

## LAW ON THE STATE PROSECUTION SERVICE

### DISCLAIMER

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Date of last check: 15 April 2024

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 25th convocation, at the sitting of the first extraordinary session in 2015, on 26th February 2015, has adopted the:

### LAW ON THE STATE PROSECUTION SERVICE<sup>1</sup>

#### I. BASIC PROVISIONS

##### Subject matter

##### Article 1

This Law shall govern the establishment, organization and competences of the State Prosecution Service; composition, election, term of office, organisation and manner of operation of the Prosecutorial Council, as well as other matters of importance for the operation of the State Prosecution Service and Prosecutorial Council.

##### Constitutionality and Legality

##### Article 2

The State Prosecution Service shall preform activities of prosecution of perpetrators of criminal offences that are prosecuted ex officio and of misdemeanours, as well as other activities stipulated by the law.

The State Prosecution Service shall preform its affairs based on the Constitution, law and ratified international agreements.

##### Independence

<sup>1</sup> Official Gazette of Montenegro, no 011/15 of 12.03.2015, 042/15 of 29.07.2015, 080/17 of 01.12.2017, 010/18 of 16.02.2018, 076/20 of 28.07.2020, 059/21 of 04.06.2021.

### **Article 3**

Affairs of the State Prosecution Service shall not be preformed under any influence and no person shall exert any influence on the State Prosecution Service in preforming its affairs.

### **Impartiality Article 4**

Duties of the State Prosecutor shall be preformed impartially and objectively and in line with the principles of legality and equality before the law.

### **Public Nature of Operations Article 5**

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

### **Professional Development Article 6**

State prosecutors shall have the right to and the duty of professional development for more successful performance of their function.

### **Funds for Work Article 7**

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

### **Salaries Article 8**

Heads of State Prosecution Offices and State Prosecutors shall have the right to salary and other labour rights and labour-based rights in accordance with the law.

### **Right to Association Article 9**

Heads of the State Prosecution Offices and State Prosecutors shall have the right to professional association.

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

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

## **II. ESTABLISHMENT, ORGANIZATION AND COMPETENCES OF THE STATE PROSECUTION OFFICES**

### **Structure of the State Prosecution Service Article 11**

The following shall be established within the State Prosecution Service: The 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 the seat in Podgorica.

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

The High state prosecution office shall be established for the territories of 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**

Supreme State Prosecution Office shall proceed before the Supreme Court of Montenegro, Court of Appeals of Montenegro, Administrative Court of Montenegro, other courts and other state authorities, in accordance with the law.

Supreme State Prosecution Office shall, in accordance with the law, a request for protection of legality.

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

### **Special State Prosecution Office Article 13**

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

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

High state prosecution offices shall be:

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

2)the High State Prosecution Office in Podgorica, to proceed before the High Court in Podgorica.

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

### **Basic State Prosecution Office Article 15**

Basic state prosecution offices shall be:

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

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

### **Actual and territorial jurisdiction Article 16**

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

In order to discharge the duties of prosecution of perpetrators of criminal offences and misdemeanours the state prosecution offices shall, together with the authorities that have the jurisdiction, be authorized to impose and undertake the measures necessary for detecting criminal offences and other acts punishable in accordance with 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**

*(Law amending the Law on State Prosecution Service, Official Gazette of Montenegro, no. 076/2020, Article 1)*

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

**Management**

**Article 17**

*(Law amending the Law on State Prosecution Service, Official Gazette of Montenegro, no. 059/2021, of 4.6. 2021, Article 1)*

The State Prosecutor's Office shall be managed by the Supreme State Prosecutor.

The work of state prosecutor's offices shall be managed by the heads of state prosecutor's offices, as follows:

- Basic State Prosecutor's Office, Head of the Basic State Prosecutor's Office;
- Senior State Prosecutor's Office, Head of the Senior State Prosecutor's Office;
- Special State Prosecutor's Office, Chief Special Prosecutor.

The work of the Supreme State Prosecutor's Office shall be managed by the Supreme State Prosecutor.

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

**III. PROSECUTORIAL COUNCIL**

**1. Compositions and Term of Office of the Prosecutorial Council**

**Composition of the Prosecutorial Council**

**Article 18**

*(Law amending the Law on State Prosecution Service, Official Gazette of Montenegro, 059/2021, of 4.6.2021, Article 2)*

Prosecutorial Council shall have a president and ten members.

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

Members of the Prosecutorial Council shall be:

- 1) four state prosecutors who have a permanent position and at least five years of work experience in performing the prosecutorial function, of which three from the Supreme State Prosecutor's Office, Special State Prosecutor's Office and higher state prosecutor's offices, and one from basic state prosecutor's offices elected and dismissed by the Conference of State prosecutors;
- 2) four eminent lawyers elected and dismissed by the Parliament of Montenegro (hereinafter referred to as the Parliament), at the proposal of the competent working body;
- 3) one representative of the state administration body responsible for judicial affairs (hereinafter referred to as the Ministry of Justice), appointed by the Minister of Justice from among the employees of the Ministry of Justice;
- 4) one eminent lawyer as a representative of non-governmental organizations in the field of rule of law, work of the state prosecutor's office or fight against corruption and organized crime, proposed by non-governmental organizations that meet the requirements of this law, and elected and dismissed by the Parliament.

A member of the Prosecutorial Council from the ranks of state prosecutors may not be: a spouse or common-law spouse or a relative of a deputy, a member of the Government of Montenegro (hereinafter referred to as the Government) and the President of Montenegro in the direct line regardless of the degree of kinship, in lateral line to the second degree of kinship or a relative by in-law to the first degree.

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

The President of the Parliament of Montenegro shall promulgate Composition of the Prosecutorial Council.

