare draft documents, enter citizens` reports, briefs and statements into the records, carry out other technical tasks prescribed by the law and regulations adopted under the law either autonomously or under the supervision and by following instructions of the special prosecutor.

If they are given the power by the special prosecutor, advisors may also conduct certain evidentiary procedures.

Records on the delegated task that has been carried out shall be certified by the special prosecutor by his/her signature within 48 hours from the hour it has been carried out.

### **Civil Servants with Special Expert Knowledge Article 39**

The Special State Prosecutor`s Office may hire economists, accounting-finance officers and members of other relevant professions with relevant work experience in these areas who shall assist the special prosecutor in his/her work regarding the matters for which expert knowledge of these fields is required.

### **Application of other Laws**

#### **Article 40**

Unless otherwise provided for by this Law, the regulations governing rights, obligations and duties of civil servants and state employees shall apply to the employment and termination of employment of advisors, other civil servants and state employees, salaries and other rights, obligations and duties, employment requirements, requirements for taking state exam.

## **VII PENAL PROVISION**

### **Misdemeanour Article 41**

A legal entity shall be imposed a fine ranging between EUR 2,000 and EUR 20,000 if:

- 1) despite the special prosecutor` request it fails to submit the requested data on bank accounts and account balance within a set time-limit (Article 34 paragraph 2),
- 2) it fails to enforce the investigative judge`s decision (Article 33 paragraph 1).

Responsible person in a legal entity and a physical entity shall be imposed a fine ranging between EUR 500 and EUR 2,000 for committing the misdemeanour referred to in paragraph 1 of this Article.



## **VIII TRANSITIONAL AND FINAL PROVISIONS**

### **Application of Laws to the Initiated Procedures**

#### **Article 42**

The cases falling within jurisdiction of the Special State Prosecutor's Office which were within jurisdiction of other state prosecutor's offices shall be concluded by the time this Law enters into force by the state prosecutor's offices which had jurisdiction thereof under the regulations that were valid before entry of this Law into force.

### **Take-over of Cases**

#### **Article 43**

The cases falling within jurisdiction of the Special State Prosecutor's Office which were within jurisdiction of the Division for Suppressing Organised Crime, Corruption, Terrorism and War Crimes at the Supreme State Prosecutor's Office shall be taken over by the Special State Prosecutor's Office within 30 days from the day of election of the chief special prosecutor, i.e. special prosecutor.

### **Take-over of Tasks**

#### **Article 44**

Within 30 days from the day of election of the chief special prosecutor, i.e. special prosecutor, the Special State Prosecutor's Office shall take over tasks from the Division for Suppressing Organised Crime, Corruption, Terrorism and War Crimes at the Supreme State Prosecutor's Office, the employees responsible for carrying out these tasks, as well as the equipment, funds and official documents.

### **Time-limit for Rendering Decision on the Number of Special Prosecutors**

#### **Article 45**

Decision on the number of special prosecutors at the Special State Prosecutor's Office shall be rendered by the Prosecutorial Council within 30 days from the day on which this Law enters into force.

### **Time-limit for Public Advertisement**

#### **Article 46**

The Prosecutorial Council shall publish public advertisement for election of the chief special prosecutor and special prosecutors within 15 days from the day on which the decision referred to in Article 45 of this Law has been rendered.

### **Act on Internal Organisation and Job Descriptions**

#### **Article 47**

The act on internal organisation and job descriptions of the Special State Prosecutor's Office shall be passed within 60 days from the day on which the decision referred to in Article 46 of this Law has been rendered.

### **Application of Regulations**

#### **Article 48**

The provision of Article 81 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 applied until adoption of the law that will regulate salaries in public sector.

### **Entry into Force**

#### **Article 49**

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

# **DRAFT LAW ON THE PROSECUTION OFFICE FOR ORGANISED CRIME AND CORRUPTION (PROPOSED BY MEMBERS OF PARLIAMENT OF MONTENEGRO)**

## **I. BASIC PROVISIONS**

### **Subject of the Law Article 1**

This Law regulates organization and competence of the Prosecution Office for Organized Crime and Corruption, conditions and procedure of selection of Head of Prosecution Office for Organized Crime and Corruption and State prosecutors in Prosecution Office for Organized Crime and Corruption and relation to others state authorities and authorities of state administration, as well as other questions of significance for the work of Prosecution Office for Organized Crime and Corruption.

### **Prosecution Office for Organized Crime and Corruption Article 2**

Prosecution Office for Organized Crime and Corruption is formed for the territory of Montenegro in the State of Prosecution Office as unique and independent body.

