mans

JUDICIARY AND FIGHT AGAINST CORRUPTION

BEHIND THE STATISTICS

Summary of the analysis of legal framework and final judgments for corruption (Vol.4)

This Report is funded by EU. All views expressed cannot be attributed to the EU and are the sole responsibility of the author

Publisher:

Network for Affirmation of NGO Sector - MANS

Authors:

Veselin Radulović

Vanja Ćalović Marković

Translator:

Đovana Elezović

Ana Bakić Papić

Technical support:

Marijana Subotić

Anđela Radulović

Print:

3M - Makarije

Contact:

Dalmatinska 188, Podgorica, Montenegro
Phone: +382 20 266 326
Fax: +382 20 266 328
E-mail: mans@t-com.me
www.mans.co.me

CONTENT

INTRODUCTION

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.

In this publication we have analyzed, from multiple aspects, the results of the judiciary in the fight against corrupton. The first part relates to analysis of the legal framework in which the State Prosecutor's Office is to prove a criminal offense, and the courts are to render a judgment and punish perpetrators. In this section, we pointed to the key shortcomings of the existing legal framework, but also gave concrete proposals for improving the Law based on comparative practice.

In the second chapter, we have analyzed statistical data on the results of the judiciary over the last five years based on the information from publicly available final judgments. This chapter provides a clear overview of the structure of the persons accused and convicted of corruption, with emphasis on the data about public officials.

The data on penal policy in ordinary proceedings are presented separately from the data on agreements on the admission of guilt, and the data on duration of the proceedings, the most common reasons for rejecting charges, and other data of importance for understanding the work of the judiciary in the fight against corruption, at the general level.

The third part contains various case studies in which specific cases that reached the final judgments were analyzed. First we have analyzed the practice of concluding agreements on the admission of guilt and proceedings against the so-called criminal group from Budva, as well as the seizure of their property.

Separate studies relate to ordinary proceedings before courts and decisions of second-instance courts, as well as the use of secret surveillance measures in proving corruption. Various case studies given in this chapter refers to judgments rejecting the charge, and withdrawals of the State Prosecutor's Office from prosecution and the statute of limitation for the institution of prosecution of corruption.

At the end of the chapter, through specific cases we have compared the penal policy in ordinary proceedings and in the agreements on the admission of guilt.

In the fourth part, in relation to responsibility of the courts and the State Prosecutor's Office, we have analyzed the current and previous legal framework, data on the results of the proceedings conducted in the last five years, as well as concrete case studies that point to problems in law enforcement.

The last chapter refers to the access to information on the work of the judiciary that is necessary for the analysis of their work. This chapter contains case studies that point to the limits of public control over the work of the judiciary.

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

SUMMARY

Legal Framework

In the course of 2015, a number of amended laws of great importance for the fight against corruption came into force. Jurisdiction of the High Court in Podgorica has been established to adjudicate and jurisdiction of the Special State Prosecutor's Office to represent indictments for criminal offenses of high corruption. The burden of proving the origin of the property has been transferred to perpetrators of criminal offenses and their related persons, and the extended and permanent confiscation confiscation of pecuniary gain originating from a criminal offence as well as financial investigations have been prescribed separately. Since then, the State Prosecutor and the accused may conclude an agreement on the admission of guilt for all criminal offenses of corruption.

The applicable Criminal Code was amended 12 times, and the amendments were mostly in favor of perpertrators of corruptive criminal offenses, which has lasting consequences on the results of the judiciary in this area. Any court procedure conducted during the validity of these legal solutions as well as subsequent proceedings pertaining to criminal offenses committed before these amendments oblige the court to apply them to the accused.

Not one amendment to the Code has been a response to new forms of crime in the public sector, particularly in areas vulnerable to corruption, such as unlawful enrichment of public officials, corruption in public procurement, privatization and bankruptcy, although there is a stronghold for that in international conventions and useful comparative experiences. **Despite the numerous amendments, bribery in the public and private sectors has not been consistently separated**, and for the same act, one person may be charged with two criminal offenses with significantly different penalties.

In Montenegro, a more simple extension of duration of the surveillance measures is prescribed than in the countries of the region. The provisions defining competences of the State Prosecutor to impose certain measures have been declared unconstitutional, so now it is not prescribed in whose jurisdiction this is.

Statistical Data

The number of persons for which final judgement for corruption have been rendered is decreasing, and most of the proceedings refer to cases of administrative corruption. There are no final judgements for many criminal offenses with elements of corruption executed in the economy.

In the past five years, the State Prosecutor's Office has failed to prove more than half of the criminal offenses of corruption charged to the accused. More than half of the convicting final judgements refer to small corruption, and the most convicted are among civil servants.

The courts have most frequently pronounced sentence of one year imprisonment for criminal offenses with elements of corruption, and the most serious sentence pronounced was five years. In 90% of cases the courts have imposed a minimum or penalty below the legal minimum.

Public officials were rarely accused and even more rarely convicted, and even then the courts issued milder sentences than to the convicted for corruption in the economy. In the past five years, six convictions have been issued for five public officials, and all have been imposed minimum sentences or sentences below the legal minimum.

The accused of high corruption had the biggest benefit from signing agreements on the admission of guilt. No penalty agreed upon by the agreement was above the legal minimum, regardless of the gravity of the criminal offenses, the amount of gain or damages.

The first-instance court proceedings for corruption lasted about four years on average, and the second instance appeals for about a year. Proceedings in which the State Prosecutor's Office did not prove the indictments lasted twice as long, which mainly referred to minor corruption, and their procrastination caused unreasonably high costs for the court budget.

Court Practice

Court practice in cases of corruption is very mild and uneven. In ordinary proceedings, the courts had a milder attitude towards corruption in the public sector, which caused multi-million dollar damage to the state budget, rather than corruption in the private sector, when the companies were damaged for much lesser amounts.

The courts have pronounced milder penalties for high-level corruption than for administrative corruption, and public officials have had more favorable treatment than other accused persons. The courts have differently appraised the same circumstances for various accused persons, in favor of public officials, who were even pronounced suspended sentences when there were no legal requirements for that. The fact that bribing traffic policeman is punished more severely than political corruption shows the extent to which the penal policy of the courts is uneven.

Practice of the second instance courts further alleviated the penal policy of the first instance courts in case of public officials. All judgments of the High Court pronouncing several years of imprisonment for high-level corruption were revised by the Appellate Court which reduced the penalties.

Failures and improper conduct by the State Prosecutor's Office also had an impact on the extremely mild penal policy of the courts for high corruption criminal offenses. In addition, in the cases of high corruption, the State Prosecutor's Office did not request the measures of secret surveillance to be ordered, but applied those measures almost exclusively to cases of corruption at the lowest level.

Concluding agreements on the admission of guilt further alleviated penal policy towards the convicted for high corruption, even in cases when they caused multi-million damage. By applying the agreement, negotiating and accepting punishments below the legal minimum for serious criminal offenses of corruption has become a rule, not an exception. Extremely mild sentences that the State Prosecutor's Office has been agreeing with the accused, the courts have just confirmed without analyzing whether this is in accordance with the law.

Conclusion of agreements did not contribute to achieving better results in financial investigations, whose achievements are still extremely modest. The State Prosecutor's Office still has not managed toconfiscate the property from the convicted for corruption who confessed execution of criminal offences and then left the state to avoid serving prison sentences and alienated property.

Accountability

Adoption of new laws did not increase the accountabilit in the work of the judiciary in practice, as only few disciplinary proceedings were conducted against judges and prosecutors.

There was no accountability of the judiciary for errors in concrete judicial proceedings that led to release or milder convictions, nor for ineffectiveness which led to the statute of limitation for the institution of prosecution. There was no accountability of the prosecutors who did not conduct investigations effectively, whose indictments fell before the courts, or who withdrew from prosecution after several years of proceedings whose costs were paid by the citizens.

The disciplinary proceedings conducted against the judges were selective, which cast doubt on the real reasons for their initiation. On the other hand, an analysis of the proceedings against the State Prosecutors was not possible because that information was declared secret by the Prosecutorial Council.

Transparency

Public control of the judiciary is limited, because the courts and the State Prosecutor's Office are hiding information about their work and results in the fight against corruption.

Many important data have been deleted from the published final judgments for corruption rendered in public proceedings under the pretext of protecting the privacy of the accused even when they are convicted of corruption.

The judiciary has declared a secret records of validly terminated cases as well as significant data on the temporary and permanent confiscation confiscation of pecuniary gain originating from a criminal offence. They have argued that disclosure of these data could endanger investigations or prosecutions of convicted perpetrators of corruption, and only parties in the proceedings may have access to that data.

METHODOLOGY

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 the level of corruption was determined?

According to the Law on Courts, highlevel 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.

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.

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

A ANALYSIS OF THE LEGAL FRAMEWORK

Current Criminal Code has been amended 12 times, and the amendments have mostly been in favor of perpetrators of corrupt criminal offenses, which has a lasting impact on the results of the judiciary in this area. Any court proceedings conducted during the validity of these decisions, as well as subsequent procedures relating to criminal offenses committed prior to these amendments, oblige the court to apply them to the accused.

Article prescribing the abuse of office has been amended four times, and the indictments of the State Prosecutor's Office most often pressed charges for this corruptive criminal offense. First, the sentence for this offense has been reduced, and the obligation of the prosecution to prove the existence of an intent has been introduced. Then, the intent was erased and the sentence increased. After that, there was an additional difficulty in proving the existence of an intent by introducing an element of unlawfulness which does not exist in comparative legislation. In the end, sentences were increased, although the courts in practice never impose sentences even close to the prescribed maximum.

Amendments to the law still do not clearly distinguish bribery in the public and private sector, and for the same offense, one person may be charged with two criminal offenses with significantly different prescribed punishments.

No amendment of the Criminal Code was a reaction to new forms of public sector crime, especially in areas that are vulnerable to corruption. Although there are useful comparative experiences from the region and a stronghold in international conventions, the illicit enrichment of public officials, corruption in public procurement, privatization and bankruptcy are not prescribed as specific criminal acts in Montenegro's Criminal Code.

The High Court in Podgorica renders verdicts, and the Special Prosecutor's Office represents indictments for high-level corruption crimes since 2015. However, the classification of the high-corruption is too wide, so there are procedures for many minor cases before this court.

Since August 2015, the state prosecutor and the accused persons may conclude a plea agreement for all criminal offenses of corruption. Since the beginning of 2010, when this institute was introduced, up until the amendments to the law, the agreement has been concluded only for criminal offenses for which a maximum sentence of ten years was imposed.

The burden of proving the origin of the property has been transferred to perpetrators of criminal offenses and related persons when, at the end of 2015, a special law prescribed prolonged and permanent seizure of property gain acquired through criminal activity, as well as financial investigations.

Montenegrin legislation prescribes simpler extension of the duration of secret surveillance measures than the countries of the region. Most of the measures can last up to four months, but can be extended and last for a maximum of 18 months, regardless of the results of the initial application. Since the end of February 2018, when the Constitutional Court of Montenegro abolished the provision of the Criminal Code that prescribed the jurisdiction of the state prosecutor for determination of certain measures, it is not prescribed whose competence it is. According to the standards, those measures would have to be determined by the court.

A.1. Competences of the judiciary for the prosecution of corruption

According to the old Law on Courts that was in force until March 20, 2015, the Basic Courts determined in first instance for corrupt criminal offenses:
- abuse of official position if the sentence of imprisonment is less than eight years
- abuse of official position in business operations if the sentence of imprisonment is less than eight years
- fraud in performance of official duties if the sentence of imprisonment is less than eight years
- abuse of authority in economy if the sentence of imprisonment is less than eight years
- negligent exercise of duties

As of March 20, 2015, the Basic Courts under the new Law on Courts, determine for corrupt criminal offenses:

- breach of equality in business operations
- abuse of monopoly position
- causing bankruptcy
- bankruptcy fraud
- false financial statement
- misuse of assessment
- revealing business secret
- revealing and using stock-exchange secrets / misuse of privileged information
- negligent exercise of judicial duties
- abuse of office if a defendant is not a public official
- fraud in performance of official duties if a defendant is not a public official
- illegal influence if a defendant is not a public official
- active bribery if a defendant is not a public official
- passive bribery if a defendant is not a public official
- abuse of position in business operations if the material gain not exceeding the amount of forty thousand Euros was obtained
- abuse of powers in economy if the material gain not exceeding the amount of forty thousand Euros was obtained.

In this law [2], it is also determined who is considered a public official:

A public official, in terms of this law, is elected, appointed or designated person in a state body, a state administration body, a local self-government body, a local government authority (hereinafter: authority), an independent body, a regulatory body, a public institution, public enterprise or other company, or a legal person performing public authority or public interest activities or is in state ownership, as well as a person whose choice, appointment or designation is granted by the authority.

The new Law on Courts [1] for the first time prescribes which criminal offenses are considered "high level corruption" for which the jurisdiction of the High Court is prescribed and a special department was established. Regardless of the rules on the territorial jurisdiction, the High Court in Podgorica shall hear and decide the criminal proceedings conducted for the following criminal offences of high level corruption:

a) 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;

b) 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

The jurisdiction of the Special Prosecutor's Office is determined by the new Law on Special State Prosecutor's Office, which came into force on March 18, 2015 in the same manner as the jurisdiction of courts in the Law on Courts that came into force in March of the same year.

A.2. Criminal offenses with elements of corruption

Judges and prosecutors classify criminal offences as corruptive ones differently, therefore their statistics are not comparable.

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 (3).

Thus, for example, the Judicial Council considers that breach of equality in business operations and the abuse of monopoly position are criminal offenses with elements of corruption, while the Supreme State Prosecution does not evaluate them in such a way. On the other hand, for example, causing bankruptcy and negligent exercise of official duties are not considered as corruptive acts by the Judicial Council, unlike the Supreme State Prosecutor's Office.

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, as well as the former Tripartite Commission.

Table below provides an overview of criminal offenses with information which these institutions include in statistics on corruption.

Number of the Criminal Code Article	Name of the criminal offense	Tripartite Commission	Judicial Council	Supreme State Prosecutor's Office	MANS
268	Money Laundering	YES	NO	NO	YES
269	Breach of Equallity 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 Freud	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 *	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 **	YES	NO	NO	NO
276a	Passive Bribery in Business Operations ***	NO	YES	YES	YES
276b	Active Bribery in Business Operations ***	NO	YES	YES	YES
422a	Soliciting to Trading in Influence ***	NO	YES	YES	YES
281a	Manipulation of the securities market or of other financial instruments ***	NO	YES	NO	YES
420	Embezzlement	NO	YES	NO	YES
421	Diversion of Property	NO	YES	NO	YES

* Misuse of privileged information
** Deleted
*** Was not prescribed at the time of Tripartite Commission

A.3. Analysis of the legal framework

Current Criminal Code adopted in 2003 has been amended as many as 12 times.

In theory of the criminal law, it is undisputed that the purpose of the Criminal Code is to combat crime through providing protection for the most important goods and values from behaviour that hurts or threatens them. Likewise, it is undisputed that frequent amendments to the law directly contribute to the rare implementation of the Criminal Code, and this rare implementation weakens the goal and the protective function of the criminal law. Or, vice versa, the rare implementation of the Criminal Code due to its frequent amendments directly contributes to the strengthening of crime and the increase of its volume in society.

Of course, social circumstances and relations impose the need for laws to change, including the Criminal Code. However, the legislator's interventions in the Criminal Code of Montenegro in relation to criminal offenses with elements of corruption mostly related to the description of criminal offenses and these changes were mostly in favor of perpetrators of corrupt criminal offenses.

However, no amendment of the Criminal Code was a reaction to new forms of crime in the public sector, and no amendment was aimed at combating corruption in areas that are particularly sensitive to this phenomenon and where state resources are spent in large amounts. Although there are useful comparative experiences from the region, the areas of public procurement, privatization, bankruptcy, as well as the enrichment of public officials, have never been recognized in the amendments to the Criminal Code as areas that should be addressed by prescribing criminal offenses.

Below is the analysis of the amendments to the Criminal Code in the area of combating of high-level corruption. As a rule, these amendments in practice have led to more favorable treatment of persons accused of corruption and cannot be said to have contributed to the combating of corruption.

A.3.1. Abuse of office (Article 416 of the Criminal Code)

Frequent amendments to the Criminal Code have been in the interest of the persons charged with this criminal offense with elements of corruption and they have a negative impact on the outcome of court proceedings.

Since 2003, when the Criminal Code of Montenegro was adopted, the provision that prescribes this criminal offense has changed four times - in 2006, 2010 and 2011. Of these changes, three concerned the essential amendment of the essence of this crime, while one amendment was of no practical significance, as it increased the maximum penalty for the most severe form of this crime from 10 to 12 years in prison.

Special advantage for the perpetrators of this criminal offense are amendments to the 2003 and 2010 Criminal Code.

According to the first amendment from 2003, from January 2004 to August 2006, for the existence of this criminal offense, it was necessary to prove the existence of intent of the perpetrator to obtain the benefit to oneself or others, or to cause damage. The same amendment to the law reduced the sentence prescribed for this criminal offense, so instead of the sentence of imprisonment for a term of six months to five years, imprisonment of up to three years is prescribed.

According to the amendments to the Criminal Code of 2006 intent, as a subjective element of the essence of this criminal offense, was omitted from the description of the offense and again a sentence of imprisonment of six months to five years was prescribed for this criminal offense.

With the amendments to the Criminal Code of 2010, the element of unlawfulness was introduced into the essence of this criminal offense, and for the existence of a criminal offense it was necessary to establish that the perpetrator acted in an unauthorized manner or contrary to the regulations. Stating the unlawfulness in the description of the offense obliges the court to determine that the accused has acted without authorization for this criminal offense, that is, that s/he has undertaken an act contrary to the regulations which is thus unlawful.

With such description of an act of committing a criminal offense, the inability to prove intent or unlawfulness would mean that there is no criminal offense of abuse of office, regardless of the resulting consequence in the form of damage or violation of the right.

4 changes to the Law on the criminal offense of Abuse of Office

Thus, for example, a public official would be able to use his/her official position to conclude a contract that causes multi-million damage to public funds and thus enable others to acquire material gain, but s/he could not be held respond for this crime if s/he had a formal authority to conclude contracts, because then there are no elements of unlawfulness in his/her actions.

Any proceeding conducted during the validity of these decisions in the Criminal Code imposed an obligation on the court to apply them to the perpetrators of this kind of corruption, because these solutions were more favorable for them. [4] Thus, in every proceeding initiated for this criminal offense from January 2004 to August 2006, it must be determined whether the accused had an intent, whereas in any proceeding initiated since May 2010 it must be established whether there is an unlawfulness in the in the actions of the accused.

Finally, the amendments to the Criminal Code of 2011 stipulate an increase in the punishment imposed for the most serious form of this offense from ten to 12 years of imprisonment.

However, the analysis of the judicial practice shows that the proceedings for this criminal offense are rarely conducted and that convictions that impose prison sentences are very rarely issued. Moreover, the analysis of the judicial practice shows that imprisonment sentences for this offense are short and usually below the statutory minimum, and there are no cases where someone was sentenced to a prison term close to the prescribed maximum.

Thus, it seems that the increase in the maximum sentence of imprisonment from 10 to 12 years had no practical significance. If the motive for such amendment of the law was to achieve a more rigorous penal policy, then it would make more sense for the legislator to impose a higher minimum imprisonment and stricter conditions for mitigation of sentence below the prescribed minimum, thereby influencing the judicial practice in order to reduce the number of short prison terms.

High maximum punishment prescribed by the legislator indicates the gravity of a criminal offense, but it is undisputed that the increase in the prescribed maximum sentence cannot influence judicial practice to have a stricter penal policy. On the contrary, this amendment of the law has only deepened the gap between the prescribed and imposed sentences. Additionally, when such highly prescribed sentence is compared with the punishments provided for in judicial practice, this further points to the inefficiency in combating of these crimes.

One of the basic principles is that a more favorable law is applied to the accused, including the retroactive implementation of provisions that are more favorable for the accused. When the Criminal Code changes several times after commission of a criminal offense, the court is obliged to apply the law that is the most lenient for the perpetrator, no matter how long and when that most lenient law was in force. [5] Therefore, amendments to the Criminal Code that are more favorable for perpetrators of these criminal offenses apply to any criminal offense committed before and during the validity of such amendments.

In practice, this causes additional issues because in cases when the Criminal Code is amended after commission of a criminal offense, the State Prosecutor's Office and the court must, in qualification of the criminal offense, apply the most lenient law to the accused. Inaccurate estimates of the State Prosecutor's Office are not rare, and the possible wrongful qualification may depend on the jurisdiction of the court, but also the final decision in a case. [6]

Comparative experiences

Serbia, Croatia, Bosnia and Herzegovina and Kosovo*

In a comparative legal experience, there is no example that the criminal offense of abuse of office was essentially amended five times in a relatively short time. Also, in the legal systems of the countries in the region there are no general solutions which the executive power of Montenegro proposes, and the Parliament adopts.

For example, in the description of the act of committing the criminal offense of abuse of office [7], the Criminal Code of Serbia [8] does not contain either intent or unlawfulness. From the formerly valid Criminal Code of Serbia [9], intent as an essential element of this criminal offense was left out by amendments of the law in 1990, while unlawfulness has never been in the description of the offense of abuse of office.

The Criminal Code of Croatia also does not contain unlawfulness or intent as an element of this criminal offense.

Also, the legal systems of Bosnia and Herzegovina, Croatia, Republika Srpska and Kosovo* do not contain unlawfulness as an element of the criminal offense abuse of office.

A.3.2. Passive and active bribery (Articles 423 and 424 of the Criminal Code)

The provision of the Criminal Code that prescribes the criminal offense of passive bribery,[10] since the adoption of the Code in 2003, has been amended three times. All three times there was an attempt to clarify the actions of this crime, while the prescribed penalties remained unchanged.

In the same period, the Criminal Code has been amended four times in the part in which the criminal offense of active bribery [11] was prescribed. As in the case of passive bribery, in two cases it was an attempt to clarify the actions of this criminal offense, while the prescribed punishments remained unchanged. However, the other two amendments to the Code related to this crime were more important. The first abolished the possibility of the bribe being returned to the person who gave it, while the other increased the prescribed penalties.

3 changes to the law for a criminal offense of passive bribery

4 changes to the law for a criminal offense of active bribery

Possibility of returning the bribe to the person who gave it

Namely, the amendments to the 2010 Code abolished the possibility that the perpetrator of the active bribery who reported the offense before knowing that it was discovered, in addition to the exemption from punishment, could return the bribe that s/he gave. This possibility was valid for a period of six years of implementation of the Code before it was abolished in 2010 and can be applied to every perpetrator of a criminal offense committed during that period, regardless of the time when s/he is tried.

Increase in the prescribed punishment for active bribery

Amendments to the 2013 Code increased penalties for this criminal offense. For the first form of this criminal offense referred to in Article 424, paragraph 1 of the Criminal Code,[12] it is now prescribed a prison sentence of one to eight years, instead of the previously prescribed sentence of six months to five years. For the second form of this criminal offense referred to in Article 424, paragraph 2 of the Criminal Code [13], a prison sentence of six months to five years is prescribed instead of the previously prescribed sentence of up to three years.

As with the increase of punishment for the most serious form of criminal offense of abuse of office, it is important to point out that prior to the increase of punishment for this crime, in practice, there were no cases in which a sentence close to the previously prescribed maximum was imposed. That is why this amendment of the law only deepens the gap between the prescribed and imposed sentences and when the highly prescribed punishment is compared with the penalties that are pronounced in the judicial practice, this further points to inefficiency in the suppression of these crimes.

Separating bribery in the public sector from bribery in the private sector

By amending the Criminal Code in 2010, the legislator tried to make a clear distinction between corruptive criminal offenses committed in the private sector and acts committed in the public sector. Thus, in terms of bribery, a distinction is made as to whether the bribery is in the private or public sector.

According to this concept, the criminal offenses of passive and active bribery should be acts against official duty, and the perpetrator of these crimes can only be an official person. On the other hand, the amendments to the Criminal Code prescribe two new criminal offenses, namely the unlawful accepting of gifts from Article 276a and the unlawful offering of gifts referred to in Article 276b.

However, by amending the 2011 Criminal Code, the name of these two new criminal offenses has changed, and since then it has been called passive bribery in business sector and active bribery in business sector.

These are criminal offenses classified into a group of criminal offenses against payment transactions and economic activities, and the perpetrator of such crimes can only be a responsible person in a company or other business entity. Thus, for the first time, passive and active bribery in the private sector are specially prescribed, which makes this bribery distinct from the bribery in the public sector.

However, while separating an official person from a responsible person in a commercial company, i.e. separating of bribery in the public sector from bribery in the private sector, the legislator was not completely consistent.

Namely, in the provisions that regulate bribery in the public sector, that is, the criminal offenses of passive and active bribery (Articles 423 and 424), it is still stipulated that the perpetrator of these crimes can be a responsible person as well (paragraph 5 of Article 423 and paragraph 4 Article 424). Thus, as of May 2010, the responsible person in a legal entity engaged in economic activities may be charged with two offenses for the same act.

The criterion for determining whether it is about bribery in the private or public sector when the perpetrator is the responsible person is whether a legal entity is engaged in economic activities or not. If a legal entity deals with business, then it is about bribery in the private sector, that is, criminal offenses under Articles 276a and 276b of the CC. However, the Criminal Code in the provision defining the meaning of the term does not determine what is considered to be economic activity in terms of this Code, [14] which in practice can lead to different interpretation and unequal implementation of the law.

The qualification of a criminal offense a defendant is being charged is very important in practice, since penalties for bribes in the public sector are almost twice as rigid. Thus, for the basic form of the criminal offense, passive bribery is subject to a sentence of imprisonment of two to twelve years, while for the basic form of the criminal offense, the unlawful accepting of a gift, a prison sentence of six months to five years is prescribed. Amendments to the Code from 2013 for the criminal offense of passive bribery in business sector increased the punishment prescribed from one to eight years.

Also, for the basic form of the offense active bribery, the imprisonment for a term of one to eight years is prescribed, while for the basic form of the criminal offense of unlawful offering of a gift, a prison sentence of three months to three years is prescribed. Amendments to the Code from 2013 for the criminal offense of active bribery in business sector prescribed the prison term increase from six months to five years.

Therefore, depending on how the prosecutor and the court will interpret the concept of business, a responsible person may, from May 2010, be charged with two offenses for the same act, for which there are significantly different punishments.

In addition, the actual jurisdiction of the court in proceedings against responsible persons in the company could depend on the qualification of the charge. Pursuant to Article 16, paragraph 1, item 1 of the Law on Courts, the High Court is competent to determine in first instance for criminal offenses for which imprisonment is prescribed for more than 10 years. Therefore, if a prosecutor would charge the responsible person with the criminal offense of passive bribery, then the High Court would determine in first instance. For the same offense in first instance, a basic court would have jurisdiction if a prosecutor would charge the responsible person with the criminal offense of unlawful acceptance of gifts, or passive bribery in business sector.

Although the Criminal Code has been amended six times since 2010, this inconsistency in the separation of the official and responsible person and the delineation of bribery in the private sector from the bribery in the public sector has not yet been completely eliminated.

In addition to the apparent inconsistency in the separation of the official and responsible person, there is also no valid explanation that would give reasons for significantly different penalties prescribed by the legislator for the same actions when the perpetrator is a responsible person.

As in the case of other criminal offenses, the increase in sentences for the criminal offenses of passive and active bribery in business sector of the amendments to the Criminal Code from 2013 is of no practical significance, since in practice there were no verdicts for those criminal offenses for which the imposed penalties were near the previously prescribed maximum.

Criminal offense	Public sector	Private sector
Passive bribery	2 - 12 years	6 months to 5 (8) years
Active bribery	1 - 8 years	3 months to 3 (5) years

A.3.3. Plea Agreement

This institute was introduced into the legal system of Montenegro in 2009 by adopting the Criminal Procedure Code, and its provisions that stipulate the plea agreement have been implemented since February 27, 2010. [15]

By mid-August 2015, a state prosecutor and a defendant were able conclude a plea agreement only for criminal offenses for which a prison sentence of up to ten years is prescribed. With the amendments to the Code, since August 2015 plea agreement can be concluded for all criminal offenses, apart from the crimes of terrorism and war crimes. [16]

In the process of adopting these amendments to the Code, at the initiative of NGO MANS, the members of the Parliament of Montenegro **[17]** submitted amendments to the amendments to the Criminal Procedure Code. These amendments proposed, inter alia, that a plea agreement cannot be concluded for criminal offenses with elements of corruption and for criminal offenses of organized crime. However, these amendments were not adopted because they did not have the required majority because the Parliament's sitting was not attended by the opposition MPs who previously announced support for the amendment**. [18]**

Thus, these amendments to the Code have become the basis for conclusion of the agreement and adoption of verdicts in cases of the most serious criminal offenses of corruption for which a sentence of imprisonment of more than 10 years is prescribed, and in which the punishments are well below the prescribed minimum, without any explanation and without a reason that could justify such privileged treatment of high-level corruption actors. [19]

Subject of the agreement

In the plea agreement, the accused shall fully confesses to the criminal offence or concurrence of criminal offences s/he is charged with, and agrees with the state prosecutor on the penalty and other criminal sanctions, the costs of criminal proceedings and the property claim of the injured party and denouncing the right of appeal. [20]

Agreement on the admission of guilt might also contain an obligation of the accused person to return the property gain acquired by the commission of the criminal offense as well as objects that have to be forfeited under the Criminal Code,[21] The accused person may also undertake by to perform the obligations to fulfil the conditional opportunity of prosecution (postponing of criminal prosecution) [22], provided that the nature of the obligations is such that it allows the accused person to perform or start performing them before the submission of an agreement on the admission of guilt. [23]

Deliberation on the agreement

The agreement shall be decided by the court - the Chair of the Panel or the Chair of the first instance panel, depending on the time of submitting of the agreement to the court. [24] The Court may adopt two types of decisions in relation to the agreement:
· procedural decision rejecting the agreement if the agreement is filed after the first hearing was held at the main hearing [25] or if the duly summoned accused person does not appear at the hearing [26] and
· decision on the merits by which the agreement is approved [27] or rejected [28]

The court shall accept an agreement on the admission of guilt and render a decision which is in line with the contents of the agreement, if it establishes the following [29]:
· that the accused person confessed to the criminal offence or offences s/he is charged with voluntarily and consciously, that the confession is in line with the evidence contained in the case files and that there is no possibility that the confession was made as a consequence of an error;
· that the agreement was concluded in accordance with Article 301 of the present Code; [30]
· that the accused person completely understands the consequences of the agreement, and particularly that s/he waives the right to a trial and that s/he may not file an appeal against the decision of the court rendered on the basis of the agreement;
· that the agreement does not violate the rights of the injured party; and
· that the agreement is in line with the interests of fairness and the punishment serves the purpose for which criminal sanctions are imposed.

The court is obliged to determine the fulfilment of all the above conditions, since the lack of any of them constitutes a reason for rejecting of the plea agreement. [31]

Therefore, the court must not be the place where the agreements will only be certified. On the contrary, the court would have to determine the existence of the prescribed conditions in every case regarding the plea agreement, because it must provide an explanation in its decision on their (non)fulfilling.

The fulfilment of formal terms of the agreement, as well as the verification that recognition is conscious and voluntary and that the defendant understands the consequences of the concluded agreement, in practice should not pose a problem for the judge who decides on the agreement. However, the court should undoubtedly find if the agreement is in line with the interests of fairness and the punishment serves the purpose for which criminal sanctions are imposed, and the agreed sanction serves the purpose, as defined by the Criminal Code.

Namely, in the decision-making procedures under plea agreements, the court does not impose a sentence because the sentence in the agreement is agreed between the prosecutor and the accused. However, the prosecutor would have to adhere to the general rules on the determination of the penalties prescribed in Article 42 of the Criminal Code, [32] that is, s/he would have to take into account all the circumstances that affect the level of punishment (mitigating and aggravating circumstances). In deciding on a plea agreement, the court would have to verify whether the prosecutor acted in such way and should not accept the agreement and impose a sentence contrary to the general rules on sentencing.

Thus, the court would have to reject the agreement if it found that the punishment does not serve the purpose, that is, it was not fair. In this regard, the court must in particular take into account whether the punishments have been agreed within the limits of the legal minimum and maximum, because the purpose of punishment and the fairness of the punishment could be particularly jeopardized with punishments below the prescribed minimum. Also, the court must assess whether the punishment corresponds to the gravity of the criminal offense and the consequences of the criminal offense the accused is charged with.

In this regard, in all cases where the punishments are below the legally prescribed minimum, for serious crimes with a more serious effect, the court would in particular have to deal with the assessment whether such agreement and such punishment are in accordance with the interests of fairness and whether the sentence can achieve the purpose of punishment.

The State Prosecutor does not have the right to impose a sentence (ius puniendi) because that right belongs solely to the court. Therefore, the court must especially take into account whether the prosecutor acted in accordance with the rules of substantive criminal law when agreeing on a sentence.

The agreed punishment, as a rule, cannot be below the statutory minimum for the criminal offense the accused is charged with, since the State Prosecutor is not in a position to determine the existence of mitigating and aggravating circumstances on a merit basis, in particular to assess the particular mitigating circumstances which justify the reducing of punishments below the statutory minimum. This right belongs primarily to the court and these circumstances must be proved by examining the evidence, which is also entrusted to the court.

A.3.4. Secret surveillance measures (SSM)

Conditions for determining SSM

The Criminal Procedure code in a fairly detailed manner prescribes the procedure for determining and performing of secret surveillance measures (SSM). [33]

The first condition for use of these measures is that evidence cannot be obtained in another manner or their obtaining would request a disproportional risk or endangering the lives of people.

Second condition is if grounds for suspicion exist that a person has individually or in complicity with others committed, is committing or is preparing to commit criminal offences, including the ones with elements of corruption. [34]

Jurisdiction for determining SSM

By the end of April 2018, the jurisdiction to determine the SSM was split between the court and the State Prosecutor's Office. Thus, based on the grounded proposal of the State Prosecutor, the investigating judge was able to determine the following measures of secret control:
- secret surveillance, recording of telephone and other distance technical communication;
- interception, collection and recording of computer data;
- secret photographing and video recording in private premises;
- secret supervision and technical recording of persons and objects. [35]

By April 27, 2018, on a grounded proposal of the police or ex officio, the State Prosecutor was able to determine the following measures:
· simulated purchase of objects or persons and simulated giving and taking of bribe;
· providing simulated business services or concluding simulated legal transactions;
· establishing false business company;
· supervision over the transportation and delivery of objects of criminal offence; and
· use of undercover investigators and collaborators. [36]

Simulated purchase of objects or persons and simulated giving and taking of bribe and providing of simulated business services or the conclusion of simulated legal transactions, by the nature of the matter, may relate only to one simulated act, and all subsequent motions for the application of this measure against the same person shall contain a statement of reasons justifying the repeated application of this measure. [37]

The motion and the order for determining secret surveillance measures shall contain: the type of measure, data on the person against whom the measure is enforced, grounds for reasonable suspicion, the manner of measure enforcement, its goal, scope and duration. The motion and the order for determining measures shall become an integral part of the criminal file and should contain available data on the person against whom they are ordered, the criminal offence because of which they are ordered, facts on basis of which the need to undertake them originates, duration deadline that needs to be suitable to achieving the objective of measure, manner, scope and place for the measures to be implemented. [38]

The regulation within the competences of a prosecutor to determine the secret surveillance measures was contrary to the provisions of the Constitution of Montenegro and the European Convention for the Protection of Human Rights and Fundamental Freedoms, according to which such measures affecting basic human rights can only be determined by the court.

On February 25, 2018, the Constitutional Court of Montenegro issued a decision establishing that the provision of the Criminal Procedure Code that prescribed the jurisdiction of the state prosecutor for the determination of secret surveillance measures was not in accordance with the Constitution and ceased to be valid on the day of publishing the decision of the Constitutional Court in "Official Gazette of Montenegro". [39] Such decision of the Constitutional Court could be the basis for challenging all convictions that were brought on the basis of evidence collected by these secret surveillance measures.

However, the Criminal Procedure Code remained incomplete in this part, because since April 2018, it has not prescribed whose competence is determining the SSM that was previously determined by the State Prosecutor. That further demonstrates the incompetence and lack of will of the executive and legislative authorities for issues of exceptional significance to combat corruption properly and completely.

Duration of SSM

All measures of secret surveillance, except simulated purchase of objects or persons and simulated giving and taking of bribe and providing of simulated business services or the conclusion of simulated legal transactions, can only last as long as necessary, no longer than 4 months, and for justified reasons, can be extended for 18 more months. Extension of secret surveillance measures is not conditioned by the fact that their implementation in the first four months yielded any results. Thus it is possible to continue the measures of secret surveillance, although no evidence has been collected for the four months of their implementation.

By August 15 2015, maximum duration of the secret surveillance measures was up to seven months (the basic term of four months and the possibility of its extension for another three months). According to the amendments to the Criminal Procedure Code that have been [40] this maximum period was extended to 18 months.

After the first deadline, which has a primary character and after which the SSM could only be extend only in exceptional cases, SSM can be extended within a period of a secondary character, for a period which is three and a half times longer than the first deadline for which SSMs are specified.

This solution is also controversial in terms of compliance with the Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms, according to which the restriction of human rights and freedoms must be reduced to the minimum necessary time and by which citizens must have the ability to effectively control the application of these measures in practice.

In the explanation of these amendments to the Criminal Procedure Code, the Government only stated that the previous SSM duration "made the collection of evidence significantly difficult". It is unclear on the basis of which an assessment was made that the longer duration would give better results in practice. The efficiency of the prosecution in the collection of evidence by the use of secret surveillance measures cannot be evaluated only in relation to the duration of these measures.

If such logic is accepted, then some subsequent amendments to the Criminal Procedure Code could stipulate that the SSM may last for an even longer period or even be implemented for an unlimited duration only because their implementation in a given period "made the collection of evidence significantly difficult".

However, in addition to this explanation of the Government, after three years of implementation of the new law, no new case in which this change of law contributed to better evidence collection, prosecution and passing a convicting verdict for some of the most serious crimes is not known in practice.

The Criminal Procedure Code also provides that, if the measures of secret surveillance were undertaken in contravention to the provisions of the present Code or in contravention to the order of the investigative judge, the court verdict may not be founded on the collected information. [41]

Ratio legis of such detailed prescription when it comes to determining secret surveillance measures is primarily in strengthening the evidence credibility of the material gathered by these measures, but also in allowing control (primarily by the defence) and preventing illegal and arbitrary interference with basic human rights.

Croatia

The maximum duration of a measure of 18 months is envisaged only exceptionally for certain criminal offenses and it is conditioned that their application already in the first four months gave results.

Jurisdiction

Unlike the ruling from Montenegro's Criminal Procedure Code, the Criminal Procedure Act of Croatia prescribes the competence of the investigation judge [42] to determine all the measures of secret surveillance. [43] By way of exception, if there is a risk of delay and if there are reasons to believe that s/he will not be able to obtain a judge's order in time, the State Prosecutor can determine for 24 hours all the measures of secret surveillance, except:

- interception, gathering and recording of electronic data if requires entry on the premises, or remote access to the suspect's computer located in his home and
- entry on the premises for the purpose of conducting surveillance and technical recording at the premises, if it is necessary to enter the home for the purpose of conducting surveillance and technical recording. [44]

In these cases, the State Prosecutor is obliged within 8 hours to submit to the investigating judge the order with the time of issuance and a letter with the reasons for its issuance, as well as a reasoned request for further implementation of the measure if s/he considers that it should be continued. [45]

The investigating judge shall decide on the legality of the order. If the investigating judge denies the order, the panel shall decide on the appeal. If the panel does not approve the order, it shall be ordered by a ruling that the actions shall be immediately ceased and the data collected shall be handed over to the investigating judge who will destroy them. [46]

The measures of secret surveillance are ultimately decided by the court, that is, judicial review of the legality of determining measures affecting basic human rights and freedoms is always ensured.

Duration

Secret surveillance measures are determined for up to three months. Upon the proposal of the State Prosecutor, the investigating judge may extend these measures for another three months if they give results and if there is a reason to continue with their implementation in order to collect evidence.

After a period of six months, for the criminal offenses referred to in Article 334, Item 1 and 2 of the Criminal Procedure Code, the investigating judge may prolong the measures for a further term of six months. Exceptionally, for the offenses referred to in Article 334, paragraph 1 of the Criminal Procedure Act [47], measures may be extended for another six months. [48]

Serbia

The maximum duration of the measures of secret surveillance of 12 months is prescribed exceptionally for the most serious crimes that are within the competence of the special prosecution.

Jurisdiction

The Criminal Procedure Code of Serbia also prescribes the jurisdiction of the court to determine all the measures of secret surveillance, [49] except for the controlled delivery ordered by the state prosecutor. [50] Therefore, the measures that affect human rights and freedoms most are within the jurisdiction of the court.

Duration

Covert Interception of Communications, covert surveillance and recording and simulated deals may take three months, and can be extended for another three months due to the need for further evidence collection.

The measure of computer search of data can also last three months, and because of the necessity of further evidence collection, it can be extensively extended not more than two times in duration of three months (a total of 9 months).

For the criminal offenses for which the special prosecutor's office has been assigned special jurisdiction [51] (which corresponds to the Special Prosecutor's Office in Montenegro), these measures can be extensively extended no more than twice in duration of three months (a total of 12 months).

A.3.5. Financial investigations and confiscation of property acquired through corruption

Financial investigation and confiscation of the property gain acquired through criminal activity, or extended confiscation, is prescribed by the provisions of the Law on seizure and confiscation of material benefit derived from criminal activity. [52]

Material benefit may be confiscated from the perpetrator, his legal predecessor, legal successor and members of the family and third persons where well-founded suspicion exists that such material benefit has been derived from criminal activities. [53] The confiscation of property gain acquired through criminal activity is the temporary seizure of such property gain (temporary security measures and temporary seizure of movable property) or the permanent seizure of that pecuniary gain.

Material benefit derived from criminal activities may be seized and confiscated from the perpetrator if it was obtained in the period before and/or after the commission of the crime until the finality of the judgment, when the court finds that there is a temporal correlation between the time of acquisition of material benefit and other circumstances of the case justifying property seizure or confiscation. For probable cause that material benefit was derived from criminal activities, the property of the perpetrator needs to be manifestly disproportionate to his lawful income. [54]

Financial investigations [55] may be instituted under an order of the state prosecutor, provided the following exists: reasonable suspicion that the property of the holder is manifestly disproportionate to his lawful income, well-founded suspicion that material benefit was derived from criminal activities; and reasonable suspicion that the that the criminal offense for which the possibility of expanded confiscation of property gain was prescribed was committed.

