



Montenegro
Agency for the Prevention of Corruption

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Pursuant to Articles 78 and 79 of the Law on the Prevention of Corruption (Official Gazette of Montenegro 53/14 and 42/17) and Article 10 of the Statute of the Agency for the Prevention of Corruption, acting ex officio, in respect of the question asked by the Independent Daily Newspaper *Vijesti*, the Agency for the Prevention of Corruption hereby issues the following

OPINION ON THE LAW ON SPORTS

The Ministry of Sports and Youth conducted all procedures during the process of drafting and adoption of the Law on Sports and thus provided the necessary level of transparency and participation and created preconditions for the proposed provisions to be laid down based on the public interest, directly reducing scope for favouring individual interests.

Having inspected the available documentation, it was concluded that there is no legal framework regulating the situation identified in the journalist question, relating to the role of the Minister of Sports and Youth in the process of adoption of the Law on Sports, as a legislative act, whose application, for him as a person who has acquired the status of a top athlete, had the effect of obtaining gain.

The conduct of public officials who are holders of the highest executive offices needs to be regulated in a systematic manner regarding the exercise of public functions and the Agency for the Prevention of Corruption has recognised the need to adopt a Law on Government and a Code of Ethics for the holders of the highest executive offices in order to eliminate possible suspicion of corruption and possible conflicts of interest in the exercise of public functions.

STATEMENT OF REASONS

I. INTRODUCTION

The Law on the Prevention of Corruption regulates the competence of the Agency for the Prevention of Corruption (hereinafter the Agency), under Article 78 paragraph 1 of the Law on the Prevention of Corruption, to:

- "...take initiatives to amend the laws, other regulations and general acts, in order to eliminate the possible risks of corruption or to bring them in line with international standards in the field of anti-corruption;

- issue opinions on draft laws and other regulations and general acts for the purpose of their alignment with international standards in the field of anti-corruption;...”

Furthermore, Article 79 of the same Law lays down that the Agency may, on its own initiative or at the request of an authority, company, legal person, entrepreneur or natural person, issue an opinion for the purpose of improving the prevention of corruption, reducing the risk of corruption and strengthening ethics and integrity in authorities and other legal persons, which includes an analysis of the risk of corruption, measures to eliminate the risk of corruption and to prevent corruption.

Under Article 2 of the Law on the Prevention of Corruption, corruption is defined as any abuse of official, business or social position or influence that is aimed at acquiring personal gain or for the benefit of another, while Article 72 of the same Law stipulates that integrity means a legitimate, independent, impartial, responsible and transparent performance of duties by which public officials and other employees of an authority protect their reputation and the reputation of the authority, ensure confidence of citizens in the exercise of public functions and the operation of the authority and eliminate doubts about the possibility of the emergence and development of corruption.

Article 6 of the Law on the Prevention of Corruption states that private interest of a public official means ownership or other tangible or intangible interest of a public official or the persons related to him/her, while the gain means property or property rights and other tangible or intangible rights.

Article 7 of the Law on the Prevention of Corruption defines that the conflict of interest in the exercise of public function exists when a private interest of a public official affects or may affect the impartiality of the public official in the exercise of public function, and it stipulates that a public official shall exercise his/her function in such a manner that the public interest is not subordinated to private interest, and without causing a conflict of interest in the exercise of public function.

United Nations Convention against Corruption (Law on the Ratification of the United Nations Convention against Corruption “Official Gazette of Serbia and Montenegro – International Treaties” No. 11/05), as an international instrument applicable to the field of the prevention of corruption, prescribes in Article 8 relating to the codes of conduct for public officials:

- “1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.
2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.
3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.
4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.
5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and

substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.”

Miloš Rudović, a journalist from the Independent Daily Newspaper *Vijesti*, addressed to the Agency for the Prevention of Corruption the question of whether Nikola Janović, the Minister of Sports, had been in a conflict of interest when he had proposed the Law on Sports, i.e. whether he had been in a conflict of interest when he had proposed a provision by which the age limit to start receiving lifetime allowance for a top athlete status was lowered from 40 to 35 years of age.

