

# **LAW ON STATE PROSECUTOR'S OFFICE**

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## **I GENERAL PROVISIONS**

### **Subject matter of the Law Article 1**

The present Law shall regulate establishment, organisation, jurisdiction and other issues of significance for the work of the State Prosecutor's Office, as well as issues of significance for the work of the Special Prosecutor for Suppression of Organised Crime, Corruption, Terrorism and War Crimes.

### **Constitutionality and Legality Article 2**

The State Prosecutor's Office shall perform its function based on the Constitution, laws and ratified international treaties.

### **Autonomy and Independence Article 3**

The State Prosecutor must not exercise his/her office under anybody's influence and nobody shall influence the State Prosecutor in the exercise of his/her office, except in cases provided for by the present Law.

### **State Prosecutor Article 4**

The Chief State Prosecutor, High State Prosecutor and Basic State Prosecutor (hereinafter referred to as: the State Prosecutor) shall exercise the duties of the State Prosecutor's Office.

The Special Prosecutor shall exercise certain duties from the realm of the State Prosecutor's Office, in accordance with the law.

### **Deputy Article 5**

The State Prosecutor shall have a Deputy.

The Deputy State Prosecutor (hereinafter referred to as: the Deputy) shall be entitled to perform all acts during the proceedings before the court or other state authority that the State Prosecutor he/she is Deputy of is entitled to perform under the law.

The Deputy shall also perform other acts in accordance with the present Law and instructions rendered by the State Prosecutor he/she is Deputy of.

### **Impartiality and Objectiveness**

#### **Article 6**

The State Prosecutor shall exercise his/her office in the public interest in order to ensure the application of law, whereby the respect for and protection of human rights and freedoms must be guaranteed.

The State Prosecutor must exercise his/her office in an impartial and objective manner.

### **Code of Ethics**

#### **Article 7**

The State Prosecutor and the Deputy shall abide by the Code of Ethics of Prosecutors in exercise of their office.

The Prosecution Council, upon prior opinion of State Prosecutors and Deputies, shall pass the Code of Ethics of Prosecutors.

### **Publicity**

#### **Article 8**

The work of the State Prosecutor's Office shall be open to public, unless otherwise provided by the law.

### **Professional skills development**

#### **Article 9**

The State Prosecutor and the Deputy shall have the right and duty to develop their professional skills in order to exercise their office more successfully.

### **Funding**

#### **Article 10**

Montenegro shall provide funding and working conditions for the State Prosecutor's Office.

**Wages  
Article 11**

The State Prosecutor and the Deputy shall have the right to wages and other entitlements, in accordance with the law

**Professional Association  
Article 12**

The State Prosecutors and the Deputies shall have the right to professional association.

**II ESTABLISHMENT AND JURISDICTION**

*1. Establishment*

**Structure of the State Prosecutor's Office  
Article 13**

The Chief State Prosecutor's Office, high state prosecutors' offices, and basic state prosecutors' offices shall be established within the State Prosecutor's Office.

The Chief State Prosecutor's Office shall be established for the territory of Montenegro, with the seat in Podgorica.

The High State Prosecutor's Office shall be established for the territory of the High Court and the Commercial Court.

The Basic State Prosecutor's Office shall be established for the territory of one or more Basic Courts.

**Chief State Prosecutor  
Article 14**

The Chief State Prosecutor's Office shall proceed before the Supreme Court of Montenegro, the Appellate Court of Montenegro and the Administrative Court of Montenegro, other courts and other state authorities, in accordance with the law.

The Chief State Prosecutor's Office shall, in accordance with the law, file a petition for protection of legality.

The Chief State Prosecutor's Office shall also exercise other duties, which are not defined as falling within the competence of the High State Prosecutor's Office and the Basic State Prosecutor's Office.

**High State Prosecutor's Office**  
**Article 15**

High State Prosecutors' Offices are established as:

- 1) The High State Prosecutor's Office in Bijelo Polje, to proceed before the High Court of Bijelo Polje and the Commercial Court of Bijelo Polje.
- 2) The High State Prosecutor's Office in Podgorica, to proceed before the High Court of Podgorica and the Commercial Court of Podgorica.

The High State Prosecutor's Office shall have jurisdiction to proceed in criminal matters before High Courts, and in matters of commercial offences before Commercial Courts.

**Basic State Prosecutor**  
**Article 16**

Basic State Prosecutors' Offices are established as:

- 1) The Basic State Prosecutor's Office in Bar, for the territory of the Basic Court of Bar;
- 2) The Basic State Prosecutor's Office in Berane, for the territory of the Basic Court of Berane;
- 3) The Basic State Prosecutor's Office in Bijelo Polje, for the territory of the Basic Court of Bijelo Polje;
- 4) The Basic State Prosecutor's Office in Kolasin, for the territory of the Basic Court of Kolasin;
- 5) The Basic State Prosecutor's Office in Kotor, for the territory of the Basic Court of Kotor;
- 6) The Basic State Prosecutor's Office in Niksic, for the territory of the Basic Court of Niksic;
- 7) The Basic State Prosecutor's Office in Plav, for the territory of the Basic Court of Plav;
- 8) The Basic State Prosecutor's Office in Pljevlja, for the territory of the Basic Court of Pljevlja and the Basic Court of Zabljak;
- 9) The Basic State Prosecutor's Office in Podgorica, for the territory of the Basic Court of Podgorica and the Basic Court of Danilovgrad;
- 10) The Basic State Prosecutor's Office in Rozaje, for the territory of the Basic Court of Rozaje;
- 11) The Basic State Prosecutor's Office in Ulcinj, for the territory of the Basic Court of Ulcinj;
- 12) The Basic State Prosecutor's Office in Herceg Novi, for the territory of the Basic Court of Herceg Novi;
- 13) The Basic State Prosecutor's Office in Cetinje for the territory of the Basic Court of Cetinje.

The Basic State Prosecutor's Office shall also proceed before the authorities in charge of petty offences and other state authorities from within its district.

The Basic State Prosecutor's Office shall be authorised to carry out all actions falling within its competence before the court which has subject matter and territorial jurisdiction and before authorities in charge of petty offences or other state authorities, except for those actions which fall within the exclusive competence of the Chief *i.e.* High State Prosecutor and actions undertaken by them.

## **2. Jurisdiction**

### **General Jurisdiction Article 17**

The State Prosecutor's Office shall perform the tasks of prosecution of perpetrators of criminal offences and other punishable offences prosecuted *ex officio*, file legal remedies falling within its jurisdiction and perform other affairs as prescribed by law.

### **Subject Matter and Territorial Jurisdiction Article 18**

The State Prosecutor's Office shall proceed within the limits of his/her subject matter and territorial jurisdiction, unless otherwise provided by the law.

### **Authority to undertake measures Article 19**

In order to perform the function of prosecution of perpetrators of criminal offences and other offences punishable by law, the State Prosecutor's Office shall have the authority to determine and undertake measures requisite for detection of criminal and other offences punishable by law and their perpetrators, in co-operation with competent authorities.

### **Representation Article 20 - erased -**

### **Settlement of Disputes by Mutual Agreement Article 21 - erased -**

**Informing the Government**

**Article 22**

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**Postponement or interruption of enforcement of court decisions**

**Article 23**

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**III CONDITIONS AND PROCEDURE FOR APPOINTMENT OF THE STATE PROSECUTOR AND THE DEPUTY**

***1. General and Special Conditions***

**General conditions**

**Article 24**

A person may be appointed as the State Prosecutor or the Deputy if he/she:

- 1) is a citizen of Montenegro;
- 2) is in a generally healthy state and possesses capacity to transact business;
- 3) has the University Degree in Law and has passed the Bar exam;

**Special conditions**

**Article 25**

A person may be appointed the State Prosecutor or the Deputy if he/she, in addition to the general conditions, possesses the following work experience in the field of law:

- for the Chief State Prosecutor and his/her Deputy – 15 years;
- for the High State Prosecutor and his/her Deputy – 10 years;
- for the Basic State Prosecutor – six years, and for his/her Deputy – three years.