During the financial investigation, the state prosecutor may propose the imposing of a provisional safeguard measure (freezing of assets) if there is a reasonable suspicion that the proceeds of crime have been acquired through criminal activity and if threat exist that the confiscation of such material benefit would be prevented or protracted. [56]

After final judgment declaring the accused person guilty of the criminal offence for which the possibility of expanded confiscation of property gain is prescribed, the state prosecutor shall file a motion, at the latest within a year, to confiscate material benefit derived from criminal activities from the holder who does not prove, by means of authentic documents or otherwise, that the origin of property is lawful (confiscation). [57]

Therefore, a financial investigation is aimed at collecting evidence on the income and property of the person against whom it is being conducted and its purpose is to verify the lawfulness of the origin of the property. Based on the results of the financial investigation, the state prosecutor proposes to the court temporary seizure of property. After final judgement finding the convict guilty of the criminal offense, for which the possibility of extended confiscation of property is prescribed, the state prosecutor proposes permanent seizure of property whose legal origin has not been proven.

The conclusion of a plea agreement and the adoption of verdicts by which these agreements are adopted do not limit the possibility of conducting financial investigations, freezing of assets and extended seizure of property, which is officially confirmed by the State Prosecutor's Office. [58] However, the practice shows that there are a number of problems with regard to the application of these provisions. [59]

A.3.6. Statute of limitation

All verdicts of the courts dismissing the charges due to statute of limitation were adopted upon expiration of twice the time required for statute of limitation (absolute statute of limitation), because the verdict itself implies the procedural actions and acts of the state prosecutor which the prosecutor undertook and for which the proceedings took place before the court.

Based on the criteria of prescribed punishment for an offense, Article 124 of the Criminal Code prescribes time limits for the occurrence of statute of limitation. Bearing in mind that statute of limitation shall be interrupted by each procedural action taken in view of detecting a criminal offense or discovering and prosecuting an offender [60], absolute statute of limitation shall take effect upon expiration of twice the time required under law for statute of limitation [61].

In relation to the criminal offenses that the courts or the State Prosecutor's Office qualify as corrupt criminal offenses, and based on the legally prescribed sentences and time limits for statute of limitation, the absolute statute of limitation and impossibility of prosecution takes effect:

- 6 years after the commission of criminal offenses: misuse of privileged information (Article 281 of the Criminal Code), malpractice in office (Article 417 of the Criminal Code), unauthorised use (Article 421 of the Criminal Code), illegal influence (Article 422 of the Criminal Code), trading in influence (Article 422a of the Criminal Code);
-10 years after the commission of criminal offenses: money laundering (Article 268 of the Criminal Code), violation of equality in the conduct of business activities (Article 269 of the Criminal Code), abuse of monopoly position (Article 270 of the Criminal Code), abuse of position in business operations (Article 272 of the Criminal Code), causing bankruptcy (Article 273 of the Criminal Code), bankruptcy fraud (Article 274 of the Criminal Code), abuse of powers in economy (Article 276 of the Criminal Code), active bribery in business operations (Article 276b of the Criminal Code) misuse of assessment (Article 279 of the Criminal Code), revealing and using stock-exchange secrets or other financial instruments (Article 281a of the Criminal Code), abuse of office (Article 416 of the Criminal Code), fraud in performance of official duties (Article 419 of the Criminal Code), embezzlement (Article 420 of the Criminal Code);
- 20 years after the commission of criminal offenses: passive bribery in business operations (Article 276a of the Criminal Code), basic form of a criminal offense active bribery (Article 424 of the Criminal Code)
- 30 years after the commission of the basic form of a criminal offense passive bribery (Article 423 of the Criminal Code)

In the criminal law theory, it is undisputed that the institute of statute of limitation is based on the reasons of criminal and political nature and that its justification is solely in the failure of the state to start and end criminal prosecution at a certain time.

From time limits for occurrence of statute of limitation of criminal offenses with elements of corruption, it stems that for most of these offenses time limit for statute of limitation is 10 years. The 10-year period can hardly be considered a short one, even for completing the most complicated procedures. Therefore, any conviction for the criminal offenses of corruption that is dismissed due to the statute of limitation of is solely the result of the failure and inactivity of the State Prosecutor's Office and/or courts.

A.3.7. Determination of sentence

In Article 42, the Criminal Code prescribes general rules for determination of sentence by stipulating that the court shall determine the sentence for the perpetrator of a criminal offense within the statutory limits for that particular offense taking into account the purpose of punishment and giving due consideration to any circumstances which result in lighter or more severe punishment (mitigating and aggravating circumstances) as well as the following, in particular:
· degree of culpability,
· motives for the commission of offense,
· degree of peril or injury to the protected good,
· circumstances under which the offense was committed,
· perpetrator's history and his personal situation,
· his behavior after the commission of criminal offense, particularly his attitude towards the victim of the criminal offense as well as any other circumstances concerning the perpetrator's personality.

Paragraph 3 of this Article prescribes that the circumstance which is an element of the criminal offense may not be additionally taken into consideration as either an aggravating or mitigating circumstance, except where it exceeds the measure required for establishing the criminal offense or a certain form of criminal offense, or where there are two or more such circumstances of which only one is sufficient for the establishment of a more serious or minor form of the criminal offense.

Therefore, in determining the sentence, the court must first take into account the limits of the prescribed sentence and this should be one of the main starting points. After that, the court should take into account the purpose of punishment [62], and then, in assessing the mitigating and aggravating circumstances, determine the exact sentence. The Criminal Code does not limit mitigating and aggravating circumstances, but points to the most important circumstances that the court, when determining their existence, must take into account when determining the sentence.

Therefore, the regular way of determining the sentence is when the court makes it within the prescribed punishment for a particular criminal offense. Mitigating of a sentence is not a regular way of determining sentences, and can be done exceptionally and exclusively under the conditions provided for by law.

Contrary to the provisions of the Criminal Code, in verdicts that were the subject of our analysis, mitigating of a sentence was carried out without foundation, without explanation and often with reasons that cannot at all represent the circumstances relevant to the sentencing, and especially not for mitigation of the sentence.

Thus, in rare cases against public officials, when their guilt for a criminal offense was established, the courts used the mitigation of the sentence as a rule.

On the other side, the legal basis for mitigating the sentence in these cases contained in Article 45, paragraph 3 of the Criminal Code, which prescribes that the court may impose on a perpetrator a punishment below the limit laid down by law or a lenient punishment provided that it is established that there were particularly mitigating circumstances and it is assessed that a mitigated sentence will be sufficient to achieve the purpose of punishment.

A.4. Recommendations for improvements of legal framework

Not one out of twelve amendments to the Criminal Code did incriminate any new criminal offense of corruption in high-risk areas.

Despite numerous issues in proving high-level corruption, as well as recommendations of the international community, there is no specific criminal offense incriminating the enrichment of public officials who cannot prove the origin of property they acquired during the performance of public office.

It is well known that the judiciary has no results in the fight against corruption in particularly risky areas, such as public procurement, privatization and bankruptcy proceedings, but despite significant comparative experience in the region, no amendment to the Criminal Code was aimed at countering the fight against corruption in these areas.

Moreover, the amendment of the 2010 Code in the part of the criminal offense of misuse of office significantly limited the possibility of prosecuting corruption in the public sector, including corruption in public procurement and privatization. Thus, the suspicions are further aroused that the legislative activity is not aimed combating corruption, but that the amendments to the Criminal Code are weakening the main goal and protective function of this act.

A.4.1. Criminalization of illegal enrichment of public officials

The lack of political will to suppress corruption, especially the one at the highest level, shows the constant resistance of the executive and legislative authorities to prescribe the unlawful enrichment of public officials as a special criminal offense.

The incrimination of the illegal abuse of public officials is in accordance with Article 20 of the United Nations Convention against Corruption (UNCAC) ratified by Montenegro [63], as well as recommendations of the European Commission, the United States and international experts. By imposing this criminal offense, emphasis is placed on public officials as perpetrators of criminal offenses, deriving also from the UNCAC, which is precisely regarding sanctioning of public officials who are unlawfully enriched. Therefore, this criminal act combats the so-called high level corruption, i.e. corruption whose actors are public officials.

In April 2012, British expert Rupert Vining, at the invitation and request of the Government of Montenegro, made an analysis of the possibility of imposing illicit enrichment as a special criminal offense in Montenegrin legislation. The analysis found that there were serious problems of corruption in Montenegro, that they were above the level recognized in the EU countries and that it coincided with significant examples of unexplained enrichment of public officials. The analysis gave a positive answer to the question of the possibility of imposing illicit enrichment as a special criminal offense in Montenegro's legislation.

However, although it hired an international expert to conduct an analysis of the possibility of imposing illicit enrichment as a special criminal offense, since the development of this analysis, which gave a positive response to this possibility in April 2012, the executive power opposes the criminalization of illegal enrichment. Any proposal to prescribe this criminal offense in the amendments to the Criminal Code was rejected as well. Such approach shows a clear lack of political will because incrimination and sanctioning of illegal enrichment is purely a political decision or choice, and not a question of legal compatibility.

We believe that problems Montenegro has with corruption require the reaction of the legislator and the prescription of the criminal offense of illicit enrichment, as recommended by the European Commission in several Progress Reports on Montenegro.

Incrimination of illicit enrichment would contribute to the fight against corruption in Montenegro and more effective proving of these cases by the prosecution.

Numerous countries have introduced the illicit enrichment of public officials as a criminal offense by linking crime with property declarations and conflicts of interest programs.

Practice in Montenegro has shown that property declarations and conflicts of interest have no impact on the detection of illicit enrichment, while all officials that might possibly unlawfully become rich can without any problems retain the property which they have acquired in an unlawful manner. Likewise, public officials have so far without any serious consequences given false information in declarations of property and conflict of interest.

A.4.2. Public procurement and privatization

The areas of public procurement and privatization carry a high degree of risk for corruption and abuse to the detriment of public funds. In cases of abuse in public procurement procedures and the privatization of public assets, it may be caused by the actions of the bidders and/or the actions of the contracting authority.

However, the criminal offenses prescribed in Montenegrin legislation do not provide sufficient grounds for prosecuting and sanctioning of persons who commit such abuses, especially of the contracting authority officials managing public funds, whose actions therefore constitute corruption in the public sector. Also, in the judicial practice, there are no legally binding convictions for abuse in privatization procedures, while convictions for abuse in public procurement procedures are very rare.

Amendments to the 2010 Criminal Code and the introduction of an element of unlawfulness into the description of the offense of abuse of office [64], limited the possibility of prosecuting officials who in the procedures of public procurement or privatization cause damage to public funds and allow gaining benefits to others.

Namely, for it to be a criminal offense committed by the abuse of office, it is necessary to prove that the official person acted in an unauthorized manner, that is, unlawfully and contrary to the regulations. This eliminates the possibility of prosecuting an official who uses his/her official position by undertaking actions that s/he is formally authorized to undertake.

Also, the abuse of office generally involves an action that is carried out under official authority and which is therefore not unlawful. This means that an official can use an official position not in the public interest, but in someone's private interest, and thus cause damage to public funds but still does not commit a criminal offense.

According to this description of the criminal offense, in the procedures of public procurement and privatization, this criminal offense could be carried out only by exceeding the authority and non-performing of official duty. That is almost impossible, because in these procedures, officials have the legal authority to act and make decisions. Namely, the exceeding of official powers exists when an official person undertakes actions that are not covered by his authority, while non-performing of official duty exists when an official fails to take actions that s/he is obliged to undertake.

In the field of public procurement and privatization, in practice, it is difficult to imagine the situation that a decision is made by an unauthorized person or that an authorized person does not make a decision at all. On the contrary, abuses in these areas are usually exercised through the use of an official position where an official person makes a decision which s/he is authorized to issue, but does not adopt it in the interests of official duty, but in the interests of others and to the detriment of the public interest and public funds.

According to the legal description of the criminal offense of abuse of office, such person does not commit this criminal offense and cannot be held responsible for this criminal offense, nor for any other criminal offense under the Criminal Code.

Serbia

The Criminal Code of Serbia stipulates specific criminal acts which suppress corruption in public procurement and privatization procedures and which set forth imprisonment of up to ten years.

Since the end of 2012 [65], the Criminal Code of Serbia has stipulated a specific criminal offence of public procurement misuse. Amendments to the Criminal code from 2016 (66), which came into force on 1 March 2018, minor amendments in description of this criminal offense, which strive to suppress misuse in public procurement procedures, were made.

The Criminal Code of Serbia describes two acts of the commission of this criminal offense, depending on whether the perpetrator is a person on the side of the bidder in the public procurement procedure or a person on the side of the public procurement contractor.

In the first case [67], a person who participates in the public procurement procedure shall be punished by imprisonment of six months to five years, and with the intent to influence the decision-making of the public procurement contractor by:
- submitting the offer based on false data;
- negotiating with other tenderers, contrary to the law, or;
- undertaking other unlawful action.

In the second case [68], the same punishment shall be imposed on a responsible person or official, contractor of public procurement who, by violating the law or other regulations, causes damage to the public means in a manner that:
- uses his/her position or authority;
- exceeds the limits of his/her authority or
- does not perform his/her duties.

The Criminal Code of Serbia stipulates a more severe form of this criminal offense for which one shall be punished by imprisonment of one to ten years. This more severe form is stipulated in relation to the value of public procurement and exists in case of misuse of public procurement whose value exceeds the amount of 150 million dinars. [69]

Also, the amendments to the Criminal Code from 2016 [70], which came into force on March 1, 2018, prescribe the new criminal offense of abuse in the privatization procedure. [71]

In this case as well, the Criminal Code of Serbia describes two acts of perpetration of a criminal offense, depending on whether a perpetrator is a participant in the privatization process or an official person.

In the first case [72], imprisonment of six months to five years shall be imposed on a person who, during the privatization process, affects the course of the proceedings or the decision-making of the organization authorized for the implementation of the privatization procedure, by:
- submitting an offer based on false data;
- making deals with other participants in the privatization process contrary to the law, or
- undertaking other unlawful actions.

In the second case [73], the same punishment shall be imposed on the official person who violates the law or other regulations on privatization, thereby causing damage to the capital or diminishing the property that is subject to privatization in a manner that:
- uses his/her position or authority;
- exceeds the limits of his/her authority or
- does not perform his/her duties

The Criminal Code of Serbia sets forth a more severe form of this criminal offense for which one shall be punished by imprisonment between one and ten years. This more severe form is stipulated in relation to the privatization of capital or assets whose estimated value exceeds the amount of 300 million dinars. [74]

Croatia

The Criminal Code of Croatia also specifically criminalizes corruption in public procurement procedures.

Article 292 of this law prescribes the criminal offense of unlawful favoritism, which is part of the criminal offenses of corruption in the public sector. For this criminal offense, a prison sentence between six months and five years is prescribed and is described in two acts of perpetrating.

The first act is committed by a public official or responsible person who on the basis of an agreement demonstrates favoritism towards an economic entity by adapting public procurement terms and conditions or who awards a contract to a tenderer whose tender is contrary to the terms and conditions set out in the bid documentation. [75] So, this provision incriminates the so-called setting up of business to certain entities, i.e. adapting the public procurement terms to a particular entity or concluding a contract with such entity whose bid is contrary to the conditions of public procurement.

Second act is done by a responsible person who abuses his or her position or authority by demonstrating favoritism in the award of contracts or in taking on or negotiating deals toward his or her activity or the activity of persons with whom he or she is linked in terms of vested interest. [76] In this case, the abuse that allows assigning jobs to oneself or related persons is incriminating.

Also, the Criminal Law of Croatia criminalizes the abuse of the public procurement procedure performed by the bidder. Thus, Article 254 sets out the criminal offense of misuse of public procurement procedures. This offense is committed by a tenderer who submits as part of a public procurement procedure a bid based on a prohibited agreement, the aim of which is that the contracting authority accepts a certain bid. Prescribed punishment is imprisonment from six months to five years, and for a more severe form of the offense when a considerable material gain is acquired or considerable damage caused, the perpetrator shall be punished by imprisonment from one to ten years.

A.4.3. Bankruptcy

The criminal prosecution of officials in the bankruptcy proceedings is limited in the same way as with officials in public procurement procedures and privatization due to the description of the criminal offense of abuse of office. However, none of the 12 amendments to the Criminal Code specifically addressed this area and the abuses that could have been committed during the bankruptcy proceedings by the insolvency body and which would damage the state property.

Regarding criminal offenses of corruption in bankruptcy proceedings, the Criminal Code of Montenegro prescribes two criminal offenses: causing bankruptcy [77] and bankruptcy fraud. [78] The perpetrator of both criminal offenses may be only a responsible person in a company or other business entity and it is a corruption in the private sector. In both cases, the actions performed before the opening of the bankruptcy proceeding and the action results in bankruptcy procedure.

However, the Criminal Code does not contain criminal offenses that would be committed during the conduct of bankruptcy proceedings. The Criminal Code does not contain criminal offenses whose perpetrator would be an official person in bankruptcy proceedings, or a bankruptcy administrator or a bankruptcy judge.

There are numerous bankruptcies that are initiated and led over state-owned entities and where the state is one of the creditors. In such proceedings, the Bankruptcy Trustee has great powers, especially in the case of the sale of the assets of the insolvent debtor. In these proceedings, the Bankruptcy Trustee has access to public funds i.e. the state property.

Comparative Experiences

Croatia

The Criminal Code of Croatia specifically criminalizes corruption in the bankruptcy proceedings with a criminal offense receiving or giving bribes in the bankruptcy proceedings referred to in Article 251.

A creditor or member of the board of creditors who accepts a bribe shall be punished by imprisonment from six months to five years. [79] If this offence is committed by the bankruptcy trustee, he or she shall be punished by imprisonment from one to eight years. [80] Offering a bribe to a creditor, member of the board of creditors or bankruptcy trustee shall be punished by imprisonment not exceeding three years. [81]

It is important to point out that the Criminal Code of Croatia in the description of the criminal offense of abuse of position and authority [82], corresponding to the criminal offense of abuse of office from the Criminal Code of Montenegro, does not contain unlawfulness, which gives an additional basis for the officials in bankruptcy proceedings to be responsible for this criminal offense, if they misuse their position. This criminal offense will also exist in cases where the bankruptcy administrator makes the decision within the limits of the legal powers, if it is proved that the position was used to obtain for himself or herself or others an advantage, or cause damage to another.

B

ANALYSIS OF STATISTICAL DATA

The judiciary is not efficient in prosecuting corruption, while the continous decrease in number of people convicted of corruption is concerning.

Most of the court proceedings relate to petty corruption, charges are rarely pressed against public officials, and they are even more rarely convicted, and even then the courts impose exceptionally lenient sentences.

Most benefit from signing of the plea agreement had the persons convicted of grand corruption, which resulted in extremely low sentences.

The State Prosecutor's Office persists in accusations which it cannot prove, and these proceedings end up in favour of the accused because of the lack of evidence or statute of limitation caused by the untimeliness of the judiciary and unacceptably long duration of the proceedings, which causes high costs of proceedings at the expense of budgetary funds.

Accusation

More than half of the criminal offenses for which a final verdict was issued relates to corruption in the public sector.

There are no final verdicts for many criminal offenses with elements of corruption in the economy.

Judgments

In the past five years, the prosecution failed to prove more than half of the criminal offenses of corruption the defendants were charged with, instead, the acquittals or dismissals were passed.

Convicted

More than half of the convictions relate to petty corruption, and only one in five is for grand corruption, which is actually only two major cases.

Most convicted of corruption are among civil servants.

Penalties

In as many as 90% of cases, the courts have imposed minimum or sentences below the legal minimum.

For criminal offenses with elements of corruption, courts usually impose sentences of imprisonment of up to one year.

A five-year prison sentence is the most severe punishment for the criminal offense of abuse of office, although for the most severe form of this offense the law prescribes a maximum sentence of twelve years of imprisonment.

Officials

In the last five years, six convictions have been issued for five state officials, all of which have been sentenced to a minimum or sentences below the legal minimum.

Agreements

The plea agreements were most often signed by public officials and representatives of the high-scale economy, while the prosecution did not conclude any agreement in the case of petty or medium-scale corruption. No sentence agreed was above the legal minimum, regardless of the gravity of the offenses, the amount of benefits or damages.

Duration

The first instance court proceedings for criminal offenses with elements of corruption lasted around four years on average, while the second instance proceedings lasted about a year. The average length of all proceedings is shortened, but the proceedings completed by acquittals or dismissals lasted twice as long than the cases of convictions.

Dismissals

Almost 80% of the dismissals are related to cases of petty corruption. Two-thirds of the verdicts rejecting the charges was adopted due to the prosecutor's dismissal of the charges. Almost a third of the dismissals were issued due to statute of limitation.

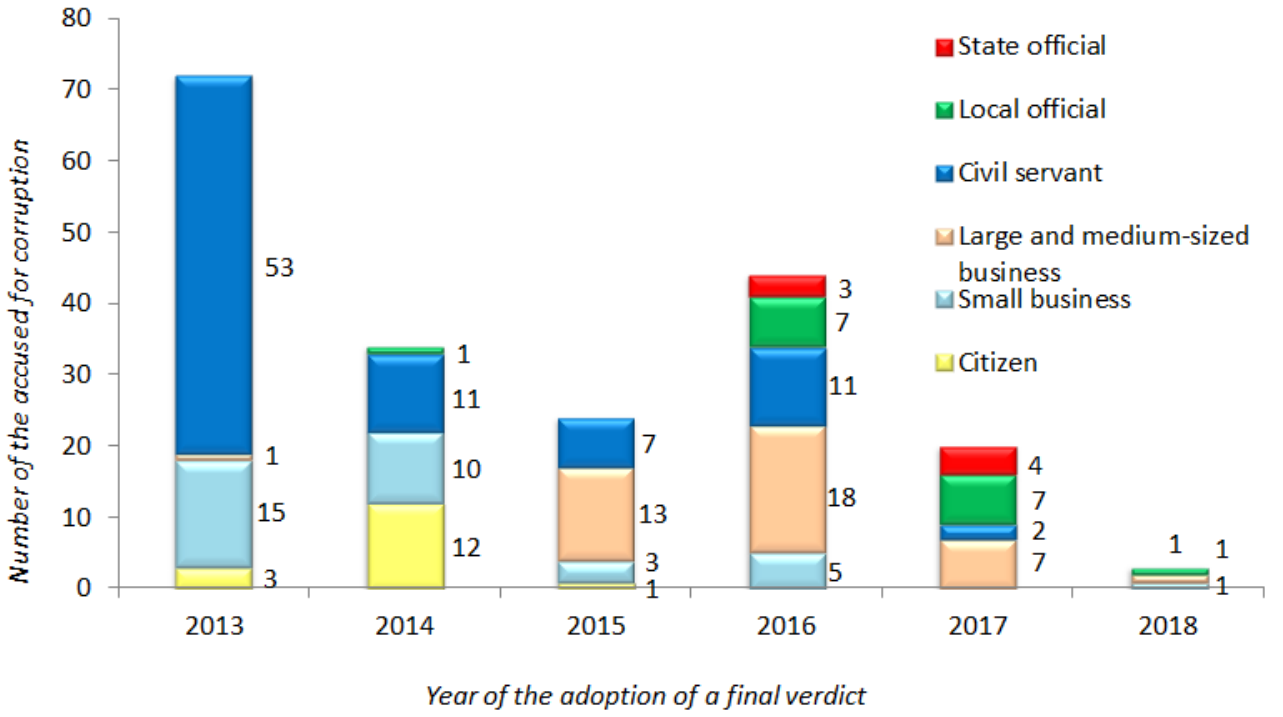
B.1. Accusation

B.1.1. 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 three 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. Most often, the proceedings were directed against state administration and businessmen, while in recent years there have been slightly more cases against public officials.

Graph 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 were 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 from the state administration, while there were no proceedings against local or state officials.

The number of accused in the verdicts adopted grew in 2016 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 were adopted in which three state and seven local officials were charged, and the number of accused for corruption in the business sector also increased.

In 2017, there were twice as 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 courts' 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 seven accused individuals who performed public functions at the state level, with one of them being Svetozar Marović who was accused in two cases.

Final verdicts in these cases were adopted in 2016 and 2017, respectively.

While final verdicts in cases of Marović and Đorđe Pinjatić, former member of the Parliament of Montenegro, were adopted during 2016, 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.

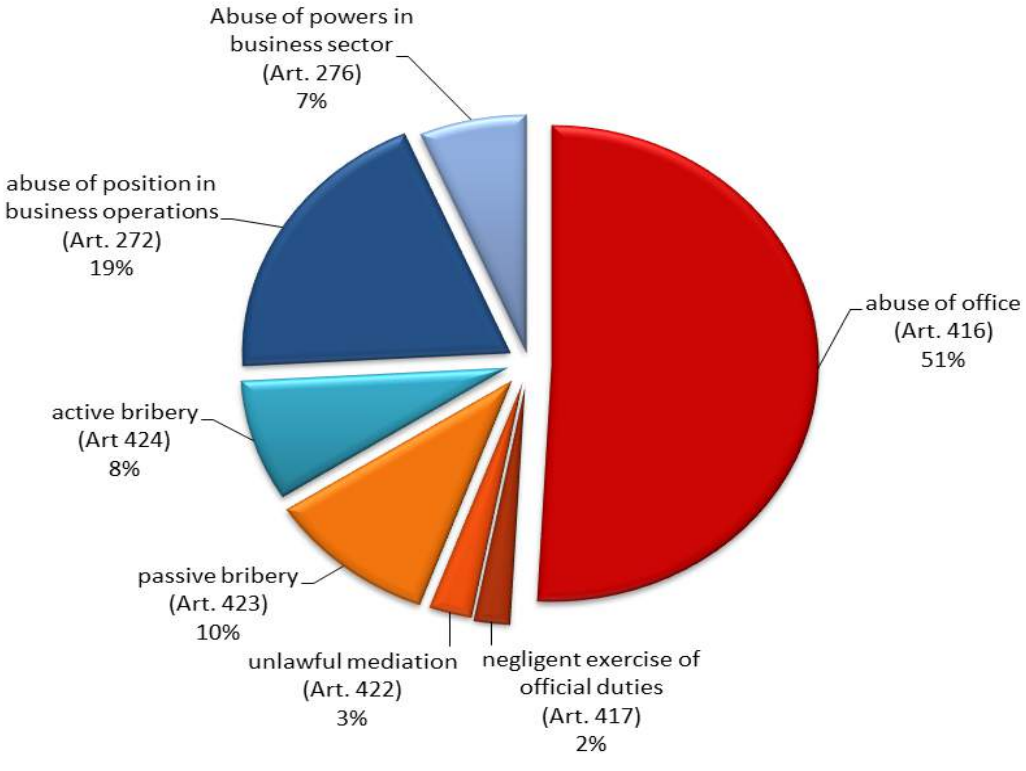
In 2018, there were no final verdicts for state-level officials.

B.1.2. What criminal offenses are most often processed?

More than half of the final verdicts refer to a criminal offense with particularly pronounced elements of corruption committed by abuse of office.

Largest number of verdicts for this offense indicates that the proceedings are led mostly against the middle and lower ranking officials because there are very few indictments and verdicts against public officials.

Graph 2: Number of criminal offenses of corruption from final verdicts (2013- 2018, by offenses)



Over 60% of the criminal offenses for which a final verdict was adopted are related to corruption in the public sector [1], and a quarter to corruption in the business sector [2], while one in ten is active bribery or unlawful mediation.

It is interesting that there are no final verdicts for many criminal offenses with elements of corruption in the bussiness sector. For example, there is no verdict for breach of equality in business operations, abuse of monopoly position, causing bankruptcy, bankruptcy fraud, false financial statement, misuse of assessment, disclosing and using stock-exchange secrets. There are no verdicts for new crimes such as passive and active bribery in business operations, or capital market manipulation. There are not even verdicts for fraud in performance of official duties, embezzlement or unauthorised use.

This shows lack of results in significant part of combating corruption in business sector, and that, for now, the legislator's attempt to make distinction between corruption and bribery in the public and private sector has no practical significance.

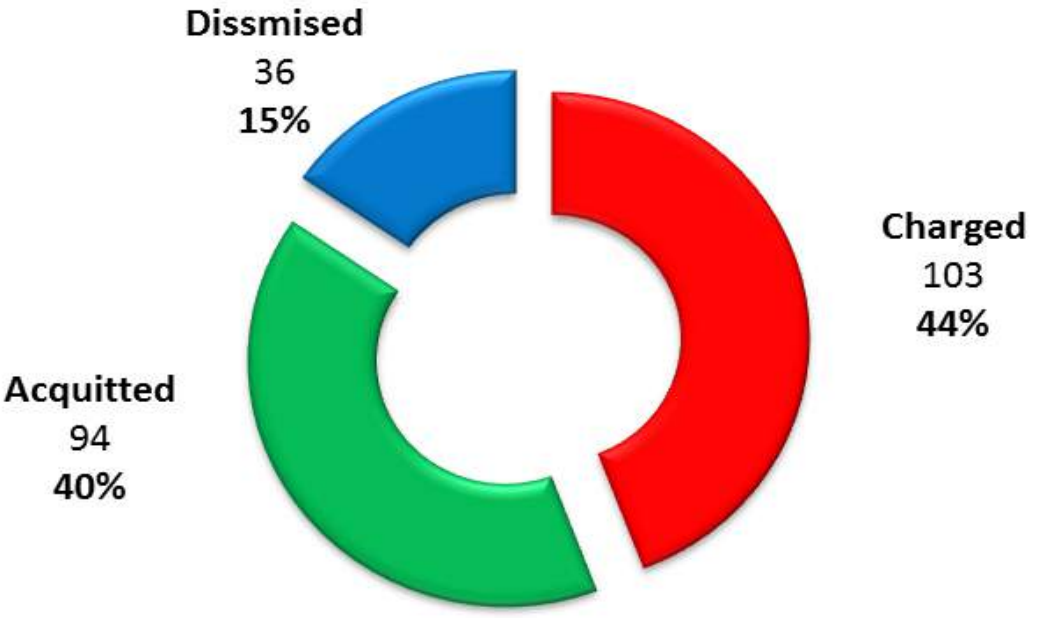
B.2. Judgments

B.2.1. 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.

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

Graph 3: Types of verdicts **(2013.-2018., by case)**

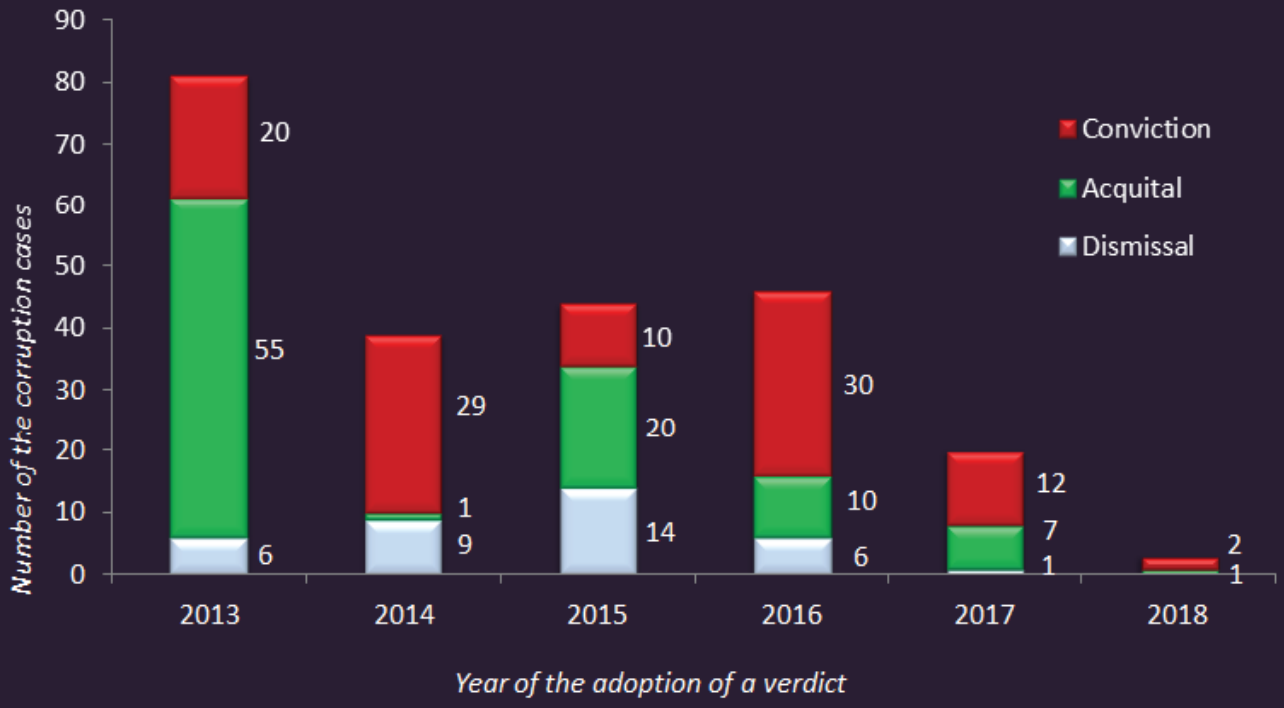


[1] 63% of all offenses for which a final verdict has been issued in the last five years relates to abuse of office, passive bribery or negligent exercise of official duties.
[2] 26% of all acts for which a final verdict has been passed in the past five years relates to offenses of abuse of position in business operations and abuse of powers in business sector.

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 twice as 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 three final verdicts were issued, two convictions and one acquittal.

Graph 4: Types of verdicts **(by year, by case)**



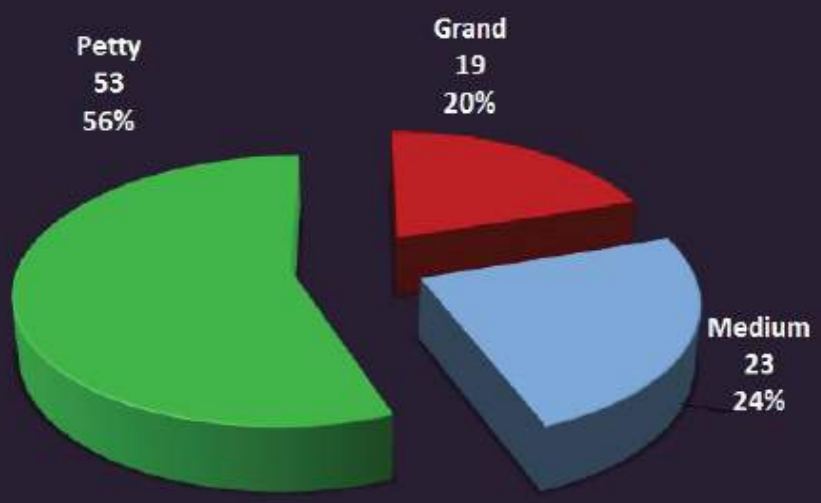
B.2.2. What is the number of convictions for grand corruption?

More than half of the convictions refer to administrative corruption. Every fourth conviction is for the medium, and only one fifth is for grand corruption.

In fact, there are only two major cases, the one of Svetozar Marović and his associates in the so-called "Budva Affair", and the one concerning the proceedings against the former Mayor of Bar, Žarko Pavićević and his associates.

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

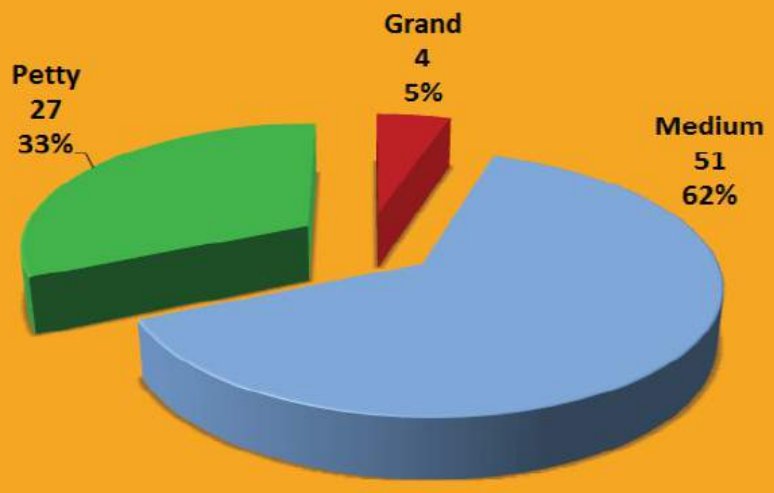
Graph 5: CONVICTIONS
(2013-2018, by person)



The majority of acquittals are related to medium corruption.

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

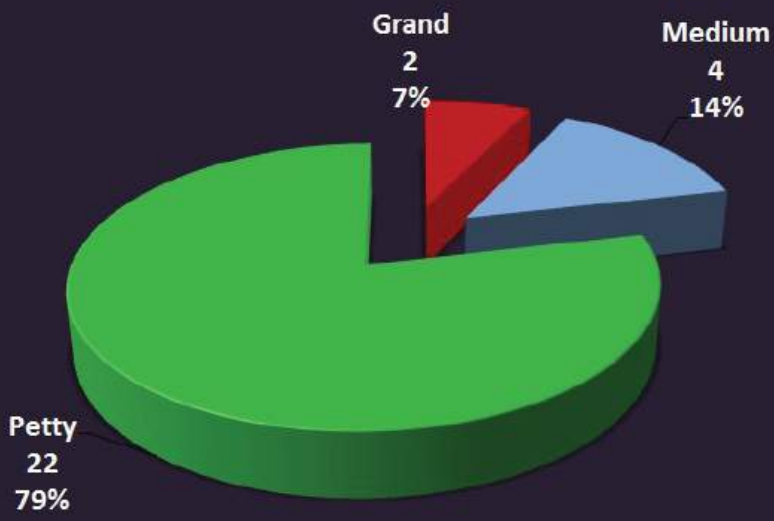
Graph 6: ACQUITTALS
(2013-2018, by person)



Almost 80% of the dismissals are related to cases of administrative 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 administrative corruption in court.

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

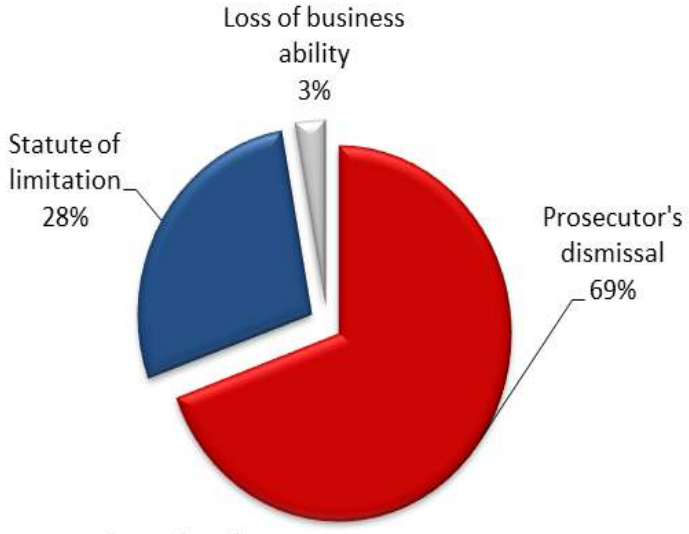
Graph 7: DISMISSALS
(2013-2018, by person)



B.2.3. Why have dismissals been adopted?

Two thirds of the verdicts rejecting the charges has been adopted **due to the prosecutor's dismissal of charges**, which indicates that the State Prosecutor's Office has no capacity to prove corruption charges before the court, that the charges are raised without valid evidence, creating proceedings' costs to the budget.

Nearly one-third of dismissals were adopted due to statute of limitation, which shows that the **judiciary acts untimely** and that the proceedings are conducted for an inappropriately long time, which leads to the rejection of the charges and unnecessary costs for the judiciary.



Graph 8: **Reasons for adoption of dismissals (2013- 2018, by offenses)**

B.2.4 How long did the proceedings last?

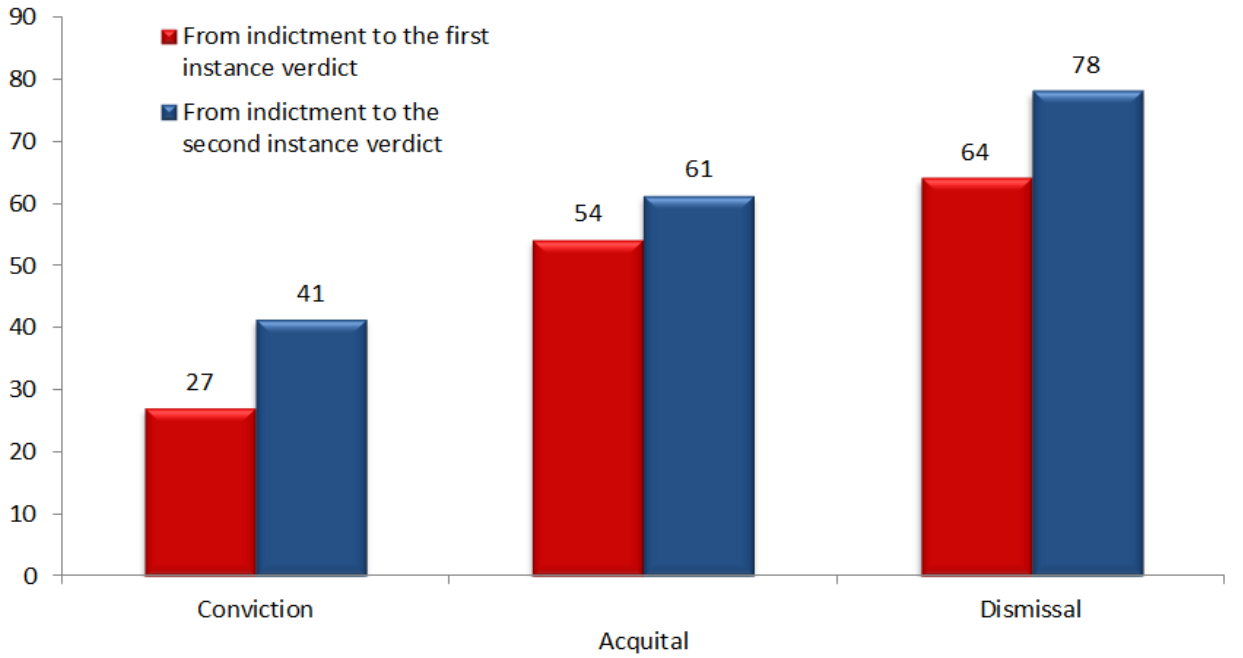
The first instance court proceedings for criminal offenses with elements of corruption lasted about four years in average, while the second instance lasted up to five years in average.

Proceedings that were completed by acquittals or dismissals lasted twice as long than in case of convicting verdicts.