The Agency for the Prevention of Corruption inspected publicly available documents related to the entire process of drafting and adoption of the mentioned piece of legislation and requested relevant documentation from the proposer of the Law, which guided the proposer in the process of drafting of the Draft Law on Sports and the Proposal for a Law on Sports, as well as any available analyses developed with a view to monitoring and reviewing the effects of the Law concerned.

II. GENERAL ASSESSMENT OF THE RISKS OF CORRUPTION

Considering the subject of interest of the Independent Daily Newspaper *Vijesti* expressed in the journalist question relating to possible existence of a conflict of interest of the Minister of Sports when the Law on Sports was proposed, i.e. when the amendment to the article of the Law on Sports relating to monthly lifetime allowance for an athlete with an extraordinary national team result was proposed, the Agency analysed all available acts relating to the above question, from the perspective of its competences.

First of all, bearing in mind the possible risks of corruption and the economic and social impact of the Law in question, the Agency also analysed the entire procedure that preceded its adoption. This is especially important in view of the fact that public debates, i.e. enabling the participation of the interested public in the preparation of laws, are an important preventive mechanism in the fight against corruption. The participation of the public in the law-making process, both by organising public debates and by consulting the professionals in the field, ensures the necessary level of transparency of and participation in the legislative process and creates conditions in which the interested public can contribute to the quality of legislation and where the proposed provisions can be laid down based on the public interest while reducing scope for favouring individual interests.

It is desirable, and also necessary, to organise public debates and public consultations at all phases of the legislative process, and especially when preparing laws that significantly change the way in which a particular issue is regulated, or in a specific case which concerns issues that may be the subject of special interest of the public. Thereby, the proposer enables defining precisely the provisions that set out the public interest and improving the quality of the piece of legislation concerned, while by publishing reports on public debates explaining all remarks and suggestions and the level of their acceptability the proposer minimises the scope for favouring individual interests to the detriment of the public interest.

As regards the adoption of the Law on Sports (Official Gazette of Montenegro 44/18), it has been established that after several months of application of the then applicable 2011 Law on Sports, the Ministry of Sports and Youth, formed in 2016, assessed that the mentioned Law contains numerous shortcomings and that, in order to improve the situation in this field, a new law defining this field should

be adopted. In this regard, the Ministry of Sports and Youth published a public call for consultations to the interested public to engage in the process of drafting of the text of the Draft Law on Sports, following which the Consultation Report was published. Furthermore, the Minister of Sports, by a decision, formed an inter-ministerial Working Group for the Drafting of the Draft Law on Sports. The representatives of the Ministry of Sports and Youth, Sports Council, Faculty of Sports and Physical Education, Union of Municipalities, Ministry of Education, Ministry of Finance and NGOs in the field of sports participated in the work of that working group.

The Draft Law on Sports prepared by the interdepartmental working group was submitted by the Ministry of Sports and Youth for public debate on 22 September 2017. The programme of the public debate which lasted 40 days, included also two meetings with the representatives of national sports federations and three round tables. All of the above provided an opportunity for the representatives of the Ministry of Sports and Youth to present the solutions provided for by the Draft Law, to answer the questions asked by the interested public, and to receive feedback from the representatives of state institutions, sports organisations, sports professionals' associations, journalists and interested individuals.

In accordance with the Decree on the Procedure for and Manner of Conducting Public Debate in the Preparation of Laws, and after the public debate had been completed, the Ministry of Sports and Youth prepared the Report on Public Debate on the Draft Law on Sports summarising all comments, remarks and suggestions received during the public debate and specifying which remarks had been accepted, but also stating the reasons for rejected remarks. Subsequently, the competent ministry prepared the Proposal for a Law on Sports, which was sent to the competent parliamentary committees, after it had been adopted at the session of the Government.