**Appointment**

**Article 26**

The state prosecutor shall be appointed and removed from office by the Assembly of Montenegro (hereinafter referred to as: the Assembly) at the proposal of the Prosecutors Council.

Deputies shall be appointed and removed from office by the Prosecutors Council.

**Number of Deputies**  
**Article 27**

The Prosecutors Council shall determine the number of Deputies at the proposal of the Minister of Justice, and following the initiative of the Chief State Prosecutor.

The decision on the number of Deputies shall be published in the “Official Gazette of Montenegro”.

**Term of Office**  
**Article 28**

The office of the Deputy shall be permanent.

Exceptionally from paragraph 1 above, a Deputy Basic State Prosecutor shall be appointed for a term of three years when appointed for the first time.

**Functional Immunity**  
**Article 29**  
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**Incompatibility of Functions**  
**Article 30**  
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**2. *Appointment Procedure***

**Public announcement**  
**Article 31**

The State Prosecutor and the Deputy shall be appointed on the basis of public announcement.

The Prosecutors Council shall announce vacancies for positions of the State Prosecutor and Deputy.

The announcement of vacancies shall be published in the “Official Gazette of Montenegro” and in a daily newspaper issued in Montenegro.

**Application Procedure**  
**Article 32**

The candidates' applications shall be submitted to the Prosecutors Council within 15 days of the date of announcement.

The Prosecutors Council shall reject applications that are belated or incomplete.

The applicant shall have the right to file a complaint with the Prosecutors Council against its decision to dismiss the application that is belated or incomplete within three days of receipt of the decision.

The decision of the Prosecutors Council on the complaint shall be final and an administrative dispute may be instituted against it.

### **Standard Application Form Article 32a**

The application referred to in Article 32 paragraph 1 above shall be submitted in a form approved by the Prosecutors Council.

### **Opinion on candidates' professional and working qualities Article 33**

The Prosecutors Council shall request an opinion on professional and working qualities of all candidates from:

- bodies, commercial companies and other legal persons where candidates had exercised their legal profession;
- the State Prosecutor's Office the candidate is to be appointed to;
- the State Prosecutor's Office which is immediately superior.

### **Criteria Article 33a**

The criteria for the appointment of the State Prosecutor and the Deputy State Prosecutor shall be as follows:

- 1) specialized knowledge, working experience and working results;
- 2) published professional papers and other activities in their line of work;
- 3) additional professional training;
- 4) ability to perform the function for which he/she applies impartially, conscientiously, diligently, determinedly and responsibly;
- 5) communication skills;
- 6) relationship with colleagues, conduct outside work, professionalism and reputation.

Apart from the criteria referred to in paragraph 1 above, organizational skills shall be also taken into account in particular for the appointment of the State Prosecutor.

More detailed criteria for the appointment of the State Prosecutor and the Deputy State Prosecutor shall be laid down by the Rules of Procedure of the Prosecutors Council.



**Insight into the Opinion on Candidates' professional and working qualities**  
**Article 34**  
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**Interview with Candidates**  
**Article 35**

The Prosecutors Council shall arrange an interview with the applicants who meet the requirements for appointment.

An applicant does not need to be interviewed:

- 1) if an interview which served as a basis for his/her assessment was conducted with him/her in the last twelve months;
- 2) he/she was given negative assessment several times when interviewed for a post of the state prosecutor or deputy state prosecutor, regardless of when he/she was last interviewed.

Based on the interview and documentation received, the Prosecutors Council shall assess each candidate taking into account the criteria referred to in Article 33a of this Law.

The Prosecutors Council shall decide by a majority vote of a total number of members on the assessment of the candidates.

Immediately after the interview, the Prosecutors Council shall fill in a standard candidate assessment form which shall contain the assessment of each candidate and explanatory note on the assessment.

**Candidate testing**  
**Article 35a**

The Prosecutors Council may conduct written testing of the candidates prior to the interview.

In case referred to in paragraph 1 above, based on the testing results, the Prosecutors Council shall make a ranking list of applicants which may be modified based on the success the candidates achieve during the interview.

The method of candidate assessment and the contents of the assessment form, as well as more detailed conditions of written testing of the candidates shall be laid down in the Rules of Procedure of the Prosecutors Council.

**Candidate list**  
**Article 35b**

Based on the interview, the assessment of the candidates and documentation received referred to in Article 35 of this Law, the Prosecutors Council shall draw up a list of candidates who achieved satisfactory results.

The list of candidates shall contain the assessment of each candidate who has been interviewed, and/or who was tested, as well as a summary of assessment results.

**Proposing the list of candidates for appointment**  
**Article 36**

The Prosecutors Council shall propose the list of candidates for appointment of the State Prosecutor at a session closed to the public.

The Prosecutors Council shall submit to the Assembly a list of candidates for the appointment of a State Prosecutor together with an explanatory note, which shall contain the list of candidates referred in Article 35b of this Law.

The method of proposing the list of candidates for the appointment of the State Prosecutor shall be regulated further by the Rules of Procedure of the Prosecutors Council.

**Appointment of the Deputy State Prosecutor**  
**Article 36a**

The Prosecutors Council shall pass the decision on the appointment of a Deputy State Prosecutor at a session closed to the public based on the list of candidates.

The decision on appointment of a Deputy State Prosecutor must contain a written statement of reasons.

The Prosecutors Council shall notify the candidate appointed, the State Prosecutor's Office to which he/she has been appointed and the Ministry of Justice of its decision on appointment.

The decision on the appointment of a Deputy State Prosecutor shall be published in the "Official Gazette of Montenegro".

**Candidate's Rights**  
**Article 36b**

A candidate shall have the right to examine his/her documentation and documentation of other candidates and to deliver a written statement thereon to the Prosecutors Council, within three days from the date of such examination.

**Protection of the law**  
**Article 36c**

Decision of the Prosecutors Council on the appointment of the Deputy State Prosecutor shall be final and an administrative dispute may be instituted against it.

**3. *Taking Office***

**Oath and taking Office**  
**Article 37**

The State Prosecutor and the Deputy shall take office on the day he/she takes the oath.

The Chief State Prosecutor shall take the oath before the Assembly on the day of the appointment.

The High State Prosecutor, Basic State Prosecutor shall take an oath before the President of the Assembly or a person appointed by him/her, within than 30 days from the day of the appointment.

Deputy State Prosecutor shall take an oath before the Prosecutors Council no later than 15 days from the date of appointment.

### **The text of the Oath Article 38**

The text of the oath shall be as follows:

“I swear upon my honour that I shall exercise the prosecutorial office in accordance with the Constitution and the law.”

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

If a State Prosecutor and a Deputy refuse to take the oath, it shall be deemed that be they have desisted from the appointment.

## **IV DISCIPLINARY RESPONSIBILITY**

### **Disciplinary Responsibility Article 39**

The State Prosecutor or the Deputy shall be subject to disciplinary proceedings if he/she exercises his/her office in a negligent manner or if he/she harms the reputation of the prosecutorial office.

### **Disciplinary Measures Article 40**

Disciplinary measures shall comprise reprimand or salary reduction.

The salary reduction, which shall not exceed 20%, may be imposed for no longer than six months.

### **Grounds for disciplinary responsibility Article 41**

The State Prosecutor or Deputy State Prosecutor shall be considered as exercising negligently the prosecutorial office if he/she without justified reason:

- 1) does not take cases in the order they are registered,
- 2) rejects to perform the tasks and duties entrusted to him,
- 3) fails to appear or is late to scheduled hearings in cases allocated to him or her,
- 4) is absent from the sessions of the prosecutor's office;
- 5) is absent from work;
- 6) in other cases when the present Law prescribes that certain actions or omissions amount to negligent performance of the tasks.

