**PROPOSAL**

**LAW**

**AMENDING THE CRIMINAL PROCEDURE CODE**

**Article 1**

In the Criminal Procedure Code (Official Gazette of Montenegro 57/09, 49/10, 47/14, 2/15, 35/15, 28/18, 116/20 and 145/21) in Article 5 paragraph 1, the words “of the right to use their own language in the criminal proceedings,” shall be added after the word “understand,”, and after the word “refugees” the full stop shall be replaced by a comma and the following words shall be added: “as well as of the right to medical assistance.”.

**Article 2**

In Article 8, paragraph 2 shall be amended to read:

“(2) Parties, victims, witnesses and other persons participating in the proceedings shall have the right to use their own language or the language they understand in the proceedings, from the first contact with the competent authorities. If the proceedings are not conducted in a language of any of those persons, translation/interpretation of submissions, statements, documents and other written evidence shall be provided.”

In paragraph 4 after the first sentence a new sentence shall be added worded as follows: “If so requested by the victim, the victim referred to in Article 65a of the present Code shall be provided with an interpreter of the same sex.”

**Article 3**

In Article 17 paragraph 2, the words “other evidence obtained therefrom,” shall be replaced by the words “evidence obtained using such evidence,”.

After paragraph 2 a new paragraph shall be added worded as follows:

“(3) Evidence obtained or presented in accordance with the Statute and Rules of Procedure and Evidence of the International Criminal Court and the International Residual Mechanism may be used in criminal proceedings in Montenegro under the conditions under which it could be used before these bodies, unless it was obtained in the manner referred to in paragraph 2 of this Article.”

**Article 4**

After Article 20 a new article shall be added worded as follows:

“**Use of Gender-Sensitive Language**

**Article 20a**

The terms used in the present Code to denote natural persons in masculine gender shall imply the same terms in feminine gender.”

**Article 5**

In Article 22 paragraph 1 after point 9 the full stop shall be replaced by a semicolon and a new point shall be added worded as follows:

“(10) The **International Residual Mechanism** is the name for the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and the International Residual Mechanism for Criminal Tribunals.”

**Article 6**

In Article 38 paragraph 1 point 2, the words “spouse, former spouse or extramarital partner” shall be replaced by the words “spouse or common-law partner, or a partner in the life partnership of persons of the same sex, or former spouse or common-law partner, or a former partner in the life partnership of persons of the same sex”.

In point 5 the words “paragraph 10” shall be replaced by the words: “paragraph 11”.

**Article 7**

In Article 44 paragraph 2 point 1, the words “administrative authority competent for police affairs” shall be replaced by the words “organisational unit of the state administration body in charge of internal affairs performing police affairs”.

**Article 8**

In Article 50 after paragraph 1 a new paragraph shall be added worded as follows:

“State Prosecutors shall provide statement of reasons for the decision to drop charges and shall deliver it to the court.”

**Article 9**

The heading of Title V shall be amended to read: “PRIVATE PROSECUTOR, INJURED PARTY AND VICTIM”.

**Article 10**

Article 53 shall be amended to read:

**“Private Action of a Child and of a Person Deprived of Capacity to Practice**

**Article 53**

(1) A private action on behalf of children and persons fully deprived of capacity to practice shall be filed by their legal representative.

(2) Children who have reached sixteen years of age may also file a private action by themselves.”

**Article 11**

In Article 54 paragraph 1, the words: “spouse, extramarital partner,” shall be replaced by the words: “spouse or common-law partner, or a partner in the life partnership of persons of the same sex,”.

**Article 12**

In Article 58 paragraph 6, Article 108 paragraph 1 point 4, Article 112 paragraph 2, Articles 255 and 314, and Article 347 paragraphs 3 and 4, the word “minor” shall be replaced by the word “child”.

**Article 13**

In Article 59 after paragraph 4 a new paragraph shall be added worded as follows:

“(5) If the notification of the State Prosecutor or of the court cannot be served on the injured party at his address known until then or if the notification could not have been served on him due to his failure to report a change of address or residence, that notification shall be posted on the bulletin board of the court and upon the expiry of a period of eight days from the date of its posting the notification shall be deemed duly served.”

In paragraph 7, the words: “spouse, extramarital partner,” shall be replaced by the words: “spouse or common-law partner, or a partner in the life partnership of persons of the same sex,”.

In paragraph 8, the words “paragraphs 3, 5 and 7” shall be replaced by the words “paragraphs 3, 6 and 8”, and the words “paragraph 7” shall be replaced by the words “paragraph 8”.

Previous paragraphs 5 to 8 shall become paragraphs 6 to 9.

**Article 14**

In Article 63 paragraph 1, the word “minor” shall be replaced by the word “child”.

In paragraph 2, the words “By way of exception, an injured party” shall be replaced by the words “An injured party”.

**Article 15**

After Article 65 three new articles shall be added worded as follows:

**“Rights of a victim of the criminal offence of trafficking in persons, criminal offence against sexual freedom, criminal offence of domestic violence and war crimes**

**Article 65a**

(1) In addition to the rights he has as an injured party in criminal proceedings, in accordance with the present Code, a victim of the criminal offence of trafficking in persons, criminal offence against sexual freedom, criminal offence of domestic and war crimes shall have the following rights:

1) right to access specialist services referred to in Article 65v of the present Code;

2) right to effective psychological and other specialised assistance and support from a service, organisation or institution providing assistance to the victims of crime in accordance with a separate law;

3) right to protection from intimidation and retaliation;

4) right to protection of dignity when testifying;

5) right to be heard without undue delay after the filing of criminal charges, as well as for further hearings to be conducted only to the extent necessary for the purposes of the criminal proceedings;

6) right to be accompanied by a trusted person when undertaking actions in which he participates;

7) that the medical actions for the purposes of criminal proceedings are undertaken to the least possible extent and only if they are absolutely necessary;

8) right to be notified by the State Prosecutor about the actions taken upon his criminal charges in accordance with Article 256b of the present Code and to file a complaint for failure to take actions during preliminary investigation in accordance with Article 256v of the present Code;

9) right to be informed of the termination of detention of the accused person, the escape of the suspect and the release of the convicted person from serving prison sentence, as well as the measures taken for his protection;

10) right to be informed, at his request, of any final decision terminating the criminal proceedings on his criminal charges.

(2) When the death of the victim referred to in paragraph 1 of this Article occurred as grave consequence of the criminal offence, for the purposes of this Article, a victim shall mean a spouse or common-law partner, or a partner in the life partnership of persons of the same sex, children, parents, adopted children, adoptive parents, siblings of that victim.

(3) If he suffers grave consequences of the criminal offence referred to in paragraph 1 of this Article punishable by a prison term of five years or more, the victim referred to in paragraphs 1 and 2 of this Article shall have the right to specialised assistance when submitting a claim under property law.

(4) When undertaking the first action in which the victim referred to in paragraphs 1 and 2 of this Article participates, the court, state prosecutor’s office and police shall inform the victim in a manner he understands of the rights set out in paragraphs 1, 2 and 3 of this Article and the rights he has as an injured party.

(5) The authorities referred to in paragraph 4 of this Article shall treat the victim referred to in paragraphs 1 and 2 of this Article considerately and make sure that the victim has understood the information referred to in paragraph 4 of this Article.

(6) The authorities referred to in paragraph 4 of this Article shall advise the victim referred to in paragraph 1 and 2 of this Article in a manner he understands about what it means to participate in the proceedings as an injured party.

(7) The data that the information referred to in paragraph 4 of this Article has been given and the statement of the victim referred to in paragraphs 1 and 2 of this Article whether he wants to participate in the proceedings as an injured party shall be included in the record of filed criminal charges referred to in Article 256 of the present Code.

**Individual Assessment of the Victim**

**Article 65b**

(1) During the hearing of the victim referred to in Article 65a of the present Code, the authority conducting the hearing shall, in cooperation with the specialist services referred to in Article 65v of the present Code, conduct an individual assessment of the victim.

