

INVESTIGATING THE INVESTIGATIONS

Monitoring the Conduct of Montenegrin Prosecutors





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Investigating the investigations
Monitoring the conduct of
Montenegrin Prosecutors through
investigative journalism and research



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For five years now, the prosecutorial system has been without a full-term Supreme State Prosecutor (SSP), whose appointment depends on a two-thirds or a three-fifths majority in the Parliament of Montenegro. The 2022 European Commission (EC) report on Montenegro draws attention to this issue while also highlighting the need to review the disciplinary and ethical framework for judges and prosecutors.

The latest report on the work of the prosecution services indicates that the issue of accountability remains a significant problem. The system of prosecutors’ disciplinary and ethical responsibility is still not functioning properly. The assessment process is also problematic, even though the rules have been changed. Transparency is still insufficient, while numerous technical issues, such as adequate facilities and access to statistical data and databases, are far from being resolved.

Nevertheless, despite these shortcomings, as noted in the latest EC report, Montenegro has made progress in combating crime and corruption at the highest level following the election of the Prosecutorial Council (PC) in late 2021 and changes at the top of the prosecutorial organization.

Public trust has significantly increased over the past two years, especially after the changes at the Special State Prosecutor’s Office (SSPO) and the first major actions taken.

Numerous members of drug clans have been incarcerated, and large quantities of smuggled goods have been seized. Significant cases have been initiated and charges have been brought against previously untouchable figures, including Vesna Medenica, the former Supreme State Prosecutor and President of the Supreme Court, Blažo Jovanić, the President of the Commercial Court, Saša Čađenović, the SSPO prosecutor, Petar Lazović and Ljubo Milović, the ANB (National Security Agency) officers, and Plantaže company management. The quality of the evidence collected in these proceedings and their ultimate outcome remain to be seen.

No matter how these cases end up, they point to serious problems. Over the past decades, the country has seen a convergence of organized crime, parts of the judiciary, politics and business. It is this entanglement that has captured Montenegro and turned it into one of the strongest

European hubs of drug trafficking and a system deeply immersed in corruption at the highest level. This entanglement is a key obstacle to Montenegro's accession to the European Union and one of the main reasons for the lack of fundamental political, judicial, and economic reforms.

The publication includes 11 out of 18 investigative articles that cover various areas, including financial investigations, confiscation of property, plea agreements, court expert work and accountability.

We have managed to obtain important documents, especially those relating to the concept of plea agreements, which was introduced in Montenegro a few years ago, as well as those containing other significant data on numerous cases of expiry of limitation periods, complaints about the work of prosecutors and the evaluation process within the prosecutorial system. The documents we have obtained indicate that Montenegro's prosecution services have been consistently undermined over the last few decades, with numerous investigations ending up in a suspicious manner and with some being indefinitely prolonged, particularly those concerning high-ranking officials and organized crime figures.

We have observed numerous irregularities that raise doubts about the legality of using plea agreements in Montenegro, which were used in almost all cases of organized crime and corruption, typically with very lenient sentencing policies. It is also concerning that almost half of the agreements were made with repeat offenders.

We also found that very few indictments from the Special State Prosecutor's Office, under its former leadership, resulted in final convictions. The problem lies in the fact that the charges were often often dropped in contradictory proceedings before courts. As a result, some of the major cases of organized crime and war crimes ended ingloriously. Another problem is that prosecutors in these cases were not held accountable, and some were even promoted.

According to the information we obtained, neither internal nor external audits

of the prosecution services have been functional. The Special State Prosecutor's Office and most other prosecution services in Montenegro have not been subject to any oversight, despite the fact that this is provided for by law.

The topics we have covered in this publication are only part of a long list. However, the general conclusion is that Montenegro urgently needs a fundamental reform of the prosecutorial organization, not only in terms of the legal framework but also in respect of staff reform, as well as individuals with the necessary expertise and determination to confront the heavy legacy of a criminal and corrupt system that has captured the key institutions.

We are grateful to our project partners, CEGAS and the Monitor weekly, whose support has been of vital importance. We also appreciate the role of Vijesti newspaper, which covered all of our investigations, as well as other media outlets that published our analyses and statements, thereby making them accessible to hundreds of thousands of citizens.

We owe special thanks to the Government of the Kingdom of the Netherlands, which funded our work through the MATRA programme, and to the Embassy of the Netherlands in Belgrade, whose representatives gave a significant contribution to the implementation of our activities.

**Financial
investigations,
confiscation and
management
of assets**



IN SIX YEARS, THE SPO SUCCEEDED IN CONFISCATING ONLY TWO APARTMENTS AND ABOUT 3,000 SQ METRES OF LAND: COLLAPSE OF FINANCIAL INVESTIGATIONS FUELS CRIME AND CORRUPTION

“FOR A LONG TIME, THE ESSENCE OF THE FIGHT AGAINST CRIME HAS NOT BEEN PUTTING PEOPLE BEHIND BARS, BUT CONFISCATING ASSETS AND MONEY, THAT HURTS THEM THE MOST”, SAYS DRAGO KOS, A WELL-KNOWN REGIONAL ANTI-CORRUPTION EXPERT.

/// Maja BORIČIĆ

10

In six years, the Special State Prosecutor’s Office (SPO) succeeded in permanently confiscating only two apartments and about 3,063 square metres of land after obtaining evidence to prove their acquisition through crime. Over the same period, the SPO initiated 79 financial investigations but managed to complete only two successfully.

These are the results of financial investigations conducted by the SPO, as reported by the prosecutor’s office from 2016 to 2021.

In addition to the inefficiency of the SPO, but also of the entire judicial system, the success of financial investigations is precluded by other links in the chain as well. Another problem is the readiness of the Police Administration to tackle these issues, but also of other institutions that are crucial for conducting such investigations. For instance, Montenegro lacks a Centralized Register of Bank Accounts, the Register of Beneficial Owners is also not yet available, and the data from the State Cadastre is often outdated.

International cooperation has proven

difficult as well. In 2019 and 2020, Montenegro lacked access to key international data on suspicious transactions due to the Department for the Prevention of Money Laundering and Terrorist Financing being incorporated into the Police Administration. Consequently, for a year, Montenegro was excluded from the Egmont Group – the international association of financial intelligence services, which facilitates the exchange of intelligence data on money laundering.

A well-known regional anti-corruption expert, Slovenia’s Drago Kos, told the Centre for Investigative Journalism of Montenegro (CIN-CG) that financial investigations are the cornerstone of the fight against organized crime and corruption, surpassing the importance of proving criminal offences and incarceration itself.



Drago Kos
photo: Delo/ Vijesti

“For a long time, the focus of the fight

against crime has not been on putting people behind bars, but on confiscating assets and money, which hurts them most”, Kos points out.

Kos also stresses that the police and the prosecution service should change their approach. They should immediately launch investigations into the flow of money and gather evidence of illegal proceeds instead of focusing solely on those elements of criminal offences that prove guilt in court.

The freedom of information requests by the CIN-CG on financial investigations conducted since 2016 have been rejected by both the SPO and the High Court in Podgorica. No decisions have been received, either approving or rejecting requests for permanent confiscation of assets or regarding suspended investigations.

According to publicly available SPO reports, in 2016, almost all decisions on permanently confiscated assets were related to the so-called “green mile” case, connected to drug smuggling. In this instance, a 53-square-meter apartment was confiscated from Dejan Rovčanin, a convicted member of the group. Additionally, 3,063 square meters of land were also seized.

According to the available data from the SPO, in 2019 the 193-square-meter apartment owned by Miloš Marović, son of Svetozar Marović, the fugitive head of the Budva criminal group convicted of embezzlements worth millions, was also

permanently seized. However, a dispute now surrounds this apartment as Miloš’s former business partner, Petar Miloš, claims to have lent money to the younger Marović, leading to a mortgage registration on the assets that were confiscated.

In response to this situation, the Protector of Property and Legal Interests of Montenegro filed a lawsuit against both parties, demanding the annulment of a contract regarding the alleged loan of €236,000, which Petar Miloš is now attempting to utilize to sell the confiscated apartment.

While the SPO previously claimed in the media that they had permanently confiscated the villa in Bečići, known as the “Budva cases”, the prosecutor’s office reports do not mention the confiscation of this property belonging to the wife of Svetozar Marović. Seeking clarification on the matter, the CIN-CG inquired about the

villa, but the SPO did not respond to that inquiry either.

Millions get seized temporarily and then returned with compensation

Under the leadership of Milivoje Katnić, the SPO took every opportunity to brag about seizing millions in assets, but only on a temporary basis while court proceedings are underway. In major cases, like those involving the Kalić or Šarić family, the seized assets were eventually

15 EUROS SEIZED IN BIJELO POLJE

Since 2016 until today, the Bijelo Polje High Court has permanently confiscated – 15 euros. This is what the Court President Milan Smolović responded following a freedom of information request by the CIN-CG.

“In the specified period, the security measure of confiscation of 10 and 5-euro banknotes was imposed against the defendant M. L.J., who had been found guilty of the offence of unauthorized production, possession and distribution of narcotic drugs and sentenced to one year in prison”.

The High State Prosecutor’s Office in Podgorica initiated 14 financial investigations in the last few years. The Podgorica High Court only requested permanent confiscation of a 36 square metre apartment in Sveti Stefan.

The PC report points out that the Podgorica High Prosecutor’s Office has no departments specializing in efficient management of financial investigations and financial crime.

returned. Notably, citizens also had to pay millions in damages from the budget due to inadequate maintenance or lost profits resulting from the temporary seizure of these assets.

After 2016, during which two financial investigations resulted in permanent confiscation in the “green mile” case, as reported by the prosecution service, the SPO launched 19 financial investigations in 2017. However, there were no instances of asset confiscation, with the SPO seeking temporary seizure in eight cases.

In 2018, financial investigations were launched in seven cases, adding to the 20 ongoing cases from the previous period. The temporary seizure of assets was requested in seven cases, but no assets were permanently confiscated during that year either.

Moving on to 2019, financial investigations were initiated in 15 cases, and according to SPO data, there were an additional 29 financial investigations carried over from previous years. Out of these, temporary seizure of assets was sought in six cases, while the only property that was permanently confiscated was Miloš Marović’s apartment, valued at €300,000, a considerably smaller amount compared to the damage this group caused to society.

In 2020, financial investigations were initiated in 11 cases, and there was an extension of an existing financial investigation. Additionally, there were 32 pending financial investigations from previous years, out of which two were suspended, and assets were temporarily confiscated in 11 cases. However, there was no permanent confiscation of assets during this year.

As for 2021, a financial investigation was launched in 25 cases, and one existing investigation was expanded. Furthermore, there were 44 pending investigations from previous years. While one financial investigation was suspended, and assets were temporarily seized in four cases, there were no reports of permanent confisca-

tion of assets throughout the year.

The 2021 report of the Prosecutorial Council (PC) provides new insights into the duration of financial investigations. “Financial investigations lasted a minimum of 15 days, and a maximum of six years, so on average the investigations per person lasted 85 days”.

The EU wants results in confiscation of assets

The European Commission (EC) has been warning for years about the state of financial investigations in Montenegro. In the 2021 report, they emphasize that the results concerning the confiscation of assets acquired through criminal acts and high-level corruption are very modest.

“The track record on seizure and confiscation of assets and final court decisions in corruption cases needs to be further improved”, the report says.

The EC urges Montenegro to review the laws governing financial investigations and asset recovery, and align them with international standards and EU practices. An integrated approach involving all relevant bodies is also necessary to establish

a sustainable track record in this area.

Nearly nine years ago, Montenegro opened negotiation chapters 23 and 24, which address judicial reform, the rule of law and the fight against corruption and or-



Zoran Miljanić
photo: Luka Zeković

ganized crime.

In previous EC reports, the state of the cadastre in Montenegro was highlighted as a hindrance to efficient financial investigations due to insufficient and outdated data. Moreover, apart from the SPO, basic and high prosecutors seldom initiate financial investigations. “The practice of financial investigations continues to differ

from the EU practice and the Financial Action Task Force (FATF) standards, because it is only used with the aim of proceeding to an extended confiscation, and not with the aim of supporting the implementation of criminal investigations”.

The document further emphasizes that international police cooperation, which is crucial in financial investigations, is underutilized. Additionally, Montenegro lacks a centralized register of bank accounts and a register of beneficial owners, both of which are requirements under the fifth EU Directive against money laundering.

“In their absence, the identification of the real owners of private companies and the monitoring of financial transactions still take a long time and present a challenge”, the document adds.

Miljanić: Weak spot of Montenegrin institutions

“Financial investigations are the weak spot of Montenegrin institutions”, Zoran Miljanić, the Minister without Portfolio responsible for the fight against corruption, explains for the CIN-CG. He assesses that so far this has been done sloppily, and that this is one of the main reasons that we have few cases of confiscated assets.

According to Miljanić, full coordination of all institutions is necessary in order to successfully conduct financial investigations.

“The essence of the fight against organized crime and corruption is to stop illegal financial flows and confiscate assets”, the minister emphasizes.

Kos adds that in order for financial investigations to be successful, registers must be operational and everything should be up to date and in electronic form.

“It is not enough that there is a law. There needs to be someone willing and able to apply that law”, says Kos.

He adds that the prosecution services and the police should be strengthened both numbers- and knowledge-wise,

because they have very significant powers that require a lot of work.

“The police and the prosecution services need to have people specializing in this, who will practically deal only with these issues. They should be relieved of other duties”, Kos says.

Miljanić adds that the international community is very willing to provide maximum support in hiring experts, as we do not have enough staff who can put up this fight. He explains that, among other things, we have very few financial experts who want to do that work, because the salaries are low.

“If someone can earn a much higher salary by working for a bank, why would they want to do such a difficult and risky job”, the minister notes.

The National Council for the Fight against Corruption, which is expected to be established soon, will connect all institutions, which are also expected to facilitate financial investigations, says Miljanić.

“The Council will also develop a National Strategy for the Fight against Corruption. We are one of the few countries in Europe that never had this strategy”, he points out.

Drago Kos reveals Slovenian experience. Their Constitutional Court repealed the law, because it provided for retroactive confiscation of assets as well, so the results, even in that country, are not satisfactory.

Our region should follow the examples of Scandinavian countries, which are quite successful in this regard, concludes Kos. “It is up to the perpetrator to prove where his assets came from”, he points out.

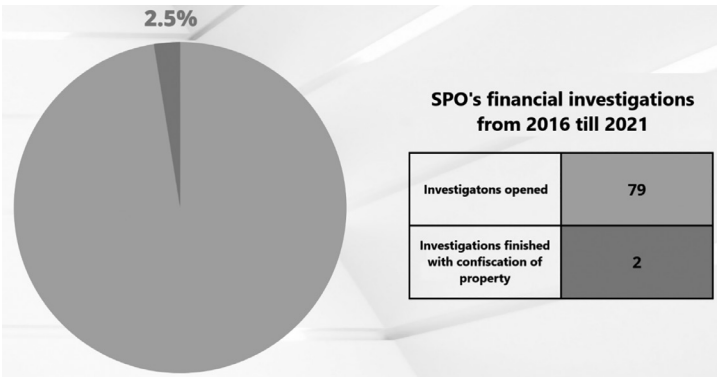
They are changing the law to confiscate assets without a judgment

Our Law on the Seizure and Confiscation of Proceeds Derived from Criminal Activity provides for the confiscation of all assets and money obtained through criminal offences. In addition, all assets

suspected of having been obtained through criminal acts are confiscated, unless the perpetrator “makes it likely” that it was acquired legally. Assets can also be confiscated from family members and related persons.

The Ministry of Justice is working on amendments to this law, so that assets could be confiscated even without a court decision in the future, as suggested by the EC. A draft law amending the Law on the Seizure and Confiscation of Proceeds Derived from Criminal Activity is in its final stages and its adoption is expected soon.

The Ministry of Justice did not tell the CIN-CG when the proposal would be completed, stating that they are working on it in line with the recommendations by EU experts so as to make a quality law.



YEAR	Investigations opened	Investigations finished with confiscation of property
2016	2	1
2017	19	0
2018	7	0
2019	15	1
2020	11	0
2021	25	0



THAT'S HOW ITALY DOES IT - PUNISHING CRIMINALS EVEN WITHOUT CRIMINAL PROCEEDINGS: ASSETS GET CONFISCATED PREVENTIVELY AS WELL

WHILE ITALIANS CONFISCATE ASSETS WHEN THEY SUSPECT THAT THEY COULD BE USED FOR CRIMINAL PURPOSES AND WHEN THEY CONSIDER SOMEONE DANGEROUS, IN MONTENEGRO, THE LAW ON THE CONFISCATION OF ASSETS HAS NOT BEEN EFFECTIVE, AND WHILE ITS AMENDMENTS HAVE BEEN ACCOMPANIED BY A LOT OF CONTROVERSY

/// Maja BORIČIĆ/Tijana LEKIĆ //////////////////////////////////////

In September 2021, the Supreme Court of Cassation of Italy decided not to allow part of the seized assets to be returned to Leoluca Bagarella, the brother-in-law of the late Salvatore Toto Riina, the most famous mafia boss of Italy's Cosa Nostra.

Those assets, valued at one and a half million euros, were seized in 2017 and fictitiously registered under the names of third parties, including family members who later became his heirs. Riina's brother-in-law, who was also suspected of being Riina's close associate in mafia activities, was also among one of them.

In his appeal, he argued that there was no longer any risk of committing criminal offences and pointed out that the assets had been acquired over 20 years before Riina's imprisonment.

Nevertheless, the Court of Cassation ruled that the state should keep the assets and ordered Riina's brother-in-law to pay approximately €3,000 towards court costs.

Riina died in prison in 2017 while serving 26 life sentences. The murder of judges Giovanni Falcone and Paolo Borsellino in

1992 is one of his most famous crimes. In 1987, those two judges brought more than 300 members of Cosa Nostra to justice. In 1997, Italy confiscated Riina's villa, among other assets, and transformed it into a school.

This case is just one of numerous examples showcasing how Italy has fought criminals, with the country recognizing a long time ago that the only thing that can really "hurt" them is the confiscation of their assets.

In addition to confiscating assets through criminal proceedings, Italy's primary tool in the fight against crime is preventive confiscation.

Preventive confiscation allows for the



Salvatore Toto Riina, photo: Reuters

seizure of someone's assets without criminal proceedings or a court judgment establishing that a criminal offence has been committed. The mere presumption that a person poses a threat to society and that there is a disparity in their assets is all it takes.



Tatiana Djanone
courtesy photo

“Libera”, the Italian association that fights against the mafia, explains to the Centre for Investigative Journalism of Montenegro (CIN-CG) that the procedure in question is a special procedure for asset confiscation known as

“misura di prevenzione patrimoniale”. This procedure is completely independent and different from criminal proceedings.

“Only assets such as real estate or businesses that could be a potential tool for crime, and for which there is no evidence of legal acquisition, are considered for confiscation”, explains the national coordinator of “Libera” Tatiana Giannone.

At the international level, this special type of confiscation is also known as “non-conviction based confiscation”.

Giannone states that it is possible to confiscate real estate, furniture and companies that do not have to be connected to organized crime at all.

Despite acknowledging that Italian legislation is certainly the most advanced in this matter, “Libera” is proposing some improvements for the country as well. These include enhancing human and financial capacities of the National Agency for Confiscated Assets, an even better valorisation of confiscated assets, providing assurances to workers of confiscated enterprises and companies that they will be protected, and an increase in transparency in the management of confiscated assets and its purpose.

The documents of that organization highlight that today there is no Italian region without assets confiscated from the mafia.

In March 2021, when the “Libera” report was made, a little less than 900 organizations were managing confiscated assets in Italy. These were 353 houses, 207 villas, 81 business premises, 25 vehicle fleets, 176 lots and 73 other properties.

The Anti-Mafia Directorate (DIA) also plays an important role in Italy's fight against organized crime. It is a specialized service within the Ministry of the Interior that conducts preventive, criminal investigations and international cooperation. Its work does not rely on the reporting a criminal offence.

Based on the data from the DIA, over the past two decades in Italy, approximately €12.5 billion worth of assets have been permanently confiscated, and an additional €26 billion temporarily seized, all from mafia organizations like Cosa Nostra, Camorra, Ndrangheta, Puglia and others.

The Italian Agency for the Management of Confiscated Assets informed the CIN-CG that over the past six years, 22,622 properties, 2,544 companies and 3,559 vehicles have been confiscated in that country solely on the basis of preventive confiscation.

There is no statute of limitations for preventive confiscation

The Italian Anti-Mafia Code, i.e. preventive confiscation, focuses on preventing the execution of a crime rather than punishing the crime itself, points out Elvira Nadia La Rocca, a professor at the Faculty of Law in Rome.

She further confirms to the CIN-CG that preventive confiscation does not involve criminal proceedings, and that the Anti-Mafia Code provides for the confiscation of assets irrespective of whether a criminal act has been committed.

“The criminal procedure actually assumes that a crime has been committed, and this procedure provides for a number of measures to safeguard against future crimes”, she explains.

