

ANALYSIS OF THE ADOPTION OF REQUESTS FOR THE PROTECTION OF LEGALITY: DO VIOLATIONS OF THE LAW BY COURTS IN FAVOR OF THE ACCUSED RAISE ALARM?



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Artbuk d. o. o.

Podgorica, November 2025



The report was prepared with the support of the regional project SMART Balkan – Civil Society for a Connected Western Balkans, implemented by the Center for the Promotion of Civil Society (CPCD), the Center for Research and Policy Making (CRPM) and the Institute for Democracy and Mediation (IDM) and financially supported by the Ministry of Foreign Affairs of the Kingdom of Norway. The content of the report is the sole responsibility of Human Rights Action and does not necessarily reflect the views of the Center for the Promotion of Civil Society, the Center for Research and Policy Making (CRPM), the Institute for Democracy and Mediation (IDM) or the Ministry of Foreign Affairs of the Kingdom of Norway.

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1. INTRODUCTION

The subject of this analysis is 11 judgments of the Supreme Court of Montenegro, issued from the beginning of 2024 until the end of October 2025, in response to requests for the protection of legality submitted by the Supreme State Prosecutor's Office (SSP) against final judgments or decisions of lower courts.

These cases involve situations in which the Supreme Court found a violation of the law in favor of the accused.

Only judgments issued in criminal proceedings for the most serious offenses were analyzed, including organized crime, corruption, drug trafficking, and one case of severe multiple rape against a minor. The accused in these cases included public officials, such as the former Mayor of Podgorica, Miomir Mugoša, and the President of Žabljak Municipality, Veselin Vukićević, as well as members of criminal organizations—for example, those founded by the former President of the State Union of Serbia and Montenegro and Speaker of the Parliament of Montenegro, Svetozar Marović, and Radoje Zvicer, whom the Special State Prosecutor's Office has identified in multiple cases as the head of one of the largest criminal organizations, along with members of his organization.

The analysis highlights the consequences of decisions in which the law was violated in favor of the accused, including the avoidance or reduction of criminal liability, the inability to seize property reasonably suspected of being acquired through criminal activity, the inability to use legally obtained evidence, and the mitigation of imposed prison sentences.

Finally, conclusions and recommendations are provided, emphasizing that this type of case should receive special attention—both for assessment and education purposes, and for investigating potential violations or abuses in the exercise of judicial functions.

The analysis was based on judgments and statements published on the websites of Montenegrin courts and statements from the Supreme State Prosecutor's Office.

The author of the analysis is lawyer Veselin Radulović, and the reviewer is Miodrag Majić, judge of the Criminal Department of the Court of Appeals of the Republic of Serbia. The report was edited by Tea Gorjanc Prelević, Executive Director of the NGO Human Rights Action.

2. LEGAL FRAMEWORK

2.1. General provisions

A request for the protection of legality is an extraordinary legal remedy that can be filed by the Supreme State Prosecutor's Office (SSP) against final court decisions and against the judicial proceedings preceding those final decisions in the following cases:

- When it considers that the law has been violated;
- When the European Court of Human Rights or another court established by a ratified international treaty has determined that human rights and fundamental freedoms were violated during the criminal proceedings, and the court decision is based on such a violation, and the competent court has not allowed the repetition of the criminal procedure, or the violation caused by the court decision can be remedied by annulling or amending the decision without repeating the proceedings, and
- When the court decision is based on a law or other regulation that has ceased to be in force according to a decision of the Constitutional Court, provided the court has not allowed the repetition of the criminal procedure, or the violation caused by the court decision can be remedied by annulling or amending the decision without repeating the proceedings.¹
- An accused person who has been sentenced to an unconditional prison term of one year or more, or a juvenile detention sentence, and their defense attorney, may, within 30 days from the day the accused receives the final judgment, submit a written and reasoned request to the VDT to file a request for the protection of legality against the final judgment on the grounds of:
 - Violation of the Criminal Code to the detriment of the accused;
 - Violation of the provisions of criminal procedure, participation in decision-making by a judge who should have been excluded, or the denial of the accused's right to use their language at the main trial or at the appeal;
 - Violation of the right of the accused to defense, and
 - Violation of the provisions of criminal procedure in the appeal process, if such a violation influenced the issuance of a correct judgment.²

The Supreme Court of Montenegro decides on requests for the protection of legality.³

The SSP may file a request for the protection of legality in favor of the accused or to their detriment.