(2) The individual assessment of the victim referred to in Article 65a of the present Code means the identification of the personal characteristics of that victim, the type and nature of the criminal offence, the circumstances of the commission of the criminal offence, the consequences of the criminal offence, the need to apply protection measures in accordance with the law regulating protection against domestic violence, the need to apply the measures and actions provided for in the present Code for the protection of the victim, and, if any, which protection measures or other measures and actions should be applied.

(3) When conducting an individual assessment of the victim referred to in Article 65a of the present Code, the personal needs of that victim shall also be taken into account, including where the victim opposes the implementation of protection measures and other measures and actions referred to in paragraph 2 of this Article.

(4) The detailed method for conducting the individual assessment of the victim referred to in Article 65a of the present Code and other matters of importance for conducting that individual assessment shall be prescribed by the state administration body in charge of judicial affairs (hereinafter referred to as the “Ministry”).

**Specialist Victims Support Service**

**Article 65v**

(1) In order to provide assistance to courts, state prosecutor’s offices and police in dealing with the victims referred to in Article 65a of the present Code, specialist victims support services shall be established in high courts and high state prosecutor’s offices.

(2) Specialist services in high courts and high state prosecutor’s offices shall provide assistance to the courts, state prosecutor's offices and police within the area of territorial jurisdiction of those courts, state prosecutor’s offices and police.

(3) The activities in the specialist service shall be performed by social workers, psychologists, defectologists, special education teachers and other experts from the relevant fields, who can provide expert opinions, information and other assistance in dealing with the victims referred to in Article 65a of the present Code, in accordance with the present Code.

(4) In the performance of its activities, a specialist service shall cooperate with the competent institutions and establishments dealing with social and child protection, which shall be obliged to provide reports and opinions at its request.”

**Article 16**

In Article 66, paragraph 2 shall be amended to read:

“(2) The accused person’s legal representative, spouse or common-law partner, or a partner in the life partnership of persons of the same sex, direct blood relative, adoptive parent, adopted child, siblings or foster parent may hire a defence attorney for the accused person.”

**Article 17**

In Article 68 paragraph 1, Article 120 paragraph 1, Article 131 paragraph 3, Article 471 paragraph 2 and Article 503 paragraph 1, the word “spouse” shall be replaced by the words: “spouse or common-law partner, or a partner in the life partnership of persons of the same sex”.

**Article 18**

In Article 69 paragraph 5, the words “as well as the suspect who is deprived of liberty” shall be added after the word “Code,” and the word “shall” shall be replaced by the word “must”.

In paragraph 7, the words “paragraph 2” shall be replaced by the words “paragraph 3”.

**Article 19**

In Article 72 paragraph 2, the words “to be informed about the content of the criminal charge.” shall be replaced by the words “to read the criminal charge.”.

**Article 20**

In Article 84 paragraph 1, the words “as well as the provisions of special laws,” shall be added after the word “Code,”.

**Article 21**

In Article 109 paragraph 1, point 1 shall be amended to read:

“1) the accused person’s spouse or common-law partner, or partner in the life partnership of persons of the same sex;”.

In paragraph 2 the words “minor” and “minor person” shall be replaced by the word “child”.

**Article 22**

In Article 113 paragraph 4, the word “minor” shall be replaced by the word “child”.

In paragraph 5, the words “of a criminal offence against sexual freedom,” shall be replaced by the words “referred to in Article 65a paragraph 1 of the present Code”.

**Article 23**

After Article 146 a new article shall be added worded as follows:

**“Expert Providing Assistance to the Defence**

**Article 146a**

(1) When a forensic examination has been ordered during the proceedings, the accused person or defence attorney shall have the right to hire, during the main hearing, an expert from the field in which the forensic examination has been ordered and to authorise him by a power of attorney to provide assistance to the defence.

(2) The expert referred to in paragraph 1 of this Article cannot be a person in respect of whom there are reasons set out in Article 38, Article 139 paragraphs 1, 2 and 3 and Article 148 paragraph 2 of the present Code.

(3) The expert referred to in paragraph 1 of this Article shall have the right to be informed of the date, hour and place of the main hearing, to examine the files and subject matter of the forensic examination and to ask the expert witness questions at the main hearing in accordance with Article 350 paragraph 2 of the present Code.

(4) At the main hearing, the expert referred to in paragraph 1 of this Article shall present the power of attorney to the court for inspection, provide professional, conscientious and timely assistance to the defence, he shall not abuse his rights and shall not delay the proceedings.”

**Article 24**

In Article 156 after paragraph 5 a new paragraph shall be added worded as follows:

“(6) If there is a child in the photograph or audio or audiovisual recording, the photograph or audio or audiovisual recording shall be reproduced by altering the image and voice of the child, if this is necessary to protect the interests of the child, while taking into account the interests of the proceedings as a whole.”

In paragraphs 6 and 7, the words “paragraphs 1 to 5” shall be replaced by the words “paragraphs 1 to 6”.

Previous paragraphs 6, 7 and 8 shall become paragraphs 7, 8 and 9.

**Article 25**

In Article 158 paragraph 1 point 4 the words “displaying pornographic material,” shall be replaced by the words “exploiting children for pornography,”, and the words “unlawful keeping of weapons and explosive substances,” shall be replaced by the words “unlawful possession and carrying of weapons and explosive substances, unlawful manufacturing of weapons and explosive substances, unlawful trafficking in weapons and explosive substances, falsifying and removing the markings on weapons and explosive substances,”.

**Article 26**

In Article 160 paragraph 10, the words “ministry responsible for internal affairs.” shall be replaced by the words “state administration body in charge of internal affairs.”.

**Article 27**

In Article 161 paragraph 2 the words “paragraph 6,” shall be replaced by the words “paragraph 4,”.

**Article 28**

In Article 176, paragraph 2 shall be amended to read:

“Prior to adopting the ruling referred to in paragraph 1 of this Article, the court shall hear the accused person in the presence of the defence attorney on the reasons for ordering detention, and the hearing may be attended by the State Prosecutor.”

**Article 29**

In Article 177 paragraph 3, the words “Supreme Court” shall be replaced by the words “Appellate Court”.

After paragraph 3 six new paragraphs shall be added worded as follows:

“(4) An appeal to the Supreme Court shall be allowed against the ruling referred to in paragraph 3 of this Article, but it shall not stay the enforcement of the ruling.

(5) The State Prosecutor shall submit a reasoned motion referred to in paragraphs 2 and 3 of this Article in writing no later than three days before the expiry of the duration of detention.

(6) The reasoned motion referred to in paragraphs 2 and 3 of this Article shall be delivered to the defence attorney of the accused person.

(7) The defence attorney of the accused person shall have the right to object to the reasoned motion referred to in paragraphs 2 and 3 of this Article, within eight hours of receipt of the motion.

(8) If the State Prosecutor adds or changes one or more reasons for the extension of detention in the motion referred to in paragraphs 2 and 3 of this Article, the court shall hear the accused person thereon in the presence of the defence attorney.

(9) If the State Prosecutor fails to comply with paragraph 5 of this Article, the court shall release the accused person upon the expiry of the duration of detention.”

Previous paragraph 4 shall become paragraph 10.

**Article 30**

In Article 178 after paragraph 2 a new paragraph shall be added worded as follows:

“(3) If the State Prosecutor does not submit the opinion referred to in paragraph 2 of this Article within 24 hours from the moment when it was requested, the investigating judge shall decide on the motion for the termination of detention.”

**Article 31**

In Article 180 paragraph 1, the words “or their extra-marital partner” shall be replaced by the words “or a partner in the life partnership of persons of the same sex”.

**Article 32**

In Article 183 paragraph 1, the words: “their spouse or extra-marital partner” shall be replaced by the words: “spouse or common-law partner, or a partner in the life partnership of persons of the same sex”.

**Article 33**

In Article 185 paragraph 2, Article 186, Article 225 paragraph 1, Article 272 paragraph 5, Article 499 paragraph 2, Article 500 paragraph 1 and Article 511 paragraph 2, the words “ministry competent for the affairs of the judiciary” shall be replaced by the word “Ministry”.

**Article 34**

In Article 199 paragraph 3, the words “Ministry of Foreign Affairs of Montenegro.” shall be replaced by the words “state administration body in charge of foreign affairs.”