Statistics show that the State Prosecutor's Office persists in accusations that it cannot prove, and these proceedings ultimately end up in favour of the accused due to lack of evidence or due to statute of limitation caused by an inappropriate length of a proceeding.

Longest duration of proceedings ending with a dismissal shows that courts also unreasonably extend the proceedings and do not have the capacity to complete it within a reasonable time.

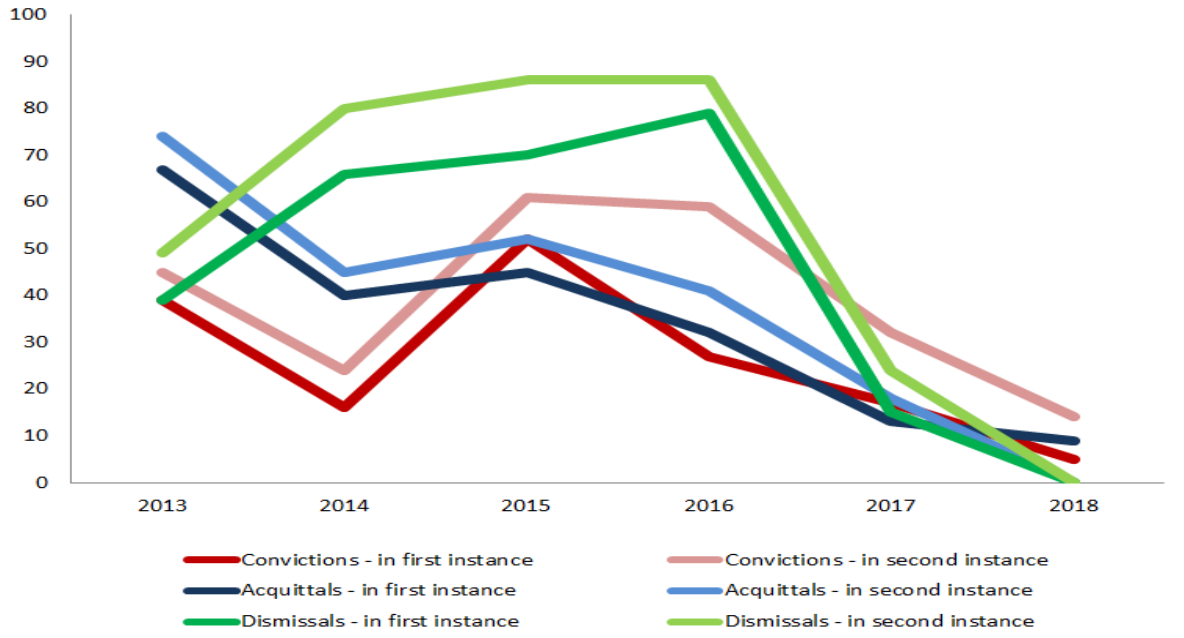
Graph 9: **Average duration of court proceedings from the indictment to the first instance and second instance verdict (expressed in months, by offenses and types of verdicts, 2013- 2018)**



Statistics show that the average duration of all proceedings is shortened. In proceedings that were completed with conviction and dismissals, the judiciary acted particularly untimely during 2015 and 2016. The proceedings that ended with dismissal of charges lasted for more than seven years in average, while convictions were passed after five years of trial in average.

Unlike 2013, when the proceeding in which the acquittal was passed lasted more than six years in average, in the previous three years there was a constant decrease in the average duration of proceedings that ended with the acquittal. The average duration of the proceedings in which the dismissals were adopted fell rapidly in cases where final verdicts were adopted in 2017.

Graph 10: **Average duration of court proceedings from the indictment to the first instance and second instance verdict (in months, by offenses, types of verdicts and years)**



B.3. Penal policy

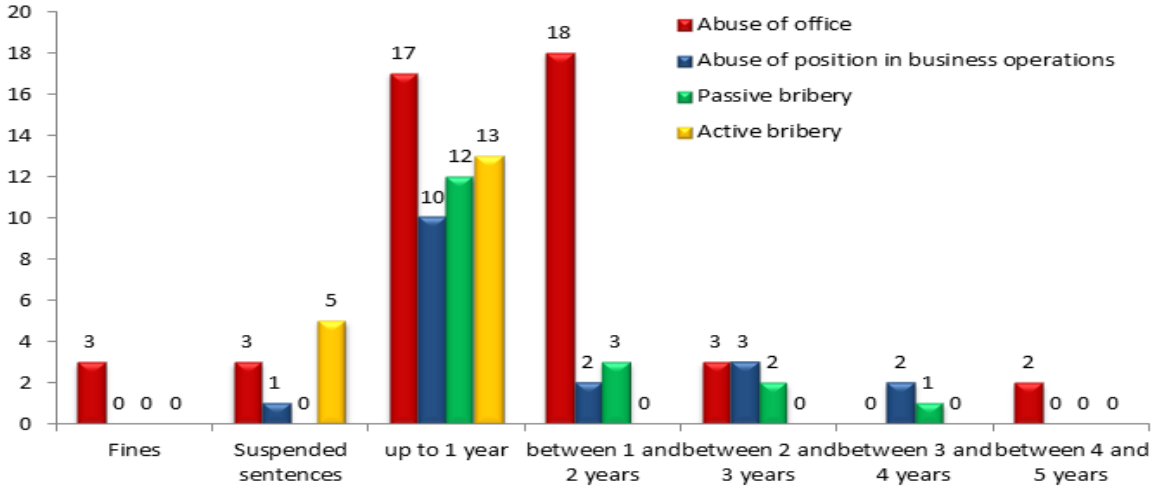
B.3.1. What is the penal policy by criminal offenses?

The penal policy for all criminal offenses of corruption is inappropriately lenient and courts most often impose sentences below or around the prescribed minimum, i.e. imprisonment of up to one year.

A five-year prison sentence is the most severe punishment imposed for the criminal offense of abuse of office, although for the most severe form of this offense the law prescribes a maximum sentence of twelve-year imprisonment. For this offense, the courts **most often imposed imprisonment sentences ranging from one to two years.**

For passive bribery, courts usually **imposed a sentence of up to one year of imprisonment,** and in all offenses related to active bribery**, suspended sentences were most often imposed.**

Graph 11: **Number of imposed imprisonment sentences for corruption offenses for which the final verdicts were most often passed (2013 - 2018, by offenses)**



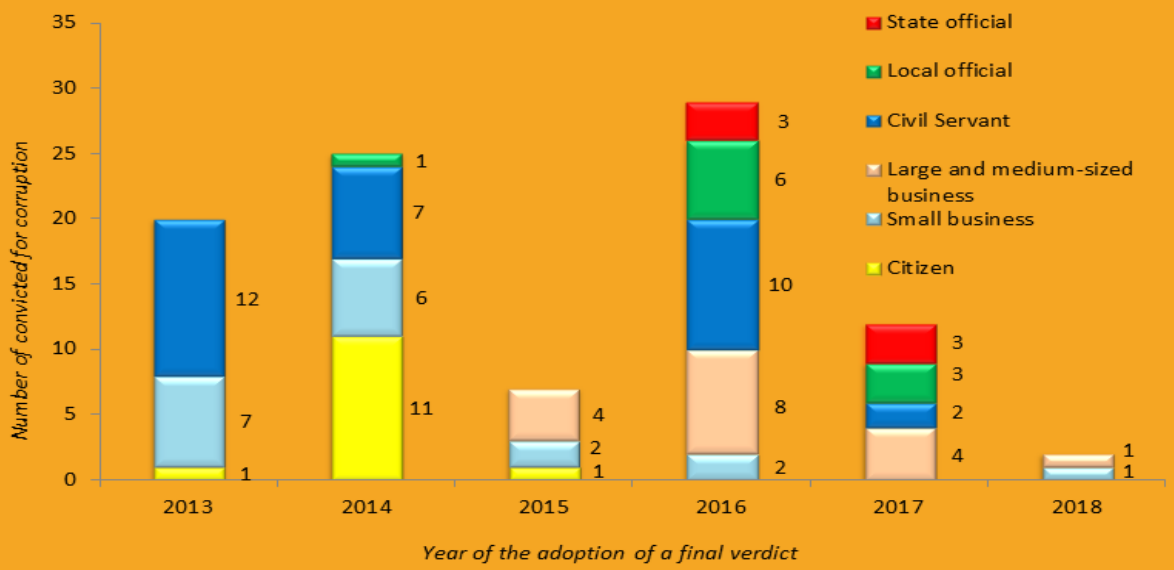
B.3.2. How many public officials have been convicted and to what penalties?

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 probation 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.

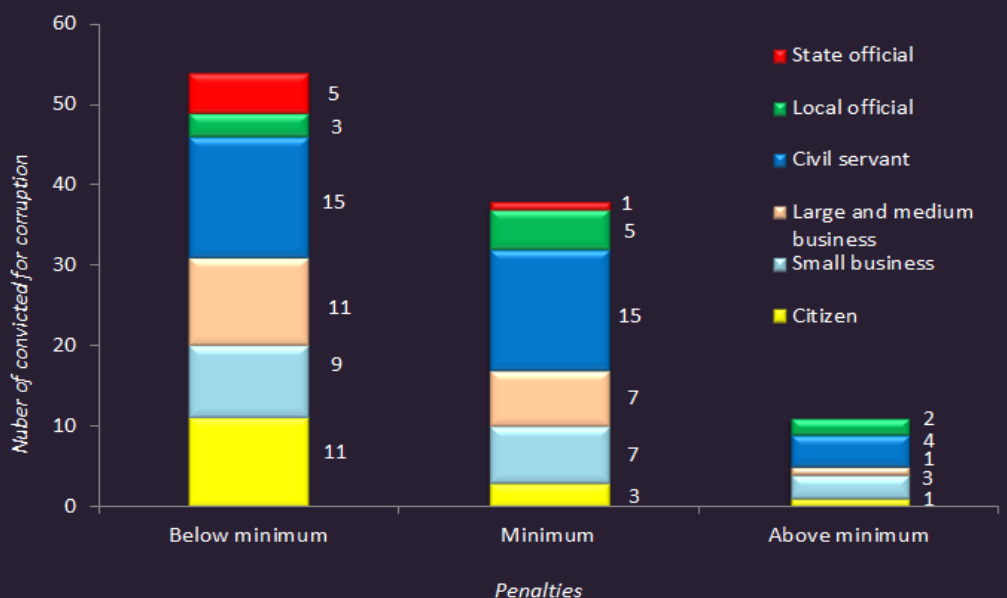
Graph 12: Convictions by type of those accused **(by years, by individuals)**



The penal policy of courts for corruption is incomprehensibly and unacceptably lenient. Courts are particularly lenient 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.

Graph 13: **Volume of sentences by structure of convicted (2013. – 2018., by offences)**

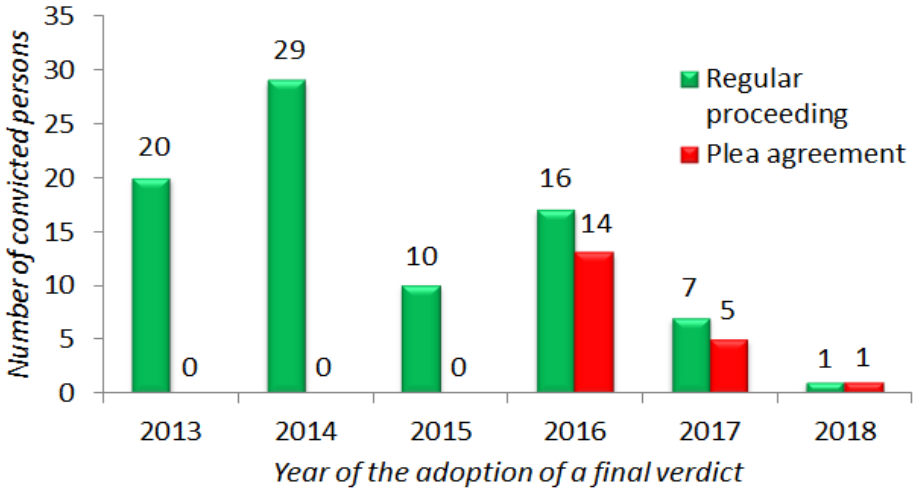


B.4. Plea agreements

B.4.1. Who and how often made guilty plea agreements?

Since the institute plea agreement for most serious crimes of corruption was established in mid-2015, **a significant number of corruption verdicts have been adopted precisely on the basis of this institute.**

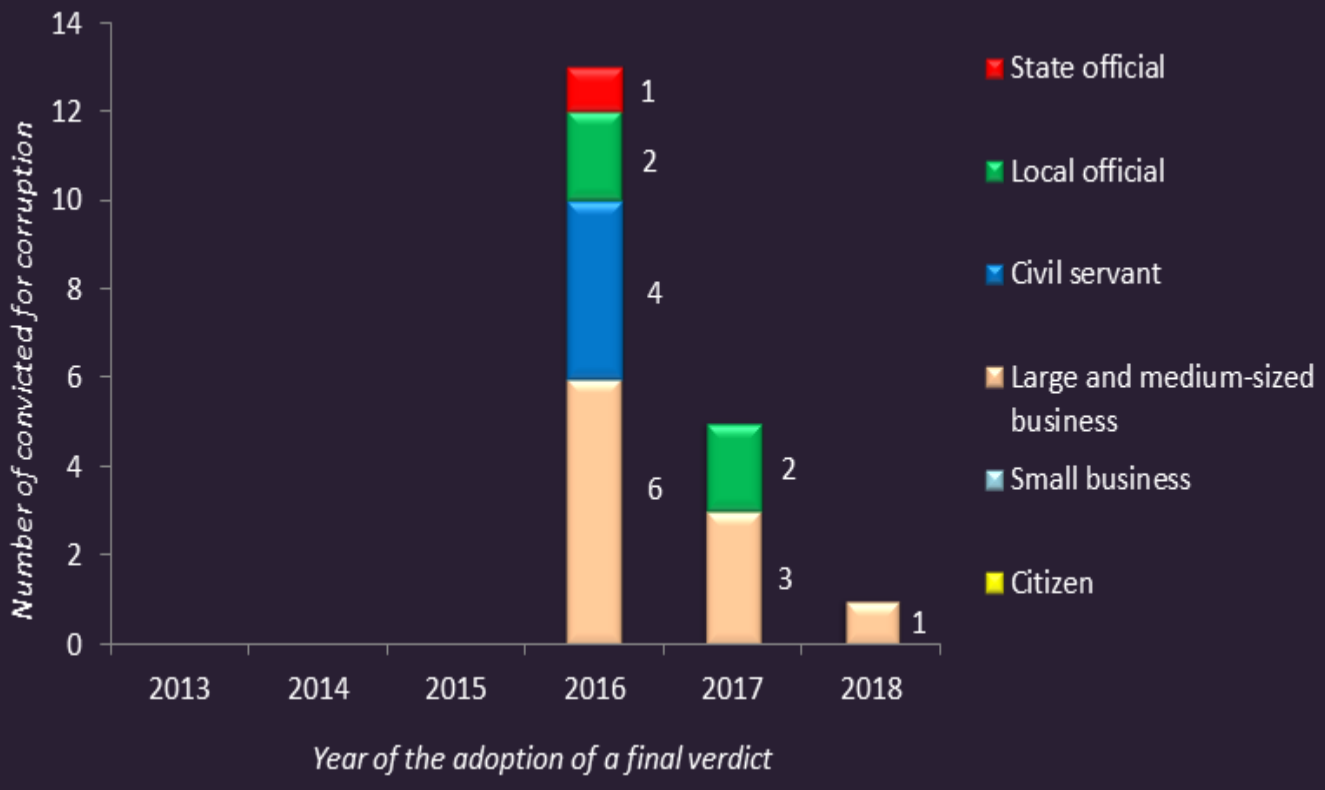
Graph 14: Convictions in regular proceedings compared to those from plea agreements **(by years, by offences)**



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

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 a citizen.

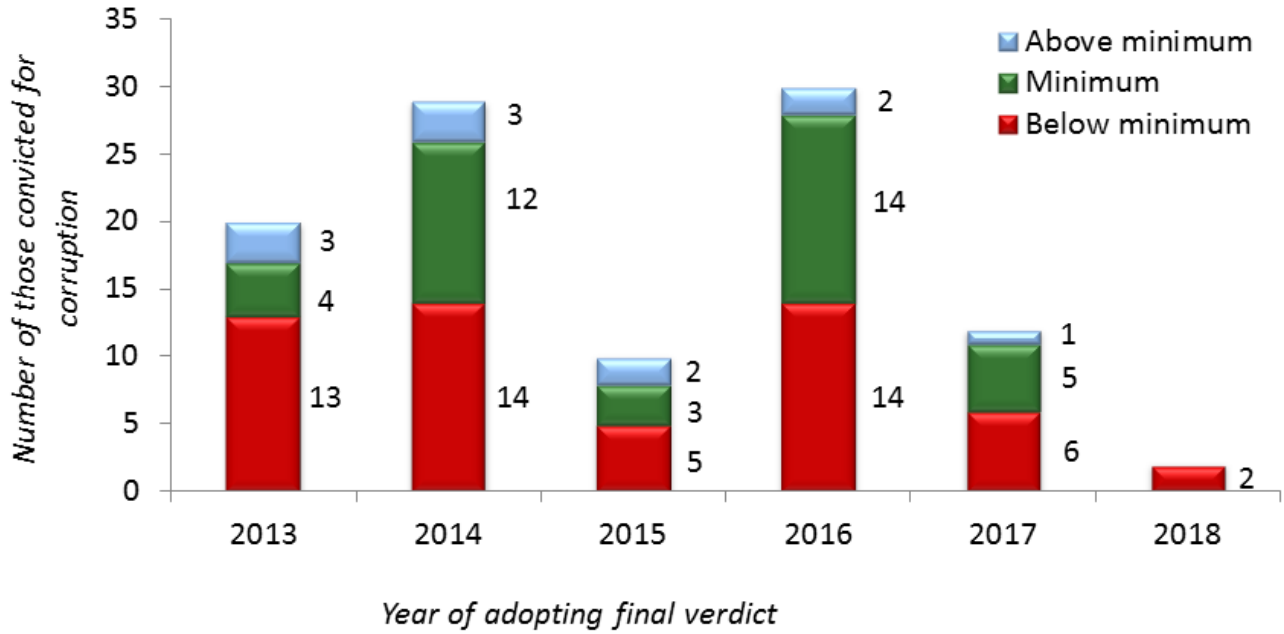
Graph 15: Plea agreements by structure of convicted **(by years, by offences)**



B.4.2. What are the sentences for (non) admitting corruption?

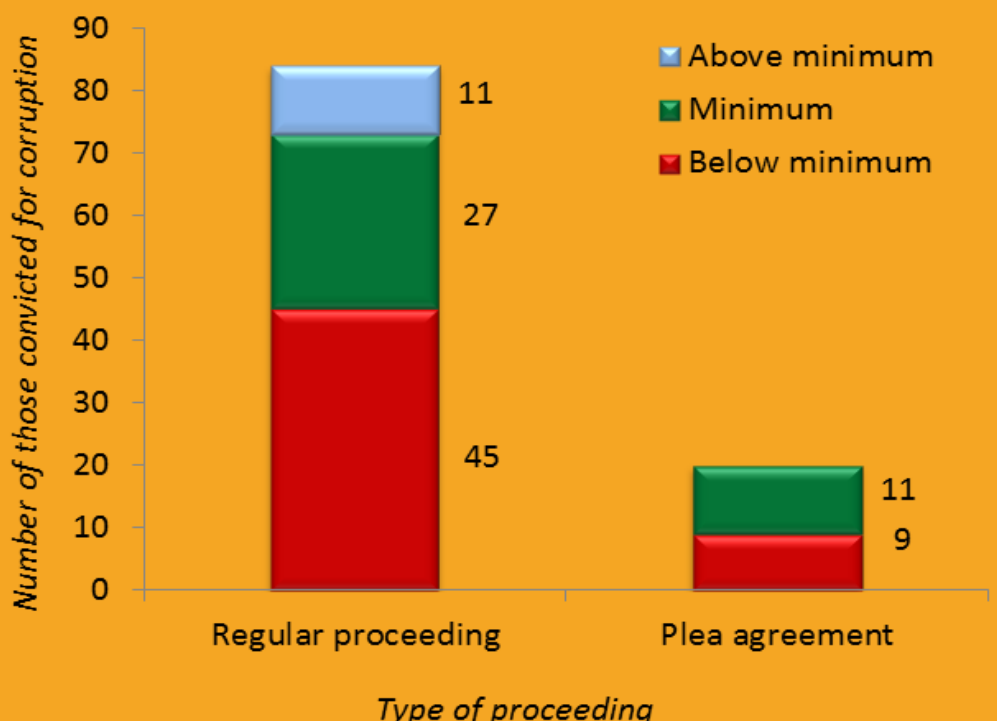
Year after year, the courts persist with a very lenient penal policy, and most of the sentences are below the minimum prescribed by the law. **Only in every 10th conviction the courts imposed penalties for corruption above the legal minimum.**

Graph 16: Penal policy **(by years, by offences)**



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

Graph 17: Penal policy by type of proceedings
(2013. – 2018., by offences)



C

ANALYSIS OF COURT PRACTICE

Court practice in cases of corruption is very mild and uneven.

The courts had a milder attitude towards corruption in the public sector, which caused multi-million dollar damage to the state budget, rather than corruption in the private sector, when the companies were damaged for much lesser amounts.

The courts have pronounced milder penalties for high-level corruption than for administrative corruption, and public officials have had more favorable treatment than other accused persons. The courts have differently appraised the same circumstances for various accused persons, in favor of public officials, who were even pronounced suspended sentences when there were no legal requirements for that. The fact that bribing police is punished more severely than political corruption shows the extent to which the penal policy of the courts is uneven.

Practice of the second instance court further alleviated the penal policy of the first instance courts in case of public officials. All judgments of the High Court pronouncing several years of imprisonment for high-level corruption were revised by the Appellate Court which reduced the penalties.

Failures and improper conduct by the State Prosecutor's Office also had an impact on the extremely mild penal policy of the courts for high corruption criminal offenses. In addition, in the cases of high corruption, the State Prosecutor's Office did not request the measures of secret surveillance to be ordered, but applied those measures almost exclusively to cases of corruption at the lowest level. After years of conducting the proceedings, the State Prosecutors arbitrarily withdrew the charges, thus causing high costs that have fallen on the burden of the court budget funds.

Concluding plea bargain further alleviated penal policy towards the convicted for high corruption, even in cases when they caused multi-million damage. Due to plea agreements, negotiating and accepting punishments below the legal minimum for serious criminal offenses of corruption has become a rule, not an exception.

The State Prosecutor's Office did not sign plea agreements in cases of small and medium corruption, and instead the accused for high corruption benefited the most from signing of the plea bargains. In such cases, the State Prosecutor's Office has introduced the practice of agreeing extremely mild sentences, which the courts have confirmed without analyzing whether this is in accordance with the law. The judgments made on the basis of these agreements do not have any basic reasoning, and the courts have interpreted the mitigating circumstances too mildly, while appraising the aggravating circumstances milder than the law prescribes or not taking them into account.

Plea agreements did not contribute to achieving better results in financial investigations, whose achievements are still extremely modest. The most important cases in which the State Prosecutor's Office concluded these agreements relate to the Budva affair, whose main actor left the state after pleading guilty to avoid serving the prison sentence, and sold the property the State Prosecutor's Office attempts to seize.

C.1. Court proceedings

Court practice in cases of corruption is mild and uneven. In ordinary court proceedings, the courts have pronounced milder penalties for high-level corruption than for administrative corruption. The courts have a milder attitude towards corruption in the public sector, which caused multi-million euro damage to the state budget, rather than corruption in the private sector, when the companies were damaged for much smaller amounts. **Public officials have more favorable treatment than other accused persons**. The courts differently appraise the same circumstances for various accused persons, in favor of public officials, who are even pronounced suspended sentences when there are no legal requirements for that. The fact that bribing police is punished more severely than political corruption shows the extent to which the penal policy of the courts is uneven.

The Appellate Court of Montenegro affected with second-instance judgments the further alleviation of the proceedings of first instance courts against public officials. All the judgments of the High Court, pronouncing several years of imprisonment for high-level corruption, have been amended and the Appellate Court reduced the sentences.

Failures and improper conduct of the State Prosecutor's Office also had an impact on the extremely mild penal policy of the courts for criminal offenses of high corruption.

In high-corruption cases, where the state was damaged for millions, the State Prosecutor's Office did not request the measures of secret surveillance to be ordered in order to gather evidence more easily, but applied those measures almost exclusively to cases of corruption at the lowest level.

After years of conducting the proceedings, the State Prosecutors arbitrarily withdrew the charges without giving any specific reasons, or with the general view that the accused who had been prosecuted for years had not committed criminal offenses or that there are no evidence for this. Such conduct of the courts and the State Prosecutor's Office has caused enormous costs that have fallen on the burden of the court budget funds.

C.1.1. Uneven penal policy

Courts pronounce most lenient sentences for high-level corruption, where the state is damaged for multi-million amounts, and the most severe ones for petty or medium-sized corruption where the amount of damage is significantly lower.

Judicial practice shows that courts have a more lenient attitude towards corruption in the public sector, when damage is caused to publics - state assets, than when a private company is damaged.

Case studies show that public officials have more favourable treatment before courts than other accused persons. Courts differently assess the same circumstances with different convicted persons, in favour of public officials, who even receive suspended sentences when there are no legal requirements for that.

Studies also show that the courts impose more severe sentences for bribing of a police officer than the political corruption.

In cases of high corruption, the Appellate Court of Montenegro had unreasonably mild penal policy in the second instance judgements, which had an impact on further alleviation of the first instance courts proceedings against public officials.

All judgments of the High Court pronouncing several years of imprisonment for high-level corruption were revised by the Appellate Court which reduced the penalties.

The High Court sentenced the accused public officials three times in one case to a somewhat more severe prison sentence, but the Appellate Court abolished two judgments and revised the third one in the part relating to the decision on penalties by halving them.

In only two cases related to high corruption, the High court considered the public function and duty of the accused as aggravating circumstances and sentenced them to several years of imprisonment. The Appellate Court determined both times that such an interpretation was exaggerated and thus ended the practice of the first instance courts.

C.1.1.1. Case Study:
More lenient sentences for corruption in public than in private sector

While the courts do not take into account the amount of damage when deciding on the sentence for a public official, in the case of corruption in the economy, they impose more severe punishments for smaller damages, citing precisely this as a main factor in the determination of the sentence.

Damage is (not) an aggravating circumstance

While in the case of a public official, the former President of the Municipality of Bar and his associate, the amount of damage caused by the commission of criminal offenses was not consider as an aggravating circumstance by the court. A businesswoman from the same municipality was sentenced to three times more severe punishment for three times less damage, with explanation that this is exactly the aggravating circumstance.

According to the verdict of the High Court in Podgorica [1], the President of the Municipality of Bar, Žarko Pavićević, was sentenced to **one year of imprisonment** for the most severe form of the criminal offense of abuse of office, for which, at the time of execution, **prescribed imprisonment was in the range of two years to 10 years prison** [2]. The total damage caused to the Municipality of Bar amounts to **almost two million Euros**. Here as well it was an extended crime for which the Criminal Code prescribes the possibility of imposing a more severe sentence than the one prescribed by the double-prescribed measure, i.e. up to 20 years in prison.

The same verdict also convicted the Executive Director of the Institute for Development of Bar Danijela Krković for the criminal offense of abuse of office by aiding for which a sentence of imprisonment of **six months to five years** was prescribed and a continuing offense of forgery of an official document for which a punishment prescribed was between three months and up to five years, with the **possibility of imprisoning up to ten years**, as it was an continuing criminal offense. The court pronounced a **suspended sentence** to Danijela Krković. [3]

Convicted	Damage/gain	Imposed sentence
public sector	€2 million	1 year
private sector	€600 thousand	3 years

The Court considered as particularly mitigating circumstances that Žarko Pavićević was a family man, a widower and a non-convicted person, and Danijela Krković, a single mother of a minor child, also never convicted. In this verdict, the court did not take into consideration the fact that the benefit obtained by the commission of the offense exceeded the legal qualifying limit for the criminal offense of the most serious form of abuse of office, but also the fact of the duties performed by the public official Pavićević, the number of actions undertaken and persistence towards the commission of the criminal offense.

On the other hand, the executive director of a private company also from Bar, after a main trial before the High Court in Podgorica, was sentenced to **three years in prison** [4] for the most severe form of the criminal offense of misuse of position in business activities [5] by which the legal person suffered damaged in the amount of €600 thousand. Previously, the High Court in this case imposed a six year prison sentence.

In this case as well, the court also found mitigating circumstances that the accused has not been convicted, her family and material history, that she was married mother of two children.

However, unlike in all cases where public officials or members of an organized criminal group have been convicted of corruption, the court in this case alleges as an aggravating circumstance that the **gain or damage obtained significantly exceed the census necessary for the qualification of the criminal offense.**

Thus, once again it was confirmed that these aggravating circumstances are considered only for persons who are not public officials or members of the criminal group, i.e. in cases where this is not a matter of high-level corruption in the public sector or organized crime.

C.1.1.2. Case Study: Minor punishment for the public official because of "forgetfulness" of the State Prosecutor

Failures and improper conduct of the State Prosecutor's Office also have an additional influence on the extremely mild penal policy for criminal offenses of high corruption. This case study shows that gross negligence of the Special State Prosecutor put the accused of high corruption in a significantly easier position and prevented the court from imposing a stricter punishment.

Although mild sentences were imposed and aggravating circumstances were ignored because of the mistake of the Special State Prosecutor, he did not appeal against a judgement of the first instance court.

In the same case [6], as in the previous study, indictment of the Special State Prosecutor's Office [7] from November 2015, Žarko Pavićević was charged with misuse of office of the President of the Municipality of Bar, and **the Municipality has suffered damages of almost two million euros** to the benefit of the company "Zavod za izgradnju Bara" JSC and the beneficiaries of the construction loan for construction of a facility that was to be built by the company.

Namely, Pavićević has guaranteed that the Municipality of Bar will reimburse the loans granted by the Prva Bank of Montenegro for construction of a facility by his company, "Zavod za izgradnju Bara" JSC, which was not completed within the deadline. To this end, Pavićević was issuing blank bills of exchange on the basis of which over 1.5 million euros were charged from the account of the Municipality of Bar.

Moreover, Pavićević committed the Municipality by contract to guarantee the repayment of the loan of the company "Zavod za izgradnju Bara" JSC with the Prva Bank of Montenegro and for that purpose issued blank bills of exchange on the basis of which 400 thousand euros were charged from the account of the Municipality of Bar.

Since nearly two million euros was obtained by committing these criminal offense, exceeding the qualifying limit of thirty thousand euros for the existence of the more serious form of this criminal offense [8], Žarko Pavićević and Danijela Krković were charged with the more serious form of this offense punishable by imprisonment for a term of two to ten years. [9]

While presenting his closing arguments the State Prosecutor "forgot" the property gain obtained by execution of the criminal offense.

The closing arguments of the Special State Prosecutor significantly improved the position of the accused persons, since instead of being sentenced to two to ten years in prison; they were threatened with possible sentence of six months to five years.

Within the closing arguments, the Special State Prosecutor [10] amends the indictment in the factual description and omits the consequence of the criminal offense in the form of property gain obtained for the company "Zavod za izgradnju Bara" JSC.

Thus, the closing arguments of the Special State Prosecutor significantly improved the position of the accused persons, as they were charged only with the basic form of the criminal offense. For this reason, instead of being sentenced to two to ten years of imprisonment, after the closing arguments of the Special State Prosecutor, they were threatened with the lightest, basic form of criminal offense, for a period of six months to five years.

Prescribed fine	Imposed sentence
2 - 10 years	1 year

For this reason, the court could not sentence Pavićević and Krković with the more serious form of misuse of office, but only with the basic form for obtaining a gain of up to three thousand euros. Therefore, the accused were sentenced to mild sentences, although the damage to the Municipality was two million euros.

Pursuant to the provisions of the Criminal Procedure Code [11], between the judgment and the charge there must be an identity and the judgement may only relate to the person accused and only to the offense that is the subject of the filed indictment or the indictment amended at the main hearing. Moreover, the court is not bound by the State Prosecutor's proposal regarding the legal assessment of the offense.

Therefore, the court is bound by the factual description of the indictment from which the Special State Prosecutor omitted the essential element of the criminal offense and therefore the court could not charge the accused with something the State Prosecutor did not factually state in the indictment. Otherwise, the court would exceed the indictment and convicted the accused of something that the State Prosecutor did not charge them with and thus violated the provisions of the criminal procedure.

In its judgment, the Court issued an explanation of why the accused were convicted for the basic form of the criminal offense of misuse of office, pointing out that the Special State Prosecutor omitted the consequence of the obtained gain in the indictment as amended during the closing arguments.

Although the State Prosecutor remained in the legal qualification of the criminal offense, pursuant to the Criminal Procedure Code the court is not bound by this qualification, but by the factual description and could have convicted the accused only of an offense that the State Prosecutor had factually described.

The court found that the Municipality had almost two million euros in damages, the accused had to be convicted of the criminal offense for which the sentence was imposed, as if the gain was up to three thousand euros.

Thus, the High Court convicted Pavićević of imprisonment within the limits prescribed by the Criminal Code.

Failure of the Special State Prosecutor in the closing arguments enabled imposition of a suspended sentence on the accused Danijela Krković. Namely, according to the provisions of the Criminal Code [12], a suspended sentence cannot be imposed for criminal offenses punishable by imprisonment for a term of ten years or a more severe punishment.

For a more severe form of criminal offense of misuse of office, the court could have sentenced Krković with a prison sentence of ten years, and in that case the possibility of a suspended sentence was excluded.

The damage of two million euros without significance for punishment

Regardless of the obvious omission of the Special State Prosecutor by which stricter punishment was prevented, the sentences pronounced by the court were extremely mild. Namely, the indictment included an allegation of damage to the Municipality Bar.

The Court determined in the judgement that the Municipality suffered damage in the amount of nearly two million euros, but it did appraise this circumstance in sentencing, stating that there were no aggravating circumstances.

Moreover, in Pavićević case, the court **did not appraise the circumstance that pertains to the importance of the public function** he has performed and used in continuity in order to obtain gain to the company in which he is a shareholder and a member of the management body.

The Special State Prosecutor satisfied both with his work and the punishment

In addition to the omission in the closing arguments that allowed lenient punishment, the Special State Prosecutor **did not appeal against the said judgement**, disregarding the aggravating circumstances that the court ignored as well.

From the judgement of the Appellate Court of Montenegro [13], it follows that only defense attorneys of the accused appealed against the judgment of the High Court, which the court rejected and confirmed the judgement of the first instance court.

C.1.1.3. Case Study: Unlawful advantages or oversights for public officials

This case study shows that in proceedings against public officials, courts pronounce suspended sentences even if legal requirements are not met.

Although he committed a corruptive criminal offense that made him unworthy of performing public office and for which the dismissal was prescribed, the convicted official remained at his position after the final verdict.

For illegal employment of several persons - suspended sentence

According to the verdict of the High Court in Podgorica, [14] after the main trial, the Chief of the Communal Police of the Municipality of Nikšić was convicted of a corruptive offense of abuse of office for prolonged duration because in November and December 2012, without announcing a public advertisement, he unlawfully employed eight people. Elections for MPs in the Parliament of Montenegro were held a month before that, in October 2012.

At the time of committing of this offense, a sentence of imprisonment of six months to five years was prescribed, i.e. there was a possibility of a more severe punishment of up to ten years in prison, as it was an extended criminal offense. [15]

Prescribed fine	Imposed sentence
6 month - 10 years	Conditional sentence

Nevertheless, the accused Chief of the Communal Police was convicted by suspended sentence of imprisonment of eight months and at the same time it was determined that it would not be executed if the accused committed a new criminal offense within two years.

In the reasoning of the verdict, the court stated the mitigating circumstances i.e. family circumstances, that the accused was married father of two children, previously not convicted, as well as his behaviour upon committing the offense because he submitted decisions on termination of employment for the persons who he unlawfully hired.

However, the court did not consider the circumstance that it was a prolonged criminal offense for which there was a possibility of a more severe punishment of up to twice the measure prescribed by law, or the public function performed by the accused, but arbitrarily stated that there were no aggravating circumstances.

Suspended sentence imposed contrary to law

According to the provisions of the Criminal Code [16], suspended sentence cannot be imposed for crimes for which a sentence of imprisonment of ten years or more can be imposed. In the concrete case, the accused was charged with an extended criminal offense of abuse of office, for which a sentence of imprisonment of ten years may be imposed, and it follows that the suspended sentence has been rendered unlawfully.

In addition, the Appellate Court confirmed [17] this verdict with identical reasons in relation to mitigating and aggravating circumstances, but the Appellate Court did not determine whether the conditions for the imposing of a suspended sentence were met at all.

Convicted of a corrupt criminal offense - (non) worthy of performing a public function

Pursuant to the Law on Civil Servants and State Employees, [18] which applies to the Chief of the Communal Police, [19] the person shall be dismissed if he has been convicted of a criminal offense which makes him unworthy of performing his duties.

However, although in this case the Chief of the Communal Police was convicted of a criminal offense that made him unworthy of performing his duties, he remained in the same position. [20]

C.1.1.4. Case Study: The Appellate Court halved the penalties for Zavala affair

This case study shows that the Appellate Court obstructed the High Court's attempt to punish the first public officials accused of high corruption with a somewhat stricter punishment and thus significantly alleviated penal policy of the courts in ordinary proceedings.

The first judgement against the accused for misuses of power in the Municipality of Budva was rendered in June 2012 in the so-called "Zavala" case [21]. By the way, this is the first case of high corruption before the Montenegrin courts.

Public officials, former President of the Municipality of Budva, Rajko Kuljača, former secretary of the Secretariat for Investments, Dragan Marović [22] and former Member of the Parliament of Montenegro and chairman of the Commission for Evaluating the Value of Performed, construction works, Đorđe Pinjatić, were convicted by this judgement.

(No) possibility of concluding plea agreement on the admission of guilt

The indictment in this case was filed in March 2011 [23], a year after the beginning of application of the agreement on the admission of guilt. [24]

Rajko Kuljača, Dragan Marović and Đorđe Pinjatić were charged with executing the most serious form of criminal offense of misuse of office punishable by imprisonment for a term of up to ten years. At the time of initiation of this proceeding, under the Criminal Procedure Code, plea agreement on these criminal offenses could be concluded if imprisonment was prescribed for up to ten years. [25]

However, the accused Rajko Kuljača and Dragan Marović were charged with the so-called continuing criminal offence for which the Criminal Code stipulates the possibility of stricter punishment to twice the punishment laid down by law [26], which in this case amounts to 20 years in prison. It is therefore questionable whether, at the time of initiation of this proceeding, Rajko Kuljača and Dragan Marović were allowed to conclude the plea agreement. This dilemma was solved for future cases by the Parliament in August 2015, when amendments to the Criminal Procedure Code began to apply, according to which the prescribed limit of up to ten years in prison was removed. [27]

However, at the time of initiation of this proceeding, the possibility of concluding plea agreement was not considered. Namely, the Special State Prosecutor's Office has not yet begun to apply the plea agreement in practice, and before the indictment in this case was filed, only three plea agreements have been concluded in the first year of application of this institute in Montenegro.

Immediately after the amendments to the Law came into force, enabling conclusion of plea agreement for all corruptive criminal offenses, regardless of the prescribed sentence, the Special State Prosecutor's Office started with its application. This is also evidenced by official statistics - in 2015 the Special State Prosecutor's Office has concluded four plea agreements, and in the following year this number has increased to 26. [28]

The first judgement in the ordinary proceedings: guilty

By the first judgement of the High Court in Podgorica, from June 2012, public officials were imposed a prison sentences within the limits prescribed by the Criminal Code.

Rajko Kuljača was sentenced to five years in prison and Dragan Marović to four years in prison for a criminal offense punishable by imprisonment for a term of two to twenty years, while Đorđe Pinjatić was sentenced to three years in prison for a criminal offense punishable by imprisonment for a term of two to ten years.

The first judgement of the Appellate Court: vacates due to violation of procedures

In March 2013, the Appellate Court of Montenegro vacated this judgement due to procedural violations and the case was remanded to the High Court for retrial, stating that the judgment of the High Court is incomprehensible because it is not known which law was applied. [29]

The second judgement in the ordinary proceedings: guilty, aggravating circumstances

The second judgement was rendered by the same judge of the High Court in Podgorica [30] in July 2014 [31] and the accused Kuljača, Marović and Pinjatić were again sentenced to the same prison sentences - five, four and three years in prison. According to this judgement, by committing a criminal offence the accused have obtained the property gain for the company Zavala Invest in the amount of 820 thousand euros, i.e. caused damage to the Municipality of Budva in the same amount.

In sentencing Kuljača and Marović, the court appraised their involvement in execution of the criminal offense as determining aggravating circumstances, having in mind the public functions and duties they had and the fact that by performing these they were obliged to keep and maintain the trust in the authorities and the legal order they represent, as well as the extent of actions undertaken in the direction of execution of the criminal offense.

These circumstances were thus appraised by the same judge in one more case [32] and later they were never appraised as aggravating ones in any proceedings against any member of the criminal group from Budva.

Convicted	Prescribed fine	First instance court	Appellate Court
R. Kuljača	2 - 20 years	5 years	2,5 years
D. Marović	2 - 20 years	4 years	2 years
Đ. Pinjatić	2 - 10 years	3 years	1 year

The second judgement of the Appellate Court: vacates due to procedural violations

Five months after the judgement was rendered, the Appellate Court of Montenegro vacates it [33] in convicting part due to violation of the procedures by arguing that the reasoning of the High Court's judgment was unclear in relation to the accused's guilt.

The case was remanded to the High Court for a retrial with a different judge. The Criminal Procedure Code [34] provides that the second-instance court may order that a new main hearing before the first instance court be held before a completely different Panel, but the Appellate Court's judgment does not in any way provide any justification for the decision to remand the case to another judge.

The third judgement in the ordinary proceedings: guilty, no aggravating circumstances are mentioned

The third judgement in the Zavala case was rendered by another High Court judge in Podgorica [35] and the accused Kuljača, Marović and Pinjatić were sentenced for the third time to the same sentences of five, four and three years in prison. [36]

However, unlike the previous judgment where the court in the cases of Kuljača and Marović appraised their involvement in execution of the criminal offense having regard to their function and duty as determining aggravating circumstances, in this judgment the Court stated that there were no aggravating circumstances with the accused.

The fourth judgment of the Appellate Court: No mitigating circumstances have been appraised

The third judgment of the High Court was revised by the Appellate Court of Montenegro at the end of 2016 [37] by halving the sentences to the public officials.

