

**QUESTIONABLE WORK OF PROSECUTORS OFFICE**

**A side view**



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*Podgorica, May 2017*

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A SIDE VIEW

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-  GradjanskaAlijansaCG
-  @GACrnaGora
-  office@gamn.org
-  www.gamn.org
-  St. Studentska, no. 21/a, Lamela 9, app. 5, Podgorica
-  +382 20 513 687

## For the Publisher

Boris Raonić

## Editor in Chief

Kristina Četković

## Authors

Civic Alliance Team and partners

## Translation

Jelena Ristović

## Design and Layout

Blažo Crvenica  
Zoran Zola Vujačić

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# Introduction

Dear Madam/Sir,

We introduce to You the second edition of Civic Alliance publication, on the occasion of the Independence Day. This year, the Prosecutor's Office attracted our attention.

Since October 2016- centre of public discourse of Montenegro was focused on State Prosecutor's Office. Arrests during the parliamentary elections lead to unprecedented political contamination due to suspicion in evidence collected by Special State Prosecutor's Office. Was this suspicion because of the new relations with the work by the State Prosecutor's office and incredible efficiency demonstrated in processing and obtaining of evidence- or something else, time will tell.

The following pages of this publication do not describe all cases filed to the Prosecutor's Office and got lost in the chaos of inactivity, weird interpretations of regulations, or simply unprofessionalism. We just tried to set examples that, to our opinion, describe the work of the prosecutorial system that is very important for the national conformation and its citizens. With the elaborated examples, we wanted to present weaknesses in the system that has a lot of lives and destinies depending on it.



With this publication we want to remind on importance of the quality of work of the Prosecutor's Office and thus these various examples. Economic, politics, society, sport, culture, media are only some of the areas where we tried to find cases for which Prosecutor's Office had strange, disappointing and often unbelievable results.

Prosecutor's Office is, by its nature, one of the pillars of effective and efficient national apparatus and always in the focus of public, One of the key elements of judicial mechanism should not be allowed to deteriorate, which might slow down democratic processes in the country. For that reason, this document is at the same time humble assistance in this regards, and the place where, jointly with partners from the NGO sector, we have reminded how it used to be, how it should not be, and accordingly – how should it be in the future.

We expect from the Supreme State Prosecutor to review the work of his predecessors and present prosecutors, who allowed irregularities and failures presented at the following pages. We also invite him to initiate financial investigations, because activities of Prosecutor's Offices in this area are very modest.

We hope that the publication will inform and inspire prosecutorial system to change the approach to work process and the manner in which they work, other institutions to contribute more, and citizens to seek out for efficiency and visible positive effects of work of the Prosecutor's Office. Civic Alliance is especially grateful to partners for assistance and information given during the development of the publication: Network for Affirmation of Nongovernmental Sector (MANS), NGO LGBT Forum Progress, Union of Free Trade Unions of Montenegro (USSCG), Human Rights Action (HRA), and Environmental Movement "Ozon".

**Civic Alliance Team**

## GENERAL ANALYSIS

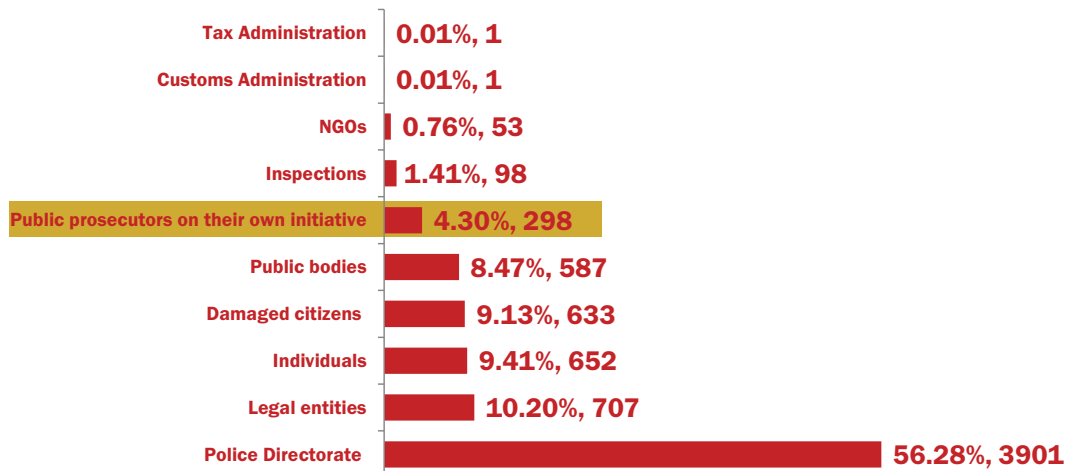
## Proactivity: not even on the horizon

According to the results from the last five years, Prosecutor's Office rarely acts on its own initiative. For that reason, other institutions, organizations and individuals filed large number of criminal charges, which is the trend that concerns.

Particularly unbelievable is the fact that, for the last five years, only 30% out of more than 10.000 criminal charges, were processed, while 70% of cases were rejected due to the statute of limitations.

According to the Report of the Supreme State Prosecutor's Office, 6.931 adult potential committers of criminal offences were reported to this institution in 2016. Out of this number, 6.561 were reported to Basic State Prosecutor, and 370 were reported to High State Prosecutor in Podgorica and Bijelo Polje.

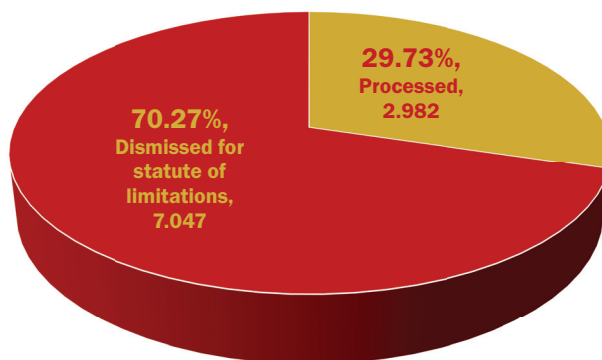
### Number of filed charges to Supreme State Prosecutor's Office in 2016



State Prosecutor's Office dismissed criminal charges against 3.203 people, or 46,21%, in 2016. Special State Prosecutor's Office received criminal charges against 1.126 committers in 2016. With the unresolved charges from the previous period, Special State Prosecutor's Office worked on criminal charges against 1.393 people. Out of the overall number of filed criminal charges, Police Directorate filed charges against 116 persons; other public bodies against 24 persons; legal entities filed criminal charges against 135 people; nongovernmental organizations participated with 365 charges; physical persons filed criminal charges against 482 people, and political parties against- one person. Special State Prosecutor's Office initiated procedures against three persons on its own initiative.

In order to check indications and the grounds for suspicion on eventual existence of criminal acts and in order to identify perpetrators, Special State Prosecutor's Office formed 54 cases.

### Number of criminal charges in the last five years:



► Source: Center for Investigative Journalism (CIN-CG)

**According to the Report on work of Prosecutor's Office for 2016, more than a half of criminal charges were filed by the Police Directorate. What causes concern is the overall share of own initiative acting of Prosecutor's Office on its, which is only 4%, and the share of Special Prosecutor's Office 0,26%. Prosecutor's Office proactive role is necessary and lack of that impulse causes concern. The active role in revealing and submitting of charges by Prosecutor's Office is the key factor for the progress of this institution.**



**GUARANTEES OF THE GOVERNMENT FOR PUBLIC ENTERPRISES**

# When the Government brakes the law, Prosecution turns it's head

Four years ago, State Audit Institution (DRI) stated in its Report on Audit of State guarantees for 2010 and 2011 that the Government of Montenegro issued guarantees without elaborated analysis of financial situation of enterprises, economic sustainability of restructuring programs, and without appropriate assessment of consequences that might occur.



DRI then controlled all arrangements of the Government that were more than 10 million euros, which included Aluminium Plant Podgorica (KAP), Steel Company Nikšić, Pobjeda, Railway Infrastructure and Railway Transport. The country guaranteed and (mostly) paid loans in the total sum of 214,53 million euros.

Auditors stated that the audit should include guarantees KAP received in 2009, when the Settlement Contract was signed. The Contract then signed representatives of the Government of Montenegro and Central European Aluminium Company (CEAC). The Contract envisaged issuing of five guarantees, out of which three (in the amount of 49,6 million euros) were issued the same year.

The assessment of auditors was that three responsible entities – Ministry of Economy, Ministry of Finances and Commission for the Control of National Assistance did not attentively assessed financial situation of KAP, Steel Company Nikšić and Pobjeda, and that they did not pay due attention considered the findings of commercial auditors. The Report of DRI showed that financial indicators could determine that the companies were not able to repay the loans from their own financial sources, and that their future business was questionable.



None of this was enough to Montenegrin Prosecutor's Office to re-examine harmful contracts for four years, and determine criminal responsibility, because the findings of DRI indicated that guarantees for these companies were not issued in accordance with the rules. This resulted in spending of hundreds of millions of euros from citizens. Mentioned failures made by the state for years were paid by the citizens, and the state leadership that makes these decisions usually stays untouchable in these cases.

**According to the latest information from 2016, this case is in the phase of investigation. Prosecutor's Office recently assessed that findings should be updated, which required additional expert testimony.**

### **The case of "PGS Agency"**

After the order of former Minister of Interior Ivan Brajović, at the end of 2012- Internal control of the Ministry of Interior submitted to Đurđina Ivanović, Prosecutor for Fight against Organized Crime and Corruption- five disputable contracts between the Police Directorate and "PGS Agency".

According to allegations from the charge, there were five disputable contracts about the business and technical cooperation between Police Directorate and "PGS Agency", worth almost 675.000 euros. Contracts implied procurement of software needed for application of new systems for surveillance of border crossings Debeli brijeg and the Airport Golubovci.

Significant number of procurement and maintenance contracts have not been carried out. This was justified with number of documents that were confirming conducting of agreed businesses, which were the grounds for the payment to the mentioned companies. Ministry of Interior also paid the software for the police, which could be downloaded from the Internet for free. Special State Prosecutor's Office finalised the procedure of control of contracts between Police Directorate and PGS Agency five years later, and determined that the five disputable contracts on business and technical cooperation did not have grounds for suspicion that any person, not even Veselin Veljović, the former Director of Police Directorate, committed the criminal act. Still, not any indictment in this case has been filed.

**Although national budget was damaged, Special State Prosecutor did not determine anyone's responsibility at the Police Directorate. Regardless of the fact that all payment orders were regularly signed by responsible persons in Police Directorate, this argument was insufficient for Special State Prosecutor.**

## CONTRACTS MADE OPPOSITE TO THE LAW ON CONCESSIONS

# Natural resources only for selected ones

Two years ago, State Audit Institution (DRI) found that the state budget was devoid of five million euros for the period from 2009 to 2012, on the account of fees for the use of resources in the public interest and the interest of natural goods.

DRI especially indicated on irresponsible and illegal forest management, because in the five years period, the Forest Administration illegally and non-transparently gave forests for exploitation. Not even one controlled contract on concession was secured with the guarantee, which is opposite to the Law on Concessions.

Findings of the audit stated that the Government gave approval for the granting of concessions for the use of forests prior to the official establishment and registration of DOO "Vektra Jakić" – Pljevlja, and even before public announcement and deciding on the procedure.

The same company, owned by Dragan Brković, was illegally forgiven for few millions and 670 thousand euros for forest exploitation. Although "Vektra Jakić" did not pay any tranche for the concession compensation for three-years period, Forest Administration did not initiate proceeding for withdrawal of concessions.

According to the latest information available to public, Supreme State Prosecutor's Office handed this case to the Special State Prosecutor's Office last year, with the special accent on case "Vektra Jakić". Still, it is unknown whether the Special State Prosecutor has taken any steps in this case.

In 2016, the state approved the guarantees for the three million euros loan to the same company – "Vektra Jakić", from the Abu Dhabi Funds for Development for the pellet production. According to media statements, pellet production stopped two months ago, and workers did not receive salaries for several months.

Conclusive with 2016, overall dues towards the local government Pljevlja by the same company were 2,8 million euros.

**Only for the period from 2009 until 2012, state budget was damaged for five million euros in the name of compensation for the use of goods of general interest and the interest of natural goods.**

**It is still unknown whether the Special State Prosecutor's Office has taken any steps in this case.**

## The Case of Ulcinj Salworks compound

In April 2016, Network for Affirmation of Nongovernmental Sector (MANS) filed criminal charges against M.O. former Director of the Real Estate Administration and Dž. Č. Head of the Branch Office in Ulcinj, and against few persons from Prva bank and Crnogorska Komercijalna bank (CKB), for allowing illegal registration of mortgage over the Salworks property.