**Article 35**

In Article 230 after paragraph 3 a new paragraph shall be added worded as follows:

“(4) A subsidiary prosecutor shall reimburse the costs of the criminal proceedings referred to in Article 226 paragraph 2 points 1 to 6 and point 8 of the present Code, the necessary expenses of the accused person and the necessary expenses and fees of his defence attorney if he stated during the proceedings that he withdrew the charges or if he does not appear at the main hearing although he has been duly summoned or if the summons could not have been served on him due to his failure to report to the court a change of address or residence.”

In paragraph 6, the words “paragraph 5” shall be replaced by the words “paragraph 6”.

Previous paragraphs 4, 5 and 6 shall become paragraphs 5, 6 and 7.

**Article 36**

After Article 248 a new article shall be added worded as follows:

**“Notifying Victim of the Accused Person’s Detention and Other Issues of Interest to the Victim**

**Article 248a**

The court shall, without delay, inform the victim referred to in Article 65a of the present Code of the detention of the accused person, releasing the accused person from detention, entry of the indictment into effect, discontinuation of proceedings based on the control of the indictment.”

**Article 37**

In Article 254 paragraph 2 the word “minors” shall be replaced by the word “children”.

**Article 38**

After Article 256a two new articles shall be added worded as follows:

“Notifying Victim of the Actions Taken

Article 256b

(1) The victim referred to in Article 65a of the present Code shall have the right, upon the expiry of three months from the filing of criminal charges, to request from the State Prosecutor a notification of the actions taken upon criminal charges.

(2) The State Prosecutor shall notify the victim referred to in Article 65a of the present Code of the actions taken within an appropriate period, but no later than thirty days from the day on which the victim requested notification.

(3) If giving the notification referred to in paragraph 1 of this Article could jeopardise the purpose of the proceedings, the State Prosecutor may refuse to give the notification, of which he shall inform the victim who requested such notification.

(4) If the State Prosecutor has not notified the victim referred to in Article 65a of the present Code in accordance with paragraphs 1, 2 and 3 of this Article, the victim shall have the right to submit a complaint to the Head of State Prosecutor’s Office.

(5) After receiving the complaint referred to in paragraph 4 of this Article, the Head of State Prosecutor’s Office shall request from the State Prosecutor to whom the complaint refers to make a statement on the allegations raised in the complaint.

(6) After receiving the statement referred to in paragraph 5 of this Article, the Head of State Prosecutor’s Office shall set a period within which the State Prosecutor is to provide the victim referred to in Article 65a of the present Code with a notification of the actions taken upon criminal charges.

Complaint for Failure to take Action

Article 256v

(1) Upon expiry of the time limits referred to in Article 256a of the present Code, the complainant, injured party and the victim referred to in Article 65a of the present Code may submit a complaint to the Head of State Prosecutor’s Office due to the State Prosecutor’s failure to take action, leading to the delay in the proceedings.

(2) After receiving the complaint referred to in paragraph 1 of this Article, the Head of State Prosecutor’s Office shall ask the State Prosecutor to whom the complaint refers to make a statement on the allegations raised in the complaint.

(3) After receiving the statement referred to in paragraph 2 of this Article, the Head of State Prosecution Office shall, if he assesses that the complaint is well-founded, set a period within which the State Prosecutor is to take a decision on the criminal charges.

(4) The Head of State Prosecutor’s Office shall notify the complainant of taken actions referred to in paragraphs 2 and 3 of this Article, within fifteen days from the date of receipt of the complaint.

(5) If, in the case referred to in paragraph 3 of this Article, the State Prosecutor does not take a decision within the time limit set by the Head of State Prosecutor’s Office, the complainant may resubmit the complaint to the Head of State Prosecutor’s Office.”

**Article 39**

In Article 266, paragraphs 2 and 3 shall be amended to read:

“(2) If the person referred to in paragraph 1 of this Article fails to ensure the presence of a defence attorney within 12 hours from the moment this was made available to him within the meaning of paragraph 1 of this Article, he shall be appointed a defence attorney by virtue of office in the order from the list of the Bar Chamber, and heshall be examined without delay, and within the next 12 hours at the latest.

(3) If the person referred to in paragraph 1 of this Article declares waiver of the right to defence attorney, the State Prosecutorshall examine him without delay, and within the next 12 hours at the latest, except in the case referred to in Article 69 paragraph 1 of the present Code.”

**Article 40**

In Article 268 paragraph 6, the words “or a partner in a customary marriage.” shall be replaced by the words “or a partner in the life partnership of persons of the same sex.”

After paragraph 6 two new paragraphs shall be added worded as follows:

“(7) The State Prosecutor shall order a medical examination of a person deprived of liberty when there is a suspicion that that person has suffered abuse. The report on conducted medical examination shall be enclosed to the case files.

(8) The investigating judge shall order a medical examination of a person ordered to be detained when there is a suspicion that that person has suffered abuse. The report on conducted medical examination shall be enclosed to the case files.”

**Article 41**

After Article 269 four new articles shall be added worded as follows:

**“Securing Evidence by Sampling**

**Article 269a**

(1) If there is a danger to general safety or health, or the preservation of evidence is impossible or difficult, or the costs of preservation are high, or there are other justified reasons, the court shall, on a proposal from the State Prosecutor or *ex officio*, by an order, order the procedure of securing evidence by sampling to be carried out.

(2) In the order referred to in paragraph 1 of this Article, the court shall determine a person, or an institution that shall carry out the procedure of securing evidence by sampling, as well as the time and place of sampling.

(3) In addition to the persons performing the sampling, the procedure referred to in paragraph 1 of this Article shall be attended by the investigating judge or the Chair of Panel referred to in Article 24 paragraph 7 of the present Code, the State Prosecutor and the defence attorney.

(4) The procedure referred to in paragraph 1 of this Article may be attended by the accused person and expert witness appointed by the accused person or his defence attorney.

(5) A record on the carrying out of the procedure of securing evidence by sampling shall be kept and signed by the persons who attended the procedure.

(6) The court shall not issue an order referred to in paragraph 1 of this Article when the perpetrator is unknown at the time of obtaining the evidence, even though there are circumstances referred to in paragraph 1 of this Article.

(7) If the perpetrator has remained unknown within one year from the date of obtaining the evidence, the court shall, on a motion from the State Prosecutor or *ex officio*, issue the order referred to in paragraph 1 of this Article and *ex officio* appoint a person to control the procedure of securing evidence from among the lawyers from the list of the Bar Chamber and, if necessary, an expert witness.

**Ruling on the Securing of Evidence by Sampling**

**Article 269b**

(1) After the procedure of securing evidence by sampling has been carried out, the court shall issue a ruling on the securing of evidence by sampling.

(2) The ruling referred to in paragraph 1 of this Article shall contain in particular: an indication that the securing of evidence was carried out by sampling with a description of the evidence secured by sampling; structure of the sample and sample storage time; a list of documentation set out in the annex to the decision (record, photo report and other documentation made during sampling); an indication that the remaining evidence will be destroyed after the ruling becomes final, as well as the time and method of destroying of that evidence.

**Appeal against Ruling on the Securing of Evidence by Sampling**

**Article 269v**

(1) An appeal may be filed against the ruling referred to Article 269b paragraph 1 of the present Code within three days from the date of service of the ruling.

(2) The ruling on the appeal referred to in paragraph 1 of this Article shall be made by the Panel referred to in Article 24 paragraph 7 of the present Code.

(3) The Panel referred to in Article 24 paragraph 7 of the present Code may dismiss or reject the appeal or remand the case to the court for a new decision.

**Method of Carrying out the Procedure of Obtaining Evidence by Sampling**

**Article 269g**

The method of carrying out the procedure of securing evidence by sampling, as well as the actions taken in the procedure of securing evidence by sampling, the method of preservation of the sample and the method of destroying the remaining evidence shall be prescribed by the Ministry, unless otherwise regulated by a separate law.”

**Article 42**

In Article 272 paragraph 1, the words “except for the criminal offence of domestic violence,” shall be added after the word “years”.