At its 19th session held on 22 June 2018, in the presence of the proposer of the Law, the Committee on Education, Science, Culture and Sports considered the amendments submitted in respect of the Proposal for a Law on Sports, and as regards the MPs' amendment on changing the age limit for the exercise of the right to a monthly lifetime allowance from 35 to 40 years of age, it decided not to support it and to propose to the Parliament to reject it. Furthermore, the plenum discussed the Proposal for a Law on Sports in general and in detail, after which it was adopted unanimously, by the votes of the MPs present, at the sitting of the Parliament of Montenegro held on 26 June 2018.

The inspection of the documentation also showed that the Minister Nikola Janović was not a member of the working group for the drafting of the Draft Law on Sports, but, in accordance with his function of a minister, he participated in the adoption of the Proposal for a Law on Sports at the session of the Government and explained it before the competent parliamentary committees in the process of discussion and adoption of the final text of the Law on Sports.

III. ANALYSIS OF THE ARTICLES OF THE LAW ON SPORTS RELATING TO THE STATUS OF AN ATHLETE WITH AN EXTRAORDINARY NATIONAL TEAM RESULT (ARTICLE 29) AND THE EXERCISE OF THE RIGHT TO MONTHLY LIFETIME ALLOWANCE (ARTICLE 72)

Athlete with an Extraordinary National Team Result Article 29

An athlete with an extraordinary national team result shall mean an athlete who, based on achieved sports results, has been awarded a status of an athlete with an extraordinary national team result.

Athlete shall be awarded the status of an athlete with an extraordinary national team result if he/she

achieved, as a national player for Montenegro, in an individual or team event, first, second or third place at the Olympic Games, the Paralympic Games, the only official world or European senior championship in a sports discipline that is included in the programme of the Olympic Games or the Paralympic Games.

Athlete shall be awarded the status of an athlete with an extraordinary national team result if he/she, as a Montenegrin national and when representing Montenegro, has become a world boxing champion, in a senior league, organised by WBC, WBA, WBO or IBF, or he/she has become a finalist of DAVIS Cup, FED Cup of the International Tennis Organization or of a Grand Slam Tournament.

Status of an athlete with an extraordinary national team result may be awarded to the athlete referred to in paragraphs 2 and 3 of this Article if he/she has not been convicted, by a final and enforceable judgment, of a criminal offence or misdemeanour referred to in Article 62 paragraph 1 items 4 and 5 of this Law.

Athlete who meets the requirements set out in paragraphs 2, 3 and 4 of this Article shall submit to the Ministry a request to be awarded a status of an athlete with an extraordinary national team result.

In addition to the request referred to in paragraph 5 of this Article, the following documents shall also be submitted:

- certificate from the relevant national sports federation or the relevant international sports organisation on achieved sports result, name of the competition, place in and date on which the athlete concerned achieved that result and that he/she achieved that result as a national player for Montenegro or when representing Montenegro;
- certificate of Montenegrin nationality; and
- contact details.

If necessary, the Ministry may request an opinion on the results referred to in paragraphs 2 and 3 of this Article from the Montenegrin Olympic Committee or the Paralympic Committee of Montenegro.

Decision awarding status of an athlete with an extraordinary national team result shall be adopted by the Ministry.

If an athlete with an extraordinary national team result achieves a better result after that status is awarded, the Ministry shall issue a new decision on his/her request.

This article of the Law lays down a new status of an athlete who achieves certain sports results defined by this Law. It stipulates that the status of an athlete with an extraordinary national team result can be acquired in two different situations. This article of the Law also sets out the manner of acquiring the status of an athlete with an extraordinary national team result, prescribes necessary documentation to be submitted together with the request and on the basis of which the decision is made and specifies the competent institution which shall issue the decision awarding this status. The criteria for acquiring the status of an athlete with an extraordinary national team result are clearly set out in this article of the Law.

Monthly Lifetime Allowance

Article 72

Athlete with an extraordinary national team result shall be entitled to monthly lifetime allowance after the age of 35.

