

Horizontal Facility for Western Balkans and Turkey



**Action against Economic Crime in Montenegro (AEC-MNE)**

**Technical paper:**

**Guidelines on Ethics and Conflict of Interest for Prosecutors in Montenegro**

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This technical paper is prepared within the Horizontal Facility's Programme for the Western Balkans and Turkey.

The views and opinions presented herein are those of the experts and should not be taken as to reflect the official position of the European Union and/or the Council of Europe

**Abbreviations:**

<b>APC</b>	Agency for Prevention of Corruption
<b>LPC</b>	Law on Prevention of Corruption
<b>GRECO</b>	Group of States against Corruption
<b>GET</b>	Greco Evaluation Team
<b>NGO</b>	Non-Governmental Organisation
<b>AEC-MNE</b>	Action against Economic Crime in Montenegro
<b>OECD</b>	Organisation for Economic Co-operation and Development

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## 1 EXECUTIVE SUMMARY

The Action against Economic Crime in Montenegro (AEC-MNE) aims, amongst others, to enhance the awareness and capacity of prosecutors, to comply with and implement legal provisions on ethics and prevention of corruption.

The present guidelines on ethics and conflict of interest for prosecutors are developed in order

- to facilitate the implementation of the provisions of the Law on Prevention of Corruption on ethics and conflict of interests for prosecutors and other relevant legislation;
- to specify the standards of integrity and conduct to be observed by prosecutors, to help them to meet those standards; and
- to address the shortcomings identified in the 4th Evaluation Round Report on Montenegro adopted by GRECO ([MNE/GRECO/2015](#)).

Specifically, these Guidelines contain:

- A summary of the most important obligations to which prosecutors are subject under the existing Code of Ethics and other laws and regulations on conduct.
- Examples on different situations, where the prosecutor has to make a choice.

The following were considered in the preparation of this technical paper: Law on Prevention of Corruption, Law on Public Prosecution Office of Montenegro, Law on Special Prosecutor's Office, Rulebook on the manner of handling gifts of public officials, Rulebook on the manner of keeping the register of sponsorships and donations and content of the report on received sponsorships and donations, Codes of Judicial, Prosecutorial, Police Ethics and other relevant legislation was used.

An assessment mission, to establish the baselines of the situation in Montenegro took place on 30 – 31 January 2017 in Podgorica and included meetings with representatives of Agency for Prevention of Corruption, Centre for Trainings in Judiciary and State Prosecution, Commission for Implementation of Code of Prosecutorial Ethics, Association of Prosecutors, Special State Prosecutor's Office, Supreme State Prosecutor's Office, Human Rights Action and Centre for Democracy and Human Rights.

These guidelines are targeting following recommendations from the GRECO – report from June 2015:

- more needs to be done to develop specialised and dedicated counselling within the prosecution service, to raise the awareness and thus to prevent risks of conflicts of interest.
- (i) the disciplinary framework for prosecutors should further be developed with a view to strengthening its objectivity, proportionality and effectiveness; and (ii) information should be published on complaints received, disciplinary action taken and

sanctions applied against prosecutors, including possible dissemination of the relevant case-law, while respecting the anonymity of the persons concerned.

The Code of Ethics for Prosecutors has been in place since May 2014. The present guidelines support the existing rules and describe and analyse the types of conflicts of interest and different situations where conflict of interest might occur.

Furthermore, the paper provides a presentation of the relevant articles of the Law on Prevention on Corruption, Criminal Code, Code of Prosecutorial Ethics and Procedural Law which should be taken under consideration. At last there is a short review of the disciplinary system.

Practical examples support the area of the guidelines. The examples are analysed and solutions are given in an annex in the paper.

The guidelines are developed in order enhance the awareness about legal provisions on ethics and prevention of conflicts of interests and to facilitate the further work concerning guidance and counselling on these rules for prosecutors. It is recommended that these guidelines are effectively implemented in the future work concerning the necessary training for all prosecutors.

It is further recommended to increase transparency and to secure that a report on complaints received is published annually, containing the opinions of the Commission to these complaints, disciplinary actions taken and sanctions applied against prosecutors, including possible dissemination of the relevant case-law, while respecting the anonymity of the persons concerned.

## 2 GUIDELINES ON ETHICAL PRINCIPLES, RULES OF CONDUCT AND CONFLICTS OF INTEREST

### 2.1 Scope of the guidelines

The Guidelines will encompass areas of conflict of interests, gifts, diligence of prosecutors and key obligations under Code of Prosecutorial Ethics: respect for the law, impartiality, reputation, integrity, confidentiality, the court, other persons and the work as a prosecutor.

### 2.2 Definitions – what is conflict of interest

The OECD Publication “**Managing Conflict of Interest in the Public Sector**” from 2005 defines Conflicts of interest in the following way: *A conflict of interest involves a conflict between the public duty and the private interest of a public official, in which the official’s private-capacity interest could improperly influence the performance of their official duties and responsibilities.*

The essence of the problem is, that a public official, who is going to make a decision, is improperly influenced or there is a risk, that he will be improperly influenced.

In the explanatory memorandum<sup>1</sup> to the COE **Model code of conduct for public officials**<sup>2</sup>, (an appendix to the Council of Europe Recommendation R(2000)10, it is stated that the public official should not allow his or her private interest to conflict with his or her public position. It is his or her responsibility to avoid such conflicts of interest, whether real, potential or apparent. According to this document, conflict of interest arises from a situation (article 13.1) in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties. The public official's private interest (article 13.2) includes any advantage to himself or herself, to his or her family, close relatives, friends and persons or organizations with whom he or she has or has had business or political relations. It includes also any liability, whether financial or civil, relating thereto.

He or she must not allow his or her private interests to affect, or appear to affect, his or her public position nor take undue advantage of that position. The term “private interest” is explained in Article 13. It is for states to define the expression “undue advantage”. However, it should be understood in a broad sense, as including not only advantages offered or given to the public official but also the avoidance of any disadvantages or burdens imposed upon him or her. Undue advantages are usually of an economic nature but may also be of a non-material nature.

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<sup>1</sup> [Explanatory memorandum](#) to the COE **Model code of conduct for public officials**

<sup>2</sup> Appendix to Council of Europe Recommendation No. R (2000) 10, Article 8.1, available at: [CoE Recommendation No. R \(2000\) 10](#)

## 2.3 Types of Conflict of Interest

There are three main types of conflicts of interest<sup>3</sup>:

- **Actual:** a conflict exists between the official duties or responsibilities and the private interests of the prosecutor (the brother of a prosecutor is accused of a crime). The prosecutor cannot act as the prosecutor in the case against his brother.
- **Perceived:** it appears that the private interests could improperly interfere with or influence in the performance of the official duties or responsibilities, whether or not this is a fact (for example the prosecutor's neighbor has been assaulted). Normally the prosecutor cannot act as the prosecutor in the trial.
- **Potential:** Where the prosecutor's private interests could interfere with or influence on the official duties or responsibilities in the future (for example friendship with a person who gets married to a woman who has been punished several times for burglary).