The State Prosecutor or Deputy State Prosecutor shall be considered as harming the reputation of the prosecutorial office, particularly if:

- 1) he/she appears at work and comes into contact with parties in a state that is not appropriate to the exercise of prosecutorial office (under the influence of alcohol or narcotic drugs),
- 2) he/she behaves indecently at public places or disturbs public peace and order by way he/she behaves,
- 3) behaves in an improper or insulting manner towards individuals, state authorities or legal in persons in connection with the exercise of his/her office,

### **Initiation of disciplinary proceedings Article 42**

A proposal for establishment of the responsibility of a State Prosecutor or Deputy State Prosecutor shall be submitted to the Prosecutors Council.

The proposal referred to in Paragraph 1 of this Article may be submitted by: the Minister of Justice for the Chief State Prosecutor, the Chief State Prosecutor, High State Prosecutor and Basic State Prosecutor for their Deputies, the Chief State Prosecutor for the High State Prosecutor and Basic State Prosecutor and by the Higher State Prosecutor for the Basic State Prosecutor within 15 days as of the day he/she learns of the reasons referred to in Article 41 of the present Law and not later than 60 days of the day the reasons for establishment of disciplinary responsibility emerge.

The Prosecutors Council shall forward the proposal for the establishment of the responsibility to the State Prosecutor or the Deputy State Prosecutor whose responsibility is being examined along with the information that he/she has the right to engage a defence counsel.

### **Dismissal of the Proposal Article 43**

The Prosecutors Council shall dismiss the untimely proposal for the establishment of the responsibility as well as the proposal submitted an unauthorised person.

### **Disciplinary Body**

#### **Article 44**

The proceedings for the establishment of the responsibility of the State Prosecutor or Deputy State Prosecutor shall be conducted by the Disciplinary Committee of the Prosecutors Council (hereinafter referred to as: the Disciplinary Committee).

The Disciplinary Committee shall have a Chairman and two members appointed by the Prosecutors Council from amongst its members.

#### **Disqualification Article 45**

A submitter of the proposal and those members of the Prosecutors Council for whom there are circumstances which engender doubt as to their impartiality may not be involved in the work of the bodies conducting the disciplinary proceedings.

The Chairman of the Prosecutors Council shall rule on the disqualification of a member of the Prosecutors Council, and the Prosecutors Council shall rule on the disqualification of the Chairman of the Prosecutors Council.

#### **Statement and absence Article 46**

A proposal for initiation of disciplinary proceedings shall be defended at the Disciplinary Committee meeting by the submitter thereof.

In the proceedings for the establishment of the responsibility the Disciplinary Committee shall hear the State Prosecutor or Deputy State Prosecutor whose responsibility is being examined.

The Disciplinary Committee shall consider such evidence as it deems indispensable to proper and complete determination of the facts.

Should the submitter of the proposal fail to appear at the meeting of the Disciplinary Committee, the proceedings shall be discontinued and should the State Prosecutor or Deputy State Prosecutor whose responsibility is being established fail to appear, the Disciplinary Committee shall conduct the proceedings in his/her absence.

#### **Decision of the Disciplinary Committee Article 47**

In the proceedings for the establishment of the responsibility of the State Prosecutor or Deputy State Prosecutor, the Disciplinary Committee may:

- reject the proposal as unfounded,
- accept the proposal and impose a disciplinary measure, and
- terminate the proceedings if satisfied that there are reasons for the removal, in which case it shall refer the case to the Prosecutors Council.

The decisions made by the Disciplinary Committee shall be furnished to the submitter of the proposal, to the State Prosecutor or Deputy State Prosecutor whose responsibility is being examined and to the Prosecutors Council.

### **Second instance proceedings**

#### **Article 48**

A complaint against the decision of the Disciplinary Committee may be filed with the Prosecutors Council within eight days of the receipt of the decision.

The complaint may be filed by the submitter of the proposal and the State Prosecutor or Deputy State Prosecutor whose responsibility is being examined or his/her defence counsel.

When acting upon a complaint, the Prosecutors Council may:

- dismiss the complaint as untimely or inadmissible,
- reject the complaint as unfounded,
- vacate the decision and remand the case to the Disciplinary Committee for reconsideration, and
- reverse the decision of the Disciplinary Committee.

The members of the Disciplinary Committee may not be involved in the work of the Prosecutors Council when the latter is deciding upon on the complaints.

### **Protection of the law**

#### **Article 48a**

The decision of the Prosecutors Council establishing disciplinary responsibility of a State Prosecutor and of a Deputy State Prosecutor shall be final and an administrative dispute may be instituted against it.

### **Statute of Limitations**

#### **Article 49**

Proceedings to establish disciplinary responsibility of a State Prosecutor or Deputy State Prosecutor must be completed within three months after the day the proposal was submitted.

Should the proceedings not be completed within the period of time specified in paragraph 1 of this Article, it shall be considered discontinued.

## **V CESSATION OF OFFICE AND REMOVAL**

**Cessation of the Office**  
**Article 50**

The office of the State Prosecutor or Deputy shall cease:

- at the expiry of the term of office,
- on resignation,
- on meeting the requirements for retirement,
- on cessation of citizenship,
- if he/she becomes a member of political party bodies,
- if he/she exercises a representative and other public office or a professional activity incompatible with the prosecutorial office,
- if an unsuspended prison sentence has been imposed against him.

**Decision on the cessation of the office**  
**Article 51**

When a reason for the cessation of the office emerges, the Prosecutors Council shall be informed immediately thereon by: the Chief State Prosecutor for the cessation of his/her Deputy and the High State Prosecutor office, the High State Prosecutor for the cessation of his/her Deputy and the Basic State Prosecutor office, and the Basic State Prosecutor for the cessation of his/her Deputy office. The Minister of Justice shall inform the Prosecutors Council on the reasons for the cessation of office of the Chief State Prosecutor.

The Prosecutors Council shall notify the Assembly without delay that the conditions for termination of office of a State Prosecutor have been fulfilled.

Should the Assembly not reach a decision on the cessation of the office of the State Prosecutor within 30 days as of the receipt of the notification, it shall be deemed that the office of the State Prosecutor has ceased upon the expiry of such time period.

The office of the State Prosecutor shall cease on the day the Assembly reaches the decision on the cessation of the office or upon the expiry of the time period specified in paragraph 3 of this Article.

The decision on termination of office of a Deputy State Prosecutor shall be passed by the Prosecutors Council within 30 days from the date of receipt of notification at latest.

The office of a Deputy State Prosecutor shall terminate on the date of passing of the Prosecutors Council's decision on termination of office.

The decision on termination of office of a Deputy State Prosecutor shall be delivered by the Prosecutors Council to the Deputy State Prosecutor whose office terminated and to the State Prosecutor's Office in which he/she exercised the office of the Deputy.

The decision on termination of office of a State Prosecutor and a Deputy State Prosecutor shall be published in the "Official Gazette of Montenegro".

## **Removal Article 52**

The State Prosecutor or Deputy State Prosecutor shall be removed from office if:

- 1) He/she be sentenced of a criminal offence which renders him or her unfit for exercise of the prosecutorial office,
- 2) He/she exercises the prosecutorial office unprofessionally or in an unconscionable manner,
- 3) He/she has permanently lost the ability to exercise the office.

The State Prosecutor shall also be removed from office if:

- 1) He/she fails to achieve positive results when directing activities through which the State Prosecutor office is being exercised,
- 2) He/she fails to initiate procedure for the removal or disciplinary proceedings of the State Prosecutor or Deputy although he/she is so authorised and that he/she was aware of, or must have known the reasons for removal.
- 3) He/she was imposed a disciplinary measure twice in the course of his/her term of office.