The Appellate Court noted that the mitigating circumstances of them being family people, having children, and that the Municipality of Budva did not join the criminal prosecution or filed a property claim were not sufficiently appraised, which is why the sentences for the accused were halved.

However, the Appellate Court does not state whether the children of the accused are underage, whether they live with them in the community and whether the accused have an obligation to support them.

The Court does not even state whether the attitude of the Municipality of Budva, as the injured party, not to join the prosecution and not to file a property claim was the result of the accused's conduct, and only then it could be considered as the mitigating circumstance.

Moreover, it is indisputable that the accused did not compensate the Municipality for damages of 820 thousand euros, and manner in which attorney was engaged for representing the Municipality and the way he worked indicates suspicion of new abuses at the expense of the Municipality, in favor of the accused. [38]

Thus, Kuljača was sentenced to two and a half years in prison, Marović was sentenced to two years in prison, which is the minimum term of imprisonment prescribed by the law and Pinjatić was sentenced to one year in prison, which is below the minimum term prescribed by the law.

C.1.1.5. Case Study: The Appellate Court considers it exaggerated to appraise damage and function of the accused

This study shows that the High Court appraised the importance of the function and duty the accused performed, as well as the gain he had obtained as aggravating circumstances, but the Appellate Court vacated the judgement and reduced the sentence by almost half.

The same judge of the High Court in Podgorica who rendered two first instance judgements in the "Zavala" case [39] convicted one more former president of the Municipality of Budva, Lazar Rađenović, with the same six-year sentence [40] for the criminal offenses in which the accused obtained gain in the total amount of half a million euros, out of which Rađenović gained 350,000 euros for himself. The indictment in this proceeding was also filed at a time [41] when the Special State Prosecutor's Office had not begun to conclude agreements on the admission of guilt.

As in the case of Kuljača and Marović in the "Zavala" case, the Court appraised as determining aggravating circumstances the importance of the function and duty the accused performed and the fact that by performing these functions and duties the accused was obliged to keep the trust in the authorities and the legal order, as well as the amount of actions undertaken in the direction of execution of the criminal offense.

Moreover, the court appraised as an aggravating circumstance that the obtained gain exceeds by multiple times the legal qualifying limit for the most serious form of misuse of office, amounting to 30,000 euros, stating that the accused obtain the gain in the amount of 350,000 euros.

The judgement of the High Court was vacated by the Appellate Court of Montenegro in early 2016 [42] by sentencing Rađenović to three years and eight months in prison, instead of six years, stating that the High Court gave exaggerated importance to these aggravating circumstances, while the mitigating circumstances were mildly appraised.

Prescribed fine	First instance court	Appellate Court
2 - 20 years	6 years	3 years and 8 months

Thus, also in this case, the Appellate Court obstructed the High Court's attempt to punish the first public officials accused of high corruption with a somewhat stricter punishment and thus significantly alleviated penal policy of the courts in ordinary proceedings as well.

Immediately after rendering the judgement sentencing Rađenović to six years in prison, the judge who made the judgement was appointed by the Government's decision as representative of Montenegro before the European Court of Human Rights in Strasbourg. [43]

These circumstances have never been appraised as being aggravating ones in any proceedings against any of the members of Svetozar Marović`s criminal group.

C.1.1.6. Case Study:
Greater sentence for bribing a policeman than for political corruption

This study shows that courts in one case have convicted an unemployed person to three months in prison for bribery in the amount of €20, while in another they imposed a suspended sentence to a public official for abuse of office that provided benefits to a political party at the expense of the state in the amount of around 1.000 Euros.

According to the verdict of the High Court in Podgorica, [44] after the main trial, an unemployed person was sentenced to three months in prison because he offered a bribe of €20 to police officers to not be prosecuted for the committed violation.

In favour of the accused, the court considered mitigating circumstances: family history, the fact that he was a father of one child, that he has not been previously convicted, poor material situation, unemployment, behaviour upon committed offense - remorse and regret for the committed act and apology to the police officers.

On the other hand, the Appellate Court of Montenegro [45] overturned the verdict of the High Court in Podgorica, [46] adopted also after the main trial, and instead of three months in prison, it imposed a suspended sentence [47] to the director of the state-owned company, Nebojša Obradović, for two offenses of abuse of office. [48]

Obradović was convicted for abusing his official position in the ruling political party whose member he is, by obtaining a total of € 954 at the expense of the budget of Montenegro, by paying from the state enterprise account the services rendered to the political party.

Although the benefit obtained by Obradović to the political party was 50 times higher than the offered bribe in the previous case, and although there were less mitigating circumstances in favour of Nebojsa Obradović than with the accused in that case,[49] the Appellate Court imposed a suspended sentence to Obradović.

The court completely ignored the aggravating circumstances that were indisputably established in the proceedings:

1. **the importance of the function Obradović performed,**
2. **the degree of guilt,**
3. **the fact that he committed two corrupt criminal offenses,**
4. **he obtained the benefit to the political party at the expense of the state budget.**

Convicted	Number of criminal offenses	Damage	Punishment
unemployed	giving bribes, 1	€20	3 months
official	abuse of Office, 2	€954	conditional sentence

C.1.1.7. Case Study: Lawyer of the Municipality represented interests of a criminal group

This study shows that one of the members of the Budva criminal group hired a lawyer to represent the interests of the Municipality of Budva in the judicial proceedings against that group. This lawyer did not join the prosecution and did not seek compensation, instead, he defended the accused by saying that they did not commit crimes, and then charged such "representation" nearly 100 thousand Euros from the municipal budget.

During 2011,[50] 2012 [51] and 2013 [52] Lazar Rađenović, former President of the Municipality of Budva, concluded contracts on power of attorney with a law office in Podgorica [53], to represent the Municipality of Budva in court proceedings. All contracts were concluded by direct agreement between Lazar Rađenović, later a legally convicted member of the criminal group [54], and lawyer Vasilije Knežević, without conducting the public bidding procedure.

On the basis of these contracts, lawyer Vasilije Knežević represented the Municipality of Budva in criminal proceedings against former municipal officials Rajko Kuljača and others, due to a series of criminal acts of corruption by which the Municipality of Budva was damaged by millions of Euros.

In this case, lawyer Knežević, as the legal representative of the Municipality of Budva whose budget was misused, did not ask for a property claim and did not request compensation for the damage caused by corruption, nor did he join the prosecution on behalf of the injured municipality of Budva.

Instead of compensation for damages, lawyer of the Municipality of Budva defended the accused.

In the verdict of the High Court in Podgorica [55], it is stated that this lawyer, as the legal representative of the Municipality of Budva, expressed before the Court the position that the Municipality of Budva does not consider itself damaged, that the offenses the defendants are charged with are not and cannot be criminal offenses, therefore joining the prosecution of the accused whose actions were performed in the utmost urgency.

In its verdict, the Court found that the position of the lawyer Knežević is contrary to the evidence.

Charged a fortune for representation at the expense of the Municipality

Although the lawyer hired by the Municipality represented the interests of the accused who caused the damage to the municipality, for such "engagement" and "representation", Knežević claimed from the Municipality of Budva the amount of €98,137.81.

According to the accounting records of the Municipality of Budva,[56] on the basis of the power of attorney, by the beginning of 2014, Knežević was paid a total of €97,337.50 for representation in several cases.

In March 2014, Lazar Rađenović, who hired this lawyer, was arrested as a member of the Budva criminal group, so Knežević stopped billing his services upon the concluded contracts.

Two years later, between June 10 and August 2, 2016, lawyer Knežević filed seven lawsuits against the Municipality of Budva in which, on the basis of contracts concluded with Rađenović, he claimed a total amount of € 1,375,731.30. In these cases, Knežević tries to charge the Municipality of Budva, for example, €27,000.00 per one unjustified act submitted to the court, or one attendance at the court hearing.

C.2.2. Use of secret surveillance measures in proving corruption

In cases of high-level corruption, where the state was damaged by millions, the State Prosecutor's Office does not request the use of secret surveillance measures to facilitate the collection of evidence. Instead, these measures are almost exclusively applied in cases of corruption at the lowest level.

The judicial practice shows that the prosecution did not show interest and willingness to put under secret surveillance measures persons against whom it is investigating the most serious crimes of corruption, instead, they signed plea agreements with the accused imposing inappropriately low sentences [57].

Such passivity of the prosecution is worrying, because by using those measures, they could have collected evidence on the defendants' guilt, but also the evidence of importance for financial investigations and confiscation of assets in cases where there were no results [58].

On the other hand, the police and the State Prosecutor's Office show that they have the capacity to apply these measures, but they do so almost exclusively in cases of petty corruption.

C.2.2.1. Case Study: Tapped only one member of the Budva group

From the verdicts against the organizer and members of the Budva criminal group, who by committing corruption crimes caused damage to the state in the amount of tens of millions of Euros, only in one case secret surveillance measures were used to collect evidence.

Only in one verdict, the High Court in Podgorica [59] referred to secret surveillance measures of recording telephone and other remote communications. This measure was used in the case of the former President of the Municipality of Budva, Lazar Rađenović. On the other hand, other members of the criminal group, including its boss, Svetozar Marović, were not under these measures and their conversations and communications were not recorded.

According to the verdict, the measures of secret surveillance lasted for half a year [60] and immediately after their implementation, the prosecution filed an indictment. On the basis of evidences collected through their implementation, the High Court, as the first instance, sentenced Rađenović to six years in prison.

However, it is incomprehensible that in the investigation against the criminal group, conversations of only one member are tapped and recorded. This is especially because, by tapping the conversation of Lazar Rađenović, evidence was collected at the beginning of 2014, and an investigation against most members of the criminal group was launched after that. It is therefore unclear why the prosecution did not request the setting up of secret surveillance measures against other members of the group, especially the organizer, Svetozar Marović.

C.2.2.2. Case Study: Tapping police officers, but not the mayors

This case study shows that in the second case of high-level corruption that was conducted before the Montenegrin courts, the measures of secret surveillance were also not applied in gathering of the evidence. However, the second part of this study shows that the police and the prosecution successfully apply these measures in cases of administrative corruption.

Six and a half years of abuse without secret surveillance measures

According to the verdict of the High Court in Podgorica [61], sentencing to a one year of imprisonment the former President of the Municipality of Bar, Žarko Pavićević, he was abusing his official position from the end of 2007 until the middle of 2015, and in November 2015, the prosecution filed an indictment.

Although it was established that Pavićević damaged budget of the Municipality of Bar for two million Euros by corruption, the prosecution did not ask for the establishment of secret surveillance measures during all that time, and Pavićević was never subject to measures of secret surveillance.

Measures for bribery of traffic police

The fact that the measures of secret surveillance of recording telephone conversations and other remote communications can provide evidence that will reveal corruption and lead to a conviction, is proved by the verdict of the High Court in Podgorica of June 2016. [62]

That verdict convicted traffic policemen for receiving bribes in the amount of 10, 15 and 100 Euros in order not to prosecute drivers' traffic violations. In this proceeding, the court carried out the evidence obtained by the measures of secret surveillance and based a convicting verdict on it.

The police officers were sentenced to a one-year prison sentence,[63] the same as Žarko Pavićević.

Secret surveillance measures were also successfully implemented in the case of the adoption of the verdict of the High Court in Podgorica from February 2013. [64] In this case as well, traffic policemen were convicted of bribery in the amount of 35, 50, 100 and 150 Euros. The conviction was also based on the measures of secret surveillance, and police officers were sentenced to a two-year sentence of imprisonment and six months of imprisonment. [65]

C.2.3. Judgements rejecting the charge

Rejecting charges on the ground that the State Prosecutor had withdrawn from prosecution or due to the statute of limitation expiration indicates incompetence and arbitrariness of the State Prosecutor's Office in raising indictments and ineffectiveness of the judiciary in conducting the proceedings.

Deadlines for expiring absolute statute of limitations for prosecution are not short [66], so every case of rejection of the charge for this reason points to inefficiency and ineffectiveness of the judiciary.

After several years of conducting the proceedings, State Prosecutors are arbitrarily withdrawing charges without providing any specific reasons, with general statements that the accused who were prosecuted for years did not commit the criminal offenses or that there are no evidences for those.

Such actions of the judiciary and the State Prosecutor's Office causes large costs that fall to the burden of the court budget funds.

C.2.3.1. Case Study: Rejected charge for 44 criminal offenses

Due to incompetence of the State Prosecutor's Office and ineffectiveness of the judiciary in this case, the charge for 44 criminal offenses was rejected. First, the State Prosecutor withdraw from prosecution of half of these offenses, and then the court found that for the other half of offences the statute of limitation for prosecution expired two and a half years before the judgement was rendered.

By the judgement of the High Court in Podgorica [67], the charge was rejected for as many as 44 criminal offenses. Of this, half the offences were a more serious form of money laundering, while the other half refered to criminal association, misuse of office, and and official misconduct.

The judgement shows that after six and a half years of conducting a proceeding the deputy Special State Prosecutor withdraw the charges for 22 criminal offenses of money laundering, concluding that it was not proven that these offences were committed.

According to the judgement, two and a half years before the judgement was passed, the statute of limitation for the institution of prosecution expired for the remaining 22 criminal offenses, i.e. for 17 criminal offenses of criminal association, three criminal offenses of misuse of office and two criminal offenses of official misconduct.

Duration of the procedure	Withdrawal of the prosecutor
6,5 years	22 criminal offenses

It follows that the State Prosecutor's Office has groundlessly prosecuted several accused persons for more than two and a half years, thus significantly increasing the costs of the proceedings that have fallen on the burden of the court budget funds.

C.2.3.2. Case Study: A five-year trial for a non-existent criminal offense

This case study shows that the State Prosecutor's Office has withdrawn from prosecution of several accused persons five years after the criminal offenses charged to them were deleted from the law. Untimely conduct of the court and incompetent conduct of the State Prosecutor's Office caused rejection of the charges against nine accused persons for a total of 22 criminal offenses.

Eighty six months have passed from filing the indictment to the final judgement, and during that time the State Prosecutor has determined that there are no evidence for four criminal offenses, and that an article of the law which the State Prosecutor stated in the indictment has been deleted for a total of eight criminal offenses. The court found that for additional ten criminal offenses the statute of limitation for the institution of prosecution came into effect.

Withdrawal of the State Prosecutor from prosecution

In this case, the Deputy Special State Prosecutor, twenty days before the first-instance judgement was rendered [68], withdrew from prosecution of nine accused persons for a total of twelve criminal offenses. The State Prosecutor stated two reasons for withdrawal from prosecution:

1) There is no evidence that the accused persons committed the criminal offense

Six years after filing the indictment [69] with the evidence for its confirmation, the State Prosecutor realized that there was no evidence for four criminal offenses of misuse of office.

2) Five years earlier, the item of the law that was the basis of the indictment had been deleted

The State Prosecutor withdrew from prosecution of eight accused persons for the more serious form of criminal offense of misuse of position in business activity, with underlining that item 3, paragraph 1 of Article 276 of the Criminal Code was deleted by the amendments to the Law that came into force on 13 May 2010, and that it was not proven at the main hearing that they committed another criminal offense prosecuted ex officio. However, it remains unclear why the State Prosecutor has withdrawn from prosecution five years after the amendments to the Law came into force and based on what he accused them during that period, i.e. which criminal offense they were accused for five years.

Duration	Withdrawal
5 years	12 crimes

The High Court: statute of limitation expired for the offence from the amended indictment

In addition to rejecting the charge on the ground that the State Prosecutor had withdrawn from prosecution, in this case, the first instance court rejected the charge for one criminal offense due to expiring of the absolute statute of limitation.

In the amended indictment, the State Prosecutor charged the accused with a criminal offense for which the statute of limitation expired. In this case before the first instance court the charge was rejected for 13 criminal offenses.

Namely, the State Prosecutor amended the indictment 20 days before the end of the first instance proceeding, and charged the accused with the less serious form of criminal ofence - the basic form of misuse of position in business activity, instead of with the most serious form of criminal offence of misuse of office. Due to the lesser prescribed punishment, the absolute statute of limitation for this criminal offense expired seven months before the judgement was rendered, so the court rejected the charge in relation to this criminal offense.

The Appellate Court of Montenegro: Statute of limitation expired for another nine criminal offenses

The Appellate Court of Montenegro [70] confirmed the decision of the High Court in Podgorica in the part rejecting the charge, and partially amended the convicting part of the judgement by rejecting the charge for another nine criminal offenses five accused persons were charged with.

The Appellate Court found that for an additional nine criminal offenses the absolute statute of limitation expired.

C.2.3.3. Case Study: State Prosecutors give up after many years of proceedings

Two cases have been described in this case study, which show that the State Prosecutor's Office concluded that the accused did not commit the criminal offenses and withdrew from prosecution only after many years of court proceedings. However, inappropriate and unjustified delay in proceedings by the State Prosecutor's Office and the court leads at the same time to expiring of the statute of limitation for other criminal offenses.

The Prosecutor give up nine years after launching an investigation

The judgement of the High Court in Podgorica from September 2013 [71] shows that untimely and improper conduct of the court causes the statute of limitation to expire.
The indictment in this case was filed in May 2009. [72] The indictment number [73] indicates that the State Prosecutor's Office had initiated the proceedings in 2004, and it follows that it took him five years from the day when he learned of the criminal offence to file an indictment.

In February 2012, the High Court in Podgorica vacated the first instance judgement [74] of the Basic Court in Kotor and remanded the case to the first instance court for retrial. One year later, the Basic Court in Kotor declined its subject-matter jurisdiction [75] and on 21 June 2013 submitted the case files to the Higher Court in Podgorica.

At the main hearing held in September 2013, the State Prosecutor has withdrawn from prosecution for the criminal offense of misuse of office, concluding that the accused did not commit this criminal offense, while in relation to the criminal offense of counterfeiting of official document he has withdrawn from prosecution because the absolute statute of limitation expired.

Withdrawal after six years of trial

From the judgement of the High Court in Podgorica [76], it appears that the Basic State Prosecutor's Office in Cetinje filed an indictment [77] in April 2008 for a more serious form of criminal offense of misuse of position in business activity [78] and the criminal offense of counterfeiting of official document [79]. According to the indictment, the offenses were committed in July 2002, and the damage caused by their execution amounts to 42 thousand euros.

At the beginning of 2014, the charge for the criminal offense of counterfeiting of official document was rejected due to expiration of the absolute statute of limitation [80], and at the main hearing in September 2014, the State Prosecutor has withdrawn from prosecution stating that the accused did not commit the criminal offense of misuse of position in business activity.

C.2.3.4. Case Study: Selective withdrawal from prosecution

In addition to inefficiency of the judiciary leading to expiration of the statute of limitation, the next case shows that the Special State Prosecutor's Office selectively and arbitrarily decides on withdrawal from prosecution.

By the judgement of the High Court in Podgorica [81], the charge against two accused persons was rejected. This decision was confirmed by the judgement of the Appellate Court of Montenegro [82]. One hundred and two months or 8.5 years have passed from filing the indictment until the final completion of the proceedings in this case.

The two accused were charged with criminal offenses for which the Criminal Code prescribes maximum sentences of up to three years in prison [83]. Starting from the prescribed sentence, which was the same for the acts the accused persons were charged with, the absolute statute of limitation expired for both accused persons six years after the execution of the offense. [84]

Seven and a half years after the indictment was filed, the State Prosecutor withdrew from prosecution of only one of these accused persons.

That is why the High Court in Podgorica has rejected the charge in relation to that accused person as well - on the ground that the State Prosecutor had withdrawn from prosecution, but also with respect to the other accused person – due to, expiring of the statute of limitation.

C.2.3.5. Case study: Quiet withdrawal from prosecution after a five-year trial

This study shows that the State Prosecutor's Office has withdrawn from prosecution of the accused person after five years of trial without stating any reasons for such decision.

The judgement of High Court on Bijelo Polje [85] determined that in 2007 the accused was charged with [86] execution of a more serious form of criminal offense of misuse of official position [87] and the criminal offense of counterfeiting of official document [88]. According to the indictment, the damage caused by execution of the criminal offences was seven thousand euros.

Five years after the indictment was filed [89], the Special State Prosecutor, at the end of the main hearing before the High Court, withdrew from prosecution without any justification, and the court rendered a judgment rejecting the charge against the accused.

Duration	Damage
5 years	€7.000

Thus, after a five-year trial, the State Prosecutor's Office dropped its own charges without any explanation of the reasons for which it had changed its decisions. In this way, the costs of the proceedings were unjustifiably increased, as all the costs of five years of representation of the accused fall to the burden of the court.

C.2. Plea Agreement for criminal offenses of corruption

Arranging and accepting sentences below the legal minimum for severe criminal offenses of corruption has become a rule, not an exception.

The courts uncritically accept the sentences agreed by the prosecution with the accused without and do not question meeting of the legally prescribed conditions for the agreements to be concluded.

No verdict contains reasoning explaining in what way the prescribed sentences would meet the purpose of punishment and whether the agreements are concluded in accordance with the interests of justice. In verdicts, there are no assessments of the gravity of consequences of the crimes committed compared to the agreed sentences, although in most cases the estimated damage per state is measured by millions of Euros.

The plea agreement was first applied to criminal offenses of corruption in the case of public officials from the so-called Budva criminal group. The subjects of these agreements were the most serious forms of corruption offenses for which a punishment of up to 20 years in prison was prescribed.

The State Prosecutor's Office agreed with all the accused in that affair the sentences below the prescribed minimum, except with the head of a criminal organization who received a minimum sentence. Signing of multiple agreements with the same accused made it possible to further mitigate sentences through their joining.

.
For the most of prominent members of this criminal group, the courts interpreted circumstances as mitigating too benevolently and in some cases unfoundedly, while aggravating circumstances were interpreted more leniently than prescribed by law or they were not taken into consideration at all.

The plea agreement did not contribute to improving the financial investigations whose results are extremely modest. The property whose seizure is requested by the prosecution no longer belongs to Marović family, while its members are unavailable to the competent authorities for serving prison sentences, largely thanks to the prosecution's actions which required them to be released after signing of the agreements.

C.2.1. Practice of the State Prosecutor's Office

On the website of the courts [90], **13 plea agreements** on corruption offenses committed by the **Budva criminal organization** were published. **All published agreements are almost identical.**

The introduction lists the provisions of the Criminal Procedure Code, on the basis of which the agreements are concluded, the initials of the accused and the criminal offense or offenses that the accused is charged with along with the legal qualification.

The text of the agreement first states the factual description of the criminal offense that the accused is charged with, then the defendant fully admits committing the crime, that the prosecutor and the accused agree on the sentence to be pronounced by the court, after that the provision on the costs of the proceedings, the statement that the accused confirms that s/he gave the statement on the admission voluntarily and consciously, without compulsion, that s/he is aware that s/he waived the right to a trial if the verdict is adopted in accordance with the agreement and that the parties waived the right to appeal against the court's decision adopted on the basis of the agreement.

C.2.1.1. Structure of the criminal offenses of corruption that were the subject of the agreement

In all cases where the State Prosecutor's Office concluded a plea agreement, it was **the most severe form of criminal offense of abuse of office**. [91]

Two plea agreements were concluded with the organizer of the criminal organization, one for the criminal offense of abuse of office and the other for the criminal offense of abuse of office and the crime of fraud.

11 agreements dealt with crimes committed **in an organized manner**, that is, criminal offenses of organized crime. [92]

10 agreements dealt with the so-called **extended criminal offenses**, that is, several of the identical offenses or of the same kind, for which the Criminal Code prescribes the **possibility of more severe sentence** than the one prescribed for that criminal offense. [93]

C.2.1.2. Prescribed sentences for the offenses for which the agreements have been concluded

For the most serious form of criminal offense of abuse of office, which was solely or with some other criminal offense the subject of every plea agreement, the Criminal Code of Montenegro, at the time when the offenses were committed, **prescribed a sentence** of imprisonment in range **between 2 and 10 years**. [94]

For the most severe form of criminal offense of evasion of taxes and contributions that were the subject of the agreement, the Criminal Code **prescribes a sentence** of imprisonment **of one to eight years and a fine**. [95]

For the most severe form of criminal offense of fraud that was the subject of an agreement with the organizer of the criminal group, the Code **prescribes a sentence** of imprisonment for a term **from two to ten years**. [96]

10 agreements dealt with the so-called continuing criminal offenses [97], for which a **double measure of the prescribed sentence may be imposed**, i.e. for the most severe form of abuse of office, up to **20 years in prison.**

C.2.1.3. Sentences agreed by the State Prosecutor's Office with the accused

For the most severe form of criminal offense of abuse of office, the State Prosecutor's Office most often, **9 times**, agreed to imprisonment for a term of **6 months**. This is the the most lenient possible sentence that can be imposed for this criminal offense after maximum reduction of the sentence below the prescribed minimum permitted by the Criminal Code. [98]

In **two cases**, the State Prosecutor's Office has agreed to imprisonment of **7 months** for the most severe form of abuse of office.

In **one case**, the State Prosecutor's Office has agreed to **a one-year** imprisonment for the most severe form of abuse of office and, while **in one case**, prison term of a **year and a half and a fine of € 30,000** were imposed.

In case where the subject of the charge were the most severe forms of criminal offenses of abuse of office and tax and contribution evasion, for the misuse of office, a **6-month** imprisonment was introduced, for the evasion of taxes and contributions a prison sentence **of 3 months** and a **fine of amounting to €1,600**, so a **single sentence of imprisonment of seven months and a fine in the amount of 1,600 € was agreed with the accused.**

In **two agreements with the accused legal entity** for the most severe forms of criminal offenses of abuse of office [99], a **probation sentence** was agreed by imposing a fine in the amount of € 100,000 and at the same time determining that the sentence will not be enforced if that legal entity is not responsible within one year for a new criminal offense.

In the case against the organizers of the criminal organization where the subject of the charges were the most serious forms of criminal offenses of abuse of office and fraud,
- for the abuse of official position, imprisonment for **one year was determined and a fine of €25,000**,
- the imprisonment **for one year and a fine of € 25,000** were determined for a fraud,

so a single sentence of imprisonment of **one year and ten months and a fine of € 100,000** were agreed with the **accused organizer of the criminal organization.**

Therefore, the prosecution concluded two plea agreements with the organizer of the criminal organization, in one was agreed the imprisonment at the minimum legal limit (2 years), while the sentence of imprisonment below the statutory minimum (a year and ten months) was agreed in other.

C.2.1. Court practice

The provisions of the Criminal Procedure Code prescribe a very active role of the court in deciding on plea agreements [100], but the practice shows that the **courts do not properly assess whether the prescribed conditions for accepting the agreement and adopting of verdicts have been met**.

The courts, **without any verification and explanation, accept agreed sentences that have been mitigated significantly below the statutory minimum, for the most serious forms of corruption that have the most severe consequences.**

The High Court in Podgorica accepted all the agreements concluded by the Special State Prosecutor's Office for the most serious corruption offenses, but **no verdict has a valid explanation as to how the sentences will meet the purpose of the punishment** and whether they are in line with the interests of fairness. No verdict contains any reasoning and assessment of the gravity of the consequences of the perpetrated crimes in relation to the sentence that the court had accepted, i.e. the assessment of the amount of damage caused to the State by the commission of criminal offenses of corruption and the amount of gains that the criminal organization and its members acquired by committing criminal offenses. In the verdicts on so-called extended crimes for which the Criminal Code prescribes the possibility of more harsh punishment, there is no reasoning and assessment of this circumstance.

C.2.2.1. Reasoning of the verdicts

Reasonings of all verdicts adopted on the basis of the plea agreement are incomplete. **No verdict has any reasoning** which could show that the concluded agreement is in line with the interests of fairness and that the **agreed punishment corresponds to the purpose of punishment** as defined by the Criminal Code for this purpose. [101]

Instead, in verdicts, the court only arbitrarily identically states that the agreed punishment is"**acceptable, in accordance with the interests of justice and that it was pronounced in accordance with the provisions of the Criminal Code and corresponds to the purpose of pronouncing criminal sanctions**" [102] or only that the agreed punishment is "rendered in accordance with the provisions of the Criminal Code and corresponds to the purpose of imposing criminal sanctions." [103] **No verdict provides reasons as to why the agreed sentence is "acceptable," why it is fair and why it corresponds to the purpose of punishment.**

None of the verdicts contains even an arbitrary allegation that the agreed punishment achieves the **purpose of punishment** that relates to the influence on others not to commit criminal offenses. [104] Thus, this means that the court did not, even seemingly, deal with the assessment of whether the imposed punishment influenced others to not commit criminal offenses.

In most of the verdicts, the court lists the evidence it examined, even though the evidence are not examined at the plea agreement hearing at all. This hearing is not the main hearing, nor should the court in all cases present all the evidence. The sole duty of the court concerning the evidence and case file is to determine whether the admission is consistent with the evidence in the case file. [105] In that sense, the court must also provide an explanation of its verdict.

Instead, in almost all verdicts, the court lists the evidence it examined - read, but does not give any reasoning from which it would be determined that the admission is consistent with that evidence, since the content of any evidence is not stated by the court in the verdict, nor is the content of the admission of the accused itself.

Therefore, it is impossible to verify from these verdicts whether one of the main conditions for accepting the agreement is met, that is, whether the admission is given in a conscious and voluntary manner, whether it refers to all the crimes that are the subject of the charge, whether the confession is in accordance with the evidence contained in the case files and whether the possibility of confession under compulsion is excluded.

C.2.2.2. Amount of the pecuniary gain - damage caused

The subject of the plea agreement with the so-called Budva criminal organization was a total of 8 corruption affairs. [106] In these affairs, the Prosecutor's Office estimated the damage in the total amount of over €45 million.

According to the legal description, the most severe form of criminal offense of abuse of office is in the case when the value of the acquired pecuniary gain exceeds the amount of €30 thousand. [107] In every case of consensual guilty plea with the so-called Budva criminal organization, this amount was exceeded multiple times.

However, **no agreement or verdict assesses this circumstance nor does it provide an explanation of how this circumstance influenced the agreed punishment.** [108]

C.2.2.3. Harmonization of the agreement with the interests of fairness

No verdict has a reasoning stating that the agreement is in line with the interests of fairness [109], especially because of the penalty that has been mitigated below the legally prescribed minimum and because of the pecuniary gain acquired by the commission of corrupt criminal offenses, i.e. the damage caused to the Municipality of Budva.

C.2.2.4. Mitigating and aggravating circumstances

Although the court does not examine evidence in deciding on a plea agreement, even the ones on which the sentence is based, in its verdicts, the court listed the circumstances which it considered to be mitigating. However, the court sometimes listed the circumstances that could not be mitigating, while aggravating circumstances were sometimes obviously neglected in order to impose an agreed punishment below the statutory minimum. [110]

In a verdict accepting a plea agreement concluded with the organizer of a criminal organization [111] and for which the organizer was sentenced to imprisonment at the prescribed minimum limit, the court did not even arbitrary list any mitigating circumstances. By providing a "reasoning" in that part, the court correctly states that it does not determine the sentence, but checks whether the prosecutor followed the rules of the material law in the negotiation of the type and level of punishment, and then arbitrarily states that this was analyzed and that the **prosecutor “at the hearing additionally clarified circumstances that affected the amount of the sentence imposed**, thus the court found that these were those circumstances."

In cases in which he acts, the President of the High Court unlawfully considers as a particularly mitigating circumstance that the accused **"did not acquire personal gain", but gain for others**. [112]

One of the circumstances that the court under the Criminal Code especially takes into consideration when determining the sentence is the history of the perpetrator. [113] In theory and court practice, this circumstance relates mainly to determining whether the defendant has been previously convicted or not, and in particular whether he was convicted of the same criminal offense. Earlier non-conviction is usually taken as a mitigating circumstance, while conviction for the same criminal offense is generally taken as an aggravating circumstance.

However, in practice, the courts do not take the previous conviction of the defendant for the same criminal offense as aggravating, instead, they state that the earlier **criminal offense was committed within the same time period, and that is the reason for reducing the sentence below the legal minimum**. It thus follows that in the favor of the defendant, the court took into consideration the fact that he had committed several similar crimes, but he did this in the same period of time. [114]

C.2.2.5. Several agreements with one defendant - additionally mitigated sentences

With a total of six accused for serious corruption offenses, including the organizer of the criminal organization, the prosecution concluded two plea agreements that the court accepted.

Thus, these persons were provided with another benefit and their sentences were additionally reduced after verdict become final, by changing the verdict without retrial. [115] Since it is about two final verdicts, which do not apply provisions on determining the single sentence for perpetrating more than one criminal offences with a single activity, at the request of those accused, such sentence must be further reduced, since the **cumulative punishment is shorter than the sum of individual punishments fixed.** [116]

Therefore, the question iswhy the subject of the agreement with the defendants was not all the crimes that are being charged and why only one plea agreement was not concluded with each of the defendants. [117]

C.2.2.6. Motive for admission of guilt

Assessing the fulfilment of the conditions of whether admission of guilt is conscious and voluntary and the possibility of confession under compulsion is excluded, in practice does not pose a problem for the judge who decides on the agreement.

However, the High Court in Podgorica has incomprehensibly assessed that the admission of the organizer of the criminal organization is conscious and voluntary, and that the possibility of compulsion was excluded, although he, prior to passing the verdicts, issued a public statement that he admitted guilt in fear for his children and family. [118]

C.2.3. Case Studies: Budva affair

Dominant part of the Special Prosecutor's Office results in fight against corruption refers to the case of the so-called Budva affair, in which several public officials were convicted, mainly due to the signing of a plea agreement.

Almost a third of all criminal offenses with elements of corruption for which final verdicts have been passed in a five-year period relates to the accused in that affair.

This chapter gives a clearer picture of the actual achievements of the State Prosecutor's Office and the judiciary when it comes to agreements made with members of the Budva criminal group, financial investigation and confiscation of their property.

Criminal investigation against Svetozar Marović and members of his criminal group, was launched on August 13.

Two days later began the implementation of the provisions of the Criminal Procedure Code enabling the conclusion of a plea agreement with the accused for the most severe corruption crimes.

First results in the affair were very modest, and after the arrest of Svetozar and Miloš Marović, concluding of plea agreements started. Total of 21 defendants were convicted for 32 criminal offenses, and only two [119] of them were acquitted of one criminal offense each.

In the end, 12 accused persons concluded plea agreements, while some of them were previously convicted in regular proceedings as well.

However, in these agreements, as a rule, **the State Prosecutor's Office agreed and the courts confirmed exceptionally lenient sentences,** below the legally prescribed minimum, despite the large amount of damage they caused or the benefits they gained, which were determined by the verdicts.

In final verdicts rendered on the basis of plea agreements there are neither basic reasons for such low sentences that do not correspond neither with their public function nor the one that the accused had within the criminal group. Thus, for example, **the head of this criminal group received more lenient sentence than one of its members.**

Concrete examples show that **for the most of prominent members of this criminal group, the courts interpreted circumstances as mitigating too benevolently,** and in some cases unfoundedly. At the same time, aggravating circumstances for some of the defendants were interpreted by the courts more leniently than prescribed by law, and sometimes they were not taken into consideration at all.

Marović family began selling property in Montenegro immediately after the first convictions for the Budva affair. Immediately after launching of the financial investigation, the State Prosecutor's Office concluded an agreement with Miloš, and later on with his father Svetozar Marović, and at the proposal of the State Prosecutor's Office, they were released from detention.

The damage caused to the Municipality of Budva in many of these procedures has not been properly estimated, because the lawyer of the Municipality, who was hired by one of the members of the Budva criminal group, in one period, did not claim any the damage to the Municipality.

Results of the financial investigation are extremely modest. The property whose seizure is requested by the State Prosecutor's Office is no longer registered as ownership of the Marovic family, while its members are inaccessible to the competent authorities for serving prison sentences, predominantly thanks to treatment by the State Prosecutor's Office.

As the State Prosecutor's Office carried out concrete measures relating to Marović's personal property only in July 2017, they used their time on freedom to sell this property and at the same time secure the departure to Serbia for the purpose of avoiding imprisonment. Thanks to the postponement of the execution of the prison sentence, which was approved upon the motion of the State Prosecutor's Office, Miloš managed to get Serbian citizenship, while Svetozar left the state day after the release.

Diagram 1: Relations between the accused in Budva affair, types of proceedings and duration of the imposed sentences

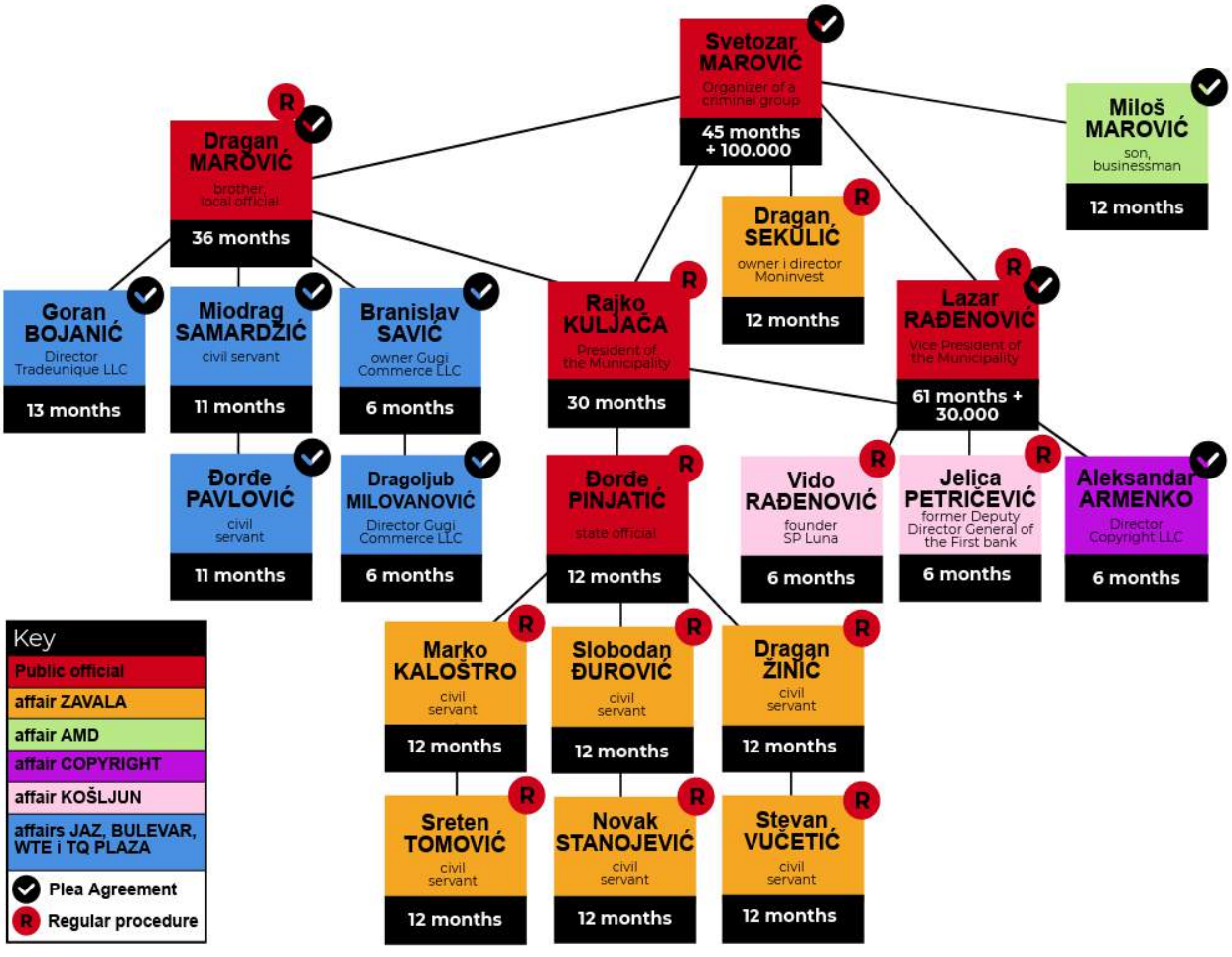
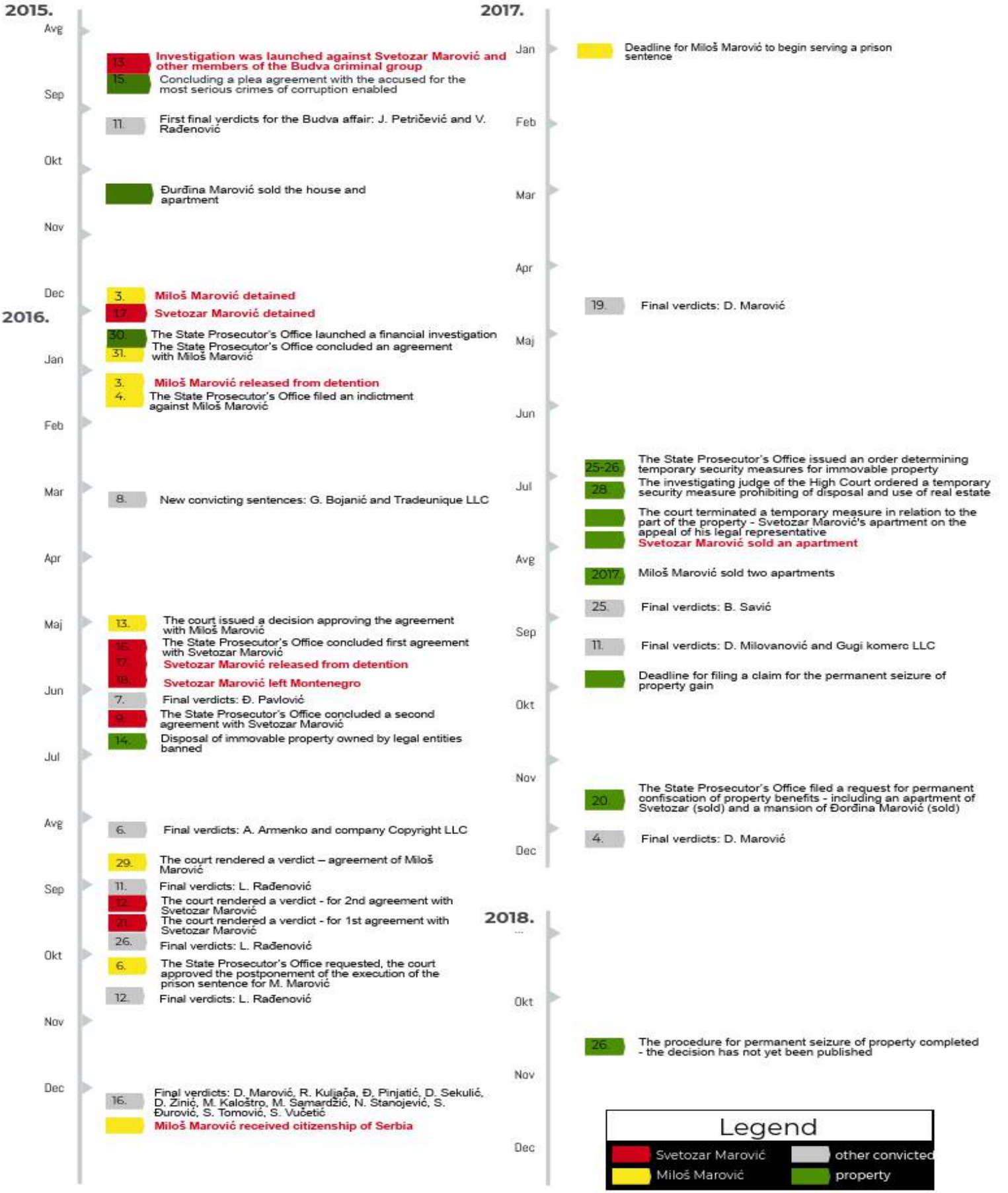


Diagram 2: Chronological overview of final verdicts and other judiciary procedures in cases related to the so-called Budva affair [120]



C.2.3.1. Case Study: Agreement with the head of the criminal group

The head of the Budva criminal organization, Svetozar Marović, was initially sentenced to a very short imprisonment, and then he was allowed to evade its execution, because he was released from detention immediately after signing a plea agreement.