**Article 43**

In Article 293, paragraph 3 shall be amended to read:

“(3) Upon receipt of the indictment, the Chair of the Panel referred to in Article 24 paragraph 7 of the present Code shall deliver the indictment to the accused person and defence attorney who may make a statement on the indictment within 15 days from the day of delivery.”

Paragraphs 4 and 5 shall be deleted.

Previous paragraphs 6 to 9 shall become paragraphs 4 to 7.

**Article 44**

In Article 295 paragraph 1, the words “paragraph 8” shall be replaced by the words “paragraph 6”.

**Article 45**

In Article 296 paragraph 1, the words: “paragraph 8” shall be replaced by the words “paragraph 6”, and the words “the hearing” shall be replaced by the words “submitting statement or upon the expiry of the deadline”.

Paragraph 2 shall be amended to read:

“(2) The indictment shall enter into effect when the ruling on confirmation of the indictment becomes final.”

**Article 46**

Article 297 shall be amended to read:

**“Appeal against Ruling**

**Article 297**

(1) An appeal against the ruling referred to in Article 293 paragraph 6 of the present Code shall be allowed, an appeal against the ruling referred to in Article 294 of the present Code may be filed by the prosecutor and injured party, while an appeal against the ruling referred to in Article 296 paragraph 1 of the present Code may be filed by the accused person and defence attorney. Other decisions of the court concerning the control of the indictment are not appealable.

(2) If an appeal against the court ruling referred to in Article 294 of the present Code was filed only by the injured party and if this appeal is adopted, it shall be deemed that the injured party has assumed prosecution by filing the appeal.”

**Article 47**

In Article 299 paragraph 1, the words “the confirmation of the indictment.” shall be replaced by the words “entry into effect of the indictment.”.

**Article 48**

Article 300 shall be amended to read:

“(1) For criminal offences which are prosecuted ex officio, except for criminal offences of terrorism, war crimes, trafficking in persons and criminal offences against sexual freedom, the suspect, the accused person and the defence attorney may be made a proposal for the conclusion of an agreement on the admission of guilt, i.e. the suspect, the accused person and defence attorney may propose the conclusion of such an agreement to the State Prosecutor.

(2) The proposal referred to in paragraph 1 of this Article may be submitted only once.

(3) When the proposal referred to in paragraph 1 of this Article has been made, the parties and the defence attorney may negotiate the conditions of admitting guilt for the criminal offence or criminal offences with which the suspect or the accused person is charged.

(4) The State Prosecutor shall inform the injured party of the content of the agreement on the admission of guilt and shall obtain a statement from the injured party as regards the part of the agreement relating to the costs of the criminal proceedings and claims under property law.

(5) If the summons could not have been served on the injured party at his address known until then or if the summons could not have been served on him due to his failure to report a change of address or residence or in case of unjustified absence, the agreement on the admission of guilt shall be concluded without his statement.

(6) The agreement on the admission of guilt shall be concluded in writing and shall be signed by the parties and the defence attorney.

(7) The agreement on the admission of guilt may not be submitted later than the first hearing for the main hearing before the first instance court.

(8) If the indictment has not been brought yet or if the bill of indictment or private action has not been filed, the agreement on admission of guilt shall be submitted to the Chair of the Panel referred to in Article 24 paragraph 7 of the present Code, and after the indictment is brought or after the bill of indictment or private action is filed, the agreement on admission of guilt shall be submitted to the Chair of the Panel.

(9) If the agreement on admission of guilt was concluded before the indictment is brought or the bill of indictment or private action is filed, the State Prosecutor shall, together with the agreement, submit to the court the indictment or bill of indictment which shall form an integral part of this agreement.

(10) The indictment or bill of indictment referred to in paragraph 9 of this Article shall not be subject to the provisions on the control of indictment, or the provisions on a preliminary examination of the bill of indictment.”

**Article 49**

In Article 302 paragraph 4, the words “paragraph 3” shall be replaced by the words “paragraph 7”.

After paragraph 9 a new paragraph shall be added worded as follows:

“(10) In the case referred to in paragraphs 4, 7 and 9 of this Article, the agreement on the admission of guilt may not be concluded any longer.”

In the second sentence of paragraph 10, the comma after the words “injured party” shall be deleted and the following words shall be added “with respect to the costs of the criminal proceedings and claims under property law,”.

In paragraph 11, the words “paragraph 10” shall be replaced by the words “paragraph 11”.

Previous paragraphs 10 and 11 shall become paragraphs 11 and 12.

**Article 50**

In Article 307, a full stop at the end of paragraph 1 shall be replaced by a comma and the following words shall be added: “as well as an expert referred to in Article 146a of the presentCode.”

In paragraph 6, the words “the witness and expert witness” shall be replaced by the words “the witness, expert witness and expert referred to in Article 146a of the presentCode”.

**Article 51**

In Article 310 paragraph 3, the words “parties and the injured party” shall be replaced by the words “parties, defence attorney and the injured party”.

**Article 52**

In Article 315 paragraph 2, the words “spouse or close relatives or his/her extra-marital partner” shall be replaced by the words “spouse or common-law partner, or a partner in the life partnership of persons of the same sex or his close relatives”.

**Article 53**

In Article 318 paragraph 1, the words “the defence attorney and expert witnesses.” shall be replaced by the words “the defence attorney, expert witnesses and expert referred to in Article 146a of the present Code.”

**Article 54**

In Article 321 paragraph 1, the words “expert referred to in Article 146a of the presentCode,” shall be added after the words “expert witness,”.

**Article 55**

In the heading of Article 350 the words “Witnesses and Expert Witnesses” shall be replaced by the words “Witnesses, Expert Witnesses and Experts Providing Assistance to the Defence”.

After paragraph 1 two new paragraphs shall be added worded as follows:

“(2) After the expert witness has been heard in accordance with paragraph 1 of this Article, the expert referred to in Article 146a of the present Code may ask him questions directly, subject to the approval of the Chair of the Panel.

(3) If necessary, the Chair and members of the Panel may ask the expert referred to in Article 146a of the present Code questions on the subject matter of the forensic examination directly.”

Previous paragraph 2 shall become paragraph 4.

**Article 56**

In the heading of Article 352 the words “Witnesses and Expert Witnesses” shall be replaced by the words “Witnesses, Expert Witnesses and Experts Providing Assistance to the Defence”.

In paragraphs 1 and 2, the words “witnesses or expert witnesses” shall be replaced by the words “witnesses, expert witnesses and experts referred to in Article 146a of the present Code”.

**Article 57**

In Article 356 paragraph 1 after point 2 a new point shall be added worded as follows:

“(2a) if the person referred to in Article 109 paragraph 1 of the present Code avails of the right not to testify during the main hearing, and he gave a statement during the first hearing although he was cautioned in accordance with Article 109 paragraph 3 of the present Code;”.

In point 4 the word “investigation” shall be replaced by the words “preliminary investigation and investigation”.

In the first sentence of paragraph 4, a full stop shall be added after the words “to the main hearing at all”, and the words “or if, at the main hearing, before the first examination, they have availed themselves of their right to refuse to testify.” shall be deleted.

**Article 58**

In Article 378 paragraph 1 in the first sentence the words “two months.” shall be replaced by the words “three months.”.

In the third sentence of paragraph 5, after the words “injured party” the comma shall be replaced by a full stop, and the words “if so requested by him/her.” shall be deleted.

**Article 59**

In Article 382 paragraph 2, the words “spouse of the defendant,” shall be replaced by the words “defendant's spouse or common-law partner, or a partner in the life partnership of persons of the same sex,”, and the words “sister, foster parent and his/her extra marital partner” shall be replaced by the words “sister and foster parent”.

**Article 60**

In Article 390 paragraph 1, the words “the opposing party and the defence attorney.” shall be replaced by the words “the opposing party, defence attorney and injured party.”.

**Article 61**

In Article 393 paragraph 1, the first sentence shall be amended to read: “The injured party, legal representative and the injured party’s attorney shall be notified of the Panel session, while the authorised prosecutor, defendant or his defence attorney shall be notified of the Panel session if, within the term for appeal or for a reply to an appeal, they requested that they be notified of the session or proposed that a hearing be held before the second instance court in accordance with Article 395 of the present Code.”.

