

# JUDICIAL MONITOR

MONITORING AND REPORTING ON JUDICIAL REFORMS

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## TOPIC 1

### | THE “SKY VERDICT” GETS ANOTHER CHANCE

The Appellate Court of Montenegro overturned the first-instance verdict against the suspects for planning the murder of Marko Ljubiša Kan, a member of the Škaljari criminal clan, at the beginning of 2021 in Budva. The case – the first in which communication from the once protected SKY application was used as evidence – was thus sent back to the Special Department of the High Court in Podgorica for retrial.

In the reasoning of its decision, the Appellate Court stated that the verdict contained significant violations of the provisions relating to the criminal procedure:

**“The disposition of the disputed verdict is incomprehensible, contradicting both itself and the reasons for the verdict; it also contains no reasons for the decisive facts, while the reasons given therein are completely unclear and to a considerable extent contradictory...”**

The part of the verdict concerning the SKY communication is disputed as well.

**“The appeals of the defendants’ attorneys justly indicate that the impugned judgment is affected by significant violations of the provisions of the criminal procedure under Article 386, paragraph 1, item 9 of the Criminal Procedure Code, as well as the part of the conclusion of the first-instance court that refers to SKY ECC communication, because in that part the impugned judgment does not contain clear, reasoned, sufficient and valid reasons for the admissibility or inadmissibility of said evidence (acquisition, legal nature, compliance with the principles of the domestic legal system and generally accepted rules of international law).”**

In 2023, in the case of the defendant former police inspector Božidar Stolić, the [Appellate Court in Belgrade](#) also found that the first-instance court did not adequately explain the verdict in terms of the SKY ECC communication. In the [second first-instance verdict](#), the Special Court in Belgrade convicted Stolić



**The Appellate Court returned the case in which SKY communication was used as evidence for a retrial**

once again, reasoning that the evidence obtained through the SKY ECC application can be used as evidence when it relies on other evidence, and that a court verdict cannot be based on it alone.

The [first final verdict](#) in the region that confirmed that SKY communication can be used as legal evidence in criminal proceedings was issued in October 2024 in Croatia. It came after the European Court of Justice ruled, in April, that information from encrypted applications can be used if supported by other evidence.

As a reminder, the higher courts, the appellate courts and the Supreme Court in Montenegro have already been accepting SKY communication as evidence, but only in cases involving the determination and extension of detention.

## TOPIC 2

### **WORRYINGLY HIGH NUMBER OF UNLAWFUL VERDICTS IN FAVOUR OF DEFENDANTS - IGNORANCE OR CORRUPTION?**

In 2024, the Supreme State Prosecutor's Office submitted 10 requests for the protection of legality; the Supreme Court approved them, stating that the law had been violated in favour of the defendants in all of them. In other words, judgments that were passed were favourable for the defendants. However, this conclusion of the Supreme Court does affect the above decisions, which will remain legally binding.

Chief Special Prosecutor Vladimir Novović told *Vijesti* that the number of such decisions is now many times higher than in the previous decade. From 2020 to 2023, violations of the law in favour of the defendants were found in a total of 11 cases.

**“Although those decisions of the lower-instance courts prevented further conduct of appropriate proceedings, the highest court in the country confirmed that the Special State Prosecutor's Office acted correctly and lawfully when it initiated those proceedings, that is, when it undertook certain procedural actions and made decisions on charging certain persons”,** said Novović.

Violation of the law was noted in cases that involved the most serious crimes, namely the “cryptocurrency king” Do Kwon, the suspected leaders of the Kavač criminal clan, Radoje Zvicer and Slobodan Kaščelan, the policeman on the run Ljubo Milović...

**Last year, the Supreme Court approved as many as 10 requests for the protection of legality, finding that all the cases showed the existence of a violation of the law in favour of the defendants.**

**“Certainly, such decisions render the efforts of SDT and SPO in the fight against organised crime and corruption meaningless, which is an additional reason for these cases to be subjected to special controls, in order - first of all - to eliminate doubts that decisions made in favour of the defendants are the result of corruption”,** said attorney Veselin Radulović for *Vijesti*, explaining that this shows that the situation in the judiciary is truly bad.