The court did not consider whether the legal requirements for concluding the agreement were fulfilled, despite Marović's public statements that he confesses the commission of criminal offenses under pressure.

According to the verdict, Marović is obliged to pay a way smaller amount of damages than originally established, while actualy so far he paid only a couple of hundreds of Euros. The property he acquired from corruptive activities was not taken away from him, and a significant part was sold in the meantime by his family.

Svetozar Marović [121] concluded two plea agreements with the State Prosecutor's Office. Although he publicly claimed that he had not committed those crimes, but had confessed in fear for his family, the Court accepted both agreements without a proper assessment whether they had been concluded in accordance with the law and without justification of the reasons for accepting extremely low sentences.

The court found as a mitigating circumstance the fact that Marović is a father, although his children are adults, and the son was also convicted as a member of his criminal group. In one verdict, the court found that the Municipality of Budva suffered damage in volume of over €11 million, but by the same verdict, Marović was obliged to pay the Municipality only €1 million because the legal representative of the Municipality requested so.

Marović did not pay that amount, or the fines imposed on him, instead, he fled abroad the day after he was released from detention. Marović continues to avoid serving the rest of the sentence, and the state managed to collect only €460 from him.

Official documents show that the first provisional measures for seizing Marović's property were adopted nine months after he was legally convicted, i.e. a year and seven months after the State Prosecutor's Office announced that it had initiated a financial investigation.

The State Prosecutor's Office made a series of mistakes trying to temporarily freeze property of Marović and related persons during the proceedings, but a significant portion of that property was sold in the meantime, and there is a risk that it will not be seized from the person to whom it was transferred.

Verdict	Imposed sentence
First verdict	2 years + €50.000
Second verdict	1 year and 10 months + €50.000
Merging of sentences	3 years and 9 months + €100.000

First verdict: 22 months of jail time for damages of €19 million

In its first verdict [122], the court accepted an agreement concluded on June 9, 2016 [123] and imposed a single sentence of imprisonment of one year and ten months to the accused Marović for two criminal offenses, as well as a fine in the amount of €50 thousand.

Marović was convicted by this verdict for the most severe form of the criminal offense of abuse of office [124] committed in an organized manner and for extended duration, for which the law prescribes the possibility of imprisonment of up to twenty years. With the same verdict, Marović was also convicted of the most severe form of crime of fraud [125], also carried out in an organized manner and for extended duration, for which the law prescribes the possibility of stricter punishment, i.e. imprisonment of up to twenty years.

This verdict states that members of the criminal organization founded by Svetozar Marović obtained a benefit of €19 million by committing crime.

Prescribed punishment	Damage / gain	Imposed sentence
2 - 20 years	€ 19 million	1 year and 10 months + €50.000

€10 million euro of damage disappeared

According to the verdict, the total damage caused to the Municipality of Budva by committing criminal offenses in this case amounts to €11.7 million.

However, the verdict states that the legal representative of the Municipality of Budva submitted a property law claim in the amount of only €1 million. That amount was rulled to the Municipality by the same verdict, obliging Marović to pay it within a year, which he did not do.

This position of the representative of the Municipality points to the suspicion that he abused his official powers in favor of the organizers of the criminal group during the trial, because he was obliged to seek compensation of the complete damage to the Municipality.

Instead of million, the state collected €460

Svetozar Marović did not pay the damage of one million Euros to the Municipality of Budva within a year, so the Municipality froze Marović's bank accounts through an enforcement officer. In this way, the head of the criminal group paid €460 for the damage he caused to the Municipality. [126]

According to the agreement between Marović and the Special Prosecutor, it is agreed that a mortgage whose value was estimated by the prosecution to €1.1 million, should be entered into the land register as a means of securing compensation of €1 million to the Municipality of Budva. [127] Some of these properties are owned by Miloš Marović, son of Svetozar Marović and convicted member of the criminal group. After assessing the value of the property by which Miloš guaranteed that his father would pay a million Euros, it was determined that it was worth €450 thousand. [128] However, the Municipality of Budva cannot sell the parcel even for that amount. [129]

It thus shows that the State Prosecutor's Office has unlawfully agreed on the method of compensation for damage to the injured Municipality of Budva and, in favor of Marović, it overestimated the value of the property that allegedly should have been a means for covering the damages.

Although Marović did not pay anything according to the final verdicts, from publicly announced information it is evident that he still has significant funds. Namely, before the sale of the apartment in July 2017, this property was mortgaged in favor of First Bank of Montenegro [130] due to the loan Marović had with the bank in the amount of € 577 thousand. However, before the sale of the apartment, Marović paid the loan to the Prva banka and the mortgage on the apartment was deleted. [131]

This once again confirms that the State Prosecutor's Office did not conduct an effective financial investigation against Marović and did not freeze his property. Otherwise, Marović could not have settled the loan to the First Bank.

Mitigating circumstance: father of a member of the criminal organization

The court states that in favor of the organizer of the criminal group they valued full admission of the criminal offence, the fact that he is a family man, father of two children, and that he has no previous convictions, considering that these are particularly mitigating circumstances because there are no aggravating circumstances.

Such explanation of the court unfoundedly reduced responsibility of the organizer of the criminal group who caused great damage with its actions. The fact that the accused is a family man who has children cannot itself be mitigating, especially since his children are adults, do not live with him, and he has no obligation to support them.

In addition, the same judge who rendered this verdict, [132] immediately prior to its adoption, issued a verdict [133] convicting his son Miloš as a member of the criminal organization of Svetozar Marović. Thus it follows that, for the organizer of the criminal group, particularly mitigating circumstance is that he is the father of a member of his criminal group.

Therefore, in this case, not only there was no reasoning why the court listed circumstances in the particular case considered especially mitigating in order to reduce the sentence below the prescribed minimum, but it is obvious that those are not mitigating circumstances at all.

This verdict has no reasoning in the part that the agreement is in accordance with the interests of justice and that the agreed sentence corresponds to the purpose of the punishment, it is only roughly noted and stated that the sentence is acceptable. Also, the verdict completely ignores the purpose of punishment – to discourage others from committing crimes.

The Court did not consider the fact that gains obtained by executing the crime amounts to € 19 million and exceeds the statutory qualifying limit for the criminal offense of the most severe form of abuse of office.

Finally, the court also did not consider the importance of the function and duties that the accused performed, the number of offenses and the persistence in committing criminal offenses, but it was obviously unfoundedly stated that there were no aggravating circumstances.

Second verdict: : two years of prison time for damages of €25 million

In second verdict [134], the court accepted a plea agreement concluded with Marović on May 16 [135], 2016, and sentenced him to two years in prison, and imposed a fine in the amount of €50 thousand.

Marović was also convicted by this verdict for the most severe form of the criminal offense of abuse of office [136] in an organized and extended manner. For such offense, the law prescribes the possibility of stricter punishment, i.e. imprisonment for up to twenty years, however a minimum sentence prescribed by the law was imposed to Marović.
This verdict states that members of the criminal organization founded by Svetozar Marović by committing criminal offenses obtained a gain of €25 million.

Prescribed punishment	Damage/gain	Imposed sentence
2 - 20 years	€25 million	2 years + €50.000

Unknown position of the injured party

This verdict does not state the position of the legal representative of the Municipality of Budva regarding the property law claim and compensation for the damage suffered by the Municipality of Budva.

Instead, the verdict merely states that the legal representative of the Municipality of Budva stated that the plea agreement did not violate the rights of the injured party. Thus, it remains unknown what the position of the injured municipality was, or whether it asked for compensation for damages from the accused.

The prosecutor "clarified at the hearing" circumstances affecting the level of punishment

In this verdict, the court did not specify any mitigating circumstance for agreeing and accepting a prison sentence at the prescribed minimum limit. The Court notes that it does not determine the sentence in these cases, but checks whether the prosecutor followed rules of the substantive law in negotiating the type and level of punishment. The verdict states that "the prosecutor at the hearing additionally clarified the circumstances that affected the amount of the sentence imposed, and the court determined that these were those circumstances."

Such explanation is unlawful and unclear, since it cannot be determined from the verdict what kind of circumstances influenced the type and the level of punishment, what the prosecutor additionally "clarified" to the court, and what are the circumstances accepted by the court as a reason to impose a minimum prescribed sentence to the organizer of a criminal organization which, by commiting crimes, obtained a gains in the amount of €25 million.

The court is obliged to state in the verdict clear reasons why it considers that the agreed sentence corresponds to the purpose of punishment, and in particular that it affects the accused and other persons not to commit criminal offenses.

Voluntary or coerced confessions

Prior to the adoption of a plea agreement, the court is required to determine whether the confession is voluntary and conscious, and that there is no possibility that the confession was made as a consequence of an misapprehension. [137]

The High Court in Podgorica assessed that the confession of Marović was conscious and voluntary and that the possibility of misapprehension was excluded. However, before issuing a verdict, Svetozar Marović issued a press release stating that he acted unintentionally and unconsciously and did not prevent what he did not know, that his family was a hostage, and in distress and pain, that others accused him for that what they had done and that he confessed in fear for his children and family. [138]

"As it is written**, I have confessed** my guilt and sin, as the first among others, **because I did not know what I should have know. I did not see what everyone saw, I did not prevent what I did not know was there**...

The confession I made, for feeling guilty for all unpleasant and harmful things that happened, **I made out of fear**, not from those who acted according to the law, **but out of fear for my children, for my closest in blood, for my family**, from those who secretly threw a stone of burden on us, out of envy of ambition, political disagreement, and to whom, in their secret power, this punishment of mine and the suffering of Marović family might not be enough, and **that is why as human I feel fear** because it is easy to attack the one who is stumbling, add another burden to the marked one, show of strength on the one who fell," Marović said, among other things. [139]

The first of the conditions necessary for a court to adopt a plea agreement is that the accused consciously and voluntarily confessed the crimes that are the subject of the charge and that the possibility of confession as a consequence of misapprehension was excluded.

In the concrete case, the defendant publicly announced that he was unintentionally and unconsciously the leader of a criminal organization and abused his position, although these crimes can only be done with intent and not unintentionally. He stated that he had not obtained personal gain, but accepted to return the gain obtained by others and stated that he had pleaded guilty out of fear for the family. These allegations explicitly show that his confession does not meet the elementary requirements prescribed by law to be the basis for a verdict based on the adoption of a plea agreement.

The court decides on a plea agreement and according to the Criminal Procedure Code [140], it rejects the agreement when one of the prescribed conditions for its conclusion is not fulfilled.

Instead of rejecting an agreement in which confession does not meet the prescribed requirements, the court accepted it. According to the media, the court warned Marović at the hearing that due to his statements the prosecutor could terminate the agreement, and the accused promised that he would no longer give such statements. [141]

However, the court does not have the authority to warn the accused that an agreement may be terminated, instead, it is obliged to determine whether the legal requirements have been met for the agreement to be concluded, which was not the case here.

Verdict does not contain any key reasonings

In its verdict, the court stated that the reasons for its adoption had already been stated in the decision approving the agreement. In addition to the fact that such reasoning is illegal, since the court cannot arbitrarily refer to a second decision in the reasoning of the verdict, the decision to which the court refers to is not available to the public. Therefore, it follows that in this case, the reasons for the agreed and accepted minimum sentence for the organizer of the criminal group which, by committing criminal offenses, obtained pecuniary gain amounting to tens of millions of Euros, are hidden from the public.

The verdict does not provide an assessment of other circumstances that must be taken into account in determination of the sentence and the purpose of the punishment is completely ignored, which is reflected in the influence on others not to commit criminal offenses.

The Court does not even mention and consider the circumstance that the gain obtained by the committing the crime amounts to €25 million and exceeds the legally qualifying limit for the criminal offense of the most severe form of abuse of office, as well as the importance of the function and duty performed by the accused, the number of offenses and the persistence in the direction of the commission of criminal offenses, which constitutes aggravating circumstances in committing these crimes.

Joining of sentences

By concluding two agreements and adopting two verdicts, the organizer of the criminal group was enabled additional sentence reduction through the so-called merging of sentences i.e. the alteration of the verdict without repeating the procedure. This verdict was not published on the court's website, while the verdicts for other defendants with merged are publicly available. With that verdict, the total sentence of Svetozar Marović was reduced by another month. [142]

The final sentence for Marović for all criminal offenses in both proceedings is 45 months of imprisonment and €100,000.

(NON)enforcement of the verdict

Svetozar Marović was detained for five months [143] and was released on suggestion of the State Prosecutor's Office immediately after the conclusion of the first plea agreement. [144] The day after, he left Montenegro [145], and now he avoids serving the remaining of the prison sentence.

Namely, Svetozar Marović and his son Miloš who is, convicted as member of the criminal organization,[146] are unavailable to the Montenegrin authorities to serve the prison sentences agreed with the prosecution. According to publicly available information, Svetozar is located in Belgrade, where he is allegedly receiving medical treatment, although the media published his photographs from the local cafes. [147]

After more than a year after expiration of the deadline determined by the verdict, Marović did not pay one million Euros for the damage suffered by the Municipality of Budva, or the fines in the total amount of €100 thousand.

CONFISCATION OF THE PROPERTY OBTAINED BY CORRUPTION

The conclusion of the plea agreement and the adoption of verdicts by which these agreements are adopted do not limit the possibility of conducting financial investigation, freezing and extended seizure of property, which is officially confirmed by the State Prosecutor's Office. [148] However, while the proceedings against the head of the criminal group were ongoing, his assets were not temporarily seized.

State Prosecutor's Office illegally requested measures of prohibition

According to the information from the 2016 Report by the State Prosecutor's Office, no property was seized in that year from the organizers of the criminal organization, Svetozar Marović and others convicted in that affair.

In that year, the State Prosecutor's Office did not file any proposal for the provision of an interim security measure against any property owned by Marović, some of the members of the criminal organization or members of their families. Similarly, a proposal to determine any provisional measure that would have frozen funds of any of these persons was not filed. [149]

Instead, in the Report, the State Prosecutor's Office states that in the proceedings against Marović, it filed proposals for determining the provisional measure of prohibition of alienation and burden of immovable property owned by legal entities. [150] However, the Law on seizure and confiscation of material benefit derived from criminal activity does not recognize the measures requested by the State Prosecutor's Office, but prescribes the measure of prohibition of disposal and use of immovable property, with an annotation of prohibition in the land register [151].

The State Prosecutor's Office alleges that in the same case it filed a motion for the prohibition of alienation and burden of a yacht owned by a legal entity [152], which is also contrary to the law that prescribes that the court may impose temporary seizure of movable property. [153] Finally, in the case of immovable property, according to the prosecution's report, the measures prohibit the alienation and burden of only immovable property owned by legal entities. [154]

"Urgent" provisional security measures nine months after the verdict

The Law on seizure and confiscation of material gains derived from criminal activity prescribes the jurisdiction of the court for determining provisional measures to secure assets, while the state prosecutor can only in urgent cases prohibit the disposal and use of immovable property with an annotation of prohibition in the real estate register. [155]

The Report on the Work of the Prosecutorial Council and the State Prosecutor's Office for 2017, [156] shows that the State Prosecutor's Office issued an order that imposed provisional measures to secure assets ten months after Marović was convicted, when he was already unavailable to the Montenegrin authorities, i.e. a year and seven months after a financial investigation was launched.

Namely, the report states [157] that the State Prosecutor's Office in this case on 25 and 26 July 2017 imposed a provisional measure of security - ban on the disposal and use of immovable property, without any specific indication whose property it is, or who out of convicted or related persons owned these properties.

What was seized based on the results of the financial investigation?

According to the official data of the State Prosecutor's Office [158], a financial investigation in the proceedings against Svetozar Marović and the criminal group formed by him was launched against 74 persons against whom criminal proceedings have been initiated, as well as against a number of other persons associated with those convicts. [159]

In the same case [160], the State Prosecutor's Office issued orders on 25 and 26 July 2017 with provisional measures prohibiting the disposal and use of the following immovable property:

- cadastral parcel 1736/1 registered in LN 1048 CM Budva, area of 90 m²
- cadastral parcel 507/4 registered in LN 2998 CM Budva, area of 193 m²
- cadastral parcel 1756 registered in LN 1048 CM Budva, area of 52 m²
- cadastral parcel 2134 registered in LN 3277 CM Budva, area of 18 m² basement, 123 m² residential unit and 40 m² business premises
- cadastral parcel 3476 registered in LN 2608 CM Tivat, area of 232 m²
- family residential building area of 259 m², registered in LN 1511
- 2nd class orchard area of 41 m² and yard area of 500 m², registered in LN 1511 [161]

On July 28, 2017, the investigation judge of the High Court in Podgorica issued a decision [162] ordering a temporary measure to ensure the prohibition of the disposal and use of these properties.

The lawyer of Marović filed an appeal on this decision which the court adopted and amended the decision of the investigation judge by abolishing the provisional measure in relation to a part of the property - the apartment of Svetozar Marović. [163] The report by the State Prosecutor's Office does not indicate the area of the apartment that was returned to Marović by a court ruling, but according to the media [164], it is an apartment of 90 m², which, according to Marović's lawyers, he acquired back in 1992.

There is no indication in the Prosecution's report whose assets were temporarily seized, and the decisions according to which those measures have been determined are not available to the public. The prosecution and courts did not publish this decision on their websites, and the State Prosecutor's Office rejected the request [165] from MANS for free access to this information. Against this decision, NGO MANS filed a complaint with the Agency for the Personal Data Protection and Free Access to Information as a second instance body which has not yet made a decision.

A year and seven months after the financial investigation, the prosecution temporarily seized the immovable property of a total area of 1.548 m² from 74 defendants and other related persons.

What is hidden behind the official data of the State Prosecutor's Office

For years, the results on the seizure of assets on the basis of a financial investigation against the organizers and members of the Budva criminal group have been missing.

The property stated in the work reports and the statements of the State Prosecutor's Office has been temporarily seized or constitutes the damage caused by the commission of the criminal offenses which the convicted persons confessed and accepted to return them in the form of real estate.

In other words, it is not about the extended seizure of assets based on the financial investigation, but about the property gain - damage caused by the commission of the offenses for which the persons have been convicted.

Namely, in public statements, the Special Prosecutor's Office states that in the case of the Budva affair, over €23 million was seized [166]. However, these are real estate that have been seized from legal entities [167], whose value was estimated by the State Prosecutor's Office for this amount. These are real estate constructed by committing crimes of corruption and the damage suffered by the Municipality of Budva on that basis. The convicted legal entity is obliged to compensate this damage, and it cannot be the subject of negotiations and plea agreement in which the manner of compensation of damages that suits more to the accused would be agreed. [168]

Moreover, in accordance with the provisions of the Criminal Procedure Code, if the injured party submits a property law claim regarding the recovery of items acquired in consequence of the commission of a criminal offence or regarding the amount which corresponds to the value of the items, the property gain shall only be established for the part which exceeds the property law claim. [169]

Thus, as stated above, a year and seven months after the financial investigation, the prosecution seized only the immovable property of a total area of 1.548 m^2 through the financial investigation.

Permanent seizure of property

The legal deadline for filing a request for permanent seizure of property gains acquired through criminal activity shall expire one year after the date of the validity of the verdict. [170]

This deadline expired in relation to each convicted from the so-called Budva criminal group because all verdicts were adopted and became final in the course of 2016, while the last two verdicts were passed in August and September 2017.

Late submission of the confiscation request?

The legal deadline for filing a request for the permanent seizure of property gain acquired through criminal activity by Svetozar Marović expired in September 2017.

The Report on the Work of the Prosecutorial Council and the State Prosecutor's Office for 2017 [171] states that on November 20, 2017 the Special State Prosecutor's Office filed with the High Court in Podgorica a request for permanent seizure of property gain acquired through criminal activity from the convicted Marović Svetozar and related persons – holder Krstović Radojica, [172] in relation to the property that is registered on those persons. It follows that the State Prosecutor's Office filed this request after the expiry of the legal deadline.

While the State Prosecutor's Office investigates, Marović family sells

While the prosecution claimed that a financial investigation is under way, according to publicly available information, Svetozar Marović and his family sold valuable properties.

First, just before the arrest of Marović, his wife sold a luxury two-stores house in Budva, as well as an apartment of 85 m^2 in Podgorica. [173]

After being convicted, the property was sold by Svetozar and his son Miloš. Svetozar sold an apartment in Budva of 90m^2 for the amount of €180,000 [174], before being temporarily seized and later returned by the court decision.

His son Miloš, after the conviction, sold a luxury apartment of 480m^2 in Budva for one million Euros [175], and an apartment of 75 m^2 also in Budva [176].

Thus, by failing to immediately "freeze" the property of Marović family immediately after initiating a financial investigation, the State Prosecutor's Office enabled Marović family to sell and dispose of that property. The disposal of assets in favor of third parties allows those persons to take part in the seizure procedure because the property is taken away from them, which at the same time makes it difficult and can prevent the permanent seizure of such property.

Property owner	Description	Price	Time of the sale
Đorđina Marović, wife [177]	**House, 1.000 m2, Budva**	**€1.500.000**	**October 2015**
	Apartment, 85 m2, Podgorica	**Unknown**	**2015**
Svetozar Marović	**Apartment, 90 m2, Budva**	**€180.000**	**July 2017**
Miloš Marović, son	**Apartment, 480 m2, Budva**	**€1.000.000**	**2017**
	Apartment, 75 m2, Budva	**Unknown**	**2017**

Namely, in addition to the fact that the State Prosecutor's Office must prove that this property is in obvious disproportion to the lawful income of Marović, the prosecution now has to prove that the persons in whose favor the alienation was carried out were unconscientious, i.e. that they knew that the property originated from criminal activity because conscientious third parties have procedural rights of the injured party in accordance with the law. [178] In addition, the State Prosecutor's Office must prove in this case that the property is transferred to a third party for no fee or for a fee that does not respond to the real value in order to prevent the confiscation. [179]

State Prosecutor's Office seeks already sold property

According to the request for permanent seizure of the property gain acquired through criminal activity, the Prosecution requests to seize the apartment [180] from Marović for which the court annulled the provisional measure in 2017 and allowed Marović to have it at its disposal. [181] Marović sold this apartment in late July 2017 for the amount of €180 thousand. [182]

Apart from that apartment, the prosecution requests to seize a villa with a yard and an orchard from Radojica Krstović who bought it from Đorđina Marović, wife of Svetozar Marović. [183] Therefore, all property whose permanent seizure is requested by the prosecution is no longer owned by Marović and is transferred to third parties.

The proceeding for the permanent seizure of property was completed on October 26, 2018, [184] and the court rendered the decision within 15 days. Until completion of this publication, it was not announced what the court had decided on the prosecution's motion for permanent seizure of property. The High Court confirmed that the decision was made, but it was not announced what kind of decision it is, noting that it would do so after the decision was sent to the parties. [185]

C.2.3.2. Case study: Avoided sentencing due to the inaccuracy of the Judiciary

Member of a criminal group convicted of corruption by an extremely lenient prison sentence, has avoided its execution due to the unlawful delay of proceedings by the judiciary. The study also shows that the injured Municipality of Budva did not seek compensation of €2.3 million. Thus, considerably less amount of the gain he confessed he had acquired was taken away from the convicted Miloš Marović.

After concluding a plea agreement, Miloš Marović was convicted as a member of a criminal organization formed by his father, Svetozar Marović [186]. The High Court in Podgorica [187] accepted the agreement on December 31, 2015 [188] and sentenced him to one year in prison.

Miloš Marović was convicted of the most severe form of criminal offense of abuse of office [189] by aiding, committed in an organized manner. For this criminal offense at the time of execution, imprisonment for a term between two and ten years was prescribed. The property gain that the accused obtained for himself by committing a criminal offense in the amount of €385,185.20 was permanently confiscated by the verdict.

The verdict found that the Municipality of Budva was damaged in this case by € 2.3 million, but the legal representative of that institution did not seek compensation for that damage.

Injured party disclaims the compensation

The court's verdict states that the legal representative of the Municipality of Budva does not state the property law claim and has no objection to the text of the plea agreement. Such behavior indicates suspicion of abuse and illegal disposal of public funds in favor of a person convicted of corruption. Namely, although the court found that committing crimes caused damage to the Municipality in the amount of €2.3 million, the legal representative of the Municipality disclaimed the fee before the court.

This verdict also does not contain reasoning in the part that the agreement is in accordance with the interests of justice and that the agreed sentence corresponds to the purpose of punishment. The court does not mention this at all and does not consider the circumstance of the amount of gain and the amount of damages to the Municipality of Budva, which exceeds the statutory qualifying limit for the criminal offense for which Miloš Marović was convicted.

Instead, the court states that the accused fully confessed the crimes and thus gave contribution to completely clear the factual situation, that he is a family man, married father of two minor children, and that he has no prior convictions, and valued these circumstances as particularly mitigating, concluding that there were no aggravating circumstances.

However, the verdict does not contain the reasoning and explanation why the confession of the accused contributed to completely clear the factual situation, or the reason why the court does not regard as an aggravating circumstance the amount of gain and the amount of damages for the Municipality of Budva that exceeds the statutory qualifying limit for this criminal offense in question, because this circumstance must be regarded as aggravating. [190]

Prescribed punishment	Damage/gain	Imposed sentence
2 - 10 years	€2,3 million + €385.000	1 year

(NON)ENFOCEMENT OF THE VERDICT

At the beginning of January 2016, immediately after signing of the agreement, at the proposal of the prosecution, Miloš Marović was released from detention, where he spent a month [191]. Thanks to the delay of the proceedings by the court and the request of the Special Prosecution to postpone the execution of the sentence, Miloš managed to obtain the citizenship of Serbia and avoided the execution of the sentence in Montenegro. In that way, he spent a month in prison, instead of one year he was sentenced to.

Delays caused by the Court

The prosecution concluded the agreement with Miloš Marović on December 31, 2015. Four days later, on January 4, 2016, the prosecution filed an indictment in this case, [192] which was submitted to the court together with the agreement.

Although the Criminal Procedure Code prescribes that the court decides on the agreement without delay, [193] the President of the Higher Court, judge Boris Savić, only four months later, in May of the same year, issued a decision approving the agreement. [194]

The Criminal Procedure Code prescribes that the court shall pass a verdict no later than three days after the validity of the decision by which the agreement is adopted [195]. However, the President of the High Court in Podgorica, judge Boris Savić, issued the verdict three months after the decision was made, i.e. on August 29, 2016.

Postponing the execution of the prison sentence at the request of the prosecution

The President of the Basic Court in Kotor addressed the public in November 2016 stating [196] that after the request was sent to Miloš Marovic for the delivery of a referral act for serving the sentence, the Special State Prosecutor's Office on October 6, 2016 requested the postponement of the execution of the prison sentence to Miloš Marović for three months in order to pay the amount of €385,185.20 determined by the verdict.

This request was adopted by the court and postponed execution of the prison sentence to Miloš Marović until January 2017. Thus, Miloš Marović was supposed to report to serving a prison sentence of one year after he had agreed with the prosecution.

Such request from the Prosecution and the court's decision to postpone the execution of the sentence to Marović is unlawful. Namely, the Law on Execution of Prison Sentences, Fines and Security Measures prescribes when and to what time the execution of the prison sentence can be postponed at the request of the convicted person. [197]

The same law prescribes that the execution of a prison sentence at the request of the state prosecutor shall be postponed until the prosecutor informs the court that he can start the execution or until a new court decision is made. [198] This request can only be filed by a state prosecutor when, in accordance with the provisions of the Criminal Procedure Code, s/he submits a request for repeating of criminal proceedings in favor of the convicted person [199], and then the court may postpone the execution of a prison sentence until a new court decision is made. [200]

No provision of any regulations gives the public prosecutor the power to request the postponement of the execution of the sentence of imprisonment so that the convicted person can return the property gain s/he has acquired through a criminal offense, or the powers to the court to adopt such request.

That time Miloš Marović used to avoid going to prison and since January 2017, when the deadline for the execution of the prison sentence has expired, he is no longer available to the Montenegrin authorities. Namely, according to the publicly announced information, Miloš Marović moved to Belgrade where, after the verdict was enforced, at the time when the court postponed the execution of the sentence, he sought and obtained the Serbian citizenship. [201]

Instead of going to Montenegrin prison, he will be serving a sentence in an apartment in Belgrade?

After obtaining the citizenship of Serbia, Miloš Marović requested to serve the sentence in Serbia [202], where the possibility of serving a sentence of up to one year of imprisonment in the premises where the convicted person resides is prescribed. [203]

Pursuant to the International agreement on extradition signed between Montenegro and the Republic of Serbia [204], extradition may be allowed only if the sentence imposed is at least two years of imprisonment. [205] Thus, the sentence below the legal minimum and the unlawful delay of its execution enabled Miloš Marović to avoid extradition to serve his sentence by escaping to Serbia and obtaining Serbian citizenship, and then to rely on the possibility of serving the sentence in Serbia in the apartment.

Had the prosecution agreed to a sentence even at the very border of the prescribed minimum of two years in prison, Miloš Marović would have to be extradited to Montenegro by Serbia, regardless of the fact that in the meantime he had obtained the citizenship of that country.

C.2.3.3. Case Study: Gain obtained for others and not for oneself is a mitigating circumstance

This case study shows incomprehensibly lenient penal policy of the courts against a public official in whose case the fact that he did not acquire gain for himself, but for others was considered a mitigating circumstance. The conduct of several proceedings against the same accused and untimely conduct of the courts led to a double reduction of already lenient sentences imposed on that official.

In this case, the Special State Prosecutor's Office on the same day concluded two plea agreements with the same accused, allowing him to impose more lenient punishments and their subsequent reduction after the validity of the verdicts. In this case as well, [206] the Appellate Court significantly reduced the penalties imposed and influenced the penal policy for the criminal offenses of corruption to be inappropriately lenient.

In two cases, this official was sentenced to a significantly lower prison term than the minimum prescribed by the law, while in the third sentence they were at the minimum. Such lenient punishments were reduced two times on the basis of their joining.

First procedure - seven months - mitigating circumstance gain obtained for others

According to the verdict of the High Court in Podgorica [207] on the basis of the agreement of the Special Prosecutor and the accused on the admission of guilt, the Secretary of the Municipality of Budva, Dragan Marović, was sentenced to seven months imprisonment for the criminal offense for which at the time of execution the imprisonment was prescribed in the range between 2 and 10 years in prison [208].

The total damage to the Budva Municipality caused by committing the crimes for which he was convicted amounted to €4.8 million. It was an extended criminal offense for which the Criminal Code prescribes the possibility of imposing a more severe sentence than the one prescribed.

Mitigating circumstance: Obtaining gain for the criminal organization, not for oneself

The court in this verdict, as particularly mitigating circumstances, states the admission of the accused and the fact that committing the crime did not result in personal gain.

However, the fact that the accused did not obtain personal gain cannot be a mitigating circumstance in the criminal offense of abuse of office, and in particular cannot be regarded as particularly mitigating to reduce the sentence below the prescribed minimum. This is because obtaining of personal gain is one of the consequences of this criminal offense and the Criminal Code does not distinguish between these consequences, i.e. it does not make a difference whether the gain is obtained for oneself or for the others [209].

The fact that the consequence of a criminal offense is committed in one, and not the other way, can in no way be a mitigating circumstance for the accused. In addition, the Criminal Code explicitly states that a circumstance which is an element of the criminal offence (in the particular case - obtaining gain for oneself or other) may not be taken into consideration as mitigating circumstance. [210]

Thus, in this case, the court unlawfully found as particularly mitigating circumstance for the accused the fact that by committing criminal offenses, he enabled others to obtain pecuniary gain in the amount of €4.8 million.

The verdict does not contain an assessment of other circumstances that the court under the Criminal Code has to take into account while determining the sentence, and the purpose of punishment is completely ignored, which is reflected in the influence on others not to commit criminal offenses.

Thus, the court did not take into account the fact that the benefit obtained by commiting the crime exceeds the legally qualified limit for the criminal offense of the most severe form of abuse of office, but also the fact of the public official duty performed by the accused, the number of offenses committed and the persistence towards the committing the crime, although the court practice and proper implementation of the law consider these circumstances as aggravating.

Second procedure – seven months of prison time, mitigating circumstance: prosecutor at the hearing

A month and a half later, the same court issued another verdict [211] against the same accused sentencing him to seven months in prison for the same criminal offense for which, at the time of committing, a term ranging from two years to 10 years in prison was prescribed [212]. Committing of this crime resulted in the acquisition of unlawful pecuniary gain in the amount of €19.5 million.

Unlike the aforementioned verdicts, in this verdict the court states that it has established that the admission is in accordance with the content of the evidence contained in the case files - which is one of the conditions for the court to adopt the agreement. However, the court merely lists the evidence from the file, without specifying their content from which it could be established that the admission is in accordance with them.

The court correctly states in this verdict that in these cases the court does not determine the sentence [213], but assess whether during negotiations and concluding of the final agreement, in terms of type and duration, the prosecutor complied with the rules of the substantive law.

However, the verdict states no reasoning in the part that the agreement is in accordance with the interests of justice and that the agreed sentence corresponds to the purpose of punishment. The court arbitrarily states that the prosecutor at the hearing "clarified the circumstances that affected the duration of the prison sentence", so the court found that these were the circumstances that affected the punishment to be mitigated. The verdict has no indication as to what the circumstances are and how the prosecutor "clarified" it at the hearing.

The court is required to state in the verdict clear reasons why it considers that the agreed punishment corresponds to the purpose of punishment, [214] in particular that it influences others not to commit crime. [215] The Court cannot base its position on the acceptance of the sentence imposed on the allegations that "the prosecutor at the hearing explained it", as the Law clearly states that the court's decision must correspond to the content of the agreement and that the agreement must, inter alia, be in line with the interests of fairness, and the sanction corresponds to the purpose of imposing criminal sanctions. [216] No provision of the Criminal Procedure Code stipulates that the Prosecutor may explain anything at the hearing (neither the circumstances that have affected the amount of the sentence) because at the main hearing, the court does not decide on the agreement and does not carry out the evidence, instead, it only decides whether the agreement was concluded in accordance with the law. In this verdict, the court did not specify any mitigating circumstance that the prosecutor could have in mind when he agreed to such reduced sentence, and remains unclear in what way the court found that the agreed penalty corresponds to the purpose of the punishment.

In this verdict as well, the court did not take into consideration the fact that the gain acquired by committing the crime exceeded the statutory qualifying limit for the criminal offense of the most serious form of abuse of office, but also the duties of the public official that the accused was performing, the number of actions undertaken and persistence towards the committing the crime, although in court practice and the correct implementation of the law, these circumstances are consider as aggravating.

Criminal offenses that were subject to both proceedings were carried out in the same time period, and the State Prosecutor's Office concluded in both cases an agreement with the accused on the same day on May 14, 2016.

Thus, the question arises as to why the State Prosecutor's Office did not conclude an agreement with this accused for all criminal offenses, rather than concluding two agreements on the same day and on the basis of which two verdicts with mitigated sentences were passed, which were then further mitigated by merging punishments.

Third procedure – four, then two years of prison time

Against the same accused public official, the High Court in Podgorica adopted another verdict [217] in regular proceedings, convicting him to four years in prison, also for the most severe form of criminal offense of abuse of office, for which at the time it was committed, the prescribed punishment was ranging from two to ten years in prison. By the committing this crime, illegal pecuniary gain in the amount of € 820 thousand was obtained.

In this verdict, the court found mitigating circumstances with the accused: family circumstances, i.e., that he is married and that he had no prior convictions, while stating that there were no aggravating circumstances.

In this verdict as well, the court did not take into consideration the fact that the gain obtained by committing the crime exceeded the statutory qualifying limit for the criminal offense of the most severe form of abuse of office, but also the duty of the public official that the accused was performing, although in court practice and correct implementation of the law these circumstances are considered as aggravating.

On December 12, 2016, the Appellate Court of Montenegro adopted a verdict [218] amending the verdict of the High Court in Podgorica and reduced by half the sentence of the accused to two years in prison.

In the reasoning of the verdict, the Appellate Court states that the High Court did not sufficiently take into consideration the mitigating circumstances that the accused is a family man with children, that the injured party did not join the prosecution and did not ask for a property claim, as well as the time passed after committing the crime to which the accused did not contribute.

The Appellate Court also does not mention the circumstances neglected by the High Court as well - that the gain obtained by committing the crime exceeds the legally qualified limit for the criminal offense of the most severe form of abuse of office, but also the duty of the public official that the accused was performing, which must be aggravating circumstances in determining the sentence.

It is unclear why the Appellate Court in general considers that the mitigating circumstances should be considered more in favor of the accused. Namely, the fact that the accused is a family man with children cannot alone be a mitigating circumstance, since the court does not specify whether the children of the accused are underage and whether there is an obligation for the accused to support them, whether they live in the same household etc.

Furthermore, the fact that the injured party did not join the prosecution and did not ask for a property claim cannot by itself be a mitigating circumstance. Such position of the injured party should be the result of the conduct of the accused after committing the criminal act (compensated damage to the injured party, expressed remorse, etc.) in order to be a mitigating circumstance.

The Municipality of Budva's position not to seek compensation for the caused damage and not to join the prosecution against its public official cannot be a mitigating circumstance, but it can and must be a reason for the State Prosecution to check the reasons why the Municipality does not claim damages in the amount of €820 thousand. Namely, these are public funds and they cannot be claimed or disposed of arbitrarily, nor can such disposal be regarded as mitigating circumstances for the accused.

Finally, consideration of the time span as mitigating circumstances in the way that the Appellate Court does is also unclear. This leads to the conclusion that the inefficiency and incompetence of the judiciary in the deterrence and processing of high-level corruption is additionally valued as a mitigating circumstance in favor of the accused for corruption.

Merging and reducing of sentences

By double merging, three sentences imposed on Dragan Marović were reduced for two months of prison time.

By amending the verdict without repeating the procedure, the conclusion of two agreements with the accused and the adoption of two verdicts made it possible, after validity of the verdicts, to further reduce already lenient sentences.

First, the sentences from the verdicts adopted on the basis of a plea agreement were merged and reduced by a total of two months, and thus connected and reduced sentence was linked to the sentence from the third verdict and total sum of prison time reduced by another month.

Verdict	Imposed sentence	Punishment prescribed by the Law	Damage / gain acquired through criminal offense	First merging of sentences	Second merging of sentences
First verdict	7 months	2 - 10 years	€4,8 million	13 months (- 1 month)	36 months (- 1 month)
Second verdict	7 months	2 - 10 years	€19,5 million		
Third verdict	2 years	2 - 10 years	€820.000		

Acting at the request of the defense attorney of the accused, the High Court issued a verdict [219] reducing the total sentence by two months and imposed a single sentence of imprisonment of a total of one year and one month. Given that the third verdict against Dragan Marović became effective one month after this first joining of sentences based on a plea agreement, [220] the High Court issued another verdict by which the two already merged sentences were further merged with the third and in total is reduced by another month and sentences Dragan Marović to a single prison sentence of three years.

C.2.3.4. Case Study: Agreed to return pecuniary gain that must be taken away from him

In this case study, it is described that the court accepted as a mitigating circumstance the consent of the accused to return pecuniary gain he had acquired through a criminal offense, although this was his legal obligation.

According to the verdict of the High Court in Podgorica [221], on the basis of the plea agreement between the Special Prosecutor and the accused, the accused Branislav Savić, owner of the company "Gugi commerce" LLC Budva, was sentenced to six months in prison for the criminal offense for which, at the time when the offenses were committed, the prescribed imprisonment was in the range between 2 and 10 years in prison. [222] It was a crime committed in an organized manner, and the damage for the Municipality of Budva amounted to a total of €2.2 million.

As mitigating circumstances for maximum mitigation of the sentence, the court states that the accused admitted committing of the criminal offense, that he is a family man and that he had no prior convictions, and that the legal entity owned by the accused agreed to compensate for the pecuniary gain acquired through the criminal offense. The verdict did not provide an explanation why the court in this particular case considered these circumstances mitigating and reduced the sentence below the prescribed minimum.

The Court considers as mitigating circumstance something that the accused is obliged to do by the law. The Criminal Code prescribes [223] that no person may retain pecuniary gain originating from an unlawful act which is established by law as a criminal offense and that this gain shall be liable to confiscation under the conditions laid down by the present Code and a court decision. Therefore, the pecuniary gain obtained by the criminal offense must be confiscated from the accused, it does not depend on his/her will or opinion and this cannot be the subject of negotiations in the plea agreement.

In the specific case, it appears that the State Prosecutor's Office negotiated with the accused legal entity whether to return the pecuniary gain obtained by corruption, and then the court considered as a mitigating circumstance the fact that the accused legal entity agreed to return the pecuniary gain. This unlawful conduct by the State Prosecutor's Office and the court indicates that in practice, the institute of plea agreement is severely abused for the benefit of persons accused of corruption.

This verdict also does not provide any explanation in part that the agreement is in accordance with the interests of justice and that the agreed sentence serves its purpose, instead, it is arbitrarily concluded and stated that the sentence is acceptable. In addition, in this verdict there is also no assessment of other circumstances that the court under the Criminal Code has to take into consideration in determining the sentence, and the purpose of the sentence is completely ignored, and that is influence on others not to commit crime. In this regard as well, the Court did not even take into consideration the fact the gain obtained by committing the crime exceeded the statutory qualifying limit for the criminal offense of the most severe form of abuse of office, although in court practice and proper implementation of the law this circumstance is regarded as decisively aggravating.

C.2.3.5. Case Study: Multiple mitigation of sentence

This case study shows that for the serious criminal offenses, mild sentences are imposed to the accused, which are additionally mitigated by the abuse of a plea agreement and an institute of merging of sentences.