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

### **Term of Office of the Prosecutorial Council Article 19**

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

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

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

## **2. The Manner of Election and Termination of the Term of Office of the Prosecutorial Council members**

### **Conference of the State Prosecutors Article 20**

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

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

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

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

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

### **Commission for the Code of Prosecutorial Ethics Article 21**

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

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

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

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

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

### **Decision-Making in the Conference of State Prosecutors Article 22**

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

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

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

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

### **Election Commission Article 23**

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

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

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

### **Proposal for Election of the Prosecutorial Council Members from Among the State Prosecutors Article 24**

*(Law amending the Law on State Prosecution Service, Official Gazette of Montenegro, no. 080/2017, of 1.12.2017, Article 1)*

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

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

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



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

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

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

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

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

### **Election of the Prosecutorial Council Member from Among State Prosecutors Article 25**

*(Law amending the Law on State Prosecution Service, Official Gazette of Montenegro, 059/2021, of 4.6. 2021, Article 3)*

The lists of candidates for the election of Prosecutorial Council members composed in line with Article 24 paragraphs 2 and 5, i.e. paragraph 6 of this Law shall be delivered to all state prosecution offices to be posted on their notice boards, not later than two months before the expiry of the term of office of the Prosecutorial Council members.

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

Members of the Prosecutorial Council shall be elected among three candidates from the list referred to in Article 24, paragraph 2 of this Law, while from one state prosecutors office can be elected only one member and one candidate from the list referred to in Article 24 paragraph 5 i.e. 6 of this law, who has obtained the highest number of votes.

If no candidate from the list receives the required majority of votes, the voting shall be repeated for the five candidates from the list referred to in Article 24 paragraph 2 of this Article, i.e. for the two candidates from the list referred to in Article 24 paragraph 5, i.e. paragraph 6 of this Law, who receive the highest number of votes.

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

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

*(Law on Amendments to the Law on State Prosecution Service, Official Gazette of Montenegro, no. 010/18, Article 1)*

*(Law amending the Law on State Prosecution Service, Official Gazette of Montenegro, 059/2021, of 4.6. 2021, Article 4)*

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

Elected member of the Prosecutorial Council shall not be person who:

- 1) is a spouse or common-law spouse or relative of an MP, member of the Government and the President of Montenegro or a person elected, nominated or appointed by the Parliament, the President of Montenegro or the Government, in a direct line regardless of kinship, in a lateral line to another degree by in-laws to the first degree;
- 2) is a member or official of political parties (presidents, members of the presidency, their deputies, members of executive and main committees), or a person who was directly elected or served as a member of the Government, MP or councilor in the last five years;
- 3) has performed the prosecutorial function in the last eight years.

The competent working body of the Parliament shall announce a public call for the election of a member of the Prosecutorial Council from the ranks of eminent lawyers in the "Official Gazette of Montenegro" and in at least one of the print media based in Montenegro, at least four months before the expiration of the term.

The competent working body of the Parliament shall publish invitation for the election of a member of the Prosecutorial Council from the ranks of eminent lawyers on the website of the Parliament.

The deadline for submission of applications shall be ten days from the day of announcing the public call.

The list of registered candidates shall be published by the competent working body of the Parliament on the website of the Parliament, and the list must be available to the public for at least seven days from the date of its publication.

The proposal for the election of a member of the Prosecutorial Council from among eminent lawyers shall be submitted to the Parliament by the competent working body of the Parliament.

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

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

#### **Article 26a**

*(Law amending the Law on State Prosecution Service, Official Gazette of Montenegro, 059/2021, of 4.6. 2021, Article 5)*

A member of the Prosecutorial Council of Representatives of Non-Governmental Organizations shall be proposed based on a public call issued by the competent working body of the Parliament.

The public invitation shall be published in the "Official Gazette of Montenegro", at least one of the print media based in Montenegro and shall be published on the website of the Parliament.

The public invitation shall contain in particular:

- 1) conditions that must be met by non-governmental organizations referred to in Article 26b paragraph 1 of this Law;
- 2) conditions referred to in Article 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 submission of proposals.

#### **Article 26b**

A non-governmental organization may nominate a candidate for a member of the Prosecutorial Council of NGO representatives if they meet the following conditions:

- 1) it has been registered with the competent state administration body for at least three years prior to the publication of the public call for candidates for a member of the Prosecutorial Council of Representatives of Non-Governmental Organizations;
- 2) to have 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 dealt with these issues in the previous three years;
- 3) that 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 of NGO Representatives should contain: name and surname, address and short biography of the proposed candidate and must be signed and certified by the responsible person in the NGO that has submitted the proposal.

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

The proposal referred to in paragraph 3 of this Article must be accompanied with:

- 1) proof that the proposed candidate has a permanent residence in Montenegro;
- 2) proof of education and work experience of the proposed candidate;
- 3) a 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 election as a member of the Prosecutorial Council.

The non-governmental organization referred to in paragraph 1 of this Article shall be obliged to submit a certified copy of the founding act and statute, a certified copy of the decision on entry in the Register of Non-Governmental Organizations and an overview of implemented projects and activities in the last three years.

An overview of the implemented projects and activities of the non-governmental organization in the last three years shall be submitted on the form determined by the competent working body of the Parliament.

The proposal for a candidate for a member of the Prosecutorial Council shall be submitted within 30 days from the day of publishing the public invitation.

### **Article 26c**

After the expiration of the prescribed deadline for the application of candidates on the basis of a public invitation 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 para. 1 and 2 and Article 26b of this Law and shall compile a list of eligible candidates.

The competent working body of the Parliament shall be obliged to publish a list of timely and complete proposals of candidates for a member of the Prosecutorial Council of Representatives of Non-Governmental Organizations on the website of the Parliament within eight days from the deadline for submission of proposals.