Supreme State Prosecutor Milorad Marković previously assessed that the decisions of the Supreme Court regarding requests for the protection of legality nevertheless “provided guidelines to the courts and the prosecutor’s office as to how they ought to act”.

**The position of Supreme Court judge intended for a person with 20 years of legal experience outside the judiciary and prosecutor’s office has not been filled for a decade**

### TOPIC 3

#### **ONE JUDICIAL OFFICE IN THE SUPREME COURT HAS BEEN VACANT FOR AN ENTIRE DECADE**

Amendments and supplements to the Law on the Judicial Council and Judges from 2015 envisages one judicial position in the Supreme Court of Montenegro for a person who had worked for 20 years as a judge, state prosecutor, attorney, notary, law professor or in other legal positions. However, despite several advertised competitions, this position was never filled.

The last time, at the session that was held on 12 May 2023, the Judicial Council rejected the application of Danka Živković, the head of the Basic State Prosecutor’s Office in Kotor, who applied for the position.

The Judicial Council explained its decision by interpreting that the objective of Article 38, paragraph 9 of the Law on the Judicial Council and Judges is to elect to that office a person who is not coming from a judicial or prosecutorial position, as judges and prosecutors are already allowed to advance to any other position in the Supreme Court. The position of the Council was that this vacant position requires an attorney or a professor, i.e. a lawyer who may have once been a judge or state prosecutor, but had left the court or state prosecutor’s office and also has 20 years of work experience.

In its [Analysis of the Work of the Judicial Council](#), the Human Rights Action proposed that the competition for that special position in the Supreme Court remain permanently open,

while one judge's position, which has been vacant for years, should in the meantime be filled with available candidates from the judiciary and the State Prosecutor's Office.

#### TOPIC 4

### | CONSTITUTIONAL COURT – THE CRISIS CONTINUES

**The Constitutional Court of Montenegro currently has five of the prescribed seven judges. The conditions for the termination of the judicial office are still subject to different interpretations, as is the possibility that the Venice Commission will examine the termination of the office of judge Dragana Djuranović. Judges who have met the same conditions for termination of office as Djuranović are still adjudicating in that court.**

Due to the decision of the parliamentary Constitutional Committee and the National Assembly of Montenegro to state that the office of the Constitutional Court judge Dragana Djuranović was terminated, at the beginning of 2025 the crisis continued. The opposition continued to physically and verbally block the work of the Assembly, preventing the highest legislative chamber from adopting numerous acts.

Although the opposition is still demanding that the decision on the termination of Djuranović's office be annulled, for the time being the ruling majority is rejecting this request.

In the meantime, after the visit of the European Commissioner for Enlargement, Marta Kos, to Montenegro, European partners proposed that the legality and constitutionality of the decision related to judge Dragana Djuranović be examined by the Venice Commission<sup>1</sup>.

**“The European Union once again appeals to Montenegro to amend the current legal framework and establish a special regulation concerning labour rights, including criteria for the retirement of judges and prosecutors, which should be harmonised with European standards and the existing recommendations of the Venice Commission. The EU calls on all competent authorities and political leaders to ensure the full functionality of the Constitutional Court as a key guarantor of the rule of law and democratic stability, including timely appointments based on merit, transparency and statutory requirements”,** stated the Delegation of the European Union in Montenegro.

The director of the NGO Human Rights Action, Tea Gorjanc Prelević, believes that it is not certain that the Venice Commission would accept the jurisdiction to decide on the constitutionality of the decision on the termination of judge Djuranović's office.

<sup>1</sup> An advisory body of the Council of Europe that deals with constitutional issues and provides non-binding opinions and recommendations.

