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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

MONTENEGRO

Draft Law
on Amendments to the Law on the State Prosecution Service
(Official Gazette of Montenegro, no 11/2015, 42/2015, 80/2017,
10/2018, 76/2020 and 59/2021)

NOTE:

Text marked in yellow- amendments to the valid Law;

~~Line through text~~—provisions deleted from the valid Law.

LAW
ON THE STATE PROSECUTION OFFICE

1 April 2024

(The law was published in the "Official Gazette of Montenegro", no [11/2015](#),
[42/2015](#), [80/2017](#), [10/2018](#), [76/2020](#) and [59/2021](#))

I. BASIC PROVISIONS

Subject Matter
Article 1

This law regulates the establishment, organisation and competence of the State Prosecution Office, the organisation of the work of the State Prosecution Office, the composition, election, term of office, organisation and manner of work of the Prosecutorial Council, and other matters of importance for the work of the State Prosecution Office and the Prosecutorial Council.

Compliance with the Constitution and Laws
Article 2

The State Prosecution Office carries out the tasks of prosecuting perpetrators of criminal offences that are prosecuted ex officio and misdemeanours, as well as other tasks prescribed by law.

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

Independence
Article 3

The 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

The 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

The 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 the more successful carrying out of the duties of their office.

Funds for Work Article 7

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

Salaries (Article 1 amendment) Article 8

~~The head of the state prosecution office and state prosecutor shall have the right to a salary and other labour rights and labour-based rights according to the law.~~

Heads of the state prosecution offices and state prosecutors shall have the right to a salary, salary compensation, salary supplement and other rights related to the performance of prosecutorial duties in accordance with the law regulating income of the judicial office holders.

Heads of the state prosecution offices and state prosecutors shall have labour rights and labour-based rights in accordance with the general regulations on labour.

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

The terms used in this law for individuals in the masculine gender shall equally refer to the same terms in the feminine gender.

II. THE ESTABLISHMENT, ORGANISATION AND COMPETENCES OF THE STATE PROSECUTION OFFICES

Structure of the State Prosecutor's Office Article 11

The following shall be established within the State Prosecution Office: Supreme State Prosecution Office, Special State Prosecution Office, High State Prosecution Offices and Basic State Prosecution Offices.

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

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

The High State Prosecution Office shall be established for the territory of the high court.

The Basic State Prosecution Office shall be established for the territories of one or several basic courts.

Supreme State Prosecution Office Article 12

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

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

The 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 appointment of the heads of the Special State Prosecution Office and state prosecutors in the Special State Prosecution Office, its competences and organisation, as well as other issues important for its work.

High State Prosecution Office
Article 14

The High State Prosecution Offices shall be:

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

High State Prosecution Offices shall undertake all activities from within their 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 the Basic Court in Žabljak;
- 9) Basic State Prosecution Office in Podgorica, for the territory of the Basic Court in Podgorica and the 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.

A Basic State Prosecution Office shall undertake all activities from within their competences before courts with subject matter and territorial jurisdiction.

Subject Matter and Territorial Jurisdiction
Article 16

The 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 the prosecution of perpetrators of criminal offences and misdemeanours, the State Prosecution Offices shall, together with the authorities that have jurisdiction, be authorised to impose and undertake the measures necessary for detecting for 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 Prosecution Office shall be responsible for filing requests for the issuance of a European arrest warrant and requests 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**

The State Prosecution Office shall be managed by the Supreme State Prosecutor.

The work of the State Prosecution Offices is managed by heads of State Prosecution Offices, as follows:

- The Basic State Prosecution Office, by the Head of the Basic State Prosecution Office;
- The High State Prosecution Office, by the Head of the High State Prosecution Office;
- The Special State Prosecution Office, by the Chief Special State Prosecutor.

The work of the Supreme State Prosecution Office is managed by the Supreme State Prosecutor.

The head of the State Prosecution Office and the state prosecutor shall discharge their prosecutorial duties in the State Prosecution Office they are appointed to, referred to or reassigned to according to this law.

III. PROSECUTORIAL COUNCIL

1. Composition and Term of Office of the Prosecutorial Council

Composition of the Prosecutorial Council

Article 18 (*Article 2 amendment*)

The 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 members of the Prosecutorial Council:

- 1) ~~four state prosecutors who have a permanent function and at least five years of work experience in performing the prosecutorial function, three of whom are from the Supreme State Prosecution Office, Special State Prosecution Office and High State Prosecution Offices, and one from a Basic State Prosecution Office, who are elected and dismissed by the Prosecutorial Conference;~~
five state prosecutors who have a permanent function and at least five years of work experience in performing the prosecutorial function, four of whom are from the Supreme State Prosecution Office, Special State Prosecution Office and High State Prosecution Offices and one from a Basic State Prosecution Office, who are elected and dismissed by the Prosecutorial Conference;
- 2) ~~four~~ three eminent lawyers elected and dismissed by the Parliament of Montenegro (hereinafter: Parliament), at the proposal of the competent working body, ~~of whom at most one is a lawyer.~~
- 3) one representative of the state administrative body responsible for judicial affairs (hereinafter: the Ministry of Justice) appointed by the Minister of Justice from among the employees of the Ministry of Justice;
- 4) one eminent lawyer from among the representatives of non-governmental organisations in the field of the rule of law, the work of the State Prosecution Office or the fight against corruption and organised crime, nominated by non-governmental organisations that meet the requirements prescribed by this law, who is elected and dismissed by the Parliament.

~~A member of the Prosecutorial Council from the ranks of the state prosecutors may not be: a marital or extramarital partner or a relative of a member of the Parliament or member of the Government of Montenegro (hereinafter: the Government) or the President of~~

~~Montenegro in a straight line regardless of the level of kinship, in the lateral line to the second level of kinship or in-law kinship to the first level.~~

A member of the Prosecutorial Council from the rank of state prosecutors may not be: a marital or extramarital partner, a partner in a same-sex community of life or a relative of a member of the Parliament, member of the Government and of the President of Montenegro, or a person elected or appointed by the Parliament, the President of Montenegro or the Government, in the straight line regardless of the degree of kinship, in the collateral line up to the second degree of kinship or in-law kinship up to the first degree.

A state prosecutor who was given an unsatisfactory grade or a 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.

The composition of the Prosecutorial Council shall be promulgated by the President of the Parliament.

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 (Article 3 amendment)

The term of Office of the Prosecutorial Council is ~~four years~~ **five years**.

The term of office of a 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 the 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 (Article 4 amendment)

In a secret vote, the Prosecutorial Conference shall elect and dismiss members of the Prosecutorial Council from among the state prosecutors.

The Conference shall be composed of all the heads of the State Prosecution Offices and all state prosecutors.

The Prosecutorial Conference shall adopt the Code of Ethics of the state prosecutors.

The Prosecutorial Conference shall elect **and dismiss** the President of the Commission for Monitoring the Implementation of the Code of Ethics (hereinafter: the Commission for the Code of Prosecutorial Ethics) **and his/her deputy**.

Administrative and 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.

~~*The Commission for the Code of Prosecutorial Ethics*~~

~~**Article 21**~~ (Article 5 amendment)

~~The Commission for the Code of Prosecutorial Ethics shall have a 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.~~

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

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

~~The Commission for the Code of Prosecutorial Ethics shall submit the report on its work to the Prosecutorial Council once a year, no later than 31 March of the current year for the previous year.~~

~~The Commission for the Code of Prosecutorial Ethics shall adopt rules of procedure regulating in detail the manner of work and decision-making.~~

Decision-Making in the Prosecutorial Conference

Article 22 (Article 6 amendment)

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

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

A 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.

The Prosecutorial Conference shall adopt rules of procedure regulating in detail the manner of work and decision-making.

The Rulebook referred to in paragraph 4 of this Article shall be published on the website of the Supreme State Prosecution Office.

Election Commission

Article 23 (Article 7 amendment)

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

The Election Commission shall have a chairman and two members, **who shall have their deputies**, ~~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 extended session of the Supreme State prosecution Office shall elect the chairman, members of the Election Commission and their deputies from among the state prosecutors, 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~~ **five-year** term of office of the Prosecutorial Council.

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

Article 24 (Article 8 amendment)

The proposals of the candidates to be elected as 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~~ **two** candidates from that prosecution office shall be proposed;

2) in the session of the Special State Prosecution Office where two candidates from that prosecution office shall be proposed;

3) in the sessions of High Prosecution Offices where two candidates from those State Prosecution Offices shall be proposed.

The list of ~~nine~~ **eight** candidates referred to in paragraph 1 of this Article shall be prepared, in alphabetical order, by the Election Commission, based on information on the nominated candidates.

To establish the proposal of candidates to be elected as Prosecutorial Council ~~members~~ **member** from among the state prosecutors from Basic State Prosecution Offices, the

Election Commission shall obtain initial proposals from every head and state prosecutor from the Basic State Prosecution Offices, containing two candidates.

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

The list of four candidates who receive the highest number of initial proposals referred to in paragraph 3 of this Article shall be compiled by the Election Commission, in 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 shall make a list consisting of all the candidates with the highest or the same number of initial proposals.

The form of the initial proposal referred to in paragraph 3 of this Article shall be defined by the Rules of Procedure of the Prosecutorial Council.

Election of Prosecutorial Council Members from Among the State Prosecutors
Article 25 (Article 9 amendment)

The lists of candidates for the election of Prosecutorial Council members composed in line with Article 24, paragraphs 2 and 5, or paragraph 6 of this law shall be delivered to all State Prosecution Offices to be posted on their notice boards, no later than two months before the expiry of the term of office of the Prosecutorial Council members.

The Prosecutorial Conference shall be convened by the Supreme State Prosecutor, no later than 30 days before the expiry of the term of office of the Prosecutorial Council members.

Three **Four** candidates from the list referred to in Article 24, paragraph 2 of this law shall be appointed as members of the Prosecutorial Council, where only one candidate may be appointed from one State Prosecution Office and one candidate from the list referred to in Article 24, paragraph 5, or paragraph 6 of this law, who receives the highest number of votes.

If none of the candidates from the lists get the required majority of votes, the vote shall be repeated among the **five four** candidates from the list referred to in Article 24, paragraph 2 of this Law, i.e. between the two candidates from the list referred to in Article 24, paragraph 5, or paragraph 6 of this Law, who received the highest number of votes.

If there are several candidates with the same number of votes, based on which they can enter the second round of voting, a list of those candidates shall be prepared and the vote shall be repeated, and only one candidate may be appointed from one State Prosecution Office.