## **Initiative for removal Article 53**

An substantiated initiative for removal of the State Prosecutor or Deputy may be submitted by: the Chief State Prosecutor, at least three members of the Prosecutors Council, Disciplinary Committee, the High State Prosecutor for removal of his/her Deputy and the Basic State Prosecutor, the Basic State Prosecutor for removal of his/her Deputy, and the Minister of Justice for the removal of the Chief State Prosecutor.

## **Periods of time Article 54**

An initiative for removal shall be submitted to the Prosecutors Council.

Within 30 days from the day of the receipt of the initiative, the Prosecutors Council shall decide whether there are grounds for conducting the procedure for establishing the proposal for the removal from office, and/or for passing the decision on removal from office.

The Prosecutors Council shall convey the initiative to the State Prosecutor or Deputy to whom the initiative relates, together with the notification that he/she has the right to engage a defence attorney in the proceedings conducted before the Prosecutors Council.

The State Prosecutor or Deputy State Prosecutor shall have the right to make oral or written representations concerning the initiative for his/her removal within eight days of the receipt.



**Setting up the Commission**  
**Article 55**

The Prosecutors Council shall dismiss the initiative upon establishing that no grounds for conducting the procedure exist or that the initiative was submitted by an unauthorised person.

If the Prosecutors Council finds that grounds to conduct the procedure exist, it shall set up the Commission for examination of conditions for the removal from office (hereinafter referred to as: the Commission).

**Composition of the Commission**  
**Article 56**

The Commission shall have a chairman and two members appointed by the Prosecutors Council from amongst its members.

**Impartiality**  
**Article 57**

The submitter of the proposal and those members of the Prosecutors Council for whom there are circumstances which engender doubt as to their impartiality may not be appointed to the Commission.

**Report of the Commission**  
**Article 58**

The Commission shall collect information and evidence relevant for determination whether or not the initiative is founded.

The State Prosecutor or Deputy whose removal is being sought shall have the right to be present during the work of the Commission.

The Commission shall submit a report on its work to the Prosecutors Council within a deadline fixed by the Prosecutors Council.

A copy of the report shall be submitted by the Commission to the State Prosecutor or Deputy whose removal is being sought.

**Opinion**  
**Article 58a**

If a proposal for removal of the Chief State Prosecutor from office has been filed on account of incompetent or unconscientious performance of the function, the Prosecutors Council shall obtain the opinion of the session of prosecutors of the Chief State Prosecutor's Office.

If a proposal for removal of a State Prosecutor or a Deputy State Prosecutor from office has been filed on account of permanent loss of work capacity required to perform the function, the Prosecutors Council shall obtain the opinion of the competent authority.

**Session of the Prosecutors Council**  
**Article 59**

The submitter of the initiative shall be present at the Prosecutors Council session.  
The State Prosecutor or Deputy whose removal is being sought shall have the right to be present at the session of the Prosecutors Council.  
The Prosecutors Council shall make the decisions in a closed session.

**Decision**  
**Article 60**

When rendering deciding upon the initiative, the Prosecutors Council may:

- 1) reject the initiative as unfounded,
- 2) establish the proposal for removal of the State Prosecutor,
- 3) pass the decision on removal of the Deputy State Prosecutor from office.

**Right to Defence Counsel**  
**Article 61**  
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**Periods of time**  
**Article 62**

The initiative for removal can not be submitted upon expiry of three-year period of time counting from the day of emergence of the reasons for initiating the procedure for removal.

**Submitting the proposal to the Assembly**  
**Article 63**

The Prosecutors Council shall submit a substantiated proposal for the removal of the State Prosecutor from office to the Assembly within 60 days as of the day of the receipt of the initiative.

The decision on the removal of the Deputy State Prosecutor from office must be passed by the Prosecutors Council within three months from the date of submission of the initiative.

The State Prosecutor or Deputy State Prosecutor shall be removed from office on the day the decision on his removal is made.

**Suspension**  
**Article 64**

The State Prosecutor or Deputy shall be suspended from office if he/she has been remanded to detention or subject to an investigation for a criminal offence which renders him or her unfit for the exercise of the office.

The State Prosecutor or Deputy may be suspended from office after the Prosecutors Council has passed the decision to initiate the procedure for removal.

The Prosecutors Council shall decide on suspension from the office of the State Prosecutor or Deputy.

***Mutatis mutandis* application of disciplinary proceedings**  
**Article 64a**

The provisions of this Law regulating disqualification in disciplinary proceedings shall apply *mutatis mutandis* to the procedure for removal from office.

**Protection of the law**  
**Article 64b**

The decision of the Prosecutors Council on removal of the Deputy State Prosecutor from office shall be final and an administrative dispute may be instituted against it.

**Delivery of Decision**  
**Article 65**

The Assembly shall deliver the decision on removal from office to the State Prosecutor who has been removed from office, to the Prosecutors Council and to the Ministry of Justice.

The Prosecutors Council shall deliver the decision on removal from office to the Deputy State Prosecutor who has been removed from office and to the State Prosecutor's Office in which he/she exercised his/her office.

The decision on removal of a State Prosecutor from office shall be published in the "Official Gazette of Montenegro".

**VI SPECIAL PROSECUTOR FOR SUPPRESSION OF ORGANISED CRIME,  
CORRUPTION, TERRORISM AND WAR CRIMES**

**Special Prosecutor**  
**Article 66**

A Department for Suppression of Organised Crime, Corruption, Terrorism and War Crimes (hereinafter referred to as: the Department), headed by the Special Prosecutor, shall be established within the Chief State Prosecutor's Office, for the purpose of carrying out activities aimed at suppression of organised crime, corruption, terrorism and war crimes.

The Special Prosecutor shall, within the limits of his/her competence, have the same rights and duties as a State Prosecutor, if otherwise not provided by the present Law.

### **Deputy Special Prosecutor Article 67**

The Special Prosecutor shall have a Deputy.

The number of the Deputy Special Prosecutors shall be determined by the Prosecutors Council at a proposal of the Chief State Prosecutor and on the basis of an initiative of the Special Prosecutor.

### **Jurisdiction Article 68**

The Special Prosecutor shall carry out all actions that fall under his/her authority to proceed before the court which has subject matter and territorial jurisdiction or other state authorities before which he or she proceeds, in accordance with the law.

### **Method of Deferring Cases Article 69**

When the High State Prosecutor and the Basic State Prosecutor in the course of performance of the tasks that fall within their competence learn that a criminal case is one of organised crime, corruption, terrorism and war crimes, they shall be under a duty to immediately inform thereof the Chief State Prosecutor and to defer the case at his/her request.

When, in the manner specified in paragraph 1 of this Article, or in any other manner, the Chief State Prosecutor learns of an offence of organised crime, corruption, terrorism and war crimes he/she shall immediately assign the case to the Special Prosecutor.

When the Special Prosecutor in the course of the proceedings learns that the committed criminal offence does not have the elements of organised crime, corruption, terrorism and war crimes, he/she shall continue to act in the case until such time as the proceedings are completed.

The Special Prosecutor shall inform the body in charge of internal affairs on deferral of the prosecution for offences of organised crime, corruption, terrorism and war crimes.

### **Responsibility Article 70**

The Special Prosecutor shall be accountable for his/her work and for the work of the Department he/she heads to the Chief State Prosecutor.

### **Requirements for Appointment Article 71**

A person who meets the requirements for appointment of the Chief State Prosecutor may be appointed to a position of the Special Prosecutor.

A person fulfilling the requirements for the appointment of High State Prosecutor may be appointed as the Deputy Special Prosecutor.

### **Appointment Article 72**

The Chief State Prosecutor shall appoint the Special Prosecutor on the written consent of the latter, from amongst the State Prosecutors and Deputies, upon a prior opinion of the Prosecutors Council.

The Chief State Prosecutor shall appoint the Deputy Special Prosecutor on the written consent of the latter, from amongst State Prosecutors and Deputies, at a proposal of the Special Prosecutor.