These measures, as explained by the professor of anti-mafia legislation, are referred to as “ante delictum”. This means that their purpose, among other things, is

to prevent individuals deemed dangerous from potentially engaging in criminal activities.

“So, it suffices for the competent institutions to consider someone to be dangerous or a mobster to confiscate their assets”, says professor La Rocca.

These measures, she points out, are not affected by the statute of limitations provided for in the Italian Criminal Code.

Specifically, she explains it like this: “Preventive confiscation can be applied even after the statute of limitation for criminal proceedings has expired. If a preventive measure is taken, and criminal proceedings are later discontinued due to the statute of limitations, preventive confiscation cannot be repealed solely on that basis”.

However, she warns that it is problematic that these measures could affect personal freedom and the freedom of using one’s assets.

In addition, confiscation of assets also applies to family members, heirs and creditors, i.e. those who are indirectly involved in the process.

“Hence, there is a risk of irreparably compromising the position of innocent third parties”, says professor La Rocca, adding that there is also a potential for significant economic damage, particularly for companies that are seized, which could lead to the unemployment of many workers.

She emphasizes that in terms of international cooperation, i.e. in dealing with problematic assets abroad, the EU Regulation 2018/1805, which has recently come into effect, could play a crucial role.

“It provides for mutual recognition of institutions for freezing and confiscation of assets. This could become a valid instrument, because the Regulation is directly applicable”, says La Rocca.

She reminds that Italian legislation against the mafia has long roots.

As early as at the end of the 19th century, preventive measures, known then as “police measures”, were initially used to stop banditry.

During fascism, these preventive measures were used to “silence” political

opponents.

This professor of the Faculty of Law in Rome explains that in the 1990s, these measures, which were employed to fight against those who were considered enemies of the state, became a bulwark against the mafia and proved to be an effective means of safeguarding against criminals.

“Because by taking away their assets, you best curtail their activities”, she concludes.

For preventive confiscation, regulations should be changed

Montenegro has achieved only modest results in asset confiscation. Over the course of eight years of implementing the Law on the Seizure and Confiscation of Proceeds Derived from Criminal Activity, only a few properties have been confiscated. Furthermore, even the temporarily seized assets were not utilized but instead destroyed, causing millions in damages to be borne by the citizens.

The latest report from the Prosecutorial Council for 2022 reflects similarly disastrous results. Last year, the Podgorica High Court confiscated a mere 805 euros upon the prosecution service’s request.

Valentina Pavličić, a legal expert and Montenegro’s representative before the European Court of Human Rights, asserts to CIN-CG that achieving better results in the confiscation of proceeds is only feasible if it becomes a focal point of state policy.



Valentina Pavličić
courtesy photo

She points out that the models of the fight against the mafia in Italy have been evolving since the 1960s.

“The biggest advantage of this model lies in the coordination and synergy between different bodies and institutions, which our neighbours have been working on for over four decades”, explains Pavličić.

She notes that the establishment of

specialized bodies such as the National Anti-Mafia and Anti-Terrorism Directorate (DNAA) certainly contributed to the successful implementation of this model, while the administrative approach to the confiscation of assets of illegal origin takes place through the establishment of a separate body called the financial police (Guardia di Finanza). This body possesses



Miodrag Iličković
photo: Vijesti

the authority to request evidence of the origin of specific goods or assets without any prior justification.

“A sufficient prerequisite for the implementation of these measures is the presence of reasonable suspicion that a particular individual poses a social threat, prompting the need to take precautionary actions against their assets to prevent their illicit enrichment”, says Pavličić.

She clarifies that the prosecuting authority, at the very beginning, assesses what measures would be most effective and efficient in achieving a positive outcome and then decides which approach to pursue.

For the introduction of preventive confiscation in our country, Pavličić points out, both legal and constitutional changes would be necessary, as well as a comprehensive analysis of whether our institutions are currently capable of implementing it.

“We would like to play football like Argentina, but we don’t have Messi”, she says metaphorically.

She explains that for the effective introduction of preventive confiscation in our country, it would be necessary to amend not only the laws, but also the Constitution and grant greater powers to prosecutors.

“Preventive confiscation of assets cannot be carried out without a court ruling. Someone has to lead this procedure before the court, and the only entity in our country with the capacity to handle such a task effectively is the prosecution

service”, Pavličić says.

With the amendments made to the Constitution of Montenegro in 2007, the powers of the prosecution service were diminished. It is now in charge of only prosecuting the perpetrators of criminal offences, while previously it could also represent the state in other legal matters.

Former Judge of the Constitutional Court Miodrag Iličković highlights that the Constitution does protect the right to assets. However, he also points out that this right can be subject to limitations if such provisions are prescribed by the law and if there is an appropriate legal remedy, such as the right to appeal.

However, Iličković believes that a cautious approach is necessary, taking into account Montenegro’s capacities. He suggests adopting a set of legal measures and establishing specialized departments, while granting them greater powers.

He points out that the first step is to conduct vetting in the judiciary, which involves checking the assets of judicial officials.

“First, the police, prosecutors and the entire judiciary must be cleaned up, because these are the people who should be doing this work. A harmonious system must be created. We cannot take a little from the Italians, a little from the Americans...”, concludes the former Judge of the Constitutional Court.

Montenegro has been trying for three years to change the law

The only law that governs this area in our country is the Law on the Seizure and Confiscation of Proceeds Derived from Criminal Activity. However, this law has been under consideration for changes over the past three years, but even the attempt to amend this ineffective piece of legislation has faced severe criticism.

The Network for the Affirmation of the NGO Sector (MANS) has been advocating for the adoption of a civil model for asset confiscation for years. They argue that the changes proposed by the Government would lead to the absolution of all those who acquired assets in the 1990s. Addi-

tionally, they highlight that the proposed amendments do not facilitate the confiscation of assets hidden abroad. Instead, they demand a precise adoption of the Italian model of asset confiscation, with a dedicated court comprising carefully selected judges to handle these cases.

The recently proposed amendments to the Law, among other things, provide that in cases falling under the jurisdiction of the Special State Prosecutor's Office (SPO) for criminal offences, there would be no need to wait for a final conviction. Instead, the process of civil asset confiscation could begin immediately after the investigation has been initiated. Another noteworthy change that has been proposed is that assets acquired 10 years before or after the commission of a crime, starting from 2010, could be subject to confiscation.

The proposed amendments were condemned by the public, because the essence of the changes was supposed to be to facilitate the process of confiscation of assets, which should be independent from criminal proceedings. Also, many have raised concerns about the specified time frame for confiscation, stating that this means that all those who acquired illegal assets in the 1990s would be absolved. Additionally, doubts have been cast on the ability of the Protector of Assets and Legal Interests to effectively lead these proceedings. The non-governmental sector has also highlighted the lack of transparency and substantial public debate surrounding the adoption of these amendments to the Law.

The Parliament has previously refused to adopt the amendments proposed by the Government and established a working group to find a solution.

However, the Government has once again put forward the same amendments to the Parliament, and the Law is now undergoing parliamentary procedure once more. Alongside the existing criticisms, concerns are now being raised regarding the legitimacy of the dissolved Government and Parliament to enact such important laws.

Valentina Pavličić believes that the

proposed changes could initially lead to more efficient procedures. However, MP Branka Bošnjak from the Movement for Changes (PzP) argues that a specific law dedicated to this matter is necessary to address it more seriously.

Pavličić highlights the advantages of the proposed civil confiscation of assets, stating that it cannot be hindered

by factors such as immunity, the inability to extradite the suspect, their unavailability, or insufficient evidence according to the criminal standard of proof.

Bošnjak, who is a member of the working group of the Committee for Justice and Administration, points out, however, that the proposed combination of proceedings, which starts as a criminal proceeding against an individual and then transitions to treating their assets in civil proceedings, causes a number of dilemmas, especially taking into account the environment in Montenegro.

In light of these concerns, she warns: "First of all, I have in mind the unreformed judiciary and prosecution service, as well as the weak institutions of the system and the many corrupt individuals installed in the state apparatus. For this reason, I fear that this model is doomed to failure or could potentially result in selective success, because the decision as to whom to prosecute and whom to exempt could end up being influenced by individual factors".

In contrast, Pavličić notes that it is also an advantage that permanent confiscation is possible when the defendant is acquitted in a trial before a criminal court. In such cases, the proceedings are treated as civil law lawsuits, where a lower standard of proof is applied (where the defendant has to prove that he has acquired something legally).

The representative of Montenegro before the European Court of Human



Branka Bošnjak
photo: Luka Žeković

Rights highlights that the civil model of asset confiscation is not unfamiliar to the court, stating that the Strasbourg court confirmed the possibility and correctness of its application in its decisions.

However, Pavličić points out, there is concern regarding the introduction of the concept of the Protector of Assets and Legal Interests, who is expected lead these proceedings. However, she adds that this is the only possible solution in the existing constitutional and legislative framework of Montenegro, due to the inability of the prosecution service to represent before the civil court.

As per the proposed amendments to the Law, the Protector of Assets and Legal Interests would present evidence and facts pointing to a clear discrepancy between the value of the defendant's assets and their legitimate income. In response, the defendant would need to provide evidence that this is not the case.

Regarding requests for a longer time frame for conducting these proceedings, Pavličić acknowledges that such extensions are acceptable. However, she emphasizes that all of this should be looked at carefully through our constitutional and legal framework while also considering the maximum time limit that could be set without breaching procedural requirements.

"Finding the golden thread between the public interest and personal rights is crucial. Failure to strike the right balance could lead to the state being held responsible and paying compensation in future proceedings", she warns.

Bošnjak also raises concerns about the time frame, pointing out that the proposed law could easily grant amnesty to all those who got rich in the 1990s.

"Those make up a majority, ranging from exhaust welders to the 'first family', because that's when the "state smuggling of cigarettes" started and gave birth to most of Montenegro's tycoons and the current quasi-elite. That was when all those criminal privatizations took place, allowing individuals to amass significant wealth by looting state-owned companies", says MP Bošnjak.

She supports the idea of adopting solutions similar to the Italian ones for the fight against the mafia, adding that it is unclear why the Government opted for a model similar to the Slovenian one, which did not prove to be effective.

"I also have to point out that the ECHR needs to assist us in finding an appropriate and fair solution, so that individuals who have gained wealth through malfeasance and by robbing the people are not granted amnesty. And they must be aware that it is necessary to take our specific Montenegrin context into account", concludes Branka Bošnjak.

And while the Italians are collecting billions of euros at the expense of criminals, Montenegro will obviously have to wait for a long time until it gets really effective means to fight the mafia.

The committee wants a new law and vetting

Bošnjak emphasizes that the working group of the Parliamentary Committee is of the opinion that it is necessary to start drafting a new law that would envisage a civil procedure to deal with illicit assets.

"The working group is also of the opinion that some accompanying laws need to be harmonized and a special court or a special department in the court must be established to deal with these cases. Additionally, it is essential to carefully select judges for this court and conduct a thorough vetting process before their appointment".

She warns that the term of office of the working group has expired, so it is necessary for the Committee or the Collegium of the Speaker of the Parliament to decide to continue the work and to specify the tasks and define time frames.



HOW ASSETS CONFISCATED DUE TO CRIMINAL ACTIVITIES ARE TREATED IN MONTENEGRO: CITIZENS BEAR MAINTENANCE COSTS AS PROPERTIES GATHER DUST

**WHILE NEIGHBOURS ARE CREATING BUSINESSES
AND GENERATING INCOME, WE RECEIVE NO BENEFITS;
ONLY THE BILLS KEEP COMING**

/// Miloš RUDOVIĆ/Maja BORIČIĆ //////////////////////////////////////

Alongside cakes, the thing that sets the pastry shop “Ke Buono” in Fier, south of Tirana, apart from the others is that it is staffed by women who were victims of organized crime and that it is located in business premises that belonged to a local criminal.

Along with the “KinFolk” coffee shop in Durrës and the “Social Crafting Garage” souvenir shop in Saranda, “Ke Buono” is one of the examples of how the Albanian authorities have found a new use for the property, which was permanently confiscated from criminals through court proceedings. With this, they want to show the locals that crime does not pay, but also that the property confiscated in this way can be used in the right way.

“Through the social reuse of confiscated property, the most important message to the community is that what was stolen can be returned to the community”, Klotilda Kosta, the Programme Director of the NGO “Partners Albania”, said in a statement for the Centre for Investigative Journalism of Montenegro (CIN-CG).

Through reuse, confiscated assets that are not sold or used by institutions are transformed into spaces or small businesses to support crime victims or affected communities.

“Property that once belonged to criminal groups has been transformed into opportunities for social or economic development”, Kosta explains.

However, Montenegro cannot boast a substantial number of confiscated assets, and even fewer instances of successfully repurposing these properties.

So far, according to the data of the Cadastre and State Property Administration, since 2015, only four properties have been transferred to the state, and for now the only plan is to try to sell them.

In 2015, in the “green mile” process, an apartment was permanently confiscated from Dejan Rovčanin, convicted of international drug trafficking.

Four years later, in the proceedings against the former high official of the Democratic Party of Socialists (DPS) Svetozar Marović, a villa was confiscated from Radojica Krstović and an apartment from Dejan Krulanović, as well as an

apartment from Miloš Marović. The elder Marović admitted that he was the head of a criminal group that had swindled the Municipality of Budva for tens of millions of euros.

The Cadastre and State Property Administration told the CIN-CG that so far only one auction was held for the sale of a family residential house – a villa, where there were no interested buyers.

According to the public invitation of the Administration, they tried to sell the villa of several hundred square meters in the Budva settlement of Babin Do for a little over €1.4 million. There were no attempts to sell the other permanently confiscated property.

“As for other immovable properties, the procedures for proposals on how to deal with them are under way”, the Administration told the CIN-CG.



“Kinfolk” in Dueres
photo: NGO Partners Albania

Also the property that was temporarily confiscated was not used, but destroyed instead, so the citizens paid millions in damages. Thus, the Kalić and Šarić families were acquitted of charges of money laundering and drug trafficking, the seized property was returned, and they were paid millions in compensation from the budget due to improper maintenance and lost profits from the temporarily seized property.

The only law that currently regulates the management of confiscated property is the Law on Seizure and Confiscation of Proceeds Derived from Criminal Activity, which is in the process of being amended. However, although the Law has been the target of sharp criticism, almost no one

even mentions the area of management of confiscated property. Experts explain that this legislation is not sufficient for efficient property management.

The community must see the benefits of confiscation of property

The only novelty in the proposed amendments to the Law in the area of property management is that it is put at the disposal of the Government – half of its value is made available to the Ministry of Justice, 30 percent to the Ministry of Finance, and the remaining 20 percent is used to fill the Alimony Fund.

Assistant Minister of Justice for Criminal and Civil Legislation Ivana Mašanović explains to the CIN-CG that the Ministry of Justice funds should be used for the operational needs of the Ministry, prosecution service, courts, procurement of software, tools, but also that a part of it should be returned to the community.

According to her, Britain proposed that these funds should be spent at the proposal of the ministries. Using this approach, they managed to increase the efficiency of the police and the prosecution service in Britain by 300 percent.

“It means that this money should not be used for salaries, remunerations and the like, but for cars, fuel, computers, software...”, the representative of the Ministry of Justice emphasized.

She also notes that property management is a segment where the community needs to see the benefits of all procedures of permanent asset confiscation, but she admits that not enough attention is paid to it in our country.

She confirms that almost all countries in the region have an agency dealing with asset management, but says that Montenegro is not planning to do so for now. She clarifies that asset management could be governed by a special law, which could possibly provide for the establishment of

an agency or a special body that would deal only with management:

“A lot of things are left unfinished in terms of asset management. Someone has to deal with this seriously”.

As a positive example, she cites Italy, where they have successfully turned managing permanently confiscated assets into a brand. In Italy, the state has entrusted the management of these assets to the non-governmental sector.

“In Rome, you come to a compound where there are three houses taken from the mafia, turned into a restaurant, a music studio and a conference hall”, the Assistant Minister of Justice shares her experience.

The Bosnians, she adds, have an agency that deals with this, but so do the Albanians, who have completely adopted the Italian model.

“Bosnians, for example, have confiscated a gas station and did not fire the workers, but the state took control over it, appointed administration and it is making money from it”, Mašanović explained.

Civil society should use confiscated assets

In neighboring Albania, confiscated property can be utilized in three ways. One option is allocation to state or local level institutions, followed by leasing and use by other institutions, including civil society organizations for social purposes.

Any civil society organization in the country may apply for using confiscated assets to the Agency for Administration of Seized and Confiscated Assets (AAPSK).

As per the agreement with the Agency, three confiscated spaces were made ava-

ilable for use, and all NGOs in the country were invited to submit project proposals. The successful proposals resulted in contracts with the non-governmental organization “Partners Albania” for the management of funds for a period of 12 to 15 months. For other projects, contracts were signed with the AAPSK for a five-year implementation period, with the possibility of extension if the projects and established companies continue to deliver

services beyond the initial five years.

The Programme Director of “Partners Albania” Klotilda Kosta told the CINCG that the former owners of confiscated property were persons convicted of various types of crime, such as human trafficking, drug trafficking, etc.

In all cases, their family members have continued to live in the cities where the confiscated assets were located and, in some cases, very close to these properties.

Kosta explains that in some cases,

they approached the families when the property was being assessed for inclusion in the project. Additionally, they continued discussions with the families even after the property was given to the NGOs: “The families contacted and engaged in discussions with the NGOs that carried out the project”.

In such situations, communication and the presence of the Agency is crucial, adds Kosta, stating that no major incidents have been recorded. She adds that the fact that the state remains the owner of the property and the fact that it will be used for social purposes contributed to avoiding further controversy with the former owners.

BASIC PROSECUTOR'S OFFICES ARE REQUIRED LAUNCH FINANCIAL INVESTIGATIONS

Basic state prosecutor's offices in Montenegro did not initiate any financial investigation until November last year.

Mašanović notes that basic prosecutor's offices should finally start pursuing financial investigations.

“Essentially, the majority of criminal offences from which property can be confiscated are under the jurisdiction of the basic state prosecutor's offices”, points out the representative of the Ministry of Justice.

Kosta concludes that the act of reuse sends a message that illegal activities can be defeated through legal means, but also that when institutions, NGOs and citizens unite, they can give confiscated property a great social, economic and political value.

Albania: Victims of crime work in confiscated bars

At the pastry shop “Ke Buono” in Fier, 75 percent of the employees are young individuals, including girls and women who were victims of organized crime or potential victims. The shop also conducts training programs for young people who are ex-convicts or have family members facing challenging living conditions.

In Saranda, the “Social Crafting Garage” operates as a souvenir shop, showcasing 1,000 products made from pebbles collected from local beaches. The staff comprises girls and women who have been victims or are at risk of becoming victims of organized crime and domestic violence. Additionally, this space offers two capacity-building programs—one related to cultural heritage and the other focused on human rights.

In Durrës, the café-bookstore “KinFolk” serves as a multifunctional centre designed primarily for young people, especially those at risk of juvenile delinquency. The establishment not only employs individuals from vulnerable groups but also hosts events like employment fairs. Additionally, “KinFolk” offers 27 different courses, primarily focused on foreign languages.

“These socially oriented companies have a crucial mission to support marginalized groups who have been victims or are at risk of being targeted by organized crime. Their goal is to provide them with education, employment and the possibility of integration”, Kosta told the CIN-CG.

According to the CIN-CG interlocutor, state institutions like the Agency and the police should offer support to these socially oriented companies in case of any difficulties or issues they may encounter with the property or interference from former owners. Local authorities should also extend their support by using their services. Furthermore, donor communi-

ties should step in with financial schemes to ensure their sustainability, while society should contribute by using their services and purchasing their products.

The manager is liable with their own assets

The Executive Director of the Network for the Affirmation of the NGO Sector (MANS), Vanja Čalović Marković, told the CIN-CG that they have repeatedly emphasized the need to revise the provisions of the law concerning the management of confiscated property, as well as the leasing process to third parties.

Čalović Marković adds that they once again call on the authorities to consider the Italian experience where confiscated property is managed by administrators, who receive significant compensation for their work, but are liable with their entire assets should any problems arise.

“When the administrator is liable with their own assets, incidents like damage, theft or any unauthorized actions are effectively prevented”, she explains.

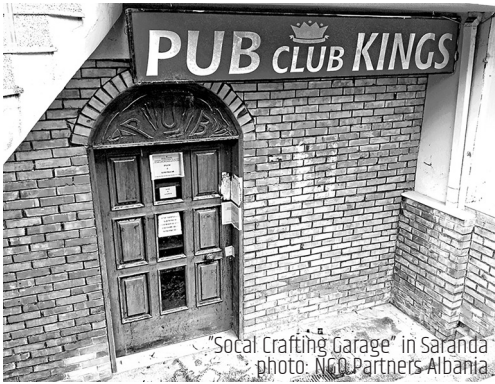
The director of MANS highlights particularly significant situations where no person or company submits a tender to manage a confiscated property, resulting in the responsibility falling on the state. She emphasizes that Italy has a successful approach in such cases, which involves the use of assets for humanitarian purposes, such as supporting associations for parents of children with special needs, hospitals and schools.