**Article 62**

In Article 394, a full stop at the end of paragraph 1 shall be replaced by a comma and the following words shall be added: “and the investigating judge shall be the Chair of the Panel.”.

**Article 63**

In Article 398 paragraph 2, the words “If an appeal filed to the benefit of the defendant” shall be replaced by the words “If an appeal filed by the defendant”.

**Article 64**

In Article 417 after paragraph 3 a new paragraph shall be added worded as follows:

“(4) When deciding on an appeal, the court may vacate the ruling referred to in paragraphs 1 and 2 of this Article only once.”

Previous paragraph 4 shall become paragraph 5.

**Article 65**

After Article 513 a new article shall be added worded as follows:

“Application of the Former Code

Article 513a

Procedures initiated until the date of entry into force of this Law shall be completed in accordance with provisions the Criminal Procedure Code (Official Gazette of Montenegro 57/09, 49/10, 47/14, 2/15, 35/15, 28/18, 116/20 and 145/21).”

**Article 66**

After Article 514 a new article shall be added worded as follows:

“Adoption of Implementing Regulations

Article 514a

(1) Implementing acts adopted on the basis of the Criminal Procedure Code (Official Gazette of Montenegro 57/09, 49/10, 47/14, 2/15, 35/15, 28/18, 116/20 and 145/21) shall be brought into line with this Law within nine months from the date of entry into force of this Law.

(2) The implementing act referred to in Article 65b paragraph 4 of the present Code shall be adopted within nine months from the date of entry into force of this Law.”

**Article 67**

After Article 516 two new articles shall be added worded as follows:

“Application of Certain Provisions

Article 516a

(1) The provisions of Articles 65a, 65b, 65v, 248a, 256b and 256v of the present Code shall apply upon expiry of one year from the date of entry into force of this Law.

Time Limit for Forming Specialist Victims Support Service

Article 516b

Specialist services referred to in Article65v of the present Code shall be formed within one year from the date of entry into force of this Law.”

**Article 68**

This Law shall enter into force on the eighth day following that of its publication in the *Official Gazette of Montenegro*.

**EXPLANATORY REPORT**

**I. CONSTITUTIONAL BASIS FOR ADOPTION OF THE LAW**

The constitutional basis for adoption of the Law Amending the Criminal Procedure Code of Montenegro is enshrined in the provision of Article 16 point 5 of the Constitution of Montenegro which stipulates that a law shall also regulate other matters of interest to Montenegro in accordance with the Constitution.

**II. REASONS FOR ADOPTION OF THE LAW**

The need to adopt a Law Amending the Criminal Procedure Code is based on several reasons. First of all, it concerns the strengthening of victims’ rights in criminal proceedings. In the Montenegrin judicial system, victims enjoy rights to active participation in the criminal proceedings, as an injured party or subsidiary prosecutor or private prosecutor. In accordance with Articles 19 to 21 of the Constitution of Montenegro, the Criminal Procedure Code of Montenegro (“CPC”) recognises a victim (injured person) as a person whose property right or personal right was violated or threatened by a criminal offence. Recognising that the victim was not only harmed, but also that his/her rights have also been threatened, essentially represents a higher level of protection than the standard laid down in the Victims’ Rights Directive and should lead to a wider scope of victim’s rights in criminal proceedings. The Montenegrin judicial system provides for and protects numerous rights of victims participating in criminal proceedings, which places Montenegro in the group of “advanced” member states, together with Poland, Germany, Austria, Spain and Portugal. Despite the recognised progress achieved, there is still room for improvement. Despite numerous provisions regulating this area, a systematic approach is lacking, which often leads to the overlap of certain provisions, their inconsistency, and insufficient legal regulation of certain areas.

Furthermore, the adoption of the Law Amending the Criminal Procedure Code is necessary in order to strengthen procedural safeguards for the accused persons and the need for harmonisation with the European Union *acquis*, and in particular with Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings.

One of the reasons is also modernisation of the Criminal Procedure Code based on good practice of the European countries and countries of our region, removing certain legal inconsistencies and further improvement of specific existing solutions. Furthermore, the activity of amending the Criminal Procedure Code is provided for in many national binding documents.

It follows from the foregoing that there are several reasons why it was necessary to proceed with amendments to the procedural criminal legislation so that Montenegro would have a Criminal Procedure Code which is modern and European and which will be a good basis for combating all forms of crime.

**III. COMPLIANCE WITH THE EUROPEAN UNION *acquis* AND RATIFIED INTERNATIONAL CONVENTIONS**

The Draft Law Amending the Criminal Procedure Code has been harmonised to the greatest extent possible with the relevant European Union *acquis* and documents of the Council of Europe and of the United Nations as sources of international criminal law.

The Draft Law Amending the Criminal Procedure Code contains the provisions which are harmonised with the following acts of the European Union:

* Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings
* Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings
* Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime

**IV. EXPLANATION OF THE BASIC LEGAL CONCEPTS**

Article 1 of the proposed law has supplemented Article 5 of the Code by stipulating that a person deprived of liberty will be promptly informed that he has the right to use his own language in the criminal proceedings, in accordance with Article 8 paragraph 2 of the CPC. It was also necessary to supplement Article 5 in such a way that a person deprived of liberty shall be provided the required medical examination at his request.

Article 2 of the Proposal for a Law amends Article 8 of the Code in the part relating to the victims’ rights. Namely, as regards the possibilities for exercising the right to effective participation in the criminal proceedings, it is evident that the injured party as a participant in the criminal proceedings has the right to use his own language (Article 8 paragraph 2 of the CPC). The current rules do not include the rules that allow the victims the right to choose an interpreter, as well as provisions that would effectively implement the provision of Article 3(1) of Directive 2012/29/EU which provides for a general right of the victim to understand and to be understood from the first contact with the relevant national authorities. Namely, it is a right which is broader than the right to use one’s own language and the right to interpretation and/or translation, bearing in mind that, for instance, it also includes the right to multilingual information on fundamental rights, versions of information which are adapted to the visually impaired and blind, information adapted to children and the like. Directive lays down that victims have the right to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings, including where information is provided by that authority. Therefore, this Proposal for a Law amends Article 8 in such a way that it is explicitly recognised that the right to an interpreter and the right to use one’s own language starts from the first contact with the competent authorities. Based on the individual assessment of victim to identify specific protection needs (Article 22 of Directive), an interpreter of the same sex will be provided when the victim requests it.

In order to prevent the inclusion of the so-called "fruit of the poisonous tree", by Article 3 of the proposed law, the wording "other evidence obtained therefrom" referred to in Article 17 paragraph 2 of the Code had to be replaced by the clearer wording "evidence obtained using such evidence.", and to achieve precision required under legal drafting rules, instead of plural, the Montenegrin term for "evidence" is used in the singular. A new provision concerning the admissibility of evidence presented before the International Criminal Court and the International Residual Mechanism is also introduced. Thus defined paragraph enables additional control of admissibility. Namely, it has been laid down that this evidence is also expressly subject to the conditions set out in paragraph 2 of Article 17 of this Code which are applicable to all evidence presented before the domestic judiciary. Although even without an explicit reference of this sort, it would be justified to conclude that even evidence obtained within the framework of international judicial bodies is not exempted from the test of compliance with the provisions defining the protection of human rights and fundamental freedoms guaranteed by the Constitution, generally accepted rules of international law or ratified international treaties, this is further emphasised by this provision.

Article 4 of the proposed law introduces new article under the heading “Use of Gender-Sensitive Language” which defines that the terms used to denote natural persons in masculine gender imply the same terms in feminine gender.

Article 5 of the proposed law amends Article 22 of the CPC by defining the term “International Residual Mechanism”. In that connection, “International Residual Mechanism” is the name for the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and the International Residual Mechanism for Criminal Tribunals.

In view of the fact that Montenegro adopted the Law on Life Partnership of Persons of the Same Sex, Articles 6, 11, 16, 31, 32, 52 and 59 of the proposed law have made terminology alignment in Article 38 paragraph 1 point 2, Article 54 paragraph 1, Article 66 paragraph 2, Article 68 paragraph 1, Article 120 paragraph 1, Article 131 paragraph 3, Article 180, Article 183 paragraph 1, Article 315 paragraph 2, Article 382 paragraph 2, Article 471 paragraph 2 and Article 503 paragraph 1 of the Code.