The Special Prosecutor and his/her Deputy shall be appointed to their positions for the term of office of five years and shall be eligible for reappointment.

### **Opinion on performance Article 73**

Prior to the appointment of the Special Prosecutor or his/her Deputy, the Chief State Prosecutor shall obtain the opinion on his/her performance.

The Chief State Prosecutor shall obtain the opinion referred to in paragraph 1 of this Article with respect to the State Prosecutor from the immediately superior State Prosecutor and with respect to the Deputy from the State Prosecutor.

The opinion referred to in Paragraph 1 of this Article shall particularly contain the evaluation of performance in pre-trial and criminal proceedings as well as in complex cases.

**Removal**  
**Article 74**

The Special Prosecutor shall be removed in the event of unprofessional performance of the duties entrusted to him/her or if the Department fails to achieve positive results in its work.

The Deputy shall be removed if he/she has not demonstrated professionalism in the performance of duties entrusted to him/her within the Department.

The decision on removal of the Special Prosecutor shall be made by the Chief State Prosecutor.

The decision on removal of the Deputy shall be made by the Chief State Prosecutor at a proposal of the Special Prosecutor.

**Rights upon Removal**  
**Article 75**

The Special Prosecutor or Deputy shall have the right to return to work in the State Prosecutor's Office in which he/she exercised the office prior to the appointment, if his/her removal from the position of the Special Prosecutor or his/her Deputy occurred upon expiry of the term of office and upon the resignation.

Should the Special Prosecutor or Deputy State Prosecutor in the event of the expiry of the term of office, resignation or removal decline to return to work in the State Prosecutor's Office in which he/she exercised the office prior to the appointment, his/her State Prosecutor or Deputy State Prosecutor office shall cease.

**Procedure of Removal from Office**  
**Article 76**

Should the reasons for removal referred to in Article 52 of the present Law exist, the Special Prosecutor or Deputy shall be removed from their office of the State Prosecutor or Deputy in the manner and in compliance with such procedure as envisaged in the present Law.

**Secondment to the Department of Persons Holding a Prosecutorial Office**  
**Article 77**

The Chief State Prosecutor may, at a request of the Special Prosecutor, second the State Prosecutor or Deputy to the Department for a certain period of time in order to conduct urgent tasks or to act in concrete cases.

The secondment referred to in paragraph 1 of this Article shall be subject to a written consent of the person being seconded to the Department.

The secondment to the Department shall last not longer than one year but it may be extended under the same conditions.

Exceptionally, the Chief State Prosecutor may second a State Prosecutor or a Deputy State Prosecutor, without his/her consent, to work in the Department if, due to disqualification or absence of the Special Prosecutor or his/her Deputy or for other justified reasons, regular discharge of duties has become uncertain, while these circumstances last and for a maximum period of one year.

During the period of work within the Department, the seconded person shall be entitled to a salary equal to that of the Deputy of the Chief State Prosecutor.

Salary and other costs incurred by the secondment to work with the Department shall be borne by the Chief State Prosecutor.

### **Secondment to the Department from Other Bodies Article 78**

The Special Prosecutor may request from the state body or other institution to second an employee of that body or institution to the Department for the purpose of performing professional or administrative tasks in a certain period of time.

The head of the state body or institution shall be under a duty to decide without delay on the request of the Special Prosecutor.

The secondment to the Department shall be subject to a written consent of the employee and shall not last longer than one year.

During the period of work within the Department, the seconded employee shall be entitled to a salary equal to that of an employee in the Department.

Salary and other expenses incurred by the secondment to the Department shall be borne by the Chief State Prosecutor's Office.

### **Official Secret Article 79**

The Special Prosecutor, his/her Deputy, officers and the administrative staff of the Department, court employees, police and other authorities that have undertaken certain actions at a request of the Special Prosecutor shall be under a duty to keep as official secrets the information classified official secret under the law or other enactment regardless of the manner by which they became privy to such information.

Along with the information classified official secret under the law or other enactment, the information from pre-trial proceedings for criminal offences falling within the competence of the Department shall also be deemed official secret.

### **Handling cases Article 80**

Files, documents and records on investigative actions undertaken during the pre-trial proceedings for criminal offences falling within the competence of the Department must bear a secrecy mark in accordance with the provisions of the special law.

The Special Prosecutor may, due to justified reasons, determine that a certain case is especially protected, and the content thereof shall be accessible solely to the Deputy he/she designates.

The officers of the Department may be informed about the case referred to in paragraph 2 of this Article solely to the extent necessary for the performance of their tasks, whereon special official records kept.

To the aim of protecting secrecy, the Special Prosecutor may determine that such case be entered into the registries and other records under a special code during the course of the pre-trial proceedings.

### **Wages Article 81**

The Special Prosecutor and his/her Deputy shall be entitled to monthly wages equal to that of the Chief State Prosecutor, i.e. the Deputy Chief State Prosecutor.

The Special Prosecutor and Deputy shall be entitled to a special bonus payment due to the onerous working conditions and special nature of the tasks they perform.

### **Direct Application of the Law Article 82**

If otherwise not provided by the provisions of Chapter VI hereof, other provisions of the present Law shall be directly applied with respect to the Special Prosecutor.

## **VII PROSECUTORS COUNCIL**

### **Jurisdiction Article 83**

The Prosecutors Council shall:

- 1) define the proposal for appointment and removal from office of State Prosecutor, appoint, remove from office and decide on termination of office of a Deputy State Prosecutor,
- 2) determine the number of Deputy State Prosecutors,
- 3) conduct the proceedings for establishing the disciplinary responsibility of State Prosecutors and their Deputies,



- 4) ensure the training of prosecutors and deputy prosecutors in cooperation with the Judicial Council;
- 5) establish the proposal for the budget line intended for the financing of the work of the State Prosecutor's Office and the Prosecutors Council,
- 6) give opinion of draft laws and secondary legislation in the field of justice and initiate enactment of relevant laws and other regulations in this field;
- 7) ensure implementation, sustainability and uniformity of the Judicial Information System in the part related to the prosecutors' offices;
- 8) keep records containing information about state prosecutors and their deputies;
- 9) propose framework guidelines on the necessary number of state prosecutors and their deputies and of other officers and administrative staff in state prosecutors' offices;
- 10) adopt methodology for development of work reports of the State Prosecutor's Office and annual allocation of tasks;
- 11) establish the Prosecutorial Code of Ethics,
- 12) adopt Rules of Procedure on its work,
- 13) perform other duties provided by law.

### **Composition of the Prosecutors Council** **Article 84**

The Prosecutors Council shall have a chairman and ten members.

The Chief State Prosecutor shall be the Chairman of the Prosecutors Council by virtue of his/her office.

The members of the Prosecutors Council shall be elected as follows:

- six from amongst the State Prosecutors and their Deputies,
- one from amongst the professors of the Law Faculty in Podgorica,
- two from amongst renowned lawyers in Montenegro, one of whom shall have experience in the field of protection of human rights and freedoms, at the proposal of the President of Montenegro, having obtained a prior opinion of the Protector of Human Rights and Freedoms;
- one representative of the Ministry of Justice.

### **Term of Office of the Prosecutors Council** **Article 85**

The members of the Prosecutors Council shall be elected by the Assembly for a four-year term of office. The members of the Prosecutors Council may be re-elected.

The term of office of a member of the Prosecutors Council who has been subsequently elected to a vacant post in the Prosecutors Council shall expire upon the expiry of the term of office of the Prosecutors Council.

### **Proposing a Member of the Prosecutors Council**

## **Article 86**

The Assembly shall elect the members of the Prosecutors Council from amongst the State Prosecutors and their Deputies at a proposal of the Extended Session of the Chief State Prosecutor's Office; from amongst the professors of Podgorica Law Faculty at a proposal of Podgorica Law Faculty; from amongst renowned legal experts at a proposal of the President of Montenegro; whereas the representative of the Ministry of Justice shall be elected at a proposal of the Minister of Justice.