“And in this way, a double goal is achieved: it prevents criminals from accessing the confiscated property through related persons and sends a clear message to the public that the property is being confiscated in the public interest”, Čalović Marković points out.

Čalović Marković further explains that this strategy serves a dual purpose. Firstly,



Katilda Kosta
courtesy photo



have been developed based on practice and there is no need to reinvent the wheel. We need to learn from them and adapt it to our system”, Čalović Marković concluded.

Montenegro has not taken away anything for four years

The conduct of financial investigations in Montenegro has yielded almost no results so far as well, so, as the CIN-CG previously wrote, in the last seven years, according to the reports of the prosecutor’s offices, the Special State Prosecutor’s Office (SPO) managed to permanently confiscate only two apartments and 3,063 square meters of land, which it proved were acquired through crime. During the same period, the High State Prosecutor’s Office in Podgorica seized only one apartment, and the High State Prosecutor’s Office in Bijelo Polje confiscated 15 euros!

There are 17 prosecutor’s offices in Montenegro, including the Supreme State Prosecutor’s Office.

The European Union (EU) has repeatedly warned about the insufficient initiation of financial investigations in parallel with criminal investigations, stressing the need for better results in this domain. The latest European Commission report on Montenegro also reiterates the importance of significant improvements in the results of financial investigations and asset confiscation related to criminal offences, particularly in the area of high corruption.

The report further notes that the problem of an incomplete cadastre obstructs the efficiency of financial investigations and confiscation of assets, noting that this problem is yet to be solved.

The report of the Prosecutorial Council for last year showed that financial investigations had lasted up to six years.

Since 2015, the SPO has been constantly expanding the team of the Department for Financial Investigations, but with the latest changes, it lowered one of the criteria – the required years of experience to do that job were reduced from five to three.

In the High State Prosecutor’s Office in Podgorica, there are no specific de-

it effectively prevents criminals from accessing the confiscated property through related individuals or entities. Secondly, it sends a powerful message to the public that the property is being confiscated in the best interest of the community.

She emphasizes that using confiscated property for humanitarian and social purposes is not only beneficial for the community but also helps avoid any potential retaliation from criminals.

“Imagine now that you seize the property from the Kavač and Škaljari clans; no one will come and take those business premises. In such situations, the state should build a police station, a kindergarten, or something that does not provoke their revenge in any way”, Čalović Marković points out.

She emphasizes that during the period of temporary seizure of property, it is crucial to preserve its value while addressing the issue of state responsibility in such cases. She further explains that when criminal organizations own companies involved in legal activities, it becomes extremely difficult to ensure that these companies function in the same manner after confiscation as they did before.

“For instance, in the case of the Kalić family, when the illegal money flows ceased to enter their companies, their value declined, and consequently, we all had to bear the burden of responsibility”, the executive director of MANS points out.

In Italian law, this is also prevented – if the situation on the market affects it, then the state assumes on responsibility.

“There are very delicate solutions that

partments specialized in the efficient management of financial investigations.

The Protector to file lawsuits for confiscation of property

The government recently adopted a proposal for amendments to the Law on the Seizure and Confiscation of Proceeds Derived from Criminal Activity, despite the fact that the public had not had the opportunity to see the text of the draft until then. This was met with fierce criticism not only from the civil sector, but



Vanja Čalović Marković
Foto: Luka Žeković

also from the European Commission, which gave a negative opinion and said that public participation is expected in the process of changing the text.

Among other things, the proposal for amendments to the Law foresees that only in the case of criminal offences under the jurisdiction of the SPO, a final conviction would not be awaited, but instead the process of civil confiscation of property could be started immediately after the confirmation of the indictment. The Law amended in this way was condemned by the public, because the essence of the changes was supposed to be to facilitate the process of confiscation of property, precisely through a civil procedure that should not wait for confirmation of the indictment.

According to Mašanović's statement to the CIN-CG, they believe that waiting for the confirmation of the indictment is necessary to safeguard the rights of the person whose property is being confiscated and to adhere to European Union standards. However, it is worth noting that countries with a stronger tradition of the rule of law, such as Great Britain, the Netherlands, and Italy, do not require confirmation of the indictment to conduct a similar procedure.

Assets that are confiscated after the

confirmation of the indictment must be over €50,000, and can be confiscated 10 years before or after the commission of the criminal offence, starting from 2010.

"It is important for us that we have covered the acts of organized crime, which were introduced here in 2010, it would be difficult to prove something now that happened 30 years ago", Mašanović explains.

When the indictment is confirmed, regardless of the outcome of the criminal proceedings, the Protector of Property and Legal Interests initiates a lawsuit, and the defendant bears the burden of proving the grounds for acquiring the property.

"It is literally a lawsuit to determine property rights, only in this case the state claims that it is theirs, and you prove that it is not. In civil proceedings, it is easier to make a decision in favour of the state, and in criminal proceedings, if there is even the slightest doubt in someone's guilt, they are acquitted", Mašanović explains.

These changes provide for civil, extended and direct confiscation of property, but also the possibility of taxing undeclared property and income at 80 percent.

"If the prosecutor does not have solid evidence in the financial investigation, there is a possibility of forwarding the case file to the tax administration and taxing that property", Mašanović pointed out.

All confiscation procedures can be conducted for criminal offences liable for imprisonment of four years or more.

If the case does not involve criminal offences under the jurisdiction of the SPO, a conviction must be confirmed in order to conduct the property confiscation procedure. The novelty is that the deadline for completing the property confiscation process has been halved – from two to one year.

The financial investigation team has been expanded, she adds, so now the Anti-Corruption Agency (ACA) is also a part of the team.

The ACA told the CIN-CG that the Agency's preventive work on collecting data on the assets of public officials and civil servants with the obligation to submit reports on income and assets will definitely be useful to the prosecution service

when it starts financial investigations.

“We hope that a detailed analysis of the compliance of the legal solutions of the new law with the Law on the Prevention of Corruption, the Law on Criminal Procedure and the Criminal Code will be done,”, said the institution headed by Jelena Perović.

The process of amending the law has been going on for almost two years, and the Ministry of Justice partly blames the European partners for this, stating that the process with the European Commission (EC) has been going on for a year: “Until now, it never happened that we had to wait for EC longer than 6 months”.

And while in Fier, Durrës and Saranda the state is using the seized property to help victims of violence or other vulnerable categories, in Montenegro it is lying idle, gathering dust and costing the state due to expensive maintenance.

Plea bargains



PLEA BARGAINS OF THE SPO AND THE HIGH PROSECUTOR'S OFFICE IN PODGORICA: THE GREATER THE CRIME, THE LESSER THE PUNISHMENT

**HALF A YEAR IN PRISON FOR A JOINT,
THREE MONTHS FOR INTERNATIONAL
DRUG SMUGGLING**

/// Maja BORIČIĆ/Marija POPOVIĆ KALEZIĆ //////////////////////////////////////

By the terms of the plea bargain, the accused received six months in prison for selling 1.7 grams of marijuana. Prosecutor Tatjana Begović made a deal with him that he should pay 10 euros as well. And two members of a criminal organization accused of international heroin and marijuana smuggling were sentenced to three months in prison each.

The settlement with them was made by the former Special Prosecutor Mira Samardžić, who was much more tolerant than Prosecutor Begović, bearing in mind that they were not only members of an international criminal group, but also repeat offenders.

They were accused of having smuggled drugs from Albania to Montenegro at least eight times, namely 805 kilograms of marijuana and slightly less than a kilogram of heroin. The settlement signed by Samardžić was adopted by the Judge of the Podgorica High Court, Dragoje Jović.

In another proceedings, a previously convicted member of a criminal organization, accused of smuggling 80 kilograms

of marijuana and 3.2 kilograms of heroin, also agreed to serve only three months in prison. This agreement was concluded by Special Prosecutor Tatjana Žižić and adopted by Judge Biljana Uskoković.

In the statements of reasons for these judgments, it was stated that the fact that they have already been convicted for selling drugs was not taken as an aggravating circumstance, because they were doing it within the same group!

Two members of another criminal organization, which smuggled hundreds of kilograms of marijuana around the region, received, after the settlement, three months of house arrest each. The two were also previously convicted. Judge Evica Durutović accepted the agreement, and in the statement of reasons for the decision, she stated that the fact that they were repeat offenders did not affect the judgment, since a certain amount of time had passed since the previous convictions, and the crimes in question were not the same.

These are just some of the controversial decisions based on plea bargains, which were accepted by the High Court

in Podgorica.

From the analysis of hundreds of judgments, which were reviewed by the Centre for Investigative Journalism of Montenegro (CIN-CG) and the Centre for Civil Liberties (CEGAS), numerous inconsistencies could be seen. Thus, it happened that in the same procedure for the same crime, the same or greater sentences were given to persons with no prior convictions, than to those who were repeat offenders in committing criminal offences.

In almost all cases, organizers of criminal groups received sentences below the legal minimum – about two years in prison, for crimes liable for imprisonment of three to 15 years. It happened that, according to the agreements, a greater sentence was determined for the member than for the organizer of a criminal group in the same proceedings.

Thus, the organizer of a criminal group that repeatedly smuggled a large amount of marijuana from Albania to Montenegro and the countries of the region received two years in prison, while two members of the same organization received one month and two months more in prison.

Prosecutor Mira Samardžić settled in that case, and the agreements were adopted by three different judges: Dragoje Jović, Dragica Vuković and Biljana Uskoković.

In addition, in numerous agreements

in cases of smuggling large quantities of drugs, fines were not imposed. And even if they were, they were mostly symbolic – a few thousand euros.

According to the information from the analyzed judgments, the purchase price of a kilogram of marijuana on the market is around €1,500, while cocaine and heroin are many times more expensive. Resale, as written in the judgments, can earn up

to five times more money. But this was not a reason for many prosecutors to punish the perpetrators of these crimes with adequate monetary amounts, in order to act preventively.

According to the Criminal Code (CC), the penalty for unauthorized production and trafficking of narcotic drugs is between two and 10 years, and can be reduced for a maximum of six months. In the judgments that we have seen, it was pointed out that for criminal offences under the jurisdiction of the Special State Prosecutor's Office (SPO), a sentence of four or more years of imprisonment may be imposed.

Out of 639 convictions based on plea bargains, which were delivered to the

CIN-CG and CEGAS, only in one case a sentence of six years in prison for cocaine smuggling was declared. All other sentences were below four years, mostly symbolic.

In 2012, the non-governmental organization "Human Rights Watch" announced that, in settlements in America, those accused of criminal offences related to

AGREEMENTS AS A TRADE IN JUSTICE

In legal systems in transition, the agreement is often perceived as "another further form of corruption" or "institutionalized form of bribery", points out the German lawyer, Dr Stefan Pürner, in the Journal for sustainable and harmonious development of law "KoPra".

"Such a legal institute, which may have been successful in its home country, will not be exceedingly fruitful in another environment, just as a banana tree, for example, will not survive in Antarctica", said the lawyer.

He points out that the absence of any guidelines for sentencing strengthens the position of the prosecution in negotiations, and that citizens may experience this as a kind of trade in justice.

Pürner adds that not even the European Convention on Human Rights requires a speedy conclusion of the proceedings at any cost, i.e. at the cost of justice, but that it requires a fair procedure instead.

narcotics received an average of five and a half years in prison.

The court rejected only a few of SPO's settlements

According to reports of the prosecution service, the High Court in Podgorica rejected only a few settlements concluded by the High State Prosecutor's Office of the capital city in the last six years. Agreements were rejected mainly due to the withdrawal of the accused. In only one case, in 2016, the court rejected an agreement of eight months in prison for nine grams of heroin. It assessed that "the punishment was not proportionate to the gravity of the crime".

Of the 437 convictions based on agreements of the High State Prosecutor's Office that were made available to us, 391 decisions are related to the criminal offence of unauthorized production, possession and distribution of narcotic drugs. Other convictions refer mainly to cases of violent behaviour, domestic violence and sexual offences. In one of those agreements, the fact that he was a "family man" was counted as a particularly mitigating circumstance for a man who was convicted several times for domestic violence.

The institution of plea bargains in our judiciary, although it was introduced earlier, has been widely used since 2016. It is interesting that as time went on, prosecutors proposed, and judges adopted, increasingly lenient sentences. Thus, in 2016 and 2017, according to the settlements of the Podgorica High Prosecutor's Office, house arrest was not ordered in a single case. However, in the last four years, in as many as a quarter of all the agreements of this prosecutor's office, the convicted were punished with an ankle monitor.

Repeat offenders often received much lower prison terms than those who committed the same criminal offence for the first time, in the settlements of the High Prosecutor's Office in Podgorica as well.

Thus, a person who was previously convicted twice, for theft and serious

bodily injury, agreed to be sentenced only to half a year of house arrest for selling narcotics. The agreement was signed by the current acting Supreme State Prosecutor Maja Jovanović, and approved by Judge Predrag Tabaš.

The CIN-CG tried to get a comment from Prosecutor Jovanović on the subject of the widespread use of agreements in the Montenegrin judiciary, but we did not receive an answer until the publication of this text.

In another case, a person who had previously been convicted five times was sentenced based on agreement to a year in prison for the criminal offence of unauthorized production and distribution of narcotic drugs. The settlement was also agreed upon by the current acting Supreme State Prosecutor, Maja Jovanović, and confirmed by Judge Vesna Moštrokol.

In one of the convictions, the five-time repeat offender agreed to go to prison for 11 months for attempted murder and illegal possession of a weapon. The same person was previously convicted of aggravated robbery, theft of weapons, criminal offence against traffic safety, illegal trade, fraud, and aggravated attempted theft. The agreement was concluded by Prosecutor Tanja Begović, and it was adopted by the Judge of the High Court in Podgorica, Vesna Moštrokol.

After the agreement, a three-time repeat offender was sentenced to two and a half years in prison for attempted murder and illegal possession of weapons. Before that, he was convicted of violent behaviour, assault on an official, and illegal possession of weapons and explosive materials. The current Disciplinary Prosecutor Danka Ivanović Đerić made the agreement, and Judge Predrag Tabaš accepted the settlement.

The court also approves the agreement if it determines that it does not violate the rights of the injured party. We did not receive an answer from the High Court to the question in how many cases the injured party appealed against the plea bargain decision, from 2016 until today, and what was the outcome of those proceedings.

Supreme Court: Mild penal policy for organized crime

The documents of the Supreme Court also acknowledge that the punishments based on plea bargains for organized crime are mild.

“The application of the institute of mitigation of punishment, along with the determination of particularly mitigating circumstances, which are most often found in convictions based on plea bargains, has led to the emergence of a trend of mild penal policy for criminal offences in the field of organized crime, which is characterized by the imposition of sentences below the prescribed legal minimum”, concludes the Analysis of the Penal Policy for the Most Serious Criminal Offences for 2017 and 2018.

The Analysis warns that the legal possibility of applying plea bargains for criminal offences in the field of organized crime could create a misconception among the perpetrators of these criminal offences and the impression among the general public that these are lighter forms of crime, “which is why achievement of general and special prevention of organized crime could be undermined”.

The document also indicates that the courts, when assessing whether an agreement should be adopted, should pay more attention to whether all the conditions of the Criminal Procedure Code (CPC) have been met, and especially whether the agreement is in line with the interests of fairness, and whether the punishment corresponds the purpose of imposing a criminal sanction.

It is explained that in 90 percent of cases, the court imposed sentences below the statutory minimum, and that the application of plea bargains is present in most cases of organized crime.

“The question arises as to whether previous convictions for other criminal offences are underestimated when sentencing the perpetrator of the criminal offence”, the analysis reads.

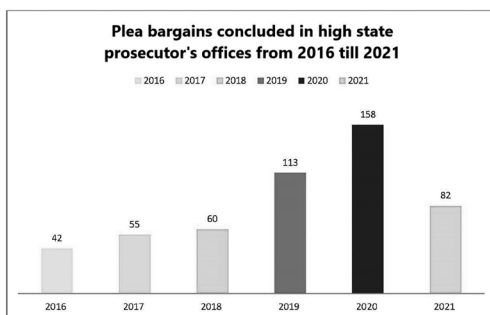
It is emphasized that when concluding a plea bargain, particular attention should be paid to protecting the rights of the injured party.

German legal expert, Dr Stefan Pürner, warns that in countries in transition, such as Montenegro, the inadequate application

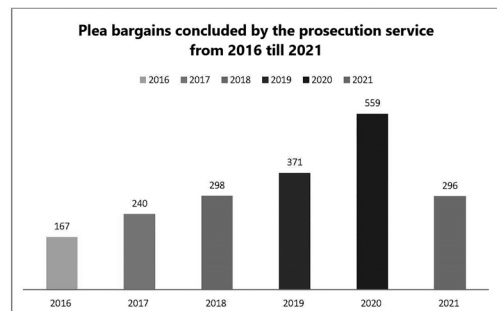
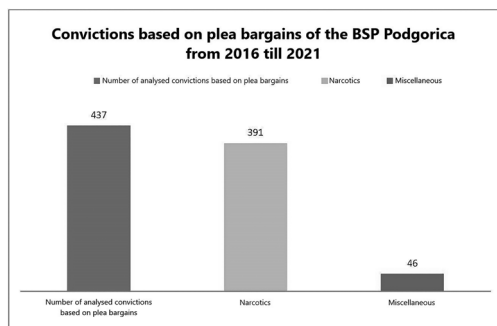
of plea bargains can have disastrous consequences for the rule of law.

Anglo-American literature also states that the institution of agreements in countries in transition can have “catastrophic consequences”. It is emphasized that the settlements can further undermine the reputation of the judiciary among the population, who perceive the negotiations as “bargaining on the market”.

All these warnings obviously had no effect, because the practice of a mild penal policy for the most serious offences of organized crime, according to the CIN-CG research, continued and practically made the institute of consensual guilty pleas in Montenegro meaningless.



Total: 510



Total: 1931



PLEA BARGAINS – THE PRACTICE OF THE SPO AND THE HIGH COURT IN PODGORICA SINCE 2016: HOW SETTLEMENTS AND CRIME FLOURISHED UNDER KATNIĆ AND SAVIĆ

OFFICIALS ACCUSED OF ABUSE OF OFFICIAL POSITION AND MONEY LAUNDERING, OFFENCES LIABLE FOR IMPRISONMENT OF ONE TO 12 YEARS, WHICH COULD BE REDUCED FOR A MAXIMUM OF THREE OR SIX MONTHS, WERE SENTENCED TO SEVEN ANKLE MONITORS

/// Maja BORIČIĆ/Marija POPOVIĆ KALEZIĆ //////////////////////////////////////

In 40 agreements of the Special State Prosecutor's Office (SPO) in cases of multimillion frauds, abuse of position, money laundering and tax evasion, the defendants were sentenced to symbolic sentences – 28 suspended sentences, seven ankle monitors and five prison sentences of six months each.

In most of these settlements, more precisely in 31 cases, decisions were made by the President of the High Court in Podgorica, Boris Savić.

How is it possible that for such serious crimes, for which one should go to prison for many years, such light sentences are imposed, even in case of a plea bargain?

The President of the High Court, Boris Savić, responded for the Centre for Investigative Journalism of Montenegro (CIN-CG) that it would be inappropriate for him to comment on the decisions he had made himself, stating that they were legal, and that he had stated the reasons for the judgments in the explanations.

“The electronic case allocation system

is such that it is impossible to influence which case will be given to which judge, and my actions are a consequence of the fact that, as the president of the criminal extra-procedural council, I participate in the scheduling of cases in which the agreement is delivered simultaneously with the indictment, and not after it”, Savić said.

In the case of a plea bargain, the sentence is not determined by the court, but is agreed upon by the prosecutor and the defendant. However, precisely the court should have a key role, because it can reject the agreement if, among other things, the punishment agreed is inappropriate.

After the change of government on August 30, 2020, it was announced several times that the focus of the Ministry of Justice would be on numerous agreements signed with perpetrators of criminal offences.

All SPO agreements, and there have been hundreds of them in the last six years, were in cases of criminal offences of organized crime, corruption, trafficking

in drugs, weapons and people.

According to unofficial information CIN-CG got from the high ranks of the judiciary, the largest number of cases of organized crime and corruption were resolved by agreements, and not through proving in court proceedings, which, according to lawyers, could be problematic, because it shows the insufficient ability of the system to prove indictments in the court process and to resolve them within a reasonable time.

In a large number of cases in which defendants are accused of creating a criminal organization, fraud, money laundering and abuse of official position, where the motive for criminal offences is money, financial penalties aren't imposed through settlements. Thus, many of the convicts, even though they participated in financial frauds worth millions, do not return the money they acquired illegally.

In 40 agreements, in cases of multimillion frauds, abuse of position, money laundering and tax evasion, which CIN-CG analyzed, the prosecutors in most cases charged the defendants more leniently than provided for these crimes.

