mans

Monitoring report

JUDICIARY AND FIGHT AGAINST CORRUPTION

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TRANSPARENCY INTERNATIONAL

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INTRODUCTION

The purpose of this report is to provide a clearer picture of the results made by the judiciary in the fight against corruption.

In the process of European integration, concrete results are expected from Montenegro's judiciary in the fight against corruption, especially at a high level.

Official statistics and reports on the results of the judiciary and the State Prosecutor's Office have been assessed as unreliable and inconsistent for years, and it is not possible to find out from them what level of corruption was the subject of court proceedings, i.e. whether there are proceedings against high officials and what are their outcomes.

Courts post verdicts on their websites, but corruption-related cases are not singled out. Thus, from this it is also not possible to get a clear picture of the results of the judiciary in this area.

Thanks to the support of the European Union, MANS monitors the work of the judiciary in the fight against corruption, and the goal of our monitoring reports is to provide a clearer insight into the results of the judiciary and the State Prosecutor's Office. MANS is monitoring and analyzing all cases of corruption that are within competence of the Special State Prosecutor's Office for corruption, organized crime and war crimes, i.e. of the High, Appellate and Supreme Court.

This is the first monitoring report that contains an overview and analysis of data for the past five years. Data are related to the level of corruption and the structure of the accused and convicted of corruption.

Second part of this report relates to liability in the judiciary and, in addition to analysis of the legal framework, it also includes statistical data, as well as case studies related to disciplinary proceedings against judges and prosecutors conducted from 2013. to 2018.

All data from the report, as well as the database of final court verdicts for corruption adopted in the last five years are available at www.mans.co.me.

ABSTRACT

In the past five years, least final verdicts have been adopted for public officials. Five state officials were convicted and the courts pronounced minimal or sentences below the statutory minimum to all of them.

In the last two years, already small number of final verdicts and the number of people convicted of corruption have been reduced.

The State Prosecutor's Office has not been able to prove more than half of criminal offenses for which the accused have been charged.

Every fifth final verdict refers to major corruption, but in fact, it is only about two major cases.

In the past five years, twice as many citizens have been convicted of corruption compared to the state officials. Also, there have been more citizens convicted of corruption than local officials.

Since the signing of the agreement on the most serious acts of corruption has been established, in the last two years, every third person has been convicted precisely on the basis of that institute. The agreements were most often signed by businessmen and local officials, and their introduction further mitigated the penal policy of courts.

Only in every 10th conviction the courts pronounced penalties for corruption above the legal minimum.

Disciplinary proceedings in the judiciary are initiated selectively.

Since the adoption of a new, improved legislation, in the last three years only two decisions have been made in disciplinary proceedings against judges and one against the prosecutor.

The Prosecutorial Council declares the information on the disciplinary responsibility of prosecutors secret, referring to the protection of their right to privacy.

METHODOLOGY

What criminal offenses have elements of corruption?

According to the information we received from the Judicial Council and the Supreme State Prosecutor's Office, these two institutions classify criminal offenses as corruptive ones differently (1). Previously, there was a Tripartite Commission, composed of representatives of the judiciary, the State Prosecutor's Office and the police, which harmonized the judicial statistics and had its own list of criminal offenses with elements of corruption.

Therefore, we have compiled a comprehensive list of criminal offenses with elements of corruption that includes both offenses from the list of the Judicial Council and the Supreme State Prosecutor. The annex provides an overview of the crimes that these institutions include in statistics on corruption, as well as a list of crimes that are subject to monitoring and analysis by MANS.

How have we obtained the verdicts?

MANS downloaded all final verdicts for such criminal offenses committed from 2013 to 2018 from the websites of the High, Appellate and Supreme Court.

Since there are no reviews of the types of verdicts on these websites, and most courts were not prepared to provide us with the number of proceedings related to corruption, we collected the relevant verdicts by searching all published data based on the Criminal Code articles prescribing criminal offenses with elements of corruption.

MANS is monitoring and analyzing all cases of corruption that are within competence of the Special State Prosecutor's Office for corruption, organized crime and war crimes, i.e. of the High, Appellate and Supreme Court.

In what way are the accused categorised?

Based on the data from the verdicts of each accused in all cases related to corruption, we classified them into one of the categories: state official, local official, civil servant, large and medium-sized economic entities, as well as small economic entities and citizens.

The group of state officials includes all persons who, according to the Law on Prevention of Corruption, are public officials, at the level of the executive power, while the group of local officials consists of local government officials.
Civil servants are all employees of the state administration, in accordance with the Law on Civil Servants and State Employees.
The criteria on the basis of which we evaluated whether it is a small or large economic entity was the size of the company and the position of the accused in it, as well as the amount of damage charged with an indictment or verdict.
The accused persons for whom it is not possible to determine the occupation from the verdict or are unemployed, are classified as citizens.

In what way are the years determined?

Based on data from verdicts in cases related to corruption, we determined the year according to which a particular case is calculated in the statistical data by the date of issuing of the final verdict. If the first instance verdict is confirmed by the second instance verdict, then the first instance verdict is valid, and the cases are classified according to the year of the adoption of the first instance verdict. In all other cases, the date of the second instance verdict will be taken. However, when for several offences for which the same person was indicted different final verdicts were adopted in different years, then this person is included in the statistics for both years.

This project monitored the verdicts adopted from 2013 onwards. All verdicts processed and entered into the database can be found on www.mans.co.me, grouped in one of the years mentioned above.

In what way the level of corruption was determined?

According to the Law on Courts, high-level corruption exists if

1) a public official committed the following criminal offenses:
- abuse of office,
- fraud in performance of official duties
- trading in influence,
- inciting to engage in trading in influence,
- active bribery,
- passive bribery;

2) if the proceeds of crime exceeding the amount of forty thousand Euros have been obtained by committing the following criminal offenses:
- abuse of position in business operations,
- abuse of authority in economy

Bearing in mind that public official is a broad term, and the need to better understand the results of the judiciary in the process of corruption cases at the highest level, which have largest consequences for the citizens, the classification given by this Law is too broad and involves numerous cases of the so-called administrative corruption.

Therefore, we have classified the cases into grand, medium or petty corruption, bearing in mind the category of the accused person, that is, how high a public office he/she performs (ed), as well as the amount of damage charged with an indictment or verdict.

What is grand corruption?

Grand corruption includes cases in which at least one defendant is:
- current or former senior state official: in the ranks of a member of the Government, the Parliament, a judge of the High, Appellate, Supreme or Constitutional Court, the Supreme, Special or High State Prosecutor, as well the management of independent bodies or management of independent agencies and similar bodies, regardless of the amount of damage/pecuniary gain they are charged of;
- other state official or top local officials (for example, the President of the Municipality, the President of the Municipal Assembly) if he / she is charged with the damage / pecuniary gain of more than one million Euros;
- a member of the company management charged with damage / pecuniary gain exceeding one million Euros;

What is medium corruption?

Medium corruption involves cases in which at least one defendant is:
- a state official at a lower level (eg. assistants of ministers or directors of directorates and similar), regardless of the amount of damage / pecuniary gain;
- a local official or a civil servant charged with the damage / pecuniary gain of more than € 50,000;
- a representative of a commercial company charged with damage / pecuniary gain exceeding € 50,000

What is petty corruption?

Petty corruption includes cases involving local officials, civil servants, small businesses, citizens and other defendants, in cases where the amount of damage is not stated in the indictment or verdict, or is less than €50,000.

How is the penal policy analyzed?

When it comes to penal policy, in practice, it often happens that a person convicted of corruption is simultaneously convicted of other crimes with or without elements of corruption. The verdicts state individual sentences for each of these offenses, and the courts impose a single sentence that is less than the sum of the sentences for individual offenses.

When analyzing minimum and maximum sentences, we used data on individual sentences, because it was methodologically impossible to process single sentences.

This means that on average, the penal policy of the courts is milder than our statistics.

Where can all the data be found?

Data from the verdicts are entered into a specially designed computer programme and published on our website, www.mans.co.me.

We processed data through the program and published graphics that show statistics in several areas, from which the cases they are related to can be directly accessed.

Also, on our website there is a special overview of all final verdicts for criminal offenses with elements of corruption that can be searched according to several criteria.

www.mans.co.me

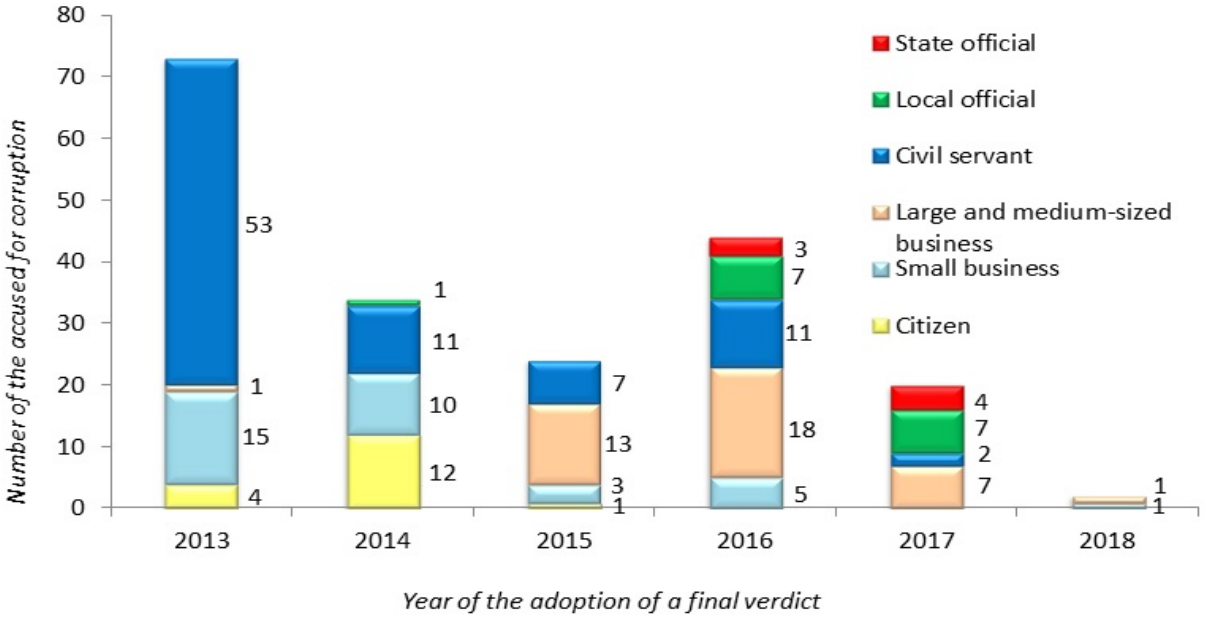
I

FINAL VERDICTS FOR CORRUPTION

Who was charged with corruption?