Prosecution Office for Organized Crime and Corruption performs all actions in its competences before the Specialized Unit of the High Court in Podgorica.

The Seat of the Prosecution Office for Organized Crime and Corruption is in the Podgorica.

### **Competence Article 3**

Prosecution Office for Organized Crime and Corruption is competent for prosecuting perpetrators of criminal offences as follows:

- 1) organized crime, regardless of duration of the prescribed punishment;
- 2) high-level corruption:
  - a) if a public official committed the following criminal offences:
    - abuse of office,
    - fraud in the conduct of an official duty,
    - trading in influence,
    - inciting to engage in trading in influence,
    - passive bribery,
    - active bribery.
  - b) if the proceeds of crime exceeding the amount of EUR 40,000 have been obtained by committing the following criminal offences:
    - abuse of position in business undertakings,
    - abuse of authority in economy;
- 3) money laundering;
- 4) terrorism;
- 5) war crimes.

A public official, within the meaning of this Law, shall be a person who is elected, nominated or appointed to a state authority, state administrative authority, local self-government authority, local administration authority (hereinafter referred to as: official authority), independent authority, regulatory authority, public institution, public enterprise or to any other business organization or legal entity that exercises public powers or activities of public interest or is owned

by the state, as well as a person whose election, nomination or appointment are subject to the consent of the official authority.

### **Managing the Prosecution Office for Organized Crime and Corruption Article 4**

The tasks of prosecution of perpetrators of criminal offences referred the article 3 of this Law, shall be carried out by the Head of Prosecution Office for Organized Crime and Corruption and State prosecutors in Prosecution Office for Organized Crime and Corruption, whose number has been established by The Prosecutorial Council in accordance with the Law on State Prosecution Office.

The Head of Prosecution Office for Organized Crime and Corruption shall be accountable for his work and work of the Prosecution Office for Organized Crime and Corruption is responsible to the Supreme State Prosecutor, whereas State prosecutors in the Prosecution Office for Organized Crime and Corruption shall be accountable for their work to the Head of Prosecution Office for Organized Crime and Corruption.

### **Institutional Supervision Article 5**

Supervision over the operation of the Prosecution Office for Organized Crime and Corruption shall be exercised by the Supreme State Prosecution Office, in accordance with the Plan of the Supervision which established by the Supreme State Prosecutor, in accordance with the Law on State Prosecution Office.

### **Funds for Operation Article 6**

Financial funds for the operation of the Prosecution Office for Organized Crime and Corruption shall be allocated within the Part of the Budget for the State Prosecutions Office.

### **Relation of the laws Article 7**

On the matters that are not regulated under this Law, provisions of the Law on State Prosecution Office shall apply accordingly.

### **Use of Gender Sensitive Language Article 8**

The terms used in this Law for physical entities in masculine gender shall mean the same terms in feminine gender.

## **II. ORGANISATION OF THE PROSECUTION OFFICE FOR ORGANIZED CRIME AND CORUPTION**

### **Internal Organization Article 9**

Prosecution Office for Organized Crime and Corruption shall have divisions and services. Divisions shall be organized to carry out tasks involving criminal prosecution, financial investigations, analytics and research and international cooperation. Services may be set up for public relations, as well as for the purpose of carrying out professional, administrative and technical tasks.

### **Divisions Article 10**

The Division for Criminal Prosecution Tasks shall carry out tasks involving preliminary inquiry, investigation, as well as the tasks involving cooperation with other authorities.

The Division for Financial Investigations shall carry out tasks involving collection of data and their analysis for the purpose of establishing the exact value of the proceeds of crime, detecting assets obtained by committing a criminal offence and also taking measures to ensure that the assets confiscation.

The Division for Analytics and Research shall carry out tasks involving creation and maintenance of technical conditions for the exchange of and access to data in the databases of other state authorities, as well as statistical reporting and monitoring of cases.

The Division for International Cooperation shall carry out tasks involving cooperation with the competent authorities and bodies of other states and international organizations, appointment of members of the joint investigative team which is set up on the basis of an international treaty for the purpose of criminal prosecution for the criminal offences that fall within jurisdiction of the Prosecution Office for Organized Crime and Corruption.

### **Activity report Article 11**

The Head of Prosecution Office for Organized Crime and Corruption shall submit a six month activity report on the work of the Prosecution Office for Organized Crime and Corruption to the Supreme State Prosecutor.