After a year of investigation, criminal charges of MANS were dismissed, not because the criminal act did not exist, but due to the statute of limitations.

Case includes few loans in the total value 5,2 million euros that were issued from Prva bank and CKB. Collateral for the loans was the land that was not owned by Saltworks factory, but by the state. The property could not serve as the collateral for the loan, because Saltworks, or the former owner Eurofond had only the right to use the land and not manipulate with it.



Prosecutor rejected the criminal charge of MANS, because it was assessed that there was no damage for the public interest, or the state budget claiming that the property was still on the place where it used to be and that mortgages were not applied.

Besides, the prosecutor said there was no profit or gain for the ones who MANS suspected of violating the law. It was all about couple of loans worth 5,2 million euros, which was direct benefit and profit for persons who were involved in this transaction.

MANS filed the complaint to the Supreme State Prosecutor. State Prosecutor's Office did not raise charges even in this case.

**The case was dismissed due to the statute of limitations although the damage was few million euros. Prosecutor who dismissed criminal charges did not suffer any consequences.**

MULTIMILION BENEFITS ON THE EXPENSE OF THE STATE BUDGET

## Corruption games remain unpunished

During the mandate of Milo Đukanović as the President of the Government of Montenegro, the Government allowed his brother – businessman Aco Đukanović, to acquire multimillion benefits, which damaged the state budget.

With the contracts signed between Aco Đukanović and Police Directorate during 2008, Đukanović paid three million and 300 thousand euros for the lease of land where the police building was. Afterwards, the state took the responsibility to remove the object from 7.500 square meters of land in the wider center of Podgorica, and to give the land to Đjukanović.

The competent state authorities did not fulfil a contractual obligation - to remove the existing building from the land that was the subject of the contract. During 2012, they informed the buyer of the land - Aco Đukanović that they would not fulfil obligations and handle over the property. Aco Đukanović then unilaterally terminated the contract and initiated the court proceeding for compensation of damage - a profits loss, which ended with the ruling that state of Montenegro had the obligation to pay Aco Đukanović almost 10.5 million euros for the profit loss, interest and the court proceedings costs. Meanwhile, documentation about who informed the buyer of the land in 2012 that the state would not fulfil its obligations and that the land would not be transferred to him, disappeared from the Ministry of Interior.

State Prosecutor's Office received more criminal charges and urgencies on this case. It is well known that the case was formed in July 2016, and that it was handed over to the Basic State Prosecutor's Office in Podgorica, because of the existence of suspicion that the criminal offence "unconscientious work in public service" was committed.

- ▶ On behalf of Montenegro, the contract signed was signed by Veselin Veljović, Director of the Police Directorate, who was in



Photo: dan.co.me

this position until 29 December 2011. Basic State Prosecutor's Office in Podgorica stated that Veselin Veljovic would not be under criminal charges because the criminal pursuit was under statute of limitations, and so, due to the flow of time, the criminal charges against him were dropped.

- ▶ At the time of conclusion of the contract and until 10 June 2009, Jusuf Kalamperović was Minister of Interior, from 10 June 2009 until 04 December 2012, Ivan Brajović was occupying this position.
- ▶ Former Prime Minister Milo Đukanović said at the Parliament of Montenegro that if the decision of the Supreme Court causes damage to state interests of Montenegro "whether it is caused by incompetence, lack of professional agility, omission or irresponsible treatment, we will clearly and accurately establish responsibility and initiate appropriate procedure with the clear ambition to fully eradicate such behaviour ". Until now and despite the firm attitude of Aco Đukanović's brother, the responsibility has not been clearly and precisely established, nor has the appropriate procedure been initiated.

**10,5 million euros of the state money were paid to Aco Đukanović, brother of former Prime Minister of Montenegro, and despite evident, systematic failures, no one has been considered responsible.**

### **"Telekom affair" - a story about eternal investigation**

US Securities and Exchange Commission (SEC) announced in April that two former Directors of Magyar Telekom agreed to pay 400.000 USD and to accept the prohibition of doing business, in order to settle in case of indictments for corruptive privatisation of telecommunication companies in Macedonia and Montenegro.

In December 2011, Magyar Telekom paid 95 million USD penalty for the settlement with SEC, due to accusations that the company bribed officials in Macedonia and Montenegro, in order to get the job and exclude the competition in telecommunication field. In case of Telekom Montenegro privatisation in 2005, SEC filed a lawsuit against Hungary claiming there was a corruption scheme, by which 7.35 million euros were paid to at least two Montenegrin state officials and to "a sister of the highest state official" by fake consultancy contracts, so that the Telekom could buy Montenegrin company under favourable conditions. It is suspected that a sister of Milo Đukanović, the former Prime Minister of Montenegro, was involved in this job.

**Although this case has the epilogue before USA courts, Special State Prosecutor's Office in Montenegro investigates this affair for years unsuccessfully.**

## YEARS OF INVESTIGATIONS FROM THE PROSECUTORS

# Illegal state property takeovers as a business trend

The Government of Montenegro sold the majority state package of shares of UTIP Montenegro (properties included: Camp and Motel „Zlatica“, hotels „Ljubović“ and „Crna Gora“) to the Normal Company for 4,7 million euros.

Five years later, with the approval of the Government, Police Directorate bought only Motel „Zlatica“ with the land for 8,4 million euros, from Žarko Burić, owner of the Normal company.

Purchase of the camp was the topic of the control hearing at the Parliamentary Board for Anti-Corruption at the end of 2013, when Veselin Vučković, former Supreme Public Prosecutor, informed members of the Parliament by letter that this Prosecutor's Office had opened the procedure in this case.

Special State Public Prosecutor's Office opened investigation again during 2015, in the case of camp „Zlatica“. According to the latest available information at the beginning of 2017, investigation is still ongoing.

According to previous media statements, focus of investigation was on 36.000 square meters of the state land at the camp „Zlatica“ that was privatised and alienated. Allegedly, the state bought its own land from the Normal Company, the land that otherwise could not be sold.

Law on Ownership and Proprietary Relations clearly prescribes that in the case of property privatisation for which market remuneration has not been paid, remains the state property.



Miomir Mugoša, Ambassador of Montenegro in Slovenia (then Mayor of Podgorica) and Žarko Burić, owner of the Normal Company gave statements to the members of the Special team of Special State Prosecutor's Office. It remained unknown whether the Special State Prosecutor's Office invited on this occasion and as planned, Igor Lukšić, who was the Prime Minister and the President of the Privatisation Council during that period, and Veselin Veljovic, former Director of the Police.

Ministry of Interior did not wait for the new steps of Special State Prosecutor's Office, which investigates for almost two years whether the state was damaged with the whole case of the purchase of the Camp „Zlatica“. Ministry of Interior plans to invest couple of million euros this year, for construction of the new object intended for elite police units.



**Special State Prosecutor's Office opened the investigation in case „Zlatica“ again in 2015, and it is still ongoing.**

### **State Land as the collateral for various trades**

Similar arrangement was made in case „KAP-Uniprom-Collector“. After the tender, „Uniprom Company“, buyer of the Aluminium Plant Podgorica (KAP), got the large chunk of land near KAP, with a minimal value – 26 million euros. Afterwards, the company used this land as the guarantee for a loan from „Zapad banka“, which was used to pay off 28 million euros of the purchase price of KAP.

„Uniprom“ now swaps the same land with the local government for the purpose of construction of wastewater treatment plant. With that swap, Uniprom Company gave parcels behind KAP to the Capital, near the red mud pond, while the Capital gave more attractive parcels in return. Some of these parcels are near the highway Podgorica-Petrovac.

**Prosecutor's Office did not issue any statements on this case.**



## The „Carine“ case

The case „Carine“ and the municipal land disposal has a long history that begins in 2002.

MANS filed the first criminal charge to Supreme State Prosecutor's Office on 17 October 2007, against Miomir Mugosa, Mayor of Podgorica and Dragan Đukić, Director of the Property Directorate, suspected of abuse of official positions and damaging of the Capital city's budget for more than 11 million euros, in the procedure of transferring the rights over the municipal land to the company CARINE DOO from Podgorica.



The criminal charge was forwarded to the Basic State Prosecutor's Office in Podgorica. One year after the filing of the criminal charge, this Prosecutor's Office in Podgorica informed MANS that their criminal charge was rejected "because there were no essential elements of the criminal offence in the reported actions for which they were reported, or for any other person for whom prosecution has been undertaken ex officio."

In 2010, the Basic Court in Podgorica annulled the contract between the municipality and the company "Carine" on the sale of municipal land from 2007. Although this land was offered for more than 13 million euros on public bidding, it was sold for almost two and a half million euros by the subsequent direct trade between the buyer and seller.

The Supreme Court then ruled that "Carine" should return the land of 15,205 square meters, while the Capital Podgorica should return to "Carine" 2,508,825 euros, as much they paid for the controversial land. However, Mugoša sold again the land to "Carine" for a price of 165 euros per square meter, just as in 2007.

**At the end of 2015, the Chief Special Prosecutor stated that he would start investigation in this case. In this case, no indictments have been processed yet.**

## ABUSE OF POWER IN LOCAL GOVERNMENTS

# Methodology that turns minus into plus

Two years ago, State Audit Institution (DRI) gave negative opinion on final account of the Budget of the Old Royal Capital Cetinje and its harmonisation of business with the legal regulations.

DRI stated as follows: „The audit identified material flaws that will significantly influence the given financial result.“

Negative opinion was given because deficiencies in the budget planning and execution were identified, as well as unpaid obligations, municipal property, realisation of certain public revenues, inadequate implementation of legal and subordinate regulations, and non-functioning of the internal control system. DRI also pointed to inappropriate and irrational spending of money. The mayor of Cetinje then and today is Aleksandar Bogdanović. He stated once to a daily newspaper "Vijesti" that they used the methodology that most municipalities used, which was why they had a results different than DRI. Bogdanović added that in future they would use the methodology that DRI recommends.

### Izveštaj o reviziji Završnog računa Budžeta Prijestonice Cetinje za 2013. godinu

- Račun 722 – Sredstva prenesena iz prethodnih godina (račun 721) - Sredstva prenesena iz prethodne godine i 7322 - Sredstva po osnovu kraškoronih plasmana) koji je bio iskazan u iznosu od 683.154,00€, sv eden je na 0, stoga jer se novčana sredstva koja su preostala na kraju godine iskazuju kao depoziti na početku slijedeće godine i ne mogu se iskazivati kao prihod Budžeta tekuće godine, a privli i odvli sredstava na računima u okviru Konsolidovanog računa trezora kao povećanje i smanjenje depozita (objašnjeno na str. 34 i 35), a ne kao prihodi i rashodi Budžeta.
- Račun 451 - Pozajmice, krediti, deponovana novčana sredstva umanj en je za iznos 394.400,00€, jer ne predstavlja rashod, već se odnosi na odvite gotovine sa jednog na drugi račun unutar Konsolidovanog računa trezora.
- Po osnovu deponovanja novčanih sredstava ostvaren je prihod od deponovanja (pozitivna kamata), stoga je račun 7155 - Ostali prihodi uvećan za 244,77€.
- Račun 742- Transferi umanj en je za iznos Pozajmica koje je Prijestonica Cetinje dobila iz sredstava Egalizacionog fonda (1.194.629,00) a uvećan je račun 7511 - Pozajmice i krediti iz domaćih izvora.
- Račun 7153 - Prihodi koje organ ostvari vršenjem svoje djelatnosti umanj en je za iznos donacija 141.212,96€ i isti je reklasifikovan na račun 741 - Donacije.

Na osnovu nalaza utvrđenih revizijom izveden je finansijski rezultat deficit, koji iznosi: - 921.580,84€.

Takođe, utvrđena su i druga odstupanja koja su uticala na davanje iskazanog mišljenja. Pomenuta odstupanja se odnose na određene nedostatke u planiranju budžeta, sistemu evidentiranja neizmirenih obaveza, imovine, prikupljanja pojedinih javnih prihoda, odstupanja u primjeni važećih zakonskih i podzakonskih propisa, nefunkcionisanja sistema unutrašnjih kontrola u pojedinim slučajevima kao i nenamjensku potrošnju sredstava.

U skladu sa utvrđenim nepravilnostima i iskazanim rezervama nadležni Kolegijum Državne revizorske institucije izražava **negativno mišljenje** na finansijske izvještaje Završnog računa Budžeta Prijestonice Cetinje za 2013. godinu i usklađenost poslovanja sa zakonskim propisima.