## 2.4 Examples of Conflict of Interest

In their day to day activities the prosecutors, may face

- Receipt of gifts and benefits (hospitality)
- Secondary employment
- Relationship between superior and staff
- Recruitment and Promotions
- Endorsements and Sponsorships
- Procurement
- Investigation

Some of the examples are dealt with below

### 2.4.1 Receipt of gifts

The public official should not seek or accept any gift or benefit for himself or anyone else that could influence, or appear to influence, the carrying out of his or her duties<sup>4</sup>.

#### **Example: Prosecutor charged with taking \$100,000 in gifts, trips<sup>5</sup>:**

Following a nearly two-year investigation into the financial affairs of a District Attorney in Philadelphia (USA), the authorities will bring charges against the career prosecutor.

The 23-count indictment describes **gifts from one business owner that included trips Williams took with his then-girlfriend to a Dominican Republic resort, where they stayed in a presidential suite; a custom \$3,400 sofa; and \$9,000 in cash or checks.**

<sup>3</sup> New South Wales Police Force, Procedures for Managing Conflicts of Interest, February 2016

<sup>4</sup> Explanatory memorandum to the COE Model code of conduct for public officials – article 18

<sup>5</sup> Reported by [Associated Press](#) (AP), last checked on 10 April 2017.



**In exchange**, authorities said, Williams offered to help the businessman's friend **seek reduced jail time in a criminal case his office handled**. He also had the businessman meet with an airport police official in an attempt to avoid enhanced screening when returning to the U.S. from abroad, they said.

However, defense lawyer Michael Diamondstein said Williams "vehemently denies that he ever compromised any investigation, case or law enforcement function."

In the Explanatory Report<sup>6</sup> to the Criminal Law Convention on Corruption, paragraph 37, gifts or undue advantage is described: The undue advantages given are usually of an economic nature but may also be of a nonmaterial nature. What is important is that the offender (or any other person, for instance a relative) is placed in a better position than he was before the commission of the offence and that he is not entitled to the benefit. Such advantages may consist in, for instance, money, paid holidays, loans, food and drink, a case handled within a swifter time, better career prospects, etc.

#### **What constitutes "undue" advantage?**

"Undue" for the purposes of the Criminal Law Convention should be interpreted as something that the recipient is not lawfully entitled to accept or receive. For the drafters of the Convention, the adjective "undue" aims at excluding advantages permitted by the law or by administrative rules as well as minimum gifts, gifts of very low value or socially acceptable gifts. (Appropriate gift shall mean a gift to the value of € 50 see below 4.4. *Gifts*).

#### **2.4.2 Hospitality**

Normally conventional hospitality is respected<sup>7</sup>. That means for instance, modest invitations to food and drinks, calendars, low price pens, advertising materials, small stationary, etc. can be accepted by prosecutors while attending events such as workshops, trainings, conferences etc.

However, low value may not always be a proper criterion. The prosecutor should be alert to the possibility of even a generally permitted advantage giving rise to a conflict of interest in particular circumstances. Thus, gifts or invitations offered repeatedly, even if of low value, could affect the public official's impartiality in the exercise of his or her functions. Also, timing of the hospitality plays a crucial role for determining is it simply act of kindness or attempted bribery. Accepting even small courtesies by suspects, or related persons/businesses, in the period of investigation might compromise the prosecutor's work.

#### **2.4.3 Relations between the management and the subordinate**

Family relations, friendships or other types of relations between the Head of Office (Manager) and direct subordinates in the office can create a conflict of interests when for example

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<sup>6</sup> [Explanatory Report](#) of the Criminal Law Convention

<sup>7</sup> Ibid – article 18

exercising management or disciplinary powers or by giving reference when the relative applies for a position. If the private interest is so strong that there is a risk that the decision is going to be improperly influenced then we can consider this a situation of conflict of interest – which should be avoided.

In addition, it might be argued that subordinate prosecutors' judgments may be skewed in the same direction because of their personal interest in pleasing their superiors.<sup>8</sup> Thus, engagement of subordinate prosecutors in cases where their superiors have direct interest, should be avoided.

**Example: Employment of family members:** Following the United Kingdom parliamentary expenses scandal that emerged in 2009, the Committee on Standards in Public Life published its findings regarding expenses and allowances of Members of the United Kingdom Parliament. One of its main recommendations was that **“the employment by MPs of members of their own families, paid out of public funds, should be brought to an end. [...] it is not consistent with modern employment practice designed to ensure fairness in recruitment, management of staff and remuneration; and it will always carry with it a suspicion of abuse.”**<sup>9</sup>

#### 2.4.4 Recruitment and promotions

Another situation in which a potential conflict of interest can occur as result of personal linkages between the management and candidates is the procedure for recruitment or promotion. In such cases it is advisable that the persons with personal ties to the candidates recuse themselves from the process of decision making to ensure that the decisions are taken based on merit and not improperly influenced by the family ties, or any other type of relationship.

**Example: Lucrative pay and promotion:** World Bank President Paul Wolfowitz resigned his post in 2007, after an internal panel tasked with investigating the **lucrative pay and promotion** package Wolfowitz arranged in 2005 **for girlfriend** Shaha Riza found him guilty of breaking bank rules. The committee also found that he **tried to hide the salary and promotion package from top ethics and legal officials** within the bank<sup>10</sup>.

#### 2.4.5 Sponsorships and special arrangements with private sector

If the public official for example has a voluntary job in a local football club where he is a coach for young football players he would not be able to take part in decisions concerning

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<sup>8</sup> Bruce A. Green, Rebecca Ropihe, “Rethinking Prosecutors’ Conflicts of Interest” Fordham University School of Law, 2016, p. 19

<sup>9</sup> [Twelfth Report](#) of the Committee on Standards in Public Life, November 2009

<sup>10</sup> [ABC News report](#) on the resignation of the World Bank President Paul Wolfowitz

for example tax violations committed by the Club or in lawsuits against the sponsor of the football club.

**Example: Financial interest in private sector:** French President François Hollande's senior political advisor Aquilino Morelle stepped down, following **accusations of a conflict of interest**. He got under pressure to resign after the investigative website Mediapart reported that the advisor had gone against ethical guidelines for public servants in 2007. Morelle **allegedly worked for pharmaceutical companies while he held a position as a senior official in the ministry for social affairs** – earning 12,500 euros in the process<sup>11</sup>.

