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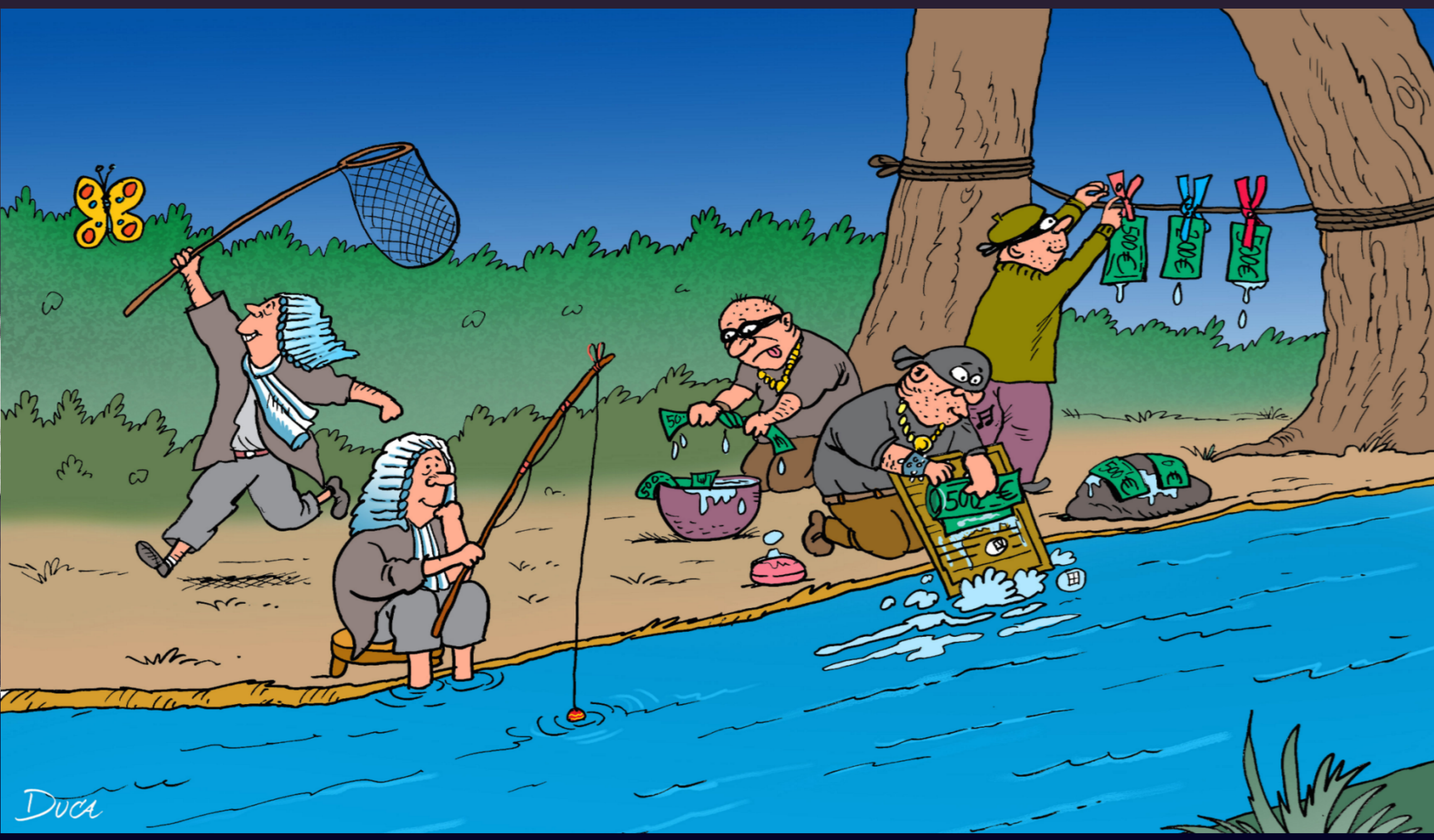
MONITORING REPORT VOL 3

MONEY LAUNDERING

Analysis of the final court verdicts (2013 - 2018)

September 2019



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Publisher:

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Author:

Veselin Radulović

Editor:

Vanja Ćalović Marković

Support:

Marijana Subotić

Translator:

Vanja Jančić

Contact:

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

CONTENT

INTRODUCTION

The aim of this document is to give a clearer picture of the results on judiciary in the fight against money laundering in Montenegro.

This document contains an analysis of the legal framework, statistics and final court verdicts for the criminal offense of money laundering, rendered in the period from 2013 to the end of 2018.

It contains information on the disciplinary responsibility of judges and prosecutors, especially those who have acted in these cases, and a separate chapter is devoted to the management of assets temporarily seized in these proceedings.

Finally, it presents problems regarding deletion of data relevant for the analysis based on the final court verdicts.

Methodology

As part of a project funded by the European Commission, MANS has collected all final court verdicts for crimes of corruption, money laundering and organized crime in which the Special Prosecutor's Office acted. The verdicts were taken from the websites of the Montenegrin courts, www.sudovi.me, and we have analyzed all the crimes classified by the judiciary and the prosecution within these categories.

Each case is entered into a specially designed database available at www.mans.co.me.

The charges against each person are ranked individually on the basis of the gravity of the crime committed and the consequences for the public interest, so cases are divided into big, medium and small ones. Thus, for example, smuggling of larger quantities of cocaine or heroin is ranked higher than smuggling excise goods. In the case of charges for organized crime, we analyzed whether the defendant was the mastermind or a member of the criminal organization, while in the case of money laundering, we analyzed the amounts, that is, the value of assets.

SUMMARY

Legal framework

Two years ago, amendments to the Criminal Code were adopted, which clearly stipulated that the existence of a criminal offense of money laundering did not require the existence of a conviction for the predicate crime from which that money originated. However, the old legal framework is still applied in the proceedings for criminal offenses committed before 2017, except in cases where the new law is more favorable for the offender.

Statistics

In the past six years, final verdicts have been published in seven money laundering cases, but only one of them was a conviction. One of the three convicted persons was sentenced above the legal minimum.

In two proceedings, the prosecution charged the accused of money laundering with organized crime. In four cases, the prosecution cited narcotics trafficking as a source of dirty money, economic crime in two cases, and corruption abroad in the third case.

The prosecution dropped charges in two-thirds of the money-laundering offenses that the defendants were charged with.

Case law

Due to the mistakes of the Special Prosecutor's Office and the Higher Court in Bijelo Polje, the defendants in the most important money laundering proceedings have been finally acquitted and can never be tried again for these crimes.

In only one case did the Special Prosecutor's Office confirm that it had the capacity to prove the offense of money laundering. In all other proceedings, it failed to provide evidence that the money originated from criminal offenses, and so the issue of the origin of the money was dealt with only after many years of trial.

The Special Prosecutors made other mistakes as well, and charged, among other things, the defendants with actions that were not prescribed as criminal offenses.

The Higher Court in Bijelo Polje confirmed the unlawful indictments, although it had an obligation to review them and return them for amendment. Such proceedings ended in acquittals, which entail the prohibition of retrial for these offenses.

The Court of Appeals, and later the Supreme Court, found that the judges of the Higher Court in Bijelo Polje did not know which version of the law to apply how to interpret it.

Responsibility of the judiciary

No prosecutor and no judge was held responsible for the omissions in the indictments that led to the acquittals, nor for the lack of promptness that caused the statute of limitations for criminal prosecution.

Prosecutors who made initial mistakes in the most important cases were not held responsible in disciplinary proceedings, but were promoted instead.

Asset management

The state budget will lose several million euros due to the mistakes in management of assets temporarily seized during the most important money laundering cases, ending in acquittals.

What is concealed?

Although all the trials were open to the public, the final verdicts generally included only the initials of the defendants, witnesses and court experts, but in some cases even the prosecutors who represented the indictments were hidden behind the initials.

In money-laundering proceedings, the names of the companies and banks that were used and even the names of the states and courts where the defendants were convicted were deleted.

In some cases, information about the amounts of money the prosecution claimed to have been laundered was deleted from the verdicts, which serves to determine what type of a criminal offense the defendants are charged with.

1. LEGAL FRAMEWORK

Two years ago, amendments to the Criminal Code were adopted, which clearly stipulated that the existence of a criminal offense of money laundering did not require the existence of a conviction for the predicate crime from which that money originated.

However, the old legal framework still applies in criminal proceedings instigated for criminal offenses committed prior to 2017, except where the new law is more favorable to the offender.

Already in 2008, Montenegro ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. [1] In Article 9, paragraph 5, of the Convention, it is explicitly stated that each Party shall ensure that a prior or simultaneous conviction for the predicate offense **is not a prerequisite** for a conviction for money laundering. **Only with the 2017 amendments** [2] did the Montenegrin Criminal Code fully comply with the provisions of that Convention.

The criminal offense of Money Laundering was first introduced in the Montenegrin Criminal Code in 2002, since 2003 it has been prescribed by Article 268 of the Criminal Code and amended three times in 2006, 2010 and 2017. All of these amendments complicated the court proceedings, as it was necessary to determine which law to apply in each individual case.

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[1] Montenegro ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism by the Law adopted on 29 July 2008, Official Gazette of MNE – International Agreements, no. 5/2008 dated 07 August 2008.
[2] Law on Amendments to the Criminal Code of Montenegro, Official Gazette of MNE no. 44/2017 dated 06 July 2017 – came into force on 14 July 2017. Article 24 amends Article 268 that prescribes the criminal offense of money laundering

Legal framework in force

With the 2017 amendments to the Criminal Code it is stipulated that the existence of a criminal offense of money laundering does not require the existence of a final conviction for a predicate crime.

With these amendments, the criminal offense of money laundering is described in the following way:

“Anyone who converts or transfers money or other property knowing that they are derived from criminal activity for the purpose of concealing or disguising the origin of the money or other property or who acquires, possesses or uses money or other property knowing at the time of receipt that they are derived from **criminal activity**, or who conceals or misrepresents the facts on the nature, origin, place of deposit, movement, disposal or ownership of money or of other property knowing they are derived from **criminal activity**”.

The following sanctions are prescribed for money laundering:
- For the basic form of that crime – six months to five years [3],
- value of money or assets exceeds 40,000 euro – from one to 10 years [4],
- offense commited by several persons associated to commit such crimes – from three to 12 years. [5]

The law in force prescribes the same penalties for money laundering in the case of convicts who have also committed the predicate crime, and those who did not participate in the illicit acquisition of the money they laundered. [6] The 2017 amendments to the Law specify that the person who helps the offender to avoid responsibility for the offense committed or to conceal the origin of the money or property will also be punished.

It also stipulates that anyone who could or should have known that money or property was derived from criminal activity will be punished for money laundering by a prison term of up to three years. [7]

The Criminal Code also stipulates that the money and property subject to the commission of the criminal offense of money laundering will be confiscated [8], and after the amendments in 2017, the CC provides a more precise definition of property. [9]

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[3] Paragraph 1 of Article 268
[4] Paragraph 3 of Article 268
[5] Paragraph 4 of Article 268
[6] Paragraph 2 of Article 268
[7] Paragraph 5 of Article 268
[8] Paragraph 6 of Article 268
[9] Paragraph 7 of Article 268

Previous legal framework

2002.

The criminal offense of Money Laundering was first introduced in the Montenegrin Criminal Code in 2002. It follows from the description of the offense in this Code that **there must exist a conviction for the predicate offense**:

“Anyone who invests, takes over, replaces or otherwise conceals, in the banking, monetary or other economic activity, the true source of money, that is, objects or rights acquired by money for which he knows that it was obtained through a **criminal offense**”. [10]

2003.

With the adoption of the 2003 Criminal Code, the first paragraph of that Article was amended and gave a somewhat more general description of the action of money laundering, but there still remained a mandatory **condition for the prosecution to prove the predicate crime**:

„Anyone who conceals, through banking, financial or other economic activity, the means of obtaining money or other property known to have been obtained through a criminal offense“.

2006.

The next amendment to the law specifies the value of **over 40 thousand euros** as the one that constitutes a more serious form of a criminal offense. Prior to that, Paragraph 3 stipulated that money or property must be of „high value“.

Paragraph 5, which generally prescribed criminal liability of the person who committed the offense out of negligence, was also amended. The 2006 amendments specify the criminal liability of the perpetrator, “and he could and should have known that money or property constituted proceeds of crime”. Thus, it is specified that **negligence** refers to **only one characteristic of the crime** – the knowledge that money or property was obtained through criminal activity, because the crime of money laundering itself cannot be committed out of negligence.

[10] Article 129a of the 2002 Criminal Code

2010.

The 2010 amendments to the Criminal Code change the description of this crime [11] and define it in three forms:

- conversion or transfer of money or property;
- acquisition, possession or use of money or property; and
- concealing or misrepresenting facts about money or property.

With the 2010 amendments, it is stipulated for the first form of this offense (conversion or transfer) that it is money or property **obtained through criminal activity**, while for the other two forms of the offense it was prescribed that it is money or property **obtained or derived from a criminal offense**.

These amendments to the Criminal Code use for the first time the term "criminal activity" through which money or property should have been obtained. In that case, for the first form of the offense, there is no need to have a conviction for a predicate crime.

For the other two forms of the offense, the CC still stipulates that money or property must be obtained through a criminal offense, which implies the existence of a conviction, since the crime can only be proven in this way.

This amendment is less favorable for the defendants who committed the crime of money laundering via conversion or transfer of money or property, as they can be convicted even if there is no conviction for the predicate crime from which the money originated.

[11] Criminal Code, Article 268, Paragraph 1

The 2010 amendments reduced maximum stipulated sanctions for the persons convicted of money laundering who commited the predicate offense, from eight to five years.

Before these changes, persons convicted of money laundering who participated in the commission of the crime by which they acquired the money could be sentenced to a prison term ranging from one to eight years.

The **2010 amendments** stipulated the same sanctions for those offenders as for the ones who did not participate in the illicit acquisition of money - **from six months to five years in prison**. [12]

Provision of the 2010 Law, which is still in force, is more favorable for persons accused of money laundering who have committed the predicate crime through which that money was obtained.

The table below gives an overview of amendments to the legal framework that criminalizes money laundering.

This criminal offense was prescribed for the first time in 2002, amended in 2003 when the Criminal Code was adopted, and amended again in 2006, 2010, and, finally, in 2017.

[12] Paragraph 2 of Article 268 of the Criminal Code

Changes in the legal framework for the criminal offense of money laundering

CC in force (amended in 2017)	Amendments (2010)	Amendments (2006)	Basic (2003)	Previous CC (2002 - Article 129a)
(1) Anyone who converts or transfers money or other property knowing that they are derived from criminal activity for the purpose of concealing or disguising the origin of the money or other property or who acquires, possesses or uses money or other property knowing at the time of receipt that they are derived **from criminal activity,** or who conceals or misrepresents the facts on the nature, origin, place of deposit, movement, disposal or ownership of money or of other property knowing they are derived from **criminal activity** shall be punished by a prison term from **six months to five years.** **It is not necessary to have a final conviction for the predicate crime!**	(1) Whoever **converts or transfers money or other property while aware that it was obtained via criminal activity**, with the intention of concealing or misrepresenting the origin of money or other property, or who **acquires, holds or uses money or other property while aware at the time of receipt that it originated from a criminal offense**, or who **conceals or misrepresents** facts regarding the nature, origin, place of deposit, movement, disposal or ownership of money or other property **aware that it was obtained through a criminal offense** shall be punished with a prison term ranging from six months to five years. **It is not necessary to have a final conviction for the predicate crime just for the transfer and conversion of money!**	No changes	(1) **Anyone who conceals, through banking, financial or other economic activity, the means of obtaining money or other property known to have been obtained through a criminal offense** shall be punished with a prison term ranging from six months to five years.	(1) Anyone who **invests, takes over, replaces or otherwise conceals**, in the banking, monetary or other economic activity, **the true source of money**, that is, objects or rights acquired by money for which **he knows that it was obtained through a criminal offense, shall be punished with a prison term ranging from six months to five years.**
(2) **The sanction referred to in Para. 1 of this Article** shall be imposed on the perpetrator of this offense, who is also the perpetrator or accomplice in the crime through which money or property referred to in Para. 1 of this Article was obtained, or the person who assists the perpetrator to avoid liability for the committed offense, or takes action with the same goal in order to conceal the origin of money or property referred to in Para. 1 of this Article.	**(2) The sanction referred to in paragraph 1 of this Article** shall be imposed on the perpetrator of the offense referred to in Paragraph 1 of this Article if he is also the perpetrator or accomplice in the criminal offense through which the money or property referred to in Paragraph 1 of this Article was obtained. **Punishment reduced from 1 to 8 years, to a range from six months to 5 years!**	No changes	No changes	(2) If the perpetrator of the offense referred to in Paragraph 1 of this Article is also the **perpetrator or accomplice in the crime through which the money or financial benefit** referred to in Paragraph 1 of this Article **was obtained, he shall be punished with the prison term from one to eight years.**
(3) Where the amount of money or value of the property referred to in Paras. 1 and 2 of this Article exceed forty thousand euros, the perpetrator shall be punished by a prison term from **one to ten years.**	No changes	(3) Where the amount of money or value of the property referred to in Paras. 1 and 2 of this Article **exceed forty thousand euros**, the perpetrator shall be punished **by a prison term from one to ten years.**	No changes	(3) If the money or property referred to in Paras. 1 and 2 of this Article is of a **big value**, the perpetrator shall be punished with a **prison term from one to ten years.**

CC in force (amended in 2017)	Amendments (2010)	Amendments (2006)	Basic (2003)	Previous CC (2002 - Article 129a)
(4) Where the offences under Paras. 1 and 2 of this Article were committed by several persons who associated for the purpose of committing such offences, they shall be punished by prison term from **three to twelve years.**	No changes	No changes	No changes	(4) If the offenses referred to in Paras. 1 and 2 of this Article are commited by **several persons who associated** for the purpose of committing such offenses, they shall be punished with a prison term ranging **from three to twelve years**.
(5) Anyone who commits the offence under Paras. 1 and 2 above and could have known or should have known that the money or property was derived from criminal activity, shall be punished by a prison term of **up to three years**.	No changes	5) Anyone who commits the offence under Paras. 1 and 2 above and **could have known or should have known** that the money or property constitutes proceeds of crime, shall be punished with a prison term of **up to three years.** **The person who could have and should have known will be punished!**	No changes	(5) If the offense referred to in Paras. 1 and 2 of this Article was **committed out of negligence**, the perpetrator shall be punished with a prison term of **up to three years**.
(6) Money and property referred to in Paras. 1, 2 and 3 above shall be confiscated.	No changes	No changes	No changes	(6) Money and property referred to in Paras. 1, 2 and 3 of this Article shall be confiscated.
(7) **Property**, for the purpose of this Article, means **property rights of any kind,** irrespective of whether they are relating to tangible or intangible property, movable or immovable property, securities and other documents proving property rights. **Definition of property included!**	No changes	No changes	No changes	Not prescribed

Table 1: *Amendments to the legal framework for the crime of money laundering (Article 268 of the Criminal Code (CC) / Article 129a of the previous CC)*

2.