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### Izvršenje budžeta

Cetinje je prije usvajanja Predloga odluke o budžetu, a u skladu sa članom 26a Zakona o javla mišljenje Ministarstva finansija br. 03-13579/1 od 10. decembra 2012. godine na Načrt letu Prijestonice Cetinje za 2013. godinu, namijenja je preporučiti Prijestonici Cetinje da izvrši korekciju kapitalnih izdataka (predloženi u 98 miliona), u skladu sa procijenjenim prioritetima u cilju servisiranja neizmirenih obaveza Prijestonice Cetinje nije prihvatila preporuku Ministarstva finansija i nije izvršila korekciju iznosa za 2013. godinu.

Izvršeno da Završnim računom Budžeta za 2013. godinu njeisu iskazana sva primanja i svi izdaci

inom njeisu obuhvaćena sredstva koja se odnose na otplatu kredita (glavnica i kamata) koju je imovine, a na osnovu političkih odnosa, vršilo Ministarstvo finansija, iz sredstava Egalizacionog i u od 1.031.363,51€. Navedeni iznos sredstava nije prikazan kao prihod Prijestonice na ime

oplatu sredstava iz Egalizacionog fonda, a takođe ni kao izdatak (račun 461- Otplata dugova i 416 - Kamate rezidentima).

- **Source: Audit Report Final account of the budget of the Old Royal Capital Cetinje for 2013**

**Representatives of Municipality Cetinje informed the public that they had positive budget result of 1,8 million euros, but the Supreme Audit determined that the municipality had 921,58 thousand euros deficit. The case of Cetinje is not an exception, because there were grounds for activities of the State Prosecutor's Office in other municipalities as well. During 2016, representatives of the Special Prosecutor' Office said they had conducted investigations in Kolašin, Berane, Bar, Ulcinj and Podgorica.**

### **Criminal responsibility of Bogdanovic is still undetermined**

Basic State Prosecutor's Office in Cetinje rejected criminal charges against Aleksandar Bogdanović, Mayor of Old Royal Capital Cetinje, which was filed after the report of DRI.

„In the actions of the suspect, no elements of the reported criminal offences were executed, or any other criminal offence prosecuted ex officio“, Basic State Prosecutor's Office said to daily „Dan“.



**M.S. from Cetinje filed criminal charges against Bogdanović at the beginning of November 2014, but the Basic State Prosecutor's Office rejected charges on 19 April 2016.**

### **Financial investigations are still a weak link**

Financial investigations are still the weak link of prosecutorial organisation. This confirmed by the last report of the European Commission (EC) on Montenegro from November 2016. EC stated that financial investigations were not systematical and parallel with regular investigations, especially in Prosecutor's Offices at lower level.

“When it comes to money laundering, despite additional specialised training and other measures, there were no new cases before courts; reporting of suspicious bank transactions is still at the low level in comparison with the reporting of cash payments. Weaknesses related to resolving of various types of financial and economic criminal offences, should be corrected”, stated the EC Report.

According to the assessments of Global Financial Integrity, more than 2 and a half billion dollars were illegally moved out from Montenegro during the period from 2004 until 2013.

## VIOLATION OF ELECTORAL RIGHTS

## Equal voting for the living and the dead

When it comes to sanctioning of violation of electoral rights, work of the Prosecutor's Office was traditionally inadequate and without determination to respond to numerous reports of citizens, nongovernmental organisations and political parties, and to react by official duty.

Such a standpoint towards the violation of laws and regulations in this area was equal to almost all election cycles held in Montenegro since gaining independence, and it has continued after the extension of the prosecution's powers in these cases - as criminal offences - which were also evident during the parliamentary elections that took place on 16 October 2016.

Although prosecutorial institution was obliged to initiate criminal responsibilities in numerous charges, so far it has been done in a small number of cases. Prosecutors remained silent on a large number of complaints received by political parties and nongovernmental organisations, while large number of these complaints were rejected without any explanation or argument.

The text below presents the cases that Network for Affirmation of Nongovernmental Sector (MANS) reported to Prosecutor's Office.

**Who is responsible for mistakes in electronic register:** Citizens enrolled into the registry of deceased persons by mistake could not exercise electoral rights at the local elections in 2013 in Nikšić.

Prosecutor's Office assessed that there were no grounds to initiate criminal proceeding against any responsible persons at the Ministry of Interior - Regional Unit Nikšić, or against responsible persons at the municipality Nikšić, because the names of three persons were deleted from the electoral list for alleged death. These people, although enrolled into the registry of deceased persons by mistake could not exercise their right to vote at local elections in this municipality on 9 March 2013. Explanation of the Prosecutor's Office stated it was not possible to determine who made the mistake while transferring data from the registry book into the electronic registry, because operators that were engaged according to the short term service contracts were responsible for the data entering.

**Using the right to vote - two times:** During the presidential elections in 2008, the same person voted two times - once at the Detention and Rehabilitation Center (KPD), and another time at the ballot station at the place of birth.

Prosecutors did not find interesting a criminal charge against NN person who provided to B.Č. the right to vote two times. On a day of presidential elections in 2008, B.Č. voted at the Detention and Rehabilitation Center Podgorica (KPD), where he served imprisonment sentence, and another time at the ballot station. Criminal charge stated it was possible that some other person voted at one out of two ballot stations instead of B.Č.

**Even deceased persons vote:** Deceased people also voted at the presidential election in Rožaje.

Prosecutor's Office did not even respond to actions taken for the criminal charges against the President of the Electoral Board I.K. in Podgorica and Đ.R. from Rožaje. During the presidential elections that took place in April 2008, they



were suspected for violation of rights to vote from Article 187 of the Criminal Code Montenegro, which says: (1) Anyone who at elections or at a referendum votes instead of another person under his/her name or at the same elections votes more than once or uses more than one ballot paper, shall be punished by a fine or imprisonment sentence not exceeding one year. (2) A member of the electoral board who enables another to commit an act referred to in Paragraph 1 of this Article shall be punished by a fine or maximum two year imprisonment sentence.

Prosecutor's Office is silent for years on four criminal charges that were filed against Presidents of Electoral Boards in Rožaje and Podgorica, for suspicion on criminal offence violation of right to vote. Prosecutor's Office also dismissed criminal charges against the President of Electoral Boards in Rožaje for suspicion that he allowed NN person to vote instead of dead person at the presidential elections in 2008.

**Voting in the name of others possible as well:** One person voted instead of 14 persons at the Presidential elections in Podgorica.

Prosecutors have remained silent on criminal charges against P.K., President of Electoral Board from Podgorica for suspicion that he allowed NN person to vote instead of 14 people at the presidential elections in 2008. All of these people live abroad, and were also out of Montenegro on

**Prosecutors do not take action on a number of charges from political parties and nongovernmental organisations during almost all electoral processes, which is of great concern. It is unacceptable that Prosecutor's Office dismissed large number of charges without explanation and arguments.**

## Right to vote- citizenship is not a precondition<sup>1</sup>

Criminal charges were filed against more NN persons, employees at the Capital City Podgorica, Ministry of Interior, and Ministry for Information Society and Telecommunication- for reasonable suspicion on committing the criminal act – composing inaccurate voters' list from Article 188 of the Criminal Code of Montenegro and violation of right to vote from Article 185 Paragraph 2 of the Criminal Code, because they made inaccurate voters' list by violating official competences intending to influence on results of elections. As stated in charge, they enabled illegal entry in voters' list of A.V. and J. Ć., although they did not have Montenegrin citizenship. In that manner, they provided a voting right for above mentioned at presidential elections 2013, although they did not have legal preconditions.

From the voters' list for the presidential elections held in 2013, it is visible that A.V. and J.Ć. from Podgorica were registered in voters' list and that they voted at these elections. According to the evidence submitted with the charge, the above mentioned persons did not have the citizenship of Montenegro on election day, that is- when they were enrolled in voters' list they did not have Montenegrin citizenship and were not eligible to vote. These persons were admitted into Montenegrin citizenship much later after the elections, in which they were unlawfully allowed to vote. As the evidence in addition to the charge, the submitter filed the following: copies of the voters' list with signatures of voters at the presidential election, voters' list for 2013, which was obtained officially, Decision from the Central Population Register of MUP (Decision on acquirement of the Montenegrin citizenship from 22th July 2015) for A.V., and Decision from the Central Population Register of MUP for J.Ć. (Decision on acquirement of the for J.Ć. from 18th September 2015).

The submitter stated that the evidence showed that reported NN persons acted illegally in the capacity of officials, therefore contributing to preparation of inaccurate voters' list, registration of people who did not have Montenegrin citizenship and right to vote into voters' list.

**Month and a half since the submitting of charges, Special State Prosecutor's Office replied to MANS that the criminal charge from 14 October 2016, filed against NN committers – employees at the Capital City Podgorica, Ministry of Interior, and Ministry for Information Society and Telecommunication for the criminal act preparation of inaccurate voters' list; was dismissed due to the statute of limitations.**

<sup>1</sup> Criminal charges of MANS, no.23146/10 from 14 October 2016 and response of the Prosecutor's Office no.503/16 from 5 December 2016

CRIMINAL PROCEDURES AGAINST STATE OFFICIALS

## Charges for ex officio abuses of power- abstract term

When it comes to elections in 2012, 2013 and 2014, not including the “Recording affair”, MANS filed 60 criminal charges against public functionaries and the ones from the ruling party for violations. Despite the concrete evidence, charges did not result in bill of indictment.

Supreme State Prosecutor’s Office dismissed all the charges, noting that the “existence of criminal offence that should be prosecuted ex officio was not found”, although MANS submitted comprehensive documentation that confirmed the opposite, as representatives of this NGO said.

**“Recording” affair:** When it comes to presidential elections in 2013, the pre-election campaign was marked by above mentioned controversial affair”; MANS filed charges against several DPS officials, using the material that was presented to public and its researches about violation of the state’s money for electoral purposes.

Special criminal charge was filed against Suad Numanović and several DPS activists within controversial affair related to allocation of state welfare funds in municipality of Pljevlja. During the elections of 2012, allocation of so called “welfare funds” which were contrary to law defined procedures and criteria- was the reason for filing of criminal charges.

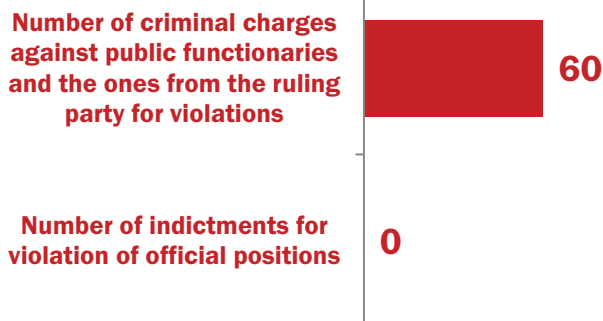


EKSKLUZIVNO AUDIO-SNIMCI IZBORNOG SAVJETA VLADAJUĆE STRANKE KOJI SVJEDOČE O ZLOUPOTREBAMA U PREDIZBORNE SVRHE

**Jedan zaposleni donosi četiri glasa DPS-u**

Photo: dan.co.me

By the first instance verdict, ten accused people were released of charges because of lack of evidence. Higher court in Bijelo Polje in February 2015 revised the decision of Basic court in Pljevlja made in September 2014 and imposed more severe sanctions for head of Welfare Center and an employee at this institution. Others had retrials that resulted in imposing six months suspended sentences.



**MANS filed 60 criminal charges against national functionaries, and those of the ruling party, for violations during the electoral processes in 2012, 2013 and 2014. However, charges didn't result in criminal proposal, although MANS filed concrete evidence for violations. In comparison to previously mentioned charges, in the frame of the "Recording" affair, certain steps have been made through indictments and verdicts, which have been subsequently portrayed as the lack of true willingness of the Prosecutor's Office to deal with instigators, but with mere perpetrators.**

### **Changes in authorisation and competences of the Prosecutors office**

After amendments of laws adopted in 2016, Special State Prosecutor's Office has become competent for criminal acts in the field of electoral rights. Besides the electoral rights of citizen, Criminal Code protects regularity of elections, from the use of power and threats, frauds, forgery, bribes and blackmails. Citizens are "even more secure", as stated from the Prosecutor's Office, because the Special State Prosecutor's Office and State Prosecutor's Office have competences in electoral process.

Milivoje Katnić, Chief Special Prosecutor formed special investigative teams that had a duty to monitor parliamentary elections and act after the reports related to violation of electoral right. Citizens had the opportunity to file criminal charges to Special Prosecutor's Office, Higher and Basic State Prosecutor's Offices, given that prosecutors were at disposal to the special teams. On that occasion, Prosecutor's Office said that entire prosecutorial staff, including special prosecutors and associates would be working full shifts in all Prosecutor's Offices.