Election of the Prosecutorial Council Members from Among the Eminent Lawyers
Article 26 (Article 10 amendment)

~~A person who has at least ten years of work experience in legal affairs and enjoys a good personal and professional reputation and has not been convicted for criminal offences that render state prosecutors unworthy of performing the duties of the prosecutorial office in accordance with this law may be appointed as a member of the Prosecutorial Council from the ranks of eminent lawyers.~~

A person who has at least 40 years of age and 15 years of work experience as a judge, state prosecutor, lawyer, notary public, public bailiff, professor of legal sciences or performed other legal affairs and enjoys a good personal and professional reputation and has not been convicted for criminal offences that render state prosecutors unworthy of performing the duties of the prosecutorial office in accordance with this law may be appointed as a member of the Prosecutorial Council from among the eminent lawyers.

A member of the Prosecutorial Council cannot be:

1) a marital or extramarital partner, **a partner in the same-sex community of life** or a relative of a member of the Parliament, member of the Government or the President of Montenegro or a person elected or appointed by the Parliament, the President of

Montenegro or the Government in a straight line regardless of the degree of kinship, in the lateral line to the second degree of kinship or in-law kinship to the first degree;

2) ~~a member of~~ official of political parties (presidents, members of the presidency, their deputies, members of executive or main committees), or a person who was directly elected in elections or held the position of a member of the Government, deputy or councillor in the last five years;

3) a person who has performed the office of a **judge or** a prosecutor in the last eight years.

The competent working body of the Parliament of Montenegro shall publish a public call for the appointment of a member of the Prosecutorial Council from among the eminent lawyers in the "Official Gazette of Montenegro" and in at least one of the printed media based in Montenegro, at least four months prior to the expiry of the term of office of the Prosecutorial Council members.

The public call for the appointment of a member of the Prosecutorial Council from the ranks of eminent lawyers shall be published by the competent working body of the Parliament on the website of the Parliament.

The deadline for candidates to apply shall be ten days from the publication of the public call.

The competent working body of the Parliament shall publish the list of candidates who applied on the Parliament website and it shall be available to the public for a period of at least seven days after its publishing.

The competent working body of the Parliament shall submit the proposal for the appointment of a member of the Prosecutorial Council from the ranks of eminent lawyers to the Parliament.

The proposal under paragraph 7 of this Article shall contain as many candidates as there are members of the Prosecutorial Council to be elected.

If the proposal for election under paragraph 7 of this Article contains fewer candidates than the number of candidates to be elected, the election procedure shall be repeated for the number of members that were not proposed by the competent working body of the Parliament.

Article 26a

A member of the Prosecutorial Council from among the representatives of non-governmental organisations is proposed on the basis of a public call issued by the competent working body of the Parliament.

The public call shall be published in the "Official Gazette of Montenegro", in at least one of the printed media based in Montenegro and on the Parliament's website.

The public call contains in particular:

1) conditions that must be met by the non-governmental organisations referred to in Article 26b, paragraph 1 of this law;

2) conditions under paragraph 26 of this law;

3) documentation that must be submitted with the proposal;

4) name and address of the body to which the proposals are submitted;

5) manner of submission and deadline for the submission of proposals.

Article 26b

A non-governmental organisation may nominate a candidate for a member of the Prosecutorial Council from among the representatives of non-governmental organisations, if it meets the following criteria:

1) it was registered with the competent state administrative body for at least three years prior to the publication of the public call for candidates for a member of the Prosecutorial Council from among the representatives of non-governmental organisations;

2) it has in the founding act and the statute, as basic goals and activities, issues in the areas prescribed by Article 18, Paragraph 3, Item 4 of this law and to have continuously worked in this area in the previous three years;

3) in the previous three years, prior to the publication of the public call for proposing candidates for a member of the Prosecutorial Council, it has implemented projects in the area referred to in Article 18, Paragraph 3, Item 4 of this law.

The proposer referred to in Paragraph 1 of this Article may nominate one candidate for a member of the Prosecutorial Council.

The proposal of a candidate for a member of the Prosecutorial Council from the representatives of non-governmental organisations should contain: the name and surname, address and a short biography of the proposed candidate and must be signed and certified by the responsible person in the non-governmental organisation that submitted the proposal.

The proposal referred to in Paragraph 3 of this Article shall be submitted in a form determined by the competent working body of the Parliament.

The proposal referred to in Paragraph 3 of this Article must be accompanied by the following:

- 1) evidence that the proposed candidate has a permanent residence in Montenegro;
- 2) evidence of education and work experience for the proposed candidate;
- 3) statement of the proposed candidate on the acceptance of the candidacy and that there is no obstacle referred to in Article 26, Paragraph 2 of this law for his/her appointment as a member of the Prosecutorial Council.

The non-governmental organisation referred to in Paragraph 1 of this Article shall, along with the proposal referred to in Paragraph 3 of this Article, submit a certified copy of the founding act and statute, a certified copy of the decision on entry in the Register of Non-Governmental Organisations and an overview of implemented projects and activities in the last three years.

Article 26c

After the expiration of the prescribed deadline for the application of candidates on the basis of a public call referred to in Article 26a of this law, the competent working body of the Parliament shall verify the fulfilment of the conditions referred to in Article 26, Paragraphs 1 and 2 and Article 26b of this law, and compile a list of eligible candidates.

The competent working body of the Parliament is obliged to publish a list of timely and complete proposals of candidates for a member of the Prosecutorial Council from among the representatives of non-governmental organisations on the website of the Parliament within eight days from the deadline for the submission of proposals.

The competent working body of the Parliament shall, within 15 days from the expiration of the deadline for the submission of proposals referred to in Article 26b, Paragraph 8 of this law, determine the proposal of a candidate for a member of the Prosecutorial Council that is, as a rule, proposed by the largest number of eligible non-governmental organisations that meet the requirements in accordance with this law.

The proposal referred to in Paragraph 3 of this Article must be reasoned.

The competent working body of the Parliament submits to the Parliament for consideration and decision the proposal of a list for the election of representatives of non-governmental organisations to the Prosecutorial Council, with reasoning and a report on the conducted election procedure.

The Parliament shall, within 30 days from the date of submission of the proposed list under Paragraph 5 of this Article, make a decision on the election of representatives of non-governmental organisations to the Prosecutorial Council.

Prohibition of Election to the Prosecutorial Office

Article 27 (Article 11 amendment)

No Prosecutorial Council member from among the state prosecutors shall be elected to the State Prosecution Office of a higher rank or elected as a head of the State Prosecution Office during the ~~mandate in the Prosecutorial Council~~ **Prosecutorial Council's** mandate, while no member of the Prosecutorial Council elected from among the eminent lawyers shall be elected as a state prosecutor or head of the State Prosecution Office.

*Re-election***Article 28** (*Article 12 amendment*)

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

The same person may not be elected as a member of the Prosecutorial Council more than two times.

*Termination of the Term of Office***Article 29**

The term of office of a Prosecutorial Council member shall end before the expiry of the term for which he/she is appointed if:

- 1) the office based on which he/she was appointed to the Prosecutorial Council ends;
- 2) he/she resigns;
- 3) he/she is convicted to unconditional imprisonment.

In the case referred to in paragraph 1, item 1 of this Article, the term of office of a Prosecutorial Council member shall end on the date when the office based on which he/she was appointed to the Prosecutorial Council ends.

In the case referred to in paragraph 1, item 2 of this Article, the term of office of a Prosecutorial Council member shall end when the Prosecutorial Council acknowledges his/her written resignation.

In the case referred to in paragraph 1, item 3 of this Article, the term of office of a member of the Prosecutorial Council shall end on the date when the convicting judgment becomes final and enforceable.

The Prosecutorial Council shall acknowledge the end of the term of office of a Prosecutorial Council member and shall inform the authority that appointed him/her thereof.

*Dismissal***Article 30** (*Article 13 amendment*)

A Prosecutorial Council member shall be dismissed if:

- 1) he/she performs his/her duties in an unconscientious or unprofessional manner;
- 2) he/she is convicted of a criminal offence that renders him/her unworthy of the performance of duties in the Prosecutorial Council.

The unconscientious and unprofessional performance of duties referred to in Paragraph 1, Item 1 of this Article shall constitute an action of a Prosecutorial Council member that is contrary to the statutory powers, as well as a failure to fulfil statutory duties.

The offence referred to in paragraph 1, item 2 of this Article shall be a criminal offence that is prosecuted ex officio, for which imprisonment is prescribed.

A member of the Prosecutorial Council from the ranks of state prosecutors shall also be dismissed if a **final and enforceable** disciplinary sanction has been imposed on him/her **for severe and the most severe disciplinary offenses**.

In the cases referred to in paragraph 1 of this Article, the motion for the dismissal of a Prosecutorial Council member shall be filed by the Prosecutorial Council to the authority that appointed him/her.

The term of office of a Prosecutorial Council member shall end on the date when the authority that appointed him/her dismisses him/her.

The provisions governing the procedure for establishing the disciplinary liability of state prosecutors shall be applied accordingly to the procedure for the dismissal of a Prosecutorial Council member.

*Term of Office in Case of Termination and Dismissal***Article 31**

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

In case of the termination of the term of office of a 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, i.e. Articles 26a, 26b and 26c of this law.

In case of the termination of the term of office of a 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 paragraphs 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 (Article 14 amendment)**

A member of the Prosecutorial Council 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 is confirmed **criminal proceeding is initiated** against him/her for an offence that makes him/her unworthy of the position in the Prosecutorial Council by the time of the 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 ~~may~~ **will** be temporarily removed from duty if the procedure for establishing disciplinary liability **for severe and the most severe disciplinary offenses** is initiated against him/her until the final completion of the disciplinary proceedings.

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 who 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, members of the Prosecutorial Council whose salary is paid from the budget shall receive their salary and other benefits arising from employment from the authority in which they are employed.

Members of the Prosecutorial Council from the ranks of state prosecutors may, for the purpose of performing duties in the Prosecutorial Council, and on the basis of the Prosecutorial Council's decision, spend up to 70% of their work hours during a year working for the Prosecutorial Council. The decision of the Prosecutorial Council shall identify the duties performed by members in the Prosecutorial Council.

In the case referred to in paragraph 3 of this Article, the workload of state prosecutors at the State Prosecution Office where they work may be reduced to the appropriate extent.

Members of the Prosecutorial Council shall be entitled to compensation for work in the Prosecutorial Council in the amount of 80% of the average gross salary in Montenegro in the previous year, and the president of the Prosecutorial Council in the amount of 120% of the average gross salary in Montenegro in the previous year.

3. Organisation and Manner of Work

Sessions of the Prosecutorial Council **Article 34**

The Prosecutorial Council shall work and decide in sessions.

A session of the Prosecutorial Council may be held if a majority of the total number of Prosecutorial Council members is present.

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

At the request of at least three members of the Prosecutorial Council, the President of the Prosecutorial Council shall be obliged to convene a session with the proposed agenda, no later than seven days from the date of submission of the request.

President of the Prosecutorial Council **Article 35**

The President of the Prosecutorial Council shall be responsible for the 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 perform his/her office to discharge other duties provided for in the Rules of Procedure of the Prosecutorial Council.

