



Montenegro
Agency for Prevention of Corruption

Number: 03-02-200-22-4

Podgorica, , 2023

Pursuant to Article 54 of the Law on Prevention of Corruption (“Official Gazette of Montenegro”, no. 53/14 and 42/2017), on December 16, 2022, the Agency for Prevention of Corruption initiated a procedure to determine the existence of a threat to the public interest, which points to the existence of corruption, and accordingly adopts the following:

OPINION

On the basis of the conducted procedure initiated by the Agency for Prevention of Corruption ex officio, it was determined that the public interest was threatened, which points to the existence of corruption in the proceedings against the Judicial Council of Montenegro, and which refers to the procedure for determining the termination of judicial office for the acting President of the Supreme Court of Montenegro Stanka Vučinić, judges Branimir Femić, Dušanka Radović, Svetlana Vujanović, Lidija Ivanović, Petar Stojanović, President of the Basic Court in Rožaje Zahid Camić and President of the Court for Misdemeanors in Budva Koviljka Đačić, contrary to Article 105 of the Law on Judicial Council and Judges.

Rationale

On December 16, 2022, the Agency for Prevention of Corruption (hereinafter: *the Agency*), in the sense of Article 54 of the Law on Prevention of Corruption, ex officio initiated the procedure for determining the existence of a threat to the public interest by the Judicial Council of Montenegro (hereinafter: *the Judicial Council*)

related to the procedure for determining the termination of judicial office in the sense of the Law on Judicial Council and Judges (“Official Gazette of Montenegro” No. 11/2015, 28/2015 and 42/2018) that is, determining whether the Judicial Council, when making the decision on termination of office, acted on the basis of the previously submitted notification of the president of the court for the judge, the president of the immediately higher court for the president of the court, and the General Session of the Supreme Court of Montenegro for the president of the Supreme Court, as prescribed by Article 105 paragraph 1 of the Law on Judicial Council and Judges.

INVESTIGATION PROCEDURE

Acting ex officio, on December 16, 2022, the Agency initiated the procedure for determining the existence of a threat to the public interest, which points to the existence of corruption No. 03-02-200-22. On the same day, the Agency sent a letter No. 03-02-200-22-2 to the Judicial Council with a request to submit a statement and documentation, since, according to the Agency's knowledge, the Judicial Council acted contrary to the provision of Article 105 of the Law on Judicial Council and Judges, when determining termination of the judicial office in relation to the following judges:

1. Stanka Vučinić
2. Branimir Femić
3. Dušanka Radović
4. Svetlana Vujanović
5. Lidija Ivanović
6. Petar Stojanović
7. Gordana Pot
8. Biserka Bukvić
9. Nataša Sekulić
10. Milica Popović
11. Senada Hasangaić
12. Dragica Vuković
13. Miljana Pavlićević
14. Zahit Camić
15. Vesna Pavišić

16. Milovan Jovković
17. Ajša Međedović
18. Koviljka Đačić
19. Dragica Stojanović
20. Dragica Kovačević
21. Vesna Šćepanović
22. Milanka Kaluđerović

In this regard, the Agency, in the cited letter, requested a statement and the following documentation:

- Minutes from the session where it was decided on the termination of the judicial office in relation to the above-mentioned judges;
- Notifications submitted to the Judicial Council by the president of the court for a judge, that is, the president of the immediately higher court for the president of the court;
- And other necessary data and information relevant for a proper and complete assessment of the factual situation in the subject procedure.

The secretary of the Judicial Council Secretariat, Vesna Aćimić submitted the following documentation to the Agency in the letter No. 01-806/22-1 from December 22, 2022:

- Minutes No. 01-4977/21-3 from July 29, 2021 from the XVI session of the Judicial Council;
- Minutes from the continuation of the XVI session of the Judicial Council held on July 30, 2021;
- Minutes from the continuation of the XVI session of the Judicial Council held on August 2, 2021;
- Minutes from the continuation of the XVI session of the Judicial Council held on August 3, 2021;
- Notification of the Supreme Court of Montenegro Su V no. 329/21 from August 2, 2021;
- Notification of the Commercial Court of Montenegro Su.nr. 739/21 from August 2, 2021;