The competent working body of the Parliament shall be obliged to, within 15 days from the deadline for 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, which is usually proposed by most eligible NGOs in accordance with this law.

The proposal referred to in paragraph 3 of this Article must be justified.

The competent working body of the Parliament shall submit to the Parliament for consideration and decision-making a proposal list for the election of representatives of non-governmental organizations to the Prosecutorial Council, with an explanation and a report on the conducted selection procedure.

The Parliament shall be obliged, within 30 days from the day of submitting the proposal of the list referred to in paragraph 5 of this Article, to make a decision on the election of representatives of non-governmental organizations to the Prosecutorial Council.

### **Prohibition of Election to the Prosecutorial Office Article 27**

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

### **Re-election Article 28**

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

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

The term of office of a Prosecutorial Council member shall be terminated before the expiry of the term of office they were elected for:

- 1) in case of termination of the office that was the basis for their election to the Prosecutorial Council;
- 2) if they resign;
- 3) if they are convicted and imposed an unconditional prison sentence.

In the case referred to in paragraph 1 item 1 of this Article the term of office of the Prosecutorial Council member shall be terminated on the day on which the office that was the basis for their election to the Prosecutorial Council is terminated.

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

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

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

### **Dismissal Article 30**

Prosecutorial Council member shall be dismissed if:

- 1) they perform their duties in unscrupulous and unprofessional manner;
- 2) they are convicted of an offence that makes them unworthy of performing duties of a Prosecutorial Council member.

Unscrupulous and unprofessional performance of duties referred to in paragraph 1 item 1 of this Article shall be the conduct of the Prosecutorial Council member that is contrary to their powers defined in the law, and the failure to meet the duties defined in the law.

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

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

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

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

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

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

*(Law amending the Law on State Prosecution Service, Official Gazette of Montenegro, 059/2021, of 4.6. 2021, Article 6)*

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

In case of termination of the term of office of the member of the Prosecutorial Council elected by the Parliament before the expiry of the term of office they were elected to, the Parliament shall elect the new member according to Article 26 of this Law, or to Article 26a, 26b and 26c.

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

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

### **Temporary Removal Article 32**

A Prosecutorial Council member shall be temporarily removed from duty if:

- 1) they are detained - for the duration of the detention;
- 2) they are temporarily removed from their duty, i.e. the activities on the basis of which they were elected into the Prosecutorial Council;
- 3) indictment against them for the offence that makes them unworthy of the position in the Prosecutorial Council is confirmed - by the time of final conclusion of the criminal proceedings;
- 4) they submit the proposal for resignation - by the conclusion of the procedure for resignation.

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

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

### **Absence from Work and Emoluments Article 33**

*(Law amending the Law on State Prosecution Service, Official Gazette of Montenegro, no. 042/2015, of 29.7.2015, Article 1)*

Prosecutorial Council members that are employed shall be entitled to absence from work in order to discharge their duties in the Prosecutorial Council.

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

Based on the decision of the Prosecutorial Council, Prosecutorial Council members elected from among the state prosecutors can work up to 70% of their annual working hours in the Prosecutorial Council. Rendering such decision, the Prosecutorial Council

shall establish the activities that the Prosecutorial Council members are to perform in the Prosecutorial Council.

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

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

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

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

##### **Article 34**

*(Law amending the Law on State Prosecution Service, Official Gazette of Montenegro, 059/2021, of 4.6. 2021, Article 7)*

Prosecutorial Council shall work and decide in its sessions.

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

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

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

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

##### **Article 35**

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

Upon the proposal of its President, the Prosecutorial Council shall appoint a member of the Prosecutorial Council from among the state prosecutors to replace the President in case of the President's absence or if the President cannot attend a session and to discharge other duties provided for in the Rules of the Procedure of the Prosecutorial Council.

#### **Commissions**

##### **Article 36**

*(Law amending the Law on State Prosecution Service, Official Gazette of Montenegro, no. 042/2015, of 29.07.2015, Article 2)*



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

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

Members of the commissions referred to in paragraph 1 of this Article and members of the Commission for the Code of Prosecutorial Ethics shall be entitled to remuneration for their work in the amount established by the Prosecutorial Council of up to 40% of the average gross salary in Montenegro in the previous year.

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

### **Competences of the Prosecutorial Council Article 37**

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

- 1) establishing the number of state prosecutors;
- 2) establishing the proposal for dismissal of the Supreme State Prosecutor;
- 3) rendering decisions on disciplinary liability of the state prosecutors and heads of state prosecution offices;
- 4) being responsible for training of the state prosecutors and heads of the state prosecution offices;
- 5) ensuring use, functioning and uniformity of the Judicial Information System in its part that is related to the State Prosecution Service;
- 6) keeping records of data related to the state prosecutors and heads of state prosecution offices;
- 7) adopting the Rules of Procedure of the Prosecutorial Council;
- 8) issuing opinions on incompatibility of certain activities with the office of a state prosecutor;
- 9) considering complaints of the work of the state prosecutors and heads of state prosecution offices and take positions regarding any jeopardy to their independence;
- 10) considering complaints against the work of the state prosecutors and heads of state prosecution offices regarding the lawfulness of their work;
- 11) forming the Commission for Evaluation of Performance of State Prosecutors;
- 12) electing the disciplinary plaintiff;
- 13) adopting the methodology for developing the report on the operation of the State Prosecution Service and annual schedule of activities;
- 14) issuing official identity cards to state prosecutors and the heads of state prosecution offices and keeping records of the official identity cards;
- 15) carrying out other duties as required by the law.