Commissions **Article 36 (Article 15 amendment)**

In order to effectively perform its tasks under its field of competence, the Prosecutorial Council may establish commissions **and panels.**

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

The commissios referred to in paragraph 1 of this Article shall inform the Prosecutorial Council about their decisions.

The members of the commission referred to in paragraph 1 of this Article, the members of the Commission for the Code of Prosecutorial Ethics **and disciplinary plaintiff** shall be entitled to a net remuneration for their work in the amount determined by the Prosecutorial Council up to 40% of the average gross salary in Montenegro in the previous year, **for the months in which such commissions or disciplinary plaintiff have worked.**

The method of work 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 (Article 16 amendment)**

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 a proposal for the dismissal of the Supreme State Prosecutor;
- 3) rendering decisions on the disciplinary liability of the state prosecutors and heads of State Prosecution Offices;
- 4) ~~being responsible for the training of the state prosecutors and heads of the State Prosecution Offices;~~
4) undertakes international cooperation in the affairs under its jurisdiction;
- 5) ~~enabling~~ **monitoring** the use, functioning and uniformity of the Judicial Information System in its part that is related to the State Prosecution Office;

- 6) keeping records of data related to the state prosecutors and heads of the State Prosecution Offices;
- 7) adopting the Rules of Procedure of the Prosecutorial Council;
- 8) issuing opinions on the incompatibility of performing certain duties with the prosecutorial office;
- 9) considering complaints about the work of the state prosecutors and heads of the State Prosecution Offices and taking positions regarding any jeopardy to their independence;
- 10) considering complaints against the work of the state prosecutors and heads of the State Prosecution Offices regarding the lawfulness of their work;
- 11) forming the Commission for Evaluating the Performance of State Prosecutors;
- 11a) appointing the disciplinary panel;
- 12) appointing the disciplinary plaintiff and his/her deputy;
- 13) defining the methodology for the preparation of reports on the work of the Prosecutorial Council and the State Prosecution Office and on annual work distribution;
- 14) issuing official identity cards to state prosecutors and the heads of State Prosecution Offices and keeping records of the official identity cards;
- 14a) giving opinions on draft regulations relating to the State Prosecution Office, as well as draft regulations relating to salaries and exercising other rights and obligations of state prosecutors;
- 15) performing other tasks prescribed by 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 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

The Prosecutorial Council shall adopt the Rules of Procedure governing the matters prescribed by this law and other matters of importance for the organisation of the 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 (Article 17 amendment)

Decisions of the Prosecutorial Council shall be final and an administrative dispute may be initiated against them, unless otherwise provided for by this law.

When it decides on the appointment of heads of State Prosecution Offices and state prosecutors, the Prosecutorial Council shall take into account the proportional representation of ethnic minorities and other national minority communities, as well as gender-balanced representation.

An administrative dispute may be initiated against the decisions of the Prosecutorial Council on the selection of candidates for the state prosecutor, the state prosecutor and the head of the State Prosecution Office, the termination of prosecutorial functions, dismissal of the head of State Prosecution Office and other rights and obligations of state prosecutors and heads of the state prosecution offices, within 15 days from the date of receipt of the decision.

In the administrative dispute referred to in paragraph 3 of this Article, the court shall be obliged to make a decision within 45 days from the date of delivery of the case file.

Annual Report
Article 41

The Prosecutorial Council compiles an annual report that contains data on the operation of the Prosecutorial Council, a description and analysis of the condition in the State Prosecution Office, detailed information about each individual State Prosecution Office related to the number of cases received and resolved during the reporting year, problems and deficiencies in their operation, as well as measures that should be undertaken in order to eliminate the identified deficiencies.

The annual report also contains data on the condition and movements of criminality in the reporting year.

The Prosecutorial Council submits the draft annual report to all State Prosecution Offices for their opinions.

The annual report shall be submitted to the Parliament for consideration, no later than 31 March of the current year for the previous year.

The annual report shall be explained in the Parliament by the President of the Prosecutorial Council.

The annual report shall be published on the Supreme State Prosecution Office and Prosecutorial Council's websites.

Relations Between the Prosecutorial Council and the State Prosecution Office
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 the 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 to the Prosecutorial Council 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.

Publicity of the Work of the Prosecutorial Council
Article 42a (Article 18 amendment)

The work of the Prosecutorial Council shall be public.

Notwithstanding paragraph 1 of this Article, the public will be excluded during debates in the process of determining the disciplinary liability of heads of state prosecution offices and state prosecutors, considering complaints about the legality of the work of heads of state prosecution offices and state prosecutors, as well as in the process of evaluating and considering specific cases.

Notwithstanding paragraph 2 of this Article, the debate in the procedure for determining disciplinary liability may be public if so requested by the head of State Prosecution Office or state prosecutor whose liability is being decided.

The method of exercising publicity of the work of the Prosecutorial Council shall be governed in more detail by the Rules of Procedure of the Prosecutorial Council.

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

1. Election of the Supreme State Prosecutor

Requirements for the Election of the Supreme State Prosecutor

Article 43

To be elected Supreme State Prosecutor, a candidate shall:

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

Public Advertisement

Article 44

Two months before the expiry of the term of office of the Supreme State Prosecutor, or 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 based in Montenegro.

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

Application Procedure

Article 45 (Article 19 amendment)

Applications in response to the public advertisement with evidence that the applicant meets the requirements for 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.

Candidates for the position of the Supreme State Prosecutor, along with the application in response to a public advertisement, are required to submit a work program containing a vision of the organization of the State Prosecution Office for a term of five years.

The content of the work program from paragraph 2 of this article is determined by the Prosecutorial Council.

The Prosecutorial Council shall dismiss untimely and incomplete applications.

Applicants may initiate an administrative dispute against the decision to dismiss an untimely or incomplete application.

List of Candidates

Article 46

The Prosecutorial Council shall make a list of candidates who meet the statutory requirements for the election 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 of delivery of the candidate list.

Proposal for the Election of the Supreme State Prosecutor
Article 47

In its closed session, the Prosecutorial Council shall establish a proposal for the election of the Supreme State Prosecutor 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 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 (Article 20 amendment)

The same person may not be elected as a Supreme State Prosecutor more than two times.

After the expiry of the term of office and upon the 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 referred to in paragraph 2 of this Article, as in the case of resignation or dismissal, the Prosecutorial Council shall determine an acting supreme state prosecutor from among the state prosecutors in the Supreme State Prosecution Office.

The member of the Prosecutorial Council from rank of the state prosecutors in the Supreme State Prosecution Office may not be appointed as the acting Supreme State Prosecutor.

~~A person who fulfils the conditions under Article 43 of this law may be appointed as acting supreme state prosecutor.~~

The acting supreme state prosecutor shall be appointed for a period of six months and the same person may not be re-appointed as the acting Supreme State Prosecutor.

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

General requirements
Article 49

A person may be appointed as a state prosecutor and a head of the State Prosecution Office if he/she meets the general conditions for employment in a state authority and if he/she:

- 1) graduated from the law faculty – level VII1 of education qualifications;
- 2) passed the bar exam.

Specific Requirements for State Prosecutors
Article 50 (Article 21 amendment)

A person may be appointed as a state prosecutor of the Basic State Prosecution Office if, after passing the bar exam, he/she has worked for at least two years as an adviser in a State Prosecution Office or court, as an attorney, notary public, deputy notary public or professor of law, or on other legal matters for at least four years.

To be elected to the position of 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 ~~eight~~ six years.

To be elected to the position of state prosecutor in the Supreme State Prosecution Office, a person has to have experience working as a state prosecutor or a judge for at least 15 years.

Notwithstanding paragraphs 2 and 3 above, to be elected to **three** positions of the state prosecutors in the ~~High State Prosecution Office~~ **high state prosecution offices**, persons have to have experience working as judges, state prosecutors, attorneys-at-law, notaries public, professors of law science or other jobs in the field of law for at least 12 years; to be elected to three positions of the state prosecutors in the Supreme State Prosecution Office, persons have to have experience working as judges, state prosecutors, attorneys-at-law, notaries public, professors of law science or other jobs in the field of law for at least 15 years.

Notwithstanding paragraphs 2 and 3 above, if the state prosecutor has been elected to the High State Prosecution Office or Supreme State Prosecution Office in accordance with paragraph 4 above for a period of four years, he or she may be elected to a permanent function in the High State Prosecution Office or Supreme State Prosecution Office if his or her performance evaluation after the expiry of the term of office was graded as good or excellent.

The provisions of the present law governing the procedure for the election of state prosecutors to the Basic State Prosecution Office for a permanent function shall be applied accordingly to the procedure for the election of the state prosecutor referred to in paragraph 5 above.

Specific Requirements for the Position of Head of Basic and High State Prosecution Offices
Article 51 (Article 22 amendment)

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) ten years of experience in the field of law, at least ~~five~~ **six** of which were as a state prosecutor or a judge - for the head of the Basic State Prosecution Office;
- 2) twelve years of experience in the field of law, at least eight of which were as a state prosecutor or a judge - for the head of the High State Prosecution Office.

Only a state prosecutor or judge who earned a grade of good or excellent in the procedure for the evaluation of their work according to the law can be elected as head of the State Prosecution Office.

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

Programme of Work
Article 52

With their application in response to the public advertisement, the candidates for the position of head of the State Prosecution Office shall submit a Programme of Work containing their vision of the organisation of work in the State Prosecution Office for the five-year term of office.

The content of the programme of work referred to in paragraph 1 of this Article shall be approved by the Prosecutorial Council.

Criteria for Election to the Position of Head of the State Prosecution Office
Article 53

The criteria for Election to the Position of Head of the State Prosecution Office are:

- 1) evaluation of the programme of work;
- 2) evaluation of his/her work in the position of state prosecutor, judge, head of the State Prosecution Office or president of the court;
- 3) evaluation in the candidate interview.

On the basis of the programme of work, a candidate for the head of the State Prosecution Office may get up to 40 points, based on the assessment of the proposed vision of the organisation of work in the State Prosecution Office.

On the basis of a good performance appraisal, a candidate for the head of the State Prosecution Office may get 30 points, and 40 points on the basis of an excellent performance appraisal.

On the basis of an interview, a candidate for the head of the State Prosecution Office may get up to 20 points, in accordance with Article 61 of this law.

If two candidates have the same number of points, the priority shall be given to the candidate who has obtained a higher number of points based on the performance appraisal.

Election of a Head of the State Prosecution Office

Article 54

The same person may be elected to the position of head of the same State Prosecution Office two times at most.

The 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 the termination of the office of the head of the State Prosecution Office upon his/her request, due to the closure or merging of State Prosecution Offices and in case of the 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, the 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 (Article 23 amendment)

Vacant posts of the state prosecutors in the State Prosecution Offices shall be filled according to the plan of vacant posts of the state prosecutors at the level of Montenegro (hereinafter: Plan of Vacancies).

