
THE LAW ON THE PUBLIC **PROSECUTOR'S OFFICE**





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NOVELTIES INTRODUCED BY THE 2022 CONSTITUTION

- the election of all holders of the public prosecutor's function, except for the Supreme Public Prosecutor, is no longer within the competence of the Government and the National Assembly
- a different definition of the concept and position of the Public Prosecutor's Office - now is a unique and independent state body, which, in addition to prosecuting perpetrators of criminal and other punishable acts, also carries out other responsibilities that protect the public interest determined by law
- the Prosecutor's Office now exercises its jurisdiction based on generally accepted rules of international law
- The prohibition of influencing the prosecution has become a constitutional category by Constitutional amendments from 2022. Previously that issue was regulated by law. No one outside the Public Prosecutor's Office can influence the Public Prosecutor's Office and the holders of the Public Prosecutor's Office in acting and deciding on a particular case.
- The monocratic system was abolished - the function of public prosecution is no longer performed by one person - the Republic Public Prosecutor, but by three categories of prosecutors: Supreme Public Prosecutor, Chief Public Prosecutor, and Public Prosecutor.
- One person can perform the function of the Supreme Public Prosecutor only in one mandate. The President of the High Prosecutorial Council is no longer

the Republic's Public Prosecutor by position but an elected member of the Council from among public prosecutors.

- All status issues will be under the jurisdiction of the High Prosecutor's Council, in contrast to the current solution, according to which the Republic's Public Prosecutor has these powers.
- The probationary three-year mandate was abolished.
- The independence of public prosecutors (previous deputy public prosecutors) has been strengthened against the Supreme Chief Public Prosecutor and chief public prosecutors.
- The immunity of holders of the Public Prosecutor's Office has been extended. Office holders in the Public Prosecutor's Office cannot be held accountable for a decision made in a specific case. Still, immunity protection, according to the new constitutional concept, extends to all other activities in connection with the performance of the office. In particular, the prosecutor cannot be called to account for a given opinion in connection with the performance of the function.
- The procedural immunity of prosecutors has also been moved from the jurisdiction of the National Assembly and is decided by the High Prosecutorial Council. According to the "mirror" system, the immunity status is equated with the position of judges.



WHAT DOES THE WORKING VERSION OF THE LAW ON PUBLIC PROSECUTION PROVIDE?

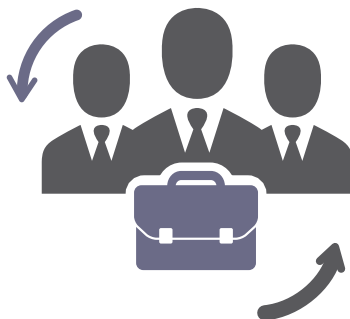
THE INDEPENDENCE OF PUBLIC PROSECUTORS IS STRENGTHENED

The obligation of prosecutors to report undue influence to the Council was added to the existing duty to refuse undue influence as a measure to strengthen the independence of the holders of the Public Prosecutor's Office.

The holder of the Public Prosecutor's Office may request protection against undue influence from the High Prosecutorial Council.

The collegium of the public prosecution acquires a more relevant role; this body becomes responsible for the following:

- giving an opinion to the High Prosecutorial Council about the candidate for the chief public prosecutor and the public prosecutor in it or immediately lower public prosecutor's office;
- giving an opinion on the proposal of the report on the work of the Public Prosecutor's Office for the previous year;
- giving an opinion on the work plan and program of the Public Prosecutor's Office for the following year;
- review of the report on the supervision of the work of the Public Prosecutor's Office;
- consideration of issues of importance for professional development and organization of the Public Prosecutor's Office;
- performs other tasks defined in the Rules on administration in the Public Prosecutor's Office.