There is a concerning constant decline in the number of persons for whom the final verdicts for corruption were adopted. Last year, verdicts were adopted for three and a half times less persons than in 2013, and by the autumn of 2018 only two final verdicts for corruption were adopted.
There are very few cases against state officials, and their number is by far the lowest among all those charged with corruption. The proceedings were most often directed against state administration and businessmen, while in recent years there have been slightly more cases against public officials.

Chart 1: Structure of the accused for corruption (by year, by person)



During 2013 and 2014, the highest number of final verdicts was adopted in cases against civil servants, i.e. in cases of the so-called administrative corruption. A considerable number of verdicts in the proceedings against the accused in the field of small business was also adopted. Only one proceeding was conducted against local officials and representatives of a large or medium-sized business, while public officials were not charged in cases for which final verdicts were adopted in that period.

In 2015 there were twice as less final verdicts for corruption than in 2013 and significantly less than in 2014. The majority of the accused were from the business sector, there was less participation of the state administration, while there were no proceedings against local or state officials.

The number of accused in the verdicts adopted in 2016 grew and their structure significantly changed, primarily thanks to the proceedings against several public officials and large companies related to the so-called "Budva Affair". In that year, verdicts in which three state and seven local officials were charged were adopted, and the number of accused for corruption in the economy also increased.

In 2017, there were two times less final verdicts compared to the previous year, but more than half of the accused were local or state officials.

Only two final verdicts were published on court websites in 2018 and both relate to businessmen and corruption in the private sector.

In the last five years, final verdicts for corruption were adopted for eight accused persons who performed public functions at the state level, but in two cases they were the same persons.

In two cases, the accused were Đorđe Pinjatić, former member of the Parliament of Montenegro, Svetozar Pinjatić, former president of the Parliament and vice-president of the ruling party. Verdicts in these cases were adopted in 2014 and 2016 respectively.

In 2017, verdicts were adopted for four state officials: Nebojša Obradović, CEO of the Railway Directorate, Željko Stamatović, Montenegro's consul in New York, Goran Vrbica, President of the Basic Court in Cetinje, and Nebojša Marković, judge of that court.

In 2018, there were no final verdicts for state-level officials.

What was the number of convictions?

In the past five years, the State Prosecutor's Office failed to prove more than half of the criminal offenses of corruption for which the accused were charged, instead, the acquittals or dismissals of final verdicts were passed.

This suggests that the Special State Prosecutor's Office is ineffective in prosecuting corruption.

Chart 2: Types of verdicts (2013-2018, by case)

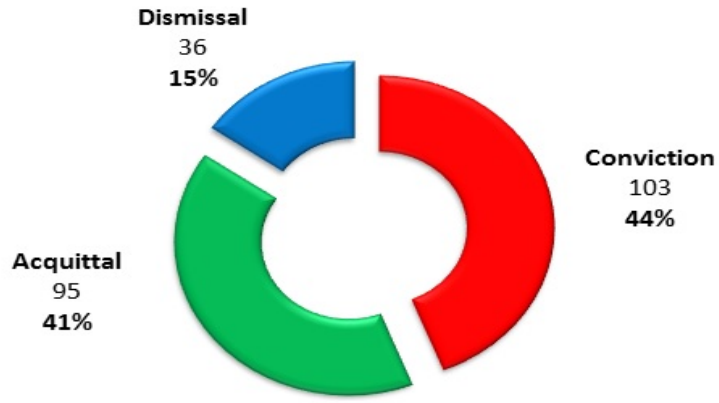
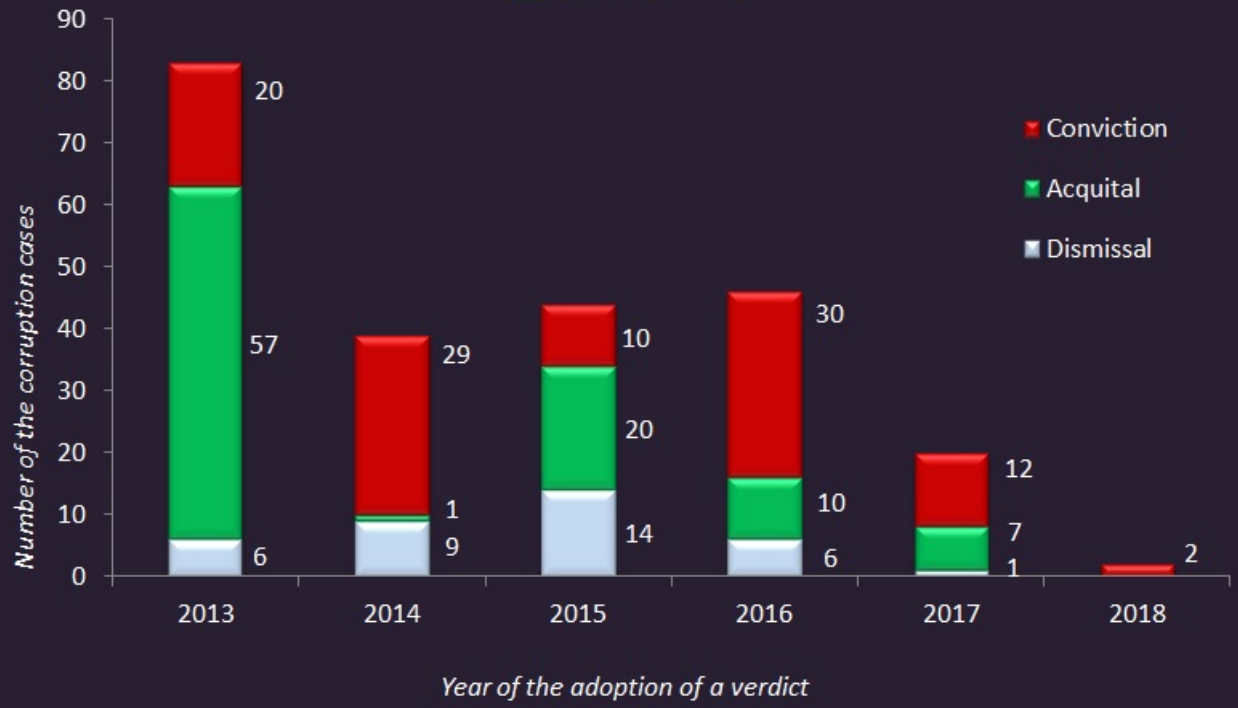


Chart 3: Types of verdicts (by year, by case)



While the largest number of acquittals was passed in 2013, data changed dramatically in 2014 and the convictions prevailed. In the following 2015, there were two times less convictions than the acquittals, while the number of dismissals increases.

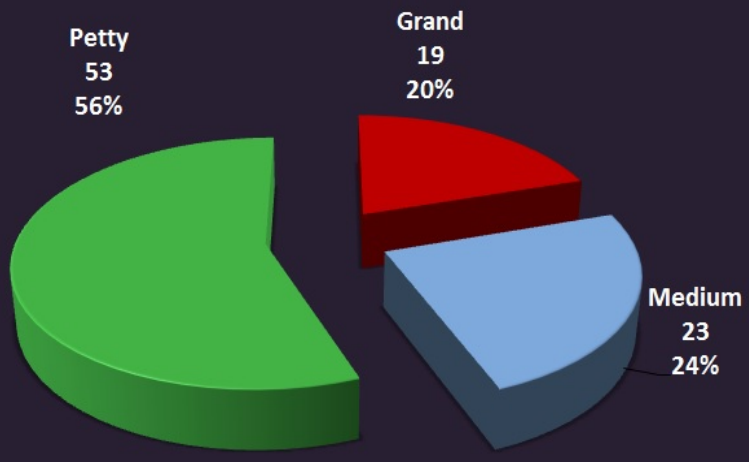
Over 60% of verdicts adopted in 2016 were convictions. In 2017, a significantly smaller number of verdicts were adopted, but also around 60% of convictions, while each third was acquittal. Finally, in 2018, only two final verdicts were issued, both convictions.

What is the number of convictions for grand corruption?

More than half of the convictions refer to petty corruption. Every fourth conviction is for the middle one, and only one fifth is for grand corruption. In fact, there are only two major cases, the first one related to Svetozar Marović and his associates in the so-called "Budva Affair", and the second one concerns the proceedings against the former Mayor of Bar, Žarko Pavićević and associates.

Therefore, senior officials are rarely prosecuted for corruption and are rarely convicted even when the proceedings are launched.