## 2.5 Responsibilities

The prosecutor as a public official has to respect key values in relation to the position and act in professional manner. It is therefore necessary that among other things the prosecutor acts in a manner that shows respect for: the law ; Impartiality; Reputation; Integrity; Confidentiality; Court; and, other persons.

### 2.5.1 Identification of the conflict of interest and reporting

The public official always has to be aware of the possible situation of conflicts of interests. In assessing the possibility of conflict of interests the public official has to include the aspects for example of financial and economic interests, family relations and further relationship with others which may seem problematic. In these situations, he immediately has to report the conflict, in the way it is described in the law and internal rules. Prosecutors can find themselves in conflict of interests not only in the investigation/court procedure, but also in the process of making decisions unrelated to cases (e.g. recruitment, promotions, procurement for the office). In the first case, recusal should be requested from superior prosecutors on the basis of procedural laws, and in the second case prosecutor should notify the APC in accordance with the article 8 in Law on Prevention on Corruption)

### 2.5.2 Avoiding the conflict of interest where possible

If a prosecutor finds himself in the situation where conflict of interest might arise, according to the procedural law<sup>12</sup> in article 43 immediately the superior State Prosecutor shall immediately decide on the recusal of a State Prosecutor for the same reasons as mentioned in article 38 concerning recusal for judges (for example close family relations, or relationship to the parties in the procedure or anyway circumstances raising suspicion to the impartiality of the prosecutor.) Also, conflicts of interest mentioned in the ethical code may cause a ground for recusal.

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<sup>11</sup> [Hollande's senior advisor steps down on conflict of interest allegations](#), reported by RFI, last visited on 18 April 2017

<sup>12</sup> THE CRIMINAL PROCEDURE CODE, (Official Gazette of Montenegro, no. 57/09, August 18, 2009), Article 43, article 38

In general, the *appearance* of a conflict of interest is also to be avoided, to minimise the risk to the organisation's reputation (and officials' personal reputation) for integrity. As perceived conflicts of interest could be similarly harmful to the trust in public decision making, managers should also consider perception when they decide on specific cases.

Conflict-of-interest situations cannot be avoided by simply prohibiting all private-capacity interests on the part of public officials: instead, public officials must take personal responsibility for identifying and resolving problem situations, and public institutions must provide realistic policy frameworks, set enforceable compliance standards, and establish effective management systems. They must also provide training, and ensure that officials actually comply with the letter and the spirit of such standards.<sup>13</sup>

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<sup>13</sup> MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

### 3 CODE OF PROSECUTORIAL ETHICS

The Code of Ethics for Prosecutors was drafted and adopted by the profession itself in 2006; it was updated in May 2014. The Code recognises its aspirational and dynamic value, and foresees its review on a biannual basis, as necessary. To supervise adherence to the Code of Ethics for Prosecutors, the Commission for the Code of Ethics of prosecutors was established in October 2011. It is composed of three members: two prosecutors (one elected by the extended session of the Supreme State Prosecution Office, and the other being the president of the Association of Prosecutors) and a non-prosecutor member of the Prosecutorial Council, the latter chairing the Commission. The Commission can act upon individual petition/complaint or on its own initiative.

#### 3.1 Respect for the law

The state prosecutors shall perform their duties lawfully and professionally taking care of respect and protection of fundamental human rights.

**Example 1 - The change in law:** The prosecutor is of the opinion that a change in law is too strict (he thinks the length of the new punishment is inhuman) so he does not want to follow the new law. Instead he argues (to his superior) that there was not sufficient evidence – so the accused person is only indicted for a minor offence. Is that performance in accordance with the rules he has to apply, including the Ethical Code?

**Example 2 – The car use:** A young prosecutor has a car, which was involved in a traffic accident. While his car was repaired, he made use of the car belonging to the office of the prosecutor in order to be able to go to work and home from work. Is that act in accordance with the rules he has to apply, including the Ethical Code?

#### 3.2 Respect for impartiality

State prosecutors should take care that the evidence, for which they know or reasonably believe that it was obtained in an illegal manner, will not be used, and undertake actions for finding objective truth. When the state prosecutors learn the facts and data which are beneficial for a suspect or accused person, or facts and evidence which are essential for decision making, they shall deliver, without delay, the data and evidence, i.e. the facts to the court. Further on they shall refrain from contacts and actions which may raise doubt about their objectivity.

**Example 3 – The new witness:** In a pending case during the court hearing just before the closing remarks, a witness no one had heard about before offers to the police to make a witness statement. The witness tells the police that the indicted person is not the perpetrator. The witness confirms the statement made by the indicted person. However, it is possible that the witness may have become aware of the statement of the indicted person from the

newspapers. The prosecutor is of the firm opinion that the witness is lying and of the firm opinion, that the indicted person is the perpetrator. Would it be a breach of the code not to inform the court and the counsel for the defence about the witness?

### 3.3 Respect for Reputation

State prosecutors shall refrain from presenting their personal opinion during providing information to the parties and shall be careful that they do not inflict damage to the reputation of state prosecutors by their conduct in public places and conduct in general. Furthermore, they have to refrain themselves from performing free activities which would be in conflict with official duties or could diminish their social reputation and reputation of the state prosecutor's office. Furthermore, they shall be careful not to damage the reputation of state prosecutors by their conduct in public places and conduct in general.

When the prosecutor is using the social media, Facebook, Twitter etc. is it very important that the expressions are so clear and precise that there is not a risk that the public may perceive the prosecutor's own private expressions as official statements from the prosecution office.

The prosecutor ought to be very careful about who is going to have access to his content on social media and be aware that the photos or the content he shares may be used by others. He shall carefully consider before placing, sharing and publishing the content on social media. He always has to be aware of confidentiality of the information he shares. He has to consider very carefully before he publicly manifests about issues that may risk to discredit his impartiality in the performance of the work in the prosecution. He shall avoid adding pictures or information about his colleagues or others, for example from a social event at work, on the web without their consent.

And at last when he is on the social media as a private person it must not be doubted that his expressions are his own and private ones. Every reference to his job as a prosecutor should be avoided.

**Example 4 – The car parking:** It is very difficult to find a parking space near the court – but the prosecutor thinks it is very important, that he is able to park near the court because he has some files to carry from his car to the court. He parks his car on a space where parking is prohibited. Is that a problem?

**Example 5 - Facebook:** The prosecutor is very active on Facebook, where he is known as "The Prosecutor". Is that that in conformity with the ethical rules?

### 3.4 Respect for Integrity

State prosecutors shall not use their official position or reputation of a state prosecutor for the purpose of accomplishing their rights or interests and they shall refuse to receive gifts and conveniences from the parties and other participants in the proceedings.