Special Prosecutor Lidija Mitrović made settlements in eight cases.

SPO prosecutors Saša Čadenović, Sanja Jovičević, Stojanka Radović, Lidija Vukčević, Nataša Bošković and Zorica Milanović made one settlement each.

In 26 decisions, which we received through the Law on Free Access to Information, the name of the prosecutor

who concluded the agreement is not mentioned.

Thus, 27 accused members of criminal groups who embezzled millions of euros, including persons from the media-exposed cases "Klap" and "Vardar", were sentenced by agreement to suspended sentences only and to pay a few thousand euros each. All these agreements were approved by Judge Savić, and most of

the agreements were made by Prosecutor Mitrović.

The defendants in those 27 settlements were responsible for the criminal offence of creating a criminal organization, liable for imprisonment of one to eight years in prison, and tax and contribution evasion, punishable by one to six years' imprisonment and a fine.

According to the Criminal Code (CC), these sentences can be reduced for a maximum of three months, while for extended criminal offences a sentence more severe than prescribed can be imposed.

Officials accused of abuse of official position and money laundering, offences

liable for imprisonment of one to 12 years, which could be reduced by a maximum of three or six months, were sentenced to seven ankle monitors.

Thus, Milenko Medigović, the vice-president of Budva Municipality, was sentenced to a 75-day house arrest for abuse of official position during the construction of the Petrovac promenade. He was directly in charge of monitoring the investment, and he was charged with demanding the contractor to carry out work that was

THE ROLE OF THE COURT IS MARGINALIZED

Pavličić emphasizes that the negotiation process is non-transparent, and the role of the court is marginalized, given that it appears only in the role of someone who confirms what was agreed upon.

"Court practice and the issue of measuring justice have been reduced to only the so-called administration of the court through this institute", Pavličić assesses.

It is possible to propose a lighter sentence below the legal minimum, she adds, but the state prosecutor is obliged to follow the general rules for imposing and mitigating the sentence.

"The court is the one that is authorized to confirm that this is in accordance with the law", the former Judge of the High Court in Podgorica emphasizes.

not foreseen and thus causing damage of €232,543 to the Municipality. At the same time, the promenade was never completed, and it cost about €8 million. According to the settlement, Medigović did not have to pay anything, except for a couple of hundred euros in court costs. In addition, he was charged with the most lenient section for this criminal offence. According to the damage that was done, he should have been charged with the most severe section, liable for imprisonment of two to 12 years.

This settlement was confirmed by High Court Judge Suzana Mugoša, and the judgment does not say which prosecutor concluded the agreement.

Branislav Gugi Savić, Stjepan Skočajić and Dragoljub Milovanović, convicted in the well-known corruption scandals in Budva, received sentences of six months in prison each. And that for the act of abuse of official position, for which prison terms of two to 12 years are provided. None of them were fined, although the damages to the state were in the millions. Through settlements, even their companies received only suspended sentences, that is, they do not have to pay fines, if they do not commit new criminal offences within a year.

Branislav Savić agreed on two settle-

ments due to million-worth embezzlements in Budva, one with Saša Čadenović and the other with Lidija Vukčević. Both times he was sentenced to six months in prison.

THE MINISTRY ANALYSES THE AGREEMENTS

State Secretary in the Ministry of Justice Bojan Božović stated for CIN-CG that the revision of the criminal legislation and the analysis of the application of plea bargains are in progress, which will provide clear recommendations for possible changes to the law, but also help to apply this institute more efficiently. The focus, he claims, will be on the penal policy established by these settlements as well.

“Often, the professional public expressed criticism that the plea agreement did not achieve its purpose, because the sanctions were much milder than ‘expected’. If this is really the case, and a large number of indications point to it, we must act institutionally and solve this deficiency as soon as possible”, Božović pointed out.

This institute partly, he adds, justified its purpose and relieved the burden from the court proceedings, but the fact that it is necessary to review the legal solutions in relation to the victims of criminal offences should not be ignored.

“Here, above all, we are thinking of criminal offences of domestic violence, human trafficking and criminal offences against sexual freedom”, he pointed out.

organizer of a criminal group that damaged Budva for over €45 million, he would be imprisoned for a total of three years and nine months and pay €100,000. Also, he was supposed to return a little over a

There are no names of prosecutors for the other two agreements concluded by Skočajić and Milovanović. They were accused of embezzlement during the construction of the Jaz plateau and the waste water plant in Budva. All settlements were accepted by Judge Boris Savić.

Although CIN-CG and the Centre for Civil Liberties (CE-GAS) have requested from the High Court all verdicts based on plea agreements since 2016, when the newly formed SPO was taken over by Milivoje Katnić, settlements with Svetozar Marović and his son Miloš and several more agreements connected with the Budva scandal were not among the 202 decisions that had been submitted.

It is known to the public that the former high official of the Democratic Party of Socialists (DPS) Svetozar Marović agreed that, as the

million euros to the budget. However, he is still unavailable to Montenegro, and the sentence expires in October 2026. So far, the state has managed to collect from his property only a third of the money it was due. His son Miloš, also on the run, agreed to serve a year in prison and pay €385,000. He returned the money, but the prison sentence expired in September 2020. These agreements were also approved by the President of the High Court, Boris Savić.

Among the 40 SPO agreements analysed, there are also four repeat offenders. All four received suspended sentences or house arrest. Three agreements were adopted by the President of the High Court, Boris Savić, and one by Judge Dragica Vuković. In the judgments that we have seen, the names of the prosecutors who made the agreements are not mentioned.

In one of these four cases, the person accused of money laundering, who was previously convicted



Boris Savić
photo: Boris Pejović

abroad for cocaine smuggling, and “laundered” the money in Montenegro, after an agreement with the SPO, was sentenced to only three months of house arrest and to pay €5,000 in fines.

Another repeat offender, for whom it is not written what he was previously convicted of, was given a

FRANCE HAS LIMITED THE SETTLEMENTS, IN GERMANY THE COURT PLAYS A KEY ROLE

In systems that use the institution of plea agreements, there is an established practice of keeping penal policy tables – instructions that enable the perpetrator of a criminal offence to predict the punishment that can be imposed on him in a specific case.

In Germany, the court plays a key role in the plea agreement process and has the right to determine the lower minimum and upper maximum, when sentencing, before concluding a plea agreement.

France has excluded the criminal offences of murder, assault on life and body, as well as acts against sexual freedom from the settlements, believing that in this way it would be fairer to the victim.

emphasized that the use of plea agreements should be limited to exceptional cases only, in order for Montenegro to face the challenges of corruption and organized crime more efficiently.

The report pointed out that the criminal policy for these crimes should be more consistent, in order to curb corruption and crime.

However, the EU’s warnings did not seem to matter much to the former Chief Special Prosecutor Katnić. Although he said in the middle of 2019 that no more agreements would be signed with the defendants for the most serious crimes, but that the most severe punishments would be proposed instead, this did not happen. On the contrary, until the end of his mandate, the practice of resolving most SPO cases through settlement continued.

In the last six years, in addition to these 40 agreements, according to the docu-

suspended sentence of one year and two months and ordered to pay €15,000. He was tried for creating a criminal organization and prolonged evasion of taxes and contributions.

The third repeat offender was sentenced for tax and contribution evasion to a six-month suspended sentence and a fine of €5,000.

The fourth repeat offender was given an ankle monitor for six months and ordered to pay €2,000 for prolonged fraud and money laundering.

The EU requests a limit to settlements

The 2021 European Commission (EC) report for Montenegro

mentation submitted for our research, the SPO also signed 93 settlements for organized drug trafficking, 54 for trafficking, 11 for arms trafficking, two for cigarette smuggling and two for the creation of a criminal organization in connection with the protests of the Democratic Front in 2016. All these settlements were accepted by the High Court in Podgorica.

In the majority of concluded agreements, members of criminal organizations received three months in prison for creating a criminal organization, which is, according to the Criminal Code, liable for imprisonment of one to eight years. As a rule, prison terms in agreements do not exceed one year for criminal offences under the SPO's jurisdiction.

And in most of these settlements, for crimes in which the motive of execution was money, there are almost no fines or they are symbolic. It is also interesting that women had an even better position in the proceedings for the creation of a criminal organization, so they received ankle monitors and suspended sentences.

Thus, an accused female member of a criminal organization, who rented apartments to hide criminals that were planning liquidations, committing violence, intimidation, murders, drug smuggling, and who transmitted messages to them, was sentenced to six months of house arrest. The settlement was concluded by Prosecutor Tatjana Žižić, and adopted by Judge Biljana Uskoković.

Ankle monitors or a couple of months in prison for repeat offenders as well

Her "colleague" from the same group, previously convicted of creating a criminal organization and illegal possession of weapons, was sentenced to four months in prison. Two automatic rifles, a pistol, a hunting rifle, ammunition were taken from him... The settlement was made by Saša Čadenović and adopted by Boris Savić. It is interesting that in this case, the same prosecutor and the same judge punished two members of that criminal group with no prior convictions more severely for the same crimes. They received a third more than repeat offenders – six months in prison each.

In the majority of analyzed settlements with previously convicted persons, this was not taken as an aggravating circumstance with the explanation that it was not a case of the same type of criminal offence or that a certain amount of time had passed since the previous sentence. And even when the same criminal offences were involved, symbolic punishments were negotiated with mitigating circumstances – confession, unemployment, children, which, in the opinion of the courts, "relativized" earlier convictions.

Repeat offenders were put in house arrest with an ankle monitor for the crea-

tion of a criminal organization and people smuggling as well, and even in these cases it happened that persons with no prior convictions received a greater sentence

THE PROSECUTION SERVICE DOES NOT RESPOND

The acting Supreme State Prosecutor, Maja Jovanović, did not answer CIN-CG's questions about whether she would do anything to finally end this practice of settlements, but neither did she answer a number of other questions related to plea bargains.

Pavličić, as well as Savić, points out that it is precisely the Supreme Prosecutor's Office that should issue practical guidelines, which would regulate the actions of prosecutors during negotiations in a detailed manner.

"Also, I believe that the principle of transparency in this type of proceedings must gain more importance, especially in the context of cases that are in particular focus of the public, such as cases in the field of organized crime and corruption", Pavličić concludes.

than repeat offenders.

Thus, for creating a criminal organization and people smuggling, three persons with no prior conviction received six, eight and ten months in prison, while five repeat offenders were sentenced to lighter sentences – three an ankle monitor, and two five months in prison each, which they had already served in custody. All of these settlements, except for two, were approved by the High Court Judge Ana Vuković, and concluded by Prosecutor Mira Samardžić.

Judges Biljana Uskoković and Dragoje Jović confirmed two sentences of eight and ten months in prison for those with no prior convictions. According to the Criminal Code, people smuggling is liable for imprisonment of one to ten years, which can be reduced by three months.

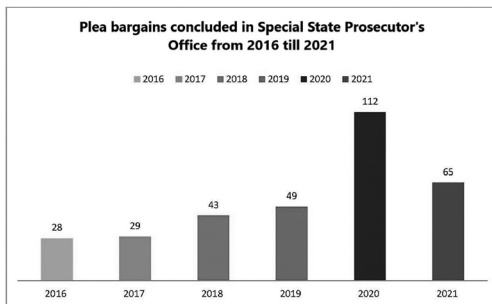
Commenting on agreements with repeat offenders, Valentina Pavličić, a representative of Montenegro before the European Court of Human Rights and a former Judge of the High Court, points out for CIN-CG that this type of settlement could very hardly meet the criterion of fairness, and especially the requirement that such a sentence corresponds to the purpose of imposing the sanction.

She also emphasizes that the wide application of suspended sentences and sentences below the legal minimum, which are imposed during the conclusion of agreements, creates a perception of criminal policy as mild and inadequate. It is also a kind of privilege of the defendants. The wide application of this institute is problematic, warns Pavličić, especially in cases of organized crime and corruption.

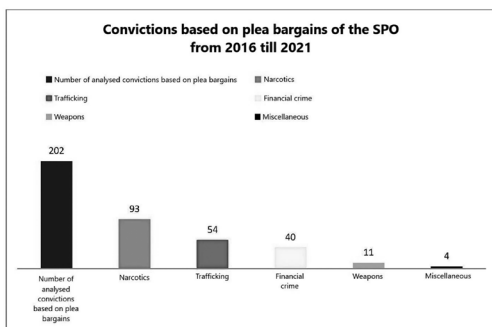
She also questions the fact that persons who have been convicted through settlement and received a sentence that they agreed upon themselves, very often also use other advantages they are entitled to in the process of execution of the sentence, such as a reduction of the sentence by



Milivoje Katnić
photo: Boris Pejović



Total: 326



parole or pardon.

“The credibility of the court can be highly damaged by application of this institute, if the goal of general and specific prevention is neglected by the prosecuti-on service, and only the reduction of the number of cases and their quick conclu-sion is taken into account”, says Pavličić.

The court has rejected only a few agreements

According to the data from the reports of the prosecutor’s offices, in the last six years the courts have rejected only a few agreements, which were agreed upon by the SPO.

The High Court in Podgorica would have been blocked if there was no possibility for the cases to end with settlements, the President of that court, Boris Savić, told CIN-CG.

“Without the application of this insti-tute, the High Court would have been occupied with the so-called ‘Budva cases’ until today, and the big question is how much space would be left in the court and in the prosecution service for all other cases”, the President of the High Court assessed.

The public has the right to draw conclusions about whether the punishment is too high or too low, Savić says, but he also points out that “rigorous punishments have not shown good results in terms of general and special prevention”.

Savić emphasizes that one of the primary goals of concluding agreements was the return of confiscated material benefits. However, in the majority of judgments that CIN-CG had insight into, the defendants generally did not compensate the state for damages, nor were they deprived of material benefits.

The institute of plea bargains began to be used in Montenegro in February 2010. At that time, according to the Criminal Procedure Code, the agreement could not be concluded for criminal offences punishable by more than 10 years in prison. The law was changed in August 2015. Since then, settlements have been possible for all criminal offences, except for war crimes and terrorism. These changes stipulated that the suspect or the accused could initiate the conclusion of an agreement, which happens most often in practice. It was precisely these changes in the law that led to the widespread use of this institute by the SPO and to the practice thanks to which crime pays off.

**The work
of court
experts and
appraisers**



THE MINISTRY OF JUSTICE REVOKED ONLY ONE COURT EXPERT'S LICENSE IN SIX YEARS: NO PENALTIES FOR RULE VIOLATIONS

THE BODIES THAT SUPERVISE THE WORK OF EXPERT WITNESSES ARE LENIENT TOWARDS THEIR MISTAKES, ALTHOUGH THE OUTCOME OF COURT PROCEEDINGS OFTEN DEPENDS ON THE FINDINGS AND OPINIONS OF THAT BRANCH OF THE JUDICIARY

/// Maja BORIČIĆ

In the last six years, the Ministry of Justice (MOJ) revoked only one court expert's license, although, according to relevant international reports, precisely the unprofessional attitude of individuals in this important link in the judicial system is one of the reasons for the prolongation of court proceedings and questionable judgments.

Mechanical expert witness Goran Dedić's license was revoked in February 2022, because he failed to submit findings and opinions in the proceedings before the Commercial Court for more than two years. He also ignored the Court's requests to return the case files, as well as the advance payment of 1,400 euros. He also failed to pay a fine of 500 euros.

These are the data obtained by the Centre for Investigative Journalism of Montenegro (CIN-CG) and the Centre for Civil Liberties (CEGAS) through free access to information.

The Commission for Expert Witnesses of the Ministry of Justice revoked Dedić's license because from December 2018, when he was hired in the case, until May

2021, when the initiative for his license to be revoked was launched, he did not submit a finding and opinion, nor did he act according to other orders and urgencies of the Court. As a result, the hearings were postponed every month. The Judge of that Court, the current acting President of the Court, Dijana Raičković, was unable to engage another expert until Dedić returned the case files.

It is a case that is being conducted in the Commercial Court on a lawsuit filed by the company "Glečer" from Herceg Novi against the company "Vektra Jakić" of Dragan Brković. The company "Vektra Jakić" was the main exploiter of Montenegrin forests for years, and several proceedings are being conducted against it on the suspicion that it has damaged the state for millions of euros.

Although the proceedings against Dedić were the only ones conducted against an expert witness in the last six years, it is not an isolated case that expert witnesses unnecessarily delay court cases and do not act according to the orders of the courts and prosecutor's offices.

The analysis of the World Bank (WB)

on the role of experts in the judicial systems of the Western Balkans, which was published in the middle of 2019, cites the unequal distribution of work among experts, delays in trials due to non-compliance with deadlines, often insufficiently precise and clear instructions given to expert witnesses, as well as ineffective mechanisms of supervision over the work of expert witnesses as key shortcomings.

“Authorities that supervise and monitor the work of expert witnesses seem to be lenient and do not revoke expert witnesses’ licenses on grounds of unethical, incompetent or inadequate work”, the Analysis points out.

The team of experts from the World Bank reviewed, inter alia, about 1,100 cases in the region, among which were the cases of three courts in Montenegro – the Basic and Commercial Court in Podgorica, and the Basic Court in Kotor.

The Analysis emphasizes that there is a sufficient number of expert witnesses, or even more than necessary, in the registers, while in practice there is a lack of good and experienced expert witnesses.

The few experienced expert witnesses, it is added, are constantly engaged and overloaded with work. Due to the large volume of work, the Analysis concludes, court experts reject cases or are late in delivering findings and opinions that often

need to be changed, supplemented or corrected, which leads to court proceedings being delayed.

Judges and prosecutors, it is pointed out, do not use the available mechanisms for managing the work of expert witnesses in order to improve procedural efficiency.

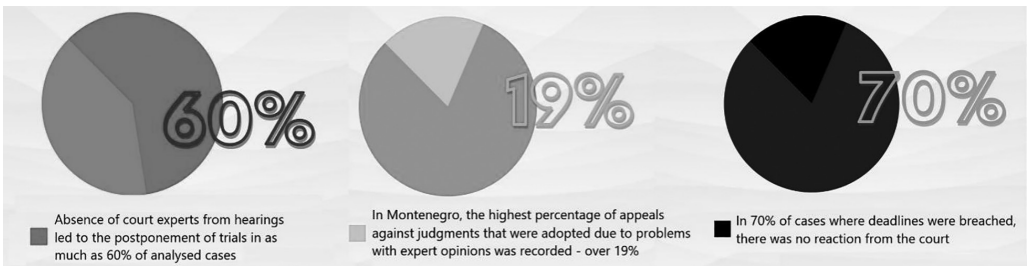
“In each of the countries, the appropriate reimbursement to be paid to an expert witness seems to depend on discretion of the judge or prosecutor. This can lead to wide disparities in the fees paid to experts for the same kind of expertise, increasing the risk of corruption and adversely impacting the independence of expert witnesses”, the Analysis assesses.

The general perception is that court experts are engaged more often than necessary, and this practice only leads to the delay of the procedure and increases the costs of the trial.

In BiH and Montenegro, court experts are sometimes called upon to give an opinion on facts that do not require expert knowledge, it is also claimed.

Expert witness engaged to read an article from the collective labour agreement

“In the Basic Court in Kotor, an expert witness was engaged to determine whether an amount, 980 euros, was lower than the amount set forth in the collective



LICENSE REVOKED FOR UNJUSTIFIABLY DELAYING THE PROCEEDINGS

Expert Dedić filed a lawsuit with the Administrative Court (AC), requesting that the decision on license revocation be annulled. He claims that the expert report was entrusted to the company “Anzas”, and not to him personally, that there is no evidence that the court’s notices of urgency reached him, that he was not informed about the obligation to return the case, and that he submitted medical documentation that his health was impaired.

However, the Administrative Court rejected the lawsuit stating that Dedić himself is the Executive Director of the company “Anzas”, which engages in expertise, as well as that he had the communication with the judge, and that he personally received all correspondence and documents from the court. The AC also adds that the medical documentation provided by the expert witness did not justify his failure to respond to court summons because, among other things, most of that documentation refers to the period when the procedure for license revocation was already underway.

“In addition, the plaintiff, along with the request to postpone the hearing, never submitted medical documentation that would confirm that he has health issues... The court concludes that the prosecutor irregularly performed the entrusted expert examination because he never submitted to the court a report on the results of the actions performed, did not respond to the court’s summons, failed to act according to the orders of the court and to submit the findings and opinion within the deadline set for him...”, concludes the explanation of the decision of the Administrative Court.

labour agreement, although this could have been easily determined by the judge himself. The engagement of experts for simple tasks prolongs the trial and causes unnecessary trial costs for the parties”, is another criticism from the authors of the Analysis.

In Montenegro, there are not enough expert witnesses in some fields, while there are too many in others, adds the Analysis, noting that some are overworked because of this, which affects the quality of work.

In one labour dispute, the court annulled the decision on engagement of a court expert because he was already hired in 24 other court cases.

“According to 52.9% of judges and 69.5% of prosecutors the deficit of qualified experts in certain fields negatively influences the quality and efficiency of the trial”, the Analysis states.