The same judge on the same day made two plea agreements with the same person, and in both cases he was sentenced under the prescribed minimum, although the damage to the state was almost €20 million.

According to the verdict of the High Court in Podgorica [224] on the basis of the plea agreement of the Special Prosecutor and the accused, the accused Goran Bojanić (executive director of "Tradeunique CG LLC Budva") was sentenced to six months in prison for the criminal offense of the most severe abuse of office [225], for which, at the time when the offenses were committed, the prescribed imprisonment was in the range between 2 and 10 years in prison [226]. The damage caused to the Municipality of Budva amounts to €3 million.

On the same day, the same judge [227] issued another verdict [228] against the same accused for two criminal offenses: the most severe form of abuse of office, committed by aiding and prolonged criminal offense, the most severe form of tax evasion and contributions. The accused was sentenced to six months in prison for the first criminal offense and three months imprisonment and a fine of € 1,600 for other criminal offense, with a single sentence of seven months imprisonment and a fine of €1,600.

For the first criminal offense at the time when crimes were committed, the prescribed imprisonment was in the range between 2 and 10 years of imprisonment,[229] while for other criminal offense a sentence of imprisonment ranging from 1 to 8 years was imposed and a fine, with the possibility of more severe punishment, because it is a prolonged criminal offense. In the first case, the Municipality of Budva suffered damages in the amount of €19.5 million, while due to the other criminal offense, the state suffered damage in the amount of nearly €300 thousand.

The court also states here that the accused fully admitted committing of the criminal offense, that he is a family man, married, not wealthy, and that he had no prior convictions and that these are especially mitigating circumstances, without explaining why he considers this to be particularly mitigating circumstances for mitigating the sentence below the prescribed minimum. This was done also without assessing other circumstances that the court under the Criminal Code must take into consideration when imposing a sentence and without considering the purpose of punishment, which is the influence on others not to commit criminal offenses.

The Court especially did not give reasons and explanation why the accused for the most severe forms of criminal offenses by which the state was damaged for almost €20 million receive sentences mitigated well below the prescribed minimum, nor in what way the court took into consideration the circumstances of the gravity of consequences of the crimes committed in relation to the sentence that he had accepted, i.e. the extent of the damage caused to the state by the crime of corruption and the amount of gain the accused earned (legal limit for the existence of more severe criminal offense was exceeded 650 times), although this circumstance is considered aggravating in the court practice and proper implementation of the law.

Also, such incomprehensibly fully reduced sentences will be further reduced by the so-called merging of sentences or by altering the verdict without repeating the procedure.

C.2.3.6. Case Study: Aggravating, then not aggravating circumstances

This case study shows that courts differently assess same circumstances with the same accused for the same crimes - in one case they are aggravating, and in the other irrelevant for the decision of the court. With more criminal offenses and more pecuniary gain acquired by corruption increases, the courts impose all the more lenient punishments.

In the first proceeding against Lazar Rađenović, the former President of the Municipality of Budva, the High Court in Podgorica cited the function of the accused, number of offenses, the persistence in committing the crime and the acquisition of large property gain as an decisive aggravating circumstance. The Appellate Court of Montenegro assessed that these circumstances were overestimated and reduced the sentence imposed. Subsequently, in the other two proceedings in which Rađenović concluded plea agreements, the High Court in Podgorica did not regard the same circumstances as aggravating and imposed a much lenient sentences.

The first proceeding in which the most severe punishment against the accused was imposed was initiated at the time when the accused for the most serious crimes of corruption could not conclude plea agreements, which further shows that the amendment of the law that enabled it was exclusively in the interests of the accused for corruption.

First proceeding

According to the verdict of the High Court in Podgorica [230], the Accused Lazar Rađenović, the then vice-president of the Budva Municipality, was sentenced to a single six-year prison term for the criminal offense of the most severe abuse of office and the criminal offense of illegal possession of weapons and explosive substances. Previously, the court imposed a prison sentence of five years and ten months for the corruptive offense of abuse of office.

In this verdict, the court found as decisive aggravating circumstances of the accused also the importance of the function and duties performed by the accused by which he was obliged to preserve trust in state institutions and the legal order, the number of offenses committed and the persistence towards committing the crime, and the fact that a gain exceeding the statutory qualifying limit for the criminal offense of the most severe abuse of office in the amount of €30 thousand was obtained, stating that the accused gained € 350 thousand.

Although the court found mitigating circumstances with the accused: personal and family circumstances, i.e. that he is a father of three children he supports and that he had not prior convictions, the court imposed the punishment of five years and ten months for the most severe form of abuse of office. At the time of execution for this criminal offense, a sentence of two to ten years in prison was prescribed.

The Appellate Court of Montenegro issued a verdict [231] amending the verdict of the High Court in Podgorica and reduced the sentence for two years and four months, thus, Lazar Rađenović was sentenced to a single prison sentence of three years and eight months. The Appellate Court of Montenegro imposed a prison sentence of three years and six months for the criminal offense of abuse of office.

In the reasoning of the verdict, the Appellate Court of Montenegro merely states that the High Court gave an overestimated significance to aggravating circumstances compared to the mitigating ones. The verdict does not contain any specific reasons for which the Appellate Court considers that an overestimated significance was given to the above-mentioned circumstances.

Second proceeding

Less than a half year after the verdict of the Appellate Court of Montenegro, the High Court in Podgorica adopts another verdict [232] against the same accused Lazar Rađenović. This verdict was adopted on the basis of a plea agreement between the accused and the special prosecutor. [233] Rađenović agreed with the prosecution a sentence of imprisonment of one year and six months and a fine of € 30,000 for the same criminal offense (the most severe form of abuse of office), but this time carried out in an organized manner and for an extended duration for which the Criminal Code in Article 49, paragraph 5 prescribes the possibility of pronouncing a more severe punishment than the one prescribed. However, the sentence agreed with the prosecutor and accepted by the court is below the statutory minimum. [234]

The total damage caused to the Municipality of Budva by committing these crimes amounts to € 24 million.

Unlike the previous verdict against the same accused, in this verdict the High Court in Podgorica did not consider as aggravating circumstances at all the significance of the function and duty that the accused performed and by which he was obliged to preserve the trust in the state institutions and the legal order, the amount of actions undertaken (although it was a continuing criminal offense), persistence in committing crime, and the fact that the pecuniary gain exceeded the legally qualified limit for the criminal offense of the most severe form of abuse of office and that the gain in this case amounts to €24 million.

In addition, the High Court in this verdict now finds the same mitigating circumstances as particularly mitigating because it reduces the sentence below the prescribed minimum, although neither the High Court nor the Appellate Court did in these proceedings assess the circumstances in this manner. Also, the High Court states that it "took into account" the previous conviction of the accused for the same offense, but noted that this earlier offense was committed in the same time period as the offenses he is charged with. The court is obliged to consider circumstances that affect the type and level of punishment, and not "take them into account" and then obviously ignore them with unacceptable and incomprehensible reasoning.

Thus, **the court first established mitigating circumstances and arbitrarily characterized them as particularly mitigating in order to justify the acceptance of the agreed punishment below the statutory minimum. Subsequently, the court ignored the aggravating circumstance of earlier conviction** with an incomprehensible and unlawful reasoning that the earlier offense was committed in the same period of time as the offenses he is charged with. It thus follows that the court here, in favor of the accused, took into consideration the fact that in the same period he had performed several similar criminal offenses.

This is why this case further raises doubts about the lawful treatment of the prosecution and the court in cases of high-level corruption and shows that the prosecution and the court allow high-level corruption actors to avoid the punishment they deserve and which is prescribed for the serious crimes they committed.

Reducing punishments by merging them

Considering that two final verdicts were imposed against this accused without applying provisions on the determination of a single sentence for offenses of the acquiring of gain, according to his request, such punishments must be additionally reduced since the cumulative punishment is shorter than the sum of individual punishments fixed. [235]

Acting on the request of the defense attorney of this convict, two months after the verdict was pronounced on the basis of a plea agreement, the High Court also rendered a verdict [236] amending those sentences, reducing the total time of imprisonment and imposed a single sentence of five years and one month of prison time.

Third procedure

The High Court in Podgorica issued another verdict [237] against the same accused Lazar Rađenović based on the plea agreement that the accused and the Special Prosecutor concluded only three days after the agreement from the previous proceedings. [238] This time, Rađenović agreed with the State Prosecutor's Office a lower prison sentence of six months for the same criminal offense (the most serious form of abuse of office), which was also carried out this time in an organized manner and for an extended period of time for which the Criminal Code prescribes the possibility of pronouncing a more severe punishment than that which is prescribed.

The total damage caused to the Municipality of Budva by committing these crimes amounts to €6.8 million.

In this case as well, the High Court does not regard as aggravating circumstances the importance of the public function and duties that the accused performed and by which he was obliged to preserve the trust in the state institutions and the legal order, number of offences committed (although it was a continuing criminal offense), the persistence in committing the crime and the fact that the pecuniary gain that exceeds the legally qualified limit for the criminal offense of the most severe form of abuse of office is exceeded, and that the benefit in this case in the amount of €6.8 million was obtained.

In this case, the court states that it was considered an aggravating circumstance that the accused was convicted of the same corruptive criminal offense, but found that this "does not influence different decision of the court", since the accused admitted at the first hearing and contributed to the detection and establishment of guilt other persons.

Therefore, in the first case, the court ignored the aggravating circumstance of earlier conviction of this accused with an incomprehensible and unlawful reasoning that the earlier criminal offense was committed in the same time period as the offenses he is charged with, and in the second that the previous conviction (with two verdicts) without any influence, because the accused admitted at the first hearing and contributed to the detection and establishment of the guilt of other persons.

In addition, the court previously listed in the verdict the written evidence from which it is undoubtedly determined what other persons participated in committing of these crimes, and it is incomprehensible how it contributed to the establishment of the guilt of other persons, because that is also not explained in the verdict. It therefore follows that the court with this reasoning tried to justify the unlawful reduction of the sentence of the accused.

C.2.3.7. Case Study: Convicted, but not convicted

This case study shows that the court, without determining the basic facts, accepts plea agreements concluded by the State Prosecutor's Office, thus, it found that the accused was not previously convicted, although the same court had convicted him. Additionally, the study points to the poor practice of the State Prosecutor's Office, which on the same day signed two agreements with the same accused, allowing him fully mitigated sentence, despite the large damage to the budget.

According to the verdict of the High Court in Podgorica [239] on the basis of the agreement of the Special Prosecutor and the accused on the admission of guilt, the accused Miodrag Samardžić, an official of the Municipality of Budva,[240] was sentenced to six months in prison for the most serious offense of abuse of office, for which, at the time when the offenses were committed, the prescribed imprisonment was in the range between 2 and 10 years in prison [241]. The damage caused to the Municipality of Budva amounts to € 2.7 million [242].

Less than two months later, the same court issued another verdict [243] against the same accused for the same criminal offense committed in an organized manner for which, at the time when the offenses were committed, prescribed imprisonment was in the range of from 2 to 10 years in prison [244].

By committing this criminal offense, the criminal organization whose member is the accused illegally obtained pecuniary gain in the amount of over one million Euros. In addition, it was an extended criminal offense for which the Criminal Code [245] provides the possibility of imposing a more severe sentence than the one prescribed. However, in this case the accused was sentenced to the same sentence of six months in prison.

In this verdict, the court, as a mitigating circumstance, states that the accused has not been previously convicted, although the verdict by which the accused was convicted of the same criminal offense was adopted on 1 July 2016, one month before the adoption of this verdict.

In addition, the court arbitrarily states that there were no aggravating circumstances on the side of the accused, even though it is a person convicted of the same offense, and although the degree of guilt, the motives for which the offenses were committed and the particular gravity of the consequences are such that they are undoubtedly aggravating circumstances [246].

Namely, the same special prosecutor concluded both agreements with the accused on the same day, on June 14, 2016 [247]. This indicates a serious suspicion that special prosecutors act in the interests of persons accused of high corruption and allow them privileged treatment before the courts, primarily by agreeing sentences which are reduced below the prescribed minimum, and then reducing the sentence after the validity of the verdicts.

The same special prosecutor, by concluding two agreements with the same defendant on the same day and the court, by issuing two verdicts, in this case, enabled the additional reduction of the already fully reduced sentences by changing the verdict without repeating the procedure.

Namely, acting on the request of the defence attorney of this accused, the High Court also adopted the verdict [248] which amended those verdicts, reduced the total sentence for a month and imposed a single sentence of a total of 11 months.

C.2.3.8. Case study: Plea agreements of legal entities

Institute of plea agreement has been abused also in cases where legal entities were charged.

The law prescribes extremely high fines in relation to the level of property damage or unlawfully acquired property gain. Nevertheless, the prosecution received only suspended sentences, despite the multi-million benefits they had gained from the commission of criminal offenses.

Suspended sentences are a warning measure [249] and they do not effectively affect the accused. All verdicts with probation sentences were issued by the same judge [250] and in each case an identical approach was applied - companies were obliged to compensate the damage to the injured Municipality in real estate whose value was estimated by the prosecution.

Instead of applying, in all cases and without exception, one of the basic rules of the Criminal Code that the property gain obtained by commiting the crime be seized under the conditions provided for by this Code,[251] the Prosecution agreed with the accused in what way it would compensate the injured party in a manner appropriate to the accused and contrary to the property law claim of the injured party. The court, without explanation and contrary to the request of the injured party, imposed compensation of the damage to the Municipality of Budva from committed crime in real estate, instead in money.

Fine of up to 7.5 million Euros prescribed, a probation sentence imposed

On the basis of a plea agreement concluded between the prosecution and the legal entity Tradeunique CG, the High Court issued a verdict [252] granting a probation sentence to Tradeunique CG, imposing a fine in the amount of €100 thousand and at the same time stipulated that it would not be executed if the legal entity within one year from the validity of the verdict, is not liable for a new criminal offense.

Legal representative of Tradeunique CG, in agreement with the State Prosecutor's Office, confessed that this legal entity committed the most severe form of criminal offense of abuse of office by aiding, and the most severe form of criminal offense of tax evasion and contributions for extended duration.

The Law on Criminal Liability of Legal Entities prescribes that a fine is determined depending on the amount of the damage done or the illicit material gain obtained, and if these amounts are different, a higher amount will be charged as a basis for determining the fine. The fine may not be less than two-fold amount of the damage caused or illicit material gain obtained or higher than 100-fold amount of the material damage caused or illicit material gain obtained. [253]

The same law stipulates that the court shall impose a single fine for several criminal offenses committed in the course of a maximum amount of €7.5 million. [254] Thus, the provisions of this law are mutually illogical, as it turns out that for one criminal offense much higher fine may be imposed than for several concurrent criminal offenses.

In the concrete case, it was established that the legal entity Tradeunique CG, through the commission of criminal offenses, obtained an unlawful property gain of almost €20 million and committed two criminal offenses. However, the prosecution agreed with this legal entity a probation sentence and the High Court accepted it.

Listing the reasons for the probation sentence, the High Court states that it believes that this sanction, with the award of a property law claim and the fulfilment of the obligation to pay €10 thousand to public institutions, would influence this legal entity sufficiently in order not to commit a new criminal offense in the future. In doing so, the High Court completely ignored the gravity of the criminal offenses committed by the legal entity, the amount of benefits obtained, the level of responsibility and the circumstances under which the offenses were committed, although the Law clearly stipulates that high fines are prescribed for these offenses.

Prescribed fine	Damage/gain	Imposed sentence
Up to € 7,5 million	**€20 million**	**Conditional sentence €100,000 + €10.000 to institutions**

Instead of € 7,500,000 - to pay € 10,000

The verdict found that a legal entity had acquired a benefit of € 20 million by committing two criminal offenses, and a fine of up to €7.5 million [255] was prescribed by law, but the court sentenced the legal entity to a probation sentence and obliged it by the same verdict to pay the public institution Orphanage "Mladost" from Bijela and the public preschool institution "Ljubica Jovanović Maša" in Budva five thousand Euros each.

Instead of money, the injured Municipality of Budva got real estate under construction

Although it is stated in the verdict that the legal representative of the injured Municipality of Budva set up a property claim in the amount of €19.5 million, the court, by a decision rendered on the basis of the agreement, obliged the legal entity Tradeunique CG to transfer 8,000 m² of immovable property to the Municipality on behalf of the property law claim whose value was estimated by the prosecution.

The verdict does not provide any explanation for the decision to pay compensation to the Municipality of Budva in this manner.

Pursuant to the Criminal Procedure Code [256], in order to adopt the agreement, the court must establish that it does not violate the rights of the injured party. However, the court does not give an assessment and reasons that in this way the rights of the injured person are not violated. Also, the provisions of the Criminal Procedure Code, which prescribe the procedure for plea agreements, as well as the provisions of the substantive regulation - the Criminal Code, do not prescribe the possibility and power of the court to award in property, the claim with whom the injured party is requesting the money.

On the contrary, the Criminal Procedure Code prescribes that by signing the plea agreement, the accused and the state prosecutor agree on the sentence, the costs of the criminal proceedings and the property law claim, as well as renunciation of the parties and defense attorneys from the right to appeal against a court decision rendered on the basis of a plea agreement, once the court fully accepted the agreement. [257] The same Code stipulates that the agreement also contains the obligation of the defendant to return the property benefit gained by committing the crime within a specified period. Therefore, the Code clearly stipulates that the agreement contains the obligation of the defendant to return the benefit gained, and not that the prosecutor negotiates it with the accused. [258]

Contrary to the legal provisions, the agreement between the Special Prosecutor and the accused legal entity [259] states that they agree that the property law claim, which is a property benefit, is paid by the accused by transferring the ownership of the real estate. The court had to reject such agreement because it was not in accordance with the Criminal Procedure Code.

State Prosecutor's Office overestimated the value of the real estate

Moreover, the assessment of the value of real estate by the State Prosecutor's Office is also controversial and indicates that the real estate handed over to the Municipality on behalf of compensation is less valuable than the prosecution has estimated.

Namely, after visiting the controversial real estate by the President of the Municipality of Budva, it was announced that these properties were in poor condition, under construction and that the Municipality cannot sell them for the amount that the Prosecution estimated to be valid. According to the President of the Municipality of Budva, the area that, according to the agreement between the State Prosecutor's Office and the accused, belonged to the Municipality is of poorer quality than the rest of the space in the building and it is difficult to be managed. [260]

Copy – Paste court practice

In case of an agreement with the legal entities "Gugi commerce" and "Copyright", the court had the same approach.

The High Court issued a verdict ordering "Gugi commerce" [261] a probation sentence, although the representative of that company confessed that the legal entity had committed the most severe form of the criminal offense of abuse of office committed by aiding it in an organized manner, for an extended period of time, in which case the Criminal Code prescribes possibility of more severe punishment.

By committing criminal offenses, this legal entity obtained a property gain of € 3.8 million, and the Municipality of Budva suffered damage in the amount of € 4.8 million.

Prescribed fine	Damage/gain	Imposed sentense
From 9,6 million to €960 million	**€4,8 million**	**Suspended sentence €100,000 + €3.000 to institutions**

Since the amount of the damage is greater than the amount of the gain obtained, this amount is taken as the basis for determining the prescribed fine [262]. According to the rule that a fine may not be less than two-fold amount of the damage caused or illicit material gain obtained or higher than 100-fold amount of the material damage caused or illicit material gain obtained, [263] it appears that in this case a fine from € 9.6 million to € 480 million was imposed.

Additionally, since it is the case of an extended criminal offense, there was the possibility of a more severe punishment of up to twice the prescribed amount, that is, up to € 960 million. Instead of fines, the court obliged the company to pay three thousand Euros to the health institution Children's Home "Special Hospital for Psychiatry" Dobrota.

In this case as well, the prosecution agreed a probation sentence, and the High Court again arbitrarily stated that it considered this sanction, with the award of a property law claim, and the fulfilment of the obligation to pay three thousand Euros to public institutions, would influence this legal entity sufficiently not to commit a new criminal offense in the future. In this case, the High Court completely ignored the gravity of the criminal offenses committed by the legal entity, the amount of benefits obtained, the level of liability and the circumstances under which the offenses were committed.

By this verdict, the court also obliged the legal entity "Gugi commerce" to transfer to the Municipality, on behalf of a part of the property law claim, the property in real estate, in the value estimated by the State Prosecutor's Office to €1.6 million, and pay the rest of the 2.2 million within the 12 months deadline from the validity of the verdict. In this verdict, there is no explanation for the decision to compensate the Municipality of Budva in this way, nor whether the rights of the injured party are violated.

The same practice is applied in the third case of a plea agreement as well, where the court rendered a verdict [264] of probation sentence to the company "Copyright" imposing a fine in the amount of €100 thousand and at the same time determined that it would not be executed if the legal entity within one year is not be responsible for the a criminal offense since the validity of the judgment.

In the agreement with the State Prosecutor's Office, legal representative of "Copyright" confesses that this legal entity had committed the most severe form of criminal offense of abuse of office committed by aiding, in an organized manner and for an extended period, in which case the Criminal Code prescribes the possibility of more severe punishment.

By the commission of criminal offenses, this legal entity acquired a property gain in the amount of €1.1 million, and the Municipality of Budva suffered damage in the amount of €3.8 million.

Given that the fine may not be less than two-fold amount of the damage caused or illicit material gain obtained or higher than 100-fold amount of the material damage caused or illicit material gain obtained, in this case a fine between 7.6 million and €380 million was prescribed. Additionally, in the case of an extended criminal offense, there was the possibility of a more severe punishment of up to two-fold amount, i.e. up to €760 million.

Prescribed fine	Damage/gain	Imposed sentense
From 7,6 million to €760 million	**€3,8 million**	**Suspended sentence €100,000**

However, in this case as well, a probation sentence was agreed and accepted. In listing the reasons for probation sentence, the High Court in this case arbitrarily states that the accused (legal entity and the responsible person in that legal entity) confessed the offenses, that they are not convicted and that, in the absence of aggravating circumstances, they are particularly mitigating circumstances. In this case as well, the High Court completely ignored the gravity of the criminal offenses committed by the legal entity, the amount of benefits obtained, the level of liability and the circumstances under which the offenses were committed, although these are aggravating circumstances.

According to this verdict as well, the court obliged the legal entity "Copyright" to transfer the property of a total area of 115 thousand m² to the Municipality of Budva, on behalf of the property law claim, in the amount estimated by the prosecution to €1.5 million. The court ordered this company to pay the remaining amount of 2.2 million by paying €350 thousand within 7 days of the validity of the verdict, and €324 thousand within 4 months of the validity of the verdict. This verdict also does not contain explanation for the decision to compensate the Municipality of Budva in this manner. The court also does not provide an assessment and the reasons why in this way the rights of the injured party were not violated.

C.3. Comparison of penal policy in agreements and in regular proceedings

The High Court's penal policy towards the accused for high-level corruption is considerably more severe in judgments rendered after an regular hearing than in judgements made on plea agreements.

By applying the agreement, the Special State Prosecutor's Office completely undermined the penal policy for these offenses by establishing rules to mitigate penalties below the statutory minimum. The State Prosecutor's Office did not sign agreements in cases of small and medium corruption, but the most benefits from the signing of the agreements had the accused for high corruption.

The case studies show that conclusion of the agreements has alleviated penal policy towards the accused of criminal offenses of high corruption, even when they caused damages in millions of euros. The courts have differently appraised the same circumstances to those accused of corruption in regular proceedings and to public officials from the criminal group from Budva that have concluded the plea agreements.

When deciding whether to plead guilty and conclude an agreement, the accused were naturally guided by its personal interests and their assessment which situation will be better for them. It is natural that stricter penal policy, i.e. certainty of pronouncing long-term imprisonment sentences in the ordinary course of proceedings, encourages the accused to try to conclude a plea agreement with the State Prosecutor's Office in order to be granted a milder sentence.

Final judgments show that the Special State Prosecutor's Office did not use plea agreements in cases of small and medium corruption, but almost all the agreements were signed with the accused of high corruption in the so-called Budva affair [265].

Until the third judgment of the High Court in the “Zavala” case and the first instance judgement in the “Košljun” case, the Special State Prosecutor's Office did not have concluded agreements with the accused for high corruption.

Following these judgements, the State Prosecutor’s Office began, by the end of 2015, to conclude agreements with members of the criminal group from Budva, where the sentencing penalties were below or at the borderline of the minimum prescribed by law.

C.3.1. Case Study: Guilty plea provided minor penalties for the same criminal offenses

The cases of Dragan Marović and Lazar Rađenović show that the accused persons have more interest in making agreements with the State Prosecutor. After being convicted in ordinary proceedings, they pleaded guilty for execution of the same offenses in other cases and agreed with the State Prosecutor's Office much shorter sentences, even though they caused much bigger damages.

Dragan Marović: Seven times smaller penalty for 23 times bigger damage

After three first-instance judgement by the High Court sentencing Dragan Marović insistently to four years in prison for the criminal offense which caused damages of 820,000 euros to the Municipality of Budva, in May 2017, Marović decided to settle with the State Prosecutor's Office in the other two cases in which he was accused.

In both cases he was charged with the same criminal offense as in the "Zavala" case, but the Municipality of Budva had damage of 4.8 million euros in one of the case and 19.5 million euros in the other case. However, under the agreement in both cases, Marović was sentenced to seven months [266] in prison for each of the cases.

Damage/gain from regular procedure	Penalty from ordinary proceedings	Damage/gain from agreement	Penalty from the agreement
€820 thousand	4 years	€19,5 million €4,8 million	7 months 7 months

Lazar Rađenović: Seven times smaller penalty for 20 times bigger damage

In May 2016, Lazar Rađenović also concluded two plea agreements with the State Prosecutor's Office. In the "Košljun" case, he was previously sentenced to three years and eight months for a criminal offense of severe misuse of office and unauthorized possession of weapons and explosives. Judgment in this case found that the accused had obtained gain in the total amount of half a million euros, of which Rađenović obtained 350 thousand euros for himself.

In the cases in which the agreement was reached, Rađenović was charged with a more serious form of misuse of office, the same criminal offense as in the "Košljun" case. In the first case, the Municipality of Budva was damaged for 24 million euros and in the other for 6.8 million euros.

Based on the agreement, Rađenović was sentenced in the first instance to one and a half year in prison and a fine of 30 thousand euros, while in the other he was sentenced to six months in prison.

Damage/gain from regular procedure	Penalty from ordinary proceedings	Damage/gain from agreement	Penalty from the agreement
€350 thousand	3 years and 8 months	€24 million €6,8 million	18 months 6 months

C.3.2. Case Study: The same circumstances - different treatment

This study shows that courts appraise the same circumstances in a different manner as those charged with corruption in the regular proceedings and the public officials who have concluded plea agreements.

Thus, the courts rule out much shorter sentences for multi-million damages caused to the state by the criminal organization, than for the 100 thousand euro damage caused by the employee in a private company.

For members of the criminal group from Budva, the courts have appraised the fact that they are fathers and that a lot of time has passed since committing the criminal offenses as particularly mitigating circumstances, while the same circumstances were less appraised or were not even appraised as mitigating when the mother of underage children was in question.

While the courts do not consider the amount of damages when deciding on a sentence for a public official, in the case of corruption in the economy, they pronounce more severe punishments for lesser amounts of damages, citing precisely this as a determining factor in sentencing.

Children are (not) a mitigating circumstance

By the judgement of the High Court in Podgorica [267], on the basis of the plea agreement, the accused member of the criminal group was sentenced to six months in prison for the criminal offense whose execution caused damages to the budget of the Municipality of Budva in amount of 2.7 million euros. At the time of execution of this criminal offense, prison sentences ranged from two years to 10 years in prison [268]. In the reasoning, the court noted that the fact that the accused was a family man, married and father of three children was appraised as particularly mitigating circumstance.

The same court eased the sentence also to the head of the criminal group [269] below the prescribed minimum taking into the account the circumstance that the accused is father of two adult children, one of whom was also convicted as a member of the same criminal group.

However, in the case of corruption in the private sector, the same court, after the main hearing, rendered a judgment [270] convicting an employee of a national airline to one-year prison term for a criminal offense causing damage of 100,000 euros. At the time of execution, the sentence prescribed for that criminal offence was ranging from two years to 10 years in prison [271]. In this judgement, the court stated that the fact that the accused is a family woman, mother of two underage children is a mitigating circumstance, adding that she has no previous convictions and that she is unemployed.

Although there are more mitigating circumstances on her side, the court imposed a sentence that is twice longer to a mother of under aged children than to a member of the criminal group that caused almost 30 times more damage.

The defense attorney of the accused in the present case submitted to the Supreme Court of Montenegro a request for extraordinary mitigation of punishment, indicating that the convicted person gave birth to a third child and that the proceedings lasted for more than ten years. The Council, chaired by the President of the Supreme Court of Montenegro, [272] rejected this request [273], assessing that the circumstance that the convicted person gave birth to a third child after the first-instance judgement is not of such importance as to lead to a milder conviction if the circumstance existed at the time of the conviction.

This practice and the penal policy of the courts are incomprehensible because the other circumstances of which the amount of penalty in the two cases depends were almost identical. In addition, in the case of a criminal group member, those were criminal offenses of corruption in the public sector and in the case of an employee in a private company that was a criminal offense of corruption in the private sector.

Consequently, the conclusion is that the courts have a milder attitude towards public sector corruption that is damaging to public - state funds only because the perpetrator has confessed the perpetration of the criminal offense.

The passage of time is (not) a mitigating circumstance

The same judges in different cases appraise the same circumstances in favor of members of the criminal group. In one case, those judges estimate that the time that has passed from execution of a criminal offense is a particularly mitigating circumstance for a member of a criminal group, while the same circumstance is without effect to a sentence in case of corruption in the private sector.

In case of conviction of an employee of a national airline, more than ten years have passed from filing the indictment [274] to the final completion of the proceedings. Duration of the proceedings was caused exclusively by the State Prosecutor's Office and the court.

The accused was first charged with [275] execution of a criminal offense for which the basic court has jurisdiction in the first instance [276]. The judgement of the Basic Court in Kotor [277] from December 2008 was acquitted of charges, but the High Court nullified that judgment and remanded the case for a retrial. [278]

Eight years after the initiation of the proceedings, the Basic State Prosecutor amends the indictment at the main hearing and instead of the criminal offense of embezzlement, the accused was charged with the criminal offense of severe misuse of position in business activity. [279] As the High Court has jurisdiction in the first instance for the new criminal offense, after eight years of trial, the Basic Court declared that it has no jurisdiction in this case. [280]

After submitting a case file to the High Court in Podgorica, the court, considering its lack of jurisdiction as well, submits the case files to the Appellate Court of Montenegro in order to resolve the conflicts of jurisdiction. After eight and a half years of trial, the Appellate Court decides that the Supreme Court in Podgorica is actually competent. Finally, the High Court in Podgorica renders a new judgement [281] convicting the accused to one year's imprisonment, and this judgment was confirmed by the Appellate Court [282], more than ten years after the proceedings was initiated.

Prescribed fine	Damage/gain	Imposed sentense
2 to 10 years	€2,7 million	6 months
2 to 10 years	€100 thousand	1 year

Although the proceedings in this case have been unreasonably long lasting exclusively as a fault of the State Prosecutor's Office and the court that initiated it and then conducted a proceeding for eight years for a wrong offence before a court that has no jurisdiction for the offence, that fact was of no relevance to the court when making the decision. The Appellate Court of Montenegro stated in its judgment [283] that the first instance court correctly established and appreciated all the circumstances relevant to sentencing, and that **more than ten years have passed** from execution of the criminal offense until the final decision was taken.

Contrary to that, in the proceedings against Dragan Marović as a member of the criminal group, after the main hearing before the High Court in Podgorica, the Appellate Court of Montenegro [284] pointed out that "the time that passed from execution to which the accused did not contribute" should be appreciated as a particularly mitigating circumstance, and further mitigated the sentence imposed on him. In that case, eight years have passed from execution of the criminal offense until the legal termination of the proceedings.

It is interesting that in rendering of both judgments of the Appellate Court, Chair of the Panel [285] and the judge rapporteur [286] were the same judge, which indicates that the same judges appraise the same circumstances differently for the benefit of members of the criminal group.

This indicates that ineffectiveness of the judiciary is a particularly mitigating circumstance for members of a criminal group, while for the accused mother of two underage children this circumstance does not have any significance for the amount of the sentence.

What is bigger?

After the main hearing, the High Court in Podgorica rendered a judgement [287] that the director of a book-keeping agency is sentenced for the basic form of criminal offense of misuse of position in business activity [288], which is punishable by imprisonment for a term between three months and five years, and for the more serious form of the same criminal offense [289] punishable by imprisonment for a term of two to ten years, both of them being carried out for an extended period of time.

The accused was sentenced to a single 26-month prison sentence, and the judgement found that the damaged legal entities were damaged for the total amount of 210 thousand euros.

Damage/gain	Imposed sentense
€210 thousand	26 months
€11,7 million	22 months

On the other hand, the same court, on the basis of the agreement between the accused and the State Prosecutor's Office, sentenced Svetozar Marović as head of the criminal group to 22 months in prison for two criminal offenses punishable by imprisonment for two to ten years and for which the state was damaged for 11.7 million euros.

D

LIABILITY IN THE JUDICIARY

Adoption of new laws did not increase the liability in the work of the judiciary, and in practice neither judges nor the prosecutors suffer the consequences due to incompetent and untimely work.

The number of disciplinary proceedings against judges and prosecutors is extremely modest and in no case corresponds to the level of problem in practice, especially in cases involving crimes with elements of corruption.

In the part of the analysis of the court practice, some of the mistakes of the prosecution from which the accused had concrete benefits were indicated, while prosecutors who "forgot" the decisive facts were never held accountable.

No state prosecutor has been called for disciplinary responsibility for any of the numerous cases where s/he dismissed the prosecution of the accused after many years of judicial proceedings.

At the same time, the Prosecutorial Council classified information on the disciplinary responsibility of state prosecutors as secret, referring to the protection of their privacy.

D.1. Liability of Judges

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

1 judge fined since the adoption of the new law

Disciplinary proceedings against judges are rare and selective, which casts doubt on the real reasons for their initiation.

A large number of court proceedings ended with dismissals due to the occurrence of the absolute statute of limitation. This shows that the judiciary acts inefficiently and untimely, because the proceedings cannot be completed within the time limits in which the statute of limitation occurs, and which are rather long.

However, the presidents of the courts do not perform regular control over the work of judges and do not take timely measures to determine the disciplinary responsibility of the judges.

Moreover, for many years, not a single judge has been held responsible of untimely treatment in numerous cases of corruption, which led to the absolute statute of limitation, dismissal of the charges and caused high costs for the budget of the judiciary.

D.1.1. 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 (1), a disciplinary prosecutor was established to conduct investigations and represent an indictment in disciplinary proceedings (2). 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 (3).

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 (4). 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 (5).

A positive change in the new law is that among the authorized proposers for filing a motion for establishing disciplinary liability (6) there is also the Commission for Monitoring the Implementation of the Code of Ethics of Judges (7). 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 (8), 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 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 (9) 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 (10) 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 (11).

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 (12).

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. (13) 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 (14).

D.1.2. 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.

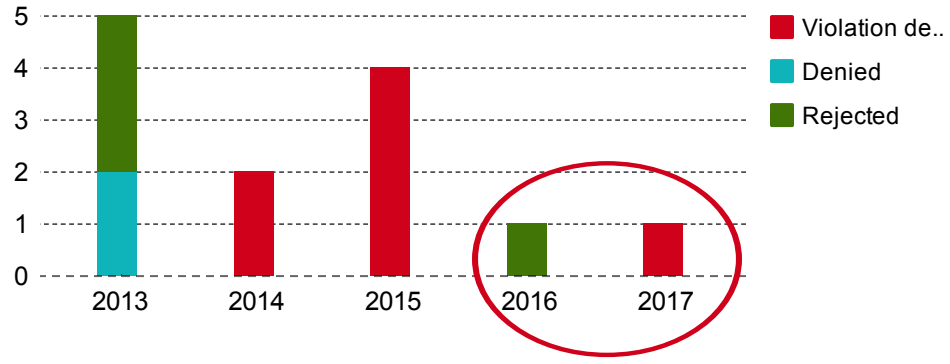
Following the adoption of the new Law on the Judicial Council and Judges, the Disciplinary Council dealt with only two cases (15).

Thus, in 2016, only one decision of the Disciplinary Council (16) 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 (17), 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

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

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

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.

Same conclusion stems from the Report on the work of courts for 2016 (18) 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.

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.

D.1.2.1. 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 (20).

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.

D.1.2.2. 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 (21), 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 (22), 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.

In two years, the decision was not passed within the legal deadline in 344 cases, but only one judge responded discipline.

D.2. Liability of prosecutors

1

Disciplinary procedure started for four years

2

Indictments were 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.

D.2.1. 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 (23), a Disciplinary Prosecutor who shall conduct an investigation and represent the indictment (24) 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 (25).

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 (26). 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 (27).
Apositive change in the new law is also that the Commission for Monitoring the Application of the Code of Ethics of State Prosecutors (28) 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 (29). The Supreme Public Prosecutor may be removed from office because of the irresponsible and unprofessional performance of office (30).

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 (31) 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. (32) 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 (33).

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 (34), which was not in accordance with the recommendation of the Venice Commission (35).

D.2.2. 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 (36) applicable from the beginning of 2016, which for the first time prescribed that these decisions are not published (37). 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 (38). 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 (39).

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 (40), 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 (41).

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 (42).

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 (43).

During 2016, the Disciplinary Council did not conduct any proceedings, nor did it make any decision on the disciplinary liability of prosecutors (44), while in 2015 the Disciplinary Council made two decisions by which the indictments of the disciplinary prosecutor were rejected as unfounded (45). 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.

E

ACCESS TO INFORMATION ABOUT THE WORK OF THE JUDICIARY

Access to information on results of the judiciary in the fight against corruption is limited, because the judiciary and the prosecution hide information about their work. In this way, public control of the judiciary is limited and their responsibility for dealing with cases of corruption is reduced.

Final court verdicts for corruption are published on the websites of courts, but many important data have been previously erased from them, under the pretext of protecting the privacy of the accused, although these court proceedings were open to the public.

In addition, it is difficult to access court verdicts for corruption on the websites of courts because data are not systematized, despite large investments in the Judicial Information System. There are cases where some final verdicts were published with a major delay or they were not published even after they became final.

Some courts argue that the publication of a case-file of completed cases would jeopardize investigations or prosecutions. Others are referring to the position of the Supreme Court of Montenegro which suspended obligation of the courts to implement the Law on Free Access to Information and adopted the position that they should not apply it when they are asked for cases of completed cases, explaining that only those involved in the criminal proceedings may have access to this information. **The decisions of the courts that declared the case file as secret were annulled by the second instance body, but the courts did not respect them and never published the requested documents.**

More precise data on financial investigations, temporary and permanent confiscation of property acquired through corruption is not available to the public, since both the prosecution and most courts hide this information.

E.1. Anonymization of court verdicts

Access to court verdicts for corruption offenses is limited. Only final court verdicts are published on the courts' websites, which prevents a more complete analysis of the work of the courts.

Pursuant to the Rules of Procedure adopted by the President of the Supreme Court, many data of importance for the analysis of the work of the courts are removed even from the final verdicts reached in public court proceedings, contrary to the Constitution and laws.

None of the verdicts contains names of the accused persons, and even the convicted public officials, and the names of the companies used in criminal offenses are also kept secret. In some cases, even the names of the judges in the proceedings, the prosecutors representing the indictment, and even the sentences pronounced for the conviction of corruption in the judiciary are declared as secret.

Hiding of data contributes to public distrust in the work of the courts and doubts about the existence of a willingness to fight corruption, especially the one at a high level.

E.1.1. Rules of Procedure of the President of the Supreme Court above the Constitution and laws

By special Rules of Procedure, the President of the Supreme Court of Montenegro prescribed that the courts anonymise the court verdicts before making them available to the public. This violates the principle of the public trial prescribed by the Constitution and the laws.

Courts' practice on hiding of data is based on the Rules of Procedure on anonymization of data in judicial decisions,[1] which was adopted by the President of the Supreme Court of Montenegro [2] in April 2011 and published on the website of the Supreme Court of Montenegro. [3] The reasons for adopting this Rulebook are unknown, and the legal basis for passing such act does not exist in the Constitution or any law.

The Constitution of Montenegro prescribes that the hearing before the court is public and that the verdicts shall be pronounced in public. Exceptionally, the court may exclude the public from the hearing or one part of the hearing for the reasons necessary in a democratic society, only to the extent necessary: in the interest of morality; public order; when minors are trailed; in order to protect private life of the parties; in marital disputes; in the proceedings related to guardianship or adoption; in order to protect military, business or official secret; and for the protection of security and defence of Montenegro. [4]

The Criminal Procedure Code prescribes that the main hearing shall be open to the public [5] and that the public can be excluded if that is necessary for keeping information secret, protecting public order, preserving morality, protecting the interests of a minor or protecting the personal or family life of the accused person or the injured party. [6]

The same code prescribed time, place and manner of announcement of the verdict, stating that if the public was excluded from the main hearing, the verdict shall be announced in public session, and the Panel shall decide whether to exclude the public when announcing the reasoning for the verdict. [7]

Contrary to quoted constitutional and legal provisions, the President of the Supreme Court of Montenegro passed a Rules of Procedure that "replaces and omits data in court decisions" on the basis of which persons can be identified. [8]

The principle of the publicity provides public oversight of public authorities, including the court, thus, anonymization of verdicts limits this right of the public.

NGO MANS submitted to the Constitutional Court of Montenegro an initiative for reviewing the constitutionality and legality of the said Rules of Procedure with the proposal that the Constitutional Court pass a decision under which this act will cease to be valid in order for the court verdicts to be published fully and for the public to have complete insight into the work of the courts. The Constitutional Court of Montenegro has not yet acted on the initiative.

Pursuant to the provision of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the public can be excluded from a procedure in the interests of morality, public order or national security in a democratic society, when required by the interests of the minors or the protection of the private life of the parties, or to the extent that is indispensable in special circumstances where the public could harm the interests of justice.

None of the above grounds for a general public limitation in all relevant verdicts exists.

E.1.2. Implementation of the Rules of Procedure on anonymization of information

In practice, the implementation of the Rules of Procedure limits the control of the work of the courts, since many data are removed from the verdicts that are relevant to the responsibility of the work of the judiciary. In addition to hiding the names of the accused, the names of judges and prosecutors who act in these cases are often secret, as well as imposed sentences or amounts of damage caused by corruption.

E.1.2.1. Case Study: Names of the convicted persons and damage from corruption are secret

Anonymization of final verdicts protects the privacy and interests of persons legally convicted of criminal offenses, including those in the area of high corruption and organized crime.