THE TERM OF HIERARCHY HAS BEEN PRECISELY DEFINED FOR THE FIRST TIME

Hierarchy means:

- The right of the Supreme Public Prosecutor to issue a mandatory general instruction for the actions of each chief public prosecutor to achieve legality, effectiveness, and uniformity in action. The news is that the mandatory general instructions will be published on the Supreme Public Prosecutor's Office website.
- The 2006 Constitution did not regulate the matter of issuing mandatory instructions; however, 2022 amendments introduced provisions in the Constitution.
- The right of the immediately higher chief prosecutor to issue a mandatory instruction to the lower chief public prosecutor for action in a particular case if there is doubt about the effectiveness or legality of his actions, that is, the activities of the immediately lower public prosecutor. The Supreme Public Prosecutor may issue such an instruction to any Chief Public Prosecutor.
- The right of the chief public prosecutor to issue mandatory instructions for the public prosecutor's work and actions if there is doubt about the effectiveness or legality of his/her actions.
- The right of the lower chief public prosecutor and the public prosecutor who believes that the mandatory instruction is illegal or unfounded is to file an objection with an explanation to the High Prosecutorial Council. Suppose the instruction was issued by an immediately superior public prosecutor's chief. In that case, two objections are allowed against that instruction, a complaint by the lower chief public prosecutor and the public prosecutor who received the instruction. However, the still valid solution is more restrictive; an objection could be declared if the conditions for its declaration were met cumulatively, namely that the mandatory instruction is illegal and unfounded.
- The public prosecutor to whom the instruction was issued and who objected to the mandatory instruction is obliged to undertake only those actions that do not suffer a delay. According to the still valid law, the prosecutor is obliged to undertake all actions until the decision on the complaint.
- The High Prosecutorial Council decides on the objection to the instruction. Five elected members of the High Prosecutorial Council from among public prosecutors who are chosen among the holders of the Public Prosecutor's Office participate in the decision-making on the complaint against the mandatory instructions for work and action in a specific case (the Minister of Justice and the Supreme Prosecutor do not participate).

- Devolution - the right to appeal to the High Prosecutorial Council was introduced.
- Substitution - the right to appeal to the High Prosecutorial Council was introduced.

A CLEAR LINE WAS DRAWN BETWEEN THE ADMINISTRATION IN THE PUBLIC PROSECUTOR'S OFFICE AND THE HIERARCHICAL AUTHORITIES OF THE CHIEF PUBLIC PROSECUTOR

- In addition to the fact that, as before, the Supreme Public Prosecutor and the Chief Public Prosecutor managing the administration of the public prosecution are responsible for the proper and timely work of the public prosecution by the law and the Rules on the administration of public prosecutions in the future senior officers in the public prosecution will be obliged to ensure the independence and impartial distribution of cases to public prosecutors. Random assignment of cases should be understood as the "right to a natural prosecutor."
- In managing the affairs of the administration in the Public Prosecutor's Office, the Supreme Public Prosecutor and the Chief Public Prosecutor adopt the plan and program of the Public Prosecutor's Office, which contains a decision on the annual schedule of work in the Public Prosecutor's Office.
- The public prosecutor may file an objection to the decision on the annual schedule to the High Prosecutorial Council within three days from the date of the program's announcement to the Public Prosecutor's Office collegium. The objection is submitted to the High Prosecutorial Council. The purpose of this norm is to prevent the chicanery of the public prosecutor's administration by frequent and unreasonable reassignment of public prosecutors from one job to another.
- Demarcation of supervision over the Rules on Administration in the Public Prosecutor's Office between the Ministry of Justice and the High Prosecutorial Council was established. According to the still valid solution, supervision is exclusively carried out by the Ministry of Justice.



DURATION OF THE FUNCTION OF THE CHIEF PUBLIC PROSECUTOR - THE POSSIBILITY OF CONSECUTIVE CHIEF MANDATES IS EXCLUDED

The chief public prosecutor is elected from among chief public prosecutors or public prosecutors, that is, among persons who meet the prescribed conditions for election for six years and cannot be re-elected as a chief public prosecutor in the same public prosecution office. In this way, the emergence of professional heads of prosecution is prevented.