Courts tend to be too lenient with expert witnesses they rely on the most, and are reluctant to impose sanctions for delays.

The authors of the Analysis give the following comment on this: “The lack of adequate distribution of cases among

experts can raise transparency concerns, as this leaves room for favouritism and corrupt behaviour”.

It is interesting that out of all the countries analyzed, the addendum to expert opinions was requested the most in Montenegro, in as many as 27 percent of cases.

Courts in Montenegro, as well as in Serbia and Bosnia and Herzegovina, often accept the expert witness’ opinion as it is, without critically examining it.

“This lack of scrutiny on the part of the courts is contrary to the European Commission for the Efficiency of Justice (CEPEJ) guidelines which provide that the expert opinion is not binding on the court or on the parties. The court evaluates it freely. The court must verify and determine whether the expert opinion is objectively convincing”, the Analysis warns.

In Montenegro, the highest percentage of appeals against judgments that were adopted due to problems with the findings of expert witnesses was recorded – over 19 percent.

“In a number of cases, judgments were overturned exclusively because the expert

opinion was inadequate, and the first instance court failed to properly examine the opinion and rectify identified issues”, the Analysis writes.

The absence of court experts from hearings led to the postponement of trials in as many as 60 percent of analyzed cases!

In 70 percent of cases where deadlines were breached, there was no reaction from the court

In Montenegro, it is common for court experts not to appear at the hearing despite being summoned by the court, and the WB analysis showed that the courts did not impose any fines on court experts in the observed three-year period.

However, it is pointed out that the inadequate management of court proceedings by judges leads to the violation of procedural discipline, and numerous postponements and delays to the same extent, if not more, than the ineffectiveness of court experts.

“In Montenegro, breaches of the deadline to submit the expert opinion resulted in adjournments in as many as 45% of the cases reviewed”, the Analysis points out.

In Montenegro, decisions on engagement of expert witnesses are often short and contain only the name and surname of the court expert and a description of the required expertise. In most of the analyzed cases, the deadline for submitting the expert opinion was not specified, but instead the court expert was ordered to prepare a report as soon as possible (although the Montenegrin Law on Civil Procedure stipulates that the deadline should be determined in each case).

In Montenegro, if expert witnesses breach deadlines, there is no court reaction in 70% of cases.

“Warning notices and fines are only issued for severe and repeated breaches but they are often not enforced”, it is noted. The opinions and findings of new and inexperienced expert witnesses are sometimes of poor quality and of little or no value to the court.

“In Montenegro, it was reported that some expert opinions are so complex and

so unclear that they cannot be reviewed properly by courts or the parties”, the Analysis points out.

In all analyzed countries, even if prescribed, continuous training for court experts is rarely or never organized.

It is not unusual for expert witnesses to give legal qualifications, thus encroaching on the authority of the judge, and this practice is contrary to internationally recognized standards.

Courts are “begging” expert witnesses for findings and opinions

Director of CEGAS, Marija Popović Kalezić, points out in a statement for the CIN-CG that it is unacceptable for courts and prosecutor’s offices to engage expert witnesses at their own discretion, and then “beg” them for findings and opinions.

“Expert witnesses must be chosen in such a way that everyone gets the possibility of equal employment, when it comes to experts of the same profession. If judges and prosecutors have doubts about the expertise of certain expert witnesses, they have the right to launch an initiative for their license to be revoked”, the Director of CEGAS emphasizes.

She adds that there must be clear deadlines in which the findings and opinions must be submitted.

“Otherwise, we have proceedings that could last quite a long time, so the issue of endangering the rule of law in the country is raised”, Popović Kalezić notes.

It is clear from the only launched initiative, she assesses, that we do not have an elaborate legal mechanism for selecting court experts and that the sanctions are low (500 euros for unjustified failure to submit findings and opinions within the deadline), and the court may be left without a case file and thus be unable to engage another expert witness.



Marija Popović Kalezić
photo: Cegas

“This casts a shadow over the correctness of the entire judicial system and raises the question: Who benefits from the postponement of hearings?”, the Director of CEGAS points out.

Popović Kalezić says that when there is no staff, sometimes expert witnesses from other countries could also be hired, which could have a positive effect and motivate the profession to improve in all areas.

“If there were clear deadlines for the expert witness to make a finding and opinion, the court would have the possibility to replace the expert witness in a shorter period of time, so the hearings would not be postponed indefinitely”, she warns.

Popović Kalezić believes that expert witnesses would be more careful if the penalties for unprofessional work were significantly higher.

“If, for example, due to non-compliance with deadlines that is not justified, initiatives for revocation of licenses were launched, we would have greater caution and greater confidence in the expertise and impartiality of court experts”, the director of CEGAS adds.

She concludes that there would be less suspicion of the possible corruption of those who make up this significant part of the judicial system if the selection of expert witnesses was really carried out in the manner prescribed by the Law. Namely, if care was taken to ensure that experts of the same profession were evenly distributed in cases, and those who performed the work unprofessionally and irresponsibly were fined and their licenses revoked.

**Ministry of Justice:
The Law should be amended carefully**

The Law on Court Experts stipulates that an expert witness will have his license revoked if he conducts an expertise in an irregular or unprofessional manner, unjustifiably refuses to perform an expertise, does not respond to the summons of the court, the prosecution, or of another body leading the proceedings, does not perform the expertise within the time

limit set... In addition, according to the Law, the expert witness is obliged, if he cannot complete the expert examination within the deadline for objective reasons, to send notification and to give a brief presentation of the results of the previous work eight days before. In more complex cases, the expert witness is obliged to give a short report on the results of his work

RESPONSIBILITY OF EXPERT WITNESSES AND THE SUPERVISION OF THEIR WORK SHOULD BE INCREASED

The Analysis includes, among other things, recommendations for increasing the responsibility of expert witnesses in Montenegro, which refer to amendments to the Law in the direction of introducing the competence of courts to conduct proceedings against expert witnesses and even to revoke their licenses. It is recommended to legally specify that the parties can report the offences of court experts to all competent bodies (courts, the Commission, the Ministry of Justice). The procedures for filing a claim for damages against court experts are also listed. It is also requested that the supervision of the expert witness' work by the Commission be better, but also that an electronic register of complaints and dismissal procedures be created.

It is also recommended that the State Prosecutor's Office adopts rules that would define the method of selecting expert witnesses in criminal cases, as well as to adopt by-laws that would prescribe the obligation to properly maintain case files in the criminal pre-investigation procedure.

It is also emphasized that techniques for good management of trials should be included in the training plans of judges and prosecutors.

Keeping a register of fines imposed on expert witnesses would, in their opinion, also be useful, but providing electronic copies of the case documentation as well. “Organize the court staff to monitor cases out of hearings and signal delays to judges,” concludes the Analysis.

once a month.

The Ministry of Justice told the CIN-CG that, according to the Law, they can only review those initiatives for revocation of license submitted by the president of the court, the head of the prosecution service, the head of another body leading the proceedings, or the judge and the state prosecutor in whose case the expert witness acted.

“In all previous procedures for the re-election of court experts, the Commission determined that the opinions submitted by the competent judicial authorities were positive”, the Ministry of Justice added.

They also point out that the Ministry of Justice in the Justice Reform Strategy 2019-2022 recognized deficiencies in the application of regulations related to the work of court experts and defined activities to improve the situation, without specifying which activities these are.

The Ministry of Justice adds that proportional representation of expert witnesses is not an obligation, since the engagement of expert witnesses is conditioned by the number of experts in a certain area, their professional qualifications, the complexity of the case and other circumstances...

“The Ministry of Justice believes that there is room for improvement of the legal provisions. However, the changes should be approached carefully, with the prior opinion of expert witnesses, their professional associations and authorities before which they act”, said the Ministry of Justice in a statement for the CIN-CG.

According to MOJ records, there are 781 court experts in Montenegro, and according to the data of the Association of Court Experts, only half of them are members of that organization as well.

The Association of Court Experts told the CIN-CG that over 90 percent of the complaints on the work of expert witnesses they receive refer to experts who are not members of the Association. The Vice President of that Association, Marko Lakić, explains that membership in the Association is voluntary, and that its members have obligations to attend

meetings, trainings and are obliged to comply with the Association’s Statute and Code of Ethics.

Of the total number of expert witnesses, about 10 percent of them were members of the Association two years ago, and as Lakić explains, that number has only increased since last year, so now they are at about 50 percent.

“It is necessary to amend the Law so that every expert witness must be a member of the Association and adhere to the Statute, the Code of Ethics and other documents”, he emphasizes.

Lakić adds that they have repeatedly asked the Ministry of Justice to start the procedure for amending the Law, but so far they have not received support and an affirmative answer.

He points out that the main goal of the Association is to improve the work, quality and status of court experts and of the expertise, and that it is necessary to amend the Law, which he believes is not good.

“As long as the Law is like this, the Association is not binding and depends on the voluntarism and volunteerism of its members, it is not realistic to expect an improvement in the responsibility of experts”, concludes Lakić.

Reform in this area is one of the keys to better functioning of the judiciary. The outcome of the proceedings often depends on the expert’s findings, and that is why it would be important for expert witnesses to work according to clear rules and bear responsibility for unprofessional work.



PROPERTY VALUATIONS IN CASES AGAINST THE CRIMINAL GROUP OF SVETOZAR MAROVIĆ ACCEPTED BY THE PROSECUTION SERVICE WITHOUT CHECKING: UNDESIRABLE LAND VALUED AT OVER €2.5 MILLION

REPRESENTATIVES OF THE SECRETARIAT FOR PROPERTY PROTECTION IN THE MUNICIPALITY OF BUDVA TOLD THE CIN-CG THAT THEY FAILED TO SELL ALMOST ANY OF THE MORTGAGED PROPERTY, ALTHOUGH ALEKSANDAR RAKOČEVIĆ, THE EXPERT WITNESS WHO MADE THE ASSESSMENTS, CLAIMS THAT HE DID THE JOB PROFESSIONALLY. THE PROSECUTION SERVICE DOES NOT WANT TO COMMENT ON THE ASSESSMENTS

/// Maja BORIČIĆ/Andrea JELIĆ //////////////////////////////////////

Meadows, pastures, fields of stone and over-grown plots on which construction was not allowed, most of which are in the remote hills above Budva and Kotor, were estimated, in two cases against the criminal group of Svetozar Marović, at €2,637,228. The assessments were made, at the request of the Special State Prosecutor's Office (SPO), by the expert Aleksandar Rakočević.

This is shown by the data obtained by the Centre for Investigative Journalism of Montenegro (CIN-CG) through free access to information.

The proceedings led against the Marović criminal group are the best example of how much the plea bargains were abused. In those settlements, the prosecution and the court accepted unrealistic valuations of property from which the Municipality of Budva has been unable to cash in

almost anything for six years. However, the Municipality also did not do much to protect its interests when signing those settlements. One part was purchased by the Municipality itself, while the other is under annotation in the cadastre and it is unlikely that they will ever be able to extract any money from it.

The former high-ranking official of the Democratic Party of Socialists (DPS) Svetozar Marović agreed with the SPO Prosecutor Saša Čadenović that, as the organizer of a criminal group that damaged Budva for over €45 million, he would serve three years and nine months in prison and pay €100,000. Also, he was supposed to return something over a million euros to the budget. However, he is still unavailable to Montenegro, and the sentence expires in October 2026.

So far, the Municipality has managed to collect about €300,000 from the sale of Marović's property, which is less than

a quarter of the debt he was supposed to repay. Expert witness Rakočević estimated the property he pledged as a guarantee that the debt would be collected at €1,120,361.

Within the same criminal group, in the case known as “Copyright”, the Municipality of Budva was damaged for €2,191,312. The former Executive Director of the company “Copyright” Aleksandar Armenko agreed to spend half a year in prison as a member of Marović’s criminal group, and the company was given a suspended sentence. On account of damages, the company handed over to the Municipality of Budva the property that was the subject of the assessment in those proceedings. Nothing has been charged from it.

In the three property assessments made for the “Copyright” case, the parcels, mostly stone areas, which were pledged for a debt of over two million euros, were assessed by the same expert witness at over one and a half million euros.

The expert witness, representatives of the judiciary, but also the Municipality of Budva, all waive the responsibility for the mistakes in those cases.

A small piece of a field valued at over half a million euros

In two assessments from June 2016, it is written that the property of the Marović family (Svetozar, his son Miloš and brother Dragan) in Krimovica and Prijedor, pledged as a guarantee for debt payment, includes, among other things, two plots near the Jaz beach, completely overgrown and inaccessible. One of them is co-owned with the state.

Rakočević assessed that one of the plots, for which he stated that he didn’t know whether construction was allowed on it, was worth €350 per square meter, but he didn’t explain in the assessment how he arrived at that figure. In the same way, he came to the estimate that 589 square meters in Prijedor were worth €206,150. The expert assessed that the plot was worth as the most expensive square of land on the market, although he himself stated in the assessment that he couldn’t

specify the purpose of the plots, and that they were inaccessible as well.

However, the highest value of land in the vicinity, with which he compared that plot, was recorded in 2013 at €253 per square meter. In the following three years, the value of the land in the vicinity dropped by almost half, as stated in the assessment as well.

On real estate websites, land on the Jaz is offered at very different prices, depending on the location, area and construction possibilities, the assessment says. They range from 70 to 350 euros per square meter.

Also, expert Rakočević valued another plot of 663 square meters in Prijedor, which was co-owned with the state and which he also stated was overgrown and inaccessible, at 120 euros per square meter, that is, at almost €80,000.

He also estimated that in Krimovica, plots that couldn’t be approached were more expensive than plots located in the village. Thus, the 2,805-square-meter plots of the Marović family, located on a hill and to which there was no road, overgrown and inaccessible, were estimated at €224,400.

The fields, orchards and pastures, which were pledged by Marović’s son, cover a huge area and are the property of a large number of people, which, according to the expert’s assessment, significantly reduces their value. From the assessment report, it can be concluded with a simple calculation that the younger Marović essentially owns only the 56th part of those plots. Nevertheless, the expert estimated Marović’s share at almost €550,000.

A field of stone is “worth” almost a million

In the case of “Copyright”, the rocky area and wetland were estimated at almost 900,000 euros, although Rakočević stated in the assessment that “due to the unattractiveness, lack of detailed urban plans, infrastructure and other things, it is very difficult to find an interested buyer, because there is almost no demand at all for such areas.”

The plot in Tudorovići of 148,538 square

meters is, as stated in the assessment, on a rocky, hilly terrain, unsuitable for construction, there is no infrastructure, no construction is allowed... Rakočević estimated this plot at five euros per square meter, that is, at €742,690.

Two plots in Buljarica of 1,729 square meters and one in Kruševica of 1,928 square meters, which were also stated to be on rocky, hilly terrain where construction was not allowed and didn't have a sea view, were estimated by the expert witness at slightly less than €200,000.

The two orchards in Sveti Stefan, in another assessment in this case, were valued by Rakočević at a little less than €700,000. The expert witness arrived at the price of the orchard of €820 per square meter by comparing data from websites related to the sale of – apartments and houses. Admittedly, this was the only location he assessed for which there was a Detailed Urban Plan (DUP) and construction was permitted.

And on the website of the Administration for Cadastre and State Property of Montenegro – Geoportal, it can be seen that most of the plots in question are actually overgrown, swampy areas and rocky areas.

Aleksandar Rakočević told the CIN-CG that he always used the principles of professionalism and expertise, especially taking care to protect the state and local governments. He points out that he did not choose the properties to be assessed,

but received an order from SPO to assess them.

Indeed, he admits, most of the cases involved less attractive real estate – land in weaker locations, partly not urbanized. However, as he says, given that it is in Budva, the land has potential.

“After reviewing the assessments, I am still of the opinion that, with a well-designed sales and marketing plan, the Municipality of Budva could sell all the properties it received through the SPO at the values at which they were assessed, and some of the properties for even higher values”, Rakočević claims.

The fact that no one responded to the calls during the announcements with the public executor, does not mean that the real estate has no value, Rakočević adds.

“In Montenegro, no real estate has been sold at the initial price by public executors. All potential buyers are waiting for the second or third auction, in order to buy real estate at a much lower value”, he states. Here, the Municipality of Budva did the right thing, Rakočević told the

CIN-CG, by purchasing part of the land in Krimovica and, as he says, preventing someone from taking those properties for minimal values.

He did not want to talk in detail about the property valuations he did in cases in question, stating that the SPO obliged him to secrecy in those proceedings.

APARTMENT UNDER DISPUTE CONFISCATED THROUGH FINANCIAL INVESTIGATIONS

The SPO also experienced a complete failure when conducting financial investigations in proceedings against the criminal group of Svetozar Marović.

CIN-CG recently wrote that, in the last six years, the SPO has managed to permanently take away only the apartment of 193 square meters from Miloš Marović. However, there is now a dispute over this apartment as well, because Miloš's former business partner Petar Miloš claims that he was lending money to the younger Marović, on the basis of which a mortgage was registered on the real estate that was confiscated.

The Protector of Property and Legal Interests of Montenegro sued the two, demanding that the contract on the alleged loan of €236,000, on the basis of which Petar Miloš is now trying to sell the confiscated apartment, be annulled.

A third of Montenegro “disappeared” in the estimates?

Even after several weeks of waiting, the CIN-CG did not receive an answer, neither from the Special State Prosecutor’s Office, nor from the Prosecutor Saša Čadenović, who arranged all disputed agreements, as to why they settled in this way. We also asked whether property valuations have passed any kind of judicial control and whether they think that someone should be held accountable for the outcome of those cases. All these agreements were concluded during the mandate of the Chief Special Prosecutor Milivoje Katnić.

In the meantime, Čadenović was arrested by order of the SPO, on the basis of suspicion that, while performing the function of a special prosecutor, in the period from mid-2020 to 2022, he committed the criminal offense of creating a criminal organization and several criminal offenses of abuse of official position.

All agreements in question were approved by the President of the High Court in Podgorica, Boris Savić. He pointed out in a statement to the CIN-CG that when concluding the agreement, neither the prosecutor nor the defendant stated that the expert’s assessment was problematic. The Municipality of Budva also agreed with the conclusion of the agreement, Savić notes. “Whether the Municipality of Budva later managed to collect something from the seized property is certainly not a question for the court”, says Savić.

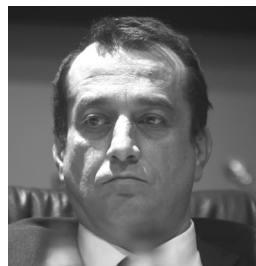
In situations where the opinion of an expert witness is evaluated as questionable, he adds, the court always has the option of ordering the so-called super-expertise, i.e. engaging a commission of experts.

The work of the President of the High Court, Boris Savić, was called into question, when the judicial inspection, at the beginning of December, questioned the random allocation of cases in that court. It was established that abuses of random allocation of cases are possible by introducing the practice that the president of the court decides on the composition of

the court panel. The Minister of Justice Marko Kovač then announced that he would inform the acting President of the Supreme Court Vesna Vučković about this in order to possibly start the procedure to determine Savić’s responsibility before the Judicial Council.

At the time when the controversial agreements with Marović and members of his criminal group were concluded, the president of the Municipality of Budva was Srđa Popović from DPS. Both of his predecessors in that position, Lazar Rađenović and Rajko Kuljača, also from DPS, were convicted for participating in Marović’s criminal group.

Popović initially told the CIN-CG that he was not the head of the Municipality when the controversial agreements were signed, but he quickly remembered that he was. After insisting on clarifying the manner in which the Municipality accepted the disputed settlements, Popović said: “I don’t remember, it was a long time ago”.



Saša Čadenović
photo: Boris Pejović

His associate at the time and the current manager of the Property and Legal Affairs Sector in the Municipality of Budva, Milena Antović, told the CIN-CG that they had faith in the work of the prosecution and believed that the money would be returned.

“We didn’t have insight then, nor we do now, into the property assessments that were made in those cases”, she emphasized.

A source from the former municipal government in Budva told the CIN-CG that “a third of Montenegro has disappeared in the estimates”, and that the land “couldn’t be worth that much even in 2006, when there was a real estate boom”.

“In particular, the property pledged for ‘Copyright’ is not worth even 15 cents per square meter”, said the source.

Representatives of the Secretariat for Property Protection in the Municipality

of Budva told the CIN-CG that they failed to sell almost any of the property that was mortgaged for Marović's debt of over one million euros. One part was bought by the Municipality itself, while the other is under annotations in the cadastre and, as they say, they will hardly ever be able to get any money out of it.

"Questionable legal affairs have not been invalidated, and we are not even close to indemnifying ourselves. The pledged property is only causing us additional damage, the accused were acquitted, and we are still spending resources for something that is not worth it", Đorđe Zenović, Secretary for Property Protection in the Municipality of Budva, told the CIN-CG.

That property only creates additional costs for the Municipality, for maintenance, conducting sales procedures, lawyers and the like, Zenović points out.