STATISTICS ANALYSIS

In the past six years, final verdicts have been issued in seven money laundering cases, and only one was a conviction.

Only one of the three convicted persons was sentenced above the legal minimum.

In two proceedings, the prosecution charged the accused of money laundering with organized crime as well.

According to the prosecution, in four cases the source of dirty money was narcotics trafficking, in two economic crimes, and in the third, corruption by a foreign national.

The prosecution dropped charges in two-thirds of the cases where it charged persons with money-laundering offenses.

In six years, final court verdicts have been issued in seven cases, in which 23 persons have been charged with 33 criminal offenses of money laundering.

Only one of those verdicts was a conviction, resulting in three persons being convicted of money laundering.

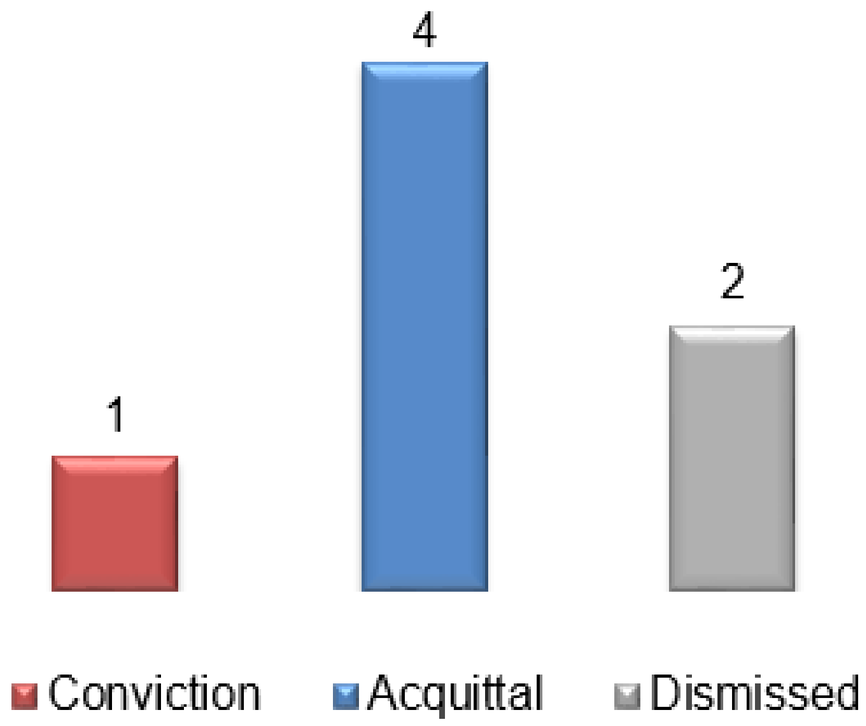
Seven persons, in four cases were acquitted.

In two cases, dismissal judgments were issued, because the prosecutor dropped charges (12 persons), or because of the statute of limitations (one person).

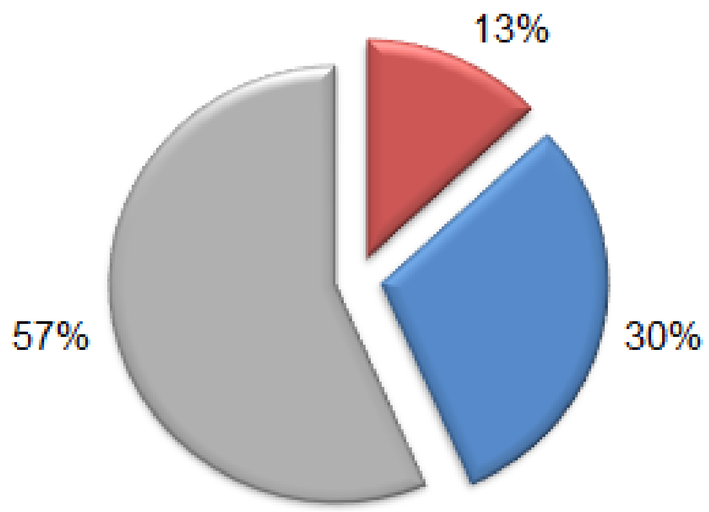
Prosecution managed to prove only 9% of money laundering offenses that it charged the defendants with.

In as many as 70% of offenses the judgment on dismissal was issued, mostly because the prosecutor dropped charges.

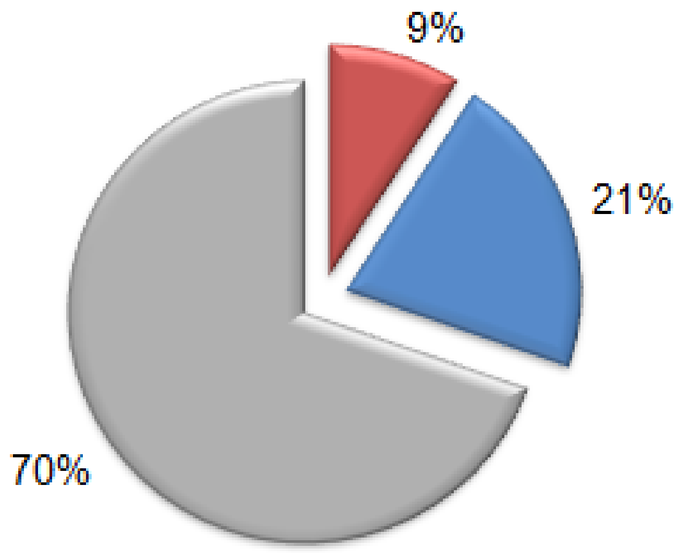
By cases



By persons



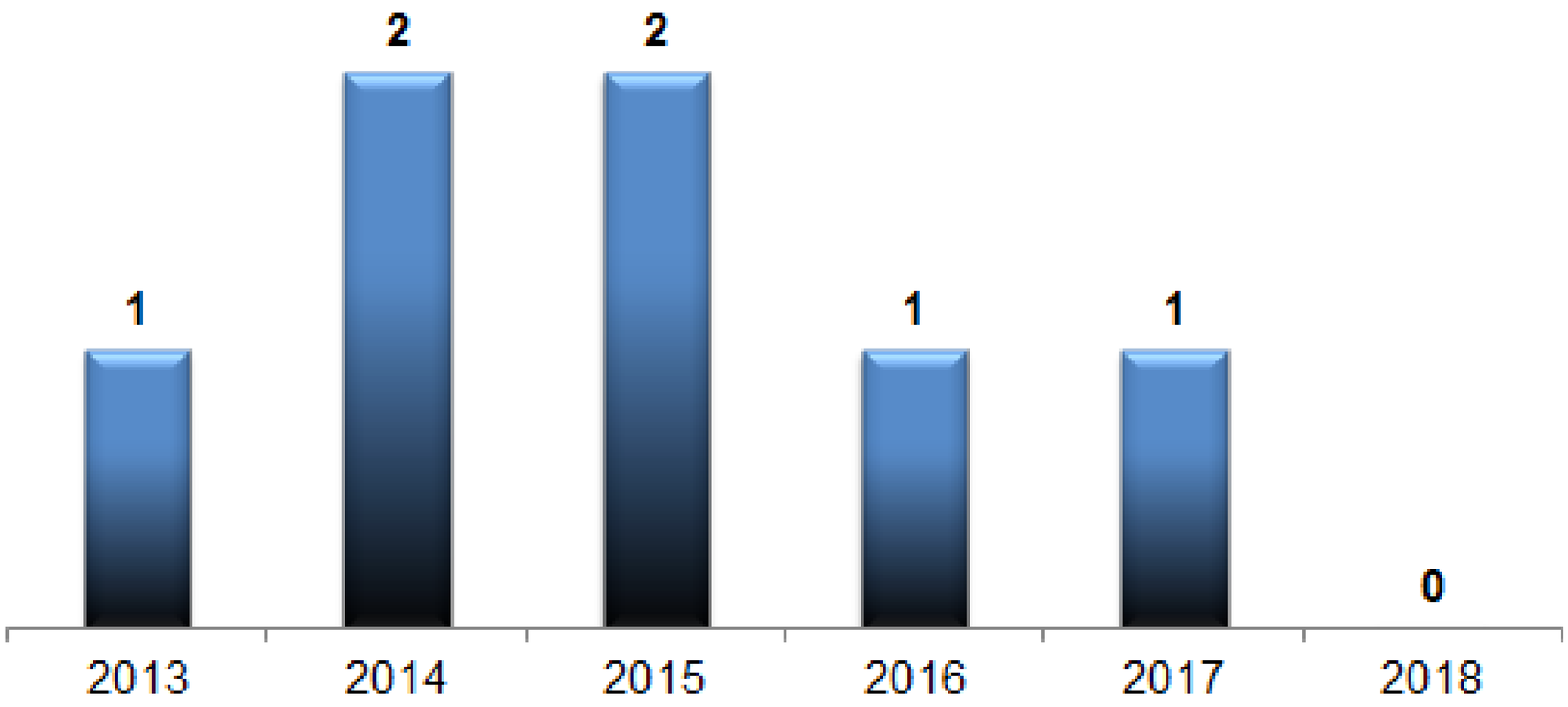
By type of offense



Graphs 1, 2 i 3:
Final verdicts for money laundering 2013 – 2018

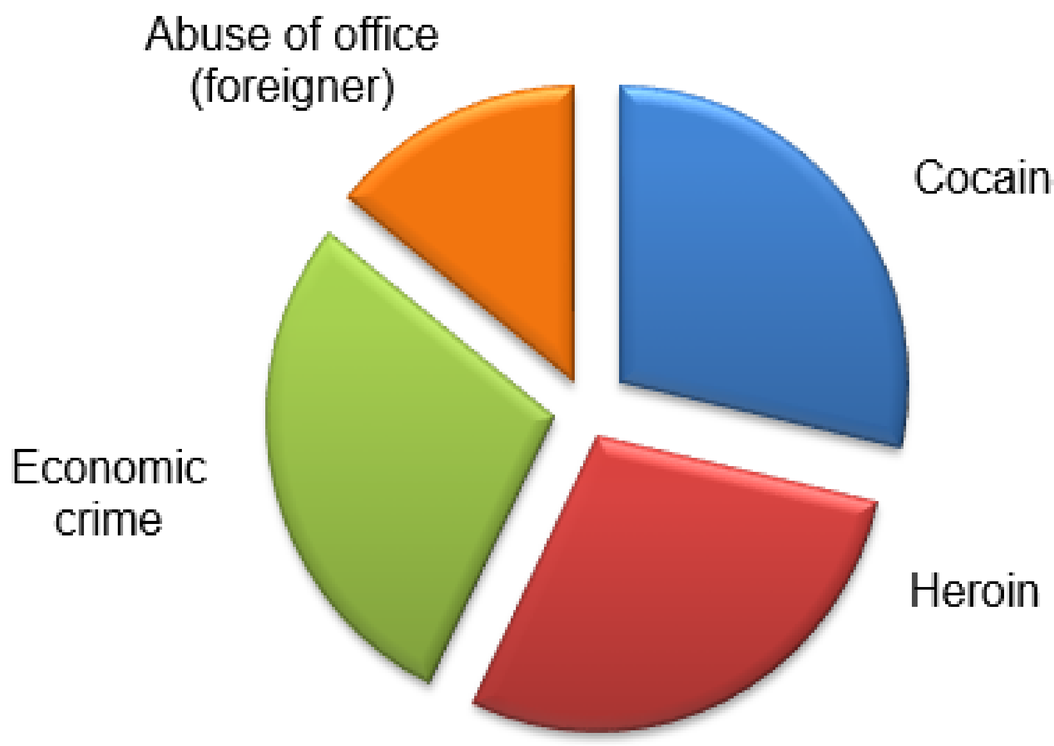
The number of final verdicts for money laundering is dropping, so there was no such verdict during the previous year.

Only one verdict was rendered in each 2016, and 2017.



Graph 4: *Number of final verdicts for money laundering by years*

According to the indictments, **in four cases the source of the money was narcotics smuggling**, cocaine in two, and heroin in two. In the remaining three cases, money was obtained from economic crime and smuggling, i.e. from the abuse of office by a foreign citizen.



Graph 5: *Sources of money stated in indictments, by cases (2013 – 2018)*

In just two cases the prosecution charged the accused of money laundering with organized crime as well. [13]

In three cases, the prosecution charged the defendants with Paragraph 4 of the relevant Article, that is, money laundering committed by several persons who had conspired to commit such acts. [14] However, in the case against Kalic, the prosecution did not charge the defendants with organized crime, unlike the other two cases. [15].

In three cases the prosecution charged the defendants with having laundered large sums of money (paragraph 3), while in only one case did the prosecutor prosecute the defendant under paragraph 2, claiming that he had also committed a predicate crime.

Considering the structure of the defendants and the gravity of the charges, **in the past six years verdicts were rendered in two major cases, three medium importance cases and two minor cases**.

Case	No of persons accused of money laundering	Para. in CC	Are they accused of organized crime	Source of money	Level	Final verdict
Kalic	3	4	No	Heroin	High	Acquittal
Saric	2	4	Yes	Cocaine	High	Acquittal
Simonovic	1	3	No	Cocaine	Medium	Acquittal
Trading in shares	12	4	Yes	Economic crime	Medium	Dismissal (charges dropped)
Fuel smuggling	3	3	No	Economic crime	Medium	Conviction
Hot	1	2	No	Heroin	Low	Dismissal (statute of limitation)
Foreign citizen	1	3	No	Abuse of office	Low	Acquittal

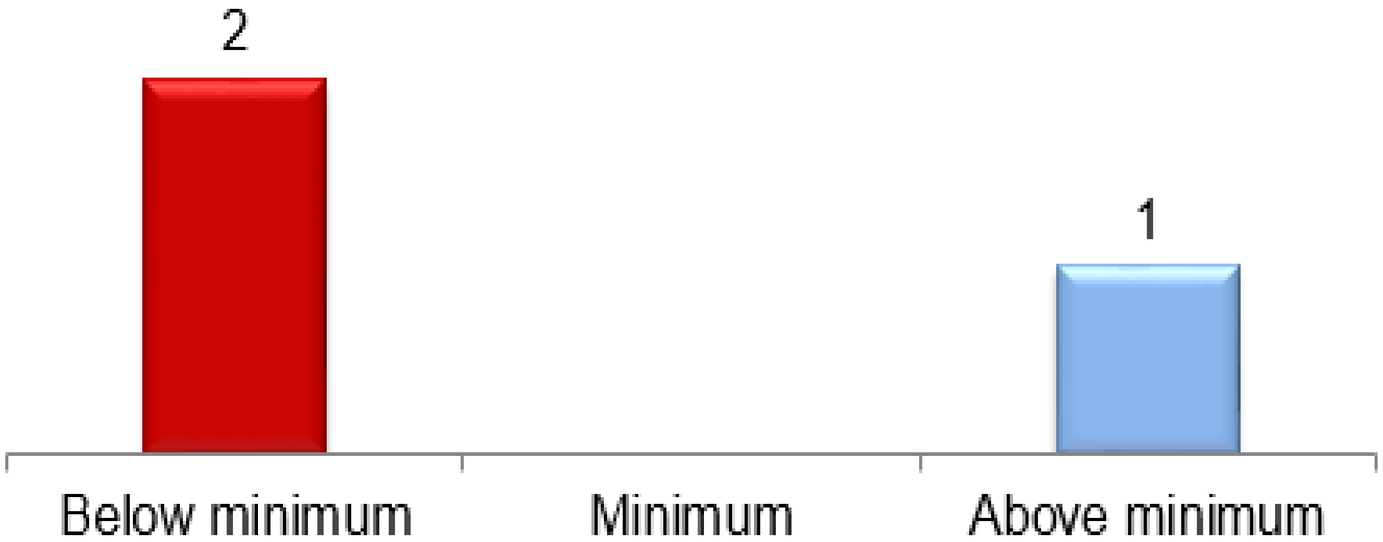
Table 2: *Overview of final verdicts for money laundering (2013 – 2018)*

[13] Crimes 401 criminal association or 401a establishment of a criminal organization
[14] Paragraph 4 of Article 268
[15] Saric was charged by the prosecution for the establishment of a criminal organization (401a), the defendants in the case related to trading in shares were charged with criminal association (401), and the defendants in the Kalic case were only charged with money laundering.

Out of the three sentences pronounced for money laundering, only one was above the legally prescribed minimum.

In only one case there was a convicting verdict rendered against three persons accused of laundering large sums of money (paragraph 3). The minimum sentence for this type of criminal offense of money laundering is one year in prison.

The courts **sentenced** one convicted person to one and a half years in prison, and two persons were sentenced to six months in prison each.



Graph 6: *No of persons convicted of money laundering by sanction compared to the legally prescribed minimum (2013 – 2018)*

3.

ANALYSIS OF COURT VERDICTS

Due to the mistakes of the Special Prosecutor's Office and the Higher Court in Bijelo Polje, the defendants in the most important money laundering proceedings have been finally acquitted and can never be tried again for these crimes.

In the last six years, **it was only in one case that the Special Prosecutor's Office confirmed that it has the capacity to prove a criminal offense of money laundering**.

In all other proceedings, that **Prosecutor's Office failed to provide evidence that the money came from criminal offenses**, and dealt with the issue of money laundering only after many years of trial.

The Special Prosecutors made a number of other mistakes in the most important cases brought before the Montenegrin judiciary and, among other things, charged the defendants with **acts that were not prescribed as criminal offenses**.

The Higher Court in Bijelo Polje upheld such indictments, although it had an obligation to review and return them for amendment. Thus, the court allowed the continuation of proceedings on unlawful indictments, which resulted in final acquittals, which entail the **prohibition of retrial for these offenses**.

The Court of Appeals, and later the Supreme Court, found that the judges of the Higher Court in Bijelo Polje did not know **which law to apply and how to interpret it**.

3.1. The most important omissions of the judiciary

The defendants in the most important money laundering proceedings have been finally acquitted, and they can never be tried again for these crimes.

Such verdicts were rendered due to the omissions of the Special Prosecutor's Office and the Higher Court in Bijelo Polje, as noted by the Court of Appeals and confirmed by the Supreme Court.

The first case concerns the Montenegrin branch of the so-called “Balkan Warrior”, that defendants Dusko Saric and Jovica Loncar belong to, while the defendants in the second case are Safet Kalic, his brother and wife.

Money laundering charges in the case of Saric and Loncar were dropped because neither the first instance court nor the prosecutor engaged in establishing its origins.