- Notification of the Administrative Court of Montenegro I.Su no. 24-1/21 from August 3, 2021;
- Notification of the High Misdemeanors Court of Montenegro Su I no. SL from August 2, 2021;
- Notification of the Misdemeanors Court in Podgorica Su. V. no. 861/21 from July 30, 2021;
- Notification of the Basic Court in Cetinje Su.V no. 200/21 from August 2, 2021;
- Notification of the High Court in Podgorica from August 2, 2021;
- Notification of the Basic Court in Žabljak from August 2, 2021;
- Notification of the Basic Court in Berane from August 2, 2021;
- Notification of the Basic Court in Rožaje from August 2, 2021;
- Notification of the Misdemeanors Court in Budva from August 2, 2021;

Upon reviewing the above-mentioned documentation, it was determined that notifications in terms of Article 105 paragraph 1 of the Law on Judicial Council and Judges were previously submitted for the following judges whose judicial office was terminated (*Gordana Pot, Biserka Bukvić, Nataša Sekulić, Milica Popović, Senada Hasangaić, Vesna Pavišić, Milovan Jovković, Ajša Međedović, Dragica Stojanović, Dragica Kovačević, Vesna Šćepanović and Milanka Kaluđerović*).

Upon reviewing the notification of the Supreme Court of Montenegro (hereinafter: *the Supreme Court*) Su V No. 329/21 from August 2, 2021, signed by acting president Stanka Vučinić, it was determined that the notification was addressed to the Judicial Council in accordance with Article 32 of the Law on Judicial Council and Judges, and it cannot constitute a notification of the reasons for the termination of the judicial office, in the sense of Article 105 of the cited law, as stated in the letter itself. Also, as the notification that one of the reasons for the termination of the office of the Acting President of the Supreme Court has occurred, is submitted from the general session of the Supreme Court for the President of the Supreme Court, as prescribed by Article 105 paragraph 1 of the Law on Judicial Council and Judges, which in this event is not the case. On the basis of the above, it means that for judges Stanka Vučinić, Branimir Femić, Dušanka Radović, Svetlana

Vujanović, Lidija Ivanović and Petar Stojanović, there is no notification in the sense of Article 105 paragraph 1 of the Law on Judicial Council and Judges, as the initial act on the basis of which the Judicial Council makes the Decision on the termination of the office of the president of the Supreme Court, the president of the court, that is, the judge (*Article 105 paragraph 2*).

Upon reviewing the notification of the Basic Court in Rožaje, which was sent to the Judicial Council in the form of an e-mail on August 2, 2021, and signed by the President of the Basic Court in Rožaje, Zahit Camić, it is determined that it does not constitute a notification in the sense of Article 105 paragraph 1 of the Law on Judicial Council and Judges, nor can it constitute an initial act on the basis of which the Judicial Council makes a Decision on the termination of the office of the president of the court. Specifically, Article 105 paragraph 1 of the Law on Judicial Council and Judges clearly prescribes that the notification of the reasons for the termination of the judicial office for the president of the court is sent by the president of the immediately higher court, which is not the case in this particular event.

Upon reviewing the notification of the Misdemeanors Court in Budva, which was sent in the form of an e-mail to the Judicial Council on August 2, 2021, and signed by the President of the Misdemeanors Court in Budva, Koveljka Đačić, it is determined that it does not constitute a notification in the sense of Article 105 paragraph 1 of the Law on Judicial Council and Judges, nor can it constitute an initial act on the basis of which the Judicial Council issues a Decision on the termination of the office of the President court. Specifically, Article 105 paragraph 1 of the Law on Judicial Council and Judges clearly prescribes that the notification of the reasons for the termination of the judicial office for the president of the court is sent by the president of the immediately higher court, which is not the case in this particular event.

Upon reviewing the notification of the High Court in Podgorica, which was sent in the form of an e-mail to the Judicial Council on August 2, 2021, and signed by the secretary of the court, Slavka Nešković, it is determined that it does not constitute a notification in the sense of Article 105 paragraph 1 of the Law on Judicial Council and Judges, nor can it constitute an initial act on the basis of which the

Judicial Council issues the Decision on the termination of the office of the president of the court. Specifically, Article 105 paragraph 1 of the Law on Judicial Council and Judges clearly prescribes that the notification of the reasons for the termination of the judicial office for the president of the court is sent by the president of the immediately higher court, which is not the case in this particular event, since the said notification is signed by the secretary of the court, it is concluded that for judges Dragica Vuković and Miljana Pavličević, there is no notification in terms of Article 105 paragraph 1 of the Law on Judicial Council and Judges.

CONCLUSION

After the investigation procedure, and the assessment of facts and circumstances, the Agency for Prevention of Corruption states that a threat to the public interest has been determined, which points to the existence of corruption, in the procedure that the Agency initiated ex officio against the Judicial Council of Montenegro, which refers to the procedure for determining the termination of judicial office contrary to Article 105 of the Law on Judicial Council and Judges.