¹ Article 437, Criminal Procedure Code (CPC), Official Gazette of Montenegro, Nos. 57/2009, 49/2010, 47/2014, 145/2021, 54/2024 i 58/2024

² Article 438, CPC, *ibid.*

³ Article 439, CPC, *ibid.*

2.2. Request for the Protection of Legality in Favor of the Accused

When the Supreme Court determines that a request for the protection of legality filed in favor of the accused is well-founded, it issues a judgment by which, depending on the nature of the violation, it amends the final decision or annuls, in whole or in part, the decisions of the first-instance and second-instance courts, or only the decision of the second-instance court, and returns the case for reconsideration or retrial to the first-instance or second-instance court.⁴ In the repeated proceedings, the court is bound by the prohibition of amending to the detriment of the accused,⁵ meaning that the new judgment cannot be modified to the detriment of the accused regarding the legal classification of the criminal offense or the criminal sanction.⁶

2.3. Request for the Protection of Legality to the Detriment of the Accused

If the Supreme Court finds that a request for the protection of legality filed to the detriment of the accused is well-founded, it will only establish that a violation of the law exists, without altering the final decision.⁷

Thus, based on a request for the protection of legality, a final judgment cannot be modified to the detriment of the accused. In such a case, the Supreme Court issues a declaratory judgment, which merely points out the violation of the law. This is consistent with one of the fundamental principles of criminal procedure that no one can be tried again for a criminal offense for which they have been convicted or acquitted by a final decision (*ne bis in idem*),⁸ except in exceptional cases where a repetition of criminal proceedings is permitted by law.⁹

This principle is one of the foundational procedural and substantive principles of criminal law, and its primary purpose is to prohibit the same person from being prosecuted and convicted twice for the same act. It therefore protects the individual from retrial or worsening of their position after a final decision, and as a rule, a trial cannot be repeated to the detriment of the accused.

However, repetition of criminal proceedings to the detriment of the accused is exceptionally possible and only if it is determined that the judgment was based on a criminal act, that is, if it is proven that the judgment resulted from a criminal act by a judge or a person performing evidentiary actions,¹⁰ or if a judgment dismissing the charges was issued due to the prosecutor's withdrawal of the indictment, and it is proven that this withdrawal occurred as a result of a criminal act of abuse of office

4 Article 443, paragraph 1, CPC, *ibid*.

5 Article 400, CPC, *ibid*.

6 Article 441, paragraph 3 and Article 445, paragraph 4, CPC.

7 Article 443, paragraph 1, CPC

8 Article 6, paragraph 1, CPC, *ibid*.: "(1) No one may be tried again for a criminal offense for which they have been convicted or acquitted by a final decision. (2) The prohibition under paragraph 1 of this Article does not prevent the repetition of criminal proceedings in accordance with this Code."

9 Article 6, paragraph 2, CPC.

10 Article 425, paragraph 1, item 1, CPC.

by the prosecutor,¹¹ as well as in cases where new facts are presented or new evidence is submitted which, either on their own or in connection with previous evidence, are sufficient to result in the conviction of a person who was previously acquitted or in their conviction under a stricter criminal law.¹² For reasons of basic legal certainty, repetition of criminal proceedings to the detriment of the accused is only possible within a subjective period of six months from when the prosecutor becomes aware of the new facts or new evidence.