**Example 6 – The price reduction:** The prosecutor is a member of the Association of Prosecutors. The Association has made an agreement with a department store according to which members of the association get 5 % reduction in prices when they shop in the store. Also, other associations have made that agreement. Is that a breach of the ethical code?

**Example 7 – The exclusive restaurant:** The prosecutor goes to a very exclusive restaurant to celebrate his wife's birthday. The owner of the restaurant offers the prosecutor 25% reduction in the price, when he recognizes the prosecutor. Which options does the prosecutor have?

**Example 8 – The dinner invitation:** In a pending case the indicted person is represented by an attorney, who is an old friend from law school. The attorney is so happy to see his old friend again – now he has become a famous prosecutor – and invites him to dinner. Can the prosecutor accept the invitation?

### 3.5 Respect for Confidentiality

The State Prosecutor shall retain for themselves everything that they have learned about parties and their rights, obligations and legal interests within the framework of the performance of duties, unless it would represent the criminal offence, and they will keep the secrecy of data which they have learned at work or in connection with work.

**Example 9 – The press campaign:** The media do not like an indictment and criticize the prosecutor. In some newspapers, some of the readers nearly call him an Idiot. They accuse him being too weak. The prosecutor is very angry and feels that his honour is insulted. Is he entitled to justify his decision on the social media or in the newspapers?

**Example 10 – The interrogation report on Facebook:** A young prosecutor was charged for servitude neglect and for unjustified to have passed on confidential information about a pending criminal case he was responsible for. He had taken a photo of an interrogation report in the case containing the explanation from the accused. He had published this photo on Facebook. He had further quoted and commented on part of the defendant's explanation. The Supreme State Prosecutor found that there was no basis for prosecuting a criminal offense. The prosecutor resigned. Was it a breach of the Ethical Code?

**Example 11 – The left material in the car:** A prosecutor left official material visible in his car. The car was parked about eight hours at an allocated parking space around the prosecution office, where the prosecutor was employed. The car was parked in a public parking lot. The prosecutor was aware that he left official material in the car, and that he did not ensure that the material was not readable from the outside. Was it a breach of the Ethical Code?

### 3.6 Respect for the court

The state prosecutors shall, on the occasion of presentation before the court and in everyday communication with the court, respect and preserve the dignity of the court.

**Example 12 – The delayed prosecutor:** The start of the court hearings in X-town is normally delayed because of the Judge who is always late. The prosecutor thinks that he does not have to be prompt too – so one day he came bit later than the judge who is normally late. The judge was very angry. Was the delay of the prosecutor a breach of the Ethical Code?

### 3.7 Respect for other persons

The state prosecutor shall respect the dignity of other persons, regardless of who the person is and regardless of his/her status, as well as without discrimination regarding religion, gender, sexual orientation, national and regional origin, belonging to an ethnic group, skin colour, age or on any other grounds.

### 3.8 Respect for the work as a Prosecutor

Several articles in the code give specific instructions about how to perform as a state prosecutor for example for the cooperation with the heads of state prosecutor offices, police and other state authorities.

**Example 14 – The arrogant prosecutor:** In an investigation, the prosecutor thinks that he is not able to get help from a certain police station because that they do not understand how to interrogate. He therefore excludes this station from the investigation even after they had offered their assistance. Is that in accordance with the ethical rules?



#### 4 EXEMPTION OF PROSECUTORS

According to the Criminal Procedural Code<sup>14</sup> the prosecutor shall request to be disqualified from proceedings of the case in which there are reasons that give rise to suspicion of his/her ability to make impartial decision. Suspicion of impartiality of a judge is particularly raised by family, friendship, business, social and other relations with parties and their representatives. The main article about conflicts of interests is so important that it is a specific rule in the Code, article 38.

Recusal concerning prosecutors follows from article 43: *“Provisions on the recusal of judges shall also be applied accordingly to State Prosecutors and persons who are authorized under law to represent the State Prosecutor in the procedure, court reporters, interpreters ....”*

According to this article, the superior State Prosecutor shall immediately decide on the recusal of State Prosecutors for nearly the same reasons as apply for judges, namely:

- 1) if they are personally injured by the offence;
- 2) if the accused persons, their defense attorney, the judge, the injured party, their legal representative or proxy is the prosecutor's spouse, former spouse or extramarital partner or direct blood relative to any degree whatsoever, collateral blood relative to the fourth degree, or relative by marriage to the second degree;
- 3) if s/he is a guardian, ward, adopted child, adoptive parent, fosterparent or foster-child of the accused person, his/her defense attorney, the judge or the injured party;
- 4) if in the same criminal case s/he has taken part in the procedure in the capacity of a judge, defense attorney, legal representative or proxy of the injured party or the judge or
- 5) if circumstances exist that raise suspicion as to his/her impartiality.

**Example 15 – The friendship:** A prosecutor in a major criminal case has known the counsel for defence since college. They have since met once a year – also privately. Does the acquaintance excludes one of them to take part in the court hearings?

**Example 16 – The strict prosecutor:** An accused in a criminal case knows the prosecutor from past and know that he is a strict prosecutor. Is it possible for the indicted person to get rid of the prosecutor?

**Example 17 – The school teacher:** A prosecutor responsible for a case where his son's school teacher is the victim of an assault. Is he able to be responsible for the case?

**Example 18 – The troublesome case:** A well-known businessman is accused of fraud. He also has a great influence on the media. The prosecutor in the case is exposed to a real press campaign. Is it possible to him to ask for being let off of the case because of conflicts of interest?

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<sup>14</sup> THE CRIMINAL PROCEDURE CODE, Official Gazette of Montenegro, no. 57/09, August 18, 2009

**Example 19 - The share owner:** A prosecutor has shares for € 5,000 in a company that goes bankrupt. The charges are pressed against the director of the company for criminal offenses in connection with its bankruptcy. Is the Prosecutor able to act as prosecutor in the case?

During the assessment, it was explained by the prosecution service, that when it comes to practical examples of exemption of prosecutors due to conflict of interests, only exemptions by personal demand of the prosecutor were accepted so far. According to representatives of prosecution - other demands for exemption of the prosecutor are mainly submitted by parties in the process in order to prolong the procedure.

## 5 INSTITUTIONAL FRAMEWORK FOR IMPLEMENTATION OF THE RULES ON ETHICS AND GOOD CONDUCT

The procedure for the establishment of disciplinary responsibility for minor and serious disciplinary offenses is conducted by the Disciplinary Committee based on the summary indictment of the Disciplinary Prosecutor. **Disciplinary Committee** consists of three members of the Prosecutorial Council, two members from among the Public Prosecutors and one member from among the eminent jurists who is the Chairman of the Disciplinary Committee. The Supreme Public Prosecutor shall not be a member of the Disciplinary Committee.