Commenting on the expert witness' claim that the pledged land has value, Zenović pointed out that perhaps a small part in Jaz and Krimovica may potentially have some value, but that this value is not even close to what the expert estimated. "The property pledged in the 'Copyright' case will not have any value even in a hundred years," Zenović

assessed.

In June of this year, he submitted a complaint to the Prosecutorial Council (PC) about the work of the state prosecutors and the heads of the prosecutor's offices who acted in Budva cases, and in relation to the application of the plea bargain institute. "As a means of secur-

ring compensation for the awarded monetary damages, the prosecution accepted immovable property, the value of which in most cases, in our opinion, did not correspond to the amount of the awarded compensation", Zenović stated in the complaint.

The Prosecutorial Council replied to the CIN-CG that, in the first half of December, the Complaints Commission will consider the case, after which it will go to the PC for assessment. Until the publication of the text, the PC had not decided on that complaint.

Savić explains to the CIN-CG that the court cannot decide on criminal or professional responsibility related to the conclusion of the agreements, because any answer would prejudice the court's decision: "That is why this issue can only be discussed by the parties who concluded the agreement".

And apparently the estimates see-

NO ONE IS RESPONSIBLE, THE PROSECUTORS ARE BEING PROMOTED

CIN-CG previously published a series of researches, analysing around 700 judgments of the High Court, adopted based on the plea bargains of SPO and SSP in Podgorica, noting serious failures in application, but also real doubts that there was abuse of this institute in our country.

In addition, unrealistic property valuations were prominent in the case of Safet Kalić's family, which was acquitted of money laundering charges due to judicial errors. As the CIN-CG previously wrote, the company "Geotech" estimated their assets at almost 30 million euros, which the experts, who participated in the court proceedings, assessed as not even worth eight million.

According to the findings of the CIN-CG, it was precisely this assessment that was the main trump card for the Kalić family in obtaining millions in compensation, as a result of the five-year management of their assets while they were in custody.

No one from the judiciary, nor the appraisers, was held responsible in any way for this case either. Prosecutor Hasan Lukač, who acted in this case, did not provide any evidence that the laundered money originated from a criminal act. After that, he was even promoted to a member of the Prosecutorial Council and evaluated the work of other prosecutors.

med realistic to the signatories of the agreement.

Estimates were done arbitrarily

That various abuses were possible in this area is also evidenced by the fact that the preparation of property valuations was not regulated by law until 2018. It was only with the adoption of the Rulebook on the Methodology for Valuation of Property that year that the rules according to which an assessment could be made were elaborated in detail for the first time. That is when the mandatory elements of the report on valuation of property or capital, among which was the fair value, i.e. the price that would be obtained for the sale of the property, were defined for the first time.

This value was not mentioned anywhere in the assessments that were made before the drafting of the Rulebook.

“Until then, and by God, even later, those assessments were often done arbitrarily and without any control”, a source from the assessment profession, who wished to remain anonymous, told the CIN-CG.

However, as he explains, an assessment that someone has made of something, especially in such important court cases, would have to be subject to serious judicial scrutiny.

The Ministry of Finance (MOF) explained to the CIN-CG that the Rulebook was awaited for a long time due to the need for professional help from foreign and domestic experts. They clarified that appraisers, even before the adoption of the Rulebook, had to work in accordance with International and European standards for valuation.

The Ministry of Finance claims that the control over appraisers is carried out by the society, chamber or association of which they are members. The Chamber of Appraisers and Court Experts of Montenegro told the CIN-CG that “they are not competent, nor responsible” for questions, among other things, about how many licensed appraisers there are in Montenegro and what kind of control they are subject to. According to the Law

on Accounting, the Ministry can revoke the license of an authorized appraiser who performs valuation tasks unprofessionally. That law provides for misdemeanour liability and a fine of up to 2,000 euros for appraisers who do not work in accordance with the regulations.

The Criminal Code (CC) of Montenegro treats the area of property valuation only in the domain of business operations, namely through acts of abuse of authority in the economy and abuse of valuation. A prison sentence of three months to 10 years is foreseen, depending on the material benefit acquired or the damage caused.

The Code of Criminal Procedure prescribes that a property claim is submitted no later than the end of the trial, that is, in this case, the signing of the agreement, and that the court decides on it. It is also stipulated that the court will approve the agreement if, among other things, it determines that the rights of the injured party are not violated by the agreement and that the agreement is in accordance with the interests of fairness, and the sentence corresponds to the purpose of imposing criminal sanctions.

Settlements were abused

The European Commission (EC) reports have warned for several years that the use of plea bargains should be limited to exceptional cases only, in order for Montenegro to deal more effectively with corruption and organized crime. The reports also pointed out that the penal policy should be more consistent and deterrent, and that a review of the use of that institute in cases of organized crime and corruption was necessary.

Even the leaders of the Montenegrin judiciary informally admit that this institute was abused.

In the middle of this year, the Ministry of Justice (MOJ) announced that a revision of the criminal legislation and an analysis of the application of plea bargains were underway, which would provide clear recommendations for possible changes to the law, but also help to apply this institute more efficiently.

The Ministry of Justice told the CIN-CG that the analysis of the application of the plea bargains has been completed and covers the period until 2021.

“The analysis will contain observations in relation to the legal framework when it comes to plea bargains. We also analysed the settlements concluded for particularly sensitive crimes, as well as the good practices of the prosecution, but also what are the shortcomings in practice”, the Ministry of Justice stated, without specifying what these observations were.

They add that the Draft Amendments to the Law on Seizure and Confiscation of Material Benefit Derived from Criminal Activity has not yet been submitted to the Parliament. They did not answer the question whether the Law will treat the area of property valuation and in what way.

The Supreme State Prosecutor’s Office recently announced that a working group will soon be formed to develop guidelines for the implementation of plea bargains. Acting Supreme State Prosecutor Maja Jovanović previously told the media that the problems and shortcomings of the current application of settlements have been recognized and that the working group will be able to draft new guidelines in a very short time. “One of the recommendations is to exclude the criminal offenses of money laundering and human trafficking from the plea bargains”, Jovanović said at the time.

According to the CIN-CG’s unofficial information, the guidelines should be ready by the end of this year.

Savić expects that these instructions will improve public perception, “because the impression is that agreements are made even without a legal basis, and the fact that they are always concluded with the consent of the defendant, the prosecutor and the injured party is completely ignored”.

We hope that the settlements in our country will finally affect the prevention, but also the satisfaction of justice. Then, hopefully, it will not happen that all the projects that the state planned for Budva in the budget for 2023 could be paid for with the money that the Municipality lost

because it could not collect the money from the properties confiscated from the convicted members of Marović’s criminal group. According to the budget for next year, the adaptation of the Budva Health Centre, the reconstruction of the Pizana outdoor swimming pool near the Old Town, the reconstruction of the wastewater treatment plant, the construction of a kindergarten in the Dubovica settlement and the construction of a mini-bypass would cost a little more than two and a half million euros. This is almost the same amount that the Municipality would have received if it had managed to cash in on the confiscated property.

**(Lack of)
accountability**



PART OF THE COMPLAINTS ABOUT THE WORK OF THE PROSECUTOR FOUNDED, BUT THERE ARE NO DISCIPLINARY PROCEEDINGS: MISTAKES STILL GO UNPUNISHED

IT IS NECESSARY TO IMPROVE THE LEGAL FRAMEWORK, SAYS STEVO MUK, A MEMBER OF THE PROSECUTORIAL COUNCIL AND OF THE COMPLAINTS COMMISSION

/// Maja BORIČIĆ/Marija POPOVIĆ KALEZIĆ //////////////////////////////////////

Out of 46 complaints about the work of state prosecutors and heads of state prosecutor's offices that were considered by the current Prosecutorial Council (PC) until the end of September this year, only six were founded, but no disciplinary proceedings were initiated against the prosecutors who acted in cases in question.

The PC decided that 36 complaints were unfounded, one was treated as a criminal complaint, one was withdrawn, and two were forwarded to the Judicial Council, because they related to the work of judges. These are the data obtained by the Centre for Investigative Journalism of Montenegro (CIN-CG) and the Centre for Civil Liberties (CEGAS) through free access to information.

A member of the PC and of the Complaints Commission, Stevo Muk, told the CIN-CG that, although some of the complaints were well-founded, disciplinary proceedings were not initiated against any prosecutor. Muk explains that the procedure can be initiated if the statute of limitations has expired, the procedure cannot be conducted, or there are other

consequences prescribed by the Law on the State Prosecution Service. However, well-founded complaints could affect the evaluation of the work of those prosecutors, Muk points out.

All well-founded complaints were related to the work of the prosecutors of the basic state prosecutor's offices, except for one, which related to the work of the Prosecutor of the Special State Prosecutor's Office (SPO), Nataša Bošković.

In the complaint against the work of Prosecutor Bošković, it is stated that in the case of the criminal complaint, filed in June 2015, due to serious abuse of official position in business operations, no action was taken for six years! A criminal complaint was filed by a group of employees of the Podgorica branch of the company "Yumko" against director Ljubomir Peković.

The complaint adds that Prosecutor Bošković had not taken any investigative action since taking over the case, because, as she told the workers in direct conversations, she was "busy with other cases".

"The prosecutor did not act within the deadlines prescribed by law, noting that the decision in the case was made on September 15, 2021, and as a result, the statute

of limitations for the criminal prosecution did not apply”, the PC decision reads.

The second well-founded complaint related to the work of the Deputy Basic State Prosecutor in Podgorica, Ivana Petrušić Vukašević.

The PC warned in this case that the deadlines for action had been missed and requested the prosecutor to intensify her work and make a decision in the case of the criminal offence of false reporting against I. D., a high-ranking police official.

In the complaint against the work of the Prosecutor Petrušić Vukašević, it is stated that in one year and three months she did not take any action that was required by law, that she did not even interview the injured party in the proceedings, and that during all that time he did not receive any answer as to the stage of the proceedings and what was done.

“Given that the person in question is a high-ranking police official, I hope that his current position does not affect the slow work of the prosecution”, the complaint reads.

Three well-founded complaints about the work of the prosecutor in Kotor

Three well-founded complaints relate to the work of representatives of the Basic State Prosecutor’s Office in Kotor – two to the work of former Prosecutor Srđa Jovanović and one to the work of Prosecutor Marija Kažić. PC assessed that part of the

complaint against Jovanović’s work in the case regarding the maritime accident, in which Maja Šljivančanin was killed, and her fiance Vladimir Stanišić was injured, was founded.

COMMISSION FOR THE EXAMINATION OF STATUTE OF LIMITATIONS SHOULD BE FORMED

Gorjanc Prelević points out that the issue of statute of limitations for criminal prosecution is extremely important and that the PC should establish a special commission to investigate the reasons for expiration of the statute of limitations.

“In order to determine a potential responsibility of state prosecutors or police officers for preventing the administration of justice”, she stated.

The new PC has not yet dealt with the problem of more than 90 percent of criminal complaints from previous years being rejected due to the statute of limitations for criminal prosecution, and disciplinary action has been taken against only one state prosecutor because of this.

The HRA also recommends that the obligation to publish complete information on the statute of limitations for criminal prosecution, including judgments rejecting charges for this reason, be prescribed.

The High Court in Podgorica annulled the first-instance judgment, by which the minor M.S. was sentenced to a maximum of 120 hours of socially useful or humanitarian work. The accident happened in July 2020, in the sea between the island of St. Nikola and Jaz beach, when a yacht, driven by a minor, collided with a boat, on which Šljivančanin and Stanišić were.

“The actions of the acting prosecutor related to locating and pulling out the sunken boat, as well as informing the parties about the date and time of the undertaking, were not accompanied by an official document – an official record of the actions of the prosecutor”, the PC decision states.

For the other part of the complaint, which refers to the illegal engagement of several experts, and the

testing for alcohol of the participants in the accident, the PC evaluated them as unfounded. It is explained that an inspection of the case files has revealed that only one maritime expert was engaged, and that the participants in the accident did not have alcohol in their blood.

Jovanović resigned in April of this year, after he was arrested on suspicion of abuse of official position by order of the SPO, because he allegedly hid the minutes

in another case in order to enable two people from Tivat to be held liable only for misdemeanours and not face criminal charges for beating of a Turkish citizen.

Acting Supreme State Prosecutor Maja Jovanović then ordered the formation of a commission to examine all the cases that Jovanović was in charge of. By the way, he was the only prosecutor who was evaluated as good in the last 10 years, while all the others consistently received the highest ratings.

Another complaint, which referred to Jovanović, was also accepted as founded by the PC.

In the complaint, it was pointed out that the prosecutor ignored several criminal complaints for stalking, filming and violent behaviour against the person, who is a multiple repeat offender and was treated at the Special Hospital for Psychiatry in Dobrota.

“My son and I feel threatened and fear for our lives and the lives of our families. We ask you to review the decisions of the BPO Kotor and order that the procedure be initiated”, the complaint reads. A similar decision of the PC was made following a complaint against the work of Kotor Prosecutor Marija Kažić. It is a case in which the complainant claims that his relatives illegally transferred the land to themselves and sold it, inter alia, to the Municipality of Tivat, thereby damaging the other co-owners of the property. Instead of treating this as a criminal complaint, Kažić made a decision through an official record.

Lukovac and Rmandić in the SPO

The well-founded complaint, which also related to the work of the Prosecutor of the BPO in Nikšić, Sofija Lukovac, was forwarded to the Special State Prosecutor’s Office (SPO) for an assessment of whether she committed a criminal offence by acting unprofessionally during the investigation, after father and son – Đordije and Vuk Mašnić died in a traffic accident on the road Nikšić – Plužine, in July 2018.

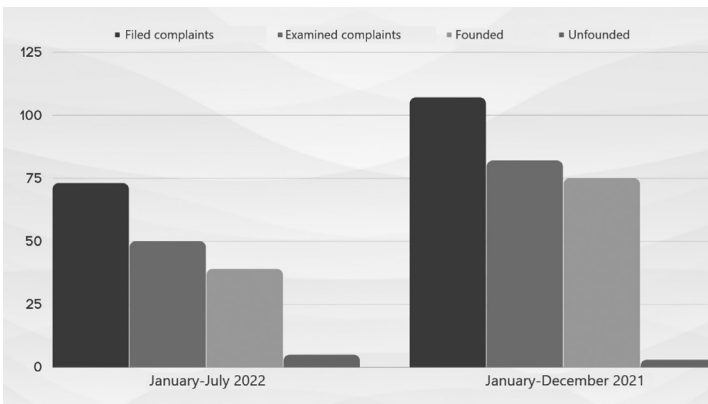
“During the investigation of the traffic accident, the prosecutor did not authentically present the established facts, as well as the material evidence, in the investigation report”, the PC decision reads.

In the complaint of the family of the deceased, it is pointed out, among other things, that Lukovac noted the presence of signs in the minutes, even though the works on the road were completely unsecured, that she did not order that part of the road to be photographed, which would show that there were no traffic signals, and that she conducted the investigation without the presence of a traffic expert.

“There are strong indications that the facts and circumstances that were ‘established’ during the investigation were deliberately incorrectly established and interpreted, in order to cover up the case, and acquit the real culprit for the accident in which two people died”, the complaint reads.

Also, the complaint against the work of the Prosecutor of the High State Prosecutor’s Office in Bijelo Polje, Milica

Rmandić, in which it is stated that she demanded money from the complainant and illegally interrogated his sons and that she imprisoned him, as he states, because he did not give her money, was treated by the PC as criminal complaint and it was submitted to the competent prosecutor’s office for processing.



What is written in the regulations

According to the Code of Criminal Procedure (CPC), the prosecutor to whom the case has been assigned is obliged to make a decision no later than three months from the date of receipt of the case, except in complex cases, in which the deadline is extended by another three months. An exception is made in cases in which secret surveillance measures are carried out, when the decision must be made within three months from the end of those measures.



Stevo Muk
photo: Boris Pejović

“In cases in which evidence was obtained through requests for international legal assistance, the decision shall be made within one month from the date of obtaining evidence through requests”, the CPC

says. In summary proceedings, it is written in the CPC, the decision on criminal charges shall be made within a maximum of one month, and an extension of these deadlines can be requested for a maximum of one more month.

According to the Law, the prosecutor, after completing the investigation, files an indictment or suspends the investigation within 15 days.

“If the investigation is not completed within six months, the state prosecutor shall promptly notify the immediately superior state prosecutor about the reasons why the investigation has not been completed. The immediately superior state prosecutor will take the necessary measures to complete the investigation”, the CPC reads.

However, in practice, these deadlines are often not respected, and prosecutors justify themselves with excessive caseloads.

Muk: The powers of the Council are vague

Since August of last year, the Prosecutorial Council did not have the necessary majority of members to function, so the

Complaints Commission was established only in March of this year, after the PC was completed. It consists of prosecutors Tatjana Begović and Sanja Jovičević and the member of the Council proposed by non-governmental organizations Stevo Muk.

Muk told the CIN-CG that the competences of the Council are vague as far as examination of complaints is concerned.

“In this sense, the improvement of the law is necessary. It is possible that the law could be improved so that some of the complaints, at least in the first instance, are resolved at the level of the heads of the state prosecutor’s offices”, says Muk.

Muk said that well-founded complaints could affect the evaluation of prosecutors, taking into account the Evaluation Rules. He reminds that the proposal for the evaluation of the work is given by the evaluation councils made up of state prosecutors, and the PC Evaluation Commission formally approves it, after familiarization with the proposal and the explanation.

The rules for evaluating prosecutors and heads of state prosecutor’s offices stipulate that if it is determined that one of them does not comply with the legal deadlines, he can also be evaluated with the not satisfactory rating. The rules also stipulate that if the prosecutor does not have good communication with the parties, he can get a worse rating, even the worst.

Muk adds that, since the beginning of the work of the Complaints Commission, and especially since the adoption of amendments to the Rules of Procedure of the PC, the explanations of decisions on complaints have been improved and that they will be of even better quality in the future.

He reminds that PC has no right to assess whether the prosecutor made a correct decision within the framework of free opinion. He concludes that efforts must be made to provide better information to citizens regarding their rights in relation to the decisions and work of the state prosecutor’s office, because there is an obvious disparity between the number of complaints submitted and those judged to be well-founded.

“The vast majority of complaints are filed for reasons that are not justified. It is possible that sometimes they are led to file complaints by their legal representatives, who raise their expectations or misinterpret the possibilities offered by this mechanism”, Muk assessed.

In the semi-annual report of the PC, it is written that, from January to July of this year, they considered 50 complaints, 47 of which were from the previous year. “... 29 complaints related to the work of basic state prosecutor’s offices, 11 to the work of high prosecutor’s offices, seven to the work of the Special State Prosecutor’s Office, and two to the work of the Supreme State Prosecutor’s Office”, the report says. In the first half of this year, 73 complaints were filed against the work of prosecutors and heads of state prosecutor’s offices.

HRA: Complaints are ineffective



Tea Gorjanc Prelević
photo: Luka Zeković

As in previous years, complaints were not an effective means of establishing the disciplinary responsibility of state prosecutors in 2022 either, the report of Human Rights Action (HRA), which analysed the

work of the PC from January to July of this year, points out. The HRA report emphasizes that none of the adopted complaints led to the initiation of disciplinary proceedings or proceedings for violation of the Code of Ethics, and that this practice additionally indicates the necessity of changing the legal definitions of disciplinary offences.

Disciplinary sanctions, according to the Law on the State Prosecution Service, are a warning, a fine, a ban on promotion and dismissal, and a proposal for determining disciplinary responsibility can be submitted by the heads of prosecutor’s offices, the Minister of Justice and the Commission for Monitoring the Implementation of the Code of Ethics for State Prosecutors.

The HRA report notes as a positive deve-

lopment that the Council changed the Rules of Procedure and introduced a deadline of 90 days for deciding on complaints. It is added that the procedure for reviewing complaints has also been specified, which all together should improve the practice.

“Until the amendments to the Rules of Procedure on May 31, 2022, the previous bad practice continued and the council did not explain decisions on complaints”, the HRA report says.

However, there were still a number of cases where a complaint was decided upon without providing a basic rationale, the report said.

The Council continued to act on complaints related to the dismissal of criminal charges, although, as the HRA claims, this is not within its jurisdiction.

“Such practice has begun to be accepted by the state prosecution service, which has undermined legal certainty”, the report points out.

HRA Director Tea Gorjanc Prelević points out that, judging by the current practice of both the old and new PC, about 90 percent of complaints are unfounded, but in order for citizens to get the impression that their complaint was thoroughly investigated, they would have to receive a reasoned conclusion about why it was not founded: “However, those decisions are still, in most cases, insufficiently reasoned”.

She adds that in the Lukovac case, the competent prosecutor’s office has not yet declared whether it will initiate criminal proceedings or not. The Director of the HRA reminds that this complaint was rejected by the previous composition of the PC, and the new one made a new decision about it and determined that it was founded. She, however, emphasizes that the new PC did not improve the timeliness compared to the previous one, but in the same period of time decided on three times fewer complaints than the previous composition: “In some cases, the decision was waited for more than a year”.