**According to results, the change of competences has not contributed to essential changes.**



## IRREGULARITIES DURING PARLIAMENTARY ELECTIONS OF 2016

# All charges dismissed

MANS, as an accredited monitor at the parliamentary elections in 2016, filed 160 criminal charges. Out of this number, 119 charges had official reply, while all charges were dismissed.

According to Article 255 Paragraph 1, and Article 256 Paragraph 3 Of the Criminal Procedure Code and Article 3 Paragraph 1 Point 6 of Law on Special Prosecutor's Office, NGO MANS filed several criminal charges for criminal acts committed during the electoral day.



CRNA GORA  
SPECIJALNO DRŽAVNO TUŽILAŠTVO  
Ktn S br. 8/17  
Podgorica, 21. mart 2017. godine  
MT/ZP

NVO MREŽA ZA AFIRMACIJU NEVLADINOG SEKTORA

PODGORICA

Na osnovu čl.271 st.2 ZKP-a, obavještavam vas da je odbačena vaša krivična prijava broj 462 od 16.10.2016. godine i dopuna navedene krivične prijave broj 462 od 16.10.2016.godine, podnesene protiv nepoznatog izvršioca zbog krivičnog djela povreda slobode opredjeljenja pri glasanju iz čl.186 st.1 Krivičnog zakonika Crne Gore, jer ne postoje osnovi sumnje da je izvršeno prijavljeno krivično djelo, niti bilo koje drugo krivično djelo za koje se goni po službenoj dužnosti.

Kao podnosilac krivične prijave imate pravo da u roku od 8 dana od dana prijema ovog obavještenja podnesete pritužbu Vrhovnom državnom tužilaštvu i zahtijevate preispitivanje rješenja o odbacivanju krivične prijave.

DRŽAVNI TUŽILAC U OSNOVNOJ DRŽAVNOJ  
TUŽILAŠTVU U PODGORICI UPUČEN NA RAD U  
SPECIJALNO DRŽAVNO TUŽILAŠTVO

Miroslav Turšković

**Case 1<sup>2</sup>**

**Criminal charges filed against several NN persons for execution of organised criminal act - violation of exercising free will at voting, from Article 186 of Criminal Code of Montenegro.**

Charge is related to suspicion on activities at the polling station in Konik, at the Elementary School "Božidar Vuković Podgoričanin". The charge indicated that there was perpetration of criminal offences against the electoral rights. According to submitted report, several people at that location intercepted and stopped the voters, and made pressure on them in order to prevent them in exercising their rights. The charge proposed to the Prosecutor's Office to act urgently on criminal charge, as the reported persons were aggressive and threatened to cause more serious consequences.

The same day, the applicant supplemented the criminal charge. The applicant submitted the video as an evidence that led to a reasonable suspicion that several persons organised criminal offences. The applicant recommended urgent actions in order to prevent further perpetration of criminal offences and to identify perpetrators who would be sent to the competent Prosecutor.

**Epilogue: Five months after filing of charges, Special State Prosecutor's Office, submitted the response to the applicant saying that the criminal charge and supplement to the criminal charge from 16 October 2016, had been rejected, as there were no grounds for suspicion that the reported criminal offence was committed or any other criminal offence prosecuted ex officio.**

**Case 2<sup>3</sup>**

**Criminal charges were filed against several NN persons for organised criminal act during elections - violation of exercising free will at voting, from Article 186 of Criminal Code of Montenegro.**

The charge indicated on reasonable suspicion on execution of criminal offences against voting rights in front of the Municipal Assembly in Bar. In the corridor in front of DPS office were more persons waiting for to take the money. Submitted video showed that 250 euros was the amount in the concrete case, which was confirmed by the representatives of the New Serbian Democracy, who said they were prepared to testify about the same case. As part of the criminal report, material evidence was also provided: two videos, photos, and the reports of monitors. The charge also required urgent actions upon the charges in order to check the allegations and prevent any further perpetration of criminal offences.

<sup>2</sup>Criminal charge of MANS, no.462 from 16 October 2016 and response of Prosecutor's Office to that criminal charge no. 8/17 from 21 March 2016

<sup>3</sup>Criminal charge of MANS no.50 from 16 October 2016

The same day, submitter supplemented the criminal charge with the new information and concrete material evidence. Namely, Facebook page of Democratic Front published the video content called "Bar: Payment for voters who DPS transported from Luxembourg and other European countries to vote for that party." Published video clearly shows that 250 euros were paid in Bar for arrival, as stated in charge. Three videos were also submitted in the addition to the report.

**Epilogue: During the preparation of this publication, Special State Prosecutor's Office did not respond and informed the applicant about the epilogue, more than six months since the day the charge was filed.**

### Case 3<sup>4</sup>

**Criminal charges were filed against several NN persons for organised criminal act during elections - violation of exercising free will at voting, from Article 186 from Criminal Code of Montenegro.**

According to this charge, one of the monitors of an accredited organisation - NGO MANS, received information of a citizen saying that DPS headquarter was at the ballot station 71 in Podgorica. Witness V.G. was ready to testify on this.

The charge had a phone number of V.G. who was at the disposal to the Prosecutor's Office. As stated in charges, registering of citizens who go to the elections indicated on the suspicion on unlawful influence on citizens to vote or to vote for a certain list. The report also stated that the research team of the complaint submitter made a written record which concluded that more than 20 voters who did not live there- voted at the mentioned ballot station. In addition to the charge, a written record from the polling site was filed as the evidence. The charge also required urgent actions in order to check the statement and prevent eventual committing of the mentioned criminal act.

**Epilogue: Special State Prosecutor's Office, more than a month since the filing of charge, sent the answer to the MANS saying that the criminal charge from 16 October 2016 was dismissed, as there were no grounds for the suspicion that the criminal act was committed or any other act prosecuted ex officio.**

**Nongovernmental organization MANS, accredited monitoring organisation at the parliamentary elections in 2016 filed 160 criminal charges. Out of this number, on 119 criminal charges was responded to. No elements of criminal offence were found in any of the charges, which is the concerning fact.**

<sup>4</sup> Criminal charge of MANS, no. 471, from 16 October 2016, and the response of Prosecutor's Office no.31/16 from 24 November 2016


## INVESTIGATIONS ON CRIMINAL CHARGES WERE TOO LONG AND NOT EFFICIENT

## Prosecutors Office does not give information, while workers are endangered

Members of the Union of the Free Trade Unions (USSCG) are not using the possibility to submit sufficient number of criminal charges, due to their suspicions regarding the misuses in the companies.

Previous experience of trade unions and trade union organisations, members of the USSCG, who used criminal charges as the legal mechanism, showed that they did not offer adequate and efficient protection method. Therefore, large number of trade unions and trade union organisations rarely decide on submitting criminal charges because of specific violations of responsible people in companies and institutions they are working within.

As representatives of USSCG said, procedures after submitting of criminal charges turned out to be long, while prosecutorial bodies do not even inform submitters of the state criminal charges.



No one has been considered responsible for the prevention of political, trade union and other organizing in Montenegro so far.

### **Trade union activities in KAP:** Trade Union of the Aluminium Plant

Podgorica filed on 29th February 2016 a criminal charge to the Basic State Prosecutor's Office against the Bankruptcy trustee and Head of the Managerial team of the Aluminium Plant under the bankruptcy, for the criminal act they committed in cooperation – prevention of political, trade union and other association and acting (Article 182 of the Criminal Code of Montenegro related to Article 23, Paragraph 2 of the Criminal Code).

Since the day when the criminal charge was filed until April 2017, Basic State Prosecutor's Office did not file any information about the procedure or the actions, or results of investigation, except the statement taken from Sandra Obradovic, the President of the Trade Union of KAP.

This situation, among other things, led to termination of employment contract of the President of the Trade Union of KAP, despite protection given to Trade Union representatives in accordance with national and international legal acts. The President of the Trade Union of KAP was also banned from entering the union premises that are inviolable by rules and standards.



**No information from the Prosecutor's Office:** Trade Union of employees at the Municipality Budva filed on 26 April, 2016 a criminal charge to the Basic State Prosecutor in Kotor against the responsible persons in Municipality Budva for the criminal offence under Article 182 of the Criminal Code - prevention of political, trade union and other association and actions, highlighting the obstructions that were carried out towards members of this newly formed trade union, particularly in the part of membership fees that were not serviced contrary to regulations.

However, until April 2017, Prosecutor's Office did not send any information to the Trade Union as the charge submitter, and the mentioned Trade Union addressed the Prosecutor's Office in accordance with the Law for Free Access to Information.

Regarding these irregularities related to the trade union membership, and a desire to examine how the leadership of another trade union at the level of the Municipality Budva spent trade union membership fees, Trade Union employees at the Municipality Budva filed charge to the

Police - Sector for Crimes in economy and trade, at the end of 2015.

After a month, this sector sent the case files to the Basic State Prosecutor's Office in Kotor for further procedures. The records were submitted to the Prosecutor's Office on 16 November 2015. Certain information were received after the Trade Union sent a request for free access to information to the Prosecutor's Office



earlier this year. But on 4 April 2017, the statement from the official records was delivered, which was completely contradictory and which ultimately said there were no grounds for further acting of the Prosecutor's Office in this case. The Trade Union continues the proceeding in this case.

**There are no doubts for initiation of the proceeding in Mojkovac:** On 26 April 2016, the organization of the Trade Union "Tara" Mojkovac submitted criminal charge to the Basic State Prosecutor's Office in Bijelo Polje against responsible persons in "Tara Aerospace and Defence Products AD" – Mojkovac, for the criminal offense from Article 182 of the Criminal Code (prevention of political, trade union and other association and activity), requiring to undertake all necessary actions within the competence of Prosecutor's Office and criminal proceedings against responsible persons in "Tara P.A." Mojkovac.

Despite the concrete evidence, which indicated that the criminal act had occurred, in September 2016 Prosecutor's Office assessed there were no grounds for initiation of criminal proceeding.

**Representatives of USSCG claimed that they were worried about the duration of the proceeding and the fact that that submitters of criminal charges did not receive feedback and were not introduced with the course of the proceeding and investigation. Of particular concern is the fact that there were no cases in Montenegro where anybody would be considered responsible for the criminal offense under Article 182 of the Criminal Code of Montenegro. Especially bearing in mind that the anti-trade union discrimination is a pervasive phenomenon, where employees and trade union activists in Montenegro face it on almost daily basis, which is continually distancing us from democracy.**

## IGNORING THE VICTIMS OF WAR CRIMES

# No effective investigations, decision makers - protected

Verdicts in cases Bukovica, Deportations, Kaludjerski laz, Morinj and Assault on Dubrovnik are best descriptions to which extent Montenegro is ready to face the war crimes committed during the war in former Yugoslavia.

**Bukovica:** According to data from the book „Bukovica“ at the beginning of 1992, inhabitants from 24 villages were displaced from the mountain area in municipality Pljevlja, from villages where Muslim population was predominant, during the conflict in Bosnia and Herzegovina.

According to available data, 221 people were displaced. During the period from 1992 until 1995 six civilians were killed: Muslić Hajro (75), Muslić Ejub (28), Bungur Latif (87), Drkenda Hilmo (70), Đogo Džafer (57), and Džaka Bijela (70). Eleven people were kidnapped, and Himzo Stovrag (67) and Hamed Bavčić (75) committed suicide due to the consequences of torture. 70 people faced physical torture, eight houses were burned as well as the village mosque. Reserve forces of the Army of Yugoslavia and the Police of Montenegro were deployed at the territory of Bukovica in that period.

High State Prosecutor on 11th December 2007 filed a requirement for investigation, which was immediately proclaimed as the official secret. The investigation was seven times reinitiated. R.Đ., R.Đ., S.C., M.B.,Đ.G., members of the reserve troupes of the Army of Yugoslavia and S.S., and R. Š., members of the reserve troupes of the Ministry of Interior of Montenegro were accused for the war crime against humanity on 26 March 2010.

On 31 December 2010, High court in Bijelo Polje released all accused persons. On 19th April 2012. same court said that the Appellate Court released all persons who were accused for committing a crime against humanity, and the verdict has become final.