### **Decision on the Number of State Prosecutors Article 38**

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

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

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

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

### **Rules of Procedure of the Prosecutorial Council Article 39**

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

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

### **Decision Article 40**

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

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

### **Annual Report Article 41**

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

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

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

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

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

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

## **Relations between the Prosecutorial Council and the State Prosecution Offices Article 42**

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

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

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

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

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

### **1. Election of Supreme State Prosecutor**

#### **Requirements for Election of the Supreme State Prosecutor Article 43**

To be elected Supreme State Prosecutor, a candidate shall:

- 1) meet general requirements for the office of a state prosecutor;
- 2) to have work experience of at least 15 years as a state prosecutor or judge, or 20 years in other duties in the field of law; and

3) to be characterised by professional impartiality, high professional and moral qualities.

#### **Public Announcement Article 44**

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

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

#### **Procedure upon Applications Article 45**

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

The Prosecutorial Council shall reject untimely and incomplete applications.

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

#### **List of candidates Article 46**

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

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

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

#### **Proposal for Election of the Supreme State Prosecutor Article 47**

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

session of the Supreme State Prosecution Office about the applied candidates and the candidate interview.

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

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

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

#### **Article 48**

*(Law amending the Law on State Prosecution Service, Official Gazette of Montenegro, 059/2021, of 4.6. 2021, Article 8)*

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

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

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

A person who meets the conditions referred to in Article 43 of this Law may be appointed to perform the duties of the Supreme State Prosecutor.

The Acting Supreme State Prosecutor shall be appointed for a period of six months.

In the event that the Supreme State Prosecutor is not elected within the period referred to in paragraph 5 of this Article, the same person may once again be appointed acting Supreme State Prosecutor for a period of six months.

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

### **General Requirements**

#### **Article 49**

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

- 1) has graduated from law school with the VII1 level of educational qualification;
- 2) has passed the judicial exam;

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

#### **Article 50**

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

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

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

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

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

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

### **Specific Requirements for the Position of Head of Basic and High State Prosecution Offices Article 51**

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

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

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

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

#### **Programme of Work**

##### **Article 52**

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

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

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

##### **Article 53**

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

- 1) evaluation of the Programme of Work,
- 2) evaluation of their work in the position of a state prosecutor, i.e. a judge or a head of the state prosecution office, i.e. president of the court; and
- 3) evaluation in the candidate interview.

The maximum number of points a candidate can be given shall be 40 for the Programme of Work. It shall be given based on the proposed vision of work in the state prosecution office.

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

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

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

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

##### **Article 54**

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

Head of the state prosecution office shall remain a state prosecutor in the state prosecution office after the expiry of the term they have elected for as the head of the state prosecution office, after termination of the office of the head of the state

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

### **Appropriate Application Article 55**

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

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

### **Contents and Manner of Adoption Article 56**

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

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

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

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

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

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

### **Advertising Vacancies Article 57**

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



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

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

### **Procedure upon Applications Article 58**

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

The Prosecutorial Council shall reject untimely and incomplete applications.

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

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

Criteria for election of the state prosecutor to be elected for the first time shall be:

- 1) the grade given in written examination referred to in Article 60 of this Law, i.e. the grade given in the judicial examination in line with the law regulating the judicial examination, and
- 2) evaluation in the candidate interview.

### **Written Examination Article 60**

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

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

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

Written test shall be taken under a code.

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

- 1)40 points for drawing up the investigation document;
- 2)40 points for drawing up a motion to indict or any other document that falls within jurisdiction of the state prosecution office.

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

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

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

### **Interview Article 61**

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

The following shall be evaluated during the interview:

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

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

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

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

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

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

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

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

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

### **Election and Assignment of the Candidates for the Office of the State Prosecutor Article 63**

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

### **Rights of Applicants Article 64**

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

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

### **Rights and Duties of State Prosecutor Candidates Article 65**

State prosecutor candidate shall be employed in the state prosecution office where they are assigned for a limited period of time waiting for the decision on their election.

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

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

## **Initial Training Article 66**

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

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

The initial training shall be implemented in accordance with 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 in accordance with the law that governs education of the state prosecutors.

## **Decision on Election Article 67**

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

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

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

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

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

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

### **Public Advertisement Article 68**

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

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

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

### **Criteria for Election of State Prosecutor to Permanent Office Article 69**

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

- 1) evaluation of performance of the state prosecutor during the four-year term of office that they were elected to for the first time; and
- 2) evaluation in the candidate interview.

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

### **Rendering decision on the election of state prosecutors Article 70**

Prosecutorial Council shall conduct interviews with the applied candidates.

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

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

If two candidates in the ranking list have the same score, the advantage is given to the candidate with a higher score given in the evaluation of performance and if the candidates have the same score in the evaluation of performance, the advantage is given to the member of a minority nation or other minority community.

If the advantage between the candidates cannot be determined in the manner referred to in paragraph 4 of this Article, the Prosecutorial Council shall decide by secret ballot.

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

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

### **Public Announcement Article 71**

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

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

### **Criteria for Election of the State Prosecutor Article 72**

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

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

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

### **Decision on Election Article 73**

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

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

### **Appropriate Application Article 74**

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

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

### **Requirements for Promotion**

#### **Article 75**

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

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

### **Public Announcement**

#### **Article 76**

In procedure of advancement vacant positions of the State Prosecutors in the High and Supreme State prosecution Office shall be advertised in accordance with the plan of vacant posts of the State Prosecutors.

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

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

#### **Article 77**

Election of the State Prosecutor in the State Prosecution Office shall be done on the basis of the performance evaluation of the State Prosecutor, i.e. judge who applied to the advertisement and the grade in the interview.

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

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

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

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

#### **Article 78**

The state prosecutor shall take their office on the day on which they have taken an oath.

The oath shall be taken in front of the Prosecutorial Council, not later than 15 days from the day of election of the state prosecutor.