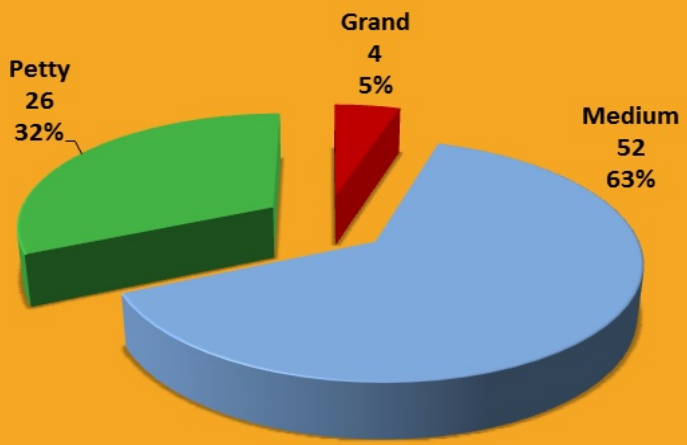
Chart 4: CONVICTIONS
(2013-2018, by person)



The majority of acquittals are related to medium corruption.

Every third refers to petty corruption, while the least number of acquittals is in the area of grand corruption, which is expected, given that there are least proceedings for grand corruption.

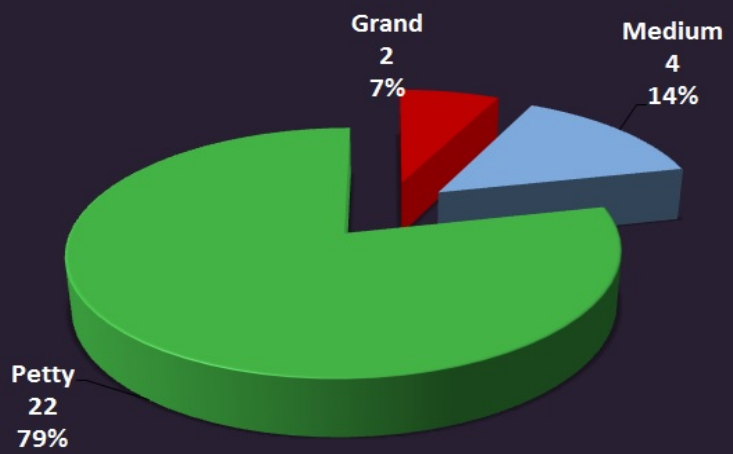
Chart 5: ACQUITTALS
(2013-2018, by person)



Almost 80% of the dismissals are related to cases of petty corruption. In most cases, such verdicts were made because the prosecutors decided to give up the prosecution during the course of the proceedings, which shows that the prosecution is inefficient and that it often cannot prove even petty corruption in court.

Large number of dismissals for petty corruption indicates that the prosecution, through unsuccessful processing and prosecution of petty corruption, causes significant costs of proceedings at the expense of budgetary funds.

Chart 6: DISMISSALS
(2013-2018, by person)

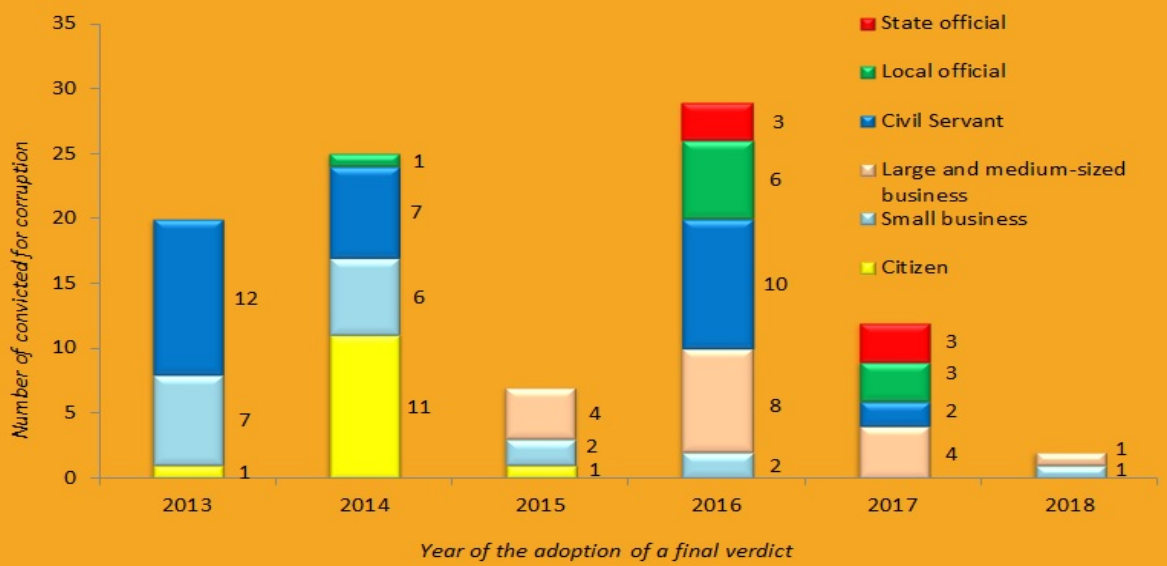


How many public officials have been convicted and to what were the penalties?

In the last five years, six convictions were adopted for five state officials. Svetozar Marović, for whom a warrant was issued, was sentenced to a total of three years and ten months of imprisonment in two cases, Đorđe Pinjatić, who served his sentence, was sentenced to one year, Nebojša Obradović was sentenced to a suspended sentence of three months in the case of "Ramada". The President and Judge of the Cetinje Court were sentenced to a year and a half and a year of imprisonment respectively.

The majority of those convicted of corruption are among civil servants. In the past five years, twice as many citizens were convicted of corruption compared to the state officials. Citizens were also more convicted of corruption than the local officials.

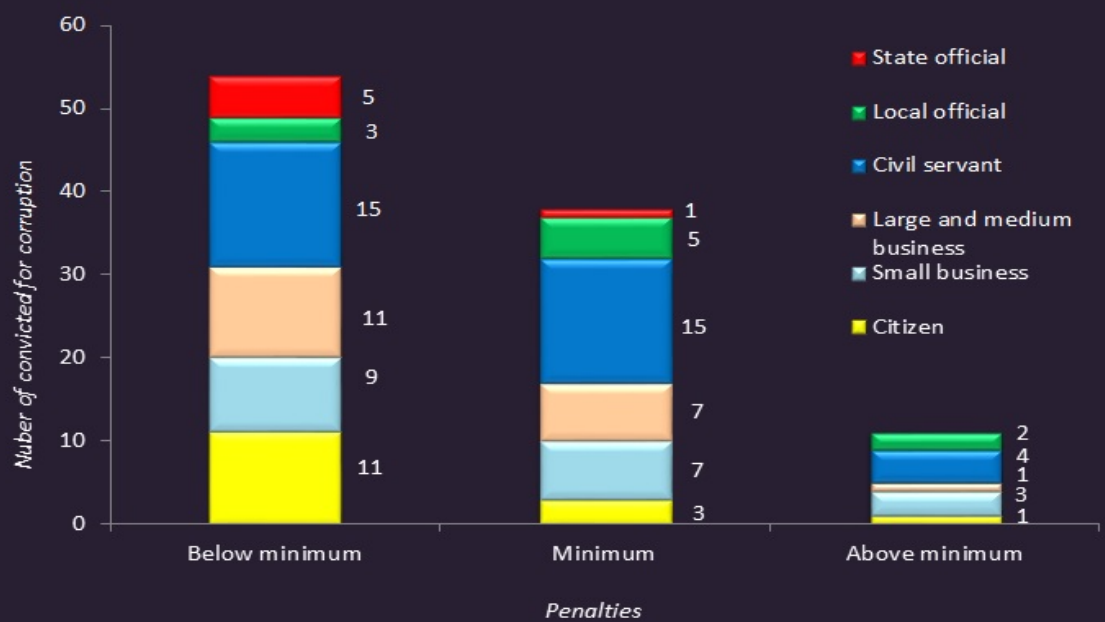
Chart 7: Convictions according to the structure of convicted persons (by year, by person)



The penal policy of courts for corruption is incomprehensibly and unacceptably mild. Courts have a particularly mild attitude towards state officials convicted of corruption. More than half of the sentences imposed for corruption are below the statutory minimum. The sentences below the minimum, together with the minimum sentences, account for as much as 90% of the total sentences for corruption.

Courts imposed minimum or penalties below the statutory minimum to all state officials convicted of corruption. Only in one case Svetozar Marović was sentenced to a minimum sentence, while in all other proceedings the sentences are below the minimum.

***Chart 8:* Penalties according to the structure of convicted persons (2013 – 2018, by case)**

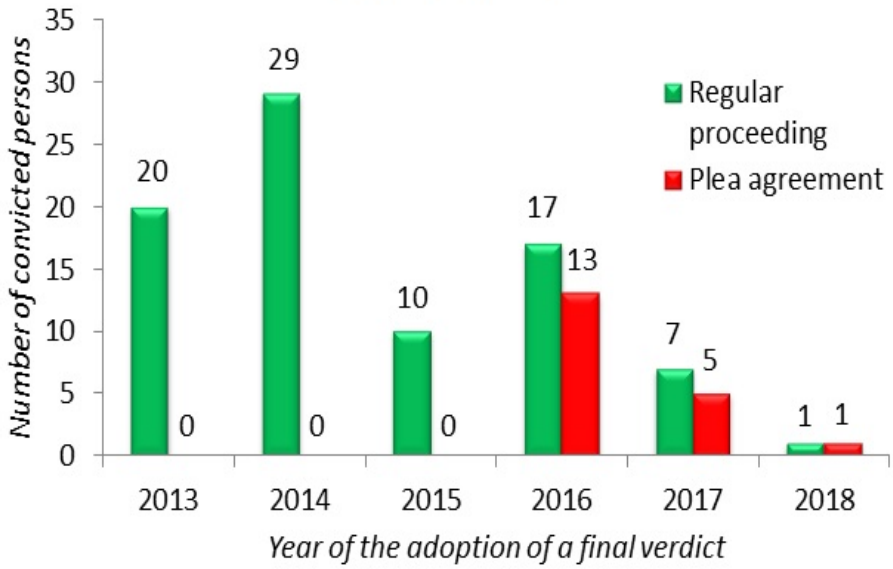


Who and how often made guilty plea agreements?