TRANSFER AND REFERRAL

- Transfers and referrals are, based on 2022 Constitutional provisions, exempted from the competence of the Republic Public Prosecutor and entrusted to the purview of the High Prosecutorial Council.
- Due to the abolition of the Public Prosecutor's Office, the High Prosecutorial Council can transfer the Chief Public Prosecutor and the Public Prosecutor to the Public Prosecutor's Offices that take over the jurisdiction of the abolished Public Prosecutor's Office. This protective clause did not exist under the "old" Law. In addition, the possibility of filing an appeal to the Constitutional Court against the Council's decision on transfer in the event of the abolition of the Public Prosecutor's Office was introduced.
- A public prosecutor may be permanently transferred to another public prosecutor's office of the same level, with his written consent, based on the decision of the High Prosecutorial Council.
- A public prosecutor may be permanently transferred to another office of the same level without his consent if the number of public prosecutors in the office is reduced, based on the decision of the High Prosecutorial Council. Constitutional-judicial protection against this decision was introduced with the right to file an appeal with the Constitutional Court.
- Referral without the consent of the public prosecutor was abolished.
- With written consent, a public prosecutor may be temporarily assigned to another public prosecutor's office of the same or immediately lower level for a maximum of one year without being reassigned to the same public prosecutor's office. Exceptionally, a public prosecutor of a higher or appellate public prosecutor's office may, with his

written consent, if he fulfills the conditions prescribed by law for election to the Public Prosecutor's Office to which he is temporarily referred, be temporarily referred to the Public Prosecutor's Office of a specialized jurisdiction for a maximum of one year, without the possibility of re-referral to the same public prosecution.

- According to the 2022 Constitution, the same authority (HPC) appoints and elects public prosecutors, so referral should not be a frequent practice. On the contrary, selection should be the rule, and referral the rare exception. Considering those mentioned above, the possibilities of referral have been narrowed, and the deadline for referral has been shortened.
- The High Prosecutorial Council adopts a decision on the temporary referral.

EVALUATION

- The evaluation of the work of the chief public prosecutor and the public prosecutor is carried out by a commission appointed by the High Prosecutorial Council.
- The commission is composed of three members. Public prosecutors of a higher level evaluate the work of the chief public prosecutor and a public prosecutor of a lower level.

DISCIPLINARY OFFENSES

Certain offenses from the current law were specified by adding an adjective unjustifiably in front of the name of the offense. In other words, in the case of a large number of disciplinary violations, the area of punishment has been narrowed.

Misdemeanors were introduced for chief public prosecutors that did not exist until now.

New offenses were introduced:

- uses hierarchical powers in a manner contrary to the law (this offense can only be committed by the Chief Public Prosecutor or the Supreme Public Prosecutor);
- unjustifiably changes the annual work schedule (this offense can only be achieved by the Chief Public Prosecutor or the Supreme Public Prosecutor);
- unauthorizedly communicates information to the media about ongoing or planned evidentiary actions and investigations;
- non-compliance with the decision of the High Prosecutorial Council on referral to a mandatory medical examination;
- unjustifiably fails to comply with the measures adopted in the supervision procedure.

The holder of the office of the public prosecutor may be dismissed if they have committed a serious disciplinary offense which, according to the opinion of the High Prosecutorial Council, seriously damages the reputation of the Public Prosecutor's Office or public trust in the Public Prosecutor's Office.

A serious disciplinary offense exists if, as a result of the disciplinary violation, there has been a severe disruption of the performance of the Public Prosecutor's Office or the performance of work tasks in the Public Prosecutor's Office, and in particular, the statute of limitations for a criminal prosecution, as well as in the case of repeated disciplinary offenses. This means that a severe disciplinary offense is not an automatic ground for dismissal, as it is according to the still valid law, but only a serious disciplinary offense that resulted in a severe disturbance in the performance of the public prosecutor's function or the performance of work tasks in the Public Prosecutor's Office.

TRANSITIONAL AND FINAL PROVISIONS

- From the day of the constitution of the High Prosecutorial Council, the deputy public prosecutor continued to perform his/her function as a public prosecutor in the Public Prosecutor's Office in which he/she was elected.
- The decision on the deputy public prosecutor's referral before the day of the High Prosecutorial Council constitution is valid until the referral period's expiry.