The Head of Prosecution Office for Organized Crime and Corruption is obliged to submit the activity report of the Prosecution Office for Organized Crime and Corruption to the Prosecutorial Council at the latest by 10 February of the current year for the previous year and shall post it, within the same time-limit, on the website of the Prosecution Office for Organized Crime and Corruption.

At the request of the Supreme State Prosecutor or of the Prosecutorial Council, The Head of Prosecution Office for Organized Crime and Corruption is obliged to submit separate or periodic reports within the time-limit set by the Supreme State prosecutor or by the Prosecutorial Council. The Head of Prosecution Office for Organized Crime and Corruption shall be accountable for accuracy of the data contained in the reports.

Report referred to in paragraph 2 of this Article is an integral part of the annual report on work which Prosecutorial Council shall submit to the Parliament, in accordance with the law.

## **III. ELECTION OF THE HEAD OF PROSECUTION OFFICE FOR ORGANIZED CRIME AND CORRUPTION AND STATE PROSECUTORS IN THE PROSECUTION OFFICE FOR ORGANIZED CRIME AND CORRUPTION**

### **Requirements for Election of the Head of Prosecution Office for Organized Crime and Corruption Article 12**

To the position of the Head of Prosecution Office for Organized Crime and Corruption may be elected a person who meets general work requirements for state administration, and who:

- 1) graduated from law school with the VII1 level of educational qualification;
- 2) passed judicial exam; and
- 3) has at least 12 years of work experience as state prosecutor, judge or attorney.

**Requirements for Election of State Prosecutor in The Prosecution Office  
for Organized Crime and Corruption  
Article 13**

To the position of the State Prosecutor in Prosecution Office for Organized Crime and Corruption may be elected a person who meets general work requirements for state administration, and who:

- 1) graduated from law school with the VII1 level of educational qualification;
- 2) passed judicial exam; and
- 3) has at least ten years of work experience as state prosecutor, judge or attorney.

**Public Advertisement  
Article 14**

The Prosecutorial Council shall elect the Head of the Prosecution Office for Organized Crime and Corruption and State Prosecutors in Prosecution Office for Organized Crime and Corruption on the basis of a public advertisement.

The Prosecutorial Council shall advertise vacancies for the Head of the Prosecution Office for Organized Crime and Corruption, i.e. State Prosecutors in Prosecution Office for Organized Crime and Corruption in the Official Gazette of Montenegro and in one of the printed media with the head office in Montenegro.

The time-limit for candidates to file their applications shall be 15 days from the day of publishing the advertisement referred to in paragraph 2 of this Article.

**Acting upon Applications  
Article 15**

Applications to the public advertisement shall be submitted together with the proofs of fulfilling the requirements for election to the position of the Head of the Prosecution Office for Organized Crime and Corruption, i.e. State Prosecutors in Prosecution Office for Organized Crime and Corruption to the Prosecutorial Council within 15 days from the day the advertisement has been published.

The Prosecutorial Council shall discard untimely and incomplete applications.

The applicant may initiate administrative dispute against the decision to discard untimely and incomplete application.

**List of Candidates  
Article 16**

The Prosecutorial Council shall compile the list of candidates who meet the requirements set out by the law for election of the Head of the Prosecution Office for Organized Crime and Corruption, i.e. State prosecutor in Prosecution Office for Organized Crime and Corruption.

**Criteria  
Article 17**

The criteria for election of the Head of the Prosecution Office for Organized Crime and Corruption and State prosecutors in Prosecution Office for Organized Crime and Corruption shall be expert knowledge and competence to discharge prosecutorial functions.

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

- 1) professional development (continuous training and other forms of training);
- 2) published scientific and professional papers and other activities in the field of profession.

Competence to discharge prosecutorial function shall be evaluated on the basis of the following sub-criteria:

- 1) work experience to work in criminal cases;
- 2) quantity and quality of work;

- 3) motivation to work in the Prosecution Office for Organized Crime and Corruption;
- 4) good communication skills;
- 5) ability to make decisions;
- 6) understanding the role of State prosecutor in society.

### **Criteria Evaluation Article 18**

Expert knowledge of the candidate for the Head of the Prosecution Office for Organized Crime and Corruption, i.e. State Prosecutor in Prosecution Office for Organized Crime and Corruption shall be evaluated on the basis of proofs submitted along with the candidate`s application. Competence to perform prosecutorial function of the candidate for the Head of the Prosecution Office for Organized Crime and Corruption, i.e. State prosecutor in Prosecution Office for Organized Crime and Corruption shall be evaluated on the basis of the opinion and the interview.