Since the signing of an agreement on the most serious crimes of corruption was established in mid-2015, a significant number of corruption verdicts have been made precisely on the basis of the agreement.

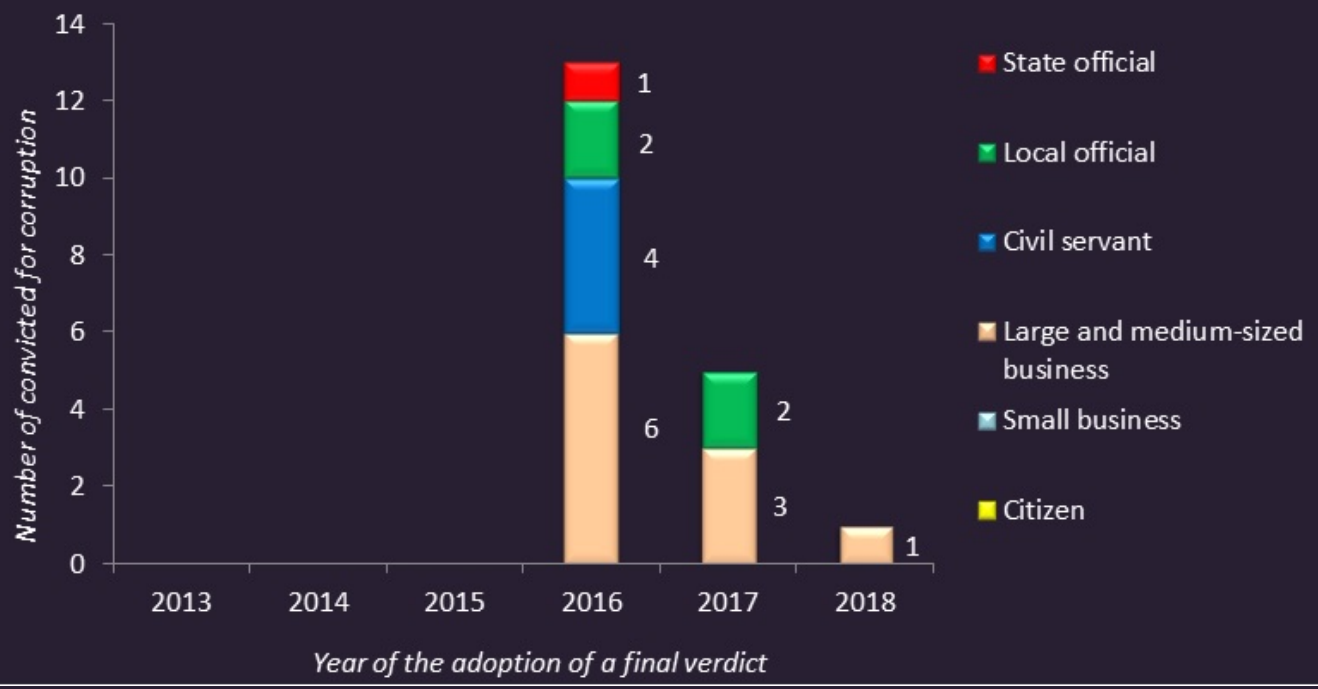
Although the prosecutor's office even before 2015 had the opportunity to conclude a plea agreement with defendants for corruption offenses for which a sentence of imprisonment of up to 10 years was prescribed, no such agreement was concluded and no conviction was adopted in this way.

Chart 9: Convictions in regular proceedings and under plea agreements (by year, by case)



The plea agreements were most often signed by representatives of large and medium-sized businesses, as well as local officials. Agreements with civil servants were signed only during 2016, and in no case the prosecution concluded an agreement with a small business representative or citizen.

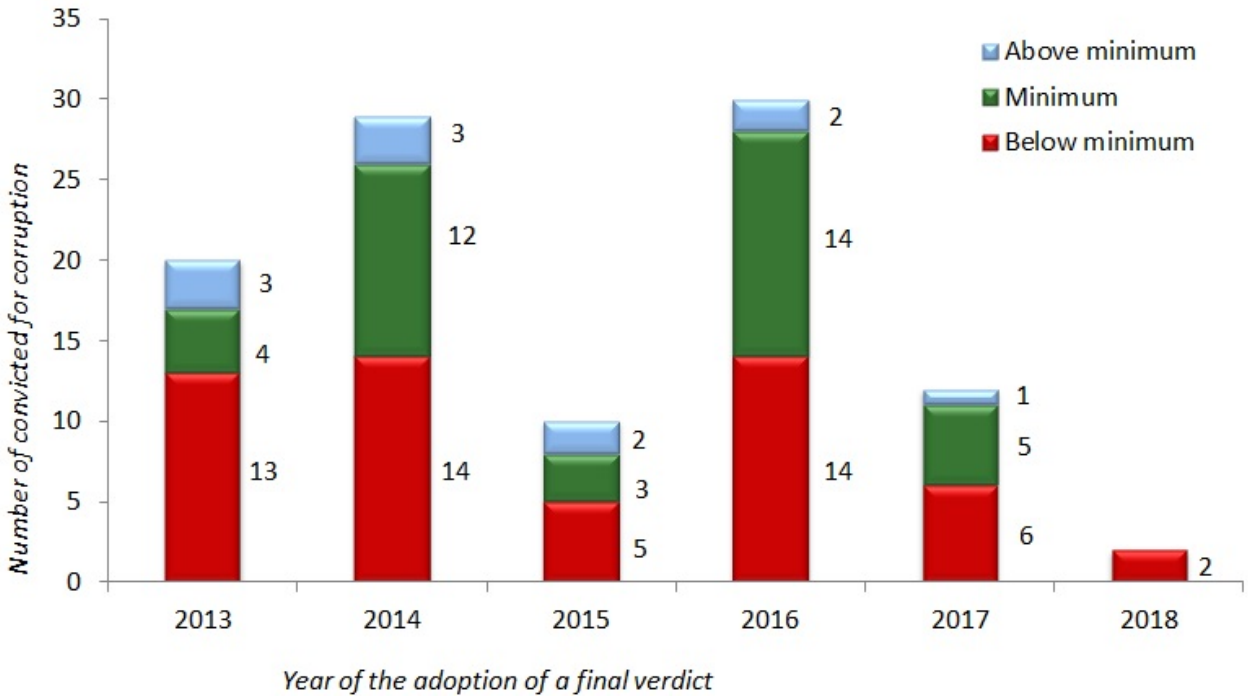
Chart 10: **Agreements according to the structure of convicted persons (by year, by case)**



What are the sentences for (non) recognition of corruption?

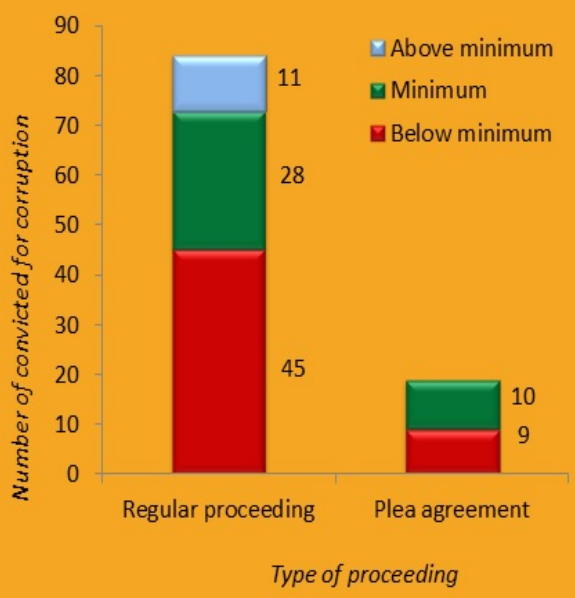
Year after year, the courts persist with a very mild penal policy, and most of the sentences are below the minimum prescribed by the law. Only in every 10th conviction the courts pronounced penalties for corruption above the legal minimum.

Chart 11: Penal policy (by year, by case)



Already mild penal policy of courts for corruption offenses is further mitigated by introducing the possibility of plea agreements for the most serious crimes of corruption.

Chart 12: Penal policy according to the type of proceeding (2013 – 2018, by case)



II

DISCIPLINARY LIABILITY

JUDGES

2

Disciplinary proceedings in three years since the adoption of the new law

1

Judge fined since the adoption of the new law

Presidents of courts do not exercise regular control over the work of judges and do not take timely measures to determine the disciplinary liability of the judges. Disciplinary proceedings are initiated selectively, which casts doubt on the real grounds for initiating proceedings.

Since the adoption of the new law and establishing of the isciplinary Prosecutor and the Disciplinary Council, the number of disciplinary proceedings has been significantly reduced, and in three years, only two decisions have been made.

Previously, proceedings were conducted by the Disciplinary Commission, which did not treat the judges equally and thus introduced legal uncertainty, while its decisions were incomprehensible and did not contain valid explanations.

Legal Framework

New Law on Judicial Council brought a number of positive changes, but did not accept the recommendation of the Venice Commission to provide the parity of members who are judges and those who are not within the Disciplinary Commission

By passing the new Law on Judicial Council and Judges, in March 2015 (2), a disciplinary prosecutor was established to conduct investigations and represent an indictment in disciplinary proceedings (3). This decision was supposed to contribute to more professional treatment and equalization of practice in initiation of disciplinary proceedings.

This Law contains more detailed disciplinary offenses of the judge and they are now divided into minor, severe and the most severe disciplinary offenses (4).