“PC should find a way to improve promptness and provide appropriate explanations for its decisions”, concludes Gorjanc Prelević.



THE SSP HAS NOT BEEN SUPERVISING THE WORK OF MOST PROSECUTOR'S OFFICES FOR FIVE YEARS: NO ONE IS SUPERVISING KATNIĆ

/// Maja BORIČIĆ/Marija Popović Kalezić////////////////////////////////////

For five years now, the Special State Prosecutor's Office (SPO) and most other prosecutor's offices in Montenegro have not been controlled by anyone, even though this is provided for by law.

The Centre for Investigative Journalism of Montenegro (CIN-CG) did not manage to get an answer as to why this was not done when the Supreme State Prosecutor's Office (SSP) was headed by Ivica Stanković. The public relations office of the current acting Supreme State Prosecutor Dražen Burić, explains the absence of control with various reasons – from epidemiological to the lack of staff.

At the beginning of this year, the SSP admittedly made a decision on the supervision of the prosecutor's offices for 2017, 2018, 2019 and 2020. The work was supposed to be completed in 2021, but since this did not happen by the beginning of November, the deadlines were extended. Thus, 2021 will also pass without the supervision of the most important prosecutor's offices.

The control of prosecutor's offices is of crucial importance because this should determine, among other things, how cases are resolved, whether prosecutors act within the deadlines provided by law, why criminal complaints are expiring, whether plea agreements are concluded according to the procedure, how prose-

cutors conduct financial investigations, as well as whether officials are doing their job as provided by law.

None of that has been done in the past five years in most prosecutor's offices.

The Law on the State Prosecution Service states that the SSP supervises the work of the SPO, high and basic prosecutor's offices through direct insight into their work and other measures for the sake of efficiency and legality. This supervision is carried out in accordance with the plan adopted by the Supreme State Prosecutor.

The law prescribes the prevention of supervision as a serious disciplinary offence, but also if irregularities and illegalities in the work are determined during the supervision.

The Rulebook on the internal operations of the State Prosecution Service stipulates that the Supreme State Prosecutor's Office conducts an analysis of all prosecutor's offices once a year.

In the documents, which we obtained for the purposes of this text through free access to information, it is written that after several changes to the plans, it is planned that the supervision of the work of the SPO and the High State Prosecutor's Office in Podgorica will begin in November this year, and that such control in the High Prosecutor's Office in Bijelo Polje and basic state prosecutor's offices will be done in December.

However, this control will not be carried

out this year either, at least not in the most important prosecutor's offices, despite numerous warnings about the work of the prosecutor's offices from the European Union (EU), as well as from the part of the domestic professional public.

The SSP confirmed in a statement to the CIN-CG that the control over the work of the SPO was done only once, in 2017, when they reviewed 2016, the first year of work of the Special Prosecutor's Office. Since then, the work of the Chief Special Prosecutor Milivoje Katnić and his organization has been completely without supervision, even though the SPO is a key institution in the fight against organized crime and corruption at the highest level.

The SSP, however, did not answer the question of what was determined by the 2017 review, nor why they have not been controlling the work of the most important prosecutor's office in the country for five years now.

In 2017 and 2018, supervision was carried out over the High Prosecutor's Office in Bijelo Polje and basic prosecutor's offices in Bijelo Polje, Pljevlja, Kolašin and Ulcinj, but there was no control in those institutions either in the last three years.

MARIĆ: GROSS MISTAKE IN WORK

State Secretary in the Ministry of Justice, Human and Minority Rights Boris Marić told the CIN-CG that it is incomprehensible that the work of the prosecutor's offices was not monitored for so long, assessing that it is a gross mistake in work and obligations.

He added that the Ministry is not competent to initiate proceedings to determine responsibility for possible mistakes in the area of internal supervision over the work of prosecutor's offices.

Marić reminds that the situation in the judicial system is worrisome, given that the Prosecutorial Council has not been constituted, and that the situation in the Judicial Council, the Supreme and Constitutional Courts is either with acting members or on the verge of a quorum for work.

"In that context, any internal mistake in work gains additional weight", said Marić, adding that it would be necessary to start a parliamentary dialogue as soon as possible, but also between the legislative, judicial and executive powers.

STATE PROSECUTION SERVICE	Supervision by the Supreme or High State Prosecutor's Office in last 5 years
SPECIAL STATE PROSECUTOR'S OFFICE	THERE'S BEEN NO SUPERVISION IN LAST 5 YEARS
HIGH STATE PROSECUTOR'S OFFICE PODGORICA	THERE'S BEEN NO SUPERVISION IN LAST 5 YEARS
HIGH STATE PROSECUTOR'S OFFICE BIJELO POLJE	IN 2019 FOR 2017 AND 2018
BASIC STATE PROSECUTOR'S OFFICE ROŽAJE	THERE'S BEEN NO SUPERVISION IN LAST 5 YEARS
BASIC STATE PROSECUTOR'S OFFICE ULCINJ	IN 2019 FOR 2017 AND 2018
BASIC STATE PROSECUTOR'S OFFICE KOLAŠIN	IN 2019 FOR 2017 AND 2018
BASIC STATE PROSECUTOR'S OFFICE HERCEG NOVI	THERE'S BEEN NO SUPERVISION IN LAST 5 YEARS
BASIC STATE PROSECUTOR'S OFFICE BERANE	THERE'S BEEN NO SUPERVISION IN LAST 5 YEARS
BASIC STATE PROSECUTOR'S OFFICE CETINJE	THERE'S BEEN NO SUPERVISION IN LAST 5 YEARS
BASIC STATE PROSECUTOR'S OFFICE KOTOR	THERE'S BEEN NO SUPERVISION IN LAST 5 YEARS
BASIC STATE PROSECUTOR'S OFFICE BIJELO POLJE	IN 2019 FOR 2017 AND 2018
BASIC STATE PROSECUTOR'S OFFICE PLAV	THERE'S BEEN NO SUPERVISION IN LAST 5 YEARS
BASIC STATE PROSECUTOR'S OFFICE PODGORICA	THERE'S BEEN NO SUPERVISION IN LAST 5 YEARS
BASIC STATE PROSECUTOR'S OFFICE PLJEVLJA	IN 2019 FOR 2017 AND 2018
BASIC STATE PROSECUTOR'S OFFICE BAR	THERE'S BEEN NO SUPERVISION IN LAST 5 YEARS
BASIC STATE PROSECUTOR'S OFFICE NIKŠIĆ	THERE'S BEEN NO SUPERVISION IN LAST 5 YEARS

However, the SSP was not willing to announce what was determined by those few controls, nor why they are only now announcing that they will fulfil the legal obligations for the previous four years in all prosecutor's offices.

In their statement to CIN-CG, the competent authorities tried to justify the lack of supervision by saying that the four state prosecutors who were supposed to exercise control retired, and that the two state prosecutors who were appointed in April of this year were sent to the Special State Prosecutor's Office for assistance for a period of three to six months. However, all those prosecutors were in positions in the earlier period, and yet the control was not carried out.

"Also, one of the reasons for the lack of supervision is the situation caused by the Covid-19 virus pandemic", the SSP states.

The pandemic began in March 2020 and could not possibly be an excuse for not fulfilling legal obligations in the previous three years.



EC DEMANDING DIALOGUE ON APPOINTMENTS IN THE JUDICIARY, POLITICIANS STILL TALKING ONLY ABOUT POSITIONS: **PROSECUTORS KEEP GETTING EXCELLENT GRADES WHILE JUDICIARY IS ON LIFE SUPPORT**

/// Maja BORIČIĆ //////////////////////////////////////

In the period between 2012 and 2021, out of 116 prosecutors working in the Basic, High and Special Prosecutor's Offices, 115 were rated as excellent. Only the Prosecutor of the Basic Prosecutor's Office in Kotor, Srđa Jovanović, received the grade good. And all the heads of the prosecutor's offices were evaluated with the highest rating.

These data were kept secret for a long time, but for the purposes of our research they were recently obtained by the Centre for Civil Liberties (CEGAS).

The evaluations are given by the commission formed by the Prosecutorial Council (PC), which consists of the Supreme State Prosecutor and five members of the PC, three of whom are prosecutors, and two of whom are distinguished lawyers. Only those who are evaluated lower than good aren't allowed to advance.

If the European Commission (EC) reports are taken into account, it is not clear on the basis of which criteria the representatives of the prosecution service did so well, when year after year it is repeated from Brussels that the rule of law is one of the biggest challenges on Montenegro's path to the European

Union (EU).

This is perhaps the best example of how necessary the reform of the prosecution service is, but even five months after the adoption of the amendments to the Law on the State Prosecution Service, there is no indication when the new PC could be completed, nor what should be the first steps in the reform of the prosecutor's organization.

Although the representatives of the parliamentary majority promised that new solutions would finally initiate the process of change, at the moment it seems that this is not a priority.

Due to disagreements in the ruling coalition regarding the appointment of one member of the PC from the ranks of distinguished lawyers, the Parliament of Montenegro has not yet completed the PC, and some parties are putting the reconstruction or change of the Government as a precondition for this.

When the prosecutors appointed their four members to the Council, the Speaker of the Parliament Aleksa Bečić proclaimed the new PC, with six members, in which, in addition to the prosecutors, there is also the acting Supreme State Prosecutor Dražen Burić, who presides

over that Council and the representative of the Ministry of Justice, State Secretary Boris Marić.

However, that incomplete Council has not even held a constitutive session yet, and there is no indication that it will hold one, until the Parliament of Montenegro completes its work regarding the appointment of distinguished lawyers.

At its first session, the PC should dismiss Dražen Burić from the position of acting Supreme State Prosecutor and appoint a new acting head of the highest prosecutorial function in the country. As we unofficially learn, there could be a problem with that first task, because the law says that the new acting Supreme State Prosecutor must be appointed at the first session of the PC, and it is not specified how – whether a public invitation is necessary or a majority vote of Council members is enough.

It will not be so easy for the new Council to dismiss the Chief Special Prosecutor Milivoje Katnić as well, although he is often cited as one of the obstacles to dealing with corruption and crime at the highest level, due to his alleged connections with the heads of the DPS and the former police department. In June of last year, the previous convocation of the PC unanimously confirmed Katnić for a second term, and he is not set to retire for another two years. Considering the results of the Special State Prosecutor's Office (SPO),

it is doubtful that he will be able to effectively deal with complicated cases, such as the “Pandora Papers”, in which the offshore companies of President Milo Đukanović and his son were discovered. The European Parliament demanded that the allegations made by the International Consortium of Investigative Journalists (ICIJ) be investigated before the national judicial authorities.

According to the Law, the Supreme State Prosecutor, three members of the Council, or the Minister of Justice have the possibility to initiate proceedings for the removal of Katnić due to unprofessional or negligent performance of his duties, a serious offence which causes significant damage to the prosecution service, or if he has been convicted.

The future efficiency of the SPO will largely depend on who will be appointed as the Supreme State Prosecutor, for which a two-thirds or three-fifths majority in the parliament is required. However, there is no indication that the Assembly will quickly vote for a new head of the Montenegrin Prosecution Service, as this requires the support of the opposition as well.

If it is complicated to reach an agreement on the Supreme State Prosecutor, the question arises why the representatives of the parliamentary majority do not at least appoint those members of the PC about which they have no disputes

CONSTITUTIONAL COURT WILL NOT DISCUSS RETIREMENTS SOON

The Constitutional Court did not answer the CIN-CG question as to when they will decide on the lower retirement age, but also on the constitutionality of the changes to the prosecution law, but according to unofficial information, due to the complicated situation in that court as well, it is unlikely that a decision will be made soon.

This certainly, as we were told unofficially, does not prevent those responsible from implementing the regulations that have been adopted.

The amendments to the Law on the Prosecution Service provide that the prosecutor's function ends upon meeting the conditions for retirement, and the same was already provided for in the Law on Courts.

While the Judicial Council decided to comply with the provisions of the law regarding retirement, even though it sought to challenge them before the Constitutional Court, the previous PC was of the position to wait for the decision of that court before deciding to send the prosecutors into retirement.

– three distinguished lawyers and one representative of the non-governmental sector and thus move on from a deadlock. The Centre for Investigative Journalism of Montenegro (CIN-CG) was unable to get an answer to this question. The President of the Parliamentary Committee for Political System, Judiciary and Administration, Momo Koprivica, promised answers to our questions in a telephone conversation, but later ignored numerous calls.

His party leader, Speaker of the Parliament Aleksa Bečić, also did not answer questions about whether he would initiate a dialogue not only about appointments in the PC, but also about the election of the Supreme State Prosecutor, and other positions in the judiciary as well.

Acting Supreme State Prosecutor Dražen Burić did not want to speak to the CIN-CG either, explaining that he had promised an interview to another media.

The EC emphasizes the responsibility of politicians

In the latest annual report of the EC on Montenegro, it is emphasized that there is no progress in the field of judiciary, and that the implementation of key reforms is stagnating. The responsibility of the political elite that fails to secure a qualified majority for key appointments in the judiciary is underlined.

It is emphasized that the recommendations of the Venice Commission (VC) regarding changes in the prosecution system should be fully respected – the European Commission is also concerned that the mandate of distinguished lawyers in the previous convocation of the PC was terminated after the amendments to the Law on the State Prosecution Service were voted. The danger of politicization of PC is also mentioned. “Broad political consensus on these pending appointments will be key to prevent politicization of the Council”, the report concludes. It is noted that it is necessary to review the disciplinary and ethical responsibility of judges and prosecutors.

It’s not just PC that’s the problem. For three years now, the Parliament has not

been able to secure a majority for four distinguished lawyers in the Judicial Council as well, so the mandate of the members whose term of office expired in July 2018 was extended. The Judicial Co-

THE COURT SYSTEM IS BLOCKED AS WELL

There is a similar situation in the judiciary, there are many acting positions or there is a smaller number of judges than prescribed. In August of this year, the Council noted the termination of the functions of 23 judges who met the conditions for retirement. In the Supreme Court, there are now only six judges out of the 18 that were prescribed, since as many as 12 of them have retired. The Judicial Council also did not manage to elect a new president of the Supreme Court by a two-thirds majority, after Vesna Medenica resigned at the end of last year.

Neither the Administrative Court, nor the basic courts in Kolašin, Berane, Bar, Rožaje and Kotor, nor also the Court for Misdemeanors in Budva have presidents.

The process of evaluating a large number of candidates who applied for vacancies in the Supreme, Administrative, Commercial and High Courts is underway.

“We hope that this procedure will also be carried out as soon as possible and that at least we will not have a situation with acting positions in the judiciary, especially in the Supreme Court where that situation has been lasting for ten months”, reminds Vesković.

The Constitutional Court is also currently functioning with an incomplete composition and with a bare quorum. After the retirement of judges Hamdija Šarkinović and Mevlida Muratović, that court operates with only five judges, of whom Dragoljub Drašković should retire soon. So that court could soon remain with four judges, which is a quorum for deciding in cases, but that means that everyone would have to be unanimous in order to make a decision.

For more than a year, the Parliament has not been able to appoint new judges for the Constitutional Court as well.

uncil functions in incomplete composition, with eight members out of provisioned ten. A judge and a distinguished lawyer are missing.

“The two Councils still need to step up efforts to improve the transparency of their work, including by publishing fully reasoned decisions on promotions, appointments and disciplinary cases”, the EC report states.

State Secretary in the Ministry of Justice, Human and Minority Rights Bojan Božović told the CIN-CG that the EC report related to chapter 23 is realistic and objective.

“Such report gives a clear message that we must look for solutions through dialogue, as well as that all institutions of the system and all actors in this society, in accordance with their powers, are responsible for the stagnation in the accession process regarding this issue”, said Božović, who is also a head of the Working Group for the negotiating chapter 23 (judiciary and fundamental rights).

The President of the Board of Directors of the Institute Alternative (IA) and candidate of the non-governmental sector for a PC member Stevo Muk said in a statement to the CIN-CG that the grades from the report were expected and that they are “a warning and a good basis for much more work in the coming period”.

“The report notes progress in the number of processed cases of organized crime, but also points to numerous weaknesses and shortcomings, as well as the fact that there is still concern about the institutional performance of the Prosecutorial Council. For the umpteenth time, insufficient effects in the system of prosecutors’ disciplinary responsibility are pointed out”, notes Muk.

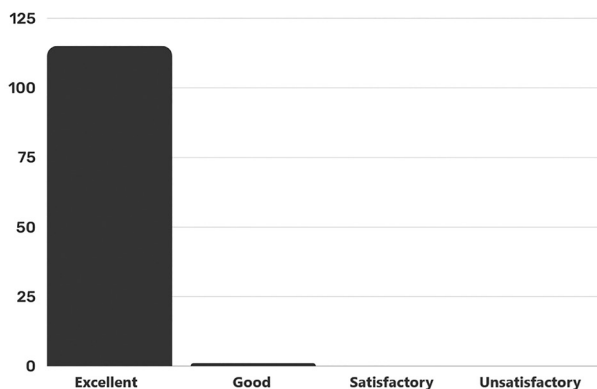
As the Parliament of Montenegro is the place where the most impor-

tant positions in the judiciary are appointed, the greatest responsibility for the entire process belongs to the Speaker of the Parliament of Montenegro, Muk assesses. He also points out that it should be discussed “in a package” about all appointments in the judiciary – judges of the Constitutional Court, members of the Judicial Council and the election of the Supreme State Prosecutor.

The executive director of the Human Rights Action (HRA), Tea Gorjanc Prelević, points out that the parties in power are acting badly, because they are unable to agree on key appointments related to the rule of law, which is a priority, and in relation to which the European Commission gave the worst rating to date.

“It calls into question the key promises of the ruling majority. Even when this blockade is lifted, it will be remembered that the normal functioning of the judiciary depended on individual interests and political party fights, even though they all promised to ‘liberate’ the prosecution service and achieve justice”, said Gorjanc Prelević. Trading with the appointments of PC members, she adds, reduces citizens’ trust in politicians, prosecutors and the state.

Grades for the work of 116 state prosecutors in the period from 2012 till 2021



99.14%

of state prosecutors received the grade "excellent" for their work in the period from 2012 till 2021

New PC proclaimed, but it's not functioning

Amendments to the prosecution law were voted at the end of May, and according to the deadlines in that law, the new PC could have been completed by September.

Amendments to the Law stipulate that the Prosecutorial Council has 11 members, five of which are prosecutors, including the president of the Council i.e. Supreme State Prosecutor, and five distinguished lawyers, one of whom is a representative of the NGO's, while the 11th member is a representative of the Ministry of Justice.

16 candidates applied to the public invitation for four positions among distinguished lawyers, which lasted until July 1. The majority in the Committee agreed that three lawyers: Miloš Vuksanović, Siniša Gazivoda and Filip Jovović, met the requirements to be members of the Council. However, the fourth candidate – lawyer Nikola Bulatović – was disputed by the representatives of the Democratic Montenegro (DCG), because they pointed out his alleged closeness to the Democratic Front (DF).

Because of this, the process of selecting PC members from the ranks of distinguished lawyers, including the representative of the non-governmental sector, Stevo Muk, was stopped, even though he received the support of the Committee members.

At the beginning of August, the conference of state prosecutors at a secret session appointed four prosecutors: Sanja Jovičević, Đurđina Nina Ivanović, Tatjana Begović and Nikola Samardžić as members of the PC. That decision was also being called into question, because there was unofficial information that there were irregularities and an insufficient number of votes in the first round for one of the candidates. The Supreme State Prosecutor's Office denied those allegations.

After that, the Speaker of the Parliament proclaimed the new PC, with an incomplete composition, in order to stop the intention of the previous convocation of the Council to make appointments and elect

the head of the Basic State Prosecutor's Office in Podgorica and three prosecutors of the Supreme State Prosecutor's Office.

The previous convocation of the PC proposed that the current acting Supreme State Prosecutor Dražen Burić be appointed, but the Parliament of Montenegro did not have a vote on that proposal.

Proclaiming the new Council, the Speaker of the Parliament stated that the PC could function and make decisions with at least six of the 11 members foreseen. The new Council, however, has not scheduled a single session since then.

The Director of the HRA emphasizes that the fact that PC is not working means that there are no conditions for the appointment of prosecutors, nor for determining their responsibility for illegal or unethical work.

HRA legal adviser Marija Vesković points out that the Basic State Prosecutor's Office in Podgorica has had an acting head for more than two years and that no appointment can be made until the PC is established. She emphasizes that, if an agreement on all candidates for the PC cannot be reached in the ruling majority, they should at least vote on those over which there is no dispute.

However, she adds, it is obvious that there is currently no will for that, as well as for considering the proposal for the appointment of the Supreme State Prosecutor, which the previous composition of the PC submitted to the Parliament at the end of July. "Since the beginning of August, the competent parliamentary committee has held three sessions and these two issues were not on the agenda at all, and the issue of the appointment of distinguished lawyers became the subject of a political ultimatum for an agreement on the reconstruction of the Government", Vesković points out.

State Secretary Bojan Božović also points out that the incomplete PC greatly complicates the work of the entire prosecution service, as well as its reform through the appointment of new prosecutors.