The principle of *ne bis in idem* is based on the protection of legal certainty and fairness, which take precedence even over the principle of truth when the two are in conflict. Nevertheless, although judgments on requests for the protection of legality to the detriment of the accused do not affect the legal position of the accused in those proceedings, they should at least influence future judicial practice, helping to ensure that the same errors in favor of the accused are not repeated.

¹¹ Article 425, paragraph 1, item 2, CPC.

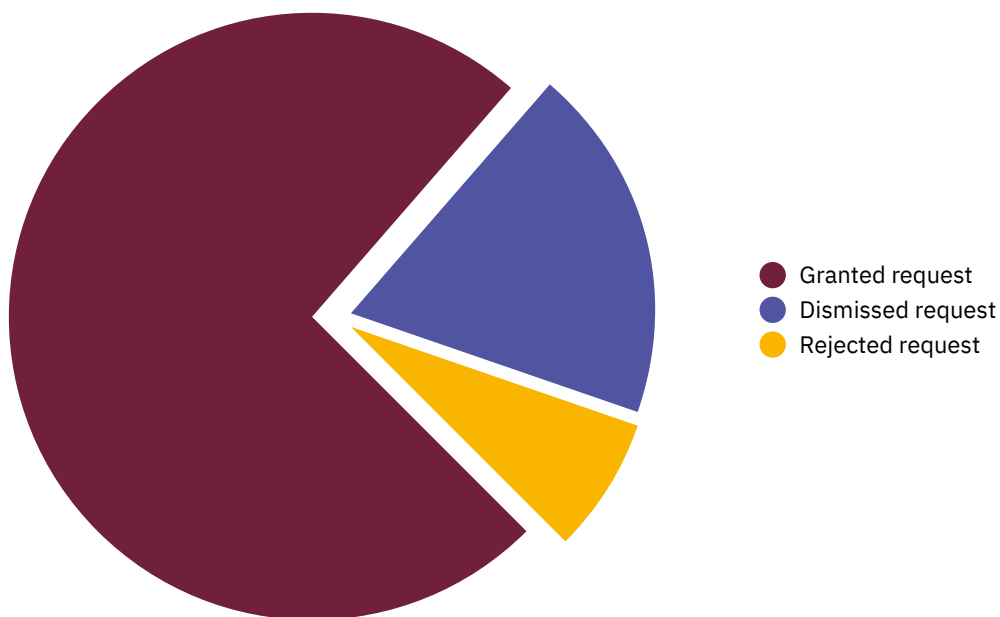
¹² Član 425, stav 1, tačka 3 ZKP

3. DECISIONS OF THE SUPREME COURT OF MONTENEGRO ON REQUESTS FOR THE PROTECTION OF LEGALITY

3.1. General overview

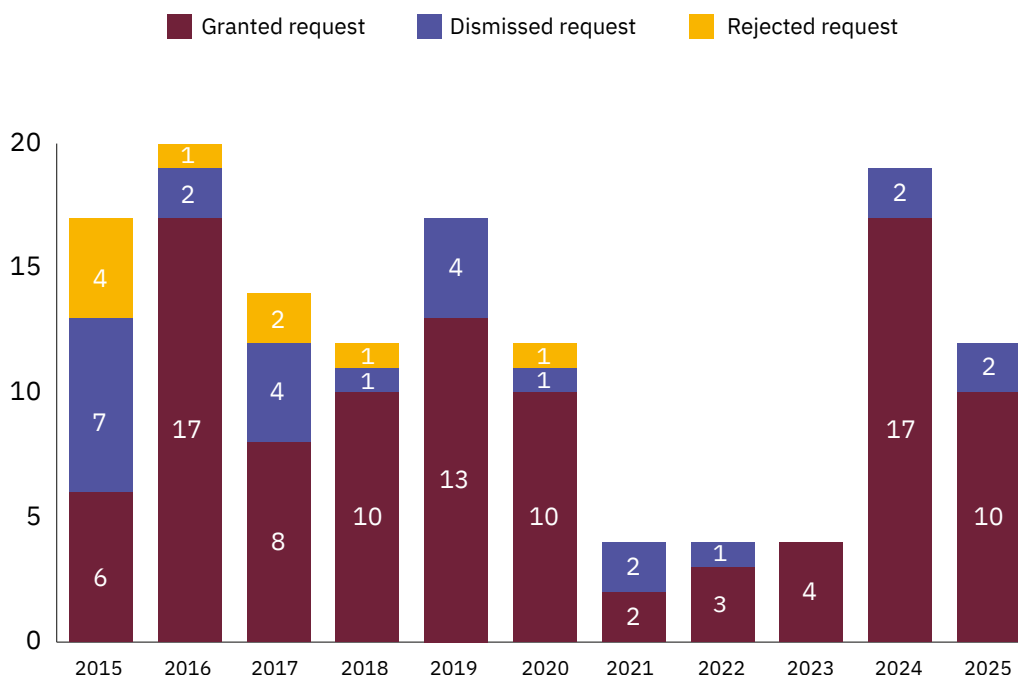
3.1.1. Decisions from 2015 to July 2025

From the beginning of 2015 until the end of October 2025, the Supreme Court of Montenegro issued 135 decisions on requests for the protection of legality. Out of these, in 100 cases (74% or 3/4) the request for the protection of legality was granted because the law had been violated, while in the remaining cases it was rejected (26) as unfounded or dismissed (9).



Proceedings of the Supreme Court of Montenegro on Requests for the Protection of Legality 2015–2025

The highest number of granted requests occurred in 2016 and 2024, and by the end of October 2025. In 2016, out of 20 submitted requests, 17 were granted (85%), while in 2024, 17 out of 19 requests were granted (89.5%). Similarly, in the first ten months of 2025, 10 out of 12 submitted requests were granted (83.33%). The fewest requests were granted in 2021 (2 out of 4 submitted, or 50%), 2022 (3 out of 4 submitted, or 75%), and 2023 (4 out of 4 submitted, or 100%).



3.1.2. Decisions in 2024 and 2025

Compared to the period from 2021 to 2023, when the Supreme Court issued four decisions per year on requests for the protection of legality, there was a significant increase in the number of such requests submitted by the Supreme State Prosecutor's Office (VDT) during 2024 and 2025. In just a shorter period of one and a half years, from the beginning of 2024 to the end of October 2025, the Supreme Court issued 31 decisions. These decisions also increased the number of granted requests, in which the Supreme Court found violations of the law by lower courts. 27 of these decisions were issued in just one year and ten months, compared to 9 in the previous three years.