The athlete referred to in paragraph 1 of this Article shall exercise the right to monthly lifetime allowance if, after he/she has been awarded the status of an athlete with an extraordinary national team

result, he/she:

- 1) has not played for a national team of another country, after 3 June 2006;
- 2) does not exercise the right to allowance on this basis in another country;
- 3) has Montenegrin nationality;
- 4) has not been convicted, by a final and enforceable judgment, of a criminal offence or misdemeanour referred to in Article 62 paragraph 1 items 4 and 5 of this Law; and
- 5) during his/her athletic career, he/she has never been punished for failing to comply with the rules of the World Anti-Doping Agency (hereinafter WADA).

Monthly lifetime allowance shall be determined in the amount from one half average monthly net salary to two average monthly net salaries in Montenegro for the year preceding the year in which the allowance is paid.

The requirement set out in this article of the Law which refers to the age limit for exercising the right to monthly lifetime allowance is new in relation to the former legal text which stipulated that the right to monthly lifetime allowance may be exercised after the age of 40. Comparative analysis of legal provisions and of international rules governing this field shows that there is no international standard which defines the age limit adequate for exercising the right to a monthly lifetime allowance. This view is supported by a comparative analysis of legislation governing the field of sports in the region and of legislation of some European countries, as stated below:

- in Article 123 of the Law on Sports (Official Gazette of the Republic of Serbia 10/2016), the Republic of Serbia awards national sports recognition in the form of monthly lifetime cash benefit after the age of 40, while former legal provision in Serbia provided for the exercise of this right after the age of 35;
- Article 130 of the Law on Sports of Republika Srpska (Official Gazette of Republika Srpska No. 79/20 of 24 August 2020) stipulates that the athlete to whom the Recognition is awarded shall exercise the right to Recognition after he/she has stopped competing in sports, not earlier than after the age of 40, or for athletes who compete in sports beyond the stated age limit after they have stopped competing in sports, while in Bosnia and Herzegovina this issue is not regulated by a special law at the state level;
- in Article 81 of the Sports Act (OG 71/06, 150/08, 124/10, 124/11, 86/12, 94/13, 85/15, 19/16, 98/19, 47/20, 77/20), the Republic of Croatia states that the age limit for granting the right to a permanent monthly cash allowance to an athlete who meets other requirements provided for by that Law is to be 45 years old;
- In Slovenia, Article 6 paragraph 2 of the Act Regulating the Supplement to Pensions for Work and Outstanding Achievements in Sports (ZDPIDŠ), Official Gazette of the Republic of Slovenia No. 34/17, defines that the beneficiary shall acquire the right to payment of the supplement when he/she acquires the right to old-age or disability pension under general legislation or when the pension is paid from abroad, or from the first day after applying for the supplement if the application is submitted after he/she has already acquired the right to old-age or disability pension under general legislation or after the beginning of payment of pension from abroad, provided that he/she is a national of the Republic of Slovenia when acquiring the right to pension under general legislation or at the beginning of payment of pension from abroad;

- In Hungary, where the legal framework for sports is laid down in 2004 Law I on Sports, Article 59 defines that Hungarian nationals are entitled to a lifetime Olympic allowance from 1 January of the year following that in which they reached the age of 35, if they won the first, second or third place as members of a Hungarian national team, either as individuals or in team sports.

Furthermore, in the procedure of issuing of this opinion, the Agency for the Prevention of Corruption requested from the Ministry of Sports and Youth the relevant documents which that institution used for the purpose of drafting of the Draft Law on Sports and of the Proposal for a Law on Sports, considering the fact that the initiative on which the Agency acted referred also to the procedure of proposing and adopting of the Law. In this regard, the Ministry of Sports and Youth stated that the main motive for changing the age limit for exercising the right to monthly lifetime allowance was to support top athletes who achieved the results provided for in Article 25 of the Law concerned, and that this institution was guided by the fact that the limit of “35 years of age is considered to be an objective limit for the maximum ability that an athlete can provide in a professional (national team) context”. Additionally, in the Regulatory Impact Assessment Report – RIA Form, the proposer of the Law made an estimate of the funds required for the enforcement of the Law and justified sustainability in terms of financial impact of this Law on the budget.