The Commission for Code of Prosecutorial Ethics may adopt non-binding decisions, and it has no possibility to issue reprimand, but its findings remain in the personal file of the prosecutor and they are taken into account when promotion of the prosecutor is considered. Complaints for breach of Code of Ethics are rare.

**The Commission for the Code of Prosecutorial Ethics.** In this report, it is stated that the Commission is authorised to<sup>15</sup>:

- Monitor the implementation of the Code of State Prosecutorial Ethics,
- Act on complaints and other sources of information about violation of the Code of State Prosecutorial Ethics,
- Give an opinion whether certain conduct of a head, i.e. state prosecutor, is in accordance with the Code of State Prosecutorial Ethics,
- Submit a proposal to the Prosecutorial Council to establish disciplinary responsibility of state prosecutors if there is reasonable suspicion that the state prosecutor committed a disciplinary offence,
- Submit a report on its work to the Prosecutorial Council,
- Perform other tasks stipulated by law and the Code of State Prosecutorial Ethics.

The transparency of work is ensured through the website of the Supreme State Prosecutor's Office of Montenegro.

The Commission has meetings at least once a month to discuss different issues, not only concrete complaints.

In the annual report two examples were mentioned where the Commission made an *opinion* about the conduct of two prosecutors – one was criticized for losing her temper and another was not criticized for being too late for a court hearing – because of the circumstances.

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<sup>15</sup> Pursuant to Paragraph 5 of Article 21 of the Law on State Prosecutor's Office, Commission for the Code of State Prosecutorial Ethics, at a meeting of 9 October 2015, adopted new Rules of Procedure, which regulated the work of the Commission according to the new Law on the State Prosecutor's Office. Rules of Procedure regulate the Commission's authorities, its mode of work and decision-making.

## 6 APPENDIX 1: INTEGRITY PLANS

**Integrity plans** are adopted in Prosecutorial Council, Supreme State Prosecutor's Office, Special State Prosecutor's Office and for each higher and basic prosecutor's office in the country. Having in mind that each integrity plan is done on the basis of the instructions received from the Agency for Prevention of Corruption, they are unified in form and they contain:

- Overview and analysis of legal acts regulating the work of the institution
- Overview and analysis of institutional organization
- Overview and analysis of human resources
- Identification of risks (legal, organizational and human)
- Risk map of positions within the prosecutor's office
- Integrity plan form containing risk registry, assessment of individual risks, planned response to a risk and reporting on undertaken measures.

Vast majority of prosecutor's offices<sup>16</sup> has defined legal, organizational and human risks in the same way.

Legal risks are:

- 1) Inadequate and incoherent laws/bylaws related to work and fulfilling the mandate of the institution;
- 2) Lack of defined procedures in some work processes (inexistence of guidelines, rules, regulations);
- 3) Inefficient administrative surveillance over implementation of regulations, measures and conclusions;
- 4) Deviations in implementation of the strategy of development of the institution, other measures and determined programs and plans of work;
- 5) Inexistence of clear regulation, control or limitation of the discretionary powers of managers;
- 6) Rules are not providing sanctions for those that violate them, or those regulations are not implemented (gifts, services, sponsorships, lobbying).

Organizational risks are:

- 1) Inadequate and inefficient organizational structure of the institution;
- 2) Insufficient and uncoordinated cooperation between different organizational units of the same institution
- 3) Weak relations and cooperation between institutions
- 4) Lack of horizontal and vertical mobility of the employees
- 5) Lack of budgetary means, adequate and transparent rewarding system based on the work performance.
- 6) Quality and result of the institutional work in particularly sensitive areas is not verified, and/or evaluated
- 7) Lack of criteria for objective evaluation of the work and/or underdeveloped criteria
- 8) There are no mechanisms for control of the working performance / or they're not applied

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<sup>16</sup> Legal, organizational and human risks as defined in Integrity plans of each basic prosecutor's office

Human risks are:

- 1) Inexistence of the strategy for human resources management, and short-term and long-term projection for the staff needed, their education and conditions for their retention in the institution
- 2) Insufficient and inadequate education of employees and managers on issues of ethics and integrity
- 3) Inadequate and contradictory statements to the media, undermining citizens trust in the rule of law and institution
- 4) Inexistence of the adequate risk map of exposure to corruption by employee positions and working processes
- 5) Officers involved in certain processes don't have enough knowledge and/or experience, motivation or professionalism. They have low level of integrity.
- 6) Property and assets of employees in position particularly exposed ot risk are not monitored or verified
- 7) There is no control of the conflict of interest of employees in relation to the nature of work they are conducting.

Similar situation is with risk registries and proposed measures which mirror each other.

## 7 APPENDIX 2: ANALYSIS AND SOLUTIONS TO THE EXAMPLES IN THE PAPER

**Example 1 - The change in law:** *No, it is essential to act legally. If he thinks that the result could be unfair he can always plead for mitigating circumstances. If he is not following the rules he may commit a violation not only of the Ethical Code but also of the articles about misuse of office, Criminal Code articles 416 or 417.*

**Example 2 – The car use:** *No. The use of property belonging to the state is not for private purposes. It is a violation not only of the Ethical Code but also of the articles 419 and 421 a about Fraud in the Conduct of Official Duty.*

**Example 3 – The new witness:** *Yes, and probably also a violation of the criminal Code. In this situation, it is very doubtful, if the witness is lying – or if the prosecutor can prove that the witness is lying. It is up to the counsel of defence or the court to decide whether they want to hear the witness – and meanwhile the prosecutor has to do everything to verify if or not the witness is lying.*

**Example 4 – The car parking:** *The prosecutor has to behave in a manner that no one can say that he takes advantage of his position as a prosecutor. Therefore, it hurts the reputation of the prosecutors if he does not follow general rules. He has to pay a fine for the illegal parking as all others. It is a question if this fine should be combined with a disciplinary action. Probably the gravity and frequency could determine this question.*

**Example 5 – Facebook:** *When he uses Facebook – and it is as a private person - he must act as a private person and any hint or reference to his job as a prosecutor should be avoided.*

**Example 6 – The price reduction:** *If it is a general arrangement – an arrangement which is also open to other categories of associations, it is not a violation of the Ethic Rules. If the manager of the department store f. example is accused for serious tax fraud the prosecutor can no longer enjoy the price reduction but either must find another store to make his shopping or pay the full price (without reduction).*

**Example 7 – The exclusive restaurant:** *In that case – the reduction is very high and it is because of his job as a prosecutor – he either has to reject the reduction or find another restaurant to celebrate his wife's birthday.*