### **Wording of the Oath Article 79**

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

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

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

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

### **Official Identity Card Article 80**

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

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

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

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

### **Reassignment to Other State Prosecution Office with the Consent of the State Prosecutor Article 81**

State Prosecutor shall perform prosecutorial function in the state prosecution office to which they were elected.

The Prosecutorial Council may, with the consent of the state prosecutor, reassign the state prosecutor to another state prosecution office of the same or lower instance for a period not longer than one year if the timely performance of duties in that state



prosecution office is called into question as a result of the state prosecutors of that state prosecution office being recused or prevented from performing prosecutorial function or due to a massive case backlog that cannot be reduced with the existing number of state prosecutors or due to some other justified reasons.

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

### **Procedure for Temporary Reassignment to another State Prosecution Office Article 82**

Prosecutorial Council shall render decision to reassign the state prosecutor temporarily as referred to in Article 81 of this Law, upon the request of the head of the state prosecution office the state prosecutor is reassigned to.

Prior to rendering the decision on temporary reassignment of the state prosecutor referred to in Article 81 of this Law, the Prosecutorial Council shall consult the head of the state prosecution office that submitted the request, the state prosecutor being reassigned temporarily and the head of the state prosecution office where the state prosecutor discharges their duties.

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

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

The Prosecutorial Council may, with the consent of the state prosecutor, reassign them for the period of up to three years, to the Ministry of Justice, legal entity authorized to train state prosecutors or to the Secretariat of the Prosecutorial Council where they shall participate in the activities of such authorities related to the promotion of operation of the State Prosecution Service, and particularly in the activities of introducing international standards in the operation of the State Prosecution Service.

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

While working in the authority they are reassigned to the state prosecutor shall not discharge the duties of their prosecutorial office.

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

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

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

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

Prosecutorial Council shall advertise vacancies for state prosecutors internally on its website.

State prosecutors wishing to be transferred permanently to another state prosecution office of the same or lower instance are entitled to apply for the internally advertised vacancies.

Prosecutorial Council shall draw up a list of transfer candidates referred to in paragraph 2 of this Article, in accordance with the work results achieved over the past three years and evaluation of their performance carried out in accordance with this Law.

On the basis of the list of candidates referred to in paragraph 3 of this Article, the Prosecutorial Council shall render decision on transferring the state prosecutor to another state prosecution office of the same level, while taking into account the needs of the state prosecution office the state prosecutor applied to be transferred from and the needs of the state prosecution office they are to be transferred to.

## **VI. PERFORMANCE EVALUATION OF STATE PROSECUTORS**

**Aim of Performance Evaluation  
Article 86**

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

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

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

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

- 1) Performance evaluation of the state prosecutor who was given the grade unsatisfactory shall be carried out one year from the day of establishing such final grade;
- 2) Performance evaluation of the state prosecutor who applied for promotion to a hierarchically higher state prosecution office, if they do not have any grade or if more than two years passed since their last performance evaluation.

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

### **Evaluation Commission Article 87**

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

The Evaluation Commission shall be composed of the Supreme State Prosecutor and five members of the Prosecutorial Council, three of whom elected from among the state prosecutors and two from among eminent lawyers.

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

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

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

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

### **Criteria for Performance Evaluation Article 88**

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

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

### **Expert Knowledge of the State Prosecutor Article 89**

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

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

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

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

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

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

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

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

Professional advancement shall be evaluated on the basis of all the training activities of the state prosecutor that they undertake to improve and implement their knowledge and methods in their future work.

## **General Competences Article 90**

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

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

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

Evaluation of the ability to adjust to changed circumstances shall be conducted on the basis of the state prosecutor's ability to adjust to structural and organizational changes within the state prosecution office where they discharge their duties, as well as to the legislative and procedural changes and use of new technology and rules of work.

Ability to organize and coordinate prosecutorial staff shall be evaluated on the basis of the ability of the state prosecutor to cooperate, organize and supervise the work of advisers, trainees and employees working with them.

Participation in various professional activities shall be evaluated based on the state prosecutor's participation in trainings and other professional activities.

## **Sources of Performance Evaluation Article 91**

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

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

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

### **Rules for Selection of Cases Article 92**

In selecting the cases referred to in Article 91 paragraph 1 item 1 to 5 of this Law, in addition to the cases the state prosecutor dealt with in the state prosecution office where they discharge their duties, the cases they dealt with in the state prosecution offices they were reassigned to shall also be taken into account in accordance with the Law.

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

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

### **Report of the State Prosecutor Article 93**

The state prosecutor whose performance is evaluated shall fill in the required form, describing their prosecutorial activities against the criteria and sub-criteria stipulated in this Law which is followed by their self-evaluation and specification of the cases the state prosecutor has personally 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 they discharge their duties.

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

### **Report and Proposal of the panel of state prosecutors for performance evaluation Article 94**

Within 30 days from the day of delivery of documentation referred to in Article 91 the panel of state prosecutors for performance evaluation shall compose a report on evaluation of the state prosecutor against all evaluation criteria and sub-criteria stipulated in this Law.

On the basis of the report referred to in paragraph 1 of this Article and the report of the state prosecutor referred to in Article 93 of this Law, the panel of state prosecutors for performance evaluation shall make a draft grade for the state prosecutor that is to be sent to the Evaluation Commission.

### **Opinion on the Proposal of the Grade Article 95**

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

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

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

### **Establishing the Grade Article 96**

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

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

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

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

### **Grade Article 97**

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

Final decision on the grade given to the state prosecutor shall be registered in the records of state prosecutors.