Article 7 of the proposed law amends Article 44 paragraph 2 of the Code by aligning the relevant terminology.

Article 8 of the proposed law amends Article 50 of the Code by adding a new paragraph that refers to the fact that the State Prosecutor is obliged to provide statement of reasons for the decision to withdraw the indictment and submit it to the court, so that the public and injured party can know the reasons for which the decision was made, and so that the injured party can decide whether he will maybe use legal remedies against that decision or whether he will assume the criminal prosecution himself.

In line with the intention to recognise and define a victim in the CPC, it is necessary to identify the victim comprehensively and through a definition of the victim in the criminal proceedings. This can be done by setting forth general provisions guaranteeing victims’ rights, in Title V of the Code. Therefore, Article 9 aligns the terminology in the heading of Title V.

Articles 10, 12, 14 and 37 of the proposed law align the terminology in respect of the term “minor”, in view of the fact that the substantive criminal law, i.e. the amendments to the Criminal Code, fully harmonised the Criminal Code of Montenegro with the term "child".

Article 13 of the proposed law supplements Article 59 of the Code in order to fully harmonise the right to receive information about one’s own case, in such a way that if the notification of the State Prosecutor or of the court cannot be served on the injured party at his address known until then or due to his failure to report a change of address or residence, that notification shall be posted on the bulletin board of the court and upon the expiry of a period of eight days from the date of its posting the notification shall be deemed duly served. Furthermore, this Article aligns the wording by adding the term “a partner in the life partnership of persons of the same sex”, and renumbers paragraphs in view of the amendment inserting a new paragraph in this Article of the Code.

Article 15 supplements the provisions of the Criminal Procedure Code in such a way that the new articles prescribe in a clear and systematised manner the victim’s rights during criminal proceedings, in accordance with Directive 2012/29/EU. Apart from the systematisation of the victims’ rights in criminal proceedings, a clear obligation of state authorities (courts, prosecutors’ offices, police) was introduced to inform the victim in a manner he understands of the rights he has as an injured party when undertaking the first action involving the victim. There is also an obligation of these authorities to treat the victim considerately while making sure that the victim has understood the information about his rights. These state authorities will advise the victim in a manner he understands about what it means to participate in the proceedings as an injured party. The information given and the victim’s statement whether he wants to participate in the proceedings as an injured party will be included in the record.

As regards the support, the lack of a national victims support service means that they often cannot get comprehensive help, tailored to their needs at the earliest stages of the proceedings. The existence of specialised services is essential for efficient and effective protection of victims' rights. In systems where such services and organisations do not exist, victims are not willing to report a crime and participate actively in criminal proceedings, which makes their procedural rights “theoretical and illusory”. Article 8 of the Victims’ Rights Directive stipulates that every victim has the right to appropriate support services free of charge, which in practice makes this right one of the most important rights. Therefore, first of all, the obligation of individual assessment of victim was introduced, while the alignment with Directive 2012/29/EU regarding the establishing of the service for support to victims (as a prerequisite for the victim’s rights which, at the moment, cannot be recognised by the CPC) indicates the choice of the Ministry regarding the systematics of the legislative framework. Regulating a victims support service by legislation will create conditions for recognising a higher level of victim protection in the CPC. Furthermore, Article 65v has been supplemented in the way that tasks in the Specialist Service are performed by experts of various specialist profiles, and defectologists – special psychologists have also been included in addition to already mentioned social workers and psychologists.

Article 18 of the proposed law amends Article 69 of the CPC. Article 69 paragraph 3 of the Criminal Procedure Code stipulates that the accused person against whom detention is ordered must have a defence attorney while he is in detention, while paragraph 5 of the same article stipulates that the suspect must have a defence attorney when the State Prosecutor issues a decision on holding referred to in Article 267 of the Criminal Procedure Code. Therefore, it is clear that with such legal solutions the legislator wanted to protect the rights and interests of persons deprived of liberty. Bearing that in mind, and proceeding from the fact that the accused person can be deprived of liberty even before holding or detention is ordered, then a completely logical solution is that the suspect who is brought to the prosecutor as a person deprived of liberty must have a defence attorney during the first hearing with the prosecutor; this is especially so given the fact that the time running from the moment of deprivation of liberty will also be included in his holding or detention period. Furthermore, in situations as these, detained persons are in a very specific state, while the evidentiary importance of the first statement they give to the competent prosecutor is obvious, which creates an additional obligation to provide them with professional defence in such situations.

The search, as one of the most important evidentiary actions under the Criminal Procedure Code, is undertaken based on a court order, which is issued on a reasoned request of the competent prosecutor, to whom the police previously submits an initiative to file a request to the court for the issuance of the order. It is a procedure which is conducted without the participation of the person against whom this action is taken, who will, usually, later on, have the status of an accused person in criminal proceedings. Of course, through the delivery of the order and the possibility of hiring a lawyer to attend this evidentiary action, that person is given the possibility to participate therein. Furthermore, Article 19 has amended paragraph 2 of Article 72 of the Code, so it is clearly stated that the defence attorney has the right to read criminal charges. Article 20 of the proposed law has amended i.e. supplemented Article 84 of the Code and the fact that the evidence collected in contravention of special laws will also be considered as legally invalid evidence, thus also emphasising the need to take into account certain rules relating to special categories of persons during the search.

Article 22 of the proposed law amends Article 113 paragraph 5 of the Criminal Procedure Code, with the aim of protecting against secondary victimisation. Namely, the right of the injured party who is a victim of a criminal offence against sexual freedom is now provided, namely, the right to be heard and the proceedings to be conducted by a judge of the same sex, if the personnel composition of the court allows it, while special rules are set out for the hearing of particularly sensitive witnesses, i.e. children in the first place. An injured party who is a victim of a criminal offence against sexual freedom, as well as a child being examined as a witness, are entitled to testify in separate premises before a judge and a court reporter. This manner of examination of witnesses can also be applied to the testifying of an injured party who is a victim of discrimination. This amendment expands this right to include victims of criminal offences of domestic violence, the criminal offence of trafficking in persons and war crimes.

Article 23 of the proposed Law introduces a new concept into the criminal legislation of Montenegro – a legal concept of an expert providing assistance to the defence. Namely, Article 6(3)(d) of the Convention for the Protection of Human Rights and Fundamental Freedoms states that everyone charged with a criminal offence has the following minimum rights: to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. Thus, the European Court of Human Rights stated in the judgment *Khodorkovskiy and Lebedev v. Russia*, no. 11082/06, 25 July 2013, §§ 732-735 that “it may be hard to challenge a report by an expert without the assistance of another expert in the relevant field. Thus, the mere right of the defence to ask the court to commission another expert examination does not suffice. To realise that right effectively the defence must have the same opportunity to introduce their own ‘expert evidence’”. Article 16 paragraph 2 of the CPC stipulates that the court shall ensure equal terms to the parties and to the defence attorney as regards the offering, accessing and presenting evidence. However, there was no provision in the CPC allowing the defence to hire an expert witness or to submit findings of an expert witness as evidence at the trial. In view of the foregoing, the procedural criminal legislation introduces the possibility for the accused person or his defence attorney, when a forensic examination has been ordered during the proceedings, to have the right to hire, during the main hearing, an expert of their choice and to authorise that expert by a power of attorney. An expert is a person who possesses expertise in the field in which the forensic examination has been ordered and who provides assistance to the defence. As regards restrictions, a person in respect of whom there are reasons for recusation or exemption laid down in the Code cannot be hired as an expert. As regards rights, the expert has the right to be informed of the date, hour and place of the main hearing, to examine the files and subject matter of the forensic examination and to ask the expert witness questions at the main hearing. The expert is obliged to present the power of attorney to the court, to provide professional, conscientious and timely assistance to the party, not to abuse his rights and not to delay the proceedings. At the main hearing, after the expert witness presents his findings and opinion, the expert shall be entitled to ask him questions directly, subject to the approval of the Chair of the Panel. Furthermore, the Chair and members of the Panel may examine the expert regarding the subject matter of the forensic examination (Article 55 of the proposed Law).