### For four war crimes at the territory of Montenegro

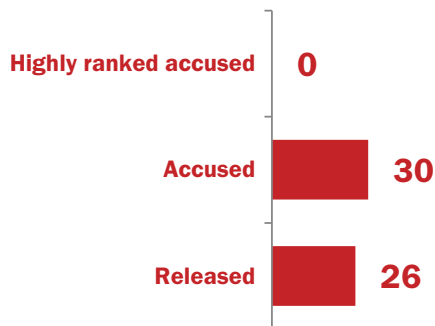




Photo: bosnjaci.net

**Stojanka Radović, Special Prosecutor said at the Board for Political System, Judiciary, and Administration that the case Bukovica was abolished at the Appellate Court because of the ignorance of the Prosecutor who acted in this case, and his incompetence. Civic Alliance filed the initiative on suspension of Milosav Veličković, in March 2016, to Veselin Vučković, Acting Supreme State Prosecutor and members of the Prosecutorial Council. There were no results on this initiative.**

**Deportations:** According to the indictment from 2009, unlawful arrest of citizens of Bosnia and Herzegovina with the refugee status, took place in May and June 1992. These people were later transported to their enemy armed forces of Serbs in BiH and were killed.

According to available information, at least 66 Muslim refugees from BiH were arrested and deported. Individual and objective responsibility has not been determined in the case “Deportations”, although the state directly took the responsibility for this war crime in December 2008, when the Government of Montenegro made a decision on court settlement and paid the total sum – 4,13 million euros to damaged individuals.

Nine officers of the Ministry of Interior of Montenegro were accused for deportation of Bosnian refugees from the territory of Montenegro during 1992.



According to the verdict from 29th March 2011, all accused persons were acquitted as they could not commit war crime against civilians, as stated in the verdict, because the conflict in BiH was not of international character. Supreme State Prosecutor's Office of Montenegro filed an appeal on acquittal of persons in the case of war crime "Deportations", on 15th June 2011, and required abolition of that decision. Retrial for nine former members of the Montenegrin Police finished on 24th October 2012 at the Higher Court in Podgorica. This court acquitted all accused police officers again on 22th November 2012.

**Deportation of Bosnian refugees was executed in consultations with the Prosecutor's Office that did not process this war crime for the full 13 years, although it had all the relevant data. During the proceeding, Prosecutor's Office did not propose material evidence, and the evidence that was public was ignored. Proposals of the Prosecutor's Office were related to hearing of victims, while the case covered only the lowest ranked in the chain of command.**

**Kaluđerski laz:** War crime in Kaluđerski laz took place in April 1999 at the municipality of Rožaje, when the members of the reserve troupes of the Army of Yugoslavia killed 22 civilians of Albanian nationality.

Supreme State Prosecutor's Office issued the indictment on 1 August 2008 against eight members of the Army of Yugoslavia for the war crimes against civilians.

**After five years of trial, all accused persons, as stated on 4th September 2015, were finally released due to the lack of evidence. Prosecutor's Office did not include all responsible people and victims, the lawyer of victims claimed. Prosecutor's Office recommended detention after the indictment has been issued, but not during investigation.**



Photo: rozajetoday.me

**Morinj:** Almost 160 Croats were imprisoned and abused in the camp Morinj near Kotor, which was established by the Yugoslavian Peoples Army (JNA) during the period from October 1991 until August 1992. Half of these people were civilians from the battlefield in Dubrovnik.

Higher State Prosecutor's Office in Podgorica issued the indictment on 15 August 2008, against six former members of the reserve troupe of JNA for the war crimes against civilians and war crimes against war prisoners in the camp Morinj.

Final verdict was reached on 23. April 2014. Four former members of JNA: I.G. B.G. Š.L. and I.M. were punished with 12 years prison sentence for molestation of Croatian prisoners. The highest sentence was given to I.M. a chef at the camp Morinj. Two acquitted people – M.G. and Z.T. initiated proceedings for groundless arrest and had received compensation of 123.000 euros. M.G. received 63.000 euros due to 21 months he spent at prison, while Z.T. received 60.000 euros for 20 months and four days spent at prison.

**Prosecutor's Office did not conduct urgent, independent and efficient investigations in cases Bukovica, Deportations, Kaluđerski laz, and Morinj.**

**Prosecutor's Office did not include all criminal acts in the case "Morinj", especially systematic torture and abuse- and all responsible ones with focus on superiors.**

**Attack on Dubrovnik:** According to available information, during the bombing and the siege of Dubrovnik from the autumn 1991 until the end of June 1992 by JNA, more than 90 civilians were killed. Most of them were abused and expelled. Most cultural landmarks and religious buildings were destroyed, and numerous objects and households were robbed. Almost 166 Montenegrin conscripts and 430 Croatian defenders were killed during the attack on Dubrovnik.

**Prosecutor's Office has not still initiated proceedings for determination of criminal responsibility for the war crimes committed during the siege of Dubrovnik, while the Hague Tribunal punished the General Pavle Strugar and the Commander Miodrag Jokić for the attack on Dubrovnik.**

ALLOCATION OF FUNDS FROM THE FUND FOR PROTECTION AND EXERCISING OF MINORITY RIGHTS

## illegal allocations as a way of functioning

The Parliament of Montenegro established the Fund for Protection and Exercising of Minority Rights in 2008, in order to support activities important for preservation and development of national or ethnical characteristics of minority population, and other minority national communities and their members, in the areas of national, ethnical, cultural, linguistic and religious identity.

Allocations of the Fund have been followed by many irregularities and the conflict of interests of the large number of members of the Management Board, who made decisions on allocations. The State Audit Institution (DRI) determined irregularities in work of the Fund.

Irregularities determined in the work of the Fund in 2011, were related to conflict of interests, because the funds were allocated to organisations where members of the Management Board of the Fund were at the same time in the managerial structures. Besides, the funds were allocated inappropriately and according to proportional representation of minorities in the society – opposite to the Law, without adequate monitoring of project implementation, which is the standard practice. DRI determined that funds were allocated to organisations that did not regularly finish earlier projects or submit complete narrative and financial reports about previously implemented projects.

Although work of the Management Board of the Fund is public, according to the Rulebook, Management Board has never allowed public or representatives of NGOs and media to monitor their sessions. Civic Alliance several times required from the Fund to attend and monitor sessions of the Fund. However, CA has always been rejected and/or decisions on attendance and monitoring of sessions would be delivered after finished sessions. CA filed two criminal charges against members of Management Board and large number of complaints to the Administrative court due to unlawful decisions.



**Administrative Court annulled seven decisions on allocations, because they were not in accordance with the Law. However, Prosecutor's Office informed Civic Alliance on 17 February 2016 that criminal charge filed against members of Management Board of the Fund was dismissed, explaining that the allocation of funds was in accordance with the Law on minority rights and freedoms and bylaws. At the beginning of 2017, the Fund made four new decisions that were identical to decisions that were already dismissed by Administrative Court. CA shall file appeals to Administrative Court against last decisions.**

## THE FATE OF CRIMINAL OFFENCES OF ABUSE AND TORTURE

# Decade of impunity from torture

When it comes to protection of human rights, the impression is that the Prosecutor's Office does not execute the function of the most important institution in this area.

### Case 1

### **Beating of Igor Milić and Dalibor Nikezić in ZIKS (Correctional facility Spuz) got the epilogue at the European Court of Human Rights in Strasbourg.**

European Court of Human Rights rendered the verdict in case Milić/Nikezić against Montenegro on 28th April 2015. The verdict of the Court in Strasbourg stated that Article 3 of the Convention for Protection of Human Rights and Fundamental Freedoms was violated and the country had to undertake comprehensive and independent investigation. The state was obliged to pay 4.350 euros to Milić and Nikezić as the compensation of non-pecuniary damage and 4.680 euros for costs of trial.

Basic State Prosecutor's Office in Podgorica made a Decision in this case on rejection of criminal charge for the criminal act torture and violation, as it was assessed

that actions of officers of ZIKS did not contain elements of reported criminal act or some other criminal act prosecuted ex officio. Verdict of the European Court of Human Rights in Strasbourg stated that decisions of the State Prosecutor on suspending the proceeding were not based on adequate assessment of all relevant and available facts in this case, especially facts determined by Ombudsman and results of disciplinary proceeding.

Instead of being punished, the Prosecutor who dismissed the criminal charge was awarded with transferr from Basic Prosecutor's Office to Special Prosecutor's Office.



### Case 2

#### **Prosecutor did not identify officers who beat up Aleksandar Pejanović**

The investigation was not efficient in identifying the perpetrators of torture in the case of Aleksandar Pejanović. Aleksandar Pejanović reported that members of the police brutally beat him up at the local police premises in Podgorica on several occasions, during police custody in October 2008. His claims were later confirmed by Goran Stanković, a police officer. Due to the assisting, two police officers were convicted but the Prosecutor's Office did not reveal and processed the perpetrators.

### Case 3

#### **The case of beating up of detainees at the Investigation prison by the Special Unit at MUP, which happened on 1 September 2005, remained uninvestigated by the Prosecutor's Office.**

Officers, who had beaten up almost 30 detainees, as well as their superiors who ordered it- remained unpunished. The report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment (CPT) listed numerous failures of the Prosecutor's Office that has not investigated the prison administration, employees, injured persons and witnesses. Officers of Ministry of internal affairs (MUP), who were involved in organisation of the assault, were not interviewed as well, while the investigation did not identify the officials responsible for organising and executing of this operation.

### Case 4

#### **Concerning the incident in January 2015, Prosecutor's Office issued indictment against inmates after 20 days, and against officers- only 11 months after.**

The case that occurred in ZIKS on 14 January 2015, should also be mentioned - the incident between inmates and officers of ZIKS.

The new incident happened the following day, when the convicted persons were injured. Institution of the Protector of Human Rights and Freedoms stated in the report on 25 November 2015, that there was inhuman and degrading treatment towards 13 convicted people, and the same treatment towards three people, which in turn, by its characteristics represent torture.

Due to the attack on officers, Basic court in Danilovgrad sentenced nine people who served 35 years imprisonment sentence, for less than a year since the incident happened,. On the other side, trial against officers of ZIKS for torture and abuse of convicted persons is in course and is characteristic because the main trial was delayed 13 times.

### Case 5

#### **Prosecutor's Office did not investigate statements of members of Democratic Action Party (SDA) on torture and violations in Bijelo Polje.**

Torture of members of SDA in 1994, have stayed uninvestigated, and one of the members of the tortured group Ibrahim Čikić published his testimony in the book in 2008. Jointly with other members of SDA Sandžak, Ibrahim Čikić was arrested in police action "Lim" and subsequently tortured and abused. There were no available information whether the Prosecutor's Office undertook any activities.

We have not covered all cases of torture and violations, but only some of them have been mentioned as uninvestigated by the Prosecutor's Office.

**In the previous period, Prosecutor's Office was insufficiently active in protection of human rights, because investigations of numerous statements on serious violations of human rights failed. However, where investigations had started, they were in most cases delayed or did not lead to identification of perpetrators and their superiors.**

### **The police officers brutal towards citizens**

Unfortunately, the practice of Prosecutor's Office has not changed significantly, especially bearing in mind results of investigation after the protests in October 2015.

Civic Alliance registered 25 cases of human rights violation. Video material recorded more than 20 police officers who brutally beaten citizens. CA documented medical reports, photos, cases of destroyed property of citizens, and cases of beating up of citizens, who did not participate in protests, as well as beating up and arrests of journalists. Protector of Human Rights and Freedoms and the Council for Civic Control of police work had determined violation of human rights of citizens in a number of cases.

**However, not one officer has been convicted in these cases. Only Radosav Lješковиć, Commandant of the Special Anti-Terrorist Unit was convicted, and the proceeding of two police officers is in course. Lješковиć is punished to five months imprisonment sentence for covering up the police unit members who beaten up citizens at the protest. According to the Law on Internal Affairs, a month longer punishment would mean that Lješковиć would lose his job.**

## The Police and the Prosecutor vs citizens

The concern lies in the fact that Prosecutor's Office firstly processes criminal charges filed by state officers against citizens, and often, criminal charges filed by citizens are not processed even for several years.

Here we want to mention the case of a citizen D.R. from Nikšić, who filed criminal charge against police officers for torture and violation. Police officers filed criminal charge against D.R., although they asked him to forgive them and reconcile, and to give up the criminal charge. They also filed criminal charge for the attack on the officer, because D.R. did not want to terminate the process.

Prosecutor's Office processed the criminal charges filed by police officers very fast, and even the court proceeding finished quickly. However, the criminal charge filed by citizen D.R. have stayed in the drawer at the Prosecutor's Office for more than a year, although the incident happened a year and a half ago.

S.T. from Mojkovac, who claimed he was a victim of the police torture in the middle of 2011, which he proved with the medical documentation and photos,- was punished to one month imprisonment sentence for the attack on officers. On the other side, police officers made pressure on him to reconcile and both parties to withdraw charges. S.T. agreed to terminate the process in that manner before Basic court in Bijelo Polje.