## **Proposing Candidate for Membership in the Prosecutors Council**

### **Article 87**

The proposal of a candidate for membership in the Prosecutors Council from amongst State Prosecutors and their Deputies shall be established by the Extended Session of the Chief State Prosecutor's Office by secret ballot.

The Extended Session of the Chief State Prosecutor's Office, in addition to the Chief State Prosecutor and his/her Deputies, shall also comprise the High State Prosecutors.

Prior to the establishment of the proposal for membership in the Prosecutors Council from amongst State Prosecutors and their Deputies, the Extended Session of the Chief State Prosecutor's Office shall obtain an initial proposal from each State Prosecutor and Deputy State Prosecutor in Montenegro in such manner as to ensure secrecy of the initiative.

## **Decision on Election of a Candidate to the Prosecutors Council**

### **Article 88**

The proposal for election of candidate to the Prosecutors Council from amongst State Prosecutors and Deputies shall be adopted by a majority vote at the Extended Session of the Chief State Prosecutor's Office.

Should there be more candidates proposed than the number of vacancies to be filled by way of election, and insufficient numbers have been elected, there shall be a repeated vote on the candidates who have won the closest number to the number necessary for election. Should a third round fail, the procedure shall be repeated with new candidates.

## **Cessation of the Function in the Prosecutors Council**

### **Article 89**

Membership in the Prosecutors Council shall cease before the expiry of the term of office for which a member was elected, if the member himself has requested so or if his/her office or employment that made him/her eligible for the election has ceased.

Cessation of membership in the Prosecutors Council shall be confirmed by the Assembly, on the basis of a notification by the Chairman of the Prosecutors Council.

**Method of Work and Decision-Making of the Prosecutors Council**  
**Article 90**

The Prosecutors Council shall adopt the Rules of Procedure of the Prosecutors Council which shall regulate the issues laid down under this Law, the method of work and decision-making of the Prosecutors Council, and other issues relevant for its work.

The Prosecutors Council shall also adopt other acts relevant for its work, in accordance with this Law.

The Rules of Procedure of the Prosecutors Council shall be published in the “Official Gazette of Montenegro” and on the web page of the Prosecutors Council.

**VIII ORGANIZATION OF WORK OF THE STATE PROSECUTOR’S OFFICE**

*1. Prosecutors Administration*

**Organisation of Work**  
**Article 91**

The organisation of work of the State Prosecutor's Office shall mean the management, organisation of the session of the prosecutors and activities of the prosecutorial administration.

**Management**  
**Article 92**

The State Prosecutor shall organise work, assign the tasks and take measures for orderly and timely performance of the tasks of the State Prosecutor’s Office.

The State Prosecutor shall be responsible, within the limits of his/her powers, for orderly and timely performance of tasks.

**Duty of the Chief State Prosecutor**  
**Article 93**

The Chief State Prosecutor shall be responsible for performance of the tasks of the State Prosecutor’s Office and shall be under a duty to take measures and actions requisite for efficient performance of the tasks of the State Prosecutor’s Office.

**Substitution**  
**Article 94**

When the State Prosecutor is absent or prevented from performing the tasks, he/she shall be substituted by the Deputy appointed at the Session of the State Prosecutor for each calendar year, at a proposal of the State Prosecutor.

### **Allocation of tasks Article 95**

An annual allocation of tasks shall be established by the State Prosecutor not later than 15 January for the current year. The annual allocation shall provide for equal allocation of tasks and required specialised training of the Deputies.

### **Conference of Prosecutors Article 96**

The State Prosecutor shall convey a conference for the purpose of examining certain issues of importance for his/her work.

The Conference of Prosecutors shall be made up of the State Prosecutor and his/her Deputies.

The Conference of Prosecutors shall be conveyed and chaired by the State Prosecutor.

The State Prosecutor shall be under a duty to convey the Conference of the prosecutors at a request of at least one third of his/her Deputies.

The decisions at the Conference of prosecutors shall be made if at least two thirds of Deputy prosecutors are present. The decisions shall be of final effect if voted for by a majority of members attending the Conference, unless otherwise provided by the present Law in respect of specific issues.

The method of the Conference work shall be regulated in more detail by the Rules of Procedure of the Conference.

### **Scope of Work of the Conference Article 97**

The Conference of prosecutors shall:

- 1) give opinion on the candidates for holders of the prosecutorial office,
- 2) examine the work program and report,
- 3) take a position concerning general issues falling within the scope of work of the State Prosecutor's Office,
- 4) adopt the Rules of Procedure on its work,

- 5) discuss the issues relevant for professional training, organization of work and overall work of the State Prosecutor's Office,
- 6) examine a proposal of annual allocation of tasks.

### **Prosecutors Administration Article 98**

The State Prosecutor shall perform the activities of prosecutorial administration.

The prosecutorial administration shall include the activities which ensure orderly and timely performance of the work of the State Prosecutor's Office, and particularly: internal allocation of tasks; examining complaints and petitions; managing of the information system; keeping prescribed records and reports; work of the filing office and archives; finances.

The tasks of the prosecutorial administration and the manner of their performance shall be precisely regulated by the Rules of Procedure of the State Prosecutor's Office.

The supervision over the performance of tasks of the prosecutorial administration shall be carried out by the Ministry of Justice.

### **Professional Skills Development Article 99 - erased -**

### **Submission of Data to the Competent Ministry Article 100**

The Chief State Prosecutor shall, at a request of the Ministry of Justice, provide such information as may be required for monitoring the organisation and work of the State Prosecutor's Office, application of the Rules of Procedure of the State Prosecutor's Office, handling the complaints and petitions of citizens, as well as general information on prosecution of perpetrators of criminal offences and other acts punishable under the law.

### **Supervision by the Competent Ministry Article 101**

The Ministry of Justice shall, through an authorised officer, carry out the supervision over the work of the State Prosecutor's Office, with respect to:

- 1) organisation of work of the State Prosecutor's Office in compliance with the Rules of Procedure of the State Prosecutor's Office,
- 2) handling complaints and petitions,
- 3) work of the filing office and archive,
- 4) keeping of official records, and
- 5) other tasks related to proper work and performance of duties of the prosecutorial administration.

### **Secondary legislation** **Article 102**

The Ministry of Justice affairs shall:

- 1) upon having obtained the opinion of the Prosecutors Council, adopt the Rules of Procedure of the State Prosecutor's Office which shall govern the issues envisaged in the present Law, as well as other issues of importance for the organisation of work of the State Prosecutor's Office,
- 2) prescribe the form, manner, procedure, records of issuance of official identity cards of State Prosecutors and their Deputies,
- 3) adopt other acts of importance for the work of the State Prosecutor's Office.

### **Annual Report** **Article 103**

The Chief State Prosecutor shall submit to the Assembly the annual report on the work of the State Prosecutor's Office which shall contain description and the analysis of the situation in the prosecutors' offices, detailed information for each prosecutor's office relating to the number of the cases received and resolved in the year for which the report is made, as well as problems and deficiencies in their work.

The annual work report shall also contain the information on the work of the Prosecutors Council and the proposal for measures aimed at improvement of performance of the State Prosecutor's Office and the Prosecutors Council.

The annual work report shall be submitted to the Assembly by 31 March of the current year for the preceding year at latest.

The report shall be published on the web page of the Prosecutors Council.

The Chief State Prosecutor shall set out the annual report in the Assembly.

### **Special Report** **Article 104** **- erased -**

### **Relations with the Public**

## **Article 105**

Information on the work of the State Prosecutor's Office shall be disclosed by the Chief State Prosecutor or a person authorised by him.

Information that could affect the conduct of the proceedings may not be made available to the public.