Among the granted requests for the protection of legality, there is a notable number of cases where the law was found to have been violated in favor of the accused.¹³ 17 such decisions were issued in 2024 and in the first ten months of 2025.

Due to the impossibility of modifying decisions where the law was violated in favor of the accused, this analysis focuses specifically on these cases, in order to assess the consequences of such decisions and to indicate whether there is reason to suspect that any of them may be the result of illegal influence, or simply due to negligence, lack of expertise, or legitimate differences in legal interpretations between the Supreme Court and lower courts.

It is concerning that out of 17 decisions in which the Supreme Court found a violation of the law in favor of the accused, **11 involved cases of organized crime, corruption and drug trafficking**. The majority were cases of organized crime – six in total.

¹³ "Trend of Increasing Requests for the Protection of Legality Due to Violations of the Law in Favor of the Accused", Supreme State Prosecutor's Office, 25.02.2025:
<https://tuzilastvo.me/tuzilastva/trend-rasta-zajtjeva-za-zastitu-zakonitosti-zbog-povrede-zakona-u-korist-okrivljenih/>

One case concerns a charge of money laundering, two are drug trafficking cases in which the accused were forgiven a total of nearly five years in prison (one received two years and five months, the other two and a half years). In three cases, the issue involved a misassessment of evidence as legally invalid, one case involved the mayor of a municipality, one case involved a former mayor of the Capital City, one case concerned legal costs that should have been borne by the accused, one case involved the illegal dismissal of the prosecutor's appeal regarding the trafficking of six grams of marijuana, and one case involved the Appellate Court of Montenegro arbitrarily and without explanation halving the prison sentence of someone convicted of multiple rapes.