**“I would find that unusual, because I don’t remember the Venice Commission ever deciding in individual cases. Until now, everything that concerned Montenegro had to do exclusively with draft laws, and it was the same with other countries. It is true that they did deal with the question of whether it is possible to extend the mandates of judges in Bosnia and Herzegovina when the Constitutional Court is completely blocked, so I do not completely rule out the possibility that they will accept this too. However, my assumption is that they will say that it is an individual legal case that can be resolved by applying legal remedies”,** said Gorjanc Prelević when she appeared as a guest on the show [“Week in the Rearview Mirror”](#).

The Constitutional Court of Montenegro currently has five of the prescribed seven judges; in addition to Dragana Djuranović, judge Milorad Gogić’s office also ended earlier, and no one was elected to his place in the last competition. Due to the reduced number of judges, only one three-member panel can currently sit, so the number of unresolved constitutional appeals continues to grow. The problem is further aggravated by the fact that the Constitutional Court makes decisions by the majority of the prescribed number of judges (at least four), which often makes decision making impossible.

Such was the decision regarding the termination of office of judge Budimir Šćepanović. At the session held on 25 December, the Constitutional Court unanimously decided to inform the President of Montenegro, Jakov Milatović, about the fulfillment of the conditions for Šćepanović’s retirement, but the judges did not agree on the date when he fulfilled (May 2024) or will fulfil (May 2025) the conditions for the termination of office. Three judges, including Šćepanović himself, were in favour of the implementation of the Labour Law, which would allow him to remain in office until May 2025, while two female judges were in favour of the implementation of the Law on Pension and Disability Insurance.

On 3 January, President Milatović announced a public call for the election of a judge of the Constitutional Court to replace Šćepanović. However, it remains unknown when his office will end and when his successor will in fact take office.

In the meantime, the Constitutional Committee assembled a list of 13 candidates for the election of two judges of the Constitutional Court of Montenegro based on the public call from 23 December 2024.



The Constitutional Committee and the National Assembly of Montenegro must interview the candidates in a timely manner and elect the missing judges of the Constitutional Court without any political calculations, to avoid the repetition of the situation from July 2024, when no one was elected despite the existence of expert candidates who met all the requirements.

## TOPIC 5

### **BIJELO POLJE IS ALSO MISSING A JUDGE - A QUICK REACTION IS NECESSARY**

**This year, the Basic Court in Bijelo Polje will be left without judges in its divisions in Pljevlja, Kolašin, Rožaje and Plav.**

The Misdemeanour Court in Bijelo Polje is currently operating with one less judge; actually, due to the long-term illness of one judge, it is essentially working without two judges. This year, two judges will meet the requirements for retirement, after which the court will be left without any judges in the court divisions in Pljevlja, Kolašin, Rožaje and Plav (which is where the judge who is on sick leave works). In addition, only one of the five advisor positions is currently filled, while the others remained vacant even after several competitions because there were no candidates.

The President of the Misdemeanour Court in Bijelo Polje, Alija Beganović, said that the current election and promotion procedure is one of the reasons for the disinterest of young lawyers in a career in the judiciary, and that there would be more applicants if candidates for judges knew which court they were applying for, and in which city. The problem, he claims, is also the amount of the salary.

**“A court advisor who has passed the bar examination has a lower salary than any municipal employee, or an educator, and a judge has a lower base salary than any attorney that appears before him/her”,** said Beganović.

The President of the Judicial Council, Radoje Korać, recently said that the judicial system lacks no less than 58 judges, or about 17%. As a reminder, the Human Rights Action’s [“Analysis of the Procedures for Election, Promotion and Determination of Responsibility of Judges in Montenegro in 2023 and 2024”](#) showed that offices of 51 judges were terminated from the beginning of 2023 to November 2024.

**The public recognises the efforts of the State Prosecutor's Office to strengthen its independence and professionalism, but there is still a need for vetting so as to combat corruption.**

## TOPIC 6

### **TRUST IN STATE PROSECUTOR'S OFFICES IS GROWING**

Judging by the survey that was initiated by the OSCE Mission in Montenegro and conducted by the De Facto agency in October and November of 2024, citizens' trust in state prosecutors' offices has grown in the course of last year.