They were also acquitted with a final court verdict of charges of organized crime and trafficking of cocaine because they were charged by the Special Prosecutor with actions that did not constitute criminal offenses under the Criminal Code.

The Higher Court in Bijelo Polje upheld the unlawful indictment by the Prosecution despite its legal obligation to review it, and issued three unlawful verdicts, showing it was unable to determine which law to apply.

In the case of Kalic, the Special Prosecutor's Office filed an indictment for the criminal offense of Money Laundering without a single piece of evidence that the money came from a criminal offense.

The court upheld such an indictment, instead of returning it to be amended. Thus, the Higher Court in Bijelo Polje enabled the continuation of the proceedings on the unlawful indictment, which ultimately led to the acquittal, but also the prohibition of retrial for this offense.

It was found during the court proceedings that € 3.5 million had no origin, but the prosecution did not provide any evidence that the money came from a crime.

Case study 1:
Montenegrin branch of the “Balkans Warrior”

This case study refers to one of the most important criminal proceedings instigated in Montenegro.

The first defendant in the case is Dusko Saric, the brother of Darko Saric, whom police and judicial authorities in several countries consider to be the main drug lord and organizer of cocaine trafficking from South America to Europe, in the case known as the “Balkan Warrior”. While Darko Saric is being tried in Serbia for criminal offenses of international cocaine trafficking and money laundering, his brother is acquitted with the final verdict of the court in Montenegro.

In this case Dusko Saric was charged with cocaine trafficking and laundering of more than EUR 21 million obtained from cocaine trafficking, as a member of a criminal organization organized by his brother Darko, and together with the defendant Jovica Loncar and other members of the organization. [16]

The omissions of the Special Prosecutor’s Office and the Higher Court in Bijelo Polje enabled the organized crime actors to be acquitted, without the possibility of ever being tried again for those offenses.

The proceedings ended seven years after the indictment was filed, and Saric and Loncar were acquitted of all charges with the final verdicts of the Court [17] and the Court of Appeals. [18] They are acquitted of the charges for organized crime and cocaine trafficking because the Special Prosecutor and the Higher Court in Bijelo Polje have charged them with actions that do not constitute criminal offenses according to the Criminal Code, and the charges for money laundering failed because during the proceedings neither the court, nor the prosecutor engaged in establishing its origin.

The Higher Court in Bijelo Polje upheld the apparently unlawful indictment, despite the legal obligation to control it, and rendered three unlawful verdicts, showing that it was unable to determine which law to apply.

Having in mind that the special prosecutors and the Higher Court judges should be among the most competent staff in the judiciary, the possibility that there exists such a degree of ignorance and incompetence at that level is almost fully excluded. For that reason, the omissions in this case raise serious doubts about the abuse of office by the Special Prosecutor’s Office and the Court.

The proceedings against Dusko Saric and Jovica Loncar were instigated in 2011. In the indictment of the Special State Prosecutor [19] Saric is charged with the commission of three criminal offenses:

A. Establishment of a Criminal Organization,
B. Unauthorized Production, Possession and Distribution of Narcotics (more than 260 kg of cocaine), and
C. Money Laundering in the amount of EUR 21,353,879.22 obtained through the sale of cocaine, (continued criminal offense, committed together with the other defendant Jovica Loncar).

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[16] Soković Goran, Vujanović Željko, Pandrc Marko, Nedić Boško, Novaković Nenad, Vuković Draško, Tošić Darko, Vorotović Marko, Pavlović Nikola, Labudović Dragan, Rakić Dejan, Pandrc Miloš, Cajić Miloš, Adamović Radan, Krpović Miloš, Joksović Nebojša, Tunjić Borislav, Knežević Mirko, Nikolić Miloš, Bajić Vitomir, Bulajić Marko, Crljen Srećko, Crljen Vladimir, Dimitrijevič Nenad, Dimitrijević Nikola, Đorđević Zlatko, Gaćeša Dragan, Kapetanović Božidar, Klisura Srpko, Milovac Milan, Sibinski Živko, Dudić Dragan
[17] Kž.I no.2/18 dated 06.03.2018.
[18] Kžs.no.83/12 dated 08.03.2013. and Kž.no.66/15 dated 27.09.2017.
[19] Kt-S.no. 7/10-2 dated 14.05.2011.

Special Prosecutor, Djurdjina Ivanovic, drafted the indictment in a way that ultimately had to result in the acquittal. The prosecutor charged the defendants with an offense which was not stipulated as a criminal offense at the time of commission, that is, with an action that did not correspond to the description of any criminal offense.

Such an indictment was confirmed by the panel of judges of the Higher Court in Bijelo Polje, headed by Sefkija Djesevic, as the President of the Panel, and Vukomir Boskovic and Jokan Varagic, as members of the Panel. Thanks to their decision to confirm an unlawful indictment, the defendants can never be tried again for these criminal offenses.

The text that follows contains an overview of verdicts for each of the three criminal offenses that Saric was charged with.

A. Organized crime

Charges for a criminal offense that is not stipulated in the law

Organized Crime is first defined in the procedural code (CPC), with the provisions that were applied to every offense committed in an organized manner,[20] while it has been stipulated as a separate criminal offense, Establishment of a Criminal Organization, with the amendments of the Criminal Code in 2010. [21]

As the Criminal Code cannot be applied retroactively, except when it is more favorable for the defendant, the state prosecutor cannot charge the defendants with the criminal offense of establishment of a criminal organization for offenses committed prior to the 2010 amendments to the Criminal Code. In such cases, the prosecutor is obliged to refer in the indictment to the provision of the CPC, with the explanation that a criminal offense was committed in an organized manner.

However, in this case [22] the Special Prosecutor charged Defendant Saric with the criminal offense of establishment of a criminal organization for actions committed in the period from 2007 to 2009, that is, prior to coming into effect of amendments to the Criminal Code in which that offense is stipulated.

Such an omission of the Special Prosecutor had to result in the failure of the indictment.

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[20] Article 22, Item 8 of the Criminal Procedure Code
[21] Article 401a of the Criminal Code
[22] Verdict number Ks. no. 3/11 dated 03.05.2012., Indictment number Kt-S.no.7/10-2 filed on 14 May 2011, which was represented by the Special Prosecutor Djurdjina Ivanovic

Higher Court confirmed the indictment for a non-existent criminal offense

After its filing, the indictment is submitted to the Court to control and confirm it, and the Court schedules a hearing to review and assess the legality and justification of the indictment. [23] If it is established, during the course of control of the indictment, that the act that the act the defendant is charged with is not a criminal offense, the court must discontinue the criminal proceedings. [24]

However, the Higher Court in Bijelo Polje did not suspend the proceedings, but confirmed the indictment, despite the fact that the Special Prosecutor charged the defendants with the act that did not constitute a criminal offense at the time when it was committed.

Thus the Court allowed for the continuation of the proceedings based on an unlawful indictment, which resulted in the acquittal, as well as the prohibition of retrial for the same offense. Namely, **had the Higher Court in Bijelo Polje acted in line with the law and discontinued the criminal proceedings, the defendant could have been tried for this criminal offense in a new trial**, because the prohibition of retrial does not refer to cases that were discontinued with the final decision of the Court. [25]

In the first verdict in this case,[26] the Higher Court in Bijelo Polje **acquitted** Defendant Saric, concluding that there is **no evidence** that the defendant committed the crime of Establishment of a Criminal Organization.

Acquittal by the Court of Appeals

Almost two years after the filing and confirmation of the unlawful indictment, the **Court of Appeals** of Montenegro [27] **acquitted** Defendant Saric of this offense, but on other grounds – because **at the time of commission the offense he was charged with was not stipulated in the law**.

The Court of Appeals of Montenegro called exactly upon the principle of legality, noting that the criminal offense of establishment of a criminal organization was incriminated as a criminal offense only with the amendments to the Criminal Code in 2010, while the indictment states that the time of commission of the crime was in the period from October 2007 to May 2009.

The Court of Appeals concluded that with such an indictment, this criminal offense could not have been subject to evidentiary proceedings and that the defendant is acquitted because the act he is charged with did not constitute a criminal offense according to the law in force at the time of commission.

Thus, Saric was acquitted on the charges for organized crime on the legal basis that is most favorable for the defendant and that stipulates that the act he is charged with is not a criminal offense. [28]

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[23] Article 293 of the Criminal Procedure Code
[24] Article 294, Paragraph 1, Item 1 of the Criminal Procedure Code
[25] Article 6 of the Criminal Procedure Code stipulates that no person will be tried again (Ne bis in idem) for a criminal offense s/he has already been acquitted of by a final judgment, while Article 36 of the Constitution of Montenegro stipulates that no person can be tried again or convicted again for the same punishable act.
[26] Ks.no. 3/11 dated 03.05.2012.
[27] Zoran Smolovic, President of the Panel, Ratko Cupic and Dragisa Rakocevic, members of the Panel
[28] Verdict Kzs.no.83/12 dated 08.02.2013.

B. Cocaine trafficking

Indictment for the action that does not correspond with the description of the criminal offense

In the indictment, Saric is also charged with the criminal offense of Unauthorized Production, Possession and Distribution of Narcotics, that is, of more than 260 kilograms of cocaine.

However, with regard to this criminal offense, the indictment states the action that does not correspond to the description of that criminal offense in the Criminal Code.

The Criminal Code defines the action through which the criminal offense of Unauthorized Production, Possession and Distribution of Narcotics is described alternatively as follows:

1) Unauthorized production, processing and sale;
2) Purchase, possession or transport for sale;
3) Mediation in sale or purchase, and
4) Any other act of unauthorized release into circulation of narcotic drugs. [29]

However, the Special Prosecutor did not charge Defendant Saric with any of the stipulated actions of this criminal offense. Saric was not charged with unauthorized production, processing and sale, nor with the purchase, possession or transport for sale, nor with mediation in sale or purchase, nor with any other act of releasing narcotics into circulation, as defined in the description of this criminal offense in the Criminal Code.

Instead, the Court of Appeals found that the Special Prosecutor in its indictment, and the Higher Court in Bijelo Polje in its first instance verdict against Saric, charged him with actions that do not constitute a criminal offense. In the verdict of the Court of Appeals [30] it is stated as follows:

*"...From the aforementioned description of facts it can be concluded that the actions taken by Defendant Dusko Saric in relation to sale of 27 kg and 20.658 grams of cocaine were the ones where he **was in Livigno** at the time when sale of cocaine took place, and two days prior to detection of perpetrators who sold narcotics, **he left Milan and came to Belgrade**".*

In the same verdict, the Court of Appeals also states as follows:

*"...As for the description of facts regarding **issuance of orders** through telephone communication, this part related to **actions taken following the commission of the crime**, which was committed by the members of the group in Livigno..."*

Thus, the prosecutor charged Defendant Saric with staying in particular locations during the sale of cocaine and giving certain orders to other members of the criminal organization via telephone, however, for actions taken **after** the commission of the criminal offense in relation to sale of cocaine. As these are actions that do not fall under any of the actions stipulated in the Criminal Code as a criminal offense of Unauthorized Production, Possession and Release into Circulation of Narcotic Drugs, Saric had to be acquitted of these charges.

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[29] Article 300, Paragraph 1 of the Criminal Code of Montenegro
[30] Kzs.no.83/12 dated 08.02.2013.

The Higher Court confirmed the indictment for actions that do not constitute a criminal offense

The Criminal Procedure Code stipulates that the indictment must contain, inter alia, description of the actions from which legal characteristics of a criminal offense stem from. [31] Thus, the offense that the defendant is charged with must correspond with the legal description of the action that constitutes a criminal offense.

In case that the indictment contains some mistakes or shortcomings regarding the description of offense that the defendant is charged with, the court is obliged to sent the indictment back to the prosecutor to correct the shortcomings and file a corrected indictment within three days. [32]

Still, the Higher Court in Bijelo Polje did not act in line with the law, but confirmed the indictment in this part, with obvious shortcomings, and allowed for the continuation of proceedings, which also resulted in an acquittal and prohibition of retrial for cocaine trafficking.

Acquittal by the Higher Court

In the first verdict in this case,[33] the Higher Court in Bijelo Polje acquitted Defendant Saric of guilt for this offense, concluding that there is no evidence that the defendant committed the crime of Unauthorized Production, Possession and Release into Circulation of Narcotic Drugs.

Thus, the Special Prosecutor in its indictment and the Higher Court in Bijelo Polje in the first instance verdict,[34] described the criminal offense committed by Defendant Saric as his stay in a particular location at the time of sale of cocaine and leaving one location and moving to another prior to detection of offenders who were engaged in selling drugs, as well as giving particular orders to other members of the criminal organization via telephone, but regarding actions taken after the commission of crime in relation to the sale of cocaine.

Acquittal by the Court of Appeals

Just as in the case of the charges for organized crime, the Court of Appeals of Montenegro, in the same verdict [35] reversed the first instance verdict and acquitted Defendant Saric of the criminal offense of Unauthorized Production, Possession and Release into Circulation of Narcotic Drugs, again on grounds that are most favorable for the defendant, that is, based on the conclusion that the action he is charged with does not constitute a criminal offense according to the law, because it does not contain the necessary elements of that criminal offense as described in the Criminal Code.

Stay in a particular location, leaving one location and moving to another and giving orders for actions after the sale of drugs do not constitute any of the actions described in the Criminal Code as the ones by which the criminal offense of Unauthorized Production, Possession and Release into Circulation of Narcotic Drugs is committed.

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[31] Article 292, Paragraph 1, Item 2
[32] Article 293, Paragraph 6 of the Criminal Procedure Code
[33] Ks.no.3/11 dated 03.05.2012.
[34] Ks.no.3/11 dated 03.05.2012.
[35] Kžs.no.83/12 dated 08.02.2013.

C. Money laundering

In relation to the charges for this criminal offense, three trials were held before the Higher Court in Bijelo Polje, because the Court of Appeals vacated its verdicts. Finally, after the third verdict of the Higher Court, the Court of Appeals held a hearing and rendered a verdict that was confirmed by the Supreme Court.

First trial: Which law does the court apply?

With the indictment of the Special Prosecutor, Saric and Loncar were charged with allying via banking and financial operations to conceal the manner of obtaining money that they knew was obtained through crime of Unauthorized Production, Possession and Release into Circulation of Narcotic Drugs.

In the period that the prosecution stipulated as the time of commission of the offense of money laundering, the Criminal Code was amended twice, in 2008 and in 2010; and with the 2010 amendments, it was exactly the description of this criminal offense that was changed. [36]

With the first verdict [37] in this case, the Higher Court in Bijelo Polje convicted Defendant Saric to **eight years in prison**, and Defendant Loncar to **six years in prison** for the criminal offense of Money Laundering.

In its verdict, the Court specified the time of commission of the offense to be the period from 24 July 2007 to the end of 2010, although the indictment specifies a different time period, from 24 December 2007 to the end of 2010. However, the court did not specify any act of the defendants in 2010, but stated that the last act was committed on 30 December 2009.

The verdict of the Higher Court in Bijelo Polje does not specify which law was applied by the court, thus, **this verdict was vacated as incomprehensible by the verdict of the Court of Appeals of Montenegro, and the case was sent back for retrial.** [38]

Namely, the Higher Cout in Bijelo Polje did not state clearly the time when the offense was committed, that is, it remained unclear whether this offense was committed in late 2009 or in late 2010. This fact determines which law is to be applied, because the 2010 amendments to the Criminal Code amended the description of the criminal offense of Money Laundering.

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[36] Before these amendments, the description of this criminal offense stated that the offense was committed by the person who concealed the manner of obtaining money or other assets for which he knew that they were obtained through a criminal offense, via banking, financial or other business operation.
The description of this criminal offense in the Criminal Code from 2010 involves three different forms:
- conversion or transfer of assets;
- obtaining, possessing or using assets, and
- concealing or falsely presenting facts about property

[37] Ks.no. 3/11 dated 03.05.2012.
[38] Kžs.no.83/12 dated 08.02.2013.

Second trial:
Wrong law, there is no predicate criminal offense

In the retrial, following the evidentiary proceedings, the prosecutor changed the description of facts regarding the time when the crime of money laundering was committed, by specifying a shorter period of time in the indictment, from 24 December 2007 until the end of 2009.

With the new verdict in the Higher Court in Bijelo Polje [39] Defendants Saric and Loncar were convicted again an the court sanctioned them with **five years and six months in prison**.

Still, in this verdict again the court made the mistakes that make the verdict incomprehensible and unlawful. For that reason, **the Court of Appeals vacated for the second time the verdict and returned the case for retrial to the first instance court.** [40]

In its verdict, the Higher Court in Bijelo Polje qualified this criminal offense referring to the amendments to the Criminal Code in 2008. However, these amendments did not refer to the criminal offense of money laundering, so the Court of Appeals noted that they should have applied the Criminal Code from 2006, because this Code was in force at the time of commission of the crime, and no later amendments of the Code were more favorable for the defendants in order to be applied.

According to the verdict of the Court of Appeals, the Higher Court in Bijelo Polje omitted from the disposition of the verdict the part of the indictment with the description of the predicate criminal offense through which the money was obtained.

The indictment states that this money was obtained through a criminal offense of Unauthorized Production, Possession and Release into Circulation of Narcotic Drugs from Article 300 of the Criminal Code, committed in an organized manner with Darko Saric, brother of Dusko Saric, as the organizer, and other members of the criminal organization, for which criminal proceedings were instigated against these persons in the Republic of Serbia and the Republic of Italy. In the continuation, the indictment describes how Dusko Saric and Jovica Loncar introduced the money obtained through a criminal offense into the legal financial flows.

However, in its verdict the Higher Court in Bijelo Polje mentions only generally that the money was obtained through a criminal offense, without stating the action through which the money was obtained and who took that action. In the opinion of the Court of Appeals, this made the convicting verdict completely incomprehensible.

Additionally, the Higher Court in Bijelo Polje states that it took into consideration the fact that Defendant Saric was previously acquitted of the criminal offenses of Establishment of a Criminal Enterprise and Unauthorized Production, Possession and Release into Circulation of Narcotic Drugs. The fact that Saric was acquitted of these criminal offenses cannot be related to the criminal offense of Money Laundering, which was clearly stated by the Court of Appeals in its ruling.

Besides, the Court of Appeals noted serious contradictions in the first instance verdict.

Namely, the Higher Court in Bijelo Polje related the origin of money with the actions taken by Dusko Saric and his criminal organization and the criminal offense of Unauthorized Production, Possession and Release into Circulation of Narcotic Drugs, and then, as a contradiction, stated that the money was not obtained through that criminal offense.

Thus, it remained completely unclear which part of the indictment was accepted by the Higher Court in Bijelo Polje and what it concluded in terms of which criminal action was used to obtain the money for which the defendants have allegedly concealed the manner in which it was obtained.

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[39] K.no. 23/13-11 dated 30.12.2013.
[40] Kž.no. 61/14 dated 12.06.2014.