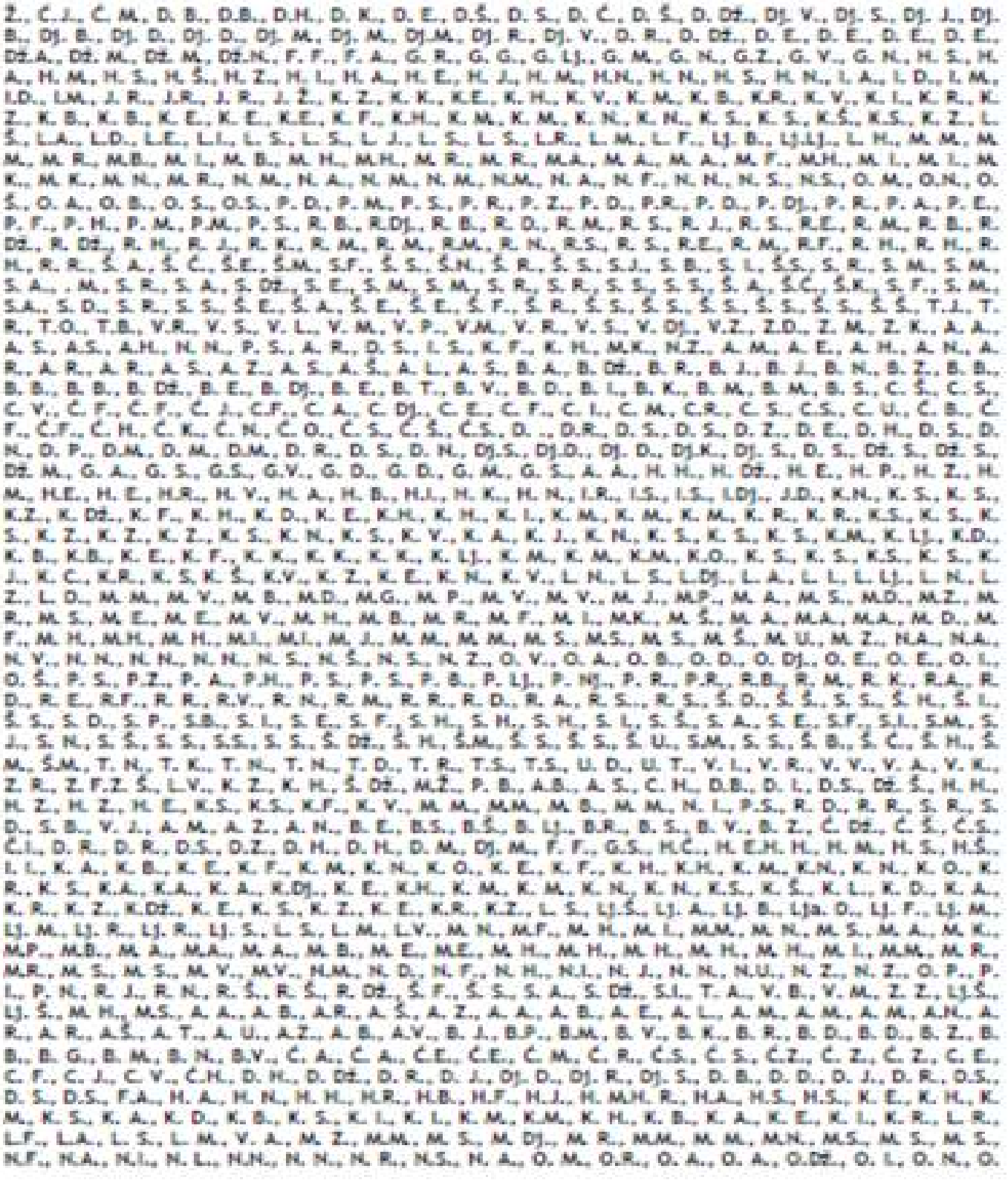
Thus, the data on the accused natural persons and companies, lawyers of the accused and the representatives of the injured parties, legal representatives and shareholders of companies, court experts and interpreters, as well as all other persons or companies that are mentioned in any way in the proceedings, are deleted or anonymized.

By hiding these data, the public cannot know who are the persons beign convicted for corruption in public trials, what companies have been convicted of these crimes, or whether they have been used for the commission of these criminal offenses or for money laundering.

There are no justified and legitimate reasons for hiding this information from the public, their concealment is contrary to the rule of law and is not in accordance with the Constitution, the law and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The anonymization of data on the accused limits or prevents analysis in complex cases in which a large number of persons is charged, sometimes with the same initials.

Verdicts with several defendants, witnesses or other participants in the proceedings are completely incomprehensible after anonymization, because they consist of unrelated letters and dots throughout the entire pages.



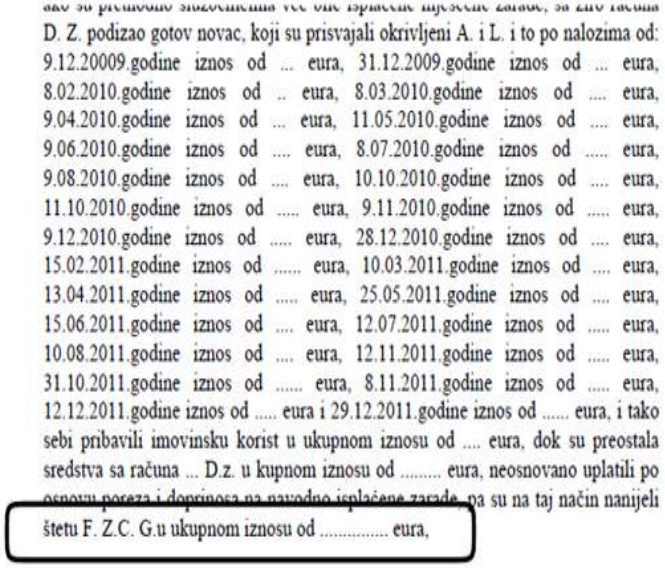
Excerpt from the verdict no. Ks.br.3/14 of the High Court in Podgorica of 22.07.2014. - **SECRET NAMES OF THE ACCUSED PERSONS**

In some of the proceedings from the verdict, data on the amount of damage caused by the commission of criminal offenses and even the names of the damaged state institutions were deleted.

This prevents public control of the work of the courts, because the qualification of the criminal offense and the prescribed sentence depend on the amount of damage, and this often impacts the determination of a sentence.

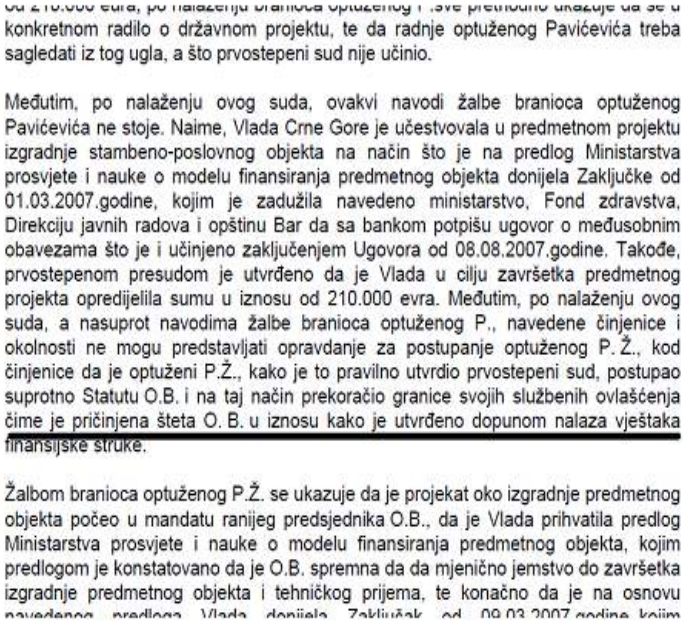
Therefore, by hiding this data, it is impossible to verify whether the prosecutor and the court have properly qualified the criminal offense and whether the prescribed sentence or punishment agreed with the prosecution is fair and in accordance with the law.

Also, the sentence often depends from the position of the injured party in the criminal procedure, that is, whether it joins the prosecution and seeks compensation for the damage, so the public cannot know in what way the representatives of the injured parties, in particular the state bodies, represent the public interest and how they relate to the accused who commit crimes to the detriment of state funds.



D. Z. podizao gotov novac, koji su prisvajali okrivljeni A. i L. i to po nalozima od: 9.12.20009.godine iznos od ... eura, 31.12.2009.godine iznos od ... eura, 8.02.2010.godine iznos od .. eura, 8.03.2010.godine iznos od .... eura, 9.04.2010.godine iznos od ... eura, 11.05.2010.godine iznos od .... eura, 9.06.2010.godine iznos od .... eura, 8.07.2010.godine iznos od ..... eura, 9.08.2010.godine iznos od .... eura, 10.10.2010.godine iznos od .... eura, 11.10.2010.godine iznos od ..... eura, 9.11.2010.godine iznos od ..... eura, 9.12.2010.godine iznos od ..... eura, 28.12.2010.godine iznos od .... eura, 15.02.2011.godine iznos od ..... eura, 10.03.2011.godine iznos od .... eura, 13.04.2011.godine iznos od ..... eura, 25.05.2011.godine iznos od .... eura, 15.06.2011.godine iznos od .... eura, 12.07.2011.godine iznos od ..... eura, 10.08.2011.godine iznos od .... eura, 12.11.2011.godine iznos od ..... eura, 31.10.2011.godine iznos od ..... eura, 8.11.2011.godine iznos od ..... eura, 12.12.2011.godine iznos od ..... eura i 29.12.2011.godine iznos od ..... eura, i tako sebi pribavili imovinsku korist u ukupnom iznosu od .... eura, dok su preostala sredstva sa računa ... D.z. u kupnom iznosu od ..... eura, neosnovano uplatili po osnovu poreza i doprinosa na navodno isplaćene zarade, pa su na taj način nanijeli štetu F. Z.C. G.u ukupnom iznosu od ..... eura,

Excerpt from the verdict no. Ks.br.1/15 of the High Court in Bijelo Polje of 25.06.2015. - **SECRET DATA ON THE AMOUNT OF DAMAGE**



konkretnom radilo o državnom projektu, te da radnje optuženog Pavićevića treba sagledati iz tog ugla, a što prvostepeni sud nije učinio.

Međutim, po nalaženju ovog suda, ovakvi navodi žalbe branioca optuženog Pavićevića ne stoje. Naime, Vlada Crne Gore je učestvovala u predmetnom projektu izgradnje stambeno-poslovnog objekta na način što je na predlog Ministarstva prosvjete i nauke o modelu finansiranja predmetnog objekta donijela Zaključke od 01.03.2007.godine, kojim je zadužila navedeno ministarstvo, Fond zdravstva, Direkciju javnih radova i opštinu Bar da sa bankom potpišu ugovor o međusobnim obavezama što je i učinjeno zaključenjem Ugovora od 08.08.2007.godine. Takođe, prvostepenom presudom je utvrđeno da je Vlada u cilju završetka predmetnog projekta opredijelila sumu u iznosu od 210.000 evra. Međutim, po nalaženju ovog suda, a nasuprot navodima žalbe branioca optuženog P., navedene činjenice i okolnosti ne mogu predstavljati opravdanje za postupanje optuženog P. Ž., kod činjenice da je optuženi P.Ž., kako je to pravilno utvrdio prvostepeni sud, postupao suprotno Statutu O.B. i na taj način prekoračio granice svojih službenih ovlašćenja čime je pričinjena šteta O. B. u iznosu kako je utvrđeno dopunom nalaza vještaka finansijske struke.

Žalbom branioca optuženog P.Ž. se ukazuje da je projekat oko izgradnje predmetnog objekta počeo u mandatu ranijeg predsjednika O.B., da je Vlada prihvatila predlog Ministarstva prosvjete i nauke o modelu finansiranja predmetnog objekta, kojim predlogom je konstatovano da je O.B. spremna da da mjenično jemstvo do završetka izgradnje predmetnog objekta i tehničkog prijema, te konačno da je na osnovu

Excerpt from the verdict no. Kž-S br.16/2017 of the Appellate Court in Podgorica, 08.11.2017. - **SECRET NAMES OF THE DAMAGED STATE INSTITUTIONS**

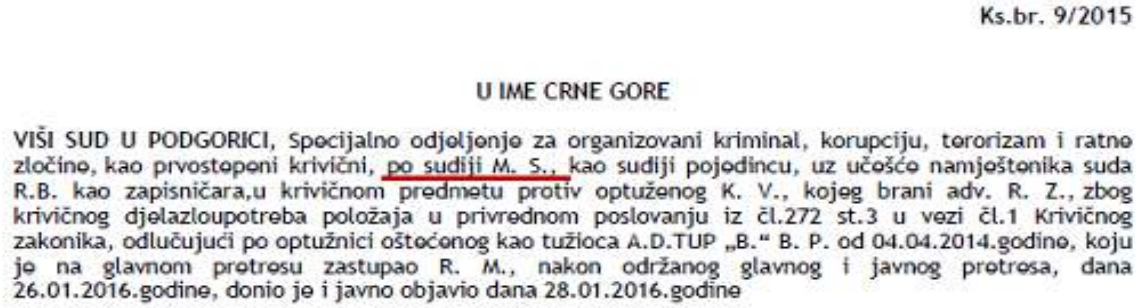
E.1.2.2. Case Study: Names of judges and prosecutors are secret

In practice, there are cases where the verdict anonymises information about the judges who issued the verdict or the prosecutors who represented the indictments.

This reduces the responsibility of the work of the judiciary, since the public cannot carry out an adequate control of their work.

Judges and prosecutors are public officials and they must perform their duties in the public interest. That is why the public has the right to know how each of them performs official duties, as well as the right to comment and criticize the work.

By hiding the identity of judges or prosecutors, right of the public to know is limited, as well as the ability of citizens to report to the competent authorities the suspicion of violations of the law, and hence the necessary liability in the judiciary.



Ks.br. 9/2015

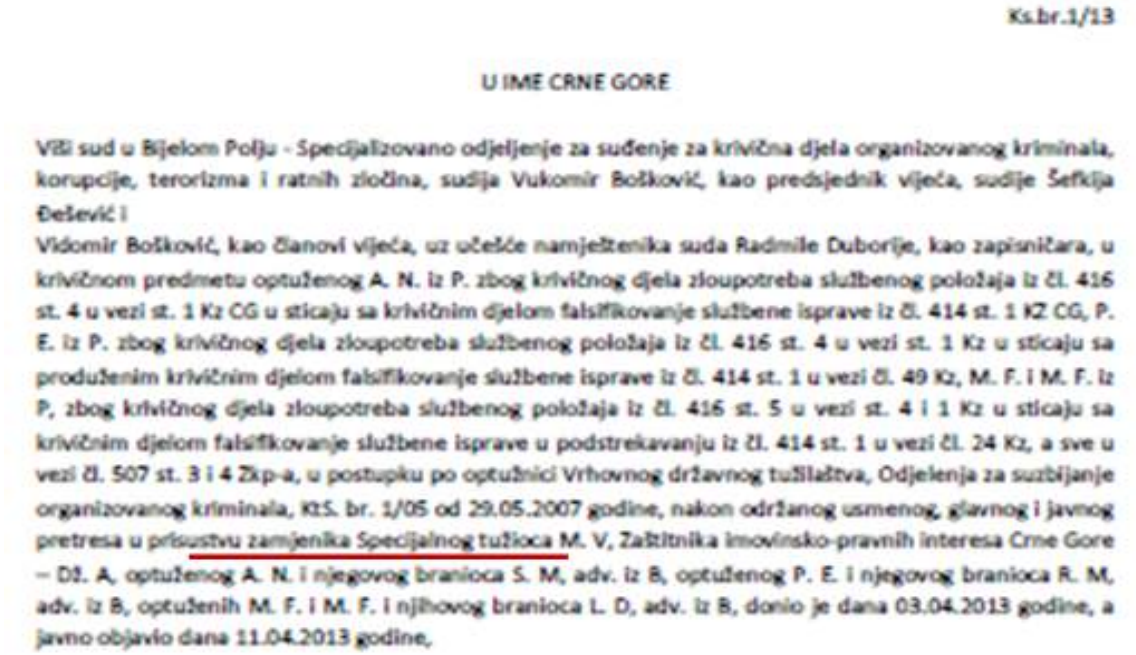
U IME CRNE GORE

VIŠI SUD U PODGORICI, Specijalno odjeljenje za organizovani kriminal, korupciju, terorizam i ratne zločine, kao prvostepeni krivični, po sudiji M. S., kao sudiji pojedincu, uz učešće namještenika suda R.B. kao zapisničara,u krivičnom predmetu protiv optuženog K. V., kojeg brani adv. R. Z., zbog krivičnog djelazloupotreba položaja u privrednom poslovanju iz čl.272 st.3 u vezi čl.1 Krivičnog zakonika, odlučujući po optužnici oštećenog kao tužioca A.D.TUP „B." B. P. od 04.04.2014.godine, koju je na glavnom pretresu zastupao R. M., nakon održanog glavnog i javnog pretresa, dana 26.01.2016.godine, donio je i javno objavio dana 28.01.2016.godine

PRESUDU

Optuženi:

Excerpt from the verdict no. Ks.br. 9/2015 of the High Court in Podgorica, 28.01.2016. - **SECRET NAME OF THE JUDGE**



Ks.br.1/13

U IME CRNE GORE

Viši sud u Bijelom Polju - Specijalizovano odjeljenje za suđenje za krivična djela organizovanog kriminala, korupcije, terorizma i ratnih zločina, sudija Vukomir Bošković, kao predsjednik vijeća, sudije Šefkija Đešević i
Vidomir Bošković, kao članovi vijeća, uz učešće namještenika suda Radmile Duborije, kao zapisničara, u krivičnom predmetu optuženog A. N. iz P. zbog krivičnog djela zloupotreba službenog položaja iz čl. 416 st. 4 u vezi st. 1 Kz CG u sticaju sa krivičnim djelom falsifikovanje službene isprave iz čl. 414 st. 1 KZ CG, P. E. iz P. zbog krivičnog djela zloupotreba službenog položaja iz čl. 416 st. 4 u vezi st. 1 Kz u sticaju sa produženim krivičnim djelom falsifikovanje službene isprave iz čl. 414 st. 1 u vezi čl. 49 Kz, M. F. i M. F. iz P, zbog krivičnog djela zloupotreba službenog položaja iz čl. 416 st. 5 u vezi st. 4 i 1 Kz u sticaju sa krivičnim djelom falsifikovanje službene isprave u podstrekavanju iz čl. 414 st. 1 u vezi čl. 24 Kz, a sve u vezi čl. 507 st. 3 i 4 Zkp-a, u postupku po optužnici Vrhovnog državnog tužilaštva, Odjeljenja za suzbijanje organizovanog kriminala, Kts. br. 1/05 od 29.05.2007 godine, nakon održanog usmenog, glavnog i javnog pretresa u prisustvu zamjenika Specijalnog tužioca M. V, Zaštitnika imovinsko-pravnih interesa Crne Gore – Dž. A, optuženog A. N. i njegovog branioca S. M, adv. iz B, optuženog P. E. i njegovog branioca R. M, adv. iz B, optuženih M. F. i M. F. i njihovog branioca L. D, adv. iz B, donio je dana 03.04.2013 godine, a javno objavio dana 11.04.2013 godine,

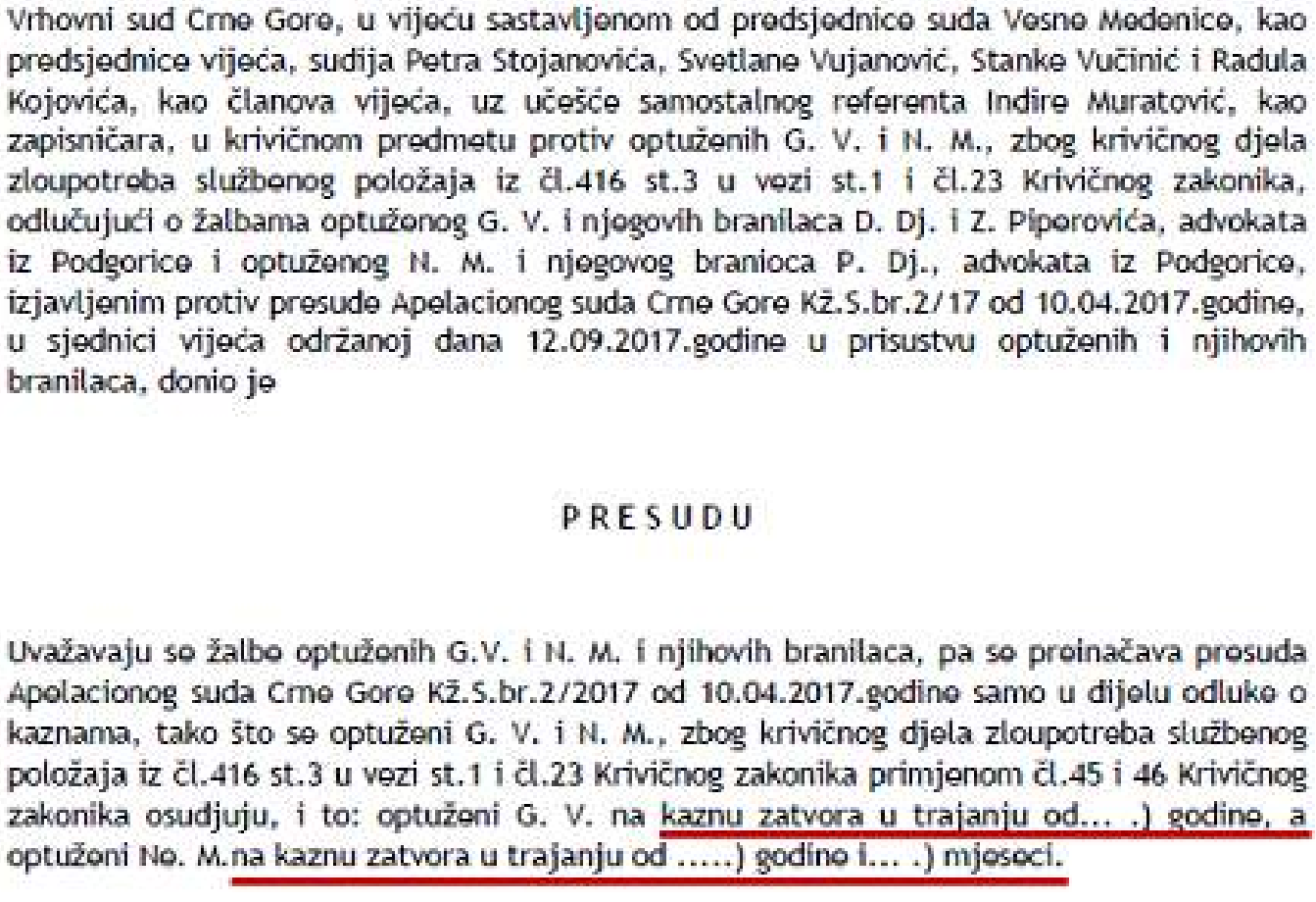
PRESUDU

Excerpt from the verdict no. Ks.br.1/13 of the High Court in Bijelo Polje, 11.04.2013. - **SECRET NAME OF THE PROSECUTOR**

E.1.2.3. Case Study: Sentences for corruption in judiciary are secret

In one case, the **Supreme Court removed from its verdict data related to the extent of imposed sentence**, i.e. to what extent the prison sentence to former judges convicted of abuse of office was mitigated.

Thus, the public cannot know what the Supreme Court's penal policy is and what the court's relation towards corruption in the courts is.



Vrhovni sud Crne Gore, u vijeću sastavljenom od predsjednice suda Vesne Medenice, kao predsjednice vijeća, sudija Petra Stojanovića, Svetlane Vujanović, Stanke Vučinić i Radula Kojovića, kao članova vijeća, uz učešće samostalnog referenta Indire Muratović, kao zapisničara, u krivičnom predmetu protiv optuženih G. V. i N. M., zbog krivičnog djela zloupotreba službenog položaja iz čl.416 st.3 u vezi st.1 i čl.23 Krivičnog zakonika, odlučujući o žalbama optuženog G. V. i njegovih branilaca D. Dj. i Z. Piporovića, advokata iz Podgorice i optuženog N. M. i njegovog branioca P. Dj., advokata iz Podgorice, izjavljenim protiv presude Apelacionog suda Crne Gore Kž.S.br.2/17 od 10.04.2017.godine, u sjednici vijeća održanoj dana 12.09.2017.godine u prisustvu optuženih i njihovih branilaca, donio je

PRESUDU

Uvažavaju se žalbe optuženih G.V. i N. M. i njihovih branilaca, pa se preinačava presuda Apelacionog suda Crne Gore Kž.S.br.2/2017 od 10.04.2017.godine samo u dijelu odluke o kaznama, tako što se optuženi G. V. i N. M., zbog krivičnog djela zloupotreba službenog položaja iz čl.416 st.3 u vezi st.1 i čl.23 Krivičnog zakonika primjenom čl.45 i 46 Krivičnog zakonika osudjuju, i to: optuženi G. V. na kaznu zatvora u trajanju od... .) godino, a optuženi No. M.na kaznu zatvora u trajanju od .....) godino i... .) mjesoci.

Excerpt from the verdict no. Kž.S.I.br.2/17 of the Supreme Court in Podgorica 12.09.2017. - **SECRET DATA ON THE SENTENCE**

In the case of corruption in the judiciary, the Supreme Court erased even data on the sentence from its final verdict.

E.2. Secret case files

For years, the courts do not allow access to files of completed corruption cases, which largely limits the analysis of the work of the judiciary in this area.

Some courts argue that publishing these files would endanger investigation or prosecution. Others are referring to the position of the Supreme Court of Montenegro stating that the judiciary should not apply the Law on Free Access to Information when asked for these files.

Such court decisions were annulled by a second-instance body for breach of the Law, but the courts did not respect it and never published the requested document.

The High Court in Podgorica and the Appellate Court of Montenegro have forbidden access to case files pertaining to criminal offenses with elements of corruption, for which final court judgments have been rendered.

Deciding on MANS's appeals to such court decisions, the Agency for the Protection of Personal Data and Free Access to Information found that the High Court in Podgorica and the Appellate Court of Montenegro violated the Law on Free Access to Information. [9]

However, the Administrative Court of Montenegro upheld the Supreme Court's appeals [10] against the Agency's decision, even though it had earlier dismissed claims brought by the first-instance body against the decision of the second-instance body as being inadmissible, which was also the position of the Supreme Court of Montenegro. The Agency ordered the courts to provide MANS with copies of the case files, so the Administrative Court therefore admitted active legitimation to the courts for challenging such decisions. [11]

The Administrative Court upheld the High Court's appeal, concluding that the Agency had to judge on its own merits, and for formal reasons annulled the Agency's decision because judging on the merits did not authorize the Agency to issue orders to the first-instance body.

E.2.1. Case Study: The Appellate Court: Publishing files of completed cases would endanger investigation and prosecution

For example, the Appellate Court has ruled on MANS's request [12] and explicitly refused to submit case files. In all decisions, the Appellate Court has referred to the legal basis of the limitation of access to information if it is in the interest of preventing the investigation and prosecution of perpetrators of criminal offenses, in order to protect from the disclosure of data relating to the content of the actions taken in pretrial and criminal proceedings.

However, the cases for which MANS sought case files were already validly finished, investigation and prosecution of perpetrators of criminal offenses had been completed and could not be jeopardized by insight into the records of the completed public trial.

The Appellate Court ruled in its decisions that the Supreme Court's position that insight into the files can not be made on the basis of the Law on Free Access to Information, but based on the Criminal Procedure Code and that copying of case file is allowed only to participants in the criminal proceedings.

The Criminal Procedure Code has previously prescribed that anyone having a justified interest may be allowed to examine, transcribe, copy or record particular criminal files [13]. However, this right has been removed through amendments to the Criminal Procedure Code from 2015.

Acting upong the appeals against the decisions of the Appellate Court of Montenegro, the Agency for the Protection of Personal Data and Free Access to Information found that the Appellate Court had acted unlawfully and ordered that court to provide a complete copy of the case file. [14]

However, the Administrative Court of Montenegro upheld the appeal of the Appellate Court, deciding in the first instance, and annulled the second instance decision of the Agency [15] for formal reasons, as in the previous case on the complaint of the High Court.

E.2.2. Case Study: The High Court in Podgorica: The Law on Free Access to Information does not apply to court proceedings

In May 2018, MANS filed 22 requests, asking copies of files of validly finished cases to the High Court in Podgorica, but the Superior Court in Podgorica continued to refuse to submit the files.

In all decisions, the President of the High Court in Podgorica [16] cites diferrent grounds for rejecting the request. [17] As the first ground for hiding the case file from the public, the President of the High Court cites **amendments to the Law on Free Access to Information from 2017, under which the provisions of that law are not applied to the parties in judicial, administrative and other other by the law prescribed procedures, in which access to information is established by the regulation.** [18]

However, MANS is not a party to the proceedings which case files it requested and the right to access such information is not provided for by other regulations. That is why the High Court is relying on a provision concerning the parties, and therefore the Supreme Court's decision completely denies the right to have access to court records to anyone except the parties to the proceedings.

Position of the Supreme Court suspends the law

In the same decisions, the President of the High Court in Podgorica refers to the position of the Supreme Court of Montenegro [19] stating that insight into court records can not be made on the basis of the Law on Free Access to Information, but exclusively on the basis of procedural laws that prescribe this right to parties in the proceedings.

With no grounds in its jurisdiction, the Supreme Court of Montenegro took a position that the Law on Free Access to Information does not apply to courts and that courts do not have to apply it when they are asked for files of validly finished cases, although the Law on Free Access to Information stipulates that the right on access to information held by public authorities shall be exercised in manner and according to procedure prescribed by this Law [20] and that courts are also public authorities in the sense of this law [21]. Thus, the Supreme Court unlawfully suspended application of the Law that would have to be applied to courts as well.

The High Court in Podgorica does not respect the decisions of the second-instance body

These decisions of the High Court in Podgorica were annulled by the Agency for the Protection of Personal Data and Free Access to Information due to misapplication of the law and violation of the procedure. The Agency pointed out that the High Court incorrectly refers to the procedural laws by restricting access to the requested information, as restricting access is strictly prescribed by the Law on Free Access to Information, and not by any other laws [22]. By decision of the Agency, the case was referred to the High Court for reconsideration and adoption of a new, lawful decision.

However, in the repeated procedure, the President of the High Court in Podgorica makes the same decisions, with identical explanation for rejecting MANS's requests.

The High Court in Bijelo Polje allowed insight into case files

Unlike the High Court in Podgorica and contrary to the position of the Supreme Court of Montenegro, the High Court in Bijelo Polje allowed only insight into the files of validly terminated cases, whose copy MANS requested, but did not submit these files.

MANS filed a complaint with the Agency for Protection of Personal Data and Free Access to Information against these decisions, which was adopted and the Supreme Court's decision in Bijelo Polje was annulled and the case was remanded to that court for reconsideration and reaching new decision [23]. Until the completetion of this publication, the High Court in Bijelo Polje did not make a new decision.

E.3. Secret decisions on confiscation of pecuniary gain and case files

Decisions on temporary and permanent confiscation of pecuniary gain originating from a criminal offence are not available to the public, which prevents adequate public control of the work of the judiciary. The State Prosecutor's Offices and the courts hide documents on the temporary and permanent confiscation of pecuniary gain originating from corruption.

The State Prosecutor's Office and the courts do not publish their decisions on the temporary confiscation of pecuniary gain originating from a criminal activity [24], or the decision on permanent confiscation of that pecuniary gain, on their websites.

Instead, in the reports on the work of the State Prosecutor's Office and the Prosecutorial Council, there are published aggregate data on proposals for temporary security measures and for permanent confiscation of pecuniary gain [25].

The reports of the State Prosecutor's Office state only what is specifically confiscated from legal entities - companies, while data on the accused persons are hidden and there are no data on the property that is confiscated from them. Thus, **in the reports of the State Prosecutor's Office there are no indications that the property has been confiscated, and the decisions under which those measures are imposed are not available to the public.**

In this way, the public do not have information on results of the judiciary in the confiscation of property from the persons accused and convicted of corruption.

E.3.1. Case Study: Practice of the State Prosecutor's Office: do not possess decisions delivered to them by the court

The State Prosecutor's Office refused to deliver decisions on the confiscation of confiscation of pecuniary gain originating from corruption, with the reasoning that these decisions were reached by the court, and that their disclosure by the State Prosecutor's Office, to which they were submitted under the law, would constitute drawing up new information.

The State Prosecutor's Office rejected the request of the NGO MANS for free access to information [26] requesting delivery of these decisions. Against this decision, we have appealed to the Agency for the Protection of Personal Data and Free Access to Information as a second instance body, but ther is still no decision.

In its decision, the State Prosecutor's Office states that the request for the delivery of these decisions could not be met because the decisions were made by the court, at the proposal of the State Prosecutor, and adoption of the request would imply drawing up new information.

However, the Law on confiscation of pecuniary gain originating from a criminal acitivity stipulates that decisions on determination of temporary security measure, as well as decisions on adoption or rejection of request for permanent confiscation of property gain, are also sent to the State Prosecutor. Additionally, those are the decisions made during and after the financial investigation, based on the results of that investigation. The financial investigation is initiated and conducted by the State Prosecutor and each of the requested decisions is made at his request, so the reasoning of the State Prosecutor's Office for rejecting the request of MANS is unacceptable.

Therefore, decisions on confiscation of property gain originating from a criminal activity are undoubtedly in the possession of the State Prosecutor's Office, so it is absurd to claim that this information should be "drew up" in order to be submitted to the NGO MANS.

E.3.2. Case Study: Court Practice: Publishing decisions would endanger prosecution of convicted perpetrators who are on the run

Although the Law prescribes that the decisions on temporary confiscation of property gains must be published in order to protect the rights and interests of conscientious third parties, the Supreme Court in Podgorica hides this decision with unfounded and absurd reasoning that their publication would jeopardize investigation and prosecution of convicted perpetrators who are on the run.

Moreover, the High Court in Podgorica does not publish any decisions on permanent confiscation of property gain originating from a criminal activity. In this way, a court that trials in all cases of high corruption [27] conceals the results that the judiciary achieves in confiscation of property from the persons accused and convicted of high corruption. Unlike that court, the High Court in Bijelo Polje has published the requested information.

On the basis of the Law on Free Access to Information, MANS requested the delivery of decisions on temporary confiscation of property gain from the convicted Svetozar Marović, convicted Milos Marović, Đorđina Marović, members of their family and the persons to whom the property was transferred.

The High Court in Podgorica limited access to decisions, referring to the need to protect the investigation and prosecution of perpetrators of criminal offenses, although Svetozar and Miloš Marović were finally convicted. Such an attitude is particularly unfounded and absurd in the situation where Svetozar and Miloš Marović are inaccessible for state authorities for serving their sentences, so it is unclear how publication of these decisions would jeopardize the investigation and prosecution.

In addition, the Law on confiscation of pecuniary gain originating from a criminal activity prescribes that, for the purpose of protecting the rights and interests of the conscientious persons third parties, these decisions shall be published in the Official Gazette of Montenegro and posted on the court's bulletin board and may be published in one of the printed media in Montenegro. [28]

With the same reasoning, the High Court also rejected the request for delivery of a decision on permanent confiscation of property gain from the convicted Svetozar Marović, the convicted Miloš Marović, his wife, Đorđina Marović, their family members as well as the third parties to whom the property was transferred.

The Agency for the Protection of Personal Data and Free Access to Information has annulled such a decision and remanded the case for re-ruling to the High Court [29]. The High Court in Podgorica has not yet decided in the reopened proceedings.

Furthermore, MANS requested from the High Court of Podgorica, based on the Law on Free Access to Information, delivery of all decisions on temporary and permanent confiscation of property gain (confiscation of property) in the period from 1 January 2013 to 30 June 2018.[30] The High Court did not act upon those requests until completion of this publication.

Good Practice: The High Court in Bijelo Polje

Unlike the High Court in Podgorica, the High Court in Bijelo Polje published the requested information.

In May 2018, based on the Law on Free Access to Information, MANS requested this court to provide, all its decisions on temporary confiscation of property and temporary property security measures for the period from 01 January 2013 to 31 December 2017 for criminal offenses of corruption. The High Court in Bijelo Polje submitted copies of the requested decisions to MANS.

Annex 1

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 2

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 3

Chronological overview of final verdicts and other judiciary procedures in cases related to the so-called Budva affair

DATE	DESCRIPTION
August 13, 2015	Investigation was launched against Svetozar Marovic and other members of the Budva criminal group
August 15, 2015	Concluding a plea agreement with the accused for the most serious crimes of corruption enabled
September 11, 2015	First final verdicts for the Budva affair: J. Petričević and V. Rađenović
October 2015	Đurđina Marović sold the house and apartment
December 3, 2015	Miloš Marović detained
December 17, 2015	Svetozar Marović detained
December 30, 2015	The State Prosecutor's Office launched a financial investigation
December 31, 2015	The State Prosecutor's Office concluded an agreement with Miloš Marović
January 3, 2016	Miloš Marović released from detention
January 4, 2016	The State Prosecutor's Office filed an indictment against Miloš Marović
March 8, 2016	New convicting sentences: G. Bojanić, and Tradeunique LLC
May 13, 2016	The court issued a decision approving the agreement with Miloš Marović
May 16, 2016	The State Prosecutor's Office concluded first agreement with Svetozar Marović
May 17, 2016	Svetozar Marović released from detention
May 18, 2016	Svetozar Marović left Montenegro
June 07, 2016	Final verdicts: Đ. Pavlović
June 09, 2016	The State Prosecutor's Office concluded a second agreement with Svetozar Marović
June 14, 2016	Disposal of immovable property owned by legal entities banned
August 06, 2016	Final verdicts: A. Armenko and company Copyright LLC
August 29, 2016	The court rendered a verdict - agreement of Miloš Marović
September 11, 2016	Final verdicts: L. Rađenović
September 12, 2016	The court rendered a verdict - for 2nd agreement with Svetozar Marović
September 21, 2016	The court rendered a verdict - for 1st agreement with Svetozar Marović
September 26, 2016	Final verdicts: L. Rađenović
October 6, 2016	The State Prosecutor's Office requested, the court approved the postponement of the execution of the prison sentence for M. Marović
October 12, 2016	Final verdicts: L. Rađenović
December 16, 2016	Final verdicts: D. Marović, R. Kuljača, Đ, Pinjatić, D. Sekulić, D. Zinić, M. Kaloštro, M. Samardžić, N. Stanojević, S. Đurović, S. Tomović, S. Vučetić
End of 2016	Miloš Marović received citizenship of Serbia
January 2017	Deadline for Miloš Marović to begin serving a prison sentence
April 19, 2017	Final verdicts: D. Marović
July 25 and 26, 2017	The State Prosecutor's Office issued an order determining temporary security measures for immovable property
July 28, 2017	The investigating judge of the High Court ordered a temporary security measure prohibiting of disposal and use of real estate
July 2017	The court terminated a temporary measure in relation to the part of the property - Svetozar Marovic's apartment on the appeal of his legal representative
July 2017	Svetozar Marović sold an apartment
August 25, 2017	Final verdicts: B. Savić
September 11, 2017	Final verdicts: D. Milovanović and Gugi komerc LLC
September 2017	Deadline for filing a claim for the permanent seizure of property gain
November 20,2017	The State Prosecutor's Office filed a request for permanent confiscation of property benefits - including an apartment of Svetozar (sold) and a mansion of Đorđina Marović (sold)
December 4, 2017	Final verdicts: D. Marović
During 2017	Miloš Marović sold two apartments
October 26, 2018	The procedure for permanent seizure of property completed - the decision has not yet been published

(red – Svetozar Marović, yellow – Miloš Marović, green – property, gray – other convicted)

Data sources

Chapter A

(1) Article 16, Paragraph 2, Item 2, indent a and b of the Law on Courts
(2) Article 3, Paragraph 2.
(3) 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
(4) Read more in publication "Behind Statistics", chapter 7.1.3. Amendmends to the law as an obstacle for the fight against corruption (p.78)
(5) Article 133, Paragraph 3 of the Criminal Code of Montenegro
(6) Read more in publication "Behind Statistics", NGO MANS 2011, chapter *Amendment to the law as an obstacle for the fight against corruption* (pp. 78-82), chapter of the *Discretionary powers of prosecutors in qualification of the offenses* (pp. 84-85)
(7) Article 359
(8) "Official Gazette of the Republic of Serbia" no. 85/2005, 88/2005, 107/2005, 72/2009 and 111/2009
(9) "Official Gazette of the Republic of Serbia" no. 26/77, 28/77, 43/77, 20/79, 24/84, 39/86, 51/87, 6/89, 42/89 and 21/90 and "Official Gazette of the Republic of Serbia" no.16/90, 49/92, 23/93, 67/93, 47/94, 17/95, 44/98, 10/2002, 11/2002, 39/2003 and 67/2003
(10) Article 423.
(11) Article 424.
(12)Active bribery or mediation in order to carry out an act which an official person **should not perform** or that an act that should have been performed **not to perform** an act **that would otherwise have to be performed**
(13) Active bribery or mediation in order to carry out an act that the official person would normally **have to perform** or **not to perform** an act **that should not be performed**
(14) Unlike the Criminal Code of Montenegro, the Criminal Code of Serbia defines the concept of economic activity in Article 112, paragraph 21a.
(15) The procedure in cases of plea agreement is prescribed by the provisions of Articles 300 to 303 of the Criminal Procedure Code. The provision of Article 516 of the Criminal Procedure Code stipulates that the provisions of Chapter XX (relating to a plea agreement) shall apply after six months from the date of entry into force of this Code
(16) Law on Amendments to the Criminal Procedure Code, published in "Official Gazette of Montenegro" no.35/2015 of 07.07.2015. It entered into force on July 15, 2015, it is applicable since 15.08.2015
(17) Draginja Vuksanović and Snežana Jonica
(18) 13 opposition MPs did not attend the sitting: Andrija Mandić, Nebojša Medojević, Koča Pavlović, Janko Vučinić, Slaven Radunović, Branka Bošnjak, Milutin Đukanović, Veljko Vasiljević, Emilo Labudović, Strahinja Bulajić, Branko Radulović, Novica Stanić and Goran Tuponja. For the adoption of the amendment, another 7 votes in favor were necessary
(19) Read more in chapter C
(20) Article 301 Paragraph 1 of the Criminal Procedure Code
(21) Article 301 Paragraph 2 of the Criminal Procedure Code
(22) Article 272 of the Criminal Procedure Code prescribes:
(1) The State Prosecutor may decide to postpone criminal prosecution for criminal offences punishable by a fine or imprisonment for a term up to five years, when s/he establishes that it is not functional to conduct criminal proceedings having in mind the nature of a criminal offence and the circumstances of its commission, the offender's past and personal attributes, if the suspect accepts to fulfill one or several of the following obligations:
1) to eliminate a detrimental consequence or to compensate the damage caused by the criminal offence;
2) to fulfill obligations as to the payables for material support or other liabilities determined by a final judgment;
3) to pay a certain amount of money for the benefit of a humanitarian organization, fund or public institution;
4) to carry out some community service or humanitarian work.
(2) The suspect shall fulfill the accepted obligation within six months the latest.
(3) The obligations referred to in paragraph 1 of this Article shall be imposed upon the suspect by a decision of the State Prosecutor. The decision shall be served on the suspect, injured party, if any, or the beneficiary humanitarian organization or public institution.
(4) Before issuing the decision referred to in paragraph 3 of this Article, the State Prosecutor may, assisted by specially trained persons – mediators, carry out the procedure of mediation between the injured party and the suspect, the process being subject to the provisions of the law regulating the rules of mediation procedure for the obligations referred to in paragraph 1 items 1 and 2 of this Article, or obtain the consent of the injured party for the measures referred to in paragraph 1 items 3 and 4 of this Article.