The plan of vacancies shall contain the posts of state prosecutors in all State Prosecution Offices that will be vacant in a period of two years.

The plan of vacancies shall be created on the basis of an 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.

While making the assessment referred to in paragraph 3 of this Article, the Prosecutorial Council shall particularly take into account the expected vacancies that may be foreseen based on the influx of cases in the previous three years, the expansion of prosecutorial competencies, the expected termination of prosecutorial office, the decision on the number of state prosecutors and the number of state prosecutor's vacancies in the past three years.

The plan of vacancies shall be adopted by the Prosecutorial Council no later than by the end of the **current** calendar year for the next two years.

The plan of vacancies may be amended if, in the course of a year, there is a change of circumstances based on which the assessment for filling the vacancies for state prosecutors referred to in paragraph 2 of this Article was made.

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 the basic state prosecution offices shall be filled on the basis of the internal advertisement for the voluntary reassignment of state prosecutors from one Basic State Prosecution Office to another.

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

Public advertisement for the filling of vacant positions of state prosecutors in Basic State Prosecution Offices at the level of Montenegro shall be published by the Prosecutorial Council in the "Official Gazette of Montenegro" and one of the printed media based in Montenegro.

Application Procedure **Article 58**

Applications in response to the public advertisement with proof that the candidate meets the requirements for election to the position of state prosecutor in the Basic State Prosecution Offices shall be submitted to the Prosecutorial Council within 15 days from the day of advertisement for filling vacancies for state prosecutors in Basic State Prosecution Offices, on the form established by the Prosecutorial Council.

The Prosecutorial Council shall dismiss untimely and incomplete applications.

Applicants may initiate an administrative dispute against the decision to dismiss an untimely or incomplete application.

Criteria for the First Election of the State Prosecutor **Article 59**

The criteria for the First Election of the State Prosecutor are:

- 1) the score on the written test referred to in Article 60 of this law, or the score on the bar exam, in accordance with the law governing the bar exam;
- 2) the score on the interview with the candidate.

Written Examination **Article 60 (Article 24 amendment)**

The Prosecutorial Council shall administer a written examination of the candidate to be elected as 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, through a commission consisting of three Prosecutorial Council members, two of whom are from among the state prosecutors and one is from among the eminent lawyers.

A candidate who has been given a grade in a bar exam shall not take the written examination referred to in paragraph 1 of this Article, **unless the candidate requests to be examined.**

In the case of conducting a written examination in accordance with paragraph 2 of this Article, the grade on the written examination is taken as a criterion for the selection of the state prosecutor.

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

The written test shall be taken under a code.

The grading of the written test shall be done using a number of points for the form of the document, the application of law and the reasoning for the adoption of the document, so 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 the jurisdiction of the State Prosecution Office.

The written test shall be examined by the Commission referred to in paragraph 1 of this Article, which shall submit it to all the members of the Prosecutorial Council together with the proposed score.

The Prosecutorial Council shall decide on the score of the written test.

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

Removal from a Written Examination
Article 60a (*Article 25 amendment*)

If a candidate uses illegal means, i.e. written or technical aids during a written examination, he/she shall be removed from the examination and the Prosecutorial Council, at the proposal of the Commission referred to in paragraph 1 of Article 60 of this law, shall make a decision to ban such a candidate from accessing the written examination for a period of two years from the date of the violation.

In the case referred to in paragraph 1 of this Article, it shall be deemed that the candidate did not pass the written examination, as confirmed by the Prosecutorial Council at the proposal of the Commission referred to in paragraph 1 of Article 60 of this Law.

Interview
Article 61

The Prosecutorial Council shall conduct an interview with persons who score more than 60 points in the written test or the bar exam.

The following shall be assessed at the interview:

- 1) the motivation of the candidate to work in the State Prosecution Office;
- 2) communication skills;
- 3) the ability to make decisions and resolve conflicts;
- 4) the understanding of the role of a state prosecutor in society.

The assessment based on the criteria referred to in paragraph 2 of this Article shall be carried out by way of each member of the Prosecutorial Council awarding a number of points to each person, where a person may get a maximum of 20 points at the interview.

The final score at the interview shall be the average number of points, which is determined based on the number of points awarded by each member of the Prosecutorial Council.

A person who, based on the interview evaluation, scores less than 15 points at the interview may not be included in the ranking list of candidates for the state prosecutor.

The Prosecutorial Council may use the expert assistance of a psychologist when conducting interviews.

Ranking List of the Candidates for the Office of the State Prosecutor
Article 62 (*Article 26 amendment*)

Based on the grade in the written test or the bar exam and the grade from the interview, a ranking list of candidates for the state prosecutor (hereinafter: ranking list) is prepared **determined** according to the number of points

If two candidates in the ranking list have the same number of points, the preference shall be given to the candidate who scored more points in a written test or bar exam, and if candidates have scored the same number of points in the written test or bar exam, the preference shall be given to the candidate who is a member of a minority ethnic group and other national minority community.

If the advantage of a candidate cannot be established in the manner referred to in paragraph 2 of this Article, the Prosecutorial Council shall draw lots.

Election and Assignment of the Candidates for the Office of the State Prosecutor
Article 63 (Article 27 amendment)

The Prosecutorial Council shall render its decision on the 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 the decision on the transfer of candidates for the office of state prosecutor for initial training in the ~~Basic State Prosecution Office in Podgorica~~ **Basic State Prosecution Office according to the candidate's place of residence or habitual residence.**

Rights of Applicants
Article 64 (Article 28 amendment)

Within a period of 15 days from the day on which the decision on the assignment of candidates for the post of state prosecutor was rendered, every person who applied to the advertisement for the election of the state prosecutor in the Basic State Prosecution Offices shall be entitled to insight into the documents, written tests and grades of the persons who applied for the advertised vacancy.

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

The Prosecutorial Council will refer candidates for state prosecutors to initial training, i.e. send state prosecutors to the State Prosecution Office to which they were elected when the decision on the assignment becomes final.

Rights and Obligations of Candidates for State Prosecutor
Article 65 (Article 29 amendment)

State prosecutor candidate shall be employed in the ~~Basic State Prosecution Office in Podgorica~~ **Basic State Prosecution Office according to the candidate's place of residence or habitual residence** for a limited period of time awaiting the decision on his/her election.

State prosecutor candidate shall be entitled to a 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 (Article 30 amendment)

State prosecutor candidates shall complete initial training that consists of theoretical and practical part and takes at least ~~48~~ **6** 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.~~ **Basic State Prosecution Office according to the candidate's place of residence or habitual residence.**

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 training 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.

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 state prosecution office of elected state prosecutors based on the right to choose of the candidates as 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 when the decision on the grade becomes final.

The employment of state prosecutor candidate who refuses the deployment referred to in paragraph 3 of this Article shall be terminated by virtue of law.

The rights of the appointed state prosecutor
Article 67a (Article 31 amendment)

A state prosecutor who, in accordance with Article 67 of this Law, has been appointed to a state prosecution office outside his/her place of residence, i.e. habitual residence, which is less than 50 km away, in both directions, from his/her place of residence, i.e. habitual residence, has the right to reimbursement of transportation expenses.

If the state prosecution office to which a state prosecutor is appointed, in accordance with Article 67 of this Law, is 50 km or more away, in both directions, from his/her place of residence, i.e. habitual residence, a state prosecutor has the right to the reimbursement of transportation expenses or reimbursement of rent, as well as the right to the reimbursement of expenses for a separate life from the family, if the state prosecutor or a member of his/her family household does not own, co-own or jointly own an apartment, i.e. a residential facility in the territory of the state prosecution office to which the state prosecutor was appointed.

The members of the family household referred to in paragraph 2 of this Article are the persons who live in the same household as the state prosecutor, namely:

- a spouse or a common-law spouse or a cohabitating partner of the same sex;
- children born in or out of wedlock, adopted children and stepchildren;
- other persons whom the state prosecutor, his/her spouse or extramarital partner, a partner in a same-sex community of life or the person with whom he/she lives in a cohabitation, i.e. in a cohabitation of persons of the same sex, is obliged by law to support, and who live with him/her in the same apartment, i.e. in the same residential building for family housing.

The Prosecutorial Council shall decide on the right from paragraph 1 and 2 of this Article, and the funds for the exercise of this right shall be provided from the budget of the state prosecution office to which the state prosecutor is appointed.

6. Procedure of Appointment of the State Prosecutors to the Permanent Office in the Basic State Prosecution Offices

Public advertisement
Article 68

Upon expiry of the term of office of the state prosecutor who was appointed 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 appointment of state prosecutor to permanent office

Article 69

Criteria for appointment of a state prosecutor to permanent office shall be:

- 1) performance appraisal score of the state prosecutor during the four-year term of office that he/she was appointed for the first time; and
- 2) score in the interview with the candidate.

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 appointment of state prosecutor

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 performance appraisal score and the score 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 appraisal of performance and if the candidates have the same performance appraisal score, 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 appointment 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. Appointment of three state prosecutors high and of 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 appointment of the state prosecutor

Article 72

Criteria for appointment of the state prosecutor in the high, i.e. Supreme State Prosecution Office shall be:

- 1) score at the written test;
- 2) score in the interview with the candidate.

Articles 60, 61 and 62 of this Law shall be applied accordingly to the implementation and scoring 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 appointment
Article 73

The Prosecutorial Council shall adopt the decision on the appointment of the state prosecutor in the high i.e. Supreme State Prosecution Office on the basis of the ranking in the ranking list composed in accordance with the Article 72 of this Law.

The state prosecutor referred to in paragraph 1 of this Article shall be appointed for the term of four years if appointed 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 appointment of the state prosecutor to the permanent office as referred to in Article 73 of this Law.

8. Promotion of State Prosecutors

Requirements for promotion
Article 75

A state prosecutor or a judge shall be entitled to promotion to the state prosecution office of a higher rank if awarded the grade excellent or good in the performance appraisal and if he/she meets the specific requirements stipulated for the appointment to that state prosecution office.

A state prosecutor or a 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 appointment 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 state prosecutor
Article 77

Appointment of the state prosecutor in the state prosecution office shall be done on the basis of the performance appraisal score of the state prosecutor or the judge who applied to the advertisement and the score in the interview.

If given the grade good in the performance appraisal the state prosecutor or the judge can be given 60 points, if given the grade excellent in the performance appraisal 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 appointment 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 when he/she has taken the oath. The oath shall be taken in front of the Prosecutorial Council, not later than 15 days following the day of appointment of the state prosecutor.

Wording of the oath **Article 79**

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

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

If the state prosecutor does not take the oath or refuses to take the oath, he/she shall be deemed not appointed.

The state prosecutor who was appointed through 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 shall symbolically sign the text of the oath.

Official identity card **Article 80**

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

The 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

Deployment to other State Prosecution Office with the consent of the state prosecutor **Article 81 (Article 32 amendment)**

State prosecutor shall perform prosecutorial function in the state prosecution office to which he/she was appointed.