**Example 8 – The dinner invitation:** *It should not be excluded that a prosecutor can enjoy a meal together with an old friend – even if the friend is a lawyer. But if they are connected by a mutual case, every meeting outside the court or outside the office should be excluded as long as the case continues. And if they are too close friends the prosecutor must ask his superior to be exempted from the case.*

**Example 9 – The press campaign:** *No, see (ethical code):*

*State prosecutors shall refrain themselves from making comments, out of hearing or out of the main hearing, on reached decisions of the court or on how the court should act in certain case, nor they will give information to others about actions of the court for which they have learned about, unless it has been established in the written document which represents the part of the act;<sup>17</sup>*

*Only exceptionally, along with previous written consent of the head of the directly higher state prosecutor's office, the state prosecutors may state their opinions before the court, which differ from the attitudes of the head of the state prosecutor's office<sup>18</sup>*

*(I 9) In certain criminal and other cases, the state prosecutors shall present their opinion on the case only at the hearing. State prosecutor who has been authorized by the Supreme State Prosecutor of Montenegro shall give the media as objective piece of information as possible, which is in that time legitimate and allowed considering the stage of the procedure, and in while taking into account all circumstances of the case, and especially the rights of a victim, but also of a suspect and accused person.<sup>19</sup>*

**Example 10 – The interrogation report on Facebook:** *Yes, this is a violation of the ethical code. First of all, he is not allowed to comment a case outside the court, and second, especially not on Facebook.*

**Example 11 – The left material in the car:** *Yes, it was a breach of the Code as he has to take care about confidentiality.*

**Example 12 – The delayed prosecutor:** *Yes, it is a breach of the Ethical Code if the prosecutor does not respect the work of the court – even if the judge is of the opinion that he (the judge) does not have to respect timetables. (But everyone has the right to file a complaint about the judge).*

**Example 13 – The Roma:** *Yes, it is a violation. The statement touches all Romas and not only the indicted person.*

**Example 14 – The arrogant prosecutor:** *No, it is not in accordance with the ethical rules. He has a duty (article 8) to strive for a successful cooperation not only in criminal but in civil and administrative procedure as well.*

**Example 15 – The friendship:** *It is very difficult to say either yes or no. It depends on how close the relations between the two parties are.*

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<sup>17</sup> Ethic Code for Prosecutors - Special rules about relations and cooperation with others 1b

<sup>18</sup> Ibid. 1d

<sup>19</sup> Ibid 1.9

**Example 16 – The strict prosecutor:** *No, it is not possible for the defendant to choose the prosecutor. Only in situations where the defendant is able to make probable that the prosecutor is not impartial (for example – many years ago, they were in love with the same girl, and the prosecutor lost).*

**Example 17 – The school teacher:** *No, the prosecutor has to exempt. His interests (he wants that his son passes the examination best way) are too much in conflict with the criteria to be objective.*

**Example 18 – The troublesome case:** *No, it is his job – even if it may be troublesome.*

**Example 19 – The share owner:** *He is not able to be totally impartial and therefore he has to exempt*



## APPENDIX 3 - LEGAL FRAMEWORK (COLLECTION OF ARTICLES FROM RELEVANT LAWS)

### **Criminal Code**

The Criminal Code of Montenegro provides for sanctioning of the public prosecutor if he accepts a bribe, misuses his office, in other ways breaches the law during conducting his duties or commits fraud in the conduct of official duty. Below is an outline of the applicable articles from the CC.

#### Passive Bribery - Article 423

(1) A public official who directly or indirectly solicits or receives a gift or any other undue advantage, or who accepts a promise of a gift or any undue advantage for himself or for another person for agreeing to perform an official or other act which he must not perform, or not to perform an official or other act which he must perform shall be punished by a prison term from two to twelve years.

(2) A public official who directly or indirectly solicits or receives a gift or any other undue advantage, or who accepts a promise of gift or any undue advantage for himself or another person for agreeing to perform an official or other act which he must perform, or not to perform an official or other act which he must not perform shall be punished by a prison term from two to eight years.

(3) A public official who commits the offences under paras 1 or 2 above in relation to detection of a criminal offence, initiating or conducting of criminal proceedings, pronouncing or enforcing of a criminal sanction shall be punished by a prison term from three to fifteen years.

(4) A public official who after performing an official or other act or after refraining from performing an official or other act as envisaged by paras 1, 2 and 3 above, or in conjunction with such acts, solicits or receives a gift or other undue advantage shall be punished by a prison term from three months to three years.

(5) A foreign public official who commits any of the offences under paras 1, 2, 3 and 4 above shall be punished by the punishment prescribed for that offence.

(6) Where a responsible officer or another person in an institution or other non-commercial entity commits any of the offences under paras 1, 2 and 4 above shall be punished by the punishment prescribed for that offence.

(7) The gift received or any other undue advantage gained shall be confiscated.

#### Misuse of Office – Article 416

(1) A public official who misuses his office or authority, oversteps the limits of his official authority or refrains from performing his official duty and thereby obtains for himself or another person undue advantage, or causes damage to another person or severely violates the rights of another person shall be punished by a prison term from six months to five years.

(2) Where the commission of the offence under para. 1 above resulted in pecuniary gain exceeding three thousand euros, the perpetrator shall be punished by a prison term from one to eight years.

(3) Where the value of pecuniary gain exceeds thirty thousand euros, the perpetrator shall be punished by a prison term from two to twelve years.

#### Malpractice in Office – Article 417

(1) A public official who, in breach of law or other regulations or general legal acts, refrains from conducting his supervision duty, and otherwise improperly acts while acting in his official capacity although he knew or could have known and was obliged to know that this may result in severe violation of rights of another person or damage to the property of another person, provided that such a violation or damage exceeding three thousand euros actually takes place, shall be punished by a fine or a prison term up to three years.

(2) Where the offences under para. 1 above resulted in grave violation of rights of another person or damage exceeding thirty thousand euros, the perpetrator shall be punished by a prison term from six months to five years.

(3) A responsible officer in an institution or other entity, with the exception of those engaged in a business activity, who commits the offences under paras 1 to 2 above shall be punished by the punishment prescribed for that offence.

#### Fraud in the Conduct of Official Duty – Article 419

(1) A public official who, while acting in his official capacity, with the intention of obtaining for himself or another person illicit pecuniary gain by submitting false statements of account or who otherwise misleads an authorized person to make an unlawful payment shall be punished by a prison term from six months to five years.

(2) Where the pecuniary gain obtained as a result of the offence under para. 1 above exceeds three thousand euros, the perpetrator shall be punished by a prison term from one to eight years.