The focus of this analysis is on 11 cases in which violations of the law in favor of the accused were identified, which had serious consequences, including the avoidance or reduction of criminal liability, significant mitigation of sentences, and the avoidance of temporary confiscation of property obtained through criminal activity.

3.2. Organized crime cases

3.2.1. Six Defendants Avoid Criminal Prosecution for Attempted Murder

According to the indictment of the Special State Prosecutor's Office (SDT) in December 2022, three defendants were charged with, as co-perpetrators, attempting to take the life of a member of a rival criminal organization on October 20, 2020, in front of the Police Administration building, Kotor Security Department.¹⁴

From the factual description of the indictment, it follows that a fourth defendant arrived at the police building parking lot and, with a prepared pistol loaded and ready to fire, waited for a suitable moment to kill the victim during his escort into the building. However, the completion of the crime was prevented by the police, who apprehended him. The fourth defendant was charged only with the criminal offense of unlawful possession of weapons and explosives, while the other three were charged with attempted murder as co-perpetrators. The differing treatment of the co-perpetrators regarding the charges brought against them was not explained and remains unclear.

The accused who was waiting with a "loaded and ready-to-fire" pistol is Petar Mujović, a member of the criminal organization formed by the co-defendant Radoje Zvicer, whose members also included the other two co-defendants, Slobodan Kaščelan and Milan Vujotić.

The procedure to review the indictment in this part lasted an entire year.

The High Court in Podgorica issued three rulings stating that the indictment against the three co-perpetrators charged with attempted murder was unfounded.¹⁵ The Appellate Court annulled¹⁶ two of these rulings and returned the case for retrial. When the High Court issued the same ruling for

¹⁴ Kts. no. 172/22 of 30.12.2023.

¹⁵ See the rulings Kvso. no. 3/23 of 10.3.2023, Kvso. no. 18/23 of 12.7.2023, and Kvso. no. 32/23 of 9.10.2023.

¹⁶ Kvsž. no. 143/23 of 12.6.2023 and Kvsž. no. 232/23 of 3.10.2023.

the third time,¹⁷ the SSP indictment against the fourth defendant (who waited with a loaded pistol for the victim) was confirmed, charging him only with the criminal offense of unlawful possession of weapons and explosives.¹⁸

Then the Appellate Court of Montenegro also confirmed the decision of the High Court, which had discontinued proceedings against the three co-perpetrators for attempted murder.¹⁹

The State Prosecutor's Office subsequently, in December 2023, filed a request for protection of legality against the court decisions that had not accepted the indictment against the three co-perpetrators for the criminal offense of attempted murder.

The Supreme Court of Montenegro granted the request for protection of legality after six and a half months, in July 2024, and determined that the decisions of the High Court in Podgorica and the Appellate Court of Montenegro had violated the law in favor of the defendants, and that the indictment for attempted murder should, in fact, have been confirmed against them.²⁰

Contrary to the position of the lower courts, which concluded that the actions constituted only preparatory acts, the Supreme Court concluded that it was indeed an attempted murder, stating that the indictment contained all three constructive elements of a criminal attempt: a) the initiation of the act of execution, b) absence of the consequence and c) the perpetrator's intent to complete the initiated criminal act.

In this case, the dispute centered on **whether the act of execution had been initiated or not**, as this determines whether the court should classify it as mere preparatory acts or as an actual attempt at the crime of murder. The distinction is also made by establishing whether, **in the specific case, the undertaken act immediately endangered the object of criminal-law protection**.