The Prosecutorial Council may, with the consent of the state prosecutor, deploy 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 receive the salary in the state prosecution office he/she is deployed to. ~~Reimbursement of expenses incurred as a result of the deployment of the state prosecutor to another state prosecution office shall be paid by the state prosecution office to which the state prosecutor is deployed in accordance with the regulations governing the reimbursement of expenses to civil servants and state employees.~~

The provisions of Article 85a of this law shall apply accordingly to the rights of the state prosecutor who has been transferred in accordance with paragraph 1 of this article.

Salaries and reimbursement referred to in paragraph 3 and 4 of this Article shall be paid by the state prosecution office to which the state prosecutor is deployed.

The procedure for temporary deployment to another State Prosecution Office
Article 82 (Article 33 amendment)

The Prosecutorial Council shall decide on the temporary deployment of the state prosecutor referred to in Article 81 of this Law, at the request of the head of the State Prosecution Office to which the state prosecutor is deployed.

Prior to deciding on the temporary deployment 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 filed the request, the state prosecutor who is temporarily deployed and the head of the state prosecution office obtain the opinion of the head of the state prosecution office where the state prosecutor discharges his/her duties.

The expenses incurred due to the deployment of the state prosecutor in accordance with the paragraph 1 of this Article shall be paid by the state prosecution office to which the state prosecutor is temporarily deployed.

Deployment to another authority
Article 83

The Prosecutorial Council may deploy a state prosecutor, with his/her consent, to the Ministry of Justice, legal entity authorized to train state prosecutors or the Secretariat of the Prosecutorial Council for a period of up to three years, to participate in the activities of such authorities related to the improvement of work of the State Prosecution Service, and particularly in the activities of introducing international standards in the work of the State Prosecution Service.

The deployment referred to in paragraph 1 of this Article shall be made upon the proposal of the head of the authority to which the state prosecutor is deployed, based on the previously obtained opinion of the head of the state prosecution office where the state prosecutor discharges his/her duties and the consent of the state prosecutor.

The state prosecutor shall not discharge the duties of his/her prosecutorial office while working for the authority to which he/she is deployed.

In the case referred to in paragraph 1 of this Article, the state prosecutor shall keep his/her salary, and the expenses incurred due to the deployment of the state prosecutor shall be paid by the authority to which the state prosecutor is deployed.

Transfer to another State Prosecution Office without the state prosecutor's consent
Article 84 (Article 34 amendment)

In case of reorganization of the State Prosecution Office whereby a number of state prosecutor's posts is reduced or terminated, the Prosecutorial Council may transfer a state prosecutor to work in another state prosecution office of the same jurisdiction without his/her consent.

In case that no state prosecutor discharges the duties of his/her prosecutorial office in a state prosecution office due to temporary inability to work, other absence or other justified reasons, the Prosecutorial Council may, without the consent of the state prosecutor, deploy the state prosecutor from the state prosecution office of the same instance to such state prosecution office, for a period until the reasons which caused such condition are eliminated, but no longer than six months.

In the case referred to in paragraph 2 of this Article, the state prosecutor shall exercise the rights referred to in Article 85a of this Law.

Permanent voluntary transfer of the state prosecutor
Article 85 (Article 35 amendment)

~~The 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.~~

~~The 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 appraisal 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 decide on transferring the state prosecutor to another state prosecution office of the same instance, while taking into account the needs of the state prosecution office where the state prosecutor discharges his/her prosecutorial office and the needs of the state prosecution office where he/she is to be transferred to.~~

Permanent voluntary transfer of state prosecutors
Article 85 (Article 35 amendment)

The Prosecutorial Council shall publish an announcement for permanent voluntary transfer of state prosecutors on its website.

Permanently appointed state prosecutors who wish to be permanently transferred to another state prosecution office of the same jurisdiction and of the same or lower instance and who have a performance appraisal of "excellent" or "good" in accordance with this Law have the right to apply for permanent voluntary transfer.

The Prosecutorial Council determines the list of registered candidates who meet the requirements from paragraph 2 of this Article, especially taking into account the appraisal performance score of the state prosecutor in accordance with this Law, the length of the state prosecutor's service, place of residence and family circumstances of state prosecutor, as well as the needs of the state prosecution office where the state prosecutor performs his/her prosecutorial function and of the state prosecution office to which he/she is transferred.

Based on the list from paragraph 3 of this Article, the Prosecutorial Council makes a decision on the permanent voluntary transfer of a state prosecutor to another prosecution office.

Applying candidates may initiate an administrative dispute against the decision from paragraph 4 of this Article.

If an administrative dispute is initiated against the decision on the permanent voluntary transfer of a state prosecutor, the Prosecutorial Council may transfer the state prosecutor when the decision on the permanent voluntary transfer becomes final.

Rights of a state prosecutor who has been permanently voluntarily transferred
Article 85a (Article 36 amendment)

A state prosecutor who, in accordance with Article 85 of this Law, has been transferred to a state prosecution office outside his/her place of residence, or habitual residence, which is less than 50 km away, in both directions, from his/her place of residence or habitual residence has the right to remuneration of transportation expenses.

If the state prosecution office to which a state prosecutor is transferred, in accordance with Article 85 of this Law, is 50 km or more away, in both directions, from his/her place of residence or habitual residence, the state prosecutor has the right to the reimbursement of transportation expenses or to the reimbursement of rent, as well as the right to the reimbursement of expenses for a separate life from the family, if the state prosecutor or a member of his/her family household does not own, co-own or jointly own an apartment, or a residential facility in the territory of the state prosecution office to which the state prosecutor was appointed.

The members of the family household referred to in paragraph 1 of this Article are the persons who live in the same household as the state prosecutor namely:

- a spouse or a common-law partner or a partner in a cohabitation with a person of the same sex;

- children born in or out of wedlock, adopted children and stepchildren;

- other persons whom the state prosecutor, his/her spouse or extramarital partner, a partner in a same-sex community of life or the person with whom he/she lives in a cohabitation, i.e. in a cohabitation of persons of the same sex, is obliged by law to support, and who live with him/her in the same apartment, i.e. in the same residential building for family housing.

The Prosecutorial Council shall decide on the right from paragraph 1 and 2 of this Article and the funds for the exercise of this right shall be provided from the budget of the state prosecution office to which the state prosecutor is transferred.

VI. PERFORMANCE EVALUATION OF STATE PROSECUTORS

Aim of Performance Evaluation

Article 86 (*Article 37 amendment*)

Performance evaluation of state prosecutors who hold permanent office, in accordance with the Plan for Performance Evaluation of State Prosecutors, with the exception of the Supreme State Prosecutor and the state prosecutors from the Supreme State Prosecution Office, shall be carried out every ~~three~~ **four** years in order to assess their competence, quantity and quality of work, their ethics, and 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 office and at 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 of state prosecutors 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 of the state prosecutor shall not be carried out if, in the period that is to be evaluated as defined in paragraphs 1 and 2 of this article, the state prosecutor was absent for at least a year.~~

Performance evaluation of the state prosecutor shall not be carried out if, in the period that is to be evaluated as defined in paragraph 1 of this article, the state prosecutor was absent for at least two years, i.e. if, in the period that is to be evaluated as defined in paragraph 2 of this article, 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, 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.

The 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 panel of state prosecutors for performance evaluation.

Criteria for Performance Evaluation **Article 88**

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

- 1) professional knowledge;
- 2) general competences for performing the duties of the prosecutorial office.

Professional Knowledge of the State Prosecutor **Article 89 (Article 38 amendment)**

Professional 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) the quality of work;
- 3) ability to plan and effectively conduct procedural actions;
- 4) skills for preparing and keeping case files;
- 5) skills for using prosecutorial knowledge ~~and for conducting proceedings;~~
- 5) ~~conducting proceedings;~~ and
- 6) professional advancement.

~~The 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 judgments and number of adopted appeals.~~

~~The quantity of work shall be evaluated on the basis of the number of completed cases.~~

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.

~~The quality of work shall be evaluated on the basis of the number of accepted indictments, number of confirmed indictments, number of convicting judgments and number of adopted appeals.~~

Ability to plan and effectively conduct procedural actions shall be evaluated on the basis of the ability of a state prosecutor to organise 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 ~~and conducting proceedings~~ shall be evaluated on the basis of the ability of the state prosecutor to accurately define the case and to properly collect the evidence needed for rendering a prosecutorial decision, i.e. for rendering of a fair judgment, ~~the ability of the state prosecutor to manage the preliminary investigation, i.e. the investigation, and to represent the indictment before the court, taking into account the decisions of the Constitutional Court of Montenegro and the European Court of Human Rights.~~

~~The skill for conducting proceedings shall be evaluated on the basis of the state prosecutor's ability to manage preliminary investigation, i.e. 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 (Article 39 amendment)**

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 organise and coordinate prosecutorial staff;
- 4) ~~participation in various professional activities.~~

Communication skills shall be evaluated based on the quality of relations with parties, colleagues and employees of the State Prosecution Office in the performance of prosecutorial 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 the legislative and procedural changes and use of new technology and rules of work.~~

Ability to organise 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 training and other professional activities.~~

Sources of Performance Evaluation **Article 91 (Article 40 amendment)**

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~~ **ten** randomly selected cases that were closed with final judgments;
- 2) ~~five~~ **ten** 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~~ **ten** randomly selected cases from the criminal register of various cases;
- 5) ~~three~~ **ten** 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~~ **supervision** of the work of the state prosecution office **prosecutor over the evaluation period**; and
- 8) report of the legal entity authorised to train state prosecutors.

If, ~~due to specialisation~~, 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 (Article 41 amendment)**

In selecting the cases referred to in Article 91 paragraph 1 items 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.

When selecting cases referred to in paragraph 1 of this article, cases that have been delegated as a result of the transfer of actual and local jurisdiction will not be taken into account.

Selection of cases shall be carried out after the performance evaluation has commenced and the state prosecutor shall be present during the 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 (Article 42 amendment)**

The state prosecutor whose performance is evaluated shall fill in the required form, describing his/her prosecutorial activities against the criteria and ~~sup-criteria~~ **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 (Article 42 amendment)

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 ~~sup-criteria~~ **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 the 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 the draft grade being submitted.

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 (Article 43 amendment)**

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~~ **one sub-criterion** 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 **and does not have the unsatisfactory grade.**

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~~ **sub-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 (Article 44 amendment)

The state prosecutor 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 have the equal to the salary of the head of the state prosecution office in which 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

The 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 PROSECUTORIAL OFFICE**Opinion on other activities
Article 101**

At the request of the head of the state prosecution office or the state prosecutor, the Prosecutorial Council shall give the opinion on whether certain activities are considered as professional performance of other activity which is incompatible with performance of the prosecutorial function.