The procedure of establishing disciplinary liability for minor and severe disciplinary offenses shall be conducted by the disciplinary panel, consisting of two members from among the judges and one member from among the eminent lawyers, who shall be the chairman of the disciplinary panel (5). Thus, the new law disregarded the recommendation of the Venice Commission from 2011 to ensure that the Disciplinary Commission provides a parity of members who are judges and those who are not.The procedure of establishing disciplinary liability for the most severe disciplinary offenses shall be conducted by the Judicial Council(6).

A positive change in the new law is that among the authorized proposers for filing a motion for establishing disciplinary liability (7) there is also the Commission for Monitoring the Implementation of the Code of Ethics of Judges (8). Thus, the Judicial Council, as the body that supervises the work of the courts and judges, is now in a position to file a motion for establishing disciplinary liability of a judge through this Commission, which was not possible before.

Also, a positive novelty is that the General Session of the Supreme Court is prescribed as a proposer for establishing disciplinary liability of the President of the Supreme Court (9), because under earlier regulations such procedure could not have been initiated because there was no authorized proposer.

However, it is illogical and unacceptable that the Judicial Council, which should also supervise the work of the President of the Supreme Court, has no authority to initiate disciplinary proceedings against the President of the Supreme Court. This is especially because it is unrealistic to expect that in the judiciary which has been autocratically administered for years, the General Session of the Supreme Court made up of judges whose superior is the President of the Supreme Court would initiate disciplinary proceedings against their superior.

Legal Framework

Legal descriptions of some offenses are too vague and allow arbitrary interpretation by an authorized proposer for initiating a disciplinary proceeding, by the Disciplinary Prosecutor or the Disciplinary Council

Thus, the formulation that a disciplinary offense exists if a jugdge “fails, without justified reason, to assume cases for work in the order in which they are received...” allows arbitrary and unequal treatment and punishment of judges. Bodies that initiate and conduct disciplinary proceedings are left to assess the justified reasons. Assuming cases for work is prescribed by other laws and regulations, so it is unclear what are the reasons that would justify not assuming cases for work as prescribed.

In the same way, severe offenses are prescribed if a judge fails, without justified reason, to schedule trials or hearings, or delays the proceedings or does not assume the case for work without justified reason, or exceeds, without justified reason, the triple statutory deadline for making decisions in at least three cases, or fails, without justified reason, to respect the programme for resolving backlog of cases or does not act upon the decision under a control request. Here it is also unclear what the justified reasons for those failures are which also allows arbitrary and unequal treatment and punishment of judges. Therefore, a large number of disciplinary offenses in its description have formulations that allow the arbitrary and unequal treatment and punishment of judges in practice.

Also, formulation of a severe disciplinary offense committed by a judge if he/she exceeds, without justified reason, the triple statutory deadline for making decisions in at least three cases (10) does not meet the requirement of elementary precision of the norm to avoid arbitrariness in its implementation, while also allows violation of procedural laws that judges must abide.

Apart from leaving the possibility to asses justified reasons for offense of deadlines for making a decision case-by-case, it is incomprehensible for what reason the legislator has estimated that disciplinary responsibility requires a triple exceeding in at least three cases.Thus, in practice, it is possible for the Disciplinary Prosecutor or the Disciplinary Council to arbitrarily determine that, for example, a judge only in one of the three cases in which he/she exceed triple statutory deadline had justified reasons for this, and could not be held accountable for this offense, even though he/she exceeded the triple deadline in two cases without justification. Such solution is particularly controversial since until its adoption, in most cases, the disciplinary procedure was initiated precisely because of this offense.

Previous Legal Framework

Until March 2015, the old Law on Judicial Council was in force, in which disciplinary proceedings against judges were significantly differently prescribed.

Until March 20, 2015, the Law on the Judicial Council (11) was in force, which stipulated that a judge will be held disciplinary liable if he/she performs a judicial office in a negligent manner or if he/she harms the reputation of the judicial office in cases prescribed by law. The same law prescribed that the president of the court will be held disciplinary liable if he/she performs the function of the president of the court in a negligent manner or if he/she harms the reputation of the president of the court (12).

Other regulation, the Law on Courts, specified what is considered exercising of judicial office in a negligent manner and the harming of reputation of judicial office by a judge and the president of the court, by unconscientious and unprofessional performing of judicial office of a judge and the president of the court (13).

Authorized proposers for initiating disciplinary proceedings were only the president of the court, the president of the higher-level court and the president of the Supreme Court. Thus, it was not legally possible to initiate disciplinary proceedings against the President of the Supreme Court because there was no authorized proposer for that. Also, the Judicial Council could not file a motion for determing of disciplinary liability of any judge, although it is the body that supervises their work and although, by the nature of its work, through a series of complaints submitted to the Judicial Council, it is logical that the Judicial Council can most often come to the knowledge that a judge has committed a disciplinary offense.

The procedure for determining disciplinary liability of the judges was carried out by the Disciplinary Commission consisting of the president appointed from the ranks of the members of the Judicial Council who are not judges, and two members from the rank of judges who are not members of the Judicial Council, who have at least 15 years of work experience. This decision did not adop the Venice Commission's recommendation from 2011 that the Disciplinary Commission be provided a parity of members who are judges and those who are not (15).

Implementation of the law

Since the entry into force of the new Law,
two disciplinary proceedings have been conducted,
and only one judge has been fined for untimely acting.

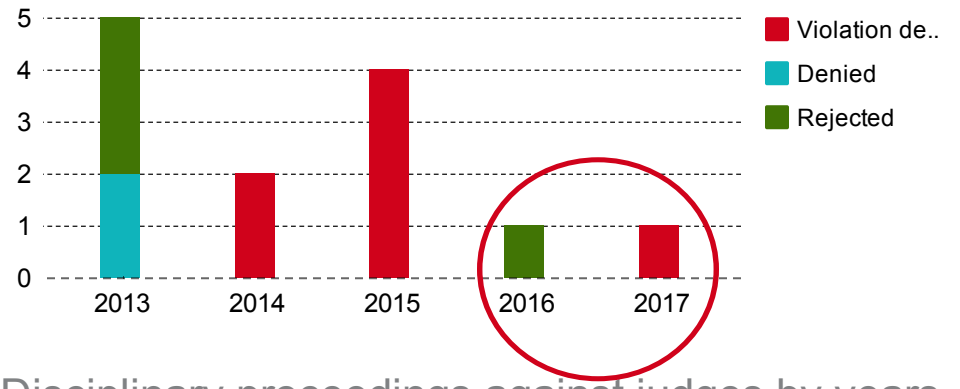
Following the adoption of the new Law on the Judicial Council and Judges, the Disciplinary Council dealt with only two cases (16).

Thus, in 2016, only one decision of the Disciplinary Council (17) was adopted, rejecting the proposal of the president of the court for determining the disciplinary liability of the judge and the case files were submitted to the Commission for the Code of Ethics for further proceedings. The decision states that the Disciplinary Council accepted the proposal of the Disciplinary Prosecutor to reject the motion because it was filed for an action that was not prescribed as a disciplinary offense and was therefore submitted to the Commission for the Code of Ethics of Judges.

This decision of the Disciplinary Council regarding explanation and the reasons for its adoption represents a step backwards in relation to the previous practice of the Disciplinary Commission. Namely, the Disciplinary Council does not give explanation and reasons for accepting the position of the prosecutor, it does not state even with what offense the judge was being charged and for what reason it was considered not to be a disciplinary offense but a possible violation of the Code.

In 2017, the Disciplinary Council issued a decision (18), which adopted the indictment proposal of the Disciplinary Prosecutor, and the judge was fined by a 20% reduction in salary for a period of three months for an offense of exceeding of legal deadlines for making a decision in several cases. Presentation of evidence was not enforced in this case because the judge fully admitted committing the offense.

There are no decisions for 2018 at the website of the Judicial Council.



Disciplinary proceedings against judges by years

Reports on the work of courts show that in practice there are many more disciplinary offenses that are not prosecuted.

Same conclusion stems from the Report on the work of courts for 2016 (20) in which the courts completed 90,537 cases, of which in 0,68% of cases the decisions were made after the legal deadline was exceeded.

It also means that in over 600 cases, legal deadline for making a decision was exceeded.

However, during this year, no disciplinary procedure was initiated for this offense.

In the Report on the work of courts for 2017 (19), it is stated that courts completed 91,400 cases in that year, out of which in 0,69% of cases the decisions were made after the legal deadline was exceeded.

This means that in over 600 cases, legal deadline for making a decision was exceeded. Only one disciplinary proceedings was initiated this year for this offense due to exceeding the legal deadline in 10 cases.

These data indicate that in practice there are considerably more violations regarding untimely conduct of judges, but no disciplinary proceedings are initiated.

Data show that in over 600 cases per year, legal deadline for making a decision was exceeded.

Previous practice

In the period from 2013 until the entry into force of the new Law on Judicial Council and Judges, the Disciplinary Commission adopted 11 decisions, five decisions in 2013, two decisions in 2014 and four decisions in the first three months of 2015.

Out of this, in six decisions a proposal for determining disciplinary liability was adopted, and a disciplinary sanction was imposed on the judge, in two decisions the proposal for determining disciplinary liability was rejected as unfounded and in three decisions the proposal for determining of disciplinary liability was rejected as untimely.

Most of the proceedings, as much as nine, were initiated due to disciplinary offense of exceeding of the statutory deadlines for making a decision.

Case studies:
Untimely initiation of disciplinary proceedings

The practice of the Disciplinary Commission shows that no judges were held liable for violation of the legally prescribed deadlines precisely because the court presidents violated the legally prescribed deadline for initiating disciplinary proceedings.

Subsequently, the Disciplinary Commission changed the practice and ceased to determine whether the deadlines for initiating proceedings expired, and therefore acted unequally in the same legal situations.