64.1% of citizens trust the Supreme State Prosecutor's Office, which is 14.5% more than in 2023. The Special State Prosecutor's Office also recorded an increase in trust - 9.7% compared to 2023, and is now trusted by 64.8% of the respondents.

Citizens are also showing more trust in those who occupy the most responsible positions in the State Prosecutor's Office. The work of the Supreme State Prosecutor Milorad Marković is supported by 51.5%, and the work of the Chief Special Prosecutor Vladimir Novović by 57.6% of the respondents.

More than half of the citizens (57.4%) have confidence in the High State Prosecutor's Office in Podgorica, which is 10.8% more than in the previous year. An increase in trust of 5.1% compared to the last year's survey was recorded also regarding the High State Prosecutor's Office in Bijelo Polje, which is trusted by 46.5% of the respondents. 60% of citizens trust basic state prosecutor's offices, showing an increase of 14.4% compared to 2023.

Just over half of the respondents (53%) believe that prosecutors' offices are successfully fighting corruption, while 58.3% of them believe that they work in the public interest and in accordance with laws and professional standards. The survey also showed that almost two-thirds of citizens (61.4%) view the State Prosecutor's Office as an independent and impartial institution that strengthens the foundations of the rule of law.

Let us recall that the last survey conducted by the *NGO Human Rights Action* and the agency *DeFacto Consultancy* showed, among other things, that almost a third of state prosecutors (31.7%) believed that there is corruption in the Montenegrin judiciary, while a quarter (25.8%) witnessed corruption in the judiciary in the last three years. We presented the results of this survey in our [Bulletin no. 2](#).

The above contrast in results shows that, although there are concerns about corruption within the judiciary, the public still recognises efforts to increase its independence and the level of professionalism.

## | BRIEF NEWS

### **GREEN LIGHT FOR THE INDICTMENT IN THE "TUNNEL" CASE**

The Basic Court in Podgorica confirmed the indictment of the Basic State Prosecutor's Office in Podgorica against seven defendants in the case the public came to know as "The tunnel". The extrajudicial panel assessed that the collected evidence provides sufficient grounds for suspecting that the defendants have committed several criminal offences that merit a prison sentence of at least five years.

The defendants are accused of digging, in early July 2023, a 30 metres long tunnel from the basement of a residential building to the High Court in Podgorica, i.e. to the court depot that housed evidentiary material from the cases that are pending or have been concluded in that court.

Neither the motive nor the persons who ordered the break-in are known, but the investigation revealed that weapons, mobile phones and a small amount of drugs were stolen from the depot.

The previous three hearings for the control of the indictment were postponed, and we analysed the reasons for this in [Buletin no. 1](#).

### **VESNA AND MILOŠ MEDENICA WILL BE IN COURT ON 28 FEBRUARY**

The trial of former President of the Supreme Court Vesna Medenica, her son Miloš and the other defendants is scheduled for 28 February in the High Court in Podgorica. After the change of the president of the court panel, judge Nada Rabrenović, the trial is set to start from the beginning. The panel will now be headed by judge Vesna Kovačević. She has scheduled a total of 40 hearings in advance, and is planning to hold them all in just over four months.

The defendants are suspected of creating a criminal organisation, smuggling, giving and receiving bribes, unlawful influence and inciting unlawful influence, abuse of office, drug smuggling, illegal possession of weapons, inflicting serious bodily harm and tampering with evidence.

The initial trial against Medenica and the other suspects lasted a year and 10 months, with more than 20 postponements



during that period. We discussed the details of the process and the reasons for the postponement of the hearings in [Bulletin no. 3](#) and [Bulletin no. 1](#).