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

**Termination of function of 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 function of the person referred to in paragraph 2 of this Article shall be terminated on the day on which the decision on termination is rendered by the Prosecutorial Council,

except in the event of 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 or the state prosecutor whose function has been terminated and 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 appointment null and void Article 107

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

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 appointment null and void, the second ranking candidate on the list shall be appointed to the post or the appointment procedure shall be repeated if there are no other candidates.

VII.a THE CODE OF ETHICS FOR STATE PROSECUTORS AND ESTABLISHING THE VIOLATION OF THE CODE OF ETHICS (Article 45 amendment)

The Code of Ethics for state prosecutors Article 107a

The Code of Ethics for state prosecutors shall define the ethical principles and rules of conduct of state prosecutors and govern in more detail the procedure for the identification of Code of Ethics violations.

Commission for the Code of ethics for state prosecutors Article 107b

The Commission for the Code of Ethics for State Prosecutors shall have a chairman and two members, who shall have their deputies.

The President of the Commission for the Code of Ethics for State Prosecutors and his/her deputy are elected from among the members of the Prosecutorial Council who are not state prosecutors.

Two members of the Commission for the Code of Ethics for State Prosecutors and their deputies are elected from among the state prosecutors, by the extended session of the Supreme

State Prosecution Office, at the proposals of the sessions of state prosecutors of all state prosecution offices.

A state prosecutor from among the state prosecutors and his/her deputy may be elected as a member of the Commission for the Code of Ethics for state prosecutors if such a state prosecutor:

- has served as a state prosecutor for at least five years;
- has not been sanctioned for his/her discipline;
- has not violated the Code of Ethics for State Prosecutors.

The Commission for the Code of Ethics for State Prosecutors shall be appointed for a term of five years.

The member of the Commission for the Code of Ethics for State Prosecutor and his/her deputy shall be dismissed if he/she is sanctioned for the discipline or if he/she violate the Code of Ethics for State Prosecutors.

The Commission for the Code of Ethics for State Prosecutors makes decisions and gives opinions and guidelines, in accordance with the Rules of Procedure referred to in paragraph 10 of this Article.

The report on the work prepared by the Commission for the Code of Ethics for State Prosecutors shall be submitted to the Prosecutorial Council, once a year, by 31 March of the current year for the previous year.

The administrative and technical tasks for the needs of the Commission for the Code of Ethics for State prosecutors shall be performed by the Prosecutorial Council Secretariat.

More detailed method of election of the president, members of the Commission for the Code of Ethics for State prosecutors and their deputies, including the method of work, cases and methods for recusal of the president and members of the Commission for the Code of Ethics for State Prosecutors and other matters of importance for the work of the Commission shall be regulated by the Rules of Procedure of the Commission for the Code of Ethics for State Prosecutors.

Decisions of the Commission of the Code of Ethics for State Prosecutors

Article 107c

Anyone may submit an initiative to the Commission for the Code of Ethics for State Prosecutors to determine whether particular conduct of state prosecutors is in accordance with the Code of Ethics for State Prosecutors.

The Commission for the Code of Ethics for State Prosecutors, after the procedure, makes a decision to reject the initiative from paragraph 1 of this Article or to confirm a violation of the Code of Ethics for State Prosecutors.

If, during the procedure of deciding on the initiative referred to in paragraph 1 of this Article, the Commission for Code of Ethics for State Prosecutors concludes that actions of a state prosecutor include elements of a disciplinary offence referred to in article 108 of this Law, it shall suspend the procedure for establishing the violation of the Code of Ethics for State Prosecutors and submit a proposal to determine disciplinary liability of the state prosecutor, and later suspend the procedure if disciplinary liability of the state prosecutor is determined.

If the disciplinary liability of the state prosecutor is not established, the Commission for the Code of Ethics for State Prosecutors shall continue the procedure and decide whether there has been a violation of the Code of Ethics for State Prosecutors.

An objection may be lodged with the Prosecutorial Council against the decision of the Commission for the Code of Ethics for State Prosecutors within eight days from the date of receipt of the decision.

The Prosecutorial Council shall decide on the objection referred to in paragraph 5 of this Article within 30 days from the date of receipt of the objection.

The Opinion of the Commission for the Code of Ethics for State Prosecutors
Article 107d

A state prosecutor or the head of the state prosecution office may ask the Commission for the Code of Ethics for State Prosecutors for an opinion on whether particular conduct would constitute a violation of the Code of Ethics for State Prosecutors.

VIII. DISCIPLINARY LIABILITY AND DISMISSAL

1. Disciplinary proceedings

Disciplinary Offences

Article 108 (Article 46 amendment)

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.

A 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 Office~~ without any justified reasons he/she fails to proceed in at least three cases within the deadlines prescribed by law;
- 2) without any justified reasons fails to submit a report or information at the written request of the head;
- 3) fails to inform the head about missing the legally prescribed deadlines for proceeding with the case;
- ~~2~~ 4) without any justified reasons fails to appear or is late for the scheduled hearings for at least three scheduled hearings;
- ~~3~~ 5) he/she fails to attend mandatory training programmes without any justified reason;
- ~~4-6~~ he/she fails to fulfil mentoring responsibilities in the initial training and training of trainees.
- 7) without any justified reasons fails to attend the Conference of State Prosecutors;
- 8) fails to submit a proposal for dismissal of the court expert in accordance with the law;
- 9) fails to submit an initiative for the dismissal of the interpreter in accordance with the law;
- 10) without any justified reasons appoints a defence counsel to the suspect *ex officio* contrary to the order in the list of the Bar Association.

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

- 1) he/she unjustifiably fails to proceed in at least two 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 appear in at least two scheduled hearings without a justified reason;
- 3) he/she fails to recuse himself/herself in case(s) in which he/she knew there was a reason for his/her mandatory recusal;
- 4) he/she renders impossible the supervision which is required under the law;
- 5) 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;
- 6) he/she treats participants in proceedings and employees of the state prosecution office in an inappropriate manner;
- 7) he/she discloses information he/she has learnt while handling cases or in discharging duties of the prosecutorial office;
- 8) he/she uses prosecutorial function to act in his/her private interests and interests of his/her family and persons close to him/her;
- 9) he/she accepts gifts or fails to disclose data on property and income in accordance with the legislation on prevention of conflict of interests after the decision of the competent court becomes final;

10) he/she is unjustifiably absent from the office for five consecutive days;
11) 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% 60% 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;

5) he/she commits a severe disciplinary offence which caused significant damage to the reputation of the State Prosecution Office.

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 minor disciplinary offences, the state prosecutor may be imposed disciplinary sanction provided for a severe 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 of 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 unconscientious 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 severe disciplinary offences will be applied accordingly to 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.

The 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 (Article 47 amendment)

The 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.

The disciplinary plaintiff can initiate an investigation to establish the disciplinary liability of the state prosecutor on his own initiative.

The disciplinary plaintiff has a deputy.

The disciplinary plaintiff and his/her deputy are elected by the Prosecutorial Council, from among state prosecutors with at least ten years of work experience as a state prosecutor, from the candidates that are proposed by a session of the Supreme State Prosecution Office and the Minister of Justice, for a period of two years.

The session of the Supreme State Prosecution Office and the Minister of Justice propose one candidate each for a disciplinary plaintiff, and one candidate each for his/her deputy.

Completion of the Investigation by the Disciplinary Plaintiff

Article 113 (Article 48 amendment)

The 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.

The disciplinary plaintiff shall ~~shall~~ **shall not** 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 because:
 - a) the motion was filed for an activity that is not defined as a disciplinary offence,
 - b) the motion is bared by time, or
 - c) the motion was filed by an unauthorised 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;
- 3) a proposal to file a motion to indict the state prosecutor for disciplinary offence.

If the disciplinary panel, i.e. the 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. the 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 (Article 49 amendment)

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.

The disciplinary panel shall comprise three members of the Prosecutorial Council, two of them from among eminent lawyers **the state prosecutors** and one from among ~~the state prosecutors~~ **the eminent lawyers** who shall be the president of the disciplinary panel.

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

Hearing
Article 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 (Article 50 amendment)

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.

The 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.

The disciplinary panel submits decisions referred to in paragraph 1 of this Article to the Prosecutorial Council.

*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, i.e. Prosecutorial Council members, for whom there are circumstances that provoke suspicion into their impartiality shall not participate in the 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 its 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; or
- 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 the 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 124**

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 (Article 51 amendment)**

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) **without any justified reason** 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, **i.e. head of the state prosecution office** in cases 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 (Article 52 amendment)**

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 **and** Minister of Justice. ~~or at least three members of the Prosecutorial Council.~~

A 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 medical 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 which has been assigned to him/her 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 purpose 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, or 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 or the head of the basic state prosecution office are authorised by law.

Supreme state prosecutor can, due to recusal of 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 paragraphs 1 through 5 of this Article shall be adopted in written form.

Supervision over work

Article 134 (Article 53 amendment)

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

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

Extraordinary supervision may be exercised at the proposal of the Supreme State Prosecutor, head of an immediately higher state prosecution office and Prosecutorial Council, due to issues observed in functioning of the state prosecution office caused by great number of unresolved cases, increased inflow or complexity of cases or other issues in functioning of the state prosecution office.

Manner of exercising the supervision shall be regulated further by the Rulebook on internal operations of the State Prosecution Service.

Public relations

Article 135

Information about the work of the 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.

When 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 (Article 54 amendment)**

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.

State prosecution replacing the head of the state prosecution office according to in paragraph 3 of this Article shall have the same rights and duties as 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 of assigned cases***Article 141**

The assigned case shall be withdrawn from the state prosecutor if it is established that he/she is unjustifiably failing to proceed in the case, due to recusal or if he/she is prevented from discharging duties for longer than a month.

The cases which urgent nature is regulated by 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 with the exception of 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.

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 for certain matters it is regulated otherwise by this Law.

*Scope of work of the session***Article 144**

The 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 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 (Article 55 amendment)

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.

At the request of the Parliament or a Parliament competent working bodies in charge of judiciary, anti-corruption and security, the Supreme State Prosecutor and the Chief Special Prosecutor are obliged to submit special, i.e. periodic reports on their work, within the deadline set by the Parliament or the competent working body, with the exception of the circumstances related to individual cases. ~~which are pending before the state prosecution service.~~

With reference to paragraph 5 of this Article, the Supreme State Prosecutor and the Chief Special Prosecutor are obliged to participate in the work of the session at the invitation of the Parliament, the inquiry committee and the competent working bodies of the Parliament in charge of judiciary, anti-corruption **and** security ~~and immunity~~.

After considering the report referred to in paragraph 5 of this Article, or if the Supreme State Prosecutor or the Chief Special Prosecutor does not submit the report in the manner and within the deadlines determined by the Parliament or the competent working body,

without justified reasons, the Parliament or the competent working body may submit an opinion, assessments, suggestions and recommendations to the Prosecutorial Council and the Minister of Justice.