He adds that this situation should not last much longer and that the Ministry hopes that the PC will be completed du-

ring the month of November.

According to the data of the Anti-Corruption Agency (ACA), the mandate of distinguished lawyers in the previous convocation of the PC, Ranka Čarapić, Milan Filipović, Velimir Rakočević and Aneta Spaić, ended on August 5, when the new PC was proclaimed.

Their mandates were supposed to last until January 2022. As things stand now, the big question is whether new members of this body will be appointed by then.

SITUATION WITH ACTING POSITIONS IN THE JUDICIARY

Situation prescribed by law

Current situation

CONSTITUTIONAL COURT

CONSTITUTIONAL COURT

7 JUDGES

5 JUDGES

SUPREME COURT

SUPREME COURT

18 JUDGES
+
COURT PRESIDENT

6 JUDGES
+
ACTING COURT PRESIDENT

JUDICIAL COUNCIL

JUDICIAL COUNCIL

9 MEMBERS
+
PRESIDENT

8 MEMBERS

SUPREME STATE PROSECUTOR'S OFFICE

SUPREME STATE PROSECUTOR'S OFFICE

Supreme State Prosecutor, at the proposal of the Prosecutorial Council, is appointed by the Parliament by a 2/3 majority

Situation with the acting head has been lasting since October 7 2019, when the term of the Supreme State Prosecutor expired

PROSECUTORIAL COUNCIL

PROSECUTORIAL COUNCIL

10 MEMBERS
+
PRESIDENT

6 MEMBERS



WHERE ARE THE PROSECUTORS WHO MADE MISTAKES IN THE CASES OF ATTACKS ON JOURNALISTS: FROM ERRORS TO HIGH-RANKING POSITIONS

PROSECUTORS WHO MADE MISTAKES IN THE CASES OF ATTACKS ON JOURNALISTS WERE EITHER PROMOTED OR CONTINUED TO TAKE HIGH-RANKING POSITIONS IN THE PROSECUTION SERVICE, THE RESEARCH BY MONITOR AND THE CIN CG HAS REVEALED. RESPONSIBILITY FOR THEIR MISTAKES IN THESE INVESTIGATIONS, EVEN WHEN THEY WERE ACKNOWLEDGED BY THE COURTS, WAS NEVER SOUGHT

/// **Predrag NIKOLIĆ** //////////////////////////////////////

Prosecutors who made mistakes in the cases of attacks on journalists were either promoted or continued to take high-positioned positions in the prosecution service, the research conducted by Monitor and the Centre for Investigative Journalism of Montenegro (CIN-CG) has revealed. Responsibility for the mistakes in these investigations, even when they were acknowledged by the courts, was never sought.

The prosecution service has consistently emphasized that investigations into attacks on journalists are a top priority. Nevertheless, a significant portion, approximately 100 cases of attacks on journalists and media property over the last 17 years, remains unresolved.

Even the most severe cases, such as the murder of Duško Jovanović, co-owner, director, and editor-in-chief of the daily Dan, as well as the attempted murders of Tufik Softić and Olivera Lakić, are still awaiting resolution.

While there has been some progress in the promptness of investigations over the past year, resulting in some attacks being resolved relatively quickly, many earlier cases remain

unresolved. Furthermore, no accountability has been sought for prosecutorial errors.

THE CASE OF TUFIK SOFTIĆ: One of the most dramatic examples in which the prosecutors made serious mistakes, and then advanced, is the investigation in the case of the attempted murder of journalist Tufik Softić in November 2007.

Softić's lawyer, Dalibor Tomović, reminds in his statement to Monitor that "numerous mistakes were committed by the Basic State Prosecutor's Office in Berane and the High State Prosecutor's Office in Bijelo Polje, many of which were noted in the decision of the Constitutional Court and the final judgment of the Basic Court in Podgorica, and which made the investigation and preliminary inquiry ineffective."

The state prosecutors who conducted the investigations in the case of Softić, from 2007 to 2015, were: Jadranka Mićović, Deputy State Prosecutor in Berane. She was the prosecutor on duty at the time of the attack on Softić in 2007. Now she is the head of the Basic State Prosecutor's Office (BSP) in Berane. Vladan Đalović, the then Deputy Basic State Prosecutor in Berane (questioned Draško Vuković

on 1 July 2014), is now the Prosecutor of the High State Prosecutor's Office in Bijelo Polje. Rifat Hadrović, head of the High State Prosecutor's Office in Bijelo Polje, is now a member of the Council of the Anti-Corruption Agency, while Gorica Golubović, then the head of the Basic State Prosecutor's Office in Berane, has since retired.

Nada Bugarin, Deputy High State Prosecutor in Bijelo Polje, took over Softić's case in 2014. During that period, says lawyer Tomović, almost no activities were undertaken in the case – from 12 November 2014 to 28 October 2015, when the investigation was terminated. In the same year, Nada Bugarin was appointed as a member of the Prosecutorial Council.

Tomović states that, in a period as long as five years and six months, essentially no actions were taken by the prosecution service (and the police) in Berane in the preliminary inquiry phase (3 March 2008 – 9 August 2013).

There were several mistakes made by the prosecutors in the case of Softić: the then Basic State Prosecutor in Berane failed to order to the police to blockade the town immediately after the event, in order to prevent the escape of the perpetrators and helpers. Also, the prosecutor in Berane and the investigating judge did not come to the scene, after being notified by the police, which was their duty. It was not ensured that the persons that Softić marked to the police as suspicious that same evening were immediately questioned. Some of the suspects were never even questioned, while Draško Vuković and Dragan Labudović were questioned by the prosecution for the first time only seven years after the attack – in July and September 2014. And Softić himself was interrogated by the Basic State Prosecutor in Berane for the first time seven years after the attack.

In addition to all that, Softić was not allowed to obtain the case files from the preliminary enquiry within the legal deadline, which was necessary for him to gain insight into all the evidence and potential evidence. Instead, he was allowed to copy about 150 pages of case files only on the day of expiration of the legal deadline for undertaking the prosecution (copying was allowed on 2 December 2015, and an order

to terminate the investigation was received on 2 November 2015).

“Despite the fact that the investigation of the attempted murder was marked as ineffective and inefficient by the highest court in Montenegro, none of the prosecutors were held accountable – in terms of either disciplinary, financial, criminal or professional responsibility”, states lawyer Tomović.

What is worrying, the lawyer points out, is that even after the decisions of the courts, there has been no progress in the investigation regarding the discovery of the perpetrators and those who ordered the attempted murder, even though it will be 15 years since the attack in November this year.

THE CASE OF OLIVERA LAKIĆ: For more than four years, no one knows who is behind the attack on the journalist Olivera Lakić, who was wounded on 8 May 2018 at the entrance of the building where she lives in Podgorica. It is not even known why the Special State Prosecutor's Office (SPO) does not file charges against those it suspects of being involved in the organization of the attempted murder of the journalist.

The investigation into the attack on Olivera Lakić has been in the works in the SPO since December 2020, and until then it was in the works in the High State Prosecutor's Office. It was designated as classified, so Dalibor Tomović, who is Olivera Lakić's legal representative, explains that he cannot talk about it. He only points out “the fact that more than four years have passed since the attack on the journalist (May 8, 2018) and more than two years since the opening of the investigation – initiation of criminal proceedings (19 February 2019), and no indictment has yet been filed, although the legal term is six months”.

In its last year's report, the Commission for Monitoring Attacks on Journalists stated that the High State Prosecutor's Office and the Special State Prosecutor's Office did not



Olivera Lakić
photo: Savo Prelević

submit documentation about the case to the Commission, and that the SPO did not interrogate Lakić since 12 December 2020, nor did it allow her to participate in the case as the injured party.

In the Commission's conclusions, it is written that, in the period from November 2019 to 23 December 2020, the High State Prosecutor's Office in Podgorica did not submit to the Commission the records of the interrogation of Mario Milošević and Milovan Žižić. Also, it is stated that since the case was taken over by the Special State Prosecutor's Office on 23 December 2020, and the new case file was created by the opening of the investigation on 25 December 2020, the injured party, Olivera Lakić, has not been interrogated.

"During the period in which the Special State Prosecutor's Office has been conducting the investigation, the injured party has not been given the opportunity to actively participate in the case (asking questions of witnesses, defendants), which is ultimately her right from Art. 282 of the Criminal Procedure Code. The practice of not submitting case files to the Commission in the case of Olivera Lakić continued, even though the Commission has permission to access classified information of the highest level of secrecy...", the Commission's conclusions stated. The Commission's earlier reports also noted that the High State Prosecutor's Office made a number of mistakes.

"The available documentation shows that Senior State Prosecutor Suzana Milić left the scene and did not attend the investigation lasting an hour and a half on 8 May last year, and that there is no information that she attended the continuation of the investigation the following day from seven to nine o'clock", stated the Commission.

The Commission also concluded that the inspection of the journalist's vehicle was allegedly carried out without moving the car from the scene, which "creates doubt regarding thoroughness in undertaking this action to uncover potential clues or find evidence". The report states that in the minutes of the investigation of the state prosecutor, there is no order to the police to inspect Lakić's car.

"In the documentation available to the Commission, there is no expert report on

the flashlight and rubber glove found on the scene".

Prosecutor Suzana Milić, who is mentioned by the Commission in the Lakić case, resigned in June 2022, together with ten other prosecutors who then decided to leave the prosecutor's organization and retire.

A team of five prosecutors worked on the case while it was under the jurisdiction of the High State Prosecutor's Office. In addition to Suzana Milić, they were: Vesna Jovičević, Maja Jovanović, Tatjana Begović and Miloš Šoškić.

Vesna Jovičević has been sent to retirement, at the same time as her colleague Milić. Maja Jovanović currently holds the position of Acting Supreme State Prosecutor. Miloš Šoškić is now in the Special State Prosecutor's Office, and last spring he submitted his candidacy for the position of the Chief Special Prosecutor. Šoškić, as stated by the decision of the Commission for the Code of Ethics for State Prosecutors, violated the code of ethics for prosecutors in 2020, because he met in public with Zoran Čočo Bećirović in Delta City at the time when the incident with Dan journalist Vladimir Otašević took place, in early December 2019. Neither that, nor investigations into attacks on journalists, prevented him from advancing.

Tatjana Begović has been appointed to the Prosecutorial Council in August last year.

Prime Minister Dritan Abazović once said that he thought that "the new prosecution service will have the opportunity to correct some of the mistakes of the previous prosecution service in the case of solving the wounding of journalist Olivera Lakić and get to the persons who ordered that attack". There's been no progress in the case so far.

THE CASE OF DAMIRA KALAČ: In one of the previous reports related to the threats against Damira Kalač via Facebook from March 2014, the Commission noted gross errors of the prosecution. Namely, the Basic State Prose-



Dalibor Tomović
photo: Savo Prelević

cutor's Office in Rožaje made a substantive error and addressed the criminal complaint to the name of Ismar Murić from Podgorica, a person who had nothing to do with this case, neither was he mentioned in it at all.

This irregularity was noticed by the Deputy Basic State Prosecutor in Podgorica, Ivan Medojević, who in a letter dated 31 July 2015 warned his colleagues from the Basic State Prosecutor's Office in Rožaje: "Based on the evaluation of the submitted files, I find it indisputable that Ismar Ličina, and not Murić Ismar, as you stated in your act, published the comment in question on the Facebook page of the independent daily Vijesti".

Bearing in mind that Ismar Ličina resides in Rožaje, the prosecutor added, and not in Podgorica, which unquestionably follows from the minutes of the information collected from the citizen on 27 April 2015, thus the place where this criminal offence was committed is on the territory of the court in Rožaje.

"Before which you have territorial jurisdiction to act. If you are of the opposite opinion, you can initiate a conflict of jurisdiction at the Supreme State Prosecutor's Office", stated Prosecutor Medojević.

The Commission concluded: The Basic Prosecutor's Office in Rožaje made a substantive error by filing a criminal complaint against Ismar Murić from Podgorica, a person who was not mentioned at all in this case, neither had anything to do with the mentioned threats. Despite its obvious jurisdiction (the suspect Ismar Ličina is from Rožaje), the Rožaje Prosecutor's Office initiated a conflict of jurisdiction before the Supreme State Prosecutor's Office, lost the proceedings and thus unnecessarily prolonged the investigation.

The head of the Basic State Prosecutor's Office in Rožaje at the time of threats to the journalists was – Hajran Kalač. In the spring of last year, he was appointed as a member of the former Prosecutorial Council, and in the meantime he retired.

CASE OF SEAD SADIKOVIĆ: Over the past year, the Commission for Investigation of Attacks on Journalists found that in one case, the attack on Sead Sadiković in Bijelo Polje, in March of last year, prosecution committed a drastic

mistake in the investigation.

The Commission President Mihailo Jovović explained that the Basic State Prosecutor did not even try to find out why the key ten seconds of the event, when the attackers beat the journalist, are missing from the video from the surveillance camera from the Hipotekarna Bank, despite the initiative of the police to determine why that part of the video was missing, whether it had been deleted or otherwise manipulated by someone, and if so, by whom.

In their address to the prosecution service, the police requested that "the reasons for the lack of footage at the specified time be established and whether any of the persons who have access to the video surveillance system intentionally deleted or edited parts of the video footage," they also stated that an expert opinion from the Forensic Centre in Danilovgrad needed to be obtained.

The Basic State Prosecutor in Bijelo Polje, Danijela Đuković, narrowed down the investigation and issued an order that an expert witness, not the Forensic Centre, should determine only whether the cameras were in operation and whether the attack was recorded. Sadiković's lawyer, Dalibor Kavarić, assesses that the investigation was slow and ineffective: "The DNA profiles of the biological material, or traces of papillary lines, on the basis of which the perpetrators could be identified beyond doubt, were not taken from the object by which the incriminated acts were carried out, instead the prosecution relied on witnesses, which are traditionally the most unreliable sources of evidence in criminal proceedings".

He explains that the main trial in this case has only started, so they have not had the opportunity to file complaints about any procedural action.

Kavarić emphasizes that "there is insufficient institutional awareness, that is, institutional seriousness about the importance of the mission and the role of journalists in society, and their work often lacks the necessary understanding, and therefore protection from representatives of state prosecution and trial bodies as well".

Prosecutor Đuković occupies the same high position in the prosecutor's office in Bijelo Polje.

Conclusions and Recommendations

////// Conclusions://////////

Prosecutorial Reform

The process of prosecutorial reform is crucial for further progress, and staff changes have shown that they can bring significant shifts. Following changes in the composition of the Prosecutorial Council (PC) and the election of a new Chief Special Prosecutor (CSP), there have been some improvements in the fight against organized crime and corruption. For further improvement, it is necessary to fill all positions in the prosecutorial organization and the police with quality staff and reach a final political consensus on the election of the Supreme State Prosecutor for a full term, as well as other appointments in the judiciary. At the same time, it is important to break with compromised individuals who violate laws and perform their duties unprofessionally. In this regard, the introduction of “vetting” should be considered.

Improvement of Legal Processes

It is necessary to properly process cases that have long burdened Montenegrin society and examine the effectiveness of investigations in these processes - from war crimes, through attacks on journalists, torture, to criminal and corruption affairs. It is necessary to carefully use the institution of plea bargaining in cases of organized crime and corruption, in accordance with European standards and practice, and reconsider some of the previous cases in which the perpe-

trators of serious crimes were acquitted or symbolically punished based on such agreements.

Changes to Legislation

For full effectiveness, it is necessary to make certain legislative changes. Primarily, it is important to amend the Law on Prosecution in accordance with the recommendations of the European Commission, as well as to prepare changes and additions to the Criminal Procedure Law. Additionally, for greater efficiency, it is necessary to reduce the jurisdiction of the Special State Prosecutor’s Office (SSP) and limit it to prosecuting high officials, while other prosecutors would deal with lower-ranking officials. It is also necessary to separate the Special Police Department (SPD) from the Police Administration (PA) and attach it to the SSP or to form a separate independent body. It is necessary to improve the capacity for conducting financial investigations, as well as to use the Law on Confiscation of Property Acquired by Criminal Activity more efficiently, including the introduction of preventive confiscation of property and management of confiscated property.

When amending or adopting new laws, especially key laws in the field of justice, it is necessary to conduct appropriate and quality public hearings. This would ensure broad participation and democratic control, and also provide an opportunity to gain important insights and feedback.



Strengthening Institutional Cooperation

It is necessary to strengthen institutional cooperation between the prosecution and the courts, police bodies and other relevant bodies in the chain of justice. This cooperation should be manifested through regular inter-institutional meetings, exchange of information, and joint training.

Improving Transparency and Accountability

It is important to strengthen the transparency of the work of the PC and individual prosecutors and publish all relevant documents on the official pages of the PC and state prosecutors, in accordance with the guidelines of the European Commission. Also, it is necessary to improve the system of criminal, disciplinary and ethical responsibility of prosecutors, as well as the evaluation system and supervision over judicial institutions. Dismissal of criminal charges due to the expiry of statute of limitations should be prevented, while cases of dismissed criminal charges due to the expiration of criminal prosecution should be analyzed to determine the reasons why the expiration occurred. Prosecutors who do not act within the legal deadlines should be sanctioned. The Prosecutorial Council should continue to improve the transparency of its work. This includes publishing of all relevant documents and information on their official website.

Improving Training and Education

The training of prosecutors and other staff should be continuous and include the latest trends in the judiciary, including the use of new technologies, forensics, investigation tactics and international standards protecting the rights of the accused. It is important to continuously improve the expertise and capacities of prosecutors in the SSP, especially to deal with complex criminal cases, such as corruption, money laundering, and organized crime. This may include specialized training, study visits to other countries, and engagement of external experts. Additionally, further steps should be taken in the field of corruption prevention, including the introduction and implementation of integrity policies, conducting regular audits, and improving the suspicious activity reporting system.

The Role of Civil Society

Civil society should be more proactive in overseeing the work of the prosecution. This could entail activities aimed at strengthening the capacities of civil society organizations for supervision, as well as improving mechanisms for cooperation with the prosecution.

////// Recommendations ////

Prosecutorial Reform

Achieve political consensus around the election of key holders of judicial functions, primarily around the election of the Supreme State Prosecutor.

Fill all positions in the prosecutorial organization, but also in the police with quality staff as soon as possible.

Consider introducing “vetting” to eliminate compromised individuals who violate laws and perform their duties unprofessionally.

Ensure adequate prerequisites for operations of the Prosecutor’s Office, primarily by providing it adequate working premises.

Promote the digitization of the judicial system, including e-courts, e-prosecution, e-protection, e-archive, to enhance efficiency and transparency.

Improvement of Legal Processes

Properly prosecute long-term(due) cases and examine the effectiveness of investigations in these processes.

Consider the use of the institution of plea bargaining in accordance with European practice and reconsider previous cases of plea bargaining in the most severe cases of organized crime and corruption, as well as criminal policy.

Legislation changes

Improve key laws in accordance with the recommendations of the European Commission, primarily the Law on Prosecution and the Criminal Procedure Law.

Reconsider the jurisdiction of the Special State Prosecutor’s Office (SSP) and limit them to prosecute only the highest state officials, so that limited administrative capacities can be used more efficiently.


Consider separating the Special Police Department from the Police Administration and attaching it to the SSP.

Improve the capacities of the prosecutorial organization for conducting financial investigations and apply more efficiently the Law on Confiscation of Assets Acquired by Criminal Activity.

Improve transparency of the work of the Ministry of Justice and consult with public while introducing changes to key laws, by conducting public hearings before amending or adopting new legislation, especially the key laws in the field of justice.

Strengthening institutional cooperation

Improve cooperation between the prosecution, courts, police organs, and other relevant organs in the justice chain.



Further improve investigative processes, especially in terms of increasing efficiency and reducing the time needed for investigation and indictment. This can involve improving coordination with the police and other bodies, as well as using modern forensic techniques and tools.

Improving transparency and accountability

Strengthen the transparency of the work of the Prosecutorial Council and individual prosecutors and publish all relevant documents on their official websites.

Enhance the system of criminal, disciplinary, and ethical accountability for prosecutors, improve the evaluation system, and strengthen the supervision over judicial institutions.

In order to preserve the integrity of the Special State Prosecutor's Office (SSP), continue strengthening measures to prevent corruption within the prosecution. This includes conducting regular internal audits, transparent procedures for the selection of prosecutors, and providing clear guidelines for ethical behavior.

The SSP should continue upgrading the transparency of its work and communication with the public. This includes

regularly informing the public about progress in important cases, and proactive communication about general trends in the fight against corruption and organized crime.

Improving Training and Education

The training of prosecutors and other staff should be continuous and should include the latest trends in applying justice. It is important to continuously improve the expertise and capacities of prosecutors in the Supreme State Prosecutor's Office, especially with regard to complex criminal cases such as corruption, money laundering, and organized crime. This may include specialized training, study visits to other countries, and the engagement of external experts.

Role of Civil Society

Civil society should play a more pro-active role in supervising the work of the Prosecutor's Office.