Third trial:
The origin of money was not established?

With the third verdict of the Higher Court in Bijelo Polje [41] Defendants Saric and Loncar were convicted again to **five years and six months in prison**.

In this verdict, the Higher Court reintroduces into the description of facts the description of the predicate criminal offense, stating that the defendants knew that the money was obtained through the criminal offense of Unauthorized Production, Possession and Release into Circulation of Narcotic Drugs from Article 300 of the Criminal Code, for which other countries have instigated criminal proceedings against Darko Saric and other persons.

Both the prosecutor and the defendants' attorneys have lodged appeals with the Court of Appeals against the verdict of the Higher Court.

The Court of Appeals of Montenegro rejected the prosecutor's appeal, while accepting the appeal by the defendants' attorneys and amended the first instance verdict by **acquitting the defendants of the criminal offense of Money Laundering because it has not been proven that they have committed it**. [42]

As the Court of Appeals decided for the third time in the same case, based on appeals, this court rendered the verdict [43] after it held again the main hearing. [44]

In its verdict the Court of Appeals noted that:

"neither the prosecutor, nor the first instance court have found it necessary to establish whether the money that was ultimately paid to the account of the company MAT COMPANY LLC Pljevlja originates from legal sources, as claimed by the defense, or from the sources states in the indictment".

In the same verdict, the Court of Appeals stated that it is clear that the court expert was not ordered, or instructed to investigate the origin of assets in non-resident accounts of the companies the documentation of which was subject to his expertise.

Thus, more than six years after the indictment was filed in this case, it was for the first time before the Court of Appeals that the origin of money was being established, for which the prosecution claimed that it originated from cocaine trafficking.

That is, the decisive facts to prove the criminal offense of Money Laundering regarding the origin and basis of money and control of documentation of the commercial banks and other legal entities were established by the court expert, instead of the prosecutor, in the third proceedings on the appeals before the second instance – Court of Appeals.

The Court of Appeals issued an order to the financial expert to look into the documentation of the commercial banks [45] and other legal entities and to establish the basis on which the money was paid into the accounts of the defendants' companies. The court expert stated in his report the grounds and sources of funds paid into the accounts of the defendants' companies.

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[41] K. no.39/14-11 dated 27.02.2015.
[42] Verdict of the Court of Appeals of Montenegro Kž.no.66/15 date 27.09.2017.
[43] In line with the provision of Article 407, Paragraph 5 of the Criminal Procedure Code, which was in force at the time when the Court of Appeals of Montenegro rendered the verdict, when the first instance verdict was vacated twice, the second instance court will render the verdict itself in the session of the panel or following a main hearing.
[44] Article 395, Paragraph 1 of the Criminal Procedure Code stipulates, inter alia, that the main hearing before the second instance court will be held if necessary to present new evidence or to repeat already presented evidence due to erroneous or incomplete establishment of the facts.
[45] Hypo Alpe Adria Bank AD Podgorica and First Bank of Montenegro AD Podgorica

However, the prosecution did not provide any evidence that this amount, or part of the amount, was obtained through a criminal offense of Unauthorized Production, Possession and Release into Circulation of Narcotic Drugs, committed in an organized manner, with Dusko Saric as the organizer, and other members of the criminal organization.

For that reason, the Court of Appeals concluded that the indictment only causes suspicion, that is, there are only leads that the money was obtained through a criminal offense of Unauthorized Production, Possession and Release into Circulation of Narcotic Drugs from Article 300 of the Criminal Code, for which other countries have instigated criminal proceedings against Darko Saric and other persons.

Supreme Court: There is only suspicion...

Seven years after the filing of the indictment these proceedings were concluded with the final verdict of the Supreme Court of Montenegro [46] that rejected the prosecutor's appeal and upheld the verdict of the Court of Appeals of Montenegro by which the defendants were acquitted of the guilt for the offense of Money Laundering.

The Supreme Court has also upheld the opinion that there is only suspicion that the money originates from a criminal offense and that the prosecution did not prove this fact.

Data concealing

On the basis of the Rulebook adopted by the President of the Supreme Court of Montenegro [47] the data regarding

- amounts of money the origin of which was assessed by the court expert,
- names of companies and names of the banks,
- names of the defendants, prosecutor, court expert, defense attorneys and all other persons

were deleted from the published final verdict of the Court of Appeals.

This prevents the analysis of the verdict and insight by the public into the manner of work and conclusion taking of the court. This is the final verdict, thus, it is of particular concern that the key facts on the basis of which the court decided that there is no guilt on the side of the defendants are being concealed from the public.

[46] Kž.I.no.2/18 dated 06.03.2018.
[47] More details in MANS Monitoring report Vol 2 - Judiciary and fight against corruption, april 2019

Case study 2:
Kalic's millions of unknown origin constitute (not) money laundering

This study speaks about the proceedings against Safet Kalic, who was mentioned in police files as one of the key heroin traffickers on the route that runs through Montenegro.

Who is Safet Kalic?

Safet Kalic was designated as a drug dealer already in 2003 by the Serbian police during the Sablja (Sword) police action [48], and in the documents of the Montenegro National Security Agency that leaked to the public, Saafet was mentioned as a person of interest as of 2007. [49]

Four years later Safet Kalic fled Montenegro, in the summer of 2011, once the Special Prosecutor's Office opened an investigation against him. [54] An arrest warrant was issued against him on 4 August 2011, and he was tried in absentia, as he was unreachable for the judicial authorities in Montenegro.

Safet was previously convicted in Germany for heroin trafficking [55], and he was arrested in Austria, after three years at large. [56] Although Montenegro issued an arrest warrant against him, Austria gave priority to the European arrest warrant issued by Germany. [57]

Kalic was in the German prison until May 2018, when he returned to Montenegro, where he was acquitted in the meantime. [58]

Leading persons of the criminal networks and intelligence service attended Kalic's wedding

In July 2009, the details of Safet Kalic's wedding were first revealed, and a year later a video was released. [50] Kalic's wedding was attended by the heads of the organized criminal groups from the region [51] along with the then senior official of the National Security Agency Zoran Lazovic. [52]. Lazovic was recently appointed by the Government as the Head of the Department for Combating Organized Crime and Corruption in the Police Directorate. [53]

Kalic is a close friend (kum) of Darko Saric, accused of international cocaine trafficking. [59]

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[48] Radio Free Europe: "Šef „rožajskog klana“ uhapšen u Austriji", 31 October 2014., https://www.slobodnaevropa.org/a/sef-rozajskog-klana-pao-u-austriji/26648736.html
[49] In March 2007, the report of the National Security Agency leaked into the public and Safet Kalic was mentioned in it as a person of interest who "conducts most of his activities abroad".
[50] Recording of the wedding can be found at https://www.youtube.com/watch?v=mT984xEDHFU
[51] Telegraf: Uhapšen balkanski Eskobar: Na uvo mu pevala Severina, na svadbi mu bili Šarić i Čume, 21 October 2014., https://www.telegraf.rs/vesti/1275012-uhapsen-balkanski-eskobar-na-uvo-mu-pevala-severina-na-svadbi-mu-bili-saric-i-cume-foto-video
[52] Monitor: "Specijalni tretman Kalićeve svadbe", 16 July 2010., https://www.monitor.co.me/specijalni-tretman-kalieve-svadbe/
[53] CDM: "Vlada imenovala četiri Veljovićeva pomoćnika", 30 May 2019., https://www.cdm.me/hronika/vlada-imenovala-cetiri-veljoviceva-pomocnika/
[54] Source: http://www.rtcg.me/vijesti/hronika/69630/uhapsen-safet-kalic.html
[55] Dan daily, Rožajski narko-bos pregovara sa njemačkim pravosudnim organima o privremenom puštanju na slobodu: Kalić nudi 200.000 eura i nanogicu", 25 May 2015., https://www.dan.co.me/?nivo=3&rubrika=Hronika&clanak=493030&datum=2015-05-25
[56] Radio TV Montenegro RTCG, "Kalić izručen Njemačkoj", 3 February 2015, http://www.rtcg.me/vijesti/hronika/80746/kalic-izrucen-njemackoj.html
[57] Portal analitika: "Austrija izručuje Kalića Njemačkoj", 15 January 2010, https://portalanalitika.me/clanak/173309/arhiv
[58] CDM: "Safet Kalić slobodan, vratio se u Rožaje", 6 May 2018., https://www.cdm.me/hronika/safet-kalic-slobodan-vratio-se-u-rozaje/
[59] Kalic confirmed that Saric is his close friend (kum) while taking stand before the Higher Court in Podgorica in the proceedings against a group that planned the murder of Veselin Bujic from Bar. Press: "Interpol traži Safeta Kalića", 4 August 2011., http://www.pressonline.rs/info/hronika/170715/interpol-trazi-safeta-kalica.html

Key facts about the proceedings

In addition to Safet Kalic, his brother, Mersudin, as well as his wife, Amina, were charged in this case. Mersudin was also convicted in Germany with a final judgment because, based on Safet's instructions, he prepared, organized, monitored and supervised the transport of heroin through several European countries and the transfer of proceeds obtained through its sale. [60]

All three were acquitted and can never be tried again for these offenses, thanks to the errors of the Special Prosecutor’s Office and the Higher Court in Bijelo Polje.

The Special Prosecutor's Office did not conduct an adequate investigation, but brought the indictment for the criminal offense of money laundering without a single piece of evidence that the money came from a crime. The court upheld such an indictment, although it was obliged to review it and return it to be amended. Thus, the court allowed the continuation of the proceedings on the unlawful indictment, which resulted in the acquittal, but also the prohibition of retrial for this crime.

Although it was established in the proceedings that € 3.5 million do not have proof of origin, the prosecution did not provide any evidence that the money came from a crime.

A. Indictment

In late 2011, in the indictment [61] of the Special State Prosecutor [62] Mersudin Kalic, Safet Kalic and Amina Kalic were charged with the commission of a continuing criminal offense of **Money Laundering** in the amount of EUR 7,733,121.06.

The indictment alleges that the money was obtained through the criminal offense of the Unauthorized Production, Possession and Distribution of Narcotics by a criminal organization that smuggled heroin through several European countries, one of whose members was Mersudin Kalic, who was convicted for that offense in Germany with a final verdict. [63]

According to the indictment, in the verdict of the German court, Mersudin Kalic was convicted of "illicit trafficking in narcotics in two cases as an organized gang and assisting in illicit trafficking in narcotics in two cases". The German verdict found that Mersudin acted based on the instructions of his brother, Safet Kalic, so he prepared, organized, monitored and supervised the transport of heroin through several European countries and the transfer of proceeds obtained through the sale of this narcotic drug. [64]

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[60] Quote from the verdict of the Higher Court in Bijelo Polje, Ks.no.4/15-11 dated 30 December 2015, which contains quotes from the German court.
[61] Kt-S.no.21/11 dated 25 December 2011
[62] Hasan Lukac
[63] Mersudin Kalic was sentenced in Germany to prison term of 11 years, as stated in the indictment.
[64] Quote from the verdict of the Higher Court in Bijelo Polje, Ks.no.4/15-11 dated 30.12.2015.

Higher Court upheld an unlawful indictment

Once the indictment is brought, it is submitted to the court for review and confirmation, and the court schedules a hearing to examine and evaluate its legality and justification. [65] When it finds, in the indictment review process, that the offense stated in the indictment is not a criminal offense or that there is insufficient evidence that the defendant was reasonably suspected of the offense stated in the indictment, the court must suspend the criminal proceedings. [66]

The Higher Court in Bijelo Polje [67] upheld the indictment, in which the special prosecutor did not cite any evidence that would link the money in the personal or accounts of the companies owned by the defendants to the crime for which Mersudin Kalic was convicted in Germany. The court also upheld the indictment, which in one part charged the defendants with something that the court later determined was not a criminal offense in itself.

Thus, as in the case of Dusko Saric, the court allowed the continuation of the proceedings on the unlawful indictment, which resulted in the acquittal, but also the prohibition of retrial for this act. Namely, should the Higher Court in Bijelo Polje have suspended the criminal proceedings in accordance with the law, the defendants could have been tried for this criminal offense in a new trial if valid evidence were obtained, since the prohibition of retrial does not apply to proceedings which have been suspended with a final court ruling. [68] In any case, the several million euro worth of damages that will be paid to the defendants from the budget due to the unlawful indictment that resulted in the acquittal would have beeen prevented.

B. Verdict

Four years after the indictment was brought, the Higher Court in Bijelo Polje adopted the decision on **acquittal** [69], because the prosecution did not provide evidence that Kalic's money came from a criminal offense, although it was established during the proceedings that the origin of of EUR 3.5 million of proceeds could not be determined.

The **Court of Appeals** [70] **and the Supreme Court of Montenegro** [71] **upheld** that verdict and noted that the prosecution did not provide evidence that the Kalics committed the crime of money laundering.

The Court of Appeals confirmed that from the description of the crime given in the indictment it can be concluded that the position of the prosecution was that the accused had transferred the proceeds of crime from one account to another without any legal basis.

However, the Court of Appeals found that transferring money from one account to another was not a criminal offense, provided that the money did not come from a crime or criminal activity, and that the court could not establish that that money had anything to do with the proceeds of crime for which Mersudin Kalic was convicted in Germany.

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[65] Article 293 of the Criminal Procedure Code
[66] Article 294, Paragraph 1, Item 1 of the Criminal Procedure Code
[67] Panel of judges: Vidomir Bošković (President), and Gorica Đalović and Šefkija Đešević as panel members
[68] The provision of Article 6 of the Criminal Procedure Code stipulates that no person can be tried again for a criminal offense (Ne bis in idem) if he/she was acquitted with the final court verdict, while Article 36 of the Constitution of Montenegro stipulates that a person cannot be subject to retrial, nor can a person be convicted again for the same offense.
[69] Ks.no.4/15-11 dated 21.12.2015.
[70] KžS no. 7/2016 date 20.06.2016.
[71] Kzz.no.16/17 date 19.12.2017.

No evidence that the money represents proceeds of crime

The final verdict of the Higher Court in Bijelo Polje states that the evidence presented, primarily the findings and opinions of financial experts, does not indicate that the money stated in the indictment was obtained through the criminal offense for which Mersudin Kalic was convicted in Germany. The same judgment states:

"...According to the description in the indictment of the actions taken and in relation to this legal entity, it follows that the position of the prosecution is that the defendant have ***transferred*** *the money obtained through the criminal offense from the accounts of related business entities* ***without the existence of a legal basis***. *Transferring money from one account to another account, even if done without a legal basis,* ***does not constitute in itself a criminal offense****, provided that that money does not originate from a criminal act or criminal activity, and in no case is it a criminal offense of money laundering that the accused are charged with."*

Thus, it is apparent from the verdict that the Special Prosecution has brought the indictment without proof that the money stated in the indictment was obtained through heroin trafficking, for which Mersudin Kalic was convicted in Germany. Besides, the prosecution charged the accused with the transfer of money from one account to another without a legal basis, which does not constitute a criminal offense.

"Legal conclusions" of the financial expert had a crucial role

The same verdict states that the crucial evidence in the case was the expertise by the financial expert. [72]

The court expert acted first based on the order of the prosecution and then based on the order of the court. However, the verdict does not specify what specific task the court expert received from the prosecution or the court.

In the verdict, the court notes that it ordered a new expertise because the court expert did not have access to part of the financial - accounting - banking documentation of the defendants' companies when drafting the first expert opinion at the order of the prosecution.

The verdict states that the court adduced as evidence the findings and opinion of the court expert "with the aim of **establishing the legality of business operations**", as well as that: "in such a legal issue, decisive facts are determined primarily from the findings and opinions of the court experts".

The court also states in the verdict that "it gave full faith to the findings of the court expert with respect to factual and **legal inference**, and not to some other **peripheral evidence** in terms of its content, **which was assessed by the financial expert**".

Expertise in criminal proceedings is requested when the findings and opinion of a person with the necessary professional knowledge is required to establish or evaluate an important fact. [73] Therefore, expertise serves to establish facts that are not of a legal nature, i.e. facts that require professional knowledge that the court lacks.

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[72] Vlajko Milićević, court expert who prepared the expertise in the cases against Dusko Saric and Jovica Loncar.
[73] Article 136 of the Criminal Procedure Code

Therefore, the court expert cannot express an opinion in relation to the legality of business operations, give legal conclusions and assess other evidence, as one can conclude from the contents of the final verdict in this case. These are legal issues that fall within the jurisdiction of the court and which the court has to answer because the court has expert legal knowledge.

The order by which expertise is requested must include, inter alia, the task and scope of the expertise. [74] When the expertise requires asessment of business records of a company or legal entity, the authority before which the proceedings are conducted must indicate to the expert in what direction and to what extent the expert assessment should be performed and which facts and circumstances should be established. [75]

However, it cannot be inferred from the judgment in this case what was the task and what the scope of the expertise was, that is, which facts and circumstances the court expert was supposed to establish, but it is undisputed that it could not have been to establish the legality of business operations, to give legal conclusions and to assess other evidence, even if it were peripheral.

Namely, the verdict only states that the prosecution gave the “appropriate order” to the court expert, but does not state what kind of an order. Besides, the court stated In the verdict that it ordered a new expertise by the same court expert "with clearly defined tasks and questions", but did not state what those tasks and questions were.

The court expert established that there is no proof of origin for EUR 3.5 million

The contents of the final verdict states that the court expert in his finding and opinion established the existence of certain transactions between the defendants and the companies in which they had various capacities, but that these transactions do not show that the money paid was obtained through the criminal offense for which Mersudin Kalic was convicted in Germany.

In doing so, the court expert established the amount of all payments to companies, their individual amount by companies and individuals and the basis of payments.

The expertise found that for as much as EUR 3.5 million there was no basis to confirm the origin of that money. Of that amount, almost € 2.5 million relates to payments to companies, while over € 1 million of cash was paid into the personal accounts of the defendants, who later transferred that money to their companies' accounts.

Namely, the verdict of the Higher Court in Bijelo Polje states:

Government approved loans to Kalic’s companies

It was confirmed before the court that Kalic’s company owed money to the Ministry of Finance in the amount of EUR 300,000.

MANS discovered earlier that this is a loan that the state approved to Kalic’s company, which was repaid through a series of suspicious transactions between several of his companies. [76]

The prosecution did not deal with the manner of repayment of the state loan during the investigation or in the indictment.

“...When the amounts for legal and natural persons are summed up, an amount of ***€ 3,509,964.54 is obtained for which there is no relevant basis to prove the origin of this money in the financial documentation****...”*

[74] Article 137 of the Criminal Procedure Code
[75] Article 155, Paragraph 1 of the Criminal Procedure Code
[76] http://www.podlupom.info/?p=2784

The prosecutor requests from the court to establish where the defendants' property originates from

In the appeal against the judgment, the prosecutor stated that the Higher Court was obliged to give reasons as to the facts regarding funds from which the defendants purchased movable and immovable property for enormously large sums of money, having in mind the fact that they did not have permanent employment and that they did not generate revenue on that basis.