According to the legal definition, integrity is the legal, independent, impartial, responsible and transparent performance of work by which public officials and other employees of the authority protect their reputation and the authority's reputation, ensure the trust of citizens in exercising public functions and the work of the authority and eliminate suspicion of possible development of corruption, while threat to the public interest implies a violation of regulations, ethical rules or the possibility of such a violation that caused, causes or threatens to cause danger to life, health and safety of people and the environment, violation of human rights or material and non-material damage to the state or legal and natural person, as well as an action aimed at not finding out about such a violation.

Assessing the case files, the Agency for Prevention of Corruption established that there is a threat to the public interest, in the procedure that it initiated ex officio, which consists of the ascertained fact that for the judges: Stanka Vučinić, Branimir Femić, Dušanka Radović, Svetlana Vujanović, Lidija Ivanović, Petar Stojanović, Dragica Vuković, Miljana Pavličević, Zahit Camić and Koveljka Đačić, there is no notification in terms of Article 105 paragraph 1 of the Law on Judicial Council and Judges (*When one of the grounds for the termination of judicial office arises, the Judicial Council shall be immediately notified thereof: by the court president for a judge, by the president of the immediately higher court for the court president, and by the General Session of the Supreme Court for the president of the Supreme Court*).

Namely, upon inspection of the submitted documentation, it was determined that for the following judges, who were terminated from their judicial function (*Gordana Pot, Biserka Bukvić, Nataša Sekulić, Milica Popović, Senada Hasangaić, Vesna*

Pavišić, Milovan Jovković, Ajša Međedović, Dragica Stojanović, Dragica Kovačević, Vesna Šćepanović and Milanka Kaluđerović), notices were previously delivered in the sense of Article 105 paragraph 1 of the Law on Judicial Council and Judges.

Upon review of the notification of the Supreme Court of Montenegro Su V No. 329/21 dated August 2, 2021, signed by Acting President Stanka Vučinić, it has been determined that the same was sent to the Judicial Council in accordance with Article 32 of the Law on Judicial Council and Judges, and it cannot represent the notification of the reasons for the termination of judicial office, in the sense of Article 105 of the cited law, as stated in the letter itself. All the more so, since the notice that one of the reasons for the termination of office of the Acting President of the Supreme Court has occurred is submitted by the General Session of the Supreme Court for the President of the Supreme Court, as prescribed by Article 105 paragraph 1 of the Law on Judicial Council and Judges, which is not the case in this particular case. It follows from the above that for judges Stanka Vučinić, Branimir Femić, Dušanka Radović, Svetlana Vujanović, Lidija Ivanović and Petar Stojanović, there is no notification pursuant to Article 105 paragraph 1 of the Law on Judicial Council and Judges, as the initial act on the basis of which the Judicial Council passes the Decision on the termination of the office of the President of the Supreme Court, the President of the Court, that is, the judge (Article 105 paragraph 2).

Upon review of the notification from the Basic Court in Rožaje, which was sent to the Judicial Council in the form of an email on August 2, 2021, signed by the president of the Basic Court in Rožaje, Zahit Camić, it has been determined that it does not constitute a notification within the meaning of Article 105, paragraph 1 of the Law on Judicial Council and Judges, nor can it serve as an initial act on the basis of which the Judicial Council decides on the termination of the court president's office. Namely, Article 105, paragraph 1 of the Law on Judicial Council and Judges clearly stipulates that the president of the immediately higher instance Court shall send a notification of the reasons for the termination of the court president's judicial office, which is not the case in this specific instance.

Upon review of the notification from the Misdemeanor Court in Budva, which was sent to the Judicial Council in the form of an email on August 2, 2021, signed by the president of the Misdemeanor Court in Budva, Kovičjka Đačić, it has been determined that it does not constitute a notification within the meaning of Article 105, paragraph 1 of the Law on Judicial Council and Judges, nor can it serve as an initial act on the basis of which the Judicial Council decides on the termination of the court president's office. Specifically, Article 105, paragraph 1 of the Law on Judicial Council and Judges clearly stipulates that the president of the immediately higher instance Court shall send a notice of the reasons for the termination of the court president's judicial office, which is not the case in this specific instance.