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 or the state prosecutor shall submit files, information and notifications when the court or other public authority need them in discharging their duties.

Co-operation 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 at the initiative of state prosecutors, or police officers or employees from other authorities.

International co-operation

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. International 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 (Article 56 amendment)

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 **and candidates for state prosecutors** 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 **and candidates for state prosecutors** 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 **and candidate for state prosecutors** 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, economists, 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 description of the Secretariat
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 authorisation 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:

- 1) establish identity of persons coming in and out of the state prosecution office;
- 2) carry out inspection of persons coming in and out of the state prosecution office and of their belongings;
- 3) give warnings and issue orders;
- 4) 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;
- 5) detain the person caught in committing a criminal offence until surrendering him/her to the administrative authority competent for police affairs;
- 6) remove from the state prosecution office the persons who disturb operation of the state prosecution office;
- 7) 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 paragraphs 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. FUNDS

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.

Ordering party 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

Deadline for adoption of secondary legislation
Article 181

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

Deadline for adoption of secondary legislation**Article 181a** (*Article 57 amendment*)

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

Adopting an assessment plan**Article 181b** (*Article 57 amendment*)

Assessment plan referred to in article 86 paragraph 1 of this Law shall be adopted no later than three months from the date of entry into force of this law.

Deadline 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.

Article 184a

Nomination of candidates and compiling the lists for the election of members of the Prosecutorial Council from the ranks of state prosecutors shall be completed within 30 days from the day this law enters into force.

The Conference of State Prosecutors shall elect the members of the Prosecutorial Council from among the state prosecutors within 15 days from the day of submitting the list referred to in paragraph 1 of this Article.

The competent working body of the Parliament shall announce a public call for the election of members of the Prosecutorial Council from the ranks of prominent jurists, within eight days from the day this law enters into force.

Article 184b

The mandate of the Prosecutorial Council elected in accordance with the Law on the State Prosecutor's Office ("Official Gazette of Montenegro", No. 11/15, 42/15, 80/17, 10/18 and 76/20) ends with the promulgation of the Prosecutorial Council elected in accordance with this law.

Article 184c

The Prosecutorial Council elected in accordance with this law, shall, at the first constitutive session, appoint the acting Supreme State Prosecutor and state the termination of the office of the acting Supreme State Prosecutor appointed before the entry into force of this Law, i.e. before the first constitutive session.

Article 184d

The Prosecutorial Council elected in accordance with this law shall elect the Disciplinary Plaintiff and his deputy within 15 days after the constitutive session of the Prosecutorial Council was held.

Article 184e

The procedures for appointment of heads of state prosecution offices and state prosecutors which have been initiated but not finalized before entry into force of this Law shall be terminated by force of this Law.

Deadline for appointment of state prosecutors**Article 185**

State prosecutors shall be appointed at the latest by 1 July 2015 in accordance with Article 135 paragraphs 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).

Commenced procedures for appointment and promotion of state prosecutors and heads of the state prosecution offices**Article 185c** (*Article 58 amendment*)

The commenced procedures for appointment of state prosecutors and heads of the state prosecution offices and promotion of state prosecutors which were initiated but not completed in accordance with the provisions of the Law on the State Prosecution Office ("Official Gazette of Montenegro", no. 11/15, 42/15, 80/17, 10/18, 76/20 and 59/21) shall be terminated by force of this Law.

Commenced procedure for initial training**Article 185b** (*Article 58 amendment*)

Initial training procedures initiated prior to date of entry into force of this Law shall be finalised in accordance with the provisions of the Law on the State Prosecution Office ("Official Gazette of Montenegro", no. 11/15, 42/15, 80/17, 10/18, 76/20 and 59/21).

Commenced procedures for appraisal of state prosecutors and heads of state prosecution offices**Article 185c** (*Article 58 amendment*)

Procedures for appraisal of state prosecutors and heads of state prosecution offices commenced prior to date of entry into force of this Law shall be finalised in accordance with the provisions of the Law on the State Prosecution Office ("Official Gazette of Montenegro", no. 11/15, 42/15, 80/17, 10/18, 76/20 and 59/21).

Commenced procedures for identification of Code of Ethics violation and disciplinary liability**Article 185d** (*Article 58 amendment*)

The commenced procedures for identification of Code of Ethics violation and disciplinary liability of state prosecutors and heads of state prosecution offices which were not completed through final and enforceable decision before the date of entry into force of this law, shall be terminated in accordance with the provisions of the Law on State Prosecution Service ("Official Gazette of Montenegro", no. 11/15, 42/15, 80/17, 10/18, 76/20 and 59/21).

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.

Deffered application
Article 186a

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

Deferred application of individual provisions
Article 186b (*Article 59 amendment*)

The provisions of Articles 67a and 85a of this Law shall apply from 1 January 2025.

Exercising the salaries of the state prosecutors until the adoption of a new law
Article 186c (*Article 59 amendment*)

Until adoption of the law regulating the income of the judicial office holders, the heads of the state prosecution offices and state prosecutors shall exercise the right to income in accordance with the law regulating salaries of employees in the public sector.

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.

Repeal
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 the day of its publication in the "Official Gazette of Montenegro".

RATIONALE

I. CONSTITUTIONAL BASIS FOR THE ADOPTION OF THE LAW

The constitutional basis for the adoption of the Law on Amendments to the Law on State Prosecution Office is contained in Article 16, paragraph 1, item 3 of the Constitution of Montenegro, which stipulates that the law, in accordance with the Constitution, shall regulate the manner of establishment, organization and competences of the authorities and the procedure before those authorities, if required so for their operation.

II. REASONS FOR THE ADOPTION OF THE LAW

The adoption of the Law on Amendments to the Law on the State Prosecution Office was initiated with the aim of strengthening the independence, accountability and efficiency of the State Prosecution Office and the Prosecutorial Council. Namely, the purpose of the amendments to this regulation is to improve the legal provisions related to the recruitment of state prosecutors and heads of state prosecution offices, their assignment and transfer, their performance evaluation and ethical and disciplinary responsibility, the composition and work of the Prosecutorial Council, as well as the harmonization of this Law with international standards and recommendations of the Venice Commission and European Commission.

Additionally, one of the reasons for amending the Law on State Prosecution Office was contained in the reports of the European Commission for Montenegro, where recommendations were made that the Law on State Prosecution Office has yet to be amended, taking into account all the outstanding recommendations of the European Commission, the opinions of the Venice Commission, as well as the recommendations of the Group of States against Corruption (GRECO), and to align the Law with the EU acquis and European standards on the independence of the judiciary and the autonomy of the prosecution service, as well as their impartiality, accountability and professionalism.

Adoption of this Law and its effective implementation is crucial for the fulfillment of the interim benchmark in the Negotiating Chapter 23 - Judiciary and Fundamental Rights, as well as for obtaining the Interim Benchmark Assessment Report (IBAR).

III. CONFORMITY WITH THE EU ACQUIS AND RATIFIED INTERNATIONAL CONVENTIONS

The Draft law on amendments to the Law on the State Prosecution Office is harmonized with the documents of the Council of Europe, the United Nations and the European Union, namely:

- European Convention for the Protection of Human Rights and Fundamental Freedoms;
- Magna Carta of Judges of the Consultative Council of European Judges (2010);
- European Charter on the Statute for Judges;
- Opinions of the Consultative Council of European Prosecutors;
- Universal Declaration of Human Rights;
- International Covenant on Civil and Political Rights;
- Basic principles of judicial independence adopted by the 7th United Nations Congress and adopted by the General Assembly.

The standards of the European Union are contained in the founding treaties and the Charter of Fundamental Rights of the European Union. However, it should be emphasized that there is no secondary legislation that regulates in detail the principles of the organisation of the national judiciary systems in the EU member states, which is understandable given the principles on which the EU and its functioning are based. Thus, it may freely be said that, when it comes to judicial independence, the EU member countries rely on international standards developed within the framework of the UN and the Council of Europe.

IV. EXPLANATION OF BASIC LEGAL CONCEPTS

BASIC PROVISIONS

When it comes to the basic provisions, the amendment to Article 8 of the Law in force stipulate that the heads of state prosecution offices and state prosecutors exercise the right to salary, salary compensation, salary supplements and other rights related to the performance of prosecutorial duties in accordance with the law regulating income of the judicial office holders. In this manner, in accordance with international standards, the financial independence of state prosecutors will be improved, so they will, similar to judges, enjoy the right to salaries and other rights related to the performance of their prosecutorial function in the future in accordance with a special law that will regulate the salaries of holders of judicial functions, and not in accordance with the Law on Salaries in the Public Sector (as it is the case now).

PROSECUTION COUNCIL

The proposed amendments impose changes to the provisions on the composition, mandate and election of members of the Prosecutorial Council and on the Council's jurisdiction.

Thus, to reduce the risk of political influence and establish an adequate balance between eminent lawyers and members of the Prosecutorial Council from the rank of state prosecutors, and in accordance with the recommendations from the Opinion of the Venice Commission from May 2021, a change in the composition of the Prosecutorial Council was proposed. With the proposed changes, the number of the Council's members from the rank of state prosecutors increases from four to five, while the number of eminent lawyers, elected and dismissed by the Parliament, decreases from four to three (with the limitation that at most one member can be from the rank of lawyers). In addition, with the aim of achieving fair representation of all state prosecution offices, it was proposed that each level of state prosecution offices have one representative in the Prosecutorial Council. Norms related to the issue of preventing conflicts of interest among the members of the Prosecutorial Council from the rank of state prosecutors were additionally specified.

When it comes to the mandate of the Prosecutorial Council, it is proposed that it lasts five years, corresponding to the mandate for which the Supreme State Prosecutor and heads of state prosecutions are elected, as stipulated by the Constitution, as well as that the same person can be elected as a member of the Prosecutorial Council for a maximum of two times.

Certain norms regulating the election of the Prosecutorial Council's members from among eminent lawyers were amended as well. Following the example of the conditions prescribed by the Constitution for the election of judges of the Constitutional Court, it was proposed that a person who is at least 40 years old and who has worked for 15 years as a judge, state prosecutor, lawyer, notary, public bailiff, professor of legal sciences or in other legal positions can be elected for the Council's member, provided that he/she enjoys personal and professional reputation, and has not been convicted of criminal acts that make state prosecutors unworthy to perform prosecutorial functions in accordance with this law.

Due to the existence of certain ambiguities in the practical interpretation of Article 27 of the Law currently in force, it was proposed to amend it in such a way as to specify that during the term of office of the Prosecutorial Council (which is to be increased to five years), a member of the Prosecutorial Council from the rank of state prosecutors cannot be promoted to the state prosecutor's office of higher instance or elected as a head of the state prosecution office, nor a member of the Prosecutorial Council from the rank of eminent lawyers can be elected as the state prosecutor or the head of the state prosecution office. Such a norm aims at preventing potential abuses and conflict of interest, which would exist if a member of the Prosecutorial Council would resign from the Prosecutorial Council before the expiration of the Council's mandate, with the aim of being elected by that

Prosecutorial Council to a higher-level state prosecutor's position or as the head of the state prosecution office.