However, the Court of Appeals pointed out that the defendants were not charged with those facts, but only with the actions related to the introduction of money into legal financial flows, since the indictment does not charge the Kalics with the legality of the acquisition of property.

So, instead for the prosecution to determine in the stage of investigation which funds did the defendants use to acquire enormously valuable assets and to gather evidence to confirm that those assets were obtained through criminal proceeds, the prosecution asked the court, in its appeal, to establish these facts.

The Supreme Court of Montenegro also found that there was no evidence that the Kalics committed a crime of money laundering. The Supreme Court has indicated that it is necessary to establish the operation of obtaining money, which has not been established in the specific case because there is no evidence that the money used in the business operations of the companies originates from the crime for which Mersudin Kalic was convicted in Germany.

C. Prosecutor lead investigation

Did the prosecution engage in an adequate investigation?

Such a verdict leads to the conclusion that the prosecution did not conduct an investigation that is adequate and necessary for indictment and for proving the crime of money laundering. Namely, in order to prove this criminal offense, it is necessary to establish, among other things, that the money originates from the criminal offense, that is, criminal activity.

To prove this fact, it is not enough to simply determine the time, amount and basis of the monetary transactions, which the court expert was establishing in this particular case. An investigation for the criminal offense of Money Laundering should identify the entire "route" of the money and the activities and actions of the prosecution in the investigation must focus "backwards" up to the level that proves that the money comes from criminal activity.

Expertise is one of the actions in evidence gathering, but certainly not the only and exclusive one, that the prosecution should take in that direction. The expertise alone, without other evidentiary actions, can never prove that certain money comes from criminal activity, since establishing that fact is not even the task of a court expert. Namely, the court expert may establish that a particular money does not have an origin or a proper basis in the financial records, but this is not yet proof that it originates from a crime. In order to establish this fact, in addition to the expert evaluation, other evidence needs to be collected.

The final verdict establishes that during the investigation the prosecution did not undertake any specific evidentiary action, which is intended to prove criminal offenses with elements of organized crime and money laundering. [77]

It is particularly incomprehensible why during the course of the investigation the prosecution did not propose any secret surveillance measure in the investigation of such a serious crime against persons convicted of drug trafficking, thus gathering some evidence. This is particularly curious because Safet Kalic fled the country after the investigation was instigated.

Apart from the expertise, financial documentation and the hearing of witnesses who were employed by the defendants and gave statements in support of the defense, the prosecution offered no other evidence.

The indictment for money laundering, which was based solely on the expertise of a financial expert, was doomed to failure in advance. Namely, even if the court expert had found that the entire amount of all the defendants' transactions had no origin and basis in the documentation, this would still have not been sufficient for the conviction, as there would still be no evidence that this money came from a crime, since that evidence cannot be provided by the court expert, but by the prosecution.

Data concealing

In this case, the names of state prosecutors, defendants, court experts, witnesses and defense lawyers were deleted from the published verdicts.

The names of companies, banks and even the name of the state and court where Mersudin Kalic was convicted of drug trafficking were deleted. The official numbers of contracts and other documents that were taken as evidence were also deleted.

It is exactly this verdict that shows that the court does not hide information from the verdicts for reasons of privacy and personal data protection. Namely, although a set of data was deleted from the verdict, it provided detailed personal information of one of the defendants, which enjoys the highest degree of protection. Thus, the verdict cited in full the findings of a neuropsychiatrist as a court expert, with a precise diagnosis of mental illness and therapy.

It follows that the court protects the privacy of individuals by hiding information when and where they have been convicted of drug trafficking, while at the same time releasing information about their health state.

[77] During the investigation of the criminal offense of Money Laundering against the defendants, secret surveillance measures and phone tapping and recording of other remote communications can be used, as well as interception, collection and recording of computer data, entry into the premises for secret photographing and video and audio recording on the premises, covert surveillance and video and audio recording of faces and objects, then simulated purchase of objects or persons and simulated giving and receiving bribes, providing simulated business services or concluding simulated legal transactions, establishing a fictitious company, monitoring the transportation and delivery of objects subject to a criminal offense, recording conversations with prior information and consent of one of the interviewees, hiring of an undercover investigator and agent.

3.2. How to prove money laundering?

The first study in this chapter shows that the Special Prosecutor's Office has the capacity to prove the criminal offense of money laundering and provide evidence.

In this case, prior to filing the indictment, the prosecution dealt with the origin of money and seecured witnesses, as well as material evidence.

On the other hand, in the most important proceedings which ended in acquittals, it was only the court expert who dealt with the origin of money in the later stages of the court proceedings. [78]

This further raises suspicions that the mistakes of the prosecutors and judges leading to the acquittals in the most important cases were not accidental.

In the only case in the last six years [79], in which the Special Prosecution has acted and in which the defendants have been convicted of money laundering, the **Court of Appeals has mitigated the already mild penalties**.

Another study shows that in the other case, the same judge who tried the case of Kalic and Saric took a **completely opposite view** - that the **burden of proving that the money had legal origin was on the defendant** and not on the prosecution. [80]

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[78] Detailed information in Chapter 3.1. The most important omissions of the judiciary
[79] This analysis refers to verdicts adopted in the period from 2013 until 2018
[80] In both cases the judge applied the same Law, as there are still no final verdicts for money laundering in which the 2017 amendments to the Law have been applied. More details in Chapter 1: Legal framework.

Case study 3:
Capacities of the Prosecution: They can when they want to

This study shows that the Special Prosecutor's Office has the capacity and knows how to prove money laundering offenses. This raises additional suspicion that the prosecutor's errors leading to the acquittals in the most important cases were not accidental.

In this case, three persons were convicted of laundering the proceeds of smuggling fuel, from which they have earned over € 200,000. According to the court verdict, the prosecutor provided evidence that the money that was being laundered came from the specific crime of which the defendants were convicted in this case.

However, in other money laundering cases [81], during investigations and in the indictments, the Special Prosecutors did not even attempt to prove that the money came from criminal activity, but only the court expert dealt with the origin of money during the trial.

For example, in the proceedings against Dusko Saric, the court expert was the first one to deal with the origin of money, before the second instance court, after more than six years of trial, and the prosecution did not provide evidence that the money came from a crime. In the case against Kalic, the expert witness found, after four years, that several million euros did not have a legitimate origin, but the prosecution had no evidence that the money came from a specific crime.

Although this study represents an example showing that the prosecution has the capacity to prove money laundering cases, in this case again the prosecutor made important omissions. As a result, 26 police officers were acquitted, some of whom had previously been convicted of various offenses. The court found omissions in the indictment in which the prosecutor incorrectly described the act of commission of the crime and incorrectly qualified the offenses for which he had charged police officers.

This study shows that the Court of Appeals reduced further the already small penalties for money laundering penalties. Due to the failure of this court to process cases in a timely manner, the sentences of the convicts were additionally reduced due to the statute of limitations for prosecuting some of the offenses of which they had previously been convicted.

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[81] More details in the case studies in Chapter 3.1. The most important omissions of the judiciary

Indictment: 32 persons charged

There was a total of 32 persons charged with the indictment that was represented by the Special Prosecutor. [82] Three of the defendants were charged with serious criminal offenses of money laundering [83] and forging of documents, and one of them was charged with illicit trade.

The prosecution charged them with concealing the method of obtaining money from the criminal offense of Illicit Trade, from the beginning of July to the beginning of October 2003, by opening a non-resident account with Crnogorska komercijalna bank, using false documents and fictitious documentation on registration of a non-existent company from Bosnia and Herzegovina. Using the documentation of the non-existent company, the first defendant **procured fuel worth over EUR 120,000**, which was transported, without authorization for trade, in a total of 17 tanks over the border crossing point between Montenegro and Bosnia and Herzegovina, with supporting customs documentation.

However, the fuel tanks did not proceed to Bosnia and Herzegovina, but instead returned to Montenegro using side, gravel roads, where the fuel was sold in the "grey market".

The defendants paid cash from the sale of fuel through a non-resident account and continued to use it to buy new quantities of fuel and sell it again in the "grey market", concealing in this way that it was money obtained through the criminal offense of Illicit Trade, thereby avoiding payment of customs duties, excise duties and value added tax and acquiring **proceeds of approximately € 215 thousand**.

Two of the defendants were charged with abetting illicit trade because they were hired to drive fuel tanks that were returned to Montenegro, after crossing the border, using side roads.

One customs officer and 26 border police officers have been charged with abuse of office and falsifying of official documents because they entered false information in official documents - records of the flow of goods that the fuel tanks left the territory of Montenegro and entered Bosnia and Herzegovina via the Ilino brdo border crossing point.

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[82] Kt.no.286/04 dated 26.06.2005, Special Prosecutor Drazen Buric
[83] Committed by several persons who joined together to commit such crimes

Verdict: Five persons convicted, 27 persons acquitted

With the verdict of the Higher Court in Podgorica [84] **three defendants were convicted of money laundering, forgery and illicit trade, and two accused drivers were convicted of aiding and abetting illicit trade.** [85]

The trial court imposed the following sentences for the offenses for which the first defendant was convicted:

- **money laundering - two years in prison**
- forgery of a document - four months in prison
- illicit trade - one year and six months in prison.

He was then sentenced to a **cumulative sentence for these offenses of three years and nine months in prison**.

The Court imposed the following sentences on two other defendants for the criminal offenses:
- money laundering - six months in prison each
- forgery of a document - two months in prison each

and sentenced them to cumulative sentences of seven months in prison each.

These three defendants are obliged to pay jointly and severally a sum of EUR 215,321.56 for the unlawfully obtained proceeds.

The court sentenced one driver charged with the criminal offense of Illicit Trade via Abetting to four months in prison, and the other driver charged with the same offense to three months in prison.

By the same verdict, on account of lack of evidence, a customs officer and 26 police officers were acquitted of abuse of office and forgery of documents.

Prosecution proved money laundering

Unlike the proceedings against Kalic and Saric, where the court expert examined the origin of the money at a late stage of the proceedings, the fact that the money originated from the criminal offense in this proceeding was established from the testimony of witnesses, the defense of the defendants and the material evidence of cash payments and balances on the non-resident account.

Therefore, the prosecution proved the origin of the money, that is, the fact that it originated from the crime, before hiring a court expert in court.

The court stated in the verdict that it was indisputably established that the defendants:

„...paid the money originating from the crime and for which they knew that it had been obtained through crime, to a non-resident account which they had previously opened with Crnogorska komercijalna bank".

The court also concluded in the verdict that

"...the money that was paid was secured from the sale of previously purchased fuel that the defendant S. A. sold in the "grey market".

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[84] K.no.131/05 date 17.04.2013, judges Valentina Pavlicic, Miroslav Basovic and Dragica Vukovic
[85] The court found that the three defendants had concealed a method of obtaining money originating from the criminal offense of Illicit Trade by opening a non-resident account with false documents and fictitious registration documents of a non-existent company from Bosnia and Herzegovina with the Crnogorska komercijalna bank. The Court found that the first defendant, through the documentation of a non-existent company, was acquiring higher value of fuel, which was transported in tanks by two of the defendants, one of which has deceased in the meantime, to the border crossing point between Montenegro and Bosnia and Herzegovina, with the accompanying customs documentation. The Court also found that the fuel tanks did not proceed to Bosnia and Herzegovina, but instead returned via gravel side roads to Montenegro, where the fuel was sold in the "grey market", and the defendants paid the money from the sale of fuel through a non-resident account and used it further to buy new quantities of fuel and sell it in the "grey market", concealing that the money was obtained through the criminal offense of illicit trade, thereby avoiding payment of customs duties, excise duties and value added tax and obtaining a proceeds of 215,321, 56 euros.

Prosecution does not know what an official document is

The accused police officers were acquitted because the prosecutor incorrectly described the act of commission of the crime and incorrectly qualified the crime in the indictment.

The indictments state that they forged internal records and committed the crime of forgery of an official document. However, the court found that this documentation did not constitute an official document.

In the reasoning of the acquittal for the 26 accused police officers, the court stated:

"In order for someone to commit the crime of forgery of an official document, it is necessary for the official person ***to enter false information into the official book or official document****".*

However, the official document in the indictment is stipulated to be **the book of records of the flow of goods**, which is neither a document nor an official document. [86]

The Court concludes that the records kept by officers of the Police Directorate regarding the flow of goods at border crossing points cannot constitute an official document because it is not a document issued by a state authority on the basis of a specific regulation, but rather a certain internal record.

The verdict states that:

"...the court finds that the records kept by officers of the Police Directorate regarding the flow of goods at border crossing points ***cannot constitute an official document*** *because it is not a document issued by a state authority on the basis of a specific regulation, but rather a certain internal record (as stated in the title of the said notebook and record), which was kept together with the official books related to the movement of persons and vehicles and which constitute an official document".*

At the main hearing, the court inspected a **photocopy of the internal record** consisting of A4 size plaid paper, as well as a printed part carrying the title "Internal Book", which the court could not obtain in the original or as a certified photocopy.

During the investigation, the prosecution should have provided evidence in the original or a certified photocopy that the court verdict could be based upon.

Therefore, the court found that it was evidence that could not serve as a basis for the verdict, because it was not eligible to prove the facts contained in them as they were not in the original, therefore they cannot prove that the content in them is original.

In addition, even if the prosecution provided internal police records in the original, again the accused police officers could not have been charged with falsifying an official document because it was not an official document.

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[86] In this regard, the Higher Court states that: "*document means a document issued in the prescribed form by a state body or institution, or other legal entity within the framework of a delegated public authority, proving what is confirmed or specified in it, indicating that the power of a public document as a piece of evidence rests upon the presumption of its accuracy and it cannot be valued based on the principle of discretionary assessment of evidence, whether certain facts will be accepted or not accepted as credible, but if the public document exists it is taken as evidence of what is confirmed therein*". The court also stated that: "*official document as a narrow term is a document issued by an official and its purpose is to prove certain facts in the course of performing an official duty, while official books are kept on the basis of regulations issued by officials and specific information is recorded in them within the framework of the performance of a particular service*".

How did the indictment for abuse of office melt away

Since the charges for forgery were dropped, the accused police officers could not be convicted of abuse of office either, as the prosecutor described the act of commission of the crime precisely as forgery of an official document.

Therefore, the prosecutor should have prosecuted those persons for abuse of office and described the act as defined in the Criminal Code [87], not as forgery of an official document.

The defendants were charged with having used their official position as police officers in order to obtain undue advantage for the other defendants **by entering false information in official documents - records of the flow of goods**, that the fuel tanks had left the territory of Montenegro and entered Bosnia and Herzegovina. The Court held that in the present case there could be no criminal offense of abuse of office because there was no criminal offense of forgery of an official document.

That is, since it has not been proven that the accused police officers forged an official document, because what the prosecutor submitted to the court was not an official document, then it was not proven that they committed the crime of abuse of office because the prosecutor described the act of committing the offense as forgery of an official document.

In its verdict, the Higher Court points out that

*"...the position of the prosecution that the criminal offense of abuse of office in conjunction with with the criminal offense of forgery of an official document is not acceptable, because this case it is **a way of committing the criminal offense of abuse of office**, so the **forgery of an official document is consumed** by the said criminal offense".*

The court points to the omissions of the prosecution

*"...In order to commit the criminal offense of abuse of office, i.e. the act of committing the crime through abuse of office as defined in the indictment, **it is necessary for the official to take actions within the scope of his powers, but not to do so in the interests of the service and in order to achieve the goals of those actions, but in order to obtain undue advantage for others**".*

It stems from the aforementioned that the prosecutor should only have charge the accused police officers with the criminal offense of abuse of office, but not together with the act of forgery of an official document.

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[87] The Criminal Code defines the offense of abuse of office as follows:
- misuse of office or authority,
- overstepping the limits of one's authority, or
- refraining from performing one's official duty

all with the aim to obtain for himself or another person undue advantage, to cause damage to another person or to severely violate the rights of another person

Did the police officers responsibly perform their duties?

The policemen were obliged to escort all excise goods to the border crossing point with Bosnia and Herzegovina, which they did not do, so the tanks with the smuggled fuel returned to Montenegro without entering Bosnia.

The verdict of the Higher Court states that in the evidentiary procedure the Court read the Police Directorate's telegram from the Assistant Minister responsible for Public Security to certain services in the Police Directorate.

From that telegram, the Court found that the police officers were ordered to increase control of persons and means of transport, as well as **to escort all excise goods from the border crossing point in Montenegro to the border crossing point in Bosnia and Herzegovina**.

The Court states that it stems from this telegram:

*"...that on 26 September 2003, a meeting was held at the Ministry of Interior of the Republic of Montenegro, chaired by Assistant Minister Mico Orlandic, and the topic of the meeting was the activities of the Ministry of Interior and the Customs Administration in the field of suppression of grey economy. The conclusions of the meeting were that in the future, excise goods would be transported via border crossing points during daylight, that **police would continue escorting excise goods and monitoring handing over to neighboring border police services**, while prohibiting the keeping of trucks loaded with this type of goods in the no man's land."*

In the specific case, the Court found that the **fuel tanks had not been escorted** to the border crossing point in Bosnia and Herzegovina, but that the vehicles were returning to Montenegro by side roads, without crossing the border with Bosnia and Herzegovina, thus enabling them to return to Montenegro via side roads, and thereby allowing the other defendants to obtain material gain. [88]

Therefore, the accused police officers should have been charged with misusing their official authority to obtain undue advantage for the other defendants because they did not control the transfer of fuel tanks from Montenegro to Bosnia and Herzegovina.

Customs officer acquitted because he entered true information

The court found that there was **no evidence that the accused customs officer had committed the criminal offenses of abuse of office and forgery of an official document**

„...by entering in the official documents JCI 4/5 and consignment notes - CMR false information that the fuel had left Montenegro and certifying them with official stamps and signatures".

Specifically, the customs officer entered true information in the consignment notes on the basis of the documentation presented to him by the driver at the border crossing point.

The Court found that

"...there was no decree or notification by the headquarters for the customs officers to impose on them the obligation to escort goods subject to excise duty to the border crossing point with Bosnia, so as to ensure that the goods have left the territory of Montenegro and moved into the territory of Bosnia and Herzegovina".

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[88] The Court found that the fuel tanks did not proceed to Bosnia and Herzegovina, but returned to Montenegro via side, gravel roads, where the fuel was sold in the "grey market".

Court of Appeals:
Verdict after the statute of limitations and reduction of sentences

The Court of Appeals reduced the sentences to those convicted of money laundering and fuel smuggling, noting that the court of first instance had overestimated the importance of greed, although it was found that they had obtained over € 200,000 in proceeds of crime.