Disclosure of information referred to in Paragraph 2 of this Article shall be considered as harming the reputation of the prosecutorial function.

### **2. Working methods**

#### **Temporary Secondment Article 106**

Deputy State Prosecutor may, with his/her consent, be temporarily seconded to another state prosecutor's office.

Exceptionally, Deputy State Prosecutor may be temporarily seconded to another state prosecutor's office, without his/her consent, if due to disqualification or absence of a State Prosecutor or his/her Deputy or for other justified reasons, regular discharge of duties in that prosecutor's office has become uncertain, while these circumstances last and for a maximum period of one year.

The decision on the temporary secondment to another state prosecutor's office in the case referred to in paragraph 1 of this Article shall be passed by the immediately superior state prosecutor, while in the case referred to in paragraph 2 of this Article it shall be passed by the Chief State Prosecutor.

The Deputy State Prosecutor may file a complaint against the decision on the temporary secondment to another state prosecutor's office without his/her consent to the Prosecutors Council within three days from the receipt of the decision. The complaint shall not delay the enforcement of the decision.

Salaries and other costs incurred by the secondment of the Deputy State Prosecutor to another state prosecutor's office shall be borne by the state prosecutor's office to which the Deputy is being seconded.

#### **Secondment of the State Prosecutor and his/her Deputy to another prosecutor's office without their consent Article 106a**

In case of reorganization of the state prosecutor's office by which the number of prosecutor posts is decreased or terminated, the Prosecutors Council may transfer or second a State Prosecutor or his/her Deputy to another prosecutor's office without his/her consent.

Salaries and other costs incurred by transfer or secondment referred to in paragraph 1 of this Article shall be borne by the State Prosecutor's Office to which a State Prosecutor or his/her Deputy is transferred or seconded.

**Secondment to the immediately superior state prosecutor's office**  
**Article 106b**

The Prosecutors Council may temporarily second a deputy state prosecutor, with his/her consent, to the immediately superior state prosecutor's office, if the workload in that state prosecutor's office increases or if there is large case backlog which cannot be resolved with the existing number of deputy state prosecutors. Deputy state prosecutor who is being seconded must meet the requirements prescribed for the appointment of a deputy state prosecutor to the state prosecutor's office to which he/she is being seconded.

**Professional Assistance**  
**Article 107**

The State Prosecutor's Office may engage a person who possesses the required professional skills or set up a team of experts or an expert working body in order to clarify specific issues arising in the course of his/her work.

The State Prosecutor may decide that the persons referred to in paragraph 1 of this Article be remunerated for the services rendered.

**Work on Duty and Alert**  
**Article 108**

The State Prosecutor shall be under a duty to organise continuous duty hours or alertness in order to ensure efficient performance of duties, particularly crime scene investigations and other non deferrable tasks in connection with potential perpetration of criminal offences and other punishable acts.

The schedule and duration of the duty hours and alertness shall be determined by the State Prosecutor.

**Allocation of Cases**  
**Article 109**

The cases shall be allocated in such a manner as to ensure impartiality, independence and efficiency in the performance of the tasks.

**Instructions for Work**  
**Article 110**



The Chief State Prosecutor shall issue the High State Prosecutor and the Basic State Prosecutor with mandatory instructions for work.

The High State Prosecutor shall issue the Basic State Prosecutor from within his/her district with mandatory instruction for his/her work.

In the sense of the present Law, the mandatory instructions for work shall be deemed to mean instructions of general character and instructions to be followed in individual cases.

The mandatory instructions of general character be issued by the Chief State Prosecutor, whereas the High State Prosecutor and the Basic State Prosecutor may initiate the issuance thereof when they find it requisite.

The mandatory instructions to be followed in individual cases shall be issued by the Chief State Prosecutor for his/her Deputies, High and Basic State Prosecutors, by the High State Prosecutor for his/her Deputies and Basic State Prosecutors from within his/her district and by the Basic State Prosecutor for his/her Deputies.

### **Method of Issuing of the Instructions for Work** **Article 111**

The State Prosecutor or Deputy who has been given an instruction to be followed in an individual case shall have the right to point out that the instruction is unlawful or ill-founded and to request to be provided with the same in writing if it was communicated orally, or to be given written instructions anew if the instruction was issued in writing in the first place.

Should the instructions to be followed in an individual case be given anew in the sense of paragraph 1 of this Article, and the State Prosecutor or Deputy State Prosecutor is still of the opinion that such instruction is unlawful or ill-founded, the State Prosecutor may, upon a substantiated request in writing, release him from further acting in the case and assign another State Prosecutor or Deputy to handle the case, provided there is no danger of postponement.

The instructions to be followed in an individual case shall be issued in writing and accompanied by a relevant explanation. Exceptionally, the instruction may be communicated orally, but the it must be issued in writing in a reasonable period of time.

### ***3. Relations and Co-operation***

#### **Relations between State Prosecutors** **Article 112**

The Chief State Prosecutor may directly exercise all powers and take over all tasks vested by the law in the High State Prosecutor or the Basic State Prosecutor.

Due to justified reasons, individual cases or certain actions falling within the competence of the High State Prosecutor or Basic State Prosecutor may be entrusted by

the Chief State Prosecutor to another State Prosecutor, which has subject matter jurisdiction..

The High State Prosecutor may directly exercise all powers and carry out all duties vested by the law in the Basic State Prosecutor.

The High State Prosecutor may, due to justified reasons, entrust individual cases or certain actions falling within the competence of the Basic State Prosecutor from within his district to another State Prosecutor which has subject matter jurisdiction.

The decision on taking over the powers and tasks or entrusting them to another State Prosecutor shall be made in writing.

**Disqualification**  
**Article 113**  
**- erased -**

**Relations with Courts and Other State Authorities**  
**Article 114**

The State Prosecutor or Deputy State Prosecutor shall have a power to request from courts and other state authorities to be provided with such files, information and notifications as may be required for taking the measures falling within his/her competence, while courts or other state authorities shall be under a duty act upon the request.

The State Prosecutor or Deputy State Prosecutor shall be under a duty to forward the files and information requested by the court or other state authority when these are required for the performance of the function of the latter.

**International Co-operation**  
**Article 115**

The State Prosecutor's Office may co-operate directly with prosecutors' offices of other countries within the framework of international agreements and other international documents.

The method and conditions of the co-operation referred to in paragraph 1 of this Article shall be determined by the Prosecutors Council.

**Official Attire**  
**Article 116**

The State Prosecutor or Deputy State Prosecutor shall exercise his/her function wearing the official attire (toga).

The toga shall look and be worn in such a way as prescribed by the Rules of Procedure of the State Prosecutor's Office.

#### **4. *Supervision***

##### **Competence Article 117**

The Chief State Prosecutor's Office shall supervise the work of the High State Prosecutor's Office and the Basic State Prosecutor's Office.

The High State Prosecutor's Office shall supervise the work of the Basic State Prosecutor's Office.

##### **Types of Supervision Article 118**

The supervision over the work of the State Prosecutor's Office shall be carried out by way of annual reports, special work reports, direct insight into the work, or in other appropriate way.

The direct insight into the work of the State Prosecutor's Office shall be carried out, as a rule, once a year by the immediately superior State Prosecutor's Office.

The assessment of performance of the state prosecutors' offices, state prosecutors and their deputies shall be presented to the Prosecutors Council and the Chief State Prosecutor's Office.

#### **5. *Internal Organisation and Systematisation***

##### **Officers and administrative staff Article 119**

The State Prosecutor's Office shall have an adequate number of advisors, other officers, administrative staff and trainees.

The commencement and termination of the employment of officers and administrative staff and their titles, salaries and other rights, obligations and responsibilities stemming from employment, the length of traineeship, undergoing traineeship, requirements for taking professional examination and other related issues, shall be regulated by legislation applicable to civil servants and state employees, unless otherwise prescribed by this Law.