### **Opinion Article 19**

The Prosecutorial Council shall obtain opinion on professional competences of the candidate referred to in Article 16 of this Law for performing prosecutorial function, as follows:

- from the enlarged session of the Supreme State Prosecution Office for the State Prosecutor;
- from the enlarged session of the Supreme Court of Montenegro for the judge;
- from the steering board of the Bar Association of Montenegro for the attorney.

The opinion referred to in paragraph 1 of this Article shall contain data on work experience, quantity and quality of work of the candidates for the Head of the Prosecution Office for Organized Crime and Corruption, i.e. State prosecutor in Prosecution Office for Organized Crime and Corruption.

### **Interview Article 20**

The Prosecutorial Council shall conduct interview with candidates for the Head of the Prosecution Office for Organized Crime and Corruption, i.e. State prosecutor in Prosecution Office for Organized Crime and Corruption during which the following shall be evaluated:

- 1) motivation to work in the Prosecution Office for Organized Crime and Corruption;
- 2) good communication skills;
- 3) ability to make decisions;
- 4) understanding the role of State prosecutor in society.

### **Decision Article 21**

On the basis of the documents submitted along with the application, the opinion referred to in Article 19 of this Law and the interview performed referred to in Article 20 of this Law, the Prosecutorial Council shall elect The Head of the Prosecution Office for Organized Crime and Corruption and State prosecutors in the Prosecution Office for Organized Crime and Corruption accordance with the criteria referred to in Article 17 of this Law.

**Term of Office**  
**Article 22**

The Head of the Prosecution Office for Organized Crime and Corruption shall be elected for a term of office of five years.

State prosecutor in Prosecution Office for Organized Crime and Corruption shall be elected to serve life tenure if he/she has worked for at least four years as the state prosecutor or as the judge.

State prosecutor in Prosecution Office for Organized Crime and Corruption who has not worked as the State prosecutor or as the judge for at least four years shall be elected for a period of four years.

Provisions of the Law on State Prosecution Office governing election of state prosecutors to serve life tenure shall apply accordingly to the procedure for election of the special prosecutor referred to in paragraph 3 of this Article to serve life tenure.

**Termination of the Term of Office**  
**Article 23**

The same person may be elected to the position of The Head of the Prosecution Office for Organized Crime and Corruption two times at the most.

The Head of the Prosecution Office for Organized Crime and Corruption upon expiry of the period which he/she has been elected for and upon termination of the function of the Head of Prosecution Office for Organized Crime and Corruption when he/she requests so himself/herself, shall continue to work as State prosecutor in Prosecution Office for Organized Crime and Corruption.

**Reassignment of State Prosecutors**  
**Article 24**

The Prosecutorial Council may, at the request of the Head of the Prosecution Office for Organized Crime and Corruption, reassign the State Prosecutor to the Prosecution Office for Organized Crime and Corruption for a certain period of time in order for him/her to carry out tasks of urgent nature or in the event of an increased workload.

The reassignment referred to in paragraph 1 of this Article shall be carried out subject to the written consent of the State prosecutor that is being reassigned and may last up to two years.

The Prosecutorial Council may, at the request of the Head of the Prosecution Office for Organized Crime and Corruption, reassign the State prosecutor to the Prosecution Office for Organized Crime and Corruption for a certain period of time in order for him/her to work on a specific case.

Reassignment to the Prosecution Office for Organized Crime and Corruption referred to in paragraph 3 of this Article shall last up to one year and may be extended under the same conditions.

During the work in the Prosecution Office for Organized Crime and Corruption, the reassigned State prosecutor referred to in paras. 1 and 3 of this Article shall be entitled to the salary that equals the salary of the State prosecutor of the Prosecution Office for Organized Crime and Corruption and also to the housing and travel expenses.

The salary and housing and travel expenses incurred as a result of reassignment to the Prosecution Office for Organized Crime and Corruption shall be paid by the Prosecution Office for Organized Crime and Corruption.

**Appropriate Application**  
**Article 25**

Provisions of the Law on State Prosecution Office shall apply accordingly to taking an oath and taking an office, rights of the candidate and court protection of the candidate.

#### **IV. RELATIONSHIP BETWEEN THE PROSECUTION OFFICE FOR ORGANIZED CRIME AND CORUPTION AND POLICE DIRECTORATE**

##### **Police Department Article 26**

Police tasks related to the criminal offences referred to in Article 3 of this Law shall be carried out by police officers employed in a special organizational unit of the administrative authority responsible for police work with the Prosecution Office for Organized Crime and Corruption (hereinafter referred to as: Police Department).