### **A COPY OF THE TESTIMONY OF A WITNESS WAS ACCEPTED AS EVIDENCE IN THE CASE OF THE MURDER OF SLAVOLJUB ŠĆEKIĆ**

The Appellate Court will not be removing a copy of the compact disc containing the testimony of the once protected witness Zoran Vlaović, known as Bohum, from the case file concerning the murder of police inspector Slavoljub Šćekić. The original CD has disappeared, as was noted back in April 2012, so the defendants' attorneys requested that the entire copy be removed from the case file, claiming that parts of the record were allegedly missing.

The trial for the murder of Šćekić started anew before the panel of the Appellate Court after the Constitutional Court overturned the verdict that sentenced Ljubo Bigović, Saša Boreta, Milan Šćekić and Ljubo Vujadinović to 30 years in prison, and the now the late Alan Kožar to six years and ten months for planting three explosions at the construction site of the "Splendid" hotel in Bečići.

According to the abrogated verdict, incited by Boreta and Bigović, Šćekić and Vujadinović killed a police inspector on 30 August 2005. According to the abrogated verdict, they did this because Slavoljub Šćekić was on their trail investigating an extortion attempt and a series of bomb attacks on the then construction site of the "Splendid" hotel.

### **THE INDICTMENT AGAINST KATNIĆ AND LAZOVIĆ IS UNDERGOING SUPPLEMENTATION**

The criminal panel of the High Court in Podgorica, presided over by judge Zoran Radović, sent back for correction the indictment that was filed against former Chief Special Prosecutor Milivoj Katnić and former Assistant Director of the Police Administration, Zoran Lazović.

They were arrested on 14 April 2024 and have been in custody ever since. They are charged with the criminal offences of creating a criminal organisation, abuse of office, and illegal possession and carrying of weapons and explosive materials. In addition to the above, Lazović is also charged with money laundering.

## **NEW PROSECUTORS AT THE SUPREME PROSECUTOR'S OFFICE AND BASIC STATE PROSECUTOR'S OFFICES**

The Prosecutorial Council elected Danka Živković and Armin Selmanović as state prosecutors in the Supreme State Prosecutor's Office. At the session, it was decided to elect Branko Knežević and Andrijana Drašković as prosecutors in the Basic State Prosecutor's Office in Bijelo Polje, and Milica Tomović and Slađana Vukotić-Kankaraš in the Basic State Prosecutor's Office in Podgorica. State prosecutors in basic state prosecutor's offices are elected for a period of four years.

## **COMPETITION FOR THE ADMISSION OF INTERNS IN 15 COURTS**

The Supreme Court of Montenegro announced a competition for the admission of 31 interns in 15 courts for a fixed period of time (up to three years). The competition was open until 2 February.

The High Court in Podgorica needs six interns, the Commercial Court of Montenegro, the Administrative Court of Montenegro, the Basic Court in Kotor and the Misdemeanour Court in Podgorica need three each, the basic courts in Nikšić and Cetinje, as well as the High Misdemeanour Court of Montenegro need two each, while the Basic Courts in Danilovgrad, Kolašin, Ulcinj, Herceg Novi and Berane, as well as the misdemeanour courts in Bijelo Polje and Budva, need one each.

## **THE JUDICIAL COUNCIL ELECTED NEW JUDGES AND ANNOUNCED COMPETITIONS**

At the second session of the Judicial Council, held on 29 January, one candidate and one judge were elected to the Administrative Court of Montenegro, while two judges were elected to misdemeanour courts. The Council also made a decision to announce a public competition for the election of the President of the Basic Court in Pljevlja, and a competition for the selection of 14 candidates for judges of the basic courts of the northern region.

## **THE SUPREME COURT ESTABLISHED THE BUREAU AND FAIR TRIAL DEPARTMENT**

In January, the Supreme Court of Montenegro established a court Bureau, which consists of the presidents of court departments and is managed by the President of the Supreme Court, Valentina Pavličić. The objective and task of this Bureau is to help the head of the court to discharge her office and to “influence the improvement of efficiency and effectiveness”. It was also decided to establish the Fair Trial Department, so the Supreme Court will now have five separate departments.

The Court announced that in the future, to increase transparency, they will be publishing all important information about the work at the sessions on their website.