(3) Where the offence under para. 1 above results in pecuniary gain exceeding thirty thousand euros, the perpetrator shall be punished by a prison term from two to ten years.

## **Law on Prevention of Corruption**

Prosecutors are public officials and as such covered by the Law on Prevention of Corruption (LPC)<sup>20</sup>. The law prescribes measures for prevention of conflict of public and private interest and sets restrictions in the exercise of public functions (gifts, sponsorships and donations), foresees submission of assets declarations by public officials, regulates protection of persons reporting threats to the public interest that indicate the existence of corruption (whistleblowers), as well as other issues of importance (integrity plans) for the prevention and suppression of corruption.

### Conflict of interest

#### Article 7

A public official shall perform his/her function in such a manner that the public interest is not subordinated to private, and without causing a conflict of interest in the exercise of public function.

The conflict of interest in the exercise of public function exists when a private interest of a public official affects or may affect the impartiality of the public official in the exercise of public function.

The Agency shall establish the existence of a conflict of interest and implement measures for prevention of conflict of interest.

Opinions about the existence of conflict of interest in the exercise of public function and restrictions in the exercise of public functions and the decisions on the violation of the provisions of this Law relating to the prevention of conflicts of interest in the exercise of public functions, restrictions in the exercise of public functions, gifts, sponsorships and 3 donations and reports on income and property by public officials, which are issued or adopted by the Agency in accordance with this Law, shall be binding for a public official.

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<sup>20</sup> LAW ON PREVENTION OF CORRUPTION, (Official Gazette of MNE no. 53/2014),

It shall be deemed that a public official has violated the provisions of this Law if he fails to act in accordance with the opinion of the Agency referred to in paragraph 4 of this Article and with the obligations laid down in this Law or when he/she acts in a manner that violates the prohibitions and rules prescribed by this Law and other regulations regulating the conflict of interest in areas that are regulated by these regulations. Statement of Conflict of Interest

#### Article 8

If, in the authority in which he/she exercises a public function, public official participates in the discussion and decision-making in the matter in which he/she or a person related to the public official has a private interest, he/she shall inform other participants in the discussion and decision-making thereon by making a statement on the existence of private interest, prior to his/her participation in the discussion, and no later than before the beginning of the decision-making.

The obligation of making a statement referred to in paragraph 1 of this Article shall not apply to MPs, councillors and public officials who are subject to the rules on exemption prescribed by a special law or other regulation.

The authority in which the public official exercises public function shall include the statement made by a public official referred to in paragraph 1 of this Article in the minutes and request the opinion of the Agency thereon.

In the case referred to in paragraph 1 of this Article, the public official shall not participate in the discussion and decision-making until the Agency issues an opinion on the existence of the conflict of interest.

If, in the case referred to in paragraph 1 of this Article, the Agency determines the existence of conflict of interest and informs the public official and authority referred to in paragraph 3 of this Article thereon, the public official shall not participate in the discussion and decision-making and the authority shall adopt the decision on his/her exemption.

The authority shall prevent the enforcement of decisions taken contrary to paragraphs 1 to 4 of this Article and put it out of force, in accordance with the Law, and shall notify the Agency thereon.

#### External Engagement

#### Article 9

A public official may be engaged in scientific, educational, cultural, artistic and sports **active** ties and acquire income from copyrights, patent rights and other similar rights, intellectual and industrial property, unless specified otherwise by the law.

Membership of a public official appointed or elected in the permanent or temporary working bodies established by an authority shall not be deemed a performance of two or more public functions in terms of this Law, except for those who make decisions or participate in decision-making process.

A public official shall report to the Agency accurate and complete data on income acquired through the exercise of activities or tasks referred to in paragraph 1 and 2 of this Article. In the case of membership in several working bodies referred to in paragraph 2 of this Article, a public official may acquire income only in one working body in the given month.

#### Integrity plans

##### Article 71

Based on estimates of the susceptibility of certain jobs and work processes to the emergence and development of corruption and other forms of biased conduct of public officials and employees of an authority, the authority shall adopt an Integrity Plan containing measures to prevent and eliminate opportunities for the emergence and development of corruption and providing confidence of citizens in their work (hereinafter: Integrity Plan).

The Integrity Plan shall be adopted in accordance with the rules for the development and implementation of the Integrity Plan adopted by the Agency.

The Integrity Plan may be adopted by another legal person as well, and the Agency may, upon the proposal of this legal person, assess the integrity and propose recommendations for its improvement.

The costs of the integrity assessment referred to in paragraph 3 of this Article shall be borne by the legal person upon whose proposal the Agency conducted the assessment.

#### Gifts

##### Article 16

Public officials shall not accept money, securities or precious metal in connection with the exercise of public function, regardless of their value.

Public officials shall not accept gifts in connection with the exercise of public function, except for protocol and appropriate gifts.

Protocol gift shall mean a gift from representatives of other states or international organizations, which is given when paying or receiving a visit, or on other occasions, as well as other gifts presented in similar circumstances.

Appropriate gift shall mean a gift to the value of € 50. If, within a year, a public official receives more than one appropriate gift from the same donor, the total value of such gifts shall not exceed the amount of € 50, and if a public official receives gifts from several donors in this period, the value of such gifts shall not exceed € 100.

The prohibition or restriction referred to in paragraph 1 and 2 of this Article shall also apply to married and common-law spouses and children of public officials if they live in the same household, if the receipt of money, securities, or precious metals and gifts is in connection with the public official, or the exercise of public function. Gift value shall be calculated on the basis of its market value on the date of receipt.

#### Article 17

A public official who is offered a gift that he is not allowed to accept shall refuse the offer, i.e. inform the donor that he/she cannot accept the gift.

A public official shall, within eight days of the offer under paragraph 1 of this Article, prepare a written report on the offer made and submit it to the authority in which he/she exercises a public function.

If a public official, in the case referred to in paragraph 1 of this Article, was not able to refuse the gift or return the gift to the donor, he/she shall hand over the gift to the authority in which he/she exercises the public function, and the gift shall become state property or property of the municipality.

#### Article 18

Received gifts and their value shall be entered into the record book of gifts kept by the authority in which the public official exercises public function.

If it is determined that the appropriate gift is of greater value than the value referred to in Article 16, paragraph 4 of this Law, the gift shall be handed over to the authority in which the public official exercises public function for management and shall become state property, or property of the municipality.

Protocol gifts shall, regardless of their value, become state property, or property of the municipality.

The manner of management and use of gifts referred to in paragraph 1, 2 and 3 of this Article, the manner of keeping record books of gifts, as well as other issues relating to restrictions regarding the acceptance of gifts in connection with the exercise of public functions shall be prescribed by the state administration body in charge of anti-corruption (hereinafter: the Ministry).