The Head of the Police Department may be a person who holds the VII1 level of educational qualification and has at least eight years of work experience in the positions in police profession for which a university degree is required.

The Head of the Police Department shall be appointed by the director of the administrative authority responsible for police affairs (hereinafter referred to as: Police Directorate) subject to the consent of the Head of the Prosecution Office for Organized Crime and Corruption.

Police officer in the Police Department may be a person who holds the VII1 level of educational qualification and has at least four years of work experience in the positions in police profession for which a university degree is required.

Exceptionally from paragraph 4 of this Article, the police officer that holds the: VII1 level of educational qualification, who has at least two years of work experience in the positions for which a university degree is required and who passed state exam to be eligible to work in state authorities may also be employed in the Police Department.

##### **Accountability of the Police Officer Article 27**

The Head and police officer from the Police Department shall execute order given by the Head of the Prosecution Office for Organized Crime and Corruption, i.e. State prosecutor in Prosecution Office for Organized Crime and Corruption.

If the police officer fails to execute order given by the State prosecutor in the case he/she has been assigned, the Head of the Prosecution Office for Organized Crime and Corruption, shall file a motion to initiate disciplinary proceedings against him/her in accordance with the law governing interior affairs.

The Head of the Police Department may not be reassigned to another position or to carry out other tasks in the Police Directorate without the consent of the Head of the Prosecution Office for Organized Crime and Corruption.

#### **V. INVESTIGATORS**

##### **Investigators Article 28**

For the purpose of investigating criminal offences that fall within jurisdiction of the Prosecution Office for Organized Crime and Corruption, the Head of the Prosecution Office for Organized Crime and Corruption may delegate certain tasks to the civil servants employed in administrative authorities responsible for tax affairs, customs affairs, affairs involving prevention of money laundering and terrorist financing and inspection affairs (hereinafter referred to as: investigators). At the Head of the Prosecution Office for Organized Crime and Corruption request, the heads of authorities referred to in paragraph 1 of this Article shall submit the list of civil servants who have relevant work experience and competences for carrying out tasks of supervision and control and have other professional knowledge that is relevant for investigation into criminal offences falling within jurisdiction of the Prosecution Office for Organized Crime and Corruption.

Upon the proposal of the Head of the Prosecution Office for Organized Crime and Corruption, the Supreme State Prosecutor shall compile annual list of investigators and submit it to the heads



of authorities referred to in paragraph 1 of this Article and to the Head of the Prosecution Office for Organized Crime and Corruption.

The Head of the Prosecution Office for Organized Crime and Corruption may conduct interview with the civil servants referred to in paragraph 2 of this Article before making the proposal referred to in paragraph 3 of this Article.

### **Powers and Accountability of Investigators** **Article 29**

The investigator shall take actions by order and instructions of State prosecutor of the Prosecution Office for Organized Crime and Corruption, in accordance with the rules of his/her profession, as well as in accordance with the Criminal Procedure Code.

The investigator shall take actions referred to in paragraph 1 of this Article within the time-limit set by the State prosecutor and he/she can not notify his/her immediate superior about the actions taken.

If the investigator, without any justifiable reason, fails to act in accordance with or acts in contravention of the State prosecutor's order and instructions, the State prosecutor shall notify the investigator's immediate superior thereof.

Failure to execute the State prosecutor's order in Prosecution Office for Organized Crime and Corruption and acting in contravention of the order and instructions of State prosecutor's order and instructions within the meaning of paragraph 3 of this Article shall constitute severe breach of official duty by the investigator.

In the event referred to in paragraph 3 of this Article, the immediate superior shall initiate disciplinary proceedings against the investigator.

The investigator shall submit his/her assets and income, as well as the assets and income of his/her spouses and common law partners and children (hereinafter referred to as: asset declaration sheet) in accordance with the law governing prevention of corruption.

### **Special Investigative Team** **Article 30**

In particularly complex cases the Head of the Prosecution Office for Organized Crime and Corruption may form a special investigative team which, besides State prosecutor in the Prosecution Office for Organized Crime and Corruption, may also comprise police officers from the Police Department, investigators and civil servants from another competent authority.

The head of investigation team shall be the State prosecutor in the Prosecution Office for Organized Crime and Corruption, while members of investigative team shall execute his/her order and act under his/her supervision.