(5) A more detailed manner of fulfilling obligations referred to in paragraph 1, items 1 to 4 of this Article, the contents of the decision referred to in paragraph 3 of this Article as well as a more detailed manner of implementing actions in the application of provisions of this Article shall be prescribed by the ministry competent for the affairs of the judiciary.
(6) If the suspect executes the obligation referred to in paragraph 1 of this Article, within the time limit referred to in paragraph 2 of this Article, the State Prosecutor shall dismiss the criminal charges. In this case, the provisions of Article 59 of the present Code shall not be applicable, of which the State Prosecutor shall advise the injured party before obtaining the consent referred to in paragraph 4 of this Article.
(7) The costs of the criminal proceedings referred to in Article 226 paragraph 1 of this Code shall be borne by the State Prosecutor's Office.
(23) Article 301. Paragraph 3. of the Criminal Procedure Code
(24) Pursuant to the Article 302, Paragraph 2 of the Criminal Procedure Code, the Chair of the Panel shall decide on the agreement if an agreement on the admission of guilt has been submitted before an indictment has been brought, while according to the Article 302 Paragraph 3 of the Code, if an agreement has been submitted after the indictment has been brought, the Chair of the first instance panel shall decide on it.
(25) Article 302 Paragraph 4 of the Criminal Procedure Code
(26) Article 302.Paragraph 7 of the Criminal Procedure Code
(27) Article 302 Paragraph 8 of the Criminal Procedure Code
(28) Article 302 Paragraph 9 of the Criminal Procedure Code
(29) Article 302 Paragraph 8 of the Criminal Procedure Code
(30) Article 301 of the Criminal Procedure Code:
1) By way of an agreement on the admission of guilt, the accused person fully confesses to the criminal offence or concurrence of criminal offences s/he is charged with, whereas the accused person and the State Prosecutor agree on the following:
1) on the penalty and other criminal sanctions which will be imposed on the accused person in accordance with the provisions of the Criminal Code;
2) on the costs of the criminal proceedings and claims under property law;
3) on denouncing the right of appeal by the parties and defense attorney against the decision of the court made on the basis of the agreement on the admission of guilt when the court has fully accepted the agreement.
(2) Agreement on the admission of guilt shall also contain an obligation of the accused person to return the property gain acquired by the commission of the criminal offense as well as objects that have to be forfeited under the Criminal Code.
(3) The accused person may undertake by means of the agreement on the admission of guilt to perform the obligations referred to in Article 272 paragraph 1 of the present Code, provided that the nature of the obligations is such that it allows the accused person to perform or start performing them before the submission of an agreement on the admission of guilt.
(31) Article 302 Pargaraph 9 of the Criminal Procedure Code
(32) Article 42, paragraph 1 of the Criminal Code prescribes: The court shall fix the punishment for the perpetrator of a criminal offence within the statutory limits for that particular offence taking into account the purpose of punishment and giving due consideration to any circumstances which result in lighter or more severe punishment (mitigating and aggravating circumstances) as well as the following, in particular: degree of culpability, motives for the commission of offence, degree of peril or injury to the protected good, circumstances under which the offence was committed, perpetrator’s history, his personal situation, his behaviour after the commission of criminal offence, particularly his attitude towards the victim of the criminal offence as well as any other circumstances concerning the perpetrator’s personality.
(33) Criminal Procedure Code, Articles 157 to 162
(34) Criminal Procedure Code, Article 157 Paragraph 1
(35) Criminal Procedure Code, Article 157 Paragraph 1 Items 1 to 4
(36) Criminal Procedure Code, Article 157 Paragraph 2 Items 1 to 6
(37) Criminal Procedure Code, Article 159 Paragraph 5
(38) Criminal Procedure Code, Article 159.
(39) Decision of the Constitutional Court published in the "Official Gazette of Montenegro" no. 28/2018 of 27.04.2018
(40) "Official Gazette of Montenegro" no. 35/15 of 07.07.2015, It is applicable from August 15, 2015
(41) Criminal Procedure Code, Article 161 Paragraph 1
(42) Article 332
(43) Criminal Procedure Code under the title "Special Collection of Evidence"
(44) Article 332 Paragraph 2 and 3 of the Criminal Procedure Act
(45) Article 332 Paragraph 4 of the Criminal Procedure Act
(46) Article 332 Paragraph 5 of the Criminal Procedure Act
(47) Article 334 Item 1 and 2 stipulates:
Posebne dokazne radnje iz članka 332. stavka 1. ovog Zakona mogu se odrediti za sljedeća kaznena djela iz Kaznenog zakona: Special collection of evidence referred to in Article 332 paragraph 1 of this Law may be determined for the following criminal offenses under the Criminal Code:
1) war crimes (Article 91, paragraph 2), terrorism (Article 97, paragraphs 1, 2 and 3), terrorist financing (Article 98), terrorism training (Article 101), terrorist association (Article 102), slavery (Article 105), trafficking in human beings (Article 106), trafficking in parts of the human body and human torments (Article 107), unlawful deprivation of liberty (article 136, paragraph 4), abduction (Article 137, paragraph 3), sexual abuse of a child under the age of fifteen (Article 158), child prostitution (Article 162, paragraphs 1 and 3), exploitation of children for pornography (Article 163, paragraphs 2 and 3), heavy criminal offenses of sexual abuse and exploitation of the child (Article 166),

money laundering (Article 265, paragraph 4), abuse of office and powers (Article 291, paragraph 2) if the offense was committed by an official, passive bribery (Article 293) if the offense was committed by an official, trading in influence (Article 295) if the offense was committed by an official, (Article 328), committing a criminal offense within the confines of a criminal organization (Article 329, paragraph 1, items 3 to 6), the murder of a person under international protection (Article 352), the kidnapping of a person under international protection (Article 353), for Criminal Offenses against the Republic of Croatia (Chapter XXXII) and against the Armed Forces of the Republic of Croatia (Chapter XXXIV) for which imprisonment for at least five years is prescribed and for all other offenses punishable by a long-term imprisonment,
2) genocide (article 88, paragraph 3), crime of aggression (Article 89, paragraphs 2 and 3), commander responsibility (Article 96), recruitment for terrorism (Article 100), preparation of criminal offenses against values protected by international law and other cruel, inhuman or degrading treatment or punishment (Article 104) if committed at the expense of the child, murder (Article 110), unlawful seizure of liberty (Article 136, paragraph 3), abduction (Article 137), prostitution (Article 157 paragraph 2), sexual abuse of a child older than fifteen (Article 159), lurring children to meet sexual needs (Article 161), child prostitution (Article 162) pornography (Article 163), exploitation of children for pornographic performances (Article 164), abduction of a child (Article 174, paragraph 3), unauthorized production and trafficking of drugs (Article 190, paragraphs 2, 3 and 4), heavy criminal offenses against general security (Article 222), an attack on an aircraft, a ship or a stationary platform (Article 223), robbery (Article 230 paragraph 2), extortion (Article 243, paragraphs 4, 5 and 6), accepting bribery in business operations (Article 257), subsidized fraud (Article 258), money laundering (Article 265), counterfeiting of money (Article 274), misuse of the public procurement procedure (Article 254) , abuse of office and powers (Article 291), unlawful favoring (Article 292), passive bribery (Article 293), active bribery (Article 294, paragraph 1), trading in influence (Article 295), Illegal entrance, Movement and residence in the Republic of Croatia (Article 326, paragraph 2), and the perpetration of a criminal offense within the Criminal Association (Article 329)
(48) Article 335 Paragraph 3 of the Criminal Procedure Code
(49) Article 166, 167 (covert interception of communications), Article 171, 172 (covert surveillance and recording), Article 174, 175 (simulated [business] deals), Article 178, 178 (computer search of data), Article 183, 184 (Undercover Investigator)
(50) Article 181.
(51) Article 162 Paragraph 1 Item 1 of the Criminal Procedure Code
(52) "Official Gazette of Montenegro"no.58/2015 of 09.10.2015, came into force on 09.11.2015. This matter was previously regulated by the provisions of the Criminal Code and the Criminal ProcedureCode
(53) Article 2 of the Law on seizure and confiscation of material benefit derived from criminal activity
(54) Article 8 Paragraph 1 and 2 of the Law on seizure and confiscation of material benefit derived from criminal activity
(55) Article 11 of the Law on seizure and confiscation of material benefit derived from criminal activity
(56) Article 19 and 20 of the Law on seizure and confiscation of material benefit derived from criminal activity
(57) Article 35 of the Law on seizure and confiscation of material benefit derived from criminal activity
(58) Report on the work of the Prosecutorial Council and the State Prosecutor's Office for 2016, page 6.
(59) Read more in chapter C.2.
(60) Article 125, paragraph 4 of the Criminal Code
(61) Article 125, paragraph 7 of the Criminal Code
(62) Pursuant to the Article 32 of the Criminal Code, shall be to: prevent a perpetrator from commission of criminal offenses and influence him not to commit criminal offenses in the future, influence others not to commit criminal offenses, express social condemnation of the criminal offense and emphasize that everyone has a duty to abide by law and strengthen morality and promote social responsibility
(63) Illicit enrichment has so far been criminalized in as many as 44 countries that have ratified the United Nations Convention to Combat Corruption, and concrete cases show that this has led to significantly better results in the fight against corruption
(64) Read more in chapter A.3.1.
(65) Law on amendments to the Criminal Code (Official Gazette of RS, Nos. 121/2012, 88/2005, from 24.12.2012.)
(66) "Official Gazette of RS" no. 94/2016 of 24.11.2016
(67) Article 228 Paragraph 1 of the Criminal Code of Serbia
(68) Article 228 Paragraph 2 of the Criminal Code of Serbia
(69) Around €1,27 million
(70) "Official Gazette of RS" no. 94/2016 of 24.11.2016
(71) Article 228a of the Criminal Code of Serbia
(72) Article 228a Paragraph 1 of the Criminal Code of Serbia
(73) Article 228a Paragraph 2 of the Criminal Code of Serbia
(74) Over €2,5 milion
(75) Article 292 Paragraph 1 of the Criminal Code of Croatia
(76) Article 292 Paragraph 2 of the Criminal Code of Croatia
(77) Article 273 of the Criminal Code of Montenegro
(78) Article 274 of the Criminal Code of Montenegro
(79) Article 251 Paragraph 1 of the Criminal Code of Croatia
(80) Article 251 Paragraph 2 of the Criminal Code of Croatia
(81) Article 251 Paragraph 3 of the Criminal Code of Croatia
(82) Article 291 of the Criminal Code of Croatia

Chapter C

(1) Decision no. 23/2015 of 28.02.2017
(2) Article 416 paragraph 3 in relation to paragraph 1 of the Criminal Code
(3) Read more about this case in study C.1.1.5.
(4) Verdict of the Appellate Court of Montenegro decision no.36/13 of 25.12.2013
(5) Article 272 paragraph 3 of the Criminal Code
(6) File no: Ks. 23/2015 of 28 February 2017
(7) File no: Kt-S.71/15 of 19 November 2015
(8) Ibid
(9) Ibid
(10) Saša Čađenović
(11) Article 369.
(12) Article 54, paragraph 2
(13) File no: Kž-S.16/2017 of 08 November 2017
(14) Decision no. 20/2015 of 29.02.2016
(15) Article 49 Paragraph 6 of the Criminal Code
(16) Article 54, paragraph 2
(17) Decision no. 12/2016
(18) Article 60, paragraph 2, indent 2
(19) Article 43 of the Law on Communal Police
(20) http://niksic.me/lokalna-uprava/posebne-i-strucne-sluzbe/komunalna-policija/
(21) Source: https://www.slobodnaevropa.org/a/presuda-za-zavalu-odbrana-najavljuje-zalbu/24604406.html
(22) He was later convicted of two other convictions based on the agreement on the admission of guilt as a member of a criminal organization formed by his brother Svetozar Marović
(23) File no: Kts. 11/10-2 of 21 March 2011
(24) Plea agreement on the admission of guilt is in force since February 2010
(25) More details in the Legal Framework section
(26) Article 49, paragraph 6 of the Criminal Code
(27) More details in the Legal Framework section
(28) Report of the Ministry of Justice on application of the institution of agreement on the admission of guilt for the period January 2016 - July 2017, September 2017
(file:///D:/My%20Documents/Downloads/IZVJE%C5%A0TAJ%20O%20PRIMJENI%20INSTITUTA%20SPORAZUM%20O%20PRIZNANJU%20KRIVICE.pdf)
(29) Source: http://www.vijesti.me/vijesti/pala-presuda-za-zavalu-120403
(30) The judge Valentina Pavličić
(31) Judgment of the High Court in Podgorica no KS. 9/2013 of 17 July 2014
(32) More details below under KOŠLJUN affair
(33) Judgment of the Appellate Court of Montenegro no. Kž-S. 21/14 of 16 December 2014
(34) Article 407, paragraph 2 of the then applicable law. It is identically prescribed in paragraph 3 of the same Article of the current law
(35) The judge Suzana Mugoša
(36) Judgement no Ks. 29/2014 of 19 June 2015
(37) Judgement no Kž.S.16/2015 of 12 December 2016
(38) More details in the study The lawyer of the municipality represented the interests of the criminal group
(39) The judge Valentina Pavličić
(40) File no: Ks. 15/2014 of 11 September 2015
(41) File no: Kt.-s. 2/14 of 26 June 2014
(42) File no: Kžs. 19/2015 of 8 February 2016
(43) Independent newspapers "Vijesti" from 24 September 2015, the text "Pavličić represents Montenegro before the European Court of Human Rights"
(44) Decision no.19/2014 of 22.10.2014
(45) Decision no.19/2017 of 21.12.2017
(46) Decision no.26/2016 of 11.05.2017
(47) Three months in prison, two years of suspended sentence
(48) Article 416 of the Criminal Code
(49) A family man, married, father of two children and not convicted.
(50) Contract on power of attorney filed with the Municipality of Budva under number 002-92/1 of 21.02.2011
(51) Contract on power of attorney filed with the Municipality of Budva under number 001-420/1 of 17.02.2012
(52) Contract on power of attorney filed with the Municipality of Budva under number 001-339/1 of 17.02.2013
(53) Lawyer Vasilije Knežević from Podgorica
(54) Read more in section C.
(55) Decision no.9/13 of 17.07.2014
(56) Cards of the Municipality of Budva on paid orders to Vasilije Knežević for 2011, 2012, 2013 and 2014

(57) Read more in section C.2.2.
(58) Read more in section E.
(59) Decision no.15/14 of 11.09.2015
(60) From December 2013 to June 2014
(61) Decision no.22/15 of 28.02.2017
(62) KS. br.8/2014 of 20.06.2014
(63) Verdict of the Appellate Court of Montenegro Decision no.15/14 of 22.10.2014
(64) Decision no.27/11 of 01.02.2013
(65) Verdict of the Appellate Court of Montenegro Decision no..25/2013 of 24.06.2013
(66) More details in the Legal Framework section
(67) File no: Ks. 3/14 of 22 July 2014
(68) Judgment of the High Court in Podgorica Ks.br.8 / 09 of 30.06.2015.
(69) File no: KTS. 13/08 of 31. March 2009
(70) Judgement no: Kžs. 6/2016 of 26 May 2016
(71) File no: Ks. 18/2013 of 27.09.2013
(72) File no: Kt 330/04 of 06 May 2009
(73) 330/**04** (the last number indicates the year)
(74) Decision no: Kž 624/11 of 17 February 2012
(75) Decision no: Kv 68/13 of 12 March 2013
(76) File no: Ks12/2014 of 9 September 2014
(77) File no: Kt 53/04 of 9 April 2008
(78) Article 272, paragraph 3 of the Criminal Code
(79) Article 414 of the Criminal Code
(80) File no: Kž 7/14 of 22 January 2014
(81) File no: Ks 18/11 of 30 May 2013
(82) File no: KžS.br. 48/13 of 13 May 2014
(83) Criminal offence of unlawful keeping of weapons and explosives from Article 403 and criminal offence of counterfeiting of official document from Article 412
(84) Article 125, paragraph 7 in relation to Article 124, paragraph 1, item 6 of the Criminal Code
(85) File no: Ks. 7/12 of 15 March 2013
(86) Indictment of the Basic State Prosecutor's Office of Bijelo Polje no Kt. 421/2007 of 19 November 2008
(87) Article 416, paragraph 2 of the Criminal Code
(88) Article 414 of the Criminal Code
(89) 12 March 2013
(90) www.sudovi.me
(91) Article 416 Paragraph 3 regarding Paragraph 1 of the Criminal Code
(92) Criminal offenses that the accsed are charged of were committed before 2010, when a special criminal offense of organized crime was prescribed - the creation of a criminal organization, and therefore they could not be charged for this criminal offense. Amendments to the Criminal Code that came into force on May 13, 2010 were introduced as a new criminal offense in Article 401a - the creation of a criminal organization. Previously, organized crime was defined only in the procedural law, in Article 22, paragraph 8 of the Criminal Procedure Code
(93) Provisions of Article 49, Paragraphs 5 and 6 of the Criminal Code prescribe that a court for an extended criminal offense may impose a more severe punishment than prescribed if an extended criminal offense consists of at least 3 criminal offenses and a more severe punishment must not exceed the double prescribed sentence or 20 years of imprisonment
(94) Article 416 Paragraph 3 of the Criminal Code, by amending the 2011 Code, the maximum sentence was increased to twelve years
(95) Article 264 Paragraph 4 of the Criminal Code
(96) Article 244.Paragraph 4 of the Criminal Code
(97) The provision of Article 49 of the Criminal Code prescribes:
1) A continuing criminal offence is composed of several criminal offences that are identical or of the same kind, were committed by the same perpetrator, and represent a whole because at least two of the following circumstances apply: the victim is the same, the object of offence is the same, the same situation or the same permanent relationship is used, the place or area of commission is the same, or the perpetrator's wrongful intent is the same.
2) Criminal offences against person may constitute a continuing criminal offence only when committed against the same person.
3) Offences that due to their nature may not be joined into a single offence may not constitute a continuing criminal offence.
4) Where a continuing criminal offence comprises minor and more serious forms of the same offence, the most serious form of the offences committed shall be considered to constitute a continuing criminal offence.
5**) A continuing criminal offence may be punished by a more severe punishment than the punishment provided for by law provided that the continuing criminal offence consists of at least three criminal offences that meet the requirements referred to in para. 1 hereof.**
6) A more severe punishment may not exceed twice the punishment laid down by law or exceed a twenty year prison term.
7) The criminal offence that is not included in the continuing criminal offence as set in the final judgment constitutes a separate criminal offence and makes part of a separate continuing criminal offence.

(98) Read more in section C.3.
(99) In one case, in addition to the criminal offense of abuse of office, the legal entity was also charged with the criminal offense of evasion of taxes and contributions
(100) Read more in section “Legal Framework“
(101) Article 32 of the Criminal Code prescribes:
Within the general purpose of criminal sanctions (Art.4, para. 2), the purpose of a punishment shall be to:
1) prevent a perpetrator from commission of criminal offences and influence him not to commit criminal offences in the future;
2) influence others not to commit criminal offences;
3) express social condemnation of the criminal offence and emphasize that everyone has a duty to abide by law;
4) strengthen morality and promote social responsibility.
(102) Decision.56/16 of 29.08.2016, Decision 68/16 of 26.07.2016, Decision 46/16 of 07.06.2016, Decision.48/16 of 04.08.2016, Decision 49/16 of 07.06.2016, Decision 67/16 od 08.08.2016, Decision 72/16 of 12.09.2016.
(103) Decision.13/16 of 08.03.2016, Decision 14/16 of 08.03.2016
(104) Article 32. Item 2. Of the Criminal Code of Montenegro
(105) Article 302 Paragraph 8 Item 1 of the Criminal Procedure
(106) The Affairs were named: "TQ Plaza", "Donji bulevar", "Krapina", "Copyright", "WTE – waste waters", "Property Investments", "Prijavor" and "Jaz"
(107) Article 416 Paragraph 3 of the Criminal Code
(108) Read more in section C.2.
(109) Article 302, Paragraph 8, Item 5 of the Criminal Procedure Code
(110) Read more in section C.3.
(111) Decision 69/16 of 21.09.2016
(112) Read more in section C.2.3.
(113) Article 42. Paragraph 1 of the Criminal Code
(114) Read more in section C.2.2.
(115) The provision of Article 421 of the Criminal Procedure Code in two or more verdicts against the same sentenced person, a number of sentences were imposed with final force and effect, without having applied provisions on fixing a single sentence for concurrent criminal offences.
(116) Article 48, paragraph 1 and 2, item 2 of the Criminal Code stipulates the imposing of penalties for the perpetration of criminal offenses (when the perpetrator commits several criminal offenses for which s/he is charged at the same time) so that the most severe punishment imposed will be increased, in that case that a **single sentence cannot reach the sum of the sentences imposed.**
(117) Read more in section C.2.
(118) Read more in setion C.2.3.1.
(119) Aleksandar Tičić and Miodrag Minić.
(120) Table overview with more detailed data is provided in Annex 3
(121) Long-time vice-president of the ruling Democratic Party of Socialists of Montenegro, former President of the Parliament of Montenegro and president of the State Union of Serbia and Montenegro.
(122) Decision 72/16 of 12.09.2016
(123) Decision no.189/15 of 09.06.2016
(124) Article 416 paragraph 3 of the Criminal Code
(125) Article 244 paragraph 4 of the Criminal Code
(126) Source: ID Vijesti of 15.10.2018, article "Miloševa zemlja ni za pola Svetovog duga"
(127) Article 4 of the Plea Agreement
(128) Ibid
(129) ND Vijesti of 16.11.2018, article "Niko neće zemlji Miloša Marovića"
(130) In majority ownership of Aco Đukanović, brother of the President of Montenegro Milo Đukanović
(131) Source: Daily newspaper "DAN" of 18.16.2017, article "Nema za državu, ali ima pola miliona za Prvu banku"
(132) President of the High Court Boris Savić
(133) Decision 56/26 of 29.08.2016
(134) Decision 69/16 of 21.09.2016
(135) Decision no.56/15 of 16.05.2016
(136) Article 416 Paragraph 3 of the Criminal Code
(137) Article 302 paragraph 8 item 1 of the Criminal Procedure Code
(138) http://www.vijesti.me/vijesti/marovic-se-obratio-javnosti-kriv-sam-samo-ja-nije-kriva-ni-moja-partija-901821 (press release published in Independent Daily "Vijesti" on 01.09.2016)
(139) Ibid
(140) Article 302 paragraph 9
(141) http://www.vijesti.me/vijesti/marovica-nisu-pritiskali-u-pitanju-je-psiha-902805 (article published in Independent Daily "Vijesti" on 09.09.2016)
(142) Source: Daily Newspaper "DAN" of 01.03.2017, article "Svetu skratili robiju za mjesec dana"
(143) From 17.12.2015 to 17.05.2016
(144) First agreement concluded on 16.05.2016
(145) Source: Daily Newspaper “Vijesti“ of 20.05.2016, article “Svetozar Marović napustio državu“
(146) Read more in section C.2.3.2.

(147) http://www.vijesti.me/tv/marovic-otisao-da-se-lijeci-a-uslikan-u-beogradskom-lokalu-916845
(148) Report on the work of the Prosecutorial Council and the State Prosecutor's Office for 2016, page 6
(149)http://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
(150) "PROPERTY INVESTMENTS" LLC PODGORICA, "GOOD LOCATION PROPERTIES"LLC PODGORICA ''ADRIATIC INVESTMENTS'' LLC BUDVA and LLC "FIFTH AVENUE INVESTMENT" LIMITED
(151) Article 19 paragraph 1 item 1of the Law on seizure and confiscation of material benefit
(152) "GUGI COMMERCE" LLC
(153) Pursuant to the Article 19 paragraph 2 of the Law on seizure and confiscation of material benefit derived from criminal activity
(154) Pages 205 and 206 of the Work Report
(155) Article 21 paragraph 3 indent
(156) http://www.tuzilastvocg.me/media/files/IZVJESTAJ%202017%20%20.pdf
(157) Page 202
(158) www.tuzilastvocg.me
(159) Report on the work of the Prosecutorial Council and the State Prosecutor's Office for 2017, page 201
(160) Decision no.3/15
(161) Source: Report on the work of the Prosecutorial Council and the State Prosecutor's Office for 2017, page 202
(162) Decision no. 57/17 of 28.07.2017
(163) Report on the work of the Prosecutorial Council and the State Prosecutor's Office for 2017, page 202
(164) Among others: Daily Newspaper "DAN" of 25.02.2018, article "Svetu vratili stan u Budvi"
(165) Decision 10/18 of 12. 11. 2018
(166) http://www.kolektiv.me/102107/finansijske-istrage-za-dvije-i-po-godine-katnic-oduzeo-preko-23-miliona-eura
(167) In only one case it is stated that the by the agreement on the admission of property worth € 19.8 million was seized from one legal entity.
(168) Read more in chapter Agreements with legal entities
(169) Article 478 paragraph 3
(170) Material benefit shall be confiscated from the holder who does not prove, by means of authentic documents or otherwise, that the origin of property is lawful (confiscation). Article 35 of the Law on seizure and confiscation of material benefit derived from criminal activity
(171) http://www.tuzilastvocg.me/media/files/IZVJESTAJ%202017%20%20.pdf
(172) Pages 205, 206
(173) http://www.vijesti.me/vijesti/dordina-marovic-ostala-bez-vile-i-stana-864013 (article published 06.12.2015)
(174) http://www.vijesti.me/vijesti/svetozar-marovic-prodao-stan-u-budvi-za-180000-eura-947850 (article published 25.07.2017)
(175) ”Večernje novosti” of 22.05.2017, article "Miloš prodaje Svetov stan"
(176) http://www.vijesti.me/vijesti/marovici-prodaju-imovinu-u-budvi-926293 (article published on 26.02.2017)
(177) According to the media, in the contract on the sale, it is stated that the area of the mansion is around 1.000 m² because over 700 m² has been added and it is not registered in the cadastre (ID Vijesti of 03.09.2017, article "Subotićev milion za vilu Marovića")
(178) Article 26 paragraph 4 of the Law on seizure and confiscation of material benefit derived from criminal activity
(179) Article 40 paragraph 4 of the Law on seizure and confiscation of material benefit derived from criminal activity
(180) Source: Daily Newspaper "DAN" of 01.11.2018, article "Maroviću nije bilo zabranjeno da raspolaže stanom"
(181) Report on the work of the Prosecutorial Council and the State Prosecutor's Office for 2017, page 202
(182) Source: Daily Newspaper "DAN" of 27.10.2018, article "Svetu oduzimaju stan koji je već prodao za 180 hiljada eura"
(183) ID Vijesti of 27.10.2018, article "Tužioci traže stan, Sveto ga već prodao"
(184) Ibid
(185) ID Vijesti of 20.11.2018, article "Ćute o sudbini stana i vile"
(186) Read more in Case Study: Agreement with the organiser of the criminal group
(187) File no: Kvs.56/16 of 29. august 2016. The judgment incorrectly states that the agreement concluded on 13 May 2016, when the court decision was adopted.
(188) Decision no.3/15 of 31.12.2015
(189) Article 416 paragraph 3 of the Criminal Code

(190) Article 42, paragraph 3 of the Criminal Code prescribes:
The circumstance that is a characteristic of a criminal offense cannot be considered as an aggravating or mitigating circumstance, **unless it exceeds the measure necessary for the existence of a criminal offense or some form of criminal offense** or if there are two or more such circumstances, and only one is sufficient for the existence of a serious or easier form of criminal offense.
(191) From 03.12.2015 to 03.01.2016
(192) Decision no.89/15 of 04.01.2016
(193) Article 302 paragraph 5
(194) Decision no.3/15 of 13.05.2016
(195) Article 303 paragraph 1
(196) http://www.radiokotor.info/radio/index.php/politika/78-lokalne-vijesti/12071-osnovni-sud-u-kotoru-o-statusu-marovica
(197) Article 18
(198) Article 21 paragraph 2
(199) Article 426
(200) Article 429 paragraph 4
(201) http://www.vijesti.me/vijesti/begovic-potvrdio-milos-marovic-je-dobio-drzavljanstvo-srbije-924581
(202) http://www.vijesti.me/tv/milos-marovic-ce-kaznu-izdrzavati-u-kucnom-pritvoru-u-srbiji-929590
(203) Article 45 paragraph 5 of the Criminal Code of Serbia
(204) "Official Gazette of Montenegro - International agreements", no. 4/2009 and 4/2011
(205) Article 71 of the Law on the Confirmation of the Extradition Agreement between the Republic of Serbia and Montenegro
(206) As in section C.3.1. i C.1.1.5.
(207) Decision no. 67/2016 of 08.08.2016
(208) Article 416 Paragraph 3 regarding Paragraph 1 of the Criminal Code. Amendments to the Code from 2011 provide for a sentence ranging between 2 to 12 years
(209) Article 416 of the Criminal Code prescribes the criminal offense of abuse of office:
(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.
(210) Article 42 Paragraph 3 of the Criminal Code prescribes:
The circumstance which is an element of the criminal offence may not be additionally taken into consideration as either an aggravating or mitigating circumstance, except where it exceeds the measure required for establishing the criminal offence or a certain form of criminal offence, or where there are two or more such circumstances of which only one is sufficient for the establishment of a more serious or minor form of the criminal offence.
(211) Decision no.66/16 of 23.09.2016
(212) Article 416 Paragraph 3 regarding Paragraph 1 of the Criminal Code
(213) However, in the continuation of the sentence, the court states the following: "..., as it does after a **legally** conducted proceeding, ...". It's probably a mistake and probably the court had in mind the proceedings after the main trial. Such formulation would indicate that this proceeding is illegal.
(214) Article 302 Paragraph 8 Item 5 of the Criminal Procedure Code stipulates that the court shall accept an agreement on the admission of guilt and render a decision which is in line with the contents of the agreement, if the sanction serves the purpose for which criminal sanctions are imposed.
(215) Article 32 of the Criminal Code prescribes the purpose of the punishment:
Within the general purpose of criminal sanctions (Art.4, para. 2), the purpose of a punishment shall be to:
1) prevent a perpetrator from commission of criminal offences and influence him not to commit criminal offences in the future;
2) influence others not to commit criminal offences;
3) express social condemnation of the criminal offence and emphasize that everyone has a duty to abide by law;
4) strengthen morality and promote social responsibility.
(216) Article 302 Paragraph 8 Item 5of the Criminal Procedure Code
(217) Decision no. 29/14 od 19.06.2015
(218) Decision no. 16/2015
(219) Decision no.138/16 of 14.11.2016
(220) On 16.12.2016
(221) Decision no.8/17 of 25.08.2017
(222) Article 416, Paragraph 3 in relation to paragraph 1 of the Criminal Code. Amendments to the 2011 Code prescribed an imprisonment sentence ranging from two to twelve years
(223) Article 112.

(224) Decision no.13/16 of 08.03.2016
(225) Committed by aiding
(226) Article 416 Paragraph 3 regarding Paragraph 1 of the Criminal Code
(227) President of the High Court in Podgorica Boris Savić
(228) Decision no.14/16 of 08.03.2016
(229) Article 416 Paragraph 3 regarding Paragraph 1 of the Criminal Code
(230) Decision no. 15/2014 of 11.09.2015
(231) Decision no. 19/2015
(232) Decision no. 68/16 of 26.07.2016
(233) Decision no. 3/15 of 13.05.2016
(234) Prescribed minimum is 2 years of imprisonment
(235) Article 48 Paragraph 1 and 2 Item 2 of the Criminal Code prescribes prounoncing of punishments for criminal offenses (where a perpetrator by one or more acts committed several criminal offences for which he is tried at the same time) the court shall increase the most severe punishment fixed, provided that the **cumulative punishment is shorter than the sum of individual punishments fixed.**
(236) Decision no. 100/16 of 26.09.2016
(237) Decision no. 71/16 of 12.10.2016
(238) Decision no. 189/15 of 16.05.2016
(239) Decision no. 47/16 of 14.06.2016
(240) Advisor for monitoring of investments and calculation of fees for development of construction land in the Secretariat for Investments and Development and a member of the Commission for determining the volume and value of works performed
(241) Article 416 Paragraph 3 regarding Paragraph 1 of the Criminal Code
(242) This verdict also does not contain any justification in the part that the agreement is in accordance with the interests of fairness and that the agreed sentence corresponds to the purpose of the punishment, but it is arbitrarily stated that the punishment is adequate to the level of guilt and criminal responsibility and that it will achieve the general purpose of the punishment. In this verdict as well, there is no assessment of other circumstances that the court under the Criminal Code has to take into consideration while determining the sentence, and the purpose of the punishment is completely ignored, which is the influence on others not to commit criminal offenses. In this verdict as well, the court did not take into consideration the fact that the gain obtained by the commission of the offense exceeded the statutory qualifying limit for the criminal offense of the most serious form of abuse of office, although in court paractice and the proper implementation of the law, this circumstance is considered aggravating. Finally, in this verdict as well, the court illegally states that it imposed the sentence in accordance with the provisions of the Criminal Code, although the court in these cases did not impose sentences, instead, the sentences were negotiated by the parties. The court states that the cccused admitted the commission of a criminal offense and contributed to the cost-effectiveness of the proceedings, that he is a family man, father of three children he is supporting, that he has not been convicted and that these are especially mitigating circumstances.
(243) Decision no. 48/16 of 04.08.2016
(244) Article 416 Paragraph 3 regarding the Paragraph 1 of the Criminal Code
(245) Article 49 Paragraph 5 of the Criminal Code
(246) In this verdict as well, the court did not take into consideration the fact that the benefit obtained by the commission of the offense exceeded the statutory qualifying limit for the criminal offense of the most serious form of abuse of office, but also the fact of the number of actions taken and persistence towards the commission of the criminal offense, although in court practice and proper implementation of the law these circumstances are considered decisively aggravating. In this verdict as well, the court illegally states that it imposed the sentence in accordance with the provisions of the Criminal Code, although the court in these cases did not impose sentences, instead, the sentences were negotiated by the parties.
(247) Special Prosecutor Saša Čađenović
(248) Decision no. 153/16 of 16.12.2016
(249) Article 52, paragraph 1 of the Criminal Code
(250) President of the High Court in Podgorica Boris Savić
(251) Article 112 of the Criminal Code
(252) Decision 14/16 of 08.03.2016
(253) Article 14
(254) Article 21 Paragraph 1
(255) Article 21 Paragraph 1 of the Law on Criminal Liability of Legal Entities
(256) Article 302, paragraph 8, item 4
(257) Article 301, paragraph 1
(258) Article 301, paragraph 2
(259) Decision no.3/15 (Article 3, paragraph 3)
(260) Statement by Dragan Krapović, the President of the Municipality Budva, Radio Television Budva on 09.02.2017 (https://www.youtube.com/watch?v=H2SQAG48fw8&t=247s)
(261) Decision 133/17 of 11.09.2017
(262) Article 14 of the Law on Criminal Liability of Legal Entities
(263) Article 14
(264) Decision no. 70/16
(265) This is an agreement concluded with Isat Boljević, President of the Board of Directors of Novi Duvanski kombinat, for the criminal offense of misuse of position in business activity.

(266) More details in the section C.3.1. i C.1.1.4.
(267) File no: Kvs. 46/16 of 07 June 2016
(268) Article 416, paragraph 3, in conjunction with paragraph 1 of the Criminal Code. Amendments to the Code from 2011 stipulate a sentence ranging from two to twelve years
(269) More details in section C.2.3.1.
(270) File no: KS 29/13 of 16 March 2015
(271) Article 272, paragraph 3 of the Criminal Code – more serious form of the criminal offense of misuse of position in business activity
(272) The judge Vesna Medenica
(273) Decision no: Kzu. 3/16 of 26 January 2016
(274) File no: Kt. 388/05 of 4 August 2005
(275) Indictment of the Basic State Prosecutor in Kotor no Kt. 388/05 of 4 August 2005
(276) Criminal offense of embezzlement under Article 420 of the Criminal Code
(277) File no: K. 437/05 of 8 December 2008
(278) Decision of the High Court in Podgorica no Kž. 517/09 of 30 April 2009
(279) Article 272, paragraph 3 of the Criminal Code
(280) Decision of the Basic Court in Kotor no Kv. 157/13 of 2 July 2013
(281) File no: KS 29/13 of 16 March 2015
(282) Judgment of the Appellate Court of Montenegro no Kž-S. 13/15 of 28 October 2015
(283) File no: Kž-S. 13/15 of 28 October 2015
(284) Judgement no Kžs. 16/2015 of 12 December 2016
(285) The judge Milić Međedović
(286) The judge Seka Piletić
(287) File no: KS.20/13
(288) Article 272, paragraph 1 of the Criminal Code
(289) Article 272, paragraph 3 of the Criminal Code

Chapter D

(1) "Official Gazette of Montenegro" no. 11/15 of March 12, 2015
(2) Article112 of the Law on Judicial Council and Judges
(3) 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.
(4) Article 114 Paragraph 1 and 2 of the Law on Judicial Council and Judges
(5) Article 114 Paragraph 4 of the Law on Judicial Council and Judges
(6) In addition to the President of the Court, the President of the directly superior court and the President of the Supreme Court
(7) Article 110 Paragraph 1 of the Law on Judicial Council and Judges
(8) Article 110 Paragraph 2 of the Law on Judicial Council and Judges
(9) Article 108 Paragraph 3 Item 3 of the Law on Judicial Council and Judges
(10) "Official Gazette of Montenegro" no. 13/08, 39/11, 31/12, 46/13 and 51/13
(11) Article 50
(12) Article 33a, 33b, 33v, 33g, 33d and 33e
(13) Article 51 of the Law on Judicial Council
(14) 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
(15) 03.2-2304/16 and Dp.no. 1/17
(16) Number: 03.2-2304/16 of June 09, 2016
(17) Dp.no. 1/17 of July 03, 2017
(18) http://sudovi.me/podaci/sscg/dokumenta/7800.pdf
(19) http://sudovi.me/podaci/sscg/dokumenta/5136.pdf
(20) 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)
(21) http://sudovi.me/podaci/pscg/dokumenta/3117.pdf
(22) http://sudovi.me/podaci/pscg/dokumenta/3118.pdf
(23) "Official Gazette of Montenegro" no. 11/15, 42/15, 80/17 and 10/18
(24) Article 112 Paragraph 1 of the Law on State Prosecutor's Office
(25) 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

(26) Article 114, Paragraph 1 and 2 of the Law on State Prosecutor's Office
(27) Article 114, Paragraph 5 of the Law on State Prosecutor's Office
(28) Article 110, Paragraph 1 of the Law on State Prosecutor's Office
(29) Article 110, Paragraph 4, 6 and 7 of the Law on State Prosecutor's Office
(30) Article 110, Paragraph 5 of the Law on State Prosecutor's Office
(31) " Official Gazette of Republic of Montenegro" no. 69/03 and "Official Gazette of Montenegro" no. 40/08, 39/11 and 46/13
(32) 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.
(33) Article 41.
(34) Article 44.
(35) 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.
(36) "Official Gazette of Montenegro" no. 67/15 of December 04, 2015.
(37) Article 19, Paragraph 8.
(38) Decision number: 05-1-37-2/18 of May 23, 2018.
(39) Article 16, Paragraph 1 of the Law on Free Access to Information
(40) 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.
(41) Decision number: 05-1-17-2/17 of April19, 2017
(42) 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. (43) http://www.tuzilastvocg.me/media/files/IZVJESTAJ%202017%20%20.pdf, page 17, The proceeding was initiated by the proposal of December 23, 2016.
(44) 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
(45) http://www.tuzilastvocg.me/media/files/izvjestaj%20o%20radu%20vdt%20za%202015-compressed.pdf, page 19

Chapter E

(1) Decision no.85/2010 of April 19, 2011
(2) Vesna Medenica
(3) http://sudovi.me/podaci/vrhs/dokumenta/1752.pdf
(4) Article 120
(5) Article 313
(6) Article 314
(7) Article 375
(8) Article 1 of the Rules of Procedure
(9) Decisions no 5498/13 of 30 December 2013, 5501/13 of 30 December 2013 and 1499/14 of 28 February 2014
(10) Judgement no. 187/14 of 7 October 2014
(11) The Administrative Court states that the Agency should, by law, judge on its own merits and not order the first instance body to submit the requested documents under the condition
(12) Decisions no V-SU 50/2013, 51/2013 and 52/2013 of 7 November 2013
(13) Article 203, paragraph 1
(14) Decisions no. 5255/13, 5256/13 and 5257/13 of 24 December 2013
(15) Judgement no U.96/14 of 7 October 2014
(16) The judge Boris Savić
(17) Among others: Decision noI SU. 76/18 of 30 May 2018
(18) Article 1 of the Law and Amendments to the Law on Free Access to Information
(19) File no Su VI 60/11 of 6 July 2011
(20) Article 1, paragraph 1
(21) Article 9, paragraph 1, item 1
(22) Among others: Decision no. UP II 07-30-2671-2/18 of 9 August 2018
(23) Decisions of the Agency of 15 November 2018
(24) Temporary security measures and tempory confiscation of movable property
(25) http://www.tuzilastvocg.me/
(26) Decision no Tu.spi.10/18 of 12 November 2018
(27) Pursuant to Article 16, paragraphs 2 and 3 of the Law on Courts a special department has been formed in the High Court in Podgorica, which judges in all proceedings for criminal offenses of high corruption
(28) Article 26, paragraph 2
(29) Decision of the Agency was delivered to MANS on 28 November 2018
(30) MANS's request of 29 November 2018

www.mans.co.me/pravosudje/

Network for Affirmation of NGO Sector - MANS
www.mans.co.me