#### Article 19

The authority referred to in Article 18, paragraph 1 of this Law shall submit an excerpt from the record book of gifts it keeps to the Agency by the end of March of the current year for the previous year.

If the Agency determines that the actions were not in accordance with this Law, it shall inform the authority which submitted the excerpt from the records thereon.

The Agency shall prepare a catalogue of gifts that the public officials received in the previous year and publish it on its website.

#### Article 20

Based on the knowledge that a public official has received a gift contrary to the law, the Agency shall carry out the procedure in accordance with this Law.

In cases where the Agency determines that a public official has received a gift contrary to the law, a public official shall hand over the gift, or the equivalent monetary value of the gift, to the authority where he/she performs the function, which shall thus become state property or property of the municipality.

#### Declaration of income and assets

#### Article 23

The public official shall, within 30 days from assuming the function, submit to the Agency a Report on Income and Assets, as well as on assets and income of married and common-law spouse and children, if they live in the same household (hereinafter: the Report), according to the state of play on the day of election, appointment, or assignment.

The public official shall provide accurate and complete information in the Report. During the exercise of public function, the public official shall submit the Report:

- Once a year, by the end of March of the current year for the previous year;
- In the case of changes in the Report that relate to an increase in assets of more than € 5,000, within 30 days from the date of change;
- At the request of the Agency in the case of initiation of proceedings referred to in Article 31, paragraph 1 and 2 of the **LPC**, within 30 days from the receipt of the request, or initiation of proceedings ex officio.
- In the case of termination of public function, a public official shall, notify the Agency thereon and submit the Report within 30 days from termination of the function.

Public official whose office has terminated shall submit annual Report to the Agency, according to the state of play on the day of submitting the Report, for the period of two years following the termination of office.

When moving to another public function, as well as in the case of election, appointment, or assignment to another public function, the public official shall, pursuant to Article 12, paragraph 2 and 4 of this Law, notify the Agency thereon within 30 days from the date of change.

The obligation to submit Report and the procedure of verification of the data from the Report shall also apply.

## **Restrictions upon Termination of Public Office**

### Article 15

For a period of two years following the termination of public office, the public official shall not:

1) Act, before the authority in which he/she exercised a public function, as a representative or attorney of a legal person, entrepreneur or international or other organization having or establishing a contractual or business relationship with this authority;

2) Establish a working relationship or business cooperation with the legal person, entrepreneur or international or other organization that acquires gain based on the decisions of the authority in which a public official has exercised function;

3) Represent a natural or legal person before the authority in which he/she exercised a public function in a case in which he participated, as a public official, in the decision-making process;

4) Perform management or audit activities in the legal person in which, at least one year prior to the termination of public function, his/her duties were related to supervisory or control activities;

5) Enter into a contract or other form of business cooperation with the authority in which he/she exercised a public function;

6) Use, for the purpose of obtaining a benefit for himself/herself or another person, or to harm another person, the knowledge and information acquired in the performance of public function, unless the knowledge and information are available to the public.

## **Law on State Prosecutor's Office - disciplinary measures**

The Public Prosecutor and the Head of the Public Prosecutor's Office as a Public Prosecutor shall be subject to disciplinary proceedings for minor, more serious and the most serious disciplinary offenses, as well as for unprofessional and negligent performance of prosecutorial duties.

### Article 108

The Public Prosecutor and the Head of the Public Prosecutor's Office as a Public Prosecutor shall be subject to disciplinary proceedings for minor, more serious and the most serious disciplinary offenses.

A **minor disciplinary offense** by the Public Prosecutor shall be committed if he or she:

1) fails to take cases in the order they are prepared in accordance with the Rules of Procedure of the Public Prosecutor's Office without any reasonable excuse;

2) fails to attend or is late for scheduled hearings with no justification;

3) fails to attend compulsory training programs without justification;

4) fails to meet his or her responsibilities as a mentor of the initial training and training of trainees.



A serious disciplinary offense by the Public Prosecutor shall be committed if he or she:

- 1) fails to act in cases in legal deadlines, which results in a statute of limitations, the inoperability of the proceedings and other consequences prescribed by law, without any reasonable excuse;
- 2) fails to seek an exemption in cases where there is reason for his or her exemption;
- 3) prevents supervision in accordance with the law;
- 4) in the exercise of prosecutorial office, or in a public place brings himself or herself into a state or behaves in a manner that is not appropriate to the exercise of prosecutorial office;
- 5) treats the parties to the proceedings and employees in the Public Prosecutor's Office inappropriately;
- 6) discloses information given to him acting in cases or exercising prosecutorial office;
- 7) uses the prosecutorial office to achieve his or her private interests and those of their family or people that are close to him or her;
- 8) accepts gifts or does not submit data on property and income in accordance with the regulations governing the prevention of conflicts of interest;
- 9) unexcused absence from work for five consecutive days;
- 10) publicly states his or her opinion on a case that has not come in effect;

The **most severe disciplinary offense** of the Public Prosecutor shall be committed if he or she:

- 1) is convicted of an offense that makes him unworthy of the prosecutorial office;
- 2) improperly or carelessly performs his or her prosecutorial office.

The offense referred to in paragraph 4, item 1 of this Article is a criminal offense that shall be prosecuted ex officio, which carries a prison sentence of at least six months.

The performance of prosecutorial office shall be unprofessional and negligent if the Public Prosecutor:

- 1) without any justifiable reason, fails to achieve at least 50% of the results in terms of workload compared to the average standards for workload in certain types of cases as determined by the Prosecutorial Council, unless some valid reasons for not having achieved the results in terms of workload are provided by the Public Prosecutor;
- 2) assumes the position of Member of Parliament or other public office or professional performance of other activities;
- 3) was evaluated as not satisfactory twice in a row;
- 4) was twice imposed a disciplinary sanction for a serious disciplinary offense.

#### Article 109

Disciplinary sanctions shall include a warning, fine, ban on promotion and removal from office. Warning and a fine in the amount of 20% of the earnings of the Public Prosecutor for up to three months shall be imposed for minor disciplinary offenses.

Fine in the amount of 20% to 40% of the earnings of the Public Prosecutor in the period of three to six months and prohibition of promotion shall be imposed for serious disciplinary

offenses. If the proceedings are conducted in two or more minor disciplinary offenses, disciplinary sanctions prescribed for a serious disciplinary offense may be imposed on the Public Prosecutor.

Removal from office shall be imposed for the most serious disciplinary offenses.

Prohibition of promotion shall imply that the Public Prosecutor shall not be appointed to a senior Public Prosecutor's Office before the expiry of two years from the date of the final decision on imposing the disciplinary sanctions.