Thus, in the case Dp.no.1 / 13, at the hearing before the Disciplinary Commission of the Judicial Council, the court president declared that during the entire year, he controls the timeliness of the decision making process and warns the judge for each specific case in which the legal deadline is exceeded. However, the President of the Court did not submit a proposal for determining disciplinary liability up until the legal deadline for filing it exceeded. Thus, the statute of limitation for initiating the disciplinary liability proceedings occurred. In this way, the judge who violated the legal deadlines could not be held liable because the president of the court violated the legal deadline for initiating disciplinary proceedings.

Also,in the case Dp.br.5 / 13, the President of the Court filed a motion for determining the disciplinary liability of the judge for delays in making decisions in as many as 59 criminal cases, but for each of these cases he exceeded the legal deadline for initiating disciplinary proceedings, so his proposal was rejected. Thus, in this case as well, the judge could not be held liable for violating the legal deadlines precisely because the court president violated the legal deadline for initiating the procedure.

Furthermore, in the case Dp.no.4 / 13, the proposal for determining of disciplinary liability was also dismissed as untimely. This proposal was submitted by the court president due to the judge's delay in making decisions in 44 criminal cases, but for each of these cases, the president of the court exceeded the legal deadline for initiating disciplinary proceedings. Therefore, in this case, the judge could not be held liable for violation of the legal deadlines precisely because the court president violated the legal deadline for the initiation of proceedings.

In the same way, the president of the court in the case Dp.no.2 / 13 acted for the same disciplinary violation for exceeding the legal deadline for making the decision. In this case, the court president filed a motion for establishing disciplinary liability significantly after the legal deadline for the initiation of disciplinary proceedings and the judge could not be held liable.

In all these cases, the presidents of courts made a statement directly at the hearing before the Disciplinary Commission about the time when they learned about the exceeding of the legal deadlines for making decisions by the judges, but the proposals for determining disciplinary liability were submitted after the expiry of the legal deadline of three months from learning of the disciplinary offense (21).

Unlike the aforementioned decisions, the Disciplinary Commission in decisions from 2014 did not deal with determining the fact when the court president learned about the reasons for initiating disciplinary proceedings and possible violation of the legal deadline for initiating disciplinary proceedings. Thus, the judges on whose liability was decided in 2014 were unequally treated for the same offenses compared to the judges on whose liability was decided in other years.

Namely, in the first decision of 2014 (Dp.no.1 / 14), the Disciplinary Commission changed the practice in disciplinary proceedings and did not ask the president of the court to make a statement on the time when he/she learned about the exceeding of legal deadlines by the judge, nor was this fact determined in other way, thus adopted its proposal from April 07, 2014, in which the violations committed during 2013 were listed and the judge was punished by a 20% reduction in salary for a period of two months. In this case, the Disciplinary Commission accepted the act of the administrator of the court registry from April 01, 2014, in which it is only stated in which cases during 2013 the judge failed to make timely decisions, but it is unknown when the court president learned of these failures.

Case study:
Selective initiating of disciplinary proceedings

This case study shows that judges are facing disciplinary liability selectively and that the court president controls the work and proposes the punishment of one judge, while tolerating the same actions of other judges. Such practice brings into question the real reasons for initiating disciplinary proceedings. Also, the Disciplinary Commission acts differently in same legal situations on which depends the final outcome of the proceedings, and additionally introduces legal uncertainty among the judges.

The fact the Disciplinary Commission does not act equally and thus introduces legal uncertainty among the judges and raises doubts that the judges are held disciplinary liable selectively, is supppрted by the decision in case Dp.no.3 / 14 on the proposal for determining disciplinary liability submitted by the President of the Commercial Court in Podgorica.This proposal was submitted on September 26, 2014 and then specified on November 03, 2014. It is the only case in which one of the court presidents controlled the compliance with the legal deadlines for scheduling hearings in certain cases as well as timeliness of taking actions by a judge in the ongoing cases and for that reason required the liability of the judge.

It is also the only case where the president of the court controlled the judge's cases in the past almost four years. However, in this case, the Disciplinary Commission did not determine the time when the court president learned of the reasons for initiating disciplinary proceedings, i.e. it did not determine whether his proposal was timely. With this decision of the Disciplinary Commission, the judge was fined by a 20% reduction in salary for a period of three months.

The decision of the commission is quite incomprehensible, because in its anouncement it is stated that the performing of the judicial office in a negligent manner was established in 73 cases, and then there are 97 cases listed in which there is a performing of the judicial office in a negligent manner. The decision included 23 written evidence, which were read at the hearing in addition to 97 cases in which the judge acted. However, none of this evidence is evaluated in the reasoning individually or in connection with other evidence.

Also, the reasoning states that the reports on the work of the judges of the Commercial Court for 2011, 2012, 2013 and the first half of 2014 were read, which means that the president of the court had to know about the exceeding of deadlines because he was familiar with the reports on the work of judges (from this the statute of limitation it is exactly determined). It thus appears that a judge may perform a judicial office in a negligent manner for a number of years and that the liability for such violation depends on the arbitrary assessment of the president of the court whether and when he/she will initiate disciplinary proceedings.

According to the Report on the Work of the Commercial Court for 2013 (22), published on the court's website (and provided as evidence in this disciplinary proceeding), this court had at the end of 2013 as many as 3473 unresolved cases. According to the same report, this court had 586 pending cases originating from 2009 onwards. Also, 620 unresolved cases were found to last more than one year. Furthermore, the same report states that in 183 cases the decision was not passed within the legal deadline, of which three cases are of the judge fined in the proceedings Dp.no.3 /14.

According to the Report on the Work of the Commercial Court for 2014 (23), also published on the court's website (and provided as evidence in this disciplinary proceedings), at the end of 2014, that court had 2354 unresolved cases, of which 463 unresolved cases originating from 2010 onwards. Also, in 695 unresolved cases, it was found that they lasted more than one year, and that in 171 cases the decision was not passed within the legal deadline, of which 13 cases are of the judge fined in the proceedings Dp.no.3 / 14.

However, the aforementioned case is the only disciplinary proceeding that has been brought against any judge of the Commercial Court for exceeding legal deadlines and timeliness in work, and the only case where a judge of that court was held disciplinary liable in the period from 2013 onwards.

Also worth noting is that untimely handling and violation of legally prescribed deadlines constitute a violation of the Code of Ethics of Judges. Thus, in the same 2013, the Commission of the Judicial Council for the Code of Ethics of Judges, for the first time in its practice, found that a judge violated the Code of Ethics by violating the legally prescribed time limits and acting in an untimely manner in the case.

He was also the judge of the Commercial Court, and it remains unclear when and why some judge is held disciplinary liable for untimely conduct, while for the same action by another judge, only a violation of the Code is established. This practice causes legal insecurity, especially bearing in mind the fact that serious sanctions can be imposed for disciplinary offenses, in contrast to the case of violation of the Code.

DISCIPLINARY LIABILITY

PROSECUTORS

1

Disciplinary proceeding initiated in four years

2

Indicments rejected in four years

From the report on the work of the State Prosecutor's Office, it can be concluded that in the period from 2014 until the end of 2017, only one state prosecutor was held disciplinary liable, and that only two disciplinary proceedings were conducted in which the indictments were rejected as unfounded.

A detailed assessment of the implementation of the law in disciplinary proceeding of state prosecutors cannot be given, since the Prosecutorial Council declares these data secrets, referring to the protection of the right to privacy of prosecutors.

Bearing in mind numerous failures of the State Prosecutor's Office in significant cases related to corruption and organized crime, the practice of hiding data on the responsibility of prosecutors does not contribute to a more professional and accountable work of the prosecution, andconsequently, to the public's confidence in their work.

Legal Framework

Amendments to the Law established a Disciplinary Prosecutor and a more detailed disciplinary proceeding was prescribed, but the Venice Commission's recommendation from 2011 were not adopted in order to ensure the parity of members of the Disciplinary Commission to those who are prosecutors and those who are not.

With the adoption of the new Law on the State Prosecutor's Office in March 2015 (24), a Disciplinary Prosecutor who shall conduct an investigation and represent the indictment (25) was established, disciplinary violations of state prosecutors have been prescribed in more detail, and are now divided into minor, severe and the most severe disciplinary offenses (26).

The procedure for the establishment of disciplinary liability for minor and severe disciplinary offenses shall be conducted by the Disciplinary Commission consisting 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 (27). Therefore, the new law also disregarded the recommendation of the Venice Commission from 2011 to ensure that the Disciplinary Commission provides a parity of members who are prosecutors and those who are not. Disciplinary proceedings for the most severe disciplinary offenses are conducted by the Prosecutorial Council (28).

Apositive change in the new law is also that the Commission for Monitoring the Application of the Code of Ethics of State Prosecutors (29) is now among the authorized proposers for initiation of disciplinary proceedings. Thus, the Prosecutorial Council, as the body that oversees the work of prosecutors, is now able to submit a proposal for determining the disciplinary liability of a prosecutor through this Commission, which was not possible before.

The initiative for dismissal of the Supreme Public Prosecutor may be submitted to the Prosecutorial Council by an extended session of the Supreme Public Prosecutor's Office, the Minister of Justice or 25 Members of Parliament. This procedure applies the provisions of the law regulating the procedure on the proposal for determining the disciplinary liability of state prosecutors for the most serious disciplinary offenses and on the basis of the conducted procedure, the Prosecutorial Council determines a reasoned proposal for dismissal of the Supreme State Prosecutor and submits it to the Parliament of Montenegro (30). The Supreme Public Prosecutor may be removed from office because of the irresponsible and unprofessional performance of office (31).

Legal Framework

Legal descriptions of some offenses are too vague and allow arbitrary interpretation by an authorized proposer for initiating a disciplinary procedure, by the Disciplinary Prosecutor or the Disciplinary Panel, and thus unequal treatment of prosecutors.