For some offenses, the statute of limitations on criminal prosecution occurred 19 days before the decision of the Court of Appeals, so the Court dismissed the charges for these offenses, which further reduced the cumulative sentences.

The Court of Appeals rendered a verdict [89] reversing the verdict of the Higher Court and reducing the sentences. It reduced the **first defendant's** sentence for the criminal offenses of money laundering and illicit trade by six months each [90], dismissed the charge of falsifying the document due to the statute of limitations, and imposed a **one year and six months lighter sentence than the first instance sentence.** [91]

The Court of Appeals **reduced by half the sentences for money laundering** to the other **two defendants** and sentenced them to three instead of six months in prison.

For the criminal offense of Illicit Trade via Abetting, **the court imposed suspended sentences on the accused drivers instead of imprisonment**, convicting them to four years and three months in prison and determining that the sentences would not be executed if they did not commit another offense within two years of the moment when the verdict becomes final.

The Court of Appeals stated as grounds for mitigation of sentences that the first instance court:

*„...**overestimated the importance given to the aggravating circumstances regarding greed** that guided the defendants in committing the crimes, the manner of committing them, the contribution of each of the defendants in committing the crimes and the severity of violation of the protected assets, but did not sufficiently assess the mitigating circumstances, nor did it find that there were particularly mitigating circumstances in relation to some of the defendants, which resulted in the imposition of longer sentences than those necessary to achieve the purpose of the punishment".*

In the present case, it was a serious crime of money laundering that exists when the amount of money exceeds EUR 40 thousand and for which the Criminal Code prescribes a sentence of imprisonment ranging from **one to ten years**, as well as a serious form of illicit trade that exists when obtained pecuniary gain exceeds EUR 30 thousand. By committing the criminal offenses, the defendants obtained a pecuniary gain of over 200 thousand euros, for which the Criminal Code prescribes a sentence of imprisonment ranging from **one to six years**.

The first instance court imposed the most severe punishment for money laundering on the first defendant - two years, even though the legally prescribed sentence is up to ten years in prison. The same defendant was sentenced to one year and six months in prison for illicit trade, for which the legally prescribed sentence is up to six years.

However, the Court of Appeals held that such penalties were too stringent, even though the pecuniary gain obtained exceeded many times the limit prescribed for the serious forms of the mentioned offenses, requiring much more severe penalties.

Thus, the Court of Appeals reduced the prison sentence for laundering over € 200,000 by a quarter, to one year and a half, while reducing the sentence for fuel smuggling by a third, to just one year in prison.

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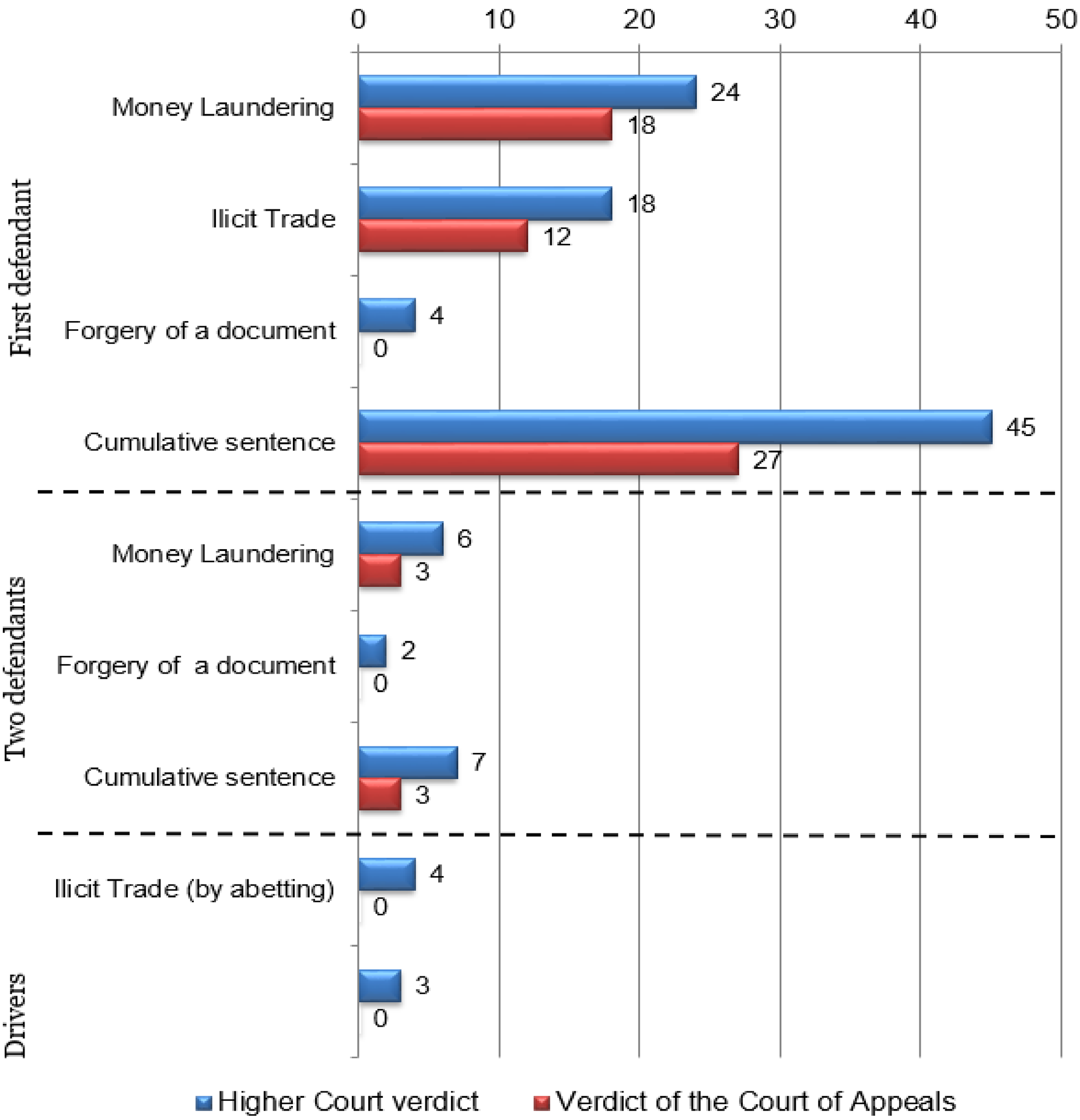
[89] Verdict Kžs.no.41/2013 dated 28.10.2013, judges Zoran Smolovic, Seka Piletic and Milic Medjedovic
[90] For the offense of money laundering it imposed one year and six months in prison, and for illicit trade a sentence of one year in prison.
[91] This is a cumulative sentence for two offenses, previously it was three, but the charges for forgery of official document were dismissed, and this is explained in more detailed in the later part of the study.



Graph 7: *Overview of imposed sentences by defendants – Higher Court and the Court of Appeals*

In addition, the Court of Appeals rejected the charges for forgery of documents against the three defendants due to the absolute statute of limitations on criminal prosecution, which further reduced the cumulative prison sentences they were sentenced to.

The verdict notes that the **statute of limitations** for this offense against these defendants occurred on 9 October 2013, **19 days before the Court of Appeals held its session**.

The first instance verdict was rendered on 17 April 2013, so the **Court of Appeals had about five months to reach a verdict before the statute of limitations on prosecution of this criminal offense occurred**.

Defendant	Offense	Stipulated sentence	Higher Court verdict	Verdict of the Court of Appeals
First defendant	Money Laundering	1 – 10 yrs	2 yrs	1 yr and 6 months
	Illicit Trade	1 – 6 yrs	1 yr and 6 months	1 yr
	Forgery of a document	Up to 3 yrs	4 months	Indictment rejected
	Cumulative sentence		*3 yrs and 9 months*	*2 yrs and 3 months*
Two defendants	Money Laundering	1 – 6 yrs	6 months	3 months
	Forgery of a document	Up to 3 yrs	2 months	Indictment rejected
	Cumulative sentence		*7 months*	*3 months*
Driver 1	Illicit Trade (by abetting)	1 – 6 yrs	4 months	conditional, 4 months
Driver 2			3 months	conditional, 3 months

Table 3: *Overview of the imposed sentences by the Higher Court and the Court of Appeals*

The acquitted customs officer and five police officers have previous convictions

It stems from the verdict of the Higher Court that both in the Customs Administration and the Police Directorate there are convicted persons, some even convicted of serious crimes, working on detection of crimes and their perpetrators.

Thus, it follows from the judgment that the accused **customs officer was previously sentenced to three and a half years in prison for the offense of serious bodily injury**.

One border police officer was sentenced to **four years in prison for the criminal offenses of Unauthorized Production, Possession and Distribution of Narcotic Drugs and Illicit Possession of Weapons and Explosive Substances**.

Another police officer was **imposed a suspended sentence for the criminal offense of kidnapping, two police officers were imposed a suspended sentence for forgery of a public document**, while one police officer was **sentenced twice for forgery of a public document**, and one police officer was imposed a suspended sentence for **Endangering Public Traffic**.

Case study 4:
Who bears the burden of proving the origin of money?

This study shows that in one verdict the Higher Court in Bijelo Polje found that the burden of proving the origin of money was on the defendant, while in other cases it found that the burden of proof was on the prosecution.

Such a verdict was upheld by the Court of Appeals, without prejudice to such conclusions. In this case, too, the courts confirmed that the prosecution had charged the defendant with money laundering prior to the commission of the crime.

For the existence of the criminal offense of Money Laundering, it is necessary to prove, among other things, that this money originates from criminal activity, i.e. that it has an illegal, i.e. criminal origin. The burden of proving that fact, just like any other fact on which the existence of a crime depends, lies with the prosecution.

In two of the most significant criminal proceedings for the criminal offense of Money Laundering, the Higher Court in Bijelo Polje acquitted the defendants because the prosecution **did not prove that the money came from the criminal offense stated in the indictment.** [92] These verdicts were upheld by the Court of Appeals and the Supreme Court.

However, the same court, and even the same judge who was the president of the panel of judges in the Saric case and a member of the panel of judges in the Kalic case,[93] took **a different stance in the case of Vladan Simonovic from Berane** for laundering over half a million euros [94] obtained through international smuggling of four kilos of cocaine. [95]

The verdict of that court [96] states as follows:

*„Therefore, **the defendant bears the burden of proving that the money is of legal origin**, and by proving that fact the defendant eliminates the reasonable suspicion that the money originates from a criminal activity“*, as well as the following

*„In the present case, on the basis of objective facts, it is concluded that the defendant did not conceal the method of obtaining money, because it was not obtained through criminal activity, drug trafficking, because the defendant proved the lawful origin of the money, **since the burden of proof was on him**“.*

This judgment was also upheld by the Court of Appeals of Montenegro,[97] irrespective of the position of the Higher Court in Bijelo Polje that the burden of proof lies with the defendant. Two of the three judges of the panel of the Court of Appeals who acted in this case had previously participated in the adoption of verdicts in which a completely opposite view had been taken. [98]

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[92] In the proceedings against Dusko Saric and Jovica Loncar, the Court of Appeals and the Supreme Court of Montenegro found that the allegations in the indictment only indicated suspicion, that is, only indications that the money was obtained through the criminal offense of Unlawful Production, Possession and Release into Circulation of Narcotic Drugs and concluded that the prosecution did not prove that fact. For this reason, the defendants were acquitted. Similarly, in the proceedings against Mersudin, Safet and Amina Kalic, the courts concluded that the prosecution had not proven that the money originated from the crime for which Mersudin Kalic was convicted in Germany. Besides, the fact that there was no basis to prove the origin of EUR 3.5 million was not relevant for a different decision because the courts considered that this did not mean that the money came from a crime and that the prosecution did not prove that fact. More in Case Studies 1 and 2.
[93] Judge Sefkija Djesevic was the President of the Panel of Judges in the case against Saric and a member of the panel of judges in the case against Kalic, and in this case he acted alone, as a single judge.
[94] Source: https://www.monitor.co.me/vile-zgrade-dipovi-hoteli/
Information about the amount of money that was laundered according to the indictment has also been deleted from the verdict
[95] Based on the indictment of the Higher State Prosecutor's Office in Bijelo Polje, Kt.no. 29/13 dated 07.04.2014
[96] Verdict of the Higher Court in Bijelo Polje K.no.19/14 dated 17.07.2014.
[97] Verdict Kž,no,154/2014 dated 28.11.2014.
[98] President of the Panel was judge Zoran Smolovic, who was the President of the Panel in the cases against Saric and Kalic; the second member of the Panel was judge Milenka Zizic, who was a member of the panel in the case against Kalic, while the third member of the Panel was the then judge, now the Chief Special Prosecutor, Milivoje Katnic.

The defendant and the defense can prove that the origin of the money is lawful, but they have no obligation to do so, and in no way can the burden of proving this fact be borne by them. The defendant himself decides how to defend himself against the prosecution's charges, and he can decide to be totally passive and defend himself by "silence", and the burden of proving the charges, or the facts on which the existence of the crime depends, is indisputably on the prosecution.

In this case again, the Higher Court in Bijelo Polje and the Court of Appeals of Montenegro found that the prosecution had charged the defendant with money laundering during the period before he obtained that money, according to the indictment, through drug trafficking.

In this case, the Prosecution charged the defendant with obtaining the money through drug trafficking in the period from 11 December 2007 to 12 January 2008, and that he introduced that money into legal banking flows in 2004, 2005, 2006; as well as in February and March 2007.

Commission of the crime:

from 11 December 2007
to 12 January 2008

Money laundering:

in 2004, 2005, 2006, and in
February and March 2007

This is objectively impossible, because **it stems from the indictment that the defendant laundered money before he obtained it through criminal offense**.

Data concealing

The **name of the prosecutor** who acted and charged the defendant with money laundering at the time before it was obtained through drug trafficking was deleted from this verdict.

Even the information about the **amount of money** for which the prosecution claimed that it was laundered was deleted, which is an essential feature of the crime of money laundering from which it depends how the charges against the defendant will be qualified. That is, it is decisive in determining whether the defendant will be charged with a less serious or a more serious form of the crime, what is the sanction prescribed and when the statute of limitations on prosecution occurs. Each individual amount of money that was paid, according to the indictment, in order to be laundered was deleted from the verdict.

In this case too, the identity of the defendant, defense attorneys, witnesses and other persons were removed from the verdicts.

3.3. Other omissions of the Prosecution

Some Special Prosecutors have made glaring omissions in the indictments for money laundering that resulted in acquittals or statute of limitations for criminal prosecution.

The example in this chapter shows that the prosecution accused a foreign national of **laundering money before committing the criminal offense** through which he allegedly acquired it. In doing so, the prosecution referred to the judgment of the Court of the Russian Federation, which clearly stated that the defendant **had not acquired any pecuniary gain** by committing the crime for which he was convicted.

The second example shows that the criminal prosecution for the money laundering offense was subject to statute of limitations due to the mistake made by the prosecutor in the indictments, which he discovered only after several years of trial.

In that case, the prosecution filed an indictment charging the defendant with a serious form of money laundering, which exists when the amount of money exceeds EUR 40 thousand, although it charged him with only EUR 17 thousand. It was only after two years of trial and the evidentiary procedure that the prosecution corrected the mistake and changed the indictment, but the statute of limitations for criminal prosecution had long occurred.

Case study 5:
He laundered money before he (even) acquired it

The prosecution charged the defendant with laundering money before committing the criminal offense through which he allegedly acquired it.

The indictment was based on a final verdict of a court of the Russian Federation, which found that the defendant did not gain proceeds by committing the crime for which he was convicted.

The prosecution did not provide any evidence that the money came from the crime alleged in the indictment, so the proceedings ended with acquittal.

The indictment of the Special Prosecutor [99] charged the defendant with the laundering of € 3.3 million obtained through the criminal offense of Abuse of Official Powers [100] for which he was convicted by a judgment of the court of the Russian Federation, as well as the criminal offense of Money Laundering, for which his brother was also convicted by the same judgment, as well as the criminal offenses of Swindling [101] and Illegal Enterprise [102] for which three Russian citizens were convicted by that judgment.

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[99] Kt-S.no.15/11 dated 28.08.2011.
[100] Criminal offense from Article 285 of the Criminal Code of the Russian Federation
[101] Criminal offense from Article 159 Part 4 of the Criminal Code of the Russian Federation
[102] Criminal offense from Article D 171 Part 2, Item B of the Criminal Code of the Russian Federation

The Higher Court in Podgorica rendered an **acquittal** [103] after finding that no criminal proceedings had been instigated or concluded against the defendant and related persons for a criminal offense involving the gain of proceeds, before the commission of the criminal offense of money laundering that the prosecution charged him with.

The court found that the money claimed by the prosecution to have been laundered in Montenegro could in no case have been obtained through the criminal offense alleged in the indictment, because the defendant did not obtain any money from that offense, and was rendered a conditional sentence and was not obliged to return for any gain. The judgment of the Higher Court in Podgorica states that from the judgment of the court of the Russian Federation it stems that "no money was appropriated" by the defendant's actions, that the payments in his accounts cannot be related to the payments stated in the judgment of the Russian court because they were executed by other persons without the responsibility of the defendant, who was acquitted of those acts.

Besides, the verdict of the Higher Court in Podgorica states that it follows from the judgment of the Court of the Russian Federation that the defendant "is not obliged to return any funds". Thus, the defendant did not acquire money by committing the crime for which he was convicted by the judgment of the Russian Federation.

The judgments of the Higher Court and the Court of Appeals state that the defendant was convicted by the judgment of the court of the Russian Federation of the crime committed in the period from April 11 to May 12, 2006, while the inflow of more than EUR 2.5 million into the defendant's accounts in Montenegro took place in the period from 11 July 2003 to 5 April 2006. [104] It follows that most of the money the Prosecution claimed was laundered was transferred to the accounts in Montenegro before the predicate crime in the indictment was committed.

Judgment of the Russian court:
criminal offense was committed

from 11 April
to 12 May 2006

Indictment of the prosecution:
money laundering committed

from 11 July 2003
to 5 April 2006

The Court of Appeals of Montenegro rejected the Prosecutor's appeal against the acquittal of the Higher Court and concluded:

"...certainly, this money could not have been obtained in any case through a crime under the judgment of the Zuzinsky District Court in Moscow, that is, as the this indictment presents". [105]

The verdict of the Court of Appeals concludes that other persons convicted by the judgment of a Russian court have legalized and divided the proceeds of crime, "which was the reason and basis for their criminal liability, for the criminal offense of money laundering under Article 174 Part 1 of the Criminal Code of the Russian Federation, for which they were convicted."

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[103] K.no.86/14 dated 15.06.2015.
[104] The verdict did not provide information on when the remaining amount of money was transferred to the accounts of the defendant, and according to the indictment that amount is EUR 800,000.
[105] Kž.no.141/15 dated 25.11.2015.