### **Relationship with Administrative Authorities** **Article 31**

When, in carrying out the tasks falling within his/her jurisdiction, the State prosecutor in the Prosecution Office for Organized Crime and Corruption deems it necessary he/she may request from administrative authorities responsible for tax affairs, customs affairs, affairs preventing money laundering and terrorist financing and inspection affairs as well as from the other state administrative authorities to control operations of a legal or physical entity, obtain certain documents, data and to take other actions falling within their competence, in accordance with the regulations governing the competence of these authorities.

### **Obligation to Submit Data Article 32**

When, in carrying out the tasks falling within its jurisdiction, the administrative authority responsible for the prevention of money laundering and terrorist financing has established on the basis of the data, information and documents obtained in accordance with the law, that there are grounds for suspicion that funds, income and assets have been obtained by committing a criminal offence referred to in Article 3 of this Law it is obliged to submit these data to the Prosecution Office for Organized Crime and Corruption within three days.

### **Obligations of the Banks Article 33**

If there are grounds for suspicion that a person disposes of or has disposed of an income in his/her bank accounts which was generated by committing criminal offences referred to in Article 3 of this Law, while such income is relevant for preliminary inquiry and investigation and is subject to seizure, the State prosecutor shall request from the bank to submit data on these accounts and on the account balance.

The bank is obliged submit the data referred to in paragraph 1 of this Article within the time-limit set by the State prosecutor.

The request referred to in paragraph 1 of this Article shall contain statutory title of the criminal offence, short factual description and data on physical or legal entity in relation to which the request is submitted, as well as a more detailed description of the measure or action which is requested.

### **Binding Nature of the Investigative Judges` Decisions on Banks Article 34**

If there are grounds for suspicion that a person disposes in his/her bank account of an income generated by committing criminal offences referred to in Article 3 of this Law the investigative judge may, at the State prosecutor`s request, bind the bank by a decision to monitor payment transactions in a certain person`s accounts and to report on a regular basis, during the period determined for monitoring payment transactions, to the State prosecutor about the transactions effected in the account which is monitored.

For failure to enforce the decision referred to in paragraph 1 of this Article, the investigative judge may fine a responsible person in the bank by up to EUR 5,000, and the bank by up to EUR 50,000.

If even after the fine referred to in paragraph 2 of this Article has been imposed the bank still fails to enforce the investigative judges` decision, the imprisonment sentence may be imposed on a responsible person in the bank until such decision is enforced, and for the period of up to two months.

An appeal may be lodged against the decision referred to in paras. 1, 2 and 3 of this Article within 48 hours from the hour when the decision has been received.

The panel of the competent court referred to in Article 24 paragraph 7 of the Criminal Procedure Code shall decide on the appeal referred to in paragraph 4 of this Article. An appeal against the decision to impose imprisonment sentence does not delay enforcement of the decision.

### **Submission of Data Article 35**

The data from the records of state authorities and state administrative authorities that are relevant for initiating and conducting criminal proceedings for criminal offences referred to in Article 3 of this Law shall be submitted at the request of the Prosecution Office for Organized Crime and Corruption through the information system for electronic data exchange in accordance with the law governing electronic government.

In submission of the classified data that are relevant for initiating and conducting criminal proceedings for criminal offences referred to in Article 3 of this Law by electronic means, the IT protection of such data must be ensured in accordance with the law governing data secrecy. Information about the requested and submitted data referred to in paras.1 and 2 of this Article shall be inaccessible to the persons they refer to until the investigation order is issued or until the direct indictment is brought or until the bill of indictment is submitted.

**Access to Data  
Article 36**

Prosecution Office for Organized Crime and Corruption has access to the data in the databases of information systems of other state authorities and state administrative authorities. With the aim of ensuring access to data referred to in paragraph 1 of this Article, the Prosecution Office for Organized Crime and Corruption shall create technical conditions for IT protection of such data.

**VI. EMPLOYEES IN THE PROSECUTION OFFICE FOR ORGANIZED CRIME  
AND CORRUPTION**

**Employees  
Article 37**

Prosecution Office for Organized Crime and Corruption shall have a necessary number of advisors, other civil servants and state employees which shall be established in the act on internal organization and job descriptions of the Prosecution Office for Organized Crime and Corruption. Background check of advisors, civil servants and state employees shall be carried out in case of employing them in the Prosecution Office for Organized Crime and Corruption in accordance with the law governing data secrecy.

**Advisor  
Article 38**

Advisor may be a person who graduated from law school and attained the VII1 level of educational qualification, passed judicial exam and has at least five years of work experience.