### **Consequences of the Grade Article 98**

The state prosecutors given the grades satisfactory or unsatisfactory shall be referred to the program of mandatory continuous training in accordance with 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 they shall be entitled to the salary in the same category as the salary of the head of the state prosecution office on the level where they discharge their 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, they 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 conducted in accordance with 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 OFFICE**

### **Opinion on Other Activities**

#### **Article 101**

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

### **Liability for Damage**

#### **Article 102**

The state shall be liable for any damage inflicted on any party in the proceedings by the state prosecutor as a result of their performance of 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 their annual net salary.

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

#### **Article 103**

*(Law amending the Law on State Prosecution Service, Official Gazette of Montenegro, 059/2021, of 4.6. 2021, Article 9)*

State prosecutor's function shall be terminated in the following cases:

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

### **Reasons for Termination of the Function of the Head of the State Prosecution Office**

#### **Article 104**

The position of the head of the state prosecutor's office shall cease when:

- 1) the time for which they were elected expires;
- 2) their prosecutorial function ceases;
- 3) request it themselves or in the case of abolition or merging of state prosecutor's offices.

### **Termination of the Prosecutor's Term Article 105**

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

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

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

The decision on termination of the term of office shall be submitted by the Prosecutorial Council to the head of the state prosecution office, state prosecutor whose function has been terminated, to the state prosecution office where they have performed their 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, their function shall be terminated upon expiry of that time-limit.

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

### **Proclaiming the Decision on Election Null and Void Article 107**

The Prosecutorial Council shall proclaim the decision on election of the state prosecutor null and void if it proves that, at the time of the election, they did not meet the election requirements or if the Prosecutorial Council receives the information that,

had they been known at the time of the election, would have given the Prosecutorial Council reason not to render the decision on the election.

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

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

## **VIII. DISCIPLINARY LIABILITY**

### **1. Disciplinary Procedure**

#### **Disciplinary Offences**

##### **Article 108**

*(Law amending the Law on State Prosecution Service, Official Gazette of Montenegro, 059/2021, of 4.6. 2021, Article 10)*

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

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

- 1) without any justified reasons they fail to take up cases in accordance with the order in which they were received in accordance with the Rulebook on the internal operations of the State Prosecution Services;
- 2) they unjustifiably fail to appear or is late for the scheduled hearings;
- 3) they fail to attend mandatory training programmes without any justified reason;
- 4) they fail to fulfil mentoring responsibilities in the initial training and training of trainees.

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

- 1) they unjustifiably fail to proceed in the cases within the time-limits defined in the law, and due to that the case is barred by time, the procedure cannot be conducted or there are other consequences stipulated in the law;
- 2) they fail to recuse themselves in cases in which there is a reason for their recusal;
- 3) they render impossible the supervision which is required under the law;
- 4) while performing prosecutorial function or while in a public place, they put themselves into condition or behaves in a manner which is inappropriate for the prosecutorial function;
- 5) they treat participants in proceedings and employees of the state prosecution office in an inappropriate manner;
- 6) they disclose information they have learnt while handling cases or in discharging duties of the prosecutorial office;

- 7)they use prosecutorial function to act in their private interests and interests of their family and persons close to them;
- 8)they accept gifts or fails to disclose data on property and income in accordance with the legislation on prevention of conflict of interests;
- 9)they are unjustifiably absent from the office for five consecutive days;
- 10)they express in public their opinion about a case that has not become final.

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

- 1)they are convicted of an offence which makes them unworthy of performing prosecutorial function;
- 2) they perform 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)they unjustifiably fail to achieve at least 50% of the results in terms of quantity of the work done which is measured against average quantity benchmarks in a specific type of cases set by the Prosecutorial Council; unless the state prosecutor can provide valid reasons for not achieving the quantitative results;
- 2)they start holding the office of a Member of Parliament or any other public office or starts professionally dealing in some other activity;
- 3)they receive the grade unsatisfactory twice repeatedly;
- 4)they were imposed disciplinary sanctions for severe disciplinary offences two times;
- 5) they commit a more serious disciplinary offense which caused significant damage to the reputation of the State Prosecutor's 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 disciplinary offences, the state prosecutor may be imposed disciplinary sanction provided for a serious disciplinary offence.

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

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

### **Motion for Establishing Disciplinary Liability**

#### **Article 110**

*(Law amending the Law on State Prosecution Service, Official Gazette of Montenegro, no. 042/2015, of 29.07.2015, Article 3)*

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

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

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

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

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

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

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

### **Contents of the Motion**

#### **Article 111**

The motion for establishing disciplinary liability shall be filed to the Prosecutorial Council in writing and shall contain personal data on the state prosecutor, factual and legal description of the disciplinary offence, proposed disciplinary sanction to be imposed and statement of reasons which present the basis of the reasonable doubt that the state prosecutor committed the disciplinary offence.

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**

*(Law amending the Law on State Prosecution Service, Official Gazette of Montenegro, 059/2021, of 4.6. 2021, Article 11)*

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

Disciplinary plaintiff shall have a deputy.

The disciplinary plaintiff and their deputy shall be elected by the Prosecutorial Council, from among state prosecutors with at least ten years of work experience as a state prosecutor, from among the nominees, session of the Supreme State Prosecutor's Office and the Minister of Justice, for a period of two years.

The session of the Supreme State Prosecutor's Office and the Minister of Justice propose one candidate for the disciplinary plaintiff, and one candidate for their deputy.

### **Completing of Investigation by Disciplinary Plaintiff Article 113**

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.

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

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

- 1) a proposal to reject the motion for establishing disciplinary liability
  - a) because the motion was filed for an activity that is not defined as a disciplinary offence;
  - b) due to statute of limitation; or
  - c) because the motion was filed by an unauthorized person;

- 2) a proposal to reject the motion for establishing disciplinary liability as ungrounded because there are no evidence that the state prosecutor committed the disciplinary offence; or
- 3) a proposal to file a motion to indict the state prosecutor for disciplinary offence.