##### **Advisors Article 120**

Advisors shall assist a State Prosecutor or his/her Deputy in their work, make draft documents, make records of citizens' complaints, petitions and statements, perform other specialised tasks prescribed by law and regulations adopted on the basis of the law, independently or under the supervision of and according to the instructions of the State Prosecutor or his/her Deputy.

A person who meets general and special requirements for a specific post in state authorities, in accordance with the law and the act on organization and systematization of work posts, shall be eligible for the post of an advisor.

Exceptionally, the Basic State Prosecutor may authorise the advisor to represent indicting proposals in proceedings before the court.

### **Expert assistants Article 120a**

The State Prosecutor's Office may have officers with associate's degree or university degree in defectology, sociology, pedagogy, economics, accounting and finance or other appropriate field of work and having prescribed experience in these fields.

The officers referred to in paragraph 1 of this Article, as expert assistants, shall assist a State Prosecutor or a Deputy State Prosecutor in the work and matters requiring expert knowledge.

### **Trainee Article 121**

Eligible to be a trainee shall be a law graduate meeting general requirements for work in state administration.

A trainee shall be admitted to employment for a period of two years.

Trainees shall be trained in accordance with a special programme adopted by the state prosecutor.

Should a trainee, as evaluated by the Conference of Prosecutors, distinguish himself through outstanding performance during the course of the training, his/her employment may be extended after the expiry of the training period for an additional year, provided that he/she passes the bar exam within three months.

### **Volunteer Article 122**

A law graduate may be admitted to practice in the State Prosecutor's Office as a volunteer for the purpose of acquiring the required knowledge and meeting conditions for taking the bar exam.

**Secretary**  
**Article 123**

The Chief State Prosecutor's Office shall have a secretary to assist the Chief State Prosecutor in performance of the tasks of the prosecutorial administration.

The High State Prosecutor's Office and the Basic State Prosecutor's Office, having at least ten Deputies, may have a secretary to assist the State Prosecutor in performance of the tasks of the prosecutorial administration.

The secretary must meet the same requirements as the advisor referred to in Article 120 of the present Law.

**Article 124**  
**Principles of Internal Organisation and Nomenclature of Tasks**

A person who meets general and special requirements prescribed for the performance of specific tasks in accordance with the law and the act on organization and systematization of work posts may be employed to carry out administrative and other tasks in a state prosecutor's office.

The act on internal organisation and systematisation of work posts shall be passed by the State Prosecutor with the approval of the Government, having obtained a prior opinion of the competent authorities and of the Prosecutors Council.

**IX OFFICIAL SECRET AND PROTECTION OF SECRECY OF DATA**

**Official Secret**  
**Article 125**

A State Prosecutor, Deputy State Prosecutor, officer and a member of administrative staff shall be under a duty to keep official secret, regardless of the manner by which they became privy thereto.

The official secret shall be deemed to mean specifically the following:

- 1) all that has been classified as official secret by way of the law or other enactment,
- 2) all that has been classified as official or business secret by way of general acts of legal persons and other organisations and institutions,
- 3) data and documents specifically classified as official or business secret by state authorities or legal persons and other organisations and institutions,
- 4) data and documents classified as official secret by the State Prosecutor or Deputy State Prosecutor.

In the pre-trial proceedings, the content of a written document may not be made public, instead, the public may only be provided with the information about the undertaken official acts.

The manner of labelling and handling secret data and documents shall be defined by the Rules of Procedure of the State Prosecutor's Office.

### **Obligation of Keeping Official Secret Article 126**

The duty of keeping official secret shall continue after expiry of the employment in the State Prosecutor's Office.

The State Prosecutor may decide to release Deputy State Prosecutor, officer and a member of administrative staff from keeping official secret, provided there are justified reasons to do so in individual cases. The decision on releasing the State Prosecutor from keeping official secret shall be made by immediately superior State Prosecutor, and the Chief State Prosecutor shall be released by the decision of the Prosecutors Council.

### **Secrecy of Data Article 127**

A State Prosecutor, Deputy State Prosecutor, officer and a member of administrative staff must not disclose to unauthorised persons data which they have learned during the course of the proceedings and which relate to private and family life of natural or financial position of legal persons.

## **X FINANCING OF THE WORK OF THE STATE PROSECUTOR'S OFFICE**

### **Funds Article 128**

The funds for the work of the State Prosecutor's Office and of the Prosecutors Council shall be allocated in a special line of the Budget of Montenegro, within which the funds for the work of the Prosecutors Council shall be stated separately.

The proposal for the budget line referred to in paragraph 1 above shall be approved and submitted to the Government by the Prosecutors Council.

The President of the Prosecutors Council shall have the right to participate in the work of the session of the Assembly at which the proposal for the budget is discussed.

## **XI TRANSITIONAL AND FINAL PROVISIONS**

### **Article 129**

Upon entry into force of the present Law, the State Prosecutor of the Republic of Montenegro and superior and Basic prosecutors appointed in accordance with the Law on the State Prosecutor (Official Gazette of the Republic of Montenegro, No. 30/93), shall continue their work until the expiry of their term of office under following titles: the State Prosecutor of the Republic of Montenegro as the Chief State Prosecutor, the High prosecutor as the High State Prosecutor and the Basic prosecutor as the Basic State Prosecutor.

### **Article 130**

Upon entry into force of the present Law, Deputies of the State Prosecutor of the Republic of Montenegro, Deputies of High prosecutors and Deputies of Basic prosecutors appointed in accordance with the Law on the State Prosecutor (Official Gazette of the Republic of Montenegro, No. 30/93), shall continue their work until the expiry of their term of office under the following titles: Deputies of the State Prosecutor of the Republic of Montenegro as Deputies of the Chief State Prosecutor, Deputies of High prosecutors as Deputies of High State Prosecutors and Deputies of Basic prosecutors as Deputies of Basic State Prosecutors.

### **Article 131**

The Chief State Prosecutor shall appoint the Special Prosecutor not later than a month as of the day of the appointment of the Prosecutors Council.

### **Article 132**

The members of the Prosecutors Council shall be appointed in accordance with the provisions of the present Law not later than three months as of the day the present Law enters into force.

### **Article 133**

Until the members of the Prosecutors Council have been appointed, the State Prosecutors and their Deputies shall be appointed in accordance with the Law on the State Prosecutor (Official Gazette of the Republic of Montenegro, No. 30/93).

### **Article 133a**

State Prosecutors and Deputy State Prosecutors, as well as the members of the Prosecutors Council, appointed in accordance with the Law on State Prosecutor (“Official Gazette of the Republic of Montenegro”, No. 69/03) shall remain in office until the expiry of the term of office for which they have been appointed.

### **Article 133b**

The cases of corruption, terrorism and war crimes, received before the commencement of operation of the specialized department in the higher court, shall be completed by the state prosecutors' offices competent according to the previous legislation.

### **Article 133c**

The provisions of this Law relating to the representation of Montenegro in property law matters shall cease to be valid on the date of appointment of the Agent of Montenegro in property law matters.

### **Article 134**

The cases dealt with by the Basic Prosecutor of Niksic before the Basic Court of Zabljak prior to the entry into force of the present Law, shall be completed by the Basic Prosecutor of Niksic.

### **Article 135**

Implementing regulations under the present Law shall be passed not later than one year as of the day of the present Law enters into force.

Until the regulations referred to in paragraph 1 of this Article have been adopted, the existing by-laws shall be applied.

### **Article 136**

As of the day the present Law enters into force, the Law on the State Prosecutor (Official Gazette of the Republic of Montenegro, No. 30/93) shall cease to be applicable, save for the provisions which are specified to be applicable until the deadline set by the present Law.

### **Article 137**

The present Law shall come into force on the eighth day as of the day of its publication in the "Official Gazette of the Republic of Montenegro".