Upon review of the notification from the High Court in Podgorica, which was sent to the Judicial Council in the form of an email on August 2, 2021, signed by the court secretary Slavka Nešković, it has been determined that it does not constitute a notification within the meaning of Article 105, paragraph 1 of the Law on Judicial Council and Judges, nor can it serve as an initial act on the basis of which the Judicial Council decides on the termination of the court president's office. Specifically, Article 105, paragraph 1 of the Law on Judicial Council and Judges clearly stipulates that the notification of the reasons for the termination of the court president's judicial office should be sent by the president of the immediately higher court, which is not the case in this specific instance since the aforementioned notification is signed by the court secretary. Therefore, it is noted that for judges Dragica Vuković and Miljana Pavličević, there is no valid notification within the meaning of Article 105, paragraph 1 of the Law on Judicial Council and Judges.

Based on the established factual situation, the Agency unequivocally concludes that there was no notification under Article 105 of the Law on Judicial Council and Judges for initiating the procedure for termination of judicial office, which clearly prescribes and leaves no room for interpretation that "When one of the grounds for the termination of judicial office arises, the Judicial Council shall be immediately notified thereof: by the court president for a judge, by the president of the immediately higher court for the court president, and by the General Session of the Supreme Court for the president of the Supreme Court." For this reason, the Judicial Council of Montenegro did not have the authority to determine, in accordance with Article 128, paragraph 1, item 6 of the Constitution of Montenegro, in connection

with Article 105, paragraph 2 of the Law on Judicial Council and Judges, the termination of the judicial office of the Acting President of the Supreme Court of Montenegro, Stanka Vučinić, judges of the High Court in Podgorica, Miljana Pavlićević and Dragica Vuković, the president of the Basic Court in Rožaje, Zahid Camić, and the president of the Misdemeanor Court in Budva, Koviļjka Đačić. Therefore, there is no notification of the reasons for the termination of judicial office from the General Assembly of the Supreme Court of Montenegro, the president of the High Court in Podgorica and Bijelo Polje, and the president of the High Misdemeanor Court of Montenegro for these judges and court presidents in general.

Regarding the judges of the Supreme Court of Montenegro Branimir Femić, Dušanka Radović, Svetlana Vujanović, Petar Stojanović, and Lidija Ivanović, there is also no notification of the reasons for the termination of judicial office in formal legal terms, as the letter Su V no. 329/21 dated August 2, 2021, signed by the acting president of the Supreme Court of Montenegro, states that data is not being provided in accordance with Article 105 of the Law on Judicial Council and Judges, although it contains information on years of age and length of service.

Termination of the judicial office in a democratic society has special importance, and therefore the conditions for the termination of judicial office in Montenegro are prescribed by the highest legal act, the Constitution of Montenegro, specifically in Article 121, paragraph 2, while paragraph 1 of the same article guarantees the stability of the function. The importance of the termination of judicial office is reflected precisely in Article 105 of the Law on Judicial Council and Judges, which, protecting the permanence of the judicial office, foresees the control of the fulfillment of the conditions by two instances, namely the presidents of the courts or the General Session of the Supreme Court of Montenegro, and then the Judicial Council in the process deciding on the termination of judicial office.

The fact that it is not necessary to provide a notification under Article 105 of the Law on Judicial Council and Judges as a basis for deciding on the termination of judicial office is also confirmed by the fact that the Judicial Council of Montenegro can obtain information at any time from the Secretariat of the Judicial Council about the years of life of each judge and their work experience. Namely, the

Secretariat of the Judicial Council is obliged, based on Article 130 of the Law on Judicial Council and Judges, to keep records of data on judges, which particularly include the year of birth, work experience, date of election to office, and that access to the records is sufficient knowledge for the Judicial Council to determine the fulfillment of conditions for the termination of judicial office, the legislator would not prescribe the delivery of the notice from Article 105 of the Law on Judicial Council and Judges.

The Agency for Prevention of Corruption acts preventively in the fight against corruption in all areas, and the purpose of giving an opinion on endangering the public interest is to create a positive influence on the consistent application of laws and ethical standards and principles, and in this regard, it makes the following recommendation:

The Judicial Council of Montenegro should make decisions on the termination of the office of the President of the Supreme Court, the President of the court, i.e., the judges in a manner that does not raise suspicions of the existence of corruption risks or a manner that would not jeopardize the integrity of the Judicial Council and lead to the violation of ethical standards and principles, and possible discrimination, with strict adherence to Article 105 of the Law on Judicial Council and Judges.

The Judicial Council undertakes to, in accordance with Article 53 of the Law on Prevention of Corruption, within 30 days from the date of receipt of this Opinion, submit a report on the actions taken concerning the above recommendation.

Acting Assistant Director
Boris Vukašinić

DIRECTOR
Jelena Perović