If the Disciplinary Panel i.e. Prosecutorial Council does not agree with the proposal of the disciplinary plaintiff referred to in paragraph 3 items 1 and 2 of this Article the Disciplinary Panel i.e. Prosecutorial Council may oblige the disciplinary Plaintiff to conduct the investigation and to file the motion to indict.

### **Authorities Relevant to Establish Disciplinary Liability**

#### **Article 114**

*(Law amending the Law on State Prosecution Service, Official Gazette of Montenegro, 059/2021, of 4.6. 2021, Article 12)*

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 Council consists of three members of the Prosecutorial Council, two members from eminent lawyers and one member from the ranks of state prosecutors who is the president of the disciplinary council.

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, they must be enabled to present their defence in person, in writing or through the defence counsel of their 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 their 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 their absence.

### **Decision Article 117**

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

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

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

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

### **Time-limit for Writing of the Decision Article 118**

The decision determining the disciplinary responsibility of the state prosecutor and imposing a disciplinary sanction on them must be drafted and submitted to the state prosecutor whose responsibility is also determined by the disciplinary prosecutor, within 15 days from the day the decision was made.

Against the decision referred to in paragraph 1 of this Article, the disciplinary prosecutor and the state prosecutor whose responsibility is determined have the right to file an appeal to the Supreme Court, which decides in a panel of three judges.

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

### **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.



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

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

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

Prosecutorial Council shall delete the data on the imposed disciplinary sanctions ex officio after the expiry of the term referred to in paragraph 4 of this Law.

### **Recusal Article 120**

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

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

### **Temporary Removal Article 121**

A state prosecutor shall be temporarily removed from their office if:

- 1) they are imposed detention, for the duration of such detention;
- 2) a criminal procedure is initiated against them 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 their office shall be rendered by the Prosecutorial Council.

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

### **Effect of Decision Article 122**

The activities in cases undertaken by the state prosecutor after they have been temporarily removed, dismissed or their 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**

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

- 1)they change annual allocation of tasks in the state prosecution office contrary to the law;
- 2)they render impossible the supervision in the state prosecution office that is required under the law;
- 3)they treat parties and employees in the State Prosecution office in an inappropriate manner;
- 4)they fail to deliver or delivers incomplete and inaccurate activity reports and other data required under the law;
- 5)they fail to handle complaints against work of state prosecutors according to legislation;
- 6)they withdraw 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)they fail to file motion for establishing disciplinary liability of the state prosecutor in cases for which that is prescribed by the law, although they are aware or should have been aware that there are reasons for disciplinary liability;
- 9)they are temporarily removed from the office of the state prosecutor;
- 10)they are given the grade unsatisfactory.

### **Motion for Dismissal Article 126**

*(Law amending the Law on State Prosecution Service, Official Gazette of Montenegro, 059/2021, of 4.6. 2021, Article 13)*

The motion for dismissal of the head of the state prosecutor's office may be submitted by the head of the immediately higher state prosecutor's office, the supreme state prosecutor, the minister of justice or at least three members of the Prosecutorial Council.

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

### **Appropriate Application Article 127**

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

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

#### **Procedure and Decision Article 128**

State prosecutor shall be dismissed if they permanently lose 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 they are unable to perform the duties of the prosecutorial office.

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

The motion for dismissal of the state prosecutor due to the permanent loss of their 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 they have been assigned and shall be independent in their 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 their request, to the work on a specific case and the decision they intend to make, as well as to the work on a specific case in which complex factual and legal issues are raised.

#### **Mandatory Operating Instructions Article 131**

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

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

The instructions of general nature shall be issued by the supreme state prosecutor, while the head of the state prosecution office may initiate their adoption as they consider 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 ungrounded 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 their written and reasoned request, release them of the duty to proceed in that particular case if there is no danger of delay, and they can assign the case to another head of the state prosecution office, i.e. state prosecutor.

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

### **Relations within the State Prosecution Service Article 133**

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

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

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

Head of the high state prosecution office can directly exercise all the authorities and undertake all the actions for which the head of the basic state prosecution office from their 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 their territory to the other basic prosecution office in their territory.

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

### **Supervision over Work Article 134**

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

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

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

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

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

### **Public Relations Article 135**

Information about the work of the State Prosecution Service shall be provided by the supreme state prosecutor or by a person they have 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 have authorised.

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

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

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

## **2. Prosecutorial Management**

### **Organisation of the Work Article 136**

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

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

### **Management Article 137**

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

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

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

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

## **Article 138**

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

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

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

## **Allocation of Tasks Article 139**

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

## **Allocation of cases Article 140**

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

## **Withdrawal the Allocated Cases Article 141**

The allocated case shall be withdrawn from the state prosecutor if it is established that they are unjustifiably proceeding in the case, due to recusal or if they are prevented from discharging duties for longer than a month.

The cases the urgent nature of which is stipulated in the law can be withdrawn from the state prosecutor if due to their absence or because they are prevented from discharging duties they cannot proceed in such cases in a timely manner and within the time-limit set by the law.

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

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

A complaint against the decision on case withdrawal shall be permitted and it shall be filed with the head of an immediately higher state prosecution office, whereas against



the supreme state prosecutor`s decision it shall be filed with session of the Supreme State Prosecution Office, within three days from the day of receiving the decision.

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

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

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

### **Stand-by and On-call Duty Article 142**

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

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

### **Session of the State Prosecution Service Article 143**

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

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

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

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

### **Scope of Work of the Session Article 144**

Session of the State Prosecution Service:

- 1) consider the programme of work and the report on work of the state prosecution office;
- 2) take positions on general matters from within the scope of work of the state prosecution office;

- 3)adopt the Rules of Procedure for its work;
- 4)consider matters that are important for professional advancement, organisation of work and the overall operation of the state prosecution office;
- 5)consider proposal of the annual schedule of tasks;
- 6)decide on other matters that are important for operation of the state prosecution office.