**Prosecutor's Office initiated the proceeding against S.T. but not against police officers, although S.T. had a lot of injuries that were documented. Result of the proceeding was one month imprisonment sentence for S.T. for attack and humiliation of police officers. Police officers were released of responsibility for a number of injuries inflicted to S.T.**

## SECRET SURVEILLANCE MEASURES

# Lawfully collected material is unlawfully destroyed

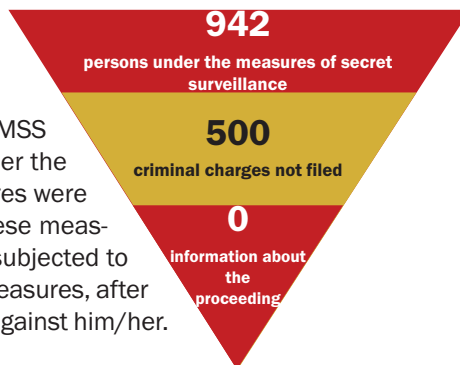
According to Criminal Procedure Code, measures of secret surveillance are allowed, but under defined conditions. Thus, Article 157 of Criminal Procedure Code envisages the measures of secret surveillance “if grounds for suspicion exist- that a person has individually or in complicity with others committed, is committing or is preparing to commit criminal offences referred to in Article 158 of the present Code and circumstances of the case indicate that evidence shall be collected with a minimum violation of the right to privacy, measures of secret surveillance may be ordered against those persons”.

After conduction of measures of secret surveillance, the Law prescribes that the collected material related to persons who would not be pursued, has to be destroyed. Previously, investigative judge is obliged to inform the person subjected to measures of secret surveillance and that person has the right to insight into the collected material.

As the Article 160, Paragraphs 7 and 8 say, should the State Prosecutor decide not to initiate a criminal procedure against a suspect, s/he shall forward to the investigative judge the material obtained through the application of Article 157 of the present Code, in a closed cover bearing the designation MSS. The investigative judge shall order that the material should be destroyed in his presence and the presence of the State Prosecutor. The investigative judge shall compose a record thereon.

During 2016, investigative judges decided on 67 orders for conduction of MSS. Until nowadays, there were no cases where the persons under the MSS were informed about it, in order to make the insight into the material collected in this manner.

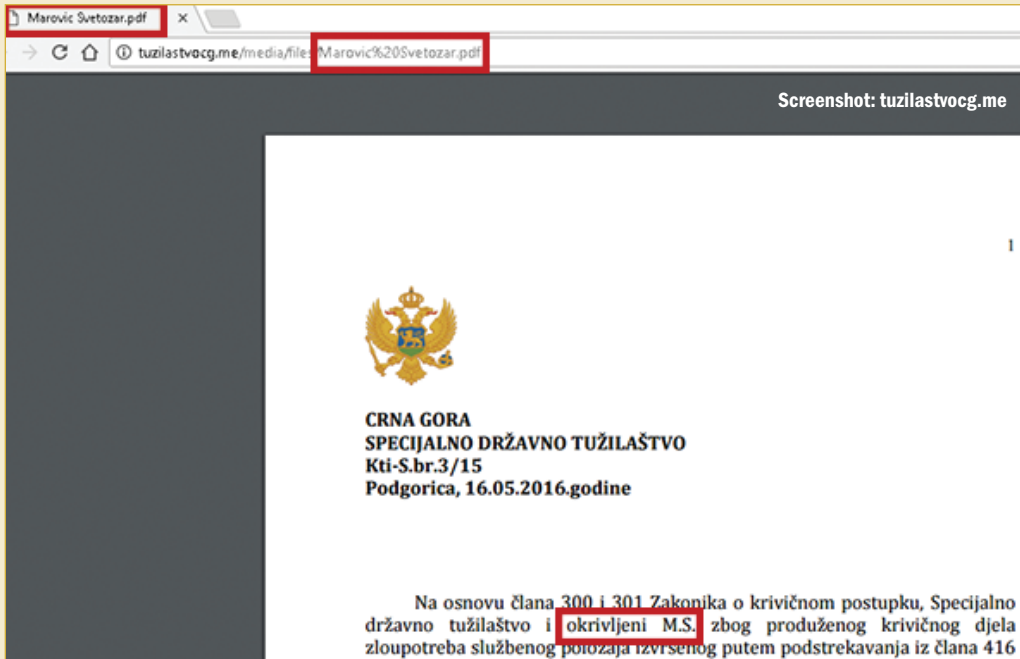
Since it came into force, and since implementation of MSS until the middle of June 2015, 942 people were under the MSS. After the conduction of MSS, criminal procedures were not initiated against 500 people that were under these measures. Although this is explicit legal duty, any person subjected to MSS after the order of a judge, was informed about measures, after the decision that criminal charges would not be filed against him/her.





**State Prosecutors have never filed complaint or addressed public and indicated on violation of law during the destruction of the material collected by measures of secret surveillance.**

### Anonymity guaranteed?



Special State Prosecutor's Office has published agreements of admission of guilt on its web page. Although the principles of anonymisation are respected and only initials of defendants are published, this does not guarantee anonymity.

Namely, some documents are saved in PDF form with the full name and surname of defendants, and are published at the web site as such. While downloading documents, it is possible to see who it is all about, as the heading reveals the full name and surname of defendant.

<http://tuzilastvocg.me/media/files/Marovic%20Svetozar.pdf>

## NO LEGAL PROTECTION FOR REPRESENTATIVES OF SEXUAL MINORITIES

# Safe. But between walls

Nongovernmental organization LGBT Forum Progress filed more than thousand misdemeanour charges in discrimination cases, hate speech, and various attacks motivated by hate towards LGBT population, since the founding of this NGO in January 2011, until April 2017.

This organisation filed almost hundred charges to Prosecutor's Office, while other charges were filed by competent police services. Representatives of LGBT Forum Progress pointed out an important fact – in cases when charges went directly to Prosecutor's Office, Prosecutors often had subjective attitude to the detriment of applicants in the given cases. Most of them were not investigated and processed. When it comes to reasons, they mentioned lack of experience in processing of charges related to LGBT community, inadequate information, lack of willingness of prosecutors to deal with the reported cases.

On the other side, large number of cases formed and filed to the Prosecutor's Office by the police, has been more adequately categorised and often resulted in positive result. Representatives of NGO LGBT Forum Progress believes that the mentioned situation was largely the result of several years long work of many civil society organisations with the police, a number of trainings and adequate and important information when it comes to this topic.

**Attacks during the Pride Parade:** First Pride Parades in Montenegro took place in Budva and Podgorica, in July and October 2013. Pride Parades are the key events for LGBT community. Organising them is of special importance in societies where lack of knowledge, lack of understanding and resistance towards social acceptance of LGBT community exists. At the same time, this is the most efficient manner to show and confirm determination of the state to provide safety and equality, but also its capacities for the rule of law and respect of human rights and freedoms. Events in Budva and Podgorica were treated as highly risky. Parades were marked by disturbance of public peace and order. Events were targets of brutal behaviour of a number of citizens, who were trying to disturb the event violently, not hiding their displeasure, antagonism, and hate. During the first peaceful gatherings of LGBT community, persons who participated in the Parade were attacked, as well as officers who secured the Parade, while the public property in Budva and Podgorica was largely destroyed.

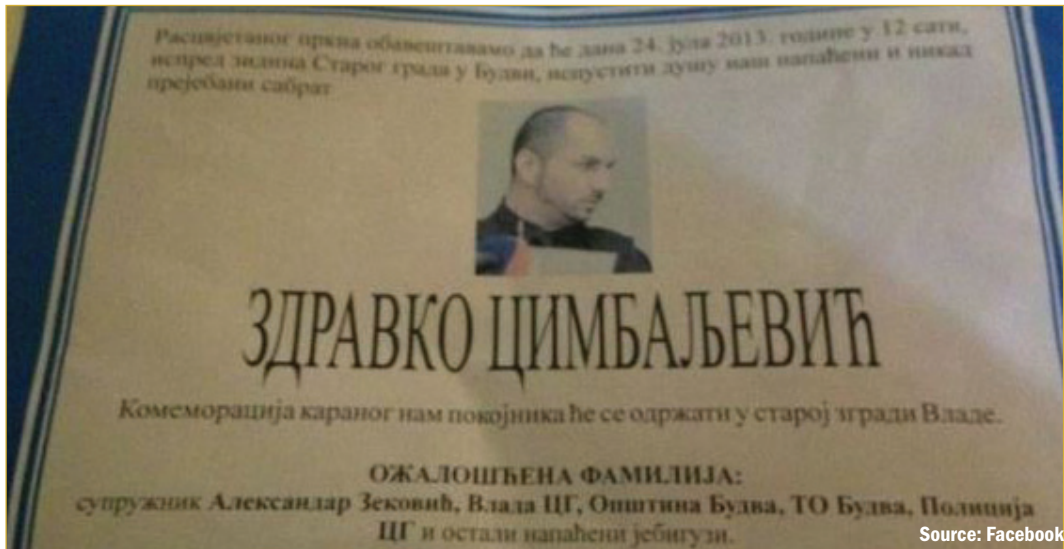
Described situations, a lot of photos and video material, proved a number of criminal acts. Epilogue of these events and attacks has been only one criminal charge against unidentified persons for infliction of severe bodily injuries, attack on police officers with stones during the Pride

Parade in Podgorica. In the written response sent to Human Rights Action (HRA), Supreme State Prosecutor's Office said they could not pursue the case because they determined there were no elements of criminal act prosecuted ex officio. Representatives of this Prosecutor's Office said that none of the participants at the Pride Parade filed charges for physical attack. NGO HRA said that the State Prosecutor's Office was not willing are able to recognize not even one out of nine possible offences from the Criminal Code in behavior of hooligans. It was also stated that people who threw stones were not identified at the video material taken in Budva.



**Death announcements for the organizer of the Pride Parade:** The day before the Pride Parade in Budva in 2013, death announcements were disseminated in Budva, which informed public about alleged death of Zdravko Cimbaljević, LGBT activist.

In the capacity of Director of NGO LGBT Forum Progress, Cimbaljević filed charges to the police on 23 July 2013. Police station in Budva later informed the mentioned organization that the po-



lice officer of the Criminal Police Unit communicated with the Deputy of Basic State Prosecutor's Office in Kotor who said there were elements of criminal act endangering security from Article 168 of the Criminal Code, but there were no elements of criminal act because Cimbalević stated for media that death announcements did not scare him, and that there were no elements for further actions in relation to this event.

The first publicly declared representative of LGBT community, Zdravko Cimbalević left Montenegro the same year, due to the lack of adequate protection. On the basis of the death threats, lack of security and legal protection in Montenegro, Canada approved him the political asylum.

**Processing of threats and attacks on the street:** Four members of NGO LGBT Forum Progress were attacked in the center of Kolašin on 13 October 2013, after finishing regional consultations of members of LGBT community from the north of the state.

A man disturbed representatives of the above mentioned organizations, pointing with the finger on their table, shouting: "Fagots came in our town."

One of the members of Forum Progress A.Z. contacted the regional police unit in Kolašin and described the situation, and ask the police to send the patrol in order to act preventively. Insulting continued although the patrol arrived and although the police warned them on behaviour. In one moment, a man tried to attack A.Z. but the police prevent him. After the incident, members of the organisation filed charges against a man who once worked as the police officer.

Local police branch in Kolašin filed misdemeanour charges against M.L., according to Article 7 Paragraph 1 of Law on Public Peace and Order. As stated in the Misdemeanour Council in April 2014, the proceeding against M.L. was in course. Basic State Prosecutor's Office in Kolašin said that there were no elements of criminal offence for his actions.