IV. FINAL ASSESSMENT

Having analysed publicly available documentation concerning the entire process of drafting and adoption of the Law on Sports which was adopted by the Parliament of Montenegro on 26 June 2018, the Agency for the Prevention of Corruption concluded that the proposer of the Law, i.e. the Ministry of Sports and Youth facilitated participation of the interested public in the preparation of the Law both by organising public debate and by consulting the professionals in the field, as one of preventive mechanisms in the fight against corruption. Thus, at the phase of drafting of the Draft Law on Sports and of the Proposal for a Law on Sports, the competent Ministry ensured the necessary level of transparency and participation in respect of the process of drafting of the Law and contributed to the creation of conditions in which scope for favouring individual interests to the detriment of the public interest has been minimised.

As for Article 72 of the Law on Sports relating to the exercise of the right to monthly lifetime allowance, through a comparative analysis of legal solutions and of international rules governing this field, the Agency for the Prevention of Corruption concluded that there is no international standard which defines the age limit adequate for exercising the right to a monthly lifetime allowance.

Furthermore, based on the available documentation, it has been concluded that Nikola Janović, as an athlete who has been awarded the status of a top athlete by amending the Law in question, i.e. by lowering the age limit for exercising the right to monthly lifetime allowance, obtained material gain and for that reason his role in the process of adoption of the Law, as a minister who has the mentioned athlete status, could have called into question the objectivity and impartiality in the exercise of public function.

However, having considered the current legislative framework, the Agency has noted that in this particular case, as well as in all similar cases which will occur or which have already occurred, there are no provisions concerning the procedure for the exclusion of high officials of the executive branch, who may find themselves in the same or a similar situation, if the application of a law may result in the improvement of the financial situation or the exercise of another right of the official himself/herself or a member of his/her family, or if there is a possibility that the public official’s actions may call into question his/her integrity and accountability in the exercise of his/her function. It should not be forgotten that every law applies to

all citizens, i.e. to an indefinite number of people, so that the effects of application of a law can also apply to the legislators themselves, both the proposers of the law and the MPs who adopt laws promulgated by the President of the State. This is precisely the reason why a specific procedure is stipulated for the adoption of laws, where the process itself is divided into several phases, in which the control by one branch of government over another branch should be most evident, leading to the establishment of the balance between the executive and legislative powers.

In this particular case, the Minister of Sports and Youth did not have the legal possibility to request his exclusion, and this did not concern a specific legal transaction or an administrative act which would apply only to him in which case he would be able to request an opinion of the Agency whether there is a conflict of interest. In the situation at hand the only possible guarantees for the prevention of corruption were precisely the public debate on all important issues and the interdepartmental working group which worked on the drafting of the Law, as the Minister Nikola Janović was not a member of this group, as well as making comparative analysis of the legislative framework of the countries of the region and of the EU Member States, all of which was done during the drafting of the Proposal for a Law on Sports.

In line with the principles of the United Nations Convention against Corruption, the Agency recommends to start drafting a Law on Government as soon as possible and to provide for in that Law the institute of exclusion of the Minister and the Prime Minister, as well as the procedure for their substitutes, and to adopt a Code of Ethics for the holders of the highest offices of the executive branch, the proposal for which has already been drafted by the Agency in cooperation with the experts of the Council of Europe and submitted to the Ministry of Justice and Human and Minority Rights.

The Agency is of the opinion that only good legislative solutions, the adoption of a Law on Government and of a Code of Ethics for the holders of the highest offices of the executive branch and compliance with those rules in the future, will prevent the possibility of the risk of corruption and thus protect also the public interest and increase public confidence in the work of the executive branch.

DIRECTOR
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