### **Session of the Supreme State Prosecution Office Article 145**

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

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

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

### **Extended Session Article 146**

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

### **Report on Work Article 147**

*(Law amending the Law on State Prosecution Service, Official Gazette of Montenegro, 059/2021, of 4.6. 2021, Article 14)*

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 timeframe.

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 working bodies of the Parliament responsible for justice, anti-corruption and security, the Supreme State Prosecutor and the Chief Special Prosecutor are obliged to submit special or periodic reports on their work, within the deadline set by the Parliament or the competent working body. the circumstances of individual cases pending before the State Prosecutor's Office.

The Supreme State Prosecutor and the Chief Special Prosecutor shall be obliged to participate in the work of the session at the invitation of the Parliament, the Inquiry Committee and the working bodies of the Parliament in charge of justice, anti-corruption, security and immunity issues.

After considering the report referred to in paragraph 5 of this Article, or if the Supreme State Prosecutor or the Chief Special Prosecutor fails to submit the report in the manner and within the deadlines set by the Parliament or the competent working body, without justified reasons, the Parliament or the competent working body may submit opinions, 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 them to undertake actions from within their competence, while courts and other public authorities shall comply with their request.

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

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

##### **Article 149**

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

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

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

### **International Cooperation Article 150**

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

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

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

### **Indicative Benchmarks Article 151**

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

### **Rulebook on Internal Organisation Article 152**

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

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

### **Secretary Article 153**

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

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

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

### **Advisers Article 154**

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

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

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

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

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

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

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

### **Prosecutorial Trainee Article 156**

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

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

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

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

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

### **Supervision Article 158**

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

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

### **Inspection Supervision Article 159**

*(Law amending the Law on State Prosecution Service, Official Gazette of Montenegro, no. 076/2020, of 28.7.2020, Article 2)*

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**

*(Law amending the Law on State Prosecution Service, Official Gazette of Montenegro, no. 076/2020, of 28.7.2020, Article 3)*

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 conducted 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 Keep 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 keep secret data regardless of how they learnt of them, in accordance with the law governing data secrecy.

### **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 based on 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 be accountable for their work to the Prosecutorial Council.

The term of office of the secretary of the Secretariat shall be terminated before expiry of the period for which they were elected if they resign or if they are dismissed.

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

### **Appropriate Application Article 170**

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

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

### **Rulebook on Internal Organisation and Job Descriptions Article 171**

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

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

## **XII. RECORDS**

### **Contents of the Records Article 172**

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

- 1) personal name, ethnic background if the state prosecutor declares it, address, date and place of birth, gender;
- 2) date of appointment to the office;
- 3) work experience;
- 4) academic title (Master, 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 their work (number of cases, quantity and quality of work, exceeding time-limits set by the law);
- 9) score given for their 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 about them.

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) they have III and IV levels of educational qualification and meets requirements for holding and carrying weapons in accordance with the law governing weapons;
- 2) they have completed the training programme for carrying out protection tasks;
- 3) in the year preceding the year of their employment, they were 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 Authorizations 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 conducting 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 them 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) perform other tasks and execute orders given by the head of the state prosecution office in relation to securing persons, property and facility of the state prosecution office.

Security tasks and authorisations referred to in paras. 1 and 2 of this Article shall be performed 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 Service Article 178**

Joint performance of these tasks may be organized 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. FINANCIAL ASSETS**

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

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

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

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

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

#### **Issuer of Financial Orders 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 authorization referred to in paragraph 2 of this Article may be delegated by the president of the Prosecutorial Council to the secretary of the Secretariat of the Prosecutorial Council.

## **XV. TRANSITIONAL AND FINAL PROVISIONS**

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

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

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

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

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

### **Taking 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**

*(Law amending the Law on State Prosecution Service, Official Gazette of Montenegro, 059/2021, of 4.6. 2021, Article 15)*

The nomination of candidates and the compilation of lists for the election of members of the Prosecutorial Council from the ranks of state prosecutors shall be made 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 public invitations for the election of members of the Prosecutorial Council from among eminent lawyers, 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) shall end with the proclamation 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, state the termination of the duties of the Acting Supreme State Prosecutor determined before the entry into force of this Law, i.e. before the constitutive session and appoint an Acting Supreme State Prosecutor.

#### **Article 184d**

The Prosecutorial Council elected in accordance with this Law shall elect the disciplinary prosecutor and its deputy, within 15 days from the constitutive session of the Prosecutorial Council.

#### **Article 184e**

The initiated procedures for the election of heads of state prosecutor's offices and state prosecutors that have been initiated but have not been completed by the entry into force of this Law shall be suspended by virtue of this Law.

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

#### **Article 185**

State prosecutors shall be elected at the latest by 1 July 2015 in accordance with Article 135 paras. 3 and 4 of the Law on State Prosecution Service (Official Gazette of the Republic of Montenegro 69/03 and Official Gazette of Montenegro 40/08, 39/11 and 46/13).

### **Deferral 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 commencement 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.

**Deferral of Implementation**  
**Article 186a**

*(Law amending the Law on State Prosecution Service, Official Gazette of Montenegro, no. 076/2020, of 28.7.2020, Article 4)*

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

**Beginning of Carrying out Security Tasks**  
**Article 187**

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

**Repealing**  
**Article 188**

On the day this Law enters into force the Law on State Prosecution Service (Official Gazette of the Republic of Montenegro 69/03 and Official Gazette of Montenegro 40/08, 39/11 i 46/13) shall be implemented.

**Entry into force**  
**Article 189**

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