Advisors shall assist the State prosecutor in his/her work, prepare draft documents, enter citizens' reports, briefs and statements into the records, carry out other professional tasks prescribed by the law and regulations adopted under the law either autonomously or under the supervision and by following instructions of the State prosecutor.

If they are given the power by the state prosecutor, advisors may also conduct certain evidentiary actions.

Records on the delegated task that has been carried out shall be certified by the State prosecutor by his/her signature within 48 hours from the hour it has been carried out.

**Civil Servants with Special Expert Knowledge  
Article 39**

Prosecution Office for Organized Crime and Corruption may have economists, accounting-finance officers and members of other relevant professions with relevant work experience in these areas who shall assist the State prosecutor in his/her work regarding the matters for which expert knowledge of these fields is required.

**Application of other Laws**  
**Article 40**

Unless otherwise provided for by this Law, the regulations governing rights, obligations and duties of civil servants and state employees shall apply to the employment and termination of employment of advisors, other civil servants and state employees, salaries and other rights, obligations and duties, employment requirements, requirements for taking state exam.

**VII. PENAL PROVISION**

**Misdemeanor**  
**Article 41**

A legal entity shall be imposed a fine ranging between EUR 2,000 and EUR 20,000 for misdemeanor if:

- 1) despite the State prosecutor` request it fails to submit the requested data on bank accounts and account balance within a set time-limit (Article 34 paragraph 2),
- 2) it fails to enforce the investigative judge`s decision (Article 33 paragraph 1).

Responsible person in a legal entity and a physical entity shall be imposed a fine ranging between EUR 500 and EUR 2,000 for committing the misdemeanor referred to in paragraph 1 of this Article.

**VIII. TRANSITIONAL AND FINAL PROVISIONS**

**Take-over of Work**  
**Article 42**

The cases falling within jurisdiction of the Prosecution Office for Organized Crime and Corruption which were within jurisdiction of Special State Prosecution Office shall be taken over by the Prosecution Office for Organized Crime and Corruption within 30 days from the day of election of the Head of Prosecution Office for Organized Crime and Corruption.

**Time-limit for Rendering Decision on the Number of State prosecutors in Prosecution  
Office for Organized Crime and Corruption**  
**Article 45**

Decision on the number of State prosecutors at the Prosecution Office for Organized Crime and Corruption shall be rendered by the Prosecutorial Council within 90 days from the day on which this Law enters into force.

**Time-limit for Public Advertisement**  
**Article 46**

The Prosecutorial Council shall publish public advertisement for election of the Head of Prosecution Office for Organized Crime and Corruption and State prosecutors in the Prosecution Office for Organized Crime and Corruption within 15 days from the day on which the decision referred to in Article 45 of this Law has been rendered.

**Act on Internal Organization and Job Descriptions and Take-over Employees  
Article 47**

The act on internal organization and job descriptions of the Prosecution Office for Organized Crime and Corruption shall be passed within 60 days from the day on which the decision referred to in Article 46 of this Law has been rendered.

Prosecution Office for Organized Crime and Corruption shall take over employees from the Special State Prosecution Office.

Employees referred to in paragraph 2 of this Article, until the assignment on the working position in accordance with act referred to in paragraph 1 of this Article will perform jobs which they performed in accordance with the decision on assignment in Special State Prosecution Office.

**Status of Chief Special Prosecutor and Special Prosecutors  
Article 48**

By entering into force of this Law, Chief Special Prosecutor and Special Prosecutors elected in accordance with the Law on Special State Prosecution Office ("Official Gazette of Montenegro", no. 10/2015 and 53/2016) have the status of unassigned prosecutors.

Until the election of the Head of Prosecution Office for Organized Crime and Corruption, Supreme State Prosecution Office will perform actions that do not tolerate postponement in cases that were under the competence of Special State Prosecution Office.

Prosecutorial Council will, within six months from entry into force of this Law, assign state prosecutors referred to in paragraph 1 of this Article within the State Prosecution Office in accordance with the Decision on the number of State prosecutors.

For assignment of State prosecutors referred to in paragraph 1 of this Article, consent of the State prosecutor being assigned is not needed.

Unassigned State prosecutor referred to in paragraph 1 of this Article, until the assignment has the right to a salary in the amount he/she had in the month preceding the month in which he/she gained the status of unassigned prosecutor.

**Termination of Validity  
Article 49**

On the day this Law enters into force, Law on Special State Prosecution Office ceases to be valid.

