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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

LAW

ON
SPECIAL PUBLIC PROSECUTOR'S OFFICE

OF MONTENEGRO

26 February 2015

Adopted text
provided by the Montenegrin authorities

Pursuant to Article 82 paragraph 1 item 2 of the Constitution of Montenegro and Amendment IV paragraph 1 to the Constitution of Montenegro, the Parliament of Montenegro of the 25 convocation, at the sitting of the first ordinary session in 2015, on 26 February 2015 passed the:

LAW
ON SPECIAL PUBLIC PROSECUTOR`S OFFICE

I BASIC PROVISIONS

Scope of the Law

Article 1

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

Special Public Prosecutor`s Office

Article 2

The Special Public Prosecutor`s Office shall be established for the territory of Montenegro within the Public Prosecution Service which is a single and autonomous authority.

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

The seat of the Special Public Prosecutor`s Office shall be in Podgorica.

Jurisdiction

Article 3

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

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

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

Managing the Special Public Prosecutor`s Office

Article 4

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

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

Institutional Supervision

Article 5

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

Funds for Operation

Article 6

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

Relationship between Laws

Article 7

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

Use of Gender Sensitive Language

Article 8

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

II ORGANISATION OF THE SPECIAL PUBLIC PROSECUTOR`S OFFICE

Internal Organisation

Article 9

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

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

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

Divisions Article 10

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

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

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

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

Activity Report Article 11

The chief special prosecutor shall submit a six-month activity report on the Special Public Prosecutor`s Office to the supreme public prosecutor.

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

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

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

The report referred to in paragraph 2 of this Article shall constitute an integral part of the Annual Activity Report, submitted by the Prosecutorial Council to the Parliament, in accordance with the Law.

III ELECTION OF THE CHIEF SPECIAL PROSECUTOR AND SPECIAL PROSECUTOR

Requirements for Election of the Chief Special Prosecutor Article 12

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

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

Requirements for Election of the Special Prosecutor

Article 13

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

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

Public Advertisement

Article 14

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

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

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

Acting upon Applications

Article 15

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

The Prosecutorial Council shall dismiss untimely and incomplete applications.

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

List of Candidates

Article 16

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

Criteria

Article 17

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

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

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

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

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

Criteria Evaluation

Article 18

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

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

Opinion

Article 19

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

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

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

Interview

Article 20

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

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

Decision

Article 21

Following the conducted interview referred to in Article 20 of this Law, and on the basis of the documentation submitted along with the application and opinion referred to in Article 19 of this Law, the supreme public prosecutor shall submit a written proposal containing a rationale for the election of the chief special prosecutor to the Prosecutorial Council.

On the occasion of proposing the candidate for the chief special prosecutor, the supreme public prosecutor shall evaluate the criteria referred to in Article 17 of this Law.

Prosecutorial Council shall elect the chief special prosecutor by majority of votes of the total number of members.

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If the Prosecutorial Council, in line with paragraph 1 of this Article, fails to elect the proposed candidate for the chief special prosecutor or the supreme public prosecutor fails to propose any of the candidates, the advertisement shall be re-issued.

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

Term of Office **Article 22**

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

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

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

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

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

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

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

Reassignment of Public Prosecutors **Article 24**

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

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

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

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

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

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

Appropriate Application

Article 25

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

IV RELATIONSHIP BETWEEN THE SPECIAL PUBLIC PROSECUTOR` S OFFICE AND POLICE ADMINISTRATION

Police Division

Article 26

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

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

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

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

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

Accountability of the Police Officer

Article 27

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

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

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

V INVESTIGATORS

Investigators Article 28

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

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

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

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

Powers and Accountability of Investigators Article 29

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

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

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

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

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

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

Special Investigative Team
Article 30

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

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

Relationship with Administrative Authorities
Article 31

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

Obligation to Submit Data
Article 32

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

Obligations of the Banks
Article 33

If there are grounds for suspicion that a person disposes of or has disposed of an income in his/her bank accounts which was generated by committing criminal offences referred to in Article 3 of this Law, while such income is relevant for preliminary inquiry and investigation and is subject to seizure, the special prosecutor shall request from the bank to submit data on these accounts and on the account balance.

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

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

Binding Nature of the Investigative Judges' Decisions on Banks
Article 34

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

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determined for monitoring payment transactions, to the special prosecutor about the transactions effected in the account which is monitored.

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

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

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

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

Submission of Data **Article 35**

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

In submission of the classified data that are relevant for initiating and conducting criminal proceedings for criminal offences referred to in Article 3 of this Law by electronic means, the IT protection of such data shall be ensured in accordance with the law governing data secrecy.

Information about the requested and submitted data referred to in paras.1 and 2 of this Article shall be inaccessible to the persons they refer to until the investigation order is issued or until the direct indictment is brought or until the bill of indictment is submitted.

Access to Data **Article 36**

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

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

VI EMPLOYEES IN THE SPECIAL PROSECUTOR`S OFFICE

Employees **Article 37**

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

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

**Advisor
Article 38**

Advisor may be a person who graduated from law school and attained the VII1 level of educational qualification, passed judicial exam and has at least five years of work experience.

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

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

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

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

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

**Application of other Laws
Article 40**

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

VII PENAL PROVISION

**Misdemeanour
Article 41**

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

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

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

VIII TRANSITIONAL AND FINAL PROVISIONS

Application of Laws to the Initiated Procedures

Article 42

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

Take-over of Cases

Article 43

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

Take-over of Tasks

Article 44

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

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

Article 45

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

Time-limit for Public Advertisement

Article 46

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

Act on Internal Organisation and Job Descriptions

Article 47

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

Application of Regulations

Article 48

The provision of Article 81 of the Law on Public Prosecution Service (Official Gazette of the Republic of Montenegro 69/03 and Official Gazette of Montenegro 40/08, 39/11 and 46/13) shall be applied until adoption of the law that will regulate salaries in public sector.

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Entry into Force
Article 49

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

PRESIDENT
Ranko Krivokapić