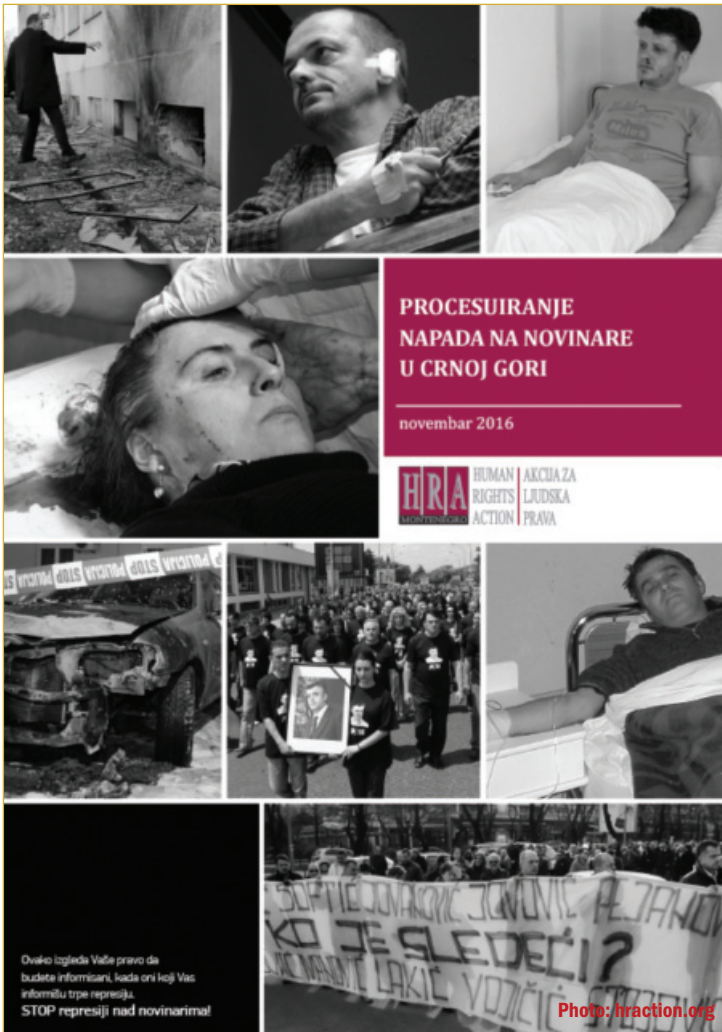
**Representatives of NGO LGBT Forum Progress said that further, deeper and systematical work with the Prosecutor's Office and prosecutors individually was needed, in order to be adequately sensitised and educated for work in cases that include LGBT persons, which are specific because of their nature.**

## IMPUNITY OF THOSE WHO ATTACK JOURNALISTS

## Brutal force on media

There were very few occasions that made turbulence in Montenegrin public scene as the relation of the executive and legal authorities towards media. Prosecutors office, especially during the mandate of Supreme Prosecutor Ranka Čarapić was secluded and did not have good relations with fourth estate. That relation began to change but there is still a presence of neglect, un-professionalism and nonchalance in the relations of Prosecutors office concerning the assaults on journalists.

Media representatives felt directly the consequences of the lack of will in the investigations of Prosecutors office. Beside this institution, ex prime minister Milo Đukanović was the one that contributed to the creation of this atmosphere- when he defined “media mafia”, as well as his closest associates that attacked media representatives physically (case of Miomir Mugoša, ex mazor of Podgorica attacking the reporter and photo journalist of “Vijesti).



PROCESUIRANJE  
NAPADA NA NOVINARE  
U CRNOJ GORI

novembar 2016

**HRA** HUMAN RIGHTS ACTION  
LJUDSKA AKCIJA ZA PRAVA

Ovakvo izgleda Vaše pravo da budete informisani, kada oni koji Vas informišu tpe represiju.  
STOP represiji nad novinarima!

Photo: hraction.org

### The most violent attacks on journalist and media

- ▶ The assassination of daily Dan Editor-in-chief, Duško Jovanović;
- ▶ The attack on writer Jevrem Brković, when his bodyguard Srđan Vojičić was killed, in 2006;
- ▶ The beating of Željko Ivanović, Director of daily Vijesti in 2007;
- ▶ The case of two attacks on journalist Tufik Softić, who was beaten in 2007, while in August 2013 an explosive device was thrown in the backyard of his family house;
- ▶ Beating of the sports journalist Mladen Stojović in 2008;
- ▶ Attack on Vijesti journalist Olivera Lakić in 2011 and 2012;
- ▶ Arson on the Vijesti property (vehicles) 2001 and 2014;
- ▶ An explosion in front of Vijesti editorial board premises in 2013;
- ▶ Exemption is the beating of the journalist of the newspaper “Dan” Lidija Nikčević, from January 2014, that was resolved, processed and sentences were made.<sup>5</sup>

In the following text we will serve ourselves with the analysis and reports from our archive and mainly with those that were assembled by Human rights action (HRA) for years.

Non-processing of the hardest cases of attacks on journalist and media property have led to the serious decline of the trust of the journalist into Prosecutors office as an institution.

After the interest of the foreign diplomatic channels for the solving of this problem of the society, Government has, at the initiative of Prime Minister Igor Lukšić, organised a meeting was on 13th of March 2012 attended by the Police Director Božidar Vuksanović, Deputy Prime Minister and Justice Minister Duško Marković, Supreme State Prosecutor Ranka Čarapić, Minister of the Interior Ivan Brajović and Special Prosecutor Đurđina Ivanović, when it was decided that the clarification and prosecution of all cases of violence against journalists and the media in the next two years should be the priority of the police and Prosecutor’s Office. And thus, the Commission for monitoring the actions of competent authorities in the investigation of cases of intimidation and violence against journalists, assassinations of journalists and attacks on media property.

But, even five years after this initiative, there is still no progress. Perpetrators and those who ordered the attacks are still far from the reach of justice and key cases are far from being solved. Conditions for the normal work of the Commission haven’t been provided.

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<sup>5</sup> Human rights action- Report “Prosecution of the attacks on journalists in Montenegro”, November 2016..

**In  
indictments the  
state prosecutors  
leaned toward lighter  
qualifications of  
offences, while the  
courts reduced pun-  
ishments.**

Responsibility of civil servants who obstructed investigations in the most serious cases, ensured impunity and seriously brought into question the rule of law in Montenegro was never established. Furthermore, there were examples where those responsible for conducting controversial investigations got promoted.

Ex Supreme state prosecutor Ranka Čarapić has persistently declined access to information about the state of investigations in the cases of violating of the human rights including the attacks on journalists until Administrative court ruled against her legal position. Current Supreme State Prosecutors introduced greater transparency into the office but showed no readiness to thoroughly examine the work of the Prosecutors office in the investigations on unsolved attacks on journalists. Commission on attacks of journalists, inspite of the efforts of media editors in chief, NGO and media trade unions representatives- to refresh and start the investigations again- had no visible results because the obstructions of police and Prosecutors office are evident.

Investigations were not conducted properly, so as to lead to the identification and punishment of all those responsible, including persons who ordered the attack, or thoroughly, because not all reasonable steps were taken to provide all relevant evidence such as identification and interviewing of suspects and witnesses pointed out by the very victims, the scene was not thoroughly examined in order to collect all the forensic and medical evidence (particularly relating to cases of murder of Duško Jovanović, threats and attacks on journalist Olivera Lakić, attempted murder and attacks on journalists Tufik Softić, beating of journalist Mladen Stojović).

**Especially bizarre is the situation when a prosecutor Vesna Jovicevic voted agains the acceptance of the Commission report for 2015, although her report to the superiors concerning the investigation on the killing of Dusko Jovanovic was transferred into the mentioned report without intervention literally. Thus the fact that members vote by automatism against the critique of the Prosecutors office even if they are voting against their own words- speaks volumes about how many obstructions did the Commission face and why it didnt give visible results.**

## CASE - MEDIA

## Horology of nonchalance

In the last 13 years, there was 55 attacks on journalists and media, from murders of assaults, bombing, stoning of the offices to vehicle damage. In the next pages are just some of the examples that shook Montenegro media community.

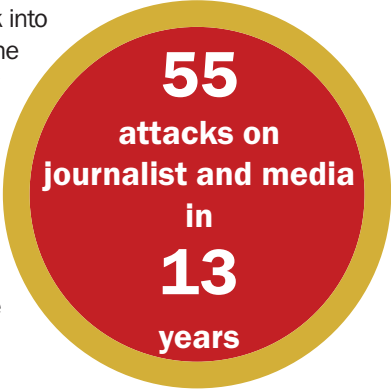
### Assassination of Duško Jovanović: investigations is still ongoing, 13 years after the murder

The undertaken actions have been lacking in urgency and seriousness required by international standards and cases involving the assassination of journalists.

For example, the DNA of persons initially suspected of assassinating Jovanović was sent for analysis four years after the crime. A man, who told the State Prosecutor's Office that he had information about the case over a year ago, has not been questioned yet. Dan got hold of an official police memo, whose importance might steer the investigation in the right direction, of which there is no trace in the official case file.

The manner in which the investigation was conducted has never been thoroughly reviewed, despite its insufficient results and complaints about its deficiencies. No one really examined whether the state had done everything it could to protect Duško Jovanović, in light of the threats he had received and reported.

In August 2013, the then Acting Supreme State Prosecutor, Veselin Vučković, required of the Higher State Prosecutor's Office to look into the preliminary inquiry case file because Dan had in the meantime reported on the existence of an official police memo on Damir Mandić's interrogation on 2 June 2004, containing his alleged confession and a description of the assassination; his memo was not signed, registered or included in the case file. To this day, nearly three years later, the Higher State Prosecutor's Office has not finished working on the case, which it opened in response to the said request. None of the actions undertaken since have led to any progress in the investigation or a comprehensive analysis of actions taken until then.



**55**  
attacks on  
journalist and media  
in  
**13**  
years

The Higher State Prosecutor's Office said that a "comprehensive analysis has not been conducted because work on cases investigated by the Higher Prosecutor's Office has not been completed".



## Attempted murder of Tufik Softic: Investigation ended without results

All of the omissions in the investigation in the case of attempted murder of Tufik Softic that happened in 2007 are the symbol of the unprofessional relation to this case by the Prosecutors office.

The state prosecutor in Berane failed to promptly interrogate the persons whom Softić named to the police as suspects, i.e. as persons who might have been connected with the attack: D.V. was interrogated by the prosecutor in Berane for the first time on 1st July 2014; D.L. was interrogated for the first time on 17 September 2014, after the High State Prosecutor's Office in Bijelo Polje initiated the investigation; N.B. was never interrogated. The state prosecutor in Berane failed to order the investigating judge to search apartments, facilities, vehicles and persons that Softić marked as suspicious: D.L., D.V., N.B. The state prosecutor in Berane interrogated the injured party, Tufik Softić, for the first time only seven years after the attack, in 2014, although the prosecutor had the right and professional obligation to do so immediately. V.B., owner of facilities in which the bats which were allegedly used for beating Tufik Softić have been discovered has never been interrogated as a witness with regard to how the bats came into his possession and who had left them in his facilities back in 2007; The DNA analysis of the baseball bats which were allegedly used in beating Softić, as well as matching the DNA with Softić's profile, has been carried out in 2013, although the bats were found back in 2007.



The attacker's DNA material was not immediately collected from Softić, bearing in mind that the attacker hit Softić with his hand in the area of his arm. The DNA profile of D.L. was not made or matched to the DNA profile of the discovered baseball bats, although Softić named this person as suspicious; The state prosecutor in Berane and the police failed to take photographs of Tufik Softić's injuries immediately after they were caused (appearance of injuries, accurate localization, spacing, shape) in order to help to precisely determine the means by which the injuries were caused; After initiating the investigation and qualifying the offence as Attempted Murder in 2014, the prosecutor in Bijelo Polje failed to request from the investigating judge to determine secret surveillance measures over the defendants, in order to enable the possibility for collecting any new evidence.

The police and the prosecution in Berane and Bijelo Polje failed to undertake any actions during the investigation phase for 5 years and 6 months (from 3 March 2008 to 15th August 2013); No relevant activities have been undertaken during the following periods from initiating the investigation: from 20th October 2014 to 1st April 2015, and from 1st April 2015 to 28th October 2015, when the investigation was terminated.

Softić commented on the ineffectiveness of investigation as “preference of prosecutor Rifat Hadrović to treat criminals with respect” and pointed out that he held the state prosecutor from Bijelo Polje and Supreme State Prosecutor Ivica Stanković responsible for his safety.<sup>6</sup>

Six years after the first attack on Tufik Softić, he was again attacked on 11 August 2013 when an explosive device was activated in the yard of his family home during the evening hours. At the moment of the explosion Softić was inside the house with his wife and three children. Basic State Prosecutor never came to the scene during the investigation in this case of a repeated attack on Softić. Four years later, not a single suspect has been identified.

### **Threats and assault on journalist Olivera Lakić: Number of prosecutor omissions - masterminds remain hidden<sup>7</sup>**

The State Prosecutor’s Office has taken legal action against most of the persons who threatened Lakić, including Ivan Bušković, who attacked her in 2012, but there was no investigation directed at identifying a person who ordered threats and attack. Also, there was no convincing investigation into the journalist’s claims about illegal operations of "Tara" factory, which triggered everything that had happened to her since. The Chief Special Prosecutor of Montenegro, Milivoje Katnić, stated in November 2015 that evidence related to Mojkovac tobacco factory "probably emigrated and was lost permanently", but that the State Prosecutor’s Office was still on the case.