**Entry into Force  
Article 50**

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

# **ADDITIONAL DRAFT AMENDMENTS TO THE DRAFT LAW ON THE PROSECUTION OFFICE FOR ORGANISED CRIME AND CORRUPTION (PROPOSED BY THE GOVERNMENT OF MONTENEGRO)**

## **„VIII TRANSITIONAL AND FINAL PROVISIONS**

### **Take-over of Cases Article 42**

The cases falling within jurisdiction of the Special State Prosecutor's Office until entering into force of this Law shall be taken over by the Prosecutor's Office for Organized Crime and Corruption within 30 days from the day of election of the head of the Prosecutor's Office for Organized Crime and Corruption.

Until the take – over of cases referred to in paragraph 1 of this Article, the Supreme State Prosecutor shall perform the duties of the Head of the Prosecutor's Office for Organized Crime and Corruption, while state prosecutors from the Supreme State Prosecutor's Office and the High State Prosecutor's Office in Podgorica shall act in cases within the jurisdiction of organized crime and corruption, upon the decision of the Supreme State Prosecutor.

For acting in cases referred to in paragraph 2 of this Article, state prosecutors shall be entitled to a special allowance, in accordance with a regulation of the Government.

Alternatively paragraph 2 could read as follows:

Until the take – over of cases referred to in paragraph 1 of this Article, the Supreme State Prosecutor shall perform the duties of the Head of the Prosecutor's Office for Organized Crime and Corruption, while state prosecutors from the Supreme State Prosecutor's Office and the High State Prosecutor's Office in Podgorica shall, upon the decision of the Supreme State Prosecutor, act in cases within the jurisdiction of organized crime and corruption in which are or should be imposed secret surveillance measures, in detention cases and cases in which the statute of limitations for criminal prosecution may occur.

### **Time-limit for Rendering Decision on the Number of state prosecutors in Prosecutor's Office for Organized Crime and Corruption Article 43**

Decision on the number of special prosecutors at the Prosecutor's Office for Organized Crime and Corruption shall be rendered by the Prosecutorial Council within 60 days from the day on which this Law enters into force.

Alternatively:

Decision on the number of state prosecutors at the Prosecutor's Office for Organized Crime and Corruption shall be rendered by the Prosecutorial Council within 15 days from the day of founding of the Prosecutorial Council in accordance with Article 184a of the Law on the State Prosecution Service ("Official Gazette of Montenegro", No. 11/15, 42/15, 80/17, 10/18, 76/20 and / 21).

### **Time-limit for Public Advertisement Article 44**

The Prosecutorial Council shall publish public advertisement for election of the head of the Prosecutor's Office for Organized Crime and Corruption and state prosecutors within 15 days from the day on which the decision referred to in Article 43 of this Law has been rendered.

**Act on Internal Organisation and Job Descriptions  
Article 45**

The act on internal organisation and job descriptions of the Prosecutor's Office for Organized Crime and Corruption shall be passed within 60 days from the day on which the decision on the election of the head of the Prosecutor's Office for Organized Crime and Corruption has been rendered.

Within 30 days from the day of election of the head of the Prosecutor's Office for Organized Crime and Corruption, this prosecutors office shall take over tasks, the employees, as well as the equipment, funds and official documents from the Special State Prosecutor's Office.

Until being assigned to the position in accordance with the act referred to in paragraph 1 of this Article, employees in the Special State Prosecutor's Office shall perform the tasks they performed according to the decision on assignment in the Special State Prosecutor's Office and retain the salary they received until assignment.

**Status of Chief Special Prosecutor and Special Prosecutors  
Article 46**

The Chief Special Prosecutor and Special Prosecutors elected in accordance with the Law on the Special State Prosecutor's Office ("Official Gazette of Montenegro", No. 10/15 and 53/16), Prosecutorial Council shall, within six months from the entry into force of this Law, deploy to vacant positions of state prosecutors, in accordance with the decision on the number of state prosecutors.

The consent of the deployed state prosecutor is not required for the deployment of state prosecutors referred to in paragraph 1 of this Article.

Until deployment in accordance with paras. 1 and 2 of this Article Chief Special Prosecutor and special prosecutors are entitled to a basic salary in the amount of the salary they earned in the month preceding the month of entry into force of this Law.

**Termination  
Article 47**

On the day this Law enters into force, the Law on the Special State Prosecutor's Office ("Official Gazette of Montenegro", No. 10/15 and 53/16) shall cease to be valid.

**Entry into Force  
Article 48**

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