Thus, according to the same judgment of the Russian court, this "dirty money" has already entered legal flows and based on that other persons have been convicted of money laundering. That is, that money has already been laundered, so it can only be subject to confiscation, and not a new cycle of money laundering.

For that reason, the judgment of the Court of Appeal states:

„Namely, according to the final judgment of the Zuzinsky District Court in Moscow, the money in question, the so-called 'dirty money', has entered into legal economic flows, which means that it has passed the last stage of money laundering, i.e. the stage of integration, after which it appears as money originating from a lawful activity and it may be subject to seizure, but not the object of a money laundering operation, as the charges against the defendant state...“

Data concealing

In this case, too, the courts concealed a series of information from the judgments that made it impossible to analyze the work of the judiciary. The **name of the prosecutor** who acted in the case was deleted from the judgment, so it is not known which prosecutor filed and represented such an indictment. [106]

Information about the **time when the defendant concluded the contracts through which he laundered money, as the prosecution claimed**, have also been deleted from the judgment.

In addition to removing the identity of the defendant and all other persons convicted in the Russian Federation, the **names of companies and banks used for money laundering** were also deleted from the judgments.

[106] The verdict states that the indictment was represented by the Deputy Special Prosecutor from Podgorica, with initials M.S., and this is probably Prosecutor Mira Samardzic

Case study 6:
Statute of limitations due to the error in the indictment

In this case, the prosecution filed an indictment charging the defendant with a serious form of money laundering, although the amount he was charged with was only 17,000 euros. It was only after two years of trial and evidentiary proceedings that the prosecution corrected the error and amended the indictment, but criminal prosecution had long been time barred.

Special Prosecutor from Podgorica, Mira Samardzic has filed an indictment [107] charging the defendant with a serious form of money laundering, punishable with prison term ranging from one to ten years. The offense stated in the indictment was committed ten years before the charges were brought, i.e. in August 2004.

After completing the two-year evidentiary proceedings, the Special Prosecutor changed the indictment and charged the defendant with a less severe form of the offense, with a prescribed prison sentence ranging from six months to five years. Namely, **the original indictment contained an incorrect legal qualification of the crime**. With that indictment, the defendant was charged with laundering the amount of EUR 17 thousand, but the indictment stated that he was charged with a serious crime, for which the amount of money must exceed EUR 40 thousand.

However, at the time when the indictment [108] was filed, there were less than four and a half months left until the absolute statute of limitations on criminal prosecution would run out, so it was impossible to terminate the proceedings with a final verdict before the statute of limitations runs out.

Following the amendment of the indictment, the Higher Court in Podgorica dismissed the indictment due to the statute of limitations for criminal prosecution [109] which has run out for the less serious offense.

Namely, the amended indictment charged the defendant with a criminal offense [110], which, according to the code, was punishable by a prison sentence of six months to five years. The relative statute of limitations for prosecution of this offense is five years [111], and the absolute deadline is 10 years. [112] The indictment stated that the crime was committed on 2 August 2004 and therefore the absolute statute of limitations on criminal prosecution ran out on 2 August 2014.

Only the defendant appealed the verdict of the Higher Court, and the appeal was upheld by the Court of Appeals in September 2016. [113] Thus, the charge was finally rejected on the grounds of the statute of limitations on prosecution twelve years after the commission of the offense that the defendant was charged with.

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[107] KT.no.30/13 dated 20 March 2014.
[108] Indictment filed on 20 March 2014.
[109] Verdict of the Higher Court in Podgorica KS.no.8/15 dated 20.05.2016.
[110] From Article 268, Paragraph 2 in relation to Paragraph 1 of the Criminal Code
[111] In line with the provisions of Article 124, Paragraph 1, Item 5 of the Criminal Code
[112] In line with the provisions of Article 125, Paragraph 7, absolute deadline involves two times more time than the time stipulated in Article 124, Paragraph 1, Item 5
[113] Verdict Kzs.no.14/2016

4.

MANAGEMENT OF SEIZED PROPERTY

The state budget will be damaged by several million euros due to the omissions in the management of assets temporarily seized during the most important money laundering cases, ending in acquittals.

In the case of Kalic, the confiscated assets were unrealistically assessed in terms of value and then mismanaged, leading to several million euros worth of claims. At the same time, in the case of Saric, just as in the case of Kalic, part of the confiscated property was leased to related parties by the state.

The temporary and permanent seizure of property acquired through criminal activity, as well as the management of such property, is regulated by the provisions of the Law on Seizure of the Proceeds of Crime. These provisions regulate this area in the most general manner and do not stipulate how to specifically manage the confiscated property in particular cases. [114]

The Property Directorate is responsible for management of seized property.

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[114] Due to the lack of legal framework in this area, in June 2019, MANS drafted and submitted to the Ministry of Justice concrete recommendations for the imporvement of the legal framework based on comparative experience of Italy and Croatia. More details can be found in MANS Recommendations – Seizure and management of the proceeds of crime; link: http://www.mans.co.me/en/proposals-for-the-improvement-of-the-law-on-seizure-and-confiscation-of-material-benefit-derived-from-criminal-activity/

Case study 7:
Management of Kalic's property

The temporarily seized property in the Kalic case was first unrealistically assessed in terms of value and then mismanaged. Part of the seized property was leased for a while to persons associated with the Kalics.

Deficiencies and omissions in the management of confiscated property will cause millions of euros of damage to the state budget, as numerous judgments have already been rendered to compensate for the damage caused in these cases.

An "inflated" assessment of value of the confiscated property

In the summer of 2011, the Kalics' property was temporarily confiscated, and the Geotech company from Podgorica estimated its value at over 28 million. [115] Doubts have been raised in the public that the real value of these assets is many times lower.

"Geotech" estimated that in September 2011 a square meter of land in the center of Rozaje was worth EUR 500, although according to the decision of the Municipality of Rozaje from June of the same year, the value of land in that city ranged from one to 120 euros per square meter. [116]

Land in the industrial zone at the entrance to Rozaje, valued by "Geotech" at 320 euros per square meter, according to the municipal decision, was worth nine euros. Geotech estimated the value of facilities of the seized factory at almost two million euros, and the Turjak Hotel which was not operational at 2.5 million euros.

The business center of 380 sq m in Rozaje was evaluated at more than half a million euro, that is, 1.4 thousand euro per square meter, while the square meter of residential space in Podgorica was evaluated to be 2.5 thousand euro.

These, obviously unrealistic evaluations, are exactly used by the Kalics in court to claim several million euro on the basis of compensation of damage.

Confiscated property was rented by a related party

While managing the confiscated property, the Property Administration leased several properties to persons related to the Kalics.

The Property Administration leased Hotel Rozaje to the company "R&D Sped" from Rozaje for a monthly rent of EUR 1.5 thousand. The founder, director and representative of this company is Zufer Sutkovic, who offered his house as a guarantee to have Mersudin Kalic released from custody. [117] The Administration has also leased the gas station in Rozaje and Tajson café to him.

This implies a reasonable suspicion that the Kalics used their property, which had been confiscated, through the related parties, and now they are claiming damages for it, inter alia, because they were unable to use it. Kalics' lawsuits against the state say that some things have been taken away or lost value because the state did not treat their property in line with a principle of a good host,[118] which is why experts are hired to assess the amount of damage to the property. [119]

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[115] Daily newspaper "Vijesti": "Optužbe padaju, milionske odštete rastu", 18. april 2019., https://www.vijesti.me/vijesti/crna-hronika/optuzbe-padaju-milionske-odstete-rastu
[116] Ibid.
[117] Ibid.
[118] Antena M: "Kalić tuži državu i za nestali namještaj", 9 November 2018., https://www.antenam.net/drustvo/99887-kalic-tuzi-drzavu-i-za-nestali-namjestaj
[119] Kolektiv: "Kalić tuži državu i upravu za imovinu: traži odštetu zbog poplave i nestanka stvari iz stana", 9 November 2018., https://kolektiv.me/122372/kalic-tuzi-drzavu-i-upravu-za-imovinu-trazi-odstetu-zbog-poplave-i-nestanka-stvari-iz-stana

Millions of euros of indemnity

Safet, Amina and Mersudin Kalic, as well as their companies, have filed numerous lawsuits with the basic courts in Rozaje, Podgorica and Ulcinj, seeking indemnity worth approximately 10 million euro. [120]

In six proceedings, the first instance rulings awarded approximately EUR 3 million to them, as follows:

- In the case “M Petrol” vs. the State for the loss in profits, the Kalics claimed EUR 831,342, and the first instance ruling awarded to them EUR 434,877 eura,
- in the additional proceedings, that company was awarded EUR 789,024 for the actual damage;
- in the “Tajson” case, the claim was EUR 704,671, and the ruling awarded to them EUR 462,899;
- in the case of the company AD “Kristal” vs. the State, the amount awarded was EUR 1,154,479;
- in the case of Safet Kalic vs. the State for the compensation of actual damage, the claim was EUR je 206,736.80, and the first instance ruling awarded EUR 6,819 [121],
- in the case of “Turjak” company vs. the State, the claim was EUR 43,916, and the ruling awarded EUR 318,000. [122].

At the moment of release of this publication, these cases were in the Higher Court in Bijelo Polje, which is deciding on the appeals.

The ongoing cases are as follows:

- AD “Turjak” and Hotel Rozaje, in which the Kalics claim an additional amount of EUR 1.8 million,
- For the lost profits for AD “Kristal” and “Daut Daut” LLC, the Kalics are claiming millions of euros,
- Compensation of damage for the apartment of 192 sq.m. the amount of EUR 128 thousand [123]
- Compensation of damage for the Hummer vehicle which was given by the Property Administration to the Special Anti-Terrorist Unit of the Police Directorate, the amount of EUR 21 thousand [124]
- Proceedings regarding the apartment in St. Stephan claiming EUR 20 thousand to compensate material damage and loss of profits [125],
- Proceedings regarding land and buildings in Ulcinj.

Mersudin Kalic received previously the amount of EUR 32,500 as compensation of damage, while Safet’s wife, Amina, received the amount of EUR 14,000 for the ungrounded arrest. [126].

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[120] Vijesti: "Optužbe padaju, milionske odštete rastu", 18 April 2019., https://www.vijesti.me/vijesti/crna-hronika/optuzbe-padaju-milionske-odstete-rastu, Standard: "Safet Kalić protiv Crne Gore: Na sudu tražio naknadu materijalne štete i izgubljene dobiti za stan na Svetom Stefanu", 8 November 2018., http://standard.co.me/index.php/hronika/item/32703-safet-kalic-protiv-crne-gore-na-sudu-trazio-naknadu-materijalne-stete-i-izgubljene-dobiti-za-stan-na-svetom-stefanu
[121] Vijesti: "Optužbe padaju, milionske odštete rastu", 18 April 2019., https://www.vijesti.me/vijesti/crna-hronika/optuzbe-padaju-milionske-odstete-rastu
[122] Dan: "Kaliću još 318.000 eura", 14 April 2019., https://www.dan.co.me/?nivo=3&rubrika=Hronika&clanak=692303&datum=2019-04-14
[123] Kolektiv: “Vještak procijenio: Safetu Kaliću pripada 128.000 EURA odštete za stan?“, 6 June 2019, https://www.kolektiv.me/136779/vjestak-procijenio-safetu-kalicu-pripada-128000-eura-odstete-za-stan-
[124] CDM: „Brat Safeta Kalića zbog štete na hameru traži 21.000 eura“, 24 April. 2019., https://www.cdm.me/hronika/brat-safeta-kalica-zbog-stete-na-hameru-trazi-21-000-eura/
[125] Standard: "Safet Kalić protiv Crne Gore: Na sudu tražio naknadu materijalne štete i izgubljene dobiti za stan na Svetom Stefanu", 8 November 2018., http://standard.co.me/index.php/hronika/item/32703-safet-kalic-protiv-crne-gore-na-sudu-trazio-naknadu-materijalne-stete-i-izgubljene-dobiti-za-stan-na-svetom-stefanu
[126] Standard: "Safet Kalić dobio dozvolu za poslovno-stambeni objekat", 1 February 2019., http://standard.co.me/index.php/ekonomija/item/40230-safet-kalic-dobio-dozvolu-za-poslovno-stambeni-objekat

Case study 8:
Management of Saric's property

As in the case of Kalic, in the case against Saric, part of the confiscated property was leased to related parties.

Due to unjustified deprivation of liberty and lost personal earnings, the defendants have already been awarded damages of more than EUR 330 thousand.

The defendants are also entitled to compensation for inability to use the property, compensation for damage to property and compensation for loss of profit, but there is no publicly available information that these proceedings have been instigated.

Seized property rented to related persons

The Property Administration rented the property seized from Saric to the related persons.

Thus, it rented the machinery of the company "Mat Company", the "Municipium" Night Club and the Concrete Factory to the company "Tim Company" from Pljevlja. The director of that company was Mohamed Dagija, who was also the director of "Mat Company". Besides, the headquarters of "Tim Company" are situated at the same address and in the same premises as "Mat Company", and Saric's residential address refers also to the same location. [127]

Thus, there is reasonable suspicion that, through the related persons, the Sarics used the seized assets without any problems.

How much will the acquittals cost the state?

Only on the basis of the compensation of damage for the ungrounded arrest, Dusko Saric was awarded the amount of EUR 103,000 with the final court decision, while Jovica Loncar was awarded the amount of EUR 106,200. [128]

Besides, Loncar was also awarded the amount of EUR 126,000 as compensation of damage for the wages that were not paid out to him during the time he spent in detention without grounds, as established in the court verdicts. [129].

Besides, Dusko Saric also has the right to claim damages from the state on the basis of damage caused to property and on the basis of the lost profit.

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[127] "Vijesti" Daily: "Firmi povezanoj sa Šarićima pet miliona eura od države Crne Gore", 25 June 2018, https://www.vijesti.me/vijesti/ekonomija/firmi-povezanoj-sa-saricima-pet-miliona-eura-od-drzave-crne-gore
[128] "Vijesti" Daily: "Država dužna Šariću 103.000 eura, plus kamatu", 17 May 2019., https://www.vijesti.me/vijesti/crna-hronika/drzava-duzna-saricu-103-000-eura-plus-kamatu
[129] "Dan" Daily: "Greške tužilaštva plaćamo tri i po miliona", 1 May 2019., https://www.dan.co.me/?nivo=3&rubrika=Vijest%20dana&datum=2019-05-01&clanak=694403

5.

RESPONSIBILITY OF THE JUDICIARY

No prosecutor was held responsible for the omissions in the indictments leading to the acquittals, nor for the lack of promptness that led to the statute of limitations for prosecution.

Prosecutors who made mistakes in the most important cases were not held accountable through disciplinary proceedings, but were promoted.

The judges confirmed the indictments for acts that were not a criminal by law or in which there was no evidence to press charges charge, instead of returning them to be corrected or to suspend proceedings before trial. For that reason, important cases ended with acquittals and prohibition of retrial for the same offenses.

No judge was subject to disciplinary proceedings due to such errors.

5.1. Responsibility of the prosecutors

4

Disciplinary proceedings in five years

In none of these cases the prosecutors were held accountable through disciplinary proceedings for the omissions in the indictments that resulted in acquittals and verdicts rejecting the indictment in the money laundering cases.

Prosecutors' omissions have led to acquittals in two of the most important money laundering cases, [130] as well as in a number of other proceedings.

Prosecutors indicted without evidence that the money came from a crime, and in some cases charged defendants with acts that did not constitute a crime. In the indictments, some prosecutors claimed that the dirty money had been laundered before the crime through which it was allegedly acquired was committed. Some prosecutors did not observe the deadlines, due to which dismissal judgments were rendered due to statute of limitations, and some dismissed prosecution after many years of court proceedings against a number of defendants.

However, the prosecutors were not held responsible for the errors in these indictments, although this resulted in the fact that the defendants can never be tried again for these crimes.

According to data from the prosecution, in the period from 2013 to 2018, four disciplinary proceedings were instigated against prosecutors, solely in connection with the failure to report income or property, and not because of incompetent action or failure to observe deadlines in their work.

The Law on State Prosecutor's Office stipulates several disciplinary offenses for state prosecutors [131], and the **incompetent** or **negligent** performance of the prosecutorial function constitutes the most serious disciplinary offense. This offense is committed if the prosecutor works for less than half of the working norm without justification, if s/he has received the grade unsatisfactory in two consecutive periods, or has been sanctioned twice for serious misdemeanors, or if s/he starts performing another public duty or other professional activity. [132]

If the prosecutor fails to act in cases within the statutory deadlines without a justified reason, which results in the **statute of limitations**, inability to conduct the proceedings and other consequences prescribed by the law, s/he has committed a serious disciplinary offense.

The motion to assess disciplinary responsibility of the State Prosecutor may be filed by the Head of the State Prosecutor’s Office, the Head of the Directly Superior State Prosecutor’s Office, the Supreme State Prosecutor, the Minister of Justice and the Commission for Monitoring the Application of the Code of Ethics of State Prosecutors. [133]

No prosecutor was held responsible for statute of limitations for criminal prosecution.

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[130] Cases against Saric and Kalic
[131] Article 108 of the Law on State Prosecutor's Office. Besides the misdemeanor offense of failure to submit data on assets and revenues, in line with the regulations on the prevention of conflict of interest, this law stipulates nine other serious disciplinary offenses, four misdemeanor offenses and two most severe offenses.
[132] Article 108, Para. 6 of the Law on State Prosecutor's Office
[133] Article 110 of the Law on State Prosecutor's Office

Case study 9:
Promotion instead of disciplinary proceedings

Special prosecutors who have made huge omissions in the proceedings against Saric and Kalic have been promoted, instead of being held responsible. Their names are hidden in final court verdicts.

The prosecution charged defendants Kalic and Saric with the criminal offense of Money Laundering, although it did not provide any evidence that the money came from a criminal offense. [134]

Additionally, the prosecution also charged Kalic and Saric with something the court later found not to be a criminal offense in itself. [135] Thus, in the case of Kalic, the prosecutor charged the defendants with the transfer of money from one account to another without a legal basis, which in itself is not a criminal offense. Saric was charged by the prosecution with committing a crime that was not prescribed by the law at the time of commission, but also with committing certain acts that did not constitute a criminal offense. [136]

Both proceedings ended in acquittals, so the defendants can no longer be tried for these offenses. They have so far been awarded more than EUR 3 million in damages, with a judgment that is not final yet, for ill-founded arrest and inadequate management of temporarily seized property. [137]

Both indictments were filed by the then Special Prosecutor's Office, headed by **Djurdjina Nina Ivanovic.** [138]

In mid 2015, she was promoted to the duty of the Deputy Supreme State Prosecutor [139], and she is still a prosecutor in the Supreme State Prosecutor's Office. [140]

In the available verdicts there is no data about other prosecutors who acted in the Saric case, while in the Kalic case, besides Ivanovic, the indictment was represented by minimum two additional prosecutors.