Article 24 of the proposed law amends Article 156 of the Code by introducing a new paragraph that specifies necessary measures to be taken where there is a child in the photograph or audio or audiovisual recording, in order to protect the interests of the child. There is also a renumbering of paragraphs considering the changes introduced by the new paragraph of this article of the Code.

Since the amendments to the Criminal Code aligned the name of the criminal offence which relates to child pornography, it was necessary in Article 25 of the proposed law to make alignment of terminology in Article 158 paragraph 1 point 4 of the Code. Furthermore, with regard to point 4, since the amendments to the Criminal Code have harmonised it with the UN Firearms Protocol and introduced three new criminal offences, it was necessary to make these changes.

Article 26 of the proposed law aligns the terminology in Article 160 paragraph 10 of the Criminal Procedure Code.

Article 27 carries out renumbering in Article 161 paragraph 2, taking into account the amendments to Article 293 of the Criminal Procedure Code.

Article 28 of the proposed law amends Article 176 paragraph 2 of the CPC. The court making a decision must personally hear the person whose detention is requested by the prosecutor’s office regarding the reasons for detention before making the decision. This rule is expressly set out for the procedures for ordering detention as defined in Article 176 paragraph 2. According to the provision in force, the defence attorney “may” attend this procedure, which does not provide sufficient safeguards for the rights of defence under the relevant standards. Since national legislation expressly provides for a mandatory defence including legal assistance in case of detention, the presence of a defence lawyer must also be mandatory without the accused person being able to waive it. In view of the foregoing, paragraph 2 was amended in such a way that the court shall hear the accused person in the presence of a defence attorney on the reasons for ordering detention.

Article 29 of the proposed law amends Article 177 of the CPC, relating to Ordering Detention and Duration of Detention During Investigation. Namely, bearing in mind that it is necessary that all judicial decisions on detention and extension of detention must have a guaranteed appellate court review, which is, at the moment, not the case for the rulings of the Supreme Court extending detention for three months in exceptional cases. This issue required special attention. In this connection, an amendment was made in the way that, first of all, if the proceedings are conducted for a criminal offence punishable by a prison term of more than five, the jurisdiction is conferred on the panel of the Appellate Court, which can, on a reasoned motion of the State Prosecutor, for important reasons, extend detention for no longer than another three months. An appeal against this ruling can be lodged to the Supreme Court. Also, an obligation is introduced for the State Prosecutor to submit a motion for the extension of detention in a timely manner, no later than three days before the expiry of the period of detention. A reasoned motion is to be submitted to the defence attorney of the accused person, to which they have the right to object within 8 hours of receipt thereof. Furthermore, if the State Prosecutor changes or adds a reason or reasons for the extension of detention in the motion, the court will hear the accused person in the presence of the defence attorney about the reasons set out in the submitted motion. If the State Prosecutor fails to act within the time limit referred to in paragraph 5 (time limit of three days), the court is obliged to release the accused person upon the expiry of the duration of detention.

Furthermore, Article 30 of the proposed law amended Article 178 of the Code. Namely, the termination of detention based on a motion of the defence must not depend on whether the court received a statement from the prosecution. The procedure had to be changed in order to enable the court to make a decision in cases where the prosecutor has not submitted a statement within set deadline. The law may also apply a presumption that the prosecution’s silence should be interpreted as a consent to release. In this connection, a provision stipulating that the investigating judge will decide on the motion if the State Prosecutor does not submit his opinion within 24 hours of requesting such opinion has been introduced.

Article 33 of the proposed law makes terminology alignment in Article 185 paragraph 2, Article 186, Article 225 paragraph 1, Article 272 paragraph 5, Article 499 paragraph 2, Article 500 paragraph 1 and Article 511 paragraph 2 of the Code.

Article 34 of the proposed law makes terminology alignment of Article 199 paragraph 3 of the Code.

In order to achieve greater procedural discipline and protect budget funds of the courts primarily, in situations where several years long proceedings are discontinued due to the negligence of the subsidiary prosecutor or his attorney, it was necessary to amend Article 230 by Article 35 of the proposed law in such a way that the subsidiary prosecutor shall reimburse the costs of the criminal proceedings referred to in Article 226 paragraph 2 points 1 to 6 and point 8 of the present Code, the necessary expenses of the accused person and the necessary expenses and fees of his defence attorney if he stated during the proceedings that he withdrew the charges or if he does not appear at the main hearing although he has been duly summoned or if the summons could not have been served on him due to his failure to report to the court a change of address or residence.

By introducing special provisions on the victim’s rights in criminal proceedings, it was necessary to systemically introduce certain provisions in the Code. Thus, Article 36 of the proposed Law has introduced a provision according to which the victim is notified of the detention and release of the accused person from detention, the entry of the indictment into effect, the discontinuation of the proceedings based on the control of the indictment, and the court will, without delay, notify the victim of the judgment rendered where a certified copy of the judgment is not delivered to the injured party under Article 378 of this Code.

Respecting the victim’s right to receive information about his case, Article 38 of the proposed law introduces in the CPC the provisions relating to the victim’s right to request to be notified of the actions taken by the State Prosecutor upon his charges (Article 256b), as well as the victim’s right to submit a complaint about his work to the Head of State Prosecutor's Office in case of the State Prosecutor’s failure to take action (Article 256v). Thus, the requirements set out in Articles 6 and 10 of Directive 2012/29/EU have been fulfilled.

Bearing in mind the introduction of mandatory defence for persons deprived of liberty who are interrogated by the State Prosecutor for the first time, it was necessary to amend the provisions relating to Article 266 paragraphs 2 and 3 of the Code (Proceeding by the State Prosecutor upon Bringing a Person

Deprived of Liberty) by Article 39 of the proposed Law.

Article 40 of the proposed law adds two new paragraphs to Article 268 of the Code, which prescribe the obligation of the state prosecutor and of the investigating judge to order a medical examination of a person deprived of liberty where there is a suspicion that the person has suffered abuse.

Analysing the recommendations given in the European Commission’s Montenegro Report as well as the Non-Paper regarding Chapters 23 and 24 for Montenegro, one can clearly see the inference by the European Commission when referring to insufficient capacities for storing seized drugs and that this problem is yet to be addressed, but also that Montenegro has not yet amended the relevant legal provisions in the Criminal Procedure Code, to make it possible to keep only a sample of psychoactive substances as evidence for court proceedings, and not the entire amount, as it is the case now.

In view of the guidance of the European Commission, Article 41 of the proposed Law introduces the possibility of judicial securing of evidence by sampling. Judicial securing of evidence is not new in Montenegrin criminal legislation, therefore, this institute has been taken as a model with regard to the sampling procedure. If there is a danger to general safety or health, or the preservation of evidence is impossible or difficult, or due to the costs of storage of seized items, or for other justified reasons, the court shall, on a proposal from the State Prosecutor or *ex officio*, by an order, order the procedures of securing evidence by sampling to be carried out. After the procedure of securing evidence by sampling has been carried out, the court shall issue a ruling on the securing of evidence by sampling, while that ruling is subject to an appeal that may be filed within three days from the date of service of the ruling. More detailed action of securing evidence by sampling, method of preservation of the sample and the procedure for destroying the remaining evidentiary material will be prescribed by the state administration body in charge of judicial affairs.

Bearing in mind special vulnerability of the victims of criminal acts of domestic violence, it was entirely appropriate to exclude the possibility of postponing criminal prosecution for these criminal offences (Article 42 of the proposed Law).