Thus, the formulation that a disciplinary offense exists if a prosecutor "fails, without justified reason, to assume cases for work in the order in which they are received..." allows arbitrary and unequal treatment and punishment of prosecutors. Bodies that initiate and conduct disciplinary proceedings are left to assess the justified reasons. Assuming cases for work is prescribed by other laws and regulations, so it is unclear what are the reasons that would justify not assuming cases for work as prescribed.

In the same way, severe offenses are prescribed if a prosecutor fails, without justified reason, 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. Here it is also unclear what are the justified reasons for those failures and violation of legal deadlines, which cause such serious consequences that determine the outcome of a procedure, which also allows arbitrary and unequal treatment and punishment of prosecutors.

Even with the reasons for dismissal, the formulation is used that the state prosecutor will be dismissed only if he/she "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". This provision is additionally incomprehensible and additionally allows arbitrary action, since it is stated even twice that there may be reasons why a prosecutor should not be dismissed, first time with phrase "without any justifiable reason" and finally with a formulation if the prosecutor "provides some valid reasons" for not having achieved the results. What are justified and what are valid reasons remains to be determined arbitrarily by those who decide on the liability of the prosecutor.

Also, if there are no justified reasons for not achieving the results of the work, it is illogical that there are valid reasons that the Prosecutor could provide. This formulation allows an unacceptable level of arbitrariness in decision making, given that there is room for some of the prosecutors not to be held liable even if there are no justified reasons for not achieving the results by assessing that the prosecutor has provided "valid reasons" for this.

Therefore, a large number of disciplinary violations in its description have formulations that allow arbitrary and unequal treatment and punishment of prosecutors in practice. Such norms do not meet the requirement of elementary precision to avoid arbitrariness in its implementation, but also allow violations of laws that prosecutors must comply with, as well as arbitrary assessment when and to whom breaking of the law is justified.

Previous legal framework

Until March 20, 2015, the Law on the State Prosecutor's Office was into force (32) prescribing that the Supreme State Prosecutor, Head of the State Prosecutor's Office or a State Prosecutor shall be subject to disciplinary proceedings if he/she exercises his/her office in a negligent manner or if he/she harms the reputation of the prosecutorial office. (33). The same law specified what is considered as exercising negligently the prosecutorial office and harming the reputation of the prosecutorial office by the Head of the State Prosecutor's Office or a State Prosecutor (34).

The proposal for establishing disciplinary liability was submitted to the Prosecutorial Council. Namely, for the Supreme State Prosecutor the proposal was submitted by the session of the Supreme State Prosecutor's Office. For the Head of the State Prosecutor's Office the proposal was submitted by the Supreme State Prosecutor and the head of the prosecutor's office of a higher level, while the prosecutor's motion was submitted by the head of the prosecutor's office in which they perform work.

As in the case of judges where the Judicial Council before March 2015 could not file a motion for determining disciplinary liability of any judge, the Prosecutorial Council could not initiate the disciplinary proceedings for determing prosecutors' liability even though it is the body that supervises their work and although it is by nature of work, through a series of complaints submitted to the Prosecutorial Council, it is logical that the Prosecutorial Council can most often come to the knowledge that a prosecutor has committed a disciplinary offense.

The procedure for determining the disciplinary liability of judges was carried out by the Disciplinary Council consisting of a president appointed from the ranks of members of the Prosecutorial Council who are not prosecutors and two members of the State Prosecutor's Office (35), which was not in accordance with the recommendation of the Venice Commission (36).

Implementation of the law

Due to inadequate non-transparency of the Prosecutorial Council and the State Prosecutor's Office, a detailed assessment of the implementation of the law in proceedings on disciplinary liability of state prosecutors cannot be given because these data were declared secret.

After April 2013, the Prosecutorial Council ceased to publish decisions on the disciplinary liability of prosecutors on its website. In November 2015, the Prosecutorial Council adopted the new Rules of Procedure (37) applicable from the beginning of 2016, which for the first time prescribed that these decisions are not published (38). Thus, the Prosecutorial Council first arbitrarily decided to stop publishing these decisions, and then, two and a half years later, also arbitrarily prescribed by the Rules of Procedure that these decisions are not to be published.

In addition, in practice the Prosecutorial Council declares this decisions classified information explaining that in this way the personal data of the prosecutors are protected and that their disclosure would violate the right of privacy of state prosecutors.

Thus, the Prosecutorial Council rejected the request of MANS for submitting of copies of all decisions of the Disciplinary Council in the period from the beginning of 2013 until the end of 2016 (39). In the reasoning of the decision, the Prosecutorial Council refers to a legal provision that provides that a government authority may restrict access to information if it is in the interest of protecting privacy from the disclosure of information provided by the law governing the protection of personal data, other than data related to: public officials in connection with the exercise of public office, as well as the revenues, property and conflict of interests of those persons and their relatives, covered by the law governing the prevention of conflict of interest (40).

NGO MANS appealed against this decision of the Prosecutorial Council to the Agency for Protection of Personal Data and Free Access to Information. Although the legal deadline for reaching a decision by the ruling is 15 days (41), the Agency has not yet decided on the appeal. Therefore, in accordance with the law, an urgent appeal was submitted to the Agency, after which the NGO MANS will file a complaint with the Administrative Court in case it fails to reach a decision on the appeal, or the so-called silence of the administration.

State prosecutors are public officials and decisions on their disciplinary responsibility are indisputably decisions made in connection with the exercise of their public function, so it is incomprehensible and absurd that the Prosecutorial Council protects the privacy of state prosecutors on the basis of a legal provision that precludes the protection of the privacy of public officials in connection with the exercise of public office. The same explanation was also given by the Prosecution Council in a decision rejecting the submission of the decisions of the Disciplinary Panel issued from January 1 to March 31, 2017 (42).

Implementation of the law

In the last four years, only one prosecutor was held liable in disciplinary proceedings. The practice shows that in the prosecutorial organization there is no system of responsibility established based on objective criteria.

From other decisions of the Prosecutorial Council adopted in 2017 at the request of NGO MANS, it is clear that the Disciplinary Council did not adopt any decision from April to the end of 2017, as they state that the Prosecutorial Council does not have the requested information in any form for the specified period (43).

However, from the report on the work of the State Prosecutor's Office, it can be concluded that in the period from 2014 until the end of 2017, only one state prosecutor was held liable for disciplinary offense, and that only two disciplinary proceedings were conducted in which the indictments were rejected as unfounded.

Namely, in the Report on the work of the Prosecutorial Council it is stated that in 2017, the Disciplinary Panel conducted one procedure and adopted one decision against one state prosecutor by imposing a fine in the amount of 20% of the salary for a period of three months due to failure to submit of data on property and income in accordance with regulations governing the prevention of conflicts of interest (44).

During 2016, the Disciplinary Council did not conduct any proceedings, nor did it make any decision on the disciplinary liability of prosecutors (45), while in 2015 the Disciplinary Council made two decisions by which the indictments of the disciplinary prosecutor were rejected as unfounded (46). The report on the work of the State Prosecutor's Office for 2014 does not contain data on the disciplinary liability of state prosecutors, which indicates that no initiated procedures and decisions were made.

Such practice does not contribute to the impression that the work of state prosecutors is sufficiently transparent, the public has no insight into the quality of their work, including omissions or disciplinary offenses, which certainly does not contribute to a more professional and accountable work of state prosecutors. It is unacceptable and incomprehensible to hide this information from the public, especially with the fact that decisions on disciplinary liability of judges are published and submitted to the public for in insight. There is no valid reason why state rosecutors would be an exception in this regard and why other rules would apply to them in relation to judges. On the contrary, this practice further shows that in the prosecutorial organization there is no system of accountability established on objective criteria.

Annex 1

Part of the Response of the Judicial Council of November 29, 2017 - criminal offenses with elements of corruption included in the statistics of the judiciary

Number: 10 - 7216-1/17
Podgorica, November 29, 2017

Based on Article 30 and 31 Paragraph 1 of the Law on Free Access to Information ("Official Gazette of Montenegro" No.44 / 2012 and 30/17), acting on the request of the Network for Affirmation of NGO Sector - "MANS", Podgorica, no. 17/115749 of November 15, 2017, the Judicial Council of Montenegro adopts

DECISION

Access to information upon request of the Network for Affirmation of the NGO Sector - "MANS", Podgorica, No. 17/115749 of 15.11.2017 is allowed by submitting the information that the Criminal Code ("Official Gazette of the Republic of Montenegro" No. 70/2003, 13/2004, 47/2006 and "Official Gazette of Montenegro" No. 40/2008, 25/2010, 32/2011, 64/2011 - second law , 40/2013, 56/2013, 14/2015, 42/2015, 58/2015 - second law and 44/2017) is an act containing names of criminal offenses which are semi-annually submitted to the Ministry of European Affairs for the Balance Sheet for Corruption Cases, which is submitted to the European Commission and those are criminal offenses:

- *Breach of Equality in Business Operations 269, Abuse of Monopoly Position 270, Misuse of Position in Business Activity 272, Bankruptcy Fraud 274, Misuse of Authority in Business Operations 276, Passive Bribery in Business Operations 276a, Active Bribery in Business Operations 276b, Misuse of Assessment 279, Revealing and Using Stock-exchange Secrets 281, Manipulation of the securities market or of other financial institutions 281a, Misuse of Office 416, Fraud in the Conduct of Official Duty 419, Embezzlement 420, Diversion of Property 421, Trading in Influence 422, Incitement to Trading in Influence 422a, Passive Bribery 423, Active Bribery 424*

Access to Information shall be done in the required way, via e-mail by sending requested information to the indicated e-mail address spi@mans.co.me.