The State Prosecutor’s Office chose the middle way - striving to prosecute all executors of threats and the attack on the journalist, but not to identify a person that had ordered these threats and attack, not to thoroughly investigate the illegal production and smuggling of cigarettes that Lakić wrote about and that made her a target, nor to investigate the disappearance of evidence in this regard.

### **Beating of the journalist Mladen Stojovic: investigation suspended**

It is unknown whether the State Prosecutor ever investigated Stojović’s statements about the existence of the "football mafia" in Montenegro and a possible link between certain individuals he named as members of that "mafia", and the attack on him. The State Prosecutor’s Office did not answer this question to HRA, and on 20 March 2012 stated on the investigation that: „During the process of gathering the necessary information, 17 persons have been heard whose testimonies did not provide the data on the identity of the perpetrators, as the Bar Police Unit stated in its latest reports submitted to the Basic State Prosecutor in Bar on 4 February and 30 March 2011. The Basic State Prosecutor in Bar submitted urgencies several times, the latest on 12 March 2012.”

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<sup>6</sup> Human Rights Action - Report “Processing of attacks on journalist in Montenegro”; Podgorica, November 2016.

<sup>7</sup> Ibid

The investigation of this case was suspended due to becoming timebarred, as stated Deputy Supreme Public Prosecutor Ćuković Radmila in June 2013. According to her, the Basic State Prosecutor in Bar Milenko Magdelinić in 18th June 2013 terminated the investigation in this case. Magdelinić led the investigation against unidentified persons for reasonable suspicion for committing grievous bodily harm and violent behavior, and failed to identify any suspects.

### **Attack on Željko Ivanović, director of daily “Vijesti”: number of omissions and masterminds unknown**

After an unusually efficient trial for the time being in Montenegro – the first-instance trial lasted one month, and the proceedings on defendant’s appeal less than five months – the Basic Court in Podgorica sentenced both defendants to imprisonment of four years, and then the High Court in Podgorica drastically reduced their sentences to one year, finding that the first-instance court did not sufficiently appreciate a mitigating circumstance that the defendants confessed committing the criminal offence, despite the fact that both defendants were convicted in the past on two occasions.

It is also quite bizarre that both the first and second instance courts pointed out as a mitigating circumstance the fact that the injured Željko Ivanović did not join the prosecution of the defendants – ignoring the fact that he had done so due to his belief that those persons were not the real perpetrators, not due to his willingness to forgive them for the attack.

Ivanović’s attorney requested from the Supreme State Prosecutor at the time, Ranka Čarapić, to announce what the Prosecution has done in the meantime to shed light on this case "which had, due to failure of prosecution, ended without any actual perpetrators and their instigators."68 He also stated in the letter to the Supreme State Prosecutor how "even if the actual perpetrators were prosecuted, it is obvious that not all of the perpetrators were prosecuted, and there is no information that anything had been done to find the rest of the perpetrators of the attack".

He received no answer from the Supreme State Prosecutor.

**The fact that a murder of a journalist has been solved, nor one attempted murder, six assaults, number of threats including the cases of the destroying of the property of media- creates an atmosphere of intimidation, and an impression of nonexistence of the rule of law, conspirative cooperation of the institutions with the perpetrators. Those that were attacked were, as it was a rule- those that were criticising the authorities and pointing out on corruption and crime. Investigations were not urgent, efficient and are full of flaws. Journalists are discouraged and public loses trust in the capability of the Police and Prosecutors Office to secure a rule of law. Investigations need to be urgent and efficient and subsequently lead to masterminds of the unlawful actions.**

## WASTE DISPOSAL- SYSTEMATIC NEGLECTING OF LIVING ENVIROMENT

## Thirteen year long ecocide above Nikšić

Disposal of unsorted waste from the territory of Municipality Nikšić at "Mislov do" is carried out for the past 13 years. The Assembly of Municipality Nikšić then issued a Decision on transferring, management and the using regime of the temporary landfill "Mislov do" to the Public Utility Company Nikšić, according to the Law on Maintenance of Cleanliness, Collection and Use of Waste and Law on Utilities and the Municipal Statute. The decision states that only the waste from apartments and business premises at the territory of the city and suburban settlements may be disposed at that location.



Photo: Ekološki pokret Ozon

The Waste Management Act, that was adopted in 2011 (Article 78), stipulates how can temporary waste disposal be carried out and the conditions of functioning of such an object. In the case of illegal landfill "Mislov do" this law has been violated for years. More paragraphs of this Article of the Law confirm that it an illegal object where illegal disposition of various types of waste is carried out, leading to a criminal offence against the environment, recognised by the Criminal Code of Montenegro. In this case, there is no consent of the Ministry of Sustainable Development and Tourism for the temporary waste disposal, as prescribed by the same Article of the same Law. The unlawfulness was also confirmed in the contracts of the municipality of Nikšić with municipalities Budva and Kotor, as well as Public Utility Company Nikšić and the municipality of Plužine, and the record form of Public Utility Company Nikšić, which in turn prove that the waste was illegally disposed at Mislov do from the mentioned municipalities and municipality of Berane. This has caused a huge damage to the environment, which will require significant financial investment for the recovery and revitalisation of the polluted area.

**500.000 tons of different waste was dumped at illegal landfill above Nikšić.**

### **Prosecutors office has overseen the facts**

Following the call of local Police department in Nikšić, and at the proposal of the Basic State Prosecutor's Office in Nikšić, Aleksandar Perović, Director of the Ecological Movement "Ozon", made a statement regarding the public engagement of this organisation about illegal activities at the unregulated urban landfill "Mislov do" (article "Mislov do temporary landfill for three more years", daily "Dan"). On that occasion, Perović also submitted the document: Analysis of Law Harmonization of the site "Mislov do" with the current legislation, where all elements of criminal offence were clearly indicated, as well as the contracts that confirmed that waste from other municipalities was illegally deposited.

**Basic State Prosecutor, in contrary to all the facts, did not find the legal grounds for initiating the criminal proceedings against any person for the criminal offense prosecuted ex officio.**

**WORK OF THE PROSECUTOR'S OFFICE IN THE AREA OF HEALTH, CULTURE, SPORT...**

## No results in other areas

When it comes to cases related to destruction of cultural and historical heritage, disruption of natural resources, sport and game fixing incidents, responsibilities for events with tragic outcomes, Prosecutor's Office cannot be proud of its work and contribution to these cases.

### The evidence still at the bottom of the sea

The ship "Miss Pat" sank in Montenegrin territorial waters in the summer 1999. Officially 35 people died, mostly Roma. Out of this number, only 13 were identified.

Almost 70 people embarked on a ship that was registered to carry only six persons and two crew members. Suspects A.G., R.B., I.B., R.H., J.N., G.Đ., and S.B. were accused for promising displaced Roma from Kosovo transportation to Italy, for a compensation.

Prosecutor's Office did not conduct urgent, independent, and efficient investigation. Number of victims has never been determined, as the coordinated rescue action has never been organised. A ship that was of essential importance as the evidence has never been drawn from the bottom. Until nowadays, no one has been considered responsible for this case. The proceeding is taking place before the Court of Human Rights in Strasbourg.

### Tragedy with the newborns in Bijelo Polje

Death of one and infection of four babies in November 2014, forced Higher State Prosecutor's Office in Bijelo Polje to issue an indictment in May 2015, against four doctors from the Hospital in Bijelo Polje, for serious criminal offence against the health of people, failing to act in accordance with the health-care rules for the prevention of dangerous disease.

Tragedy caused a huge interest of public, which made pressure on passive Prosecutor's Office. The case was followed by the hunger strike of fathers of infected babies, in front of the building of municipality Bijelo Polje. Parents required suspension of responsible doctors until the termination of court proceeding. Decisions on suspension were made after the pressure, which ended seven-day hunger strike.

## Protecting the tycoons, punishing the citizens

After four years of investigation, Supreme State Prosecutor's Office confirmed that there are no responsible persons for criminal offence of illegal supply of Aluminum Plant Podgorica (KAP) with electricity from the European interconnection. This information was recently confirmed by representatives of this institution to daily "Vijesti".

Unparalleled scandal of theft of electricity from the European interconnection was in fact a continuous action, in the period from February to May 2013, when European institutions responsible for this area reacted, threatening to exclude Montenegro from the European network. The Energy Community also reacted calling this acting "the real banditry" that has not been recorded since the Second World War. The value of illegally withdrawn electricity was almost 10 million euros and was paid with the taxpayers money.

Parliamentary Board for Economy then organised control hearing of Deputy of Supreme State Prosecutor Veselin Vučković, who said they formed special case file related to this case. And when it comes to this case, no information have been stated from this Prosecutor's Office.

The factory in Podgorica was then managed by the Government, with Milo Đukanović, the Prime Minister of Montenegro, and offshore company CEAC led by Oleg Deripaska, Russian businessman.

But at the same time Montenegrin courts sentenced three consumers from the north of Montenegro on 99 days of imprisonment sentences for illegal use of electricity, according to findings of portal Energyobserver.

Consumer from Kolašin, who used electricity illegally, was punished to 24 days imprisonment sentence. Consumer from Vinicka from Berane was punished to 30 days imprisonment sentence for the theft of electricity, while the consumer from Zminci in municipality Bijelo Polje was punished to 45 days imprisonment sentence for the theft of electricity, according to the verdict of the court from Bijelo Polje.

In the last three years, Electric Enterprise Montenegro filed 1,719 criminal charges to Basic State Prosecutor's Office Montenegro, for the theft of electricity. Courts rendered 391 convicting decisions, suspended sentences or fines.

It is not clear how the State Prosecutor's Office did not determine that there was no suspicion on criminal act in the case of theft of electricity from the European interconnection, while, on the other side, Montenegrin citizens often face courts for illegal electricity supply, or even sanctions of disconnection from the power grid for each unpaid account of 200 euros.

## **Railroad engineer - only responsible for Bioče tragedy**

The convicting verdict for a man – an engineer - is an insult for the dignity of victims of the rail accident at Bioče and their families who, even ten years after, are trying to find solution and help to finally find out the truth about the tragedy that happened.

After more than 11 years since the horrible accident at Bioče, Prosecutor's Office hasn't investigated the responsibility for one of the major tragedies, which costed 47 human lives of Montenegro citizens and more than 200 injured. Prosecutor's Office did not re-initiate the proceeding that would establish the responsibility of all the key individuals who caused or could prevent this horrible event.

It is about a time to move from an empty talk of democracy and responsibility to concrete actions and results and to send the message that the farces before courts are unacceptable. For the accident that happened on 23th January 2006 in Bioče, only one person - railroad engineer Slobodan Drobnjak has been proclaimed responsible, while 11 accused were acquitted.



## **For which team does Prosecutor play?**

Prosecutor's Office had more than humble results in investigations in the sports field.

Even the charges from various European federations for match-fixing in national championships, controversial players transfers, clubs with two identification numbers, irregularities in automotive, wrestling judo, chess and other federations were not sufficient motive for more active work in this area.



### **Is cultural-historic inheritance a national treasure?**

Destruction of cultural goods in Montenegro is the topic on various forums for decades, which is more than a strong signal for the Prosecutor's Office to take action in this area. Rumija, Ostrog, Duklja, hotel "Podgorica", national parks, Turski rt, only a few examples.

Results of the Prosecutor's Office in this area are more than humble, in both processing of the responsible ones in institutions that have failed to protect, and processing of directly responsible ones.

Art historian Aleksandar Čilikov claimed in his statement for Radio Free Europe in August 2010, that the elaborated professional analysis had been developed that show that 70% of cultural treasure had been devastated.

### **Concessions to powerful individuals precede public interest**

One of the cases of disruption of natural goods is the case of construction on Turski rt.

Representatives of Democratic Montenegro party recently claimed that the construction on Verige, which is under UNESCO protection, damages the natural and cultural values of the site. According to their claims, it is one of the drastic examples of disrespect of the public interest, in order to satisfy the needs of privileged individuals. Representatives of this party sent a detailed information with obtained documents to Ivica Stanković, the Supreme State Prosecutor, with a request to undertake the necessary investigative actions in order to fulfil conditions to initiate criminal legal responsibility of persons found responsible of having committed criminal offences. They also asked from the relevant state institutions to inform construction inspections of these wrongdoings in order to stop construction on Turski rt, but also to initiate the procedure of dismissal of Anastazia Miranović, director of the Directorate for the Protection of Cultural Property for issuing of such a decision.

According to the latest available information from the beginning of this year, the case is in phase of investigation.