Article 6(3)(a) of the European Convention clearly states that a person charged with a criminal offence must be informed without delay, in detail and in a language he understands, of the nature and reasons for the charge against him. Without this, guaranteed right to a fair trial would not be meaningful as it would not be possible to prepare a defence or to make an informed decision on the admission of guilt. This requires knowledge of the material facts on which the charges are based and any subsequent rewording thereof. In this regard, and to prevent the procedure for confirming the indictment from being unnecessarily prolonged, Articles 43, 44, 45, 46 and 47 of the proposed Law have amended the CPC in respect of the control and confirmation of the indictment. Namely, bearing in mind that the legal validity of the indictment is determined by the court, the court is obliged, upon receipt of the indictment, to deliver it to the accused person and the defence attorney, who may make a statement thereon in writing. The provisions on the hearing have been deleted. Upon expiry of the time limits or after the statement is submitted, the court will issue a ruling on the confirmation of the indictment if the conditions provided for by the law have been met. The accused person and defence attorney have the right to appeal against the ruling confirming the indictment. The indictment enters into effect when the ruling on confirmation of the indictment becomes final.

The agreement on the admission of guilt and the judgments based on this agreement are not a novelty in the Montenegrin judicial system nor do they differ significantly from usual arrangements with regard to negotiations between the parties on the European continent. The Montenegrin model of the agreement on the admission of guilt, as stipulated in the law, conveys European values, not only in terms of respect for the continental European tradition of regulating criminal proceedings, but also in terms of safeguards for the protection of the accused persons and victims of crime. However, there are certain segments in the procedure that require additional harmonisation with the current standards developed mainly in the law of the Council of Europe and the case-law of the European Court of Human Rights. In this regard, bearing in mind vulnerable groups when we talk about certain criminal offences, Article 48 of the proposed Law introduces in Article 300 paragraph 1 a prohibition to conclude agreements on the admission of guilt for the criminal offences of trafficking in persons and criminal offences against sexual freedom. The reason for this is the fact that these are particularly sensitive criminal offences involving particularly vulnerable victims.

Furthermore, in order to increase the efficiency of the criminal proceedings, a provision has been introduced which stipulates that the proposal for the conclusion of an agreement on the admission of guilt may be submitted only once, that prior to that the State Prosecutor must request a statement from the injured party regarding the part of the agreement relating to the costs of the criminal proceedings and claims under property law. Apart from the provision that the agreement must be concluded in writing and that it must be signed, the deadline by which the agreement may be submitted has also been changed. In order to achieve greater efficiency of the criminal proceedings and to prevent its unnecessary delay, it has been stipulated that the agreement on the admission of guilt may not be submitted later than the first hearing for the main hearing before the first instance court.

Article 49 of the proposed law supplements Article 302 of the CPC by adding a new paragraph (paragraph 10) concerning situations when the court dismisses or rejects a proposal for an agreement on the admission of guilt. It has clearly been stipulated that in those cases the agreement on the admission of guilt can no longer be concluded. Paragraph 11 of the same article specifies the provisions regarding the appeal of the injured party. Paragraphs have also been renumbered considering the changes introduced by a new paragraph of this article of the Code.

Articles 50, 53, 54 and 56 of the proposed law align the terminology bearing in mind new legal institutes in the Code.

In respect of the examination of witnesses and expert witnesses outside the main hearing as referred to in Article 310 paragraph 3, Article 51 of the proposed law specifies that the court shall notify the parties, defence attorney and the injured party of the time and place of the hearing if that is possible due to urgency of the proceedings.

Articles 57 of the proposed law specifies the provision of Article 356 of the CPC with a view to defining more precisely the exceptions to the immediate presentation of evidence, and avoiding any doubts that may arise in practice, and also introduces in Article 356 paragraph 1 of the Code the exception stipulated by the provision of Article 109 paragraph 3 of this Code. Furthermore, in point 4, changes are made that refer to the exceptions to the immediate presentation of evidence in part relating to paragraph 1 point 4, in such a way that if the accused person avails of his right not to present his defence or answer the questions asked, the record of the accused person’s statement given in the preliminary investigation and investigation may, according to the Panel’s decision, be read and used as evidence at the main hearing only if the accused person has given statement during his examination in the preliminary investigation and investigation although he was cautioned as prescribed by Article 100 paragraph 2 of the present Code, but the judgment may not be founded solely on this evidence. The wording was specified in view of cases where the investigation has not been conducted (abbreviated procedure).

Amendments to Article 356 paragraph 4 are necessary because it conflicts with the provision of Article 109 paragraph 3 of this Code, as it excludes the possibility of an exception to the principle of immediacy prescribed in paragraph 3 of Article 109 of the Code, by prohibiting the reading of records on the previous examination of persons granted exemption from the duty to testify referred to in Article 109 paragraph 1 of the Code if those persons have not been summoned to the main hearing at all or if they, at the main hearing, before the first examination, have stated that they will not testify. Therefore, in that sense, it is proposed to delete paragraph 4 of Article 356 of the Code in the part that restricts the reading of the record on the previous examination of persons granted exemption from the duty to testify referred to in Article 109 paragraph 1 of the CPC, if those persons who have been summoned to the main hearing before the first examination stated that they will not testify. Another reason for deleting this part of the provision of paragraph 4 of Article 356 of the CPC lies in the internal contradiction of this provision. Namely, this provision stipulates that the record on the previous examination of a privileged witness will not be read, if, at the main hearing, before the first examination, he declared that he would not testify. Therefore, if the privileged witness made this statement before the first examination, at the main hearing, there can be no record on the previous examination, because that is the first examination. Bearing in mind the obligations of the primary application of the principle of immediacy, it is necessary to retain the relevant provision of Article 356 paragraph 4 of the Code, in the part relating to the impossibility to read the record on the previous examination of a privileged witness if he has not been summoned to the main hearing. The court is obliged to try to present all evidence by applying the principle of immediacy, and, if this is not possible, and in accordance with the exceptions to the principle of immediacy, to present the evidence at the main hearing. Thus, if the privileged witness has not been invited to the main hearing, his earlier statement cannot be read as that would be in contradiction with the principle of immediacy. Any derogations have been listed in the provisions of Article 356 paragraph 1 of this Code, but it has also been provided that the Code may specify other cases derogating from the principle of immediacy, which includes the provision of Article 109 paragraph 3 of the CPC, therefore, it is not necessary to amend the provision of Article 356 paragraph 1 of the Code.

Article 58 of the proposed law amends the time limit for writing the judgment in complex cases, extending the time limit from two to three months. The same article also deletes the provisions relating to the condition that the injured party’s request is required in order to send him a final judgment. In view of the foregoing, Article 60 of the proposed law amended Article 390 paragraph 1 as well.

In order to comply with Directive 2012/29/EU, Article 61 of the proposed law supplements Article 393 paragraph 1 of the Code in order to fully ensure the right to information about one’s own case.

When deciding at the session of the Panel or at a hearing (Article 394), the second instance court shall render a decision at the session of the Panel or based on a hearing held. Furthermore, the second instance court shall decide whether to hold a hearing, unless otherwise regulated by this Code. Bearing in mind that the judge rapporteur has the greatest knowledge of the case at hand, it is necessary for him to also be a chair of the panel in order to make the proceedings more efficient, as specified in Article 62 of the proposed law.

Article 63 of the proposed law has amended paragraph 2 of Article 398 of this Code in order to eliminate interpretation in relation to Article 398 and Article 384 paragraph 2 of the CPC.

Article 64 of the proposed law has supplemented Article 417 of this Code by stipulating that when deciding on an appeal, the court may vacate the ruling referred to in paragraphs 1 and 2 of that Article only once. Namely, in practice there was a significant number of cases in which there were multiple vacating of rulings and a certain misunderstanding between the first instance courts and second instance courts regarding the vacating reasons in the ruling. That is why it was necessary to stipulate that rulings can be vacated only once, which would make this stage of the proceedings more efficient, and the legal positions of second instance courts would be implemented more easily through decisions on the merits of the immediately superior court and would provide clear case practice on how to proceed in future.

Articles 65, 66 and 67 add new articles stipulating how to proceed in the proceedings which have been initiated under the provisions of the current Code, the adoption of an implementing act, and also delayed application of certain provisions and the time limit for establishment of the specialist service.

Article 68 stipulates that the Law shall enter into force on the eighth day following that of its publication in the *Official Gazette of Montenegro*.

**V. ASSESSMENT OF FUNDS NECESSARY FOR THE IMPLEMENTATION OF THE LAW**

It is not necessary to provide additional funds in the Budget of Montenegro for the implementation of this Law.