There were no costs of proceeding.

Reasoning

The Network for Affirmation of NGO Sector - "MANS", from Podgorica, addressed with the request no. 17/115749 of November 15, 2017, by which it requested submitting of the copies stated more closely in the request.

Acting upon the request, it was determined that the requested information - a copy of the act containing the names of criminal offenses which are semi-annually submitted to the Ministry of European Affairs for the Balance Sheet for Corruption Cases, which is submitted to the European Commission. In accordance with the aforementioned, the conditions for the implementation of the Article 6 of the Law on Free Access to Information have been met, which is why it was decided as in the enacting clause of the decision, and pursuant to Article 30, Paragraph 2 of the same law.

There were no costs of proceeding.

On the basis of the aforementioned, it was decided as in the enacting clause.

Annex 2

Part of the Response of the Supreme State Prosecutor of November 29, 2017 - criminal offenses with elements of corruption included in the statistics of the State Prosecutor's Office

In relation to this, we provide the information to the applicant:

- *The State Prosecutor's Office, twice a year, in the framework of the repression of corruption, updates the table of the Balance of Results. The table shows cases for corrupt criminal offenses, which are: Misuse of Position in Business Activity from the Article 272 of the CC, Causing Bankruptcy from the Ar. 273 of the CC, Misuse of Authority in Business Operations from the Ar. 276 of the CC, Passive Bribery in Business Operations 276a of the CC, Active Bribery in Business Operations from the Ar. 276b of the CC, Misuse of Office from the Ar. 416 of the CC, Malpractice in Office from the Ar. 417 of the CC, Fraud in the Conduct of Official Duty from the Ar. 419 of the CC, Trading in Influence from the Ar. 422 of the CC, Incitement to Trading in Influence from the Ar. 422a of the CC, Passive Bribery from the Ar. 423 of the CC, Active Bribery from the Ar. 424 of the CC.*

On the basis of the aforementioned, it was decided as in the enacting clause.

***Legal remedy:** Against this decision an appeal can be made to the Agency for Protection of Personal Data and Access to Information within 15 days from the date of receipt of the decision.*

Advisor
Andrijana Ražnatović

Annex 3

List of the Judicial Council, Supreme State Prosecutor, Tripartite Commission and MANS

Number of the Criminal Code Article	Name of the criminal offense	Additional information	Tripartite Commission	Judicial Council	Supreme State Prosecutor's Office	MANS
268	Money Laundering		YES	NO	NO	YES
269	Breach of Equality in Business Operations		YES	YES	NO	YES
270	Abuse of Monopoly Position		YES	YES	NO	YES
272	Misuse of Position in Business Activity		YES	YES	YES	YES
273	Causing Bankruptcy		YES	NO	YES	YES
274	Bankruptcy Fraud		YES	YES	NO	YES
276	Misuse of Authority in Business Operations		YES	YES	YES	YES
278	Fraudulent Business Sheet		YES	NO	NO	NO
279	Misuse of Assessment		YES	YES	NO	YES
280	Revealing a Business Secret		YES	NO	NO	NO
281	Revealing and Using Stock-Exchange Secrets	Misuse of privileged information adcernacea	YES	YES	NO	YES
416	Misuse of Office		YES	YES	YES	YES
417	Malpractice in Office		YES	NO	YES	YES
419	Fraud in the Conduct of Official Duty		YES	YES	YES	YES
422	Trading in Influence		YES	YES	YES	YES
423	Passive Bribery		YES	YES	YES	YES
424	Active Bribery		YES	YES	YES	YES
425	Disclosure of Official Secret	Deleted	YES	NO	NO	NO
276a	Passive Bribery in Business Operations	Was not prescribed at the time of Tripartite Commission	NO	YES	YES	YES
276b	Active Bribery in Business Operations	Was not prescribed at the time of Tripartite Commission	NO	YES	YES	YES
422a	Soliciting to Trading in Influence	Was not prescribed at the time of Tripartite Commission	NO	YES	YES	YES
281a	Manipulation of the securities market or of other financial instruments	Was not prescribed at the time of Tripartite Commission	NO	YES	NO	YES
420	Embezzlement		NO	YES	NO	YES
421	Diversion of Property		NO	YES	NO	YES

Data sources

(1)Responses of the Judicial Council and the Supreme State Prosecutor's Office on the criminal offenses that they classify as corrupt are given in Annex 1 and Annex 2 of this report
(2)"Official Gazette of Montenegro" no. 11/15 of March 12, 2015
(3)Article112 of the Law on Judicial Council and Judges
(4)Articles 108 and 109 of the Law on Judicial Council and Judges A warning and a fine in the amount of 20% of the salary of the judge, lasting up to three months, shall be imposed for minor disciplinary offenses. A fine in the amount of 20% to 40% of the salary of the judge, lasting for a period of three to six months and a ban on promotion shall be imposed for severe disciplinary offenses for a period of two years from the enforceability of disciplinary sanctions, while dismissal shall be imposed for the most serious disciplinary offenses.
(5)Article 114 Paragraph 1 and 2 of the Law on Judicial Council and Judges
(6)Article 114 Paragraph 4 of the Law on Judicial Council and Judges
(7)In addition to the President of the Court, the President of the directly superior court and the President of the Supreme Court
(8)Article 110 Paragraph 1 of the Law on Judicial Council and Judges
(9)Article 110 Paragraph 2 of the Law on Judicial Council and Judges
(10)Article 108 Paragraph 3 Item 3 of the Law on Judicial Council and Judges
(11)"Official Gazette of Montenegro" no. 13/08, 39/11, 31/12, 46/13 and 51/13
(12)Article 50
(13)Article 33a, 33b, 33v, 33g, 33d and 33e
(14)Article 51 of the Law on Judicial Council
(15)Opinion of the Venice Commission on the Draft Amendments to the Constitution of Montenegro, the Law on Courts, the Law on the State Prosecutor's Office and he Law on Judicial Council, no. 626/2011 of June 14, 2011
(16)03.2-2304/16 and Dp.no. 1/17
(17)Number: 03.2-2304/16 of June 09, 2016
(18)Dp.no. 1/17 of July 03, 2017
(19)http://sudovi.me/podaci/sscg/dokumenta/7800.pdf
(20)http://sudovi.me/podaci/sscg/dokumenta/5136.pdf
(21)Article 58 Paragraph 1 of the then valid Law on the Judicial Council ("Official Gazette of Montenegro" no.13/2008,39/2011, 31/2012, 46/2013 and 51/2013)
(22)http://sudovi.me/podaci/pscg/dokumenta/3117.pdf
(23)http://sudovi.me/podaci/pscg/dokumenta/3118.pdf
(24) "Official Gazette of Montenegro" no. 11/15, 42/15, 80/17 and 10/18
(25) Article 112 Paragraph 1 of the Law on State Prosecutor's Office

(26)Article 108 and 109 of the Law on State Prosecutor's Office, A warning and a fine in the amount of 20% of the salary of the judge, lasting up to three months, shall be imposed for minor disciplinary offenses, a fine in the amount of 20% to 40% of the salary of the judge, lasting for a period of three to six months and a ban on promotion shall be imposed for severe disciplinary offenses, while Dismissal shall be imposed for the most serious disciplinary offenses
(27)Article 114, Paragraph 1 and 2 of the Law on State Prosecutor's Office
(28)Article 114, Paragraph 5 of the Law on State Prosecutor's Office
(29)Article 110, Paragraph 1 of the Law on State Prosecutor's Office
(30)Article 110, Paragraph 4, 6 and 7 of the Law on State Prosecutor's Office
(31)Article 110, Paragraph 5 of the Law on State Prosecutor's Office
(32)" Official Gazette of Republic of Montenegro" no. 69/03 and "Official Gazette of Montenegro" no. 40/08, 39/11 and 46/13
(33)Article 39 and 40 prescribed disciplinary measures were a warning or a salary reduction of up to 20% for a period of up to six months, and the prosecutor to whom the disciplinary measure of salary reduction was imposed, could not have been appointed to the state prosecution of a higher level before the expiration of a period of two years from the date of the adoption of final decision by which a disciplinary measure was imposed.
(34)Article 41.
(35)Article 44.
(36)Opinion of the Venice Commission on the Draft Amendments to the Constitution of Montenegro, the Law on Courts, the Law on State Prosecutor's Office and the Law on the Judicial Council, No. 626/2011 of June 14, 2011.
(37)"Official Gazette of Montenegro" no. 67/15 of December 04, 2015.
(38)Article 19, Paragraph 8.
(39)Decision number: 05-1-37-2/18 of May 23, 2018.
(40)Article 16, Paragraph 1 of the Law on Free Access to Information
(41)Article 38, Paragraph 1 of the Law on Free Access to Information prescribes that the Agencyshall make a decision upon the complaint against a decision on the request for access to information and to deliver it to the complainant within 15 working days as of the day on which the complaint is submitted.
(42)Decision number: 05-1-17-2/17 of April19, 2017
(43)Decision number: 05-1-50-2/17 of July, 03, 2017. Decision number: 05-1-79-2/17 ofOctober 09, 2017 and Decision number: 05-1-22-2/18 of January 16, 2018.
(44)http://www.tuzilastvocg.me/media/files/IZVJESTAJ%202017%20%20.pdf, page 17, The proceeding was initiated by the proposal of December 23, 2016.
(45)www.tuzilastvocg.me/media/files/Izvje%C5%A1taj%20o%20radu%20Tu%C5%BEila%C4%8Dkog%20savjeta%20i%20Dr%C5%BEavnog%20tu%C5%BEila%C5%A1tva%20za%202016.godinu.pdf, page 14
(46)http://www.tuzilastvocg.me/media/files/izvjestaj%20o%20radu%20vdt%20za%202015-compressed.pdf, page 19

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