In the first instance verdict it is stated that the indictment was amended in the presence of the prosecutor "T.Z.". According to the publicly available data, it is only the Deputy Higher State Prosecutor, **Zeljko Tomkovic**, who has these initials. [141]

Besides, the media stated that the indictment was also represented before the court by Hasan Lukac, the then Deputy Special Prosecutor. [142]

These two prosecutors were also promoted in 2015, when the first instance verdict was rendered in this case.

Zeljko Tomkovic was promoted later that year to the position of the State Prosecutor in the Higher State Prosecutor's Office in Podgorica, and he still holds that duty today. [143]

Hasan Lukac was promoted to the position of the State Prosecutor in the Higher State Prosecutor's Office in Bijelo Polje, and was later selected to become a member of the Prosecutorial Council. [144]

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[134] These cases have been described in detail in Chapter 3.1. The most important omissions of the judiciary, while the first chapter gives only the most important conclusions in the context of responsibility of the acting prosecutors and judges
[135] CPC stipulates in Article 373, Item 1 that the court will render a verdict acquitting the defendant if the offense he is charged with does not constitute a criminal offense according to the law.
[136] He was charged with creating a criminal organization before this criminal offense was stipulated by the 2010 Law, and that he **stayed** in Livigno at the time of sale of cocaine, that two days before the persons who sold drugs were detected he **left** Milan and came to Belgrade and that he **gave certain instructions** to other members of the criminal organization via telephone, but these are actions taken after the commission of the crime in relation to the sale of cocaine, which are not stipulated by the Criminal Code as a criminal offense of unauthorized production, possession and distribution of narcotics.
[137] More details in Chapter 4, Management of seized property.
[138] "Dan" Daily: "Nina pod lupom zbog Kalića", 17 September 2016., https://www.dan.co.me/?nivo=3&rubrika=Hronika&clanak=564784&datum=2016-09-17, Source: https://www.monitor.co.me/i-ari-i-lonar-trae-odtetu-od-drave-nae-pare-za-korektne-momke/
[139] "Dan" Daily: "Đurđina Ivanović zamjenik VDT-a", 25 June 2015, https://www.dan.co.me/?nivo=3&rubrika=Hronika&clanak=498140&datum=2015-06-25
[140] https://www.tuzilastvocg.me/index.php/vrhovno-drzavno-tuzilastvo/drzavni-tuzioci-u-vrhovnom-drzavnom-tuzilastvu
[141] Data search on officials under the category prosecutors, https://portal.antikorupcija.me:9343/acamPublic/funkcionerSearch.htm
[142] CIN: "Ineffective investigations result in huge damage claims, but no one is held responsible: indictments fall, prosecutors promoted", 22 May 2019. http://www.cin-cg.me/nedjelotvorne-istrage-proizvode-ogromne-stete-ali-niko-ne-odgovara-tuzbe-padaju-tuzioci-napreduju/
[143] http://tuzilastvocg.me/index.php/vise-drzavno-tuzilastvo-podgorica
[144] https://www.tuzilastvocg.me/index.php/tuzilacki-savjet/clanovi-savjeta

Case study 10:
No responsibility even for the obvious mistakes

The prosecutors whose indictments contained quite obvious mistakes that lead to acquittals or statute of limitations for criminal prosecution have also been promoted.

He laundered money although he did not acquire it

In this case, the **name of the prosecutor** who acted in this case **was deleted** from the final verdict. [145] The verdict states that the indictment was represented by the Deputy Special Prosecutor from Podgorica with initials M.S., and this is probably the prosecutor Mira Samardzic.

The prosecutor made illogical and obvious mistakes in this case, by charging the defendant with laundering money obtained through a criminal offense before that offense was committed.

Besides, the final verdict from another country found that the defendant did not acquire any gain through the commission of the crime, but the prosecutor still claimed that the money was obtained exactly through that criminal offense, referring exactly to that verdict.

It doesn’t matter that it reached the statute of limitations

Special State Proscutor **Mira Samardzic** filed the indictment for a serious form of the criminal offense of money laundering, although it was a more lenient form in question. Only after two years of trial did she correct that mistake in the indictment, but the indictment was dismissed due to the statute of limitations for criminal prosecution. [146]

Mira Samardzic was Deputy Special Prosecutor, but was promoted to the position of the Special Prosecutor in 2015.

Copy of a notebook or an official document

In the case of the Higher Court in Podgorica [147] 26 police officers were acquitted of charges for abuse of office and forging of an official document. The court found that the prosecutor had erroneously drafted the indictment because he treated a copy of the internal record as an official document, which cannot constitute an official document according to the law. Thus, the accused police officers were acquitted in this case due to the omission of the prosecution. [148]

The Prosecutor submitted to the court as evidence and an official document a mere copy of the notebook kept internally by the accused police officers. In addition to the fact that it was not an official document, the prosecutor did not even have the original or certified copies of that notebook.

Drazen Buric acted in this case as the Deputy Special Prosecutor. However, he was also promoted to a senior position in 2015, and is now a Special Prosecutor.

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[145] More details in Case study 5: He laundered money before he (even) acquired it
[146] More details in Case study 6: Statute of limitations due to the error in the indictment
[147] K.no.131/05 dated 17 April 2013, judges Valentina Pavlicic, Miroslav Basovic and Dragica Vukovic
[148] More details can be found in Case study 3: Capacities of the Prosecution: They can when they want to

5.2. Responsibility of judges

No judge was held disciplinary responsible for the omissions in confirming the indictments for actions that do not constitute criminal offenses, although this lead to acquittals and prohibition of retrial in many of the important cases.

According to data from the website of the Judicial Council, in the period from 2013 to 2015, six judges were subject to disciplinary proceedings for the violation of legally defined deadlines in scheduling hearings or drafting the verdicts and due to improper attitude towards a participant to the proceedings. Since the adoption of the new law in 2015, one judge was subject to disciplinary proceedings for the violation of the legally prescribed deadline for drafting the verdict.

However, apart from these disciplinary offenses the Law on Judicial Council and Judges prescribes another eleven serious disciplinary offenses, five minor disciplinary offenses and two very serious disciplinary offenses. [149]

Among other things, the law stipulates that the judge has committed a serious disciplinary offense if he delays the proceedings or fails to process the case without a justified reason, which results in the **statute of limitations** for criminal prosecution or statute of limitations for the execution of criminal sanctions for the crime for which a minimum term of one year imprisonment is stipulated by the law.

No judge was held disciplinary responsible for the statute of limitations for criminal prosecution.

The motion to establish disciplinary responsibility of judges may be filed by the President of the Court, the President of the directly superior Court and the President of the Supreme Court or the Committee for Monitoring the Application of the Code of Ethics of Judges. [150]

[149] Article 108 of the Law on Judicial Council and Judges
[150] Article 110 of the Law on Judicial Council and Judges

Case study 11:
Confirming unlawful indictments

Due to the omissions of the Higher Court in Bijelo Polje that upheld the unlawful indictments, acquittals have been rendered in the most important proceedings for the criminal offense of Money Laundering.

The judges of that court upheld the indictments, in which the prosecution charged the defendants with actions that were not criminal offenses, and did not provide evidence that the money came from a criminal offense. Due to these mistakes, the defendants can never be tried again for these crimes.

Final verdicts do not contain data regarding names of the judges in the extra-procedural panels responsible for control and confirmation of the indictment.

Legal framework

The Criminal Procedure Code prescribes that, upon filing, the indictment is submitted to the court for review and confirmation, and the court schedules a hearing for its examination, as well as an assessment of legality and justification.

In the event that the indictment contains deficiencies in content or in the proceedings itself, or a better clarification of the state of affairs is required to examine its justification, the court will **return it to the prosecutor to remedy the observed deficiencies, amend the indictment or conduct an investigation**.

The Prosecutor is obliged, within three days from the day the court decision was communicated to him, to file a revised indictment or to amend it or carry out an investigation within two months. [151]

When it finds, in the indictment control proceedings, that the offense stated in the indictment **is not a criminal offense** or that **there is insufficient evidence** that the defendant is reasonably suspicious of the criminal offense in the indictment, the court must **suspend the criminal proceedings**. [152]

[151] Article 293 of the Criminal Procedure Code
[152] Article 294, Paragraph 1, Item 1 of the Criminal Procedure Code

Saric case

In the proceedings against Dusko Saric and Jovica Loncar, the Court of Appeals and the Supreme Court of Montenegro, found that the allegations in the indictment only indicated suspicion, that is, they only represent **indications** that the money had been obtained through a criminal offense.

These courts also found that the defendants were charged with:

- an offense that was not prescribed at the time of commission,
- an act that does not constitute a criminal offense while
- the prosecutor did not address the origin of the money, nor did he provide evidence in the indictment for the crime of money laundering.

The Indictment based on indications should not have been confirmed by the Higher Court in Bijelo Polje, which should have rather suspended the proceedings during the indictment review procedure, because there was insufficient evidence that the defendants were reasonably suspicious of the offense. In that way, it would have been possible for these persons to be tried for this offense in another proceeding if the prosecution were to obtain evidence.

Kalic case

The defendants in the Kalic case were charged with the criminal offense of Money Laundering, but the Prosecution did not cite in the indictment any evidence that would link the money in the personal or in the accounts of companies owned by the defendants to the crime.

Also, part of the indictment charged the defendants with the transfer of money from one account to another, which the court later found not to be a criminal offense in itself.

The Higher Court in Bijelo Polje should not have confirmed this indictment either, but rather suspend the proceedings in the indictment review procedure because there was no evidence that the defendants were reasonably suspicious of the criminal offense and, in part, the subject matter of the indictment was an act that did not constitute a criminal offense according to the law. In that way, it would have been possible for these persons to be tried for this offense in another proceeding if the prosecution were to obtain evidence..

However, the court upheld such an indictment, and that error resulted in an acquittal, damages to the defendants, and a prohibition of retrial for the offense. [153]

From the published decisions on disciplinary responsibility of judges it can be concluded that no judge was held responsible for unlawful confirmation of indictments.

[153] Case study 1: Montenegrin branch of the “Balkans Warrior”

6.

WHAT IS HIDDEN?

Although all the trials were open to the public, the final verdicts generally included only the initials of the defendants, witnesses and court experts, but in some cases even the prosecutors who represented the indictments were hidden behind the initials.

In money-laundering proceedings, the names of the companies and banks that were used and even the names of the states and courts where the defendants were convicted were erased.

The numbers of contracts and other documents that were taken as evidence were deleted, and in some cases even the dates when they were concluded. In some cases, data on the amount of money the prosecution claimed to have been laundered were deleted, although the form of the crime the defendants are charged with depends on it.

The names of defendants, court experts, defense attorneys and all other persons were deleted from all of the final verdicts related to money laundering. However, even the following information was removed from some of the verdicts:

- the names of the prosecutors who represented the indictment,
- the amounts of money laundered,
- the names of the companies and banks used for money laundering,
- the numbers and dates of the documents taken as evidence,
- the names of the courts which previously convicted the defendants and the countries where they were convicted.

In some verdicts the information about the **amount of money** the prosecution claimed to have been laundered was deleted, which is an essential feature of the substance of the crime of money laundering and based on which it is decided how the offense that the defendant is charged with will be qualified. That is, it depends from that information whether the defendant will be charged with a minor or a more serious form of the crime, which sanction is legally defined for that offense and when the statute of limitations for prosecution occurs.

Name of the Special Prosecutor is deleted

Ks.br.4/15-11

U IME CRNE GORE

Viši sud u Bijelom Polju, Specijalizovano odjeljenje za suđenje za krivična djela organizovanog kriminala, korupcije, terorizma i ratnih zločina, sastavljenim u vijeću od sudije Vidomira Boškovića kao predsjednika vijeća, stalnih sudija Gorice Đalović i Šefkije Đeševića, kao članova vijeća, uz učešće namještenika suda Mirjane Gačević, kao zapisničara, u krivičnom predmetu optuženih M. K., S. K. i A. K., zbog produženog krivičnog djela pranje novca iz čl. 268 st. 4 u vezi st. 1 Krivičnog zakonika Crne Gore u vezi čl. 49 st. 1 Krivičnog zakonika Crne Gore kao saizvršioci, u postupku po optužnici Vrhovnog državnog tužilaštva – Odjeljenje za suzbijanje organizovanog kriminala, korupcije, terorizma i ratnih zločina Bijelo Polje Kt-S.br.21/11 od 25.12.2011.godine koja je izmijenjena na pretresu održanom dana 10.09.2014.godine i 21.12.2015.godine, u prisustvu Specijalnog tužioca T. Ž., optuženog M. K. i njegovog branioca K. D. advokata iz B. P., optužene A. K., njenog branioca D. Đ. advokata iz P., donio je dana 21. decembra 2015.godine, a javno objavio dana 30. decembra 2015.godine,

P R E S U D U

Excerpt from the verdict in the Kalic case

Amounts of money are deleted

U periodu od 23.08.2004 godine, do 11.07.2008 godine u B., P. i M., sposoban da shvati značaj svojih djela i upravlja svojim postupcima, svjestan zabranjenosti svojih djela i htio njihovo izvršenje, izvršio konverziju i prenos novca i prikrio činjenice o porijeklu novca u iznosu od ..... €, koji je pribavio kriminalnom djelatnošću, trgovinom drogama, pa je tako postupao i u periodu od 11.12.2007 godine do 12.01.2008 godine, organizovanim transportom oko 4 kg.opojne droge kokaina iz R. S., preko H. u D., zajedno sa V.Dj., B. I. i M. M. V. D. H., koji su pravosnažnim presudama Gradskog suda u K. SS ... od 28.04.2009 godine, i SS ... od 17.12.2008 godine, zbog krivičnog djela nezakonito držanje droge iz čl.191 Krivičnog zakonika D. osudjeni na kazne zatvora, dok protiv optuženog S. V. nije sproveden krivični postupak u D. jer se nalazio u bjekstvu i za njime bila raspisana potjernica, i ovako stečen novac uveo u legalne novčane tokove, na način što je:

-dana 23.08.2004 godine na ime svog oca S.B., kod „E. B." AD P., otvorio račun br.... , na koji je istog dana u 4 navrata uplatio gotovinu u iznosu od ..... €, a dana 23.11.2004 godine uplatio ..... €, sa kojim novčanim sredstvima je po punomoćju imao pravo raspolaganja, da bi dana 23.05.2006 godine gotovinski podigao novac u iznosu od ..... €,

-dana 23.08.2004 godine na svoje ime, kod „E. B." AD P. otvorio račun br.... , na koji je dana 12.01.2005 godine uplatio gotovinu u iznosu od .....0 €, 26.07.2005 godine .....€ i 08.12.2006 godine ..... €,

-Dj. L. iz S.-a, dana 26.02.2007 godine je na isti račun optuženog S. V. bez pravnog osnova uplatio iznos od 3.170,00 € a dana 13.03.2007 godine iznos od ..... €, sa kojeg računa je opt.S. V. 26.07.2006 godine, podigao gotovinu u iznosu od ..... € a 30.05.2007 godine iznos od ..... €,

-dok je na osnovu ugovoru o kupovini stana br.... u P. upisan u List nepokretnosti ... KO P. od 199,56 m2, za iznos od ..... €,zaključenog dana 30.12.2005 godine, izmedju njegovog oca B. kao kupca i preduzeća "Z." D. P. kao prodavca, za koji je "Z." D. P., neutvrdjenog dana, mjeseca i godine uplatio u gotovini iznos od ..... €,

Excerpt from the verdict in the Simonovic case

Names of companies and banks used for money laundering are deleted

kreditu br. ....od 17.01.2009.godine zaključen izmedju ... banke i ''T.'' ... R., pročitao i prezentovao ugovor o overdraft kreditu br. ....od 10.01.2008.godine zaključen izmedju ... banke i ''T.''... R., pročitao i prezentovao ugovor o kreditu br. ....od 20.02.2008.godine zaključen izmedju ... banke i ''T.'' .... R., pročitao i prezentovao ugovor o kreditu br. ...od 04.06.2007.godine zaključen izmedju ... banke i ''T.'' ... R., pročitao i prezentovao ugovor o hipoteci br.... od 07.12.2006.godine, pročitao i prezentovao ugovor o hipoteci br.... od 23.11.2005.godine, pročitao i prezentovao ugovor o hipoteci br.... od 21.02.2007.godine, pročitao i prezentovao ugovor o hipoteci br.... od 23.11.2005.godine, pročitao i prezentovao ugovor o overdraft kreditu br. .... od 07.12.2006.godine, pročitao i prezentovao ugovor o revolving kreditu br.... od 23.11.2005.godine, pročitao i prezentovao ugovor o hipoteci br.... od 23.03.2006. godine, pročitao i prezentovao ugovor o fiducijarnom prenosu prava svojine na nepokretnosti od 19.09.2006.godine zaključen izmedju ... banke i ''D.&D.'', pročitao i prezenetovao ugovor o overdraft kreditu br. ....od 21.02.2007.godine zaključen izmedju ... banke i ''D.&D.'' R., pročitao i prezentovao ugovor o kreditu br. ...od 15.09.2006.godine zaključen izmedju ... banke i ''D.&D.'' ... R., pročitao i prezentovao ugovor o kreditu br..... od 23.08.2006.godine zaključen izmedju ... banke i ''D.&D.'' ... R., pročitao i prezentovao ugovor o revolving kreditu br. ....od 23.11.2005.godine zaključen izmedju ... banke i ''D.&D.'' ... R., pročitao i prezentovao ugovor o kreditu br..... od 14.12.2005.godine zaključen izmedju ... banke i ''D.&D.'' ... R., sa aneksom ugovora o kratkoročnom kreditu br. ...od 14.12.2005.godine i aneksom ugovora o kratkoročnom kreditu br. ....od 14.12.2005.godine, pročitao i prezentovao ugovor o kreditu br..... od 24.10.2005.godine zaključen izmedju ... banke i ''D. & D.'' ... R., pročitao i prezentovao pismeno označeno kao procjena nekretnina dostavljena ... banci, a odnose se na nekretnine uzete kao zalog za kredit, pročitao i prezentovao izvještaji Poreske uprave koji se odnose na prijave poreza na dobit za pravno lice ''T.'' ... R. za period od 2006 do 2011.godine, pročitao i prezentovao izvještaj Poreske uprave koji se odnose na prijave poreza na dobit za pravno lice ''D.&D.'' ... R. za period od 2006 do 2011.godine, pročitao i prezentovao izvještaji Poreske uprave koji se odnose na prijave poreza na dobit za pravno lice ''M.P.'' ... R. za period od 2006 do

Excerpt from the verdict in the Kalic case

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