According to the proposed amendments, the dismissal of a member of the Prosecutorial Council from the rank of state prosecutors is foreseen only in cases of pronounced sanctions against that member for the severe and most severe disciplinary offences.

For the first time, and based on the proposed amendments, the Law will also contain norms that regulate the publicity of the work of the Prosecutorial Council.

When it comes to the decisions of the Prosecutorial Council, it is proposed to introduce a deadline for initiating an administrative dispute against the Council's decisions affecting the status of candidates for state prosecutor, state prosecutor and head of the state prosecution office, as well as a deadline in which the Administrative Court is obliged to make a decision due to the urgency of these procedures.

ELECTION OF HEADS OF THE STATE PROSECUTION OFFICES AND STATE PROSECUTORS

In accordance with the recommendations of the Venice Commission, the provision relating to the appointment of the acting Supreme State Prosecutor was amended. Namely, the legal amendments propose that the acting Supreme State Prosecutor will be appointed from the rank of state prosecutors from the Supreme State Prosecution Office, with a limitation that a member of the Prosecutorial Council from the rank of state prosecutors in the Supreme State Prosecutor's Office cannot be appointed as the acting Supreme State Prosecutor. The acting Supreme State Prosecutor shall be appointed for a period of six months and the same person may not be re-appointed as the acting Supreme State Prosecutor.

With the proposed changes, the requirements for the election of the state prosecutor in the high state prosecution office are decreased from eight to six years of prosecutorial or judge's experience, and the requirements for the election of the head of the basic state prosecution office are increased from five to six years of previous prosecutorial or judge's experience.

Significant changes were made in the provisions related to the procedure for election of candidates for state prosecutors. Namely, according to the proposed amendments, the period of initial training of candidates for state prosecutors shall be reduced from 18 to 6 months. Candidates for state prosecutors shall be assigned to the basic state prosecution office according to their place of residence or habitual residence. It is also proposed to introduce appropriate incentive measures for state prosecutors who perform their duties outside the place of their residence or habitual residence. These norms aim at eliminating the problems that were observed in the practical implementation of the current regulation and which, due to the complexity of the election procedure, had a significant impact on the lack of a significant number of state prosecutors, and therefore on the efficiency of the work of the State Prosecution Office.

REASSIGNMENT AND TRANSFER OF STATE PROSECUTOR

A significant problem in practice was the impossibility of assigning the state prosecutor to work in another state prosecution office without his/her consent, in the event that no state prosecutor in the state prosecution office performs prosecutorial functions due to temporary incapacity for work, absence or other justified reasons. With the proposed amendments, in such cases, the Prosecutorial Council will be entitled to assign a state prosecutor from the state prosecution office of the same level to work in another state prosecution office, without his/her consent, until the reasons that caused such a situation cease to exist, but not longer than six months. A state prosecutor who is temporarily assigned to work in another state prosecution office will have the right to remuneration of transportation expenses or rent compensation, as well as the right to compensation for living separately from his/her family, if the state prosecutor, as well as a member of his/her family household, does not have an apartment or a residential building in ownership, co-

ownership or joint ownership in the place of jurisdiction of the state prosecution office to which he/she is assigned. The same rights will also be granted to the state prosecutor who has been permanently transferred on a voluntary basis, creating appropriate incentive measures for the transfer of prosecutors to other state prosecution offices and underpinning the efficiency of the functioning of the prosecutorial system.

PERFORMANCE EVALUATION OF STATE PROSECUTORS

Amendments to the provisions related to the performance evaluation of state prosecutors are proposed with the aim of improving the system of performance evaluation of state prosecutors by changing the evaluation period, as well as the sub-criteria for the evaluation. Since the implementation of the existing norms on performance evaluation pointed to inadequately set criteria and sub-criteria for evaluation, which resulted in the fact that all state prosecutors were given the grade excellent, legal amendments are proposed to bring changes and allow for an appropriate evaluation.

Amendments to Article 86 stipulate that the work of state prosecutors with a permanent mandate, except for the Supreme State Prosecutor and state prosecutors in the Supreme State Prosecution Office, is evaluated in accordance with the Performance Evaluation Plan, every four years, in order to assess their professional knowledge, quantity and quality of work, ethics and the need for professional training, as well as for the purpose of advancement to the state prosecution office of a higher level. The performance evaluation of the state prosecutor will not be carried out if the state prosecutor, in the period from paragraph 1 of this article for which the evaluation is carried out, was absent for at least two years, or if the state prosecutor was absent for at least one year in the period from paragraph 2 of this article for which the evaluation is carried out.

In this regard, the sub-criteria for evaluating the professional knowledge of the state prosecutor were amended, as well as the sub-criteria for evaluating the general abilities to perform the prosecutor's function, with the aim of placing the focus of performance evaluation on the evaluation of the quantity and quality of the work of state prosecutors. The sources of performance evaluation were amended as well, along with the method of establishing an evaluation grade of the state prosecutor.

ETHICAL AND DISCIPLINARY LIABILITY OF STATE PROSECUTORS

Pursuant to Article 45 of the Draft Law, the provisions relating to the Code of Ethics of State Prosecutors are standardized and systematized in a separate chapter. Thus, the new Article 107a specifies the scope of regulation by the Code of Ethics of State Prosecutors. Article 107b brings improvements to the provisions of the current Law regarding the composition and jurisdiction of the Commission for the Code of Ethics of State Prosecutors. Thus, it was proposed that the Commission for the Code of Ethics of State Prosecutors has a president and two members, who have deputies. The president and his deputy are elected from among members of the Prosecutorial Council who are not state prosecutors, and two members and their deputies from among the state prosecutors who are elected by the extended session of the Supreme State Prosecution Office on the proposal of the sessions of state prosecutors of all state prosecution offices. The introduction of deputies aims to overcome the problem in situations where there is a need for the recusal of the president or one of the members of the Commission. Conditions for election of the Commission's members are stipulated, specifying that the state prosecutor who has been a prosecutor for at least 5 years, has not been imposed disciplinary sanction and has not violated the Code of Ethics of State Prosecutors can be elected as a member of the Commission for the Code of Ethics of State Prosecutors from among state prosecutors. Inter alia, the conditions for dismissal of the Commission's members are stipulated as well. In its work, the Commission shall make decisions, and issue opinions and guidelines, in accordance with the Rules of Procedure on the way of work and decision-making of the Commission for the Code of Ethics of State Prosecutors. Article 107c regulates in detail

who can address the Commission for the Code of Ethics of State Prosecutors, how the Commission acts upon submitted initiatives and introduces the right to a legal remedy against the Commission's decisions. The rationale behind the proposed amendments is to raise the quality of the work of the Commission for the Code of Ethics of State Prosecutors and to strengthen the track records in determining ethical and disciplinary responsibility of state prosecutors.

Article 46 of the Draft Law amends the Article 108 of the Law currently in force, by adding new reasons for which the state prosecutor may be held accountable in the disciplinary proceeding. It was proposed to introduce new minor and severe disciplinary offenses of the state prosecutor.

The provisions on the Disciplinary Plaintiff were improved in such a way that the Disciplinary Plaintiff is entitled to initiate an investigation to determine the disciplinary liability of the state prosecutor upon his/her own initiative. In addition, in line with the proposed amendments, the Disciplinary Plaintiff will no longer be bound by the factual description of the disciplinary offense given in the motion for establishing disciplinary liability.

It was also proposed to amend the composition of the Disciplinary Panel, which will still consist of three members of the Prosecutorial Council, but two members from the rank of state prosecutors, and one member from the rank of eminent lawyers who is also the president of the Disciplinary Panel.

In accordance with the recommendations of the Venice Commission, it is proposed to amend Article 126 of the Law in force by stipulating that three members of the Prosecutorial Council are excluded from the possibility of submitting a motion for the dismissal of the head of the state prosecution office. The rationale behind is to prevent a conflict of interest since according to the Law currently in force, the decision on the dismissal of the state prosecutor is made by the Prosecutorial Council.

INTERNAL ORGANISATION OF WORK OF THE STATE PROSECUTION SERVICE

Certain norms were added to this Chapter, regulating the work supervision and management in the State Prosecution Office. Hence, Article 134 introduces the possibility of extraordinary supervision, which can be carried out at the proposal of the Supreme State Prosecutor, the head of the immediately higher prosecution office and the Prosecutor's Council, if problems are noticed in the work of the state prosecution office due to a large number of unresolved cases, increased inflow or complexity of cases, or other problems in the functioning of the state prosecution office. The manner of conducting supervision is regulated in detail by the Rulebook on Internal Operations of the State Prosecution Office.

The provision of Article 137 is also amended and specifies that the state prosecutor who replaces the head of the state prosecution in cases of absence, inability to work or expiry of the mandate has the same rights and obligations as the head of the state prosecution office.

In accordance with the recommendations of the Venice Commission, the provision of Article 147 of the Law currently in force was amended in such a way that the Supreme State Prosecutor and the Chief Special Prosecutor will not be obliged to submit reports on work in individual cases to the Parliament and to the working bodies of the Parliament, regardless of the fact whether the cases have been concluded or not.

In order to improve the work of state prosecutors' offices, it was proposed to amend Article 154 of the Law in force and provide candidates for state prosecutors an opportunity to perform the tasks of advisors in the state prosecution office.

TRANSITIONAL AND FINAL PROVISIONS

Transitional and final provisions regulate the deadlines for the adoption of by-laws; adoption of a Performance Evaluation Plan; the completion of initiated appointment, promotion, initial training, performance evaluation and ethical and disciplinary responsibility procedures against state prosecutors and heads of state prosecution offices, as well as the exercise of their right to income until the adoption of the new law.

V FUNDS REQUIRED FOR THE IMPLEMENTATION OF THIS LAW

For the implementation of this Law, it is necessary to provide additional funds within the Budget of Montenegro in the amount of €_____.

VI REASONS FOR ADOPTION OF THE LAWS IN AN URGENT PROCEDURE

In accordance with Article 151 of the Rules of Procedure of the Parliament of Montenegro ("Official Gazette of Montenegro" No. 51/06, 66/06 and "Official Gazette of Montenegro", No. 88/09, 80/10, 39/11, 25/12, 49 /13, 32/14, 42/15, 52/17, 17/18 47/19 and 112/20, 129/20, 65/21, 104/21), we propose that this Law be passed by an urgent procedure, considering the fact that its adoption is necessary in order to fulfill the interim benchmark in Negotiating Chapter 23 - Judiciary and Fundamental Rights, as well as to obtain the Interim Benchmark Assessment Report (IBAR).