The Appellate Court of Montenegro²¹ pointed out that, according to legal theory, there are four possible stages in the development of a criminal act: the thought of a criminal act, representing a concrete person's idea or intention to commit a criminal act, preparation of the criminal act, attempt, and the actual execution of the criminal act, i.e., a completed criminal act. The question of when the execution of a criminal act begins is extremely important, as it sets the boundary between preparatory acts, which are generally non-punishable, and the attempt, which is generally punishable. This distinction is also important from the standpoint of legality, as it determines the moment one enters the zone of criminal liability. According to legal theory, this question is complex and must be resolved in each specific case.²² The Appellate Court assessed that there was sufficient evidence to conclude that the defendant had made a decision to commit murder and had carried out preparatory actions. However, it concluded that arriving at the parking lot with a pistol loaded and ready to fire did not constitute an act of attempted murder, but a preparatory act interrupted by the police before the victim was brought to the scene, so no attempt at murder actually occurred. The qualitative difference between an attempt and preparation is that an attempt immediately begins the execution of the criminal act, while preparatory acts involve only steps that serve to enable the later execution

¹⁷ Kvs. no. 32/23 of 9.10.2023.

¹⁸ Article 403 of the Criminal Code.

¹⁹ Kvsž no. 329/23 of 22.11.2023.

²⁰ Judgment of the Supreme Court of Montenegro KZZ no. 1/24 of 16.7.2024.

²¹ Ruling Kvsž no. 329/23 of 22.11.2023.

²² Ibid.

of the criminal act. In this specific case, the Appellate Court, like the first-instance court, concluded that the defendant's preparatory acts were interrupted before the victim was noticed, and thus no attempt at the criminal offense of murder against the protected object occurred.²³

In contrast, the Supreme Court found that in the specific case the act of execution had begun, as the defendant had arrived at the parking lot of the police building and, with a pistol "ready to fire, waited for the right moment to take the life of the victim," and that the victim was directly endangered because "his arrival was not uncertain, but, on the contrary, had been verified".

The case concerned one of the more important issues in criminal law: the question of distinguishing an attempt to commit a criminal offense from preparatory acts, that is, determining the boundary between these two stages in the commission of a criminal offense. The criterion for distinguishing an attempt from preparatory acts generally seems simple, as it is determined based on the legal description of the act of committing the criminal offense.²⁴ However, the criminal offense of murder belongs to crimes whose description is abstract and general, and the act is not specified even at the level of *exempli causa* (example). In other words, the act of committing this criminal offense can be any act capable of causing the death of another person.

The Supreme Court concluded that if the perpetrator already holds a weapon ready for use and waits for the opportunity to shoot the victim, this should be considered an attempt to commit a criminal offense, rather than merely preparatory acts. The Court found that the key factor in this situation is how close the actions were to the act of murder itself. The Supreme Court determined that, in this case, it was clear that the crime would have been carried out if not for the police intervention, as the perpetrator did not voluntarily desist from committing the act but was prevented from doing so. Therefore, based on the specific actions, it can be considered that the threshold between preparatory acts and an attempt had been crossed. Thus, in the context of placing a bullet in the chamber and waiting to commit the murder, with the perpetrator already at the location where he expected the victim to arrive and ready to act immediately without further preparatory steps, the Supreme Court concluded that these actions were sufficiently close to the execution of the crime and constitute an attempted murder. Supporting this conclusion, the Supreme Court also referenced messages exchanged between the accused via the Sky application, which indicated that their intent was directed toward killing a member of the opposing criminal organization, in front of the Kotor Police Administration building.

However, the lower courts did not consider the actions to be sufficiently close to the act of murder, as the accused was detained before the victim was brought to the police building, in front of which the accused had been waiting.

In such cases, the basic question is where the threshold lies at which the perpetrator enters the "criminal zone," and this question is answered from the perspective of the fulfillment of the essential elements of the criminal offense. In the case of preparatory acts, the essential elements of a criminal offense—namely, the criminal act itself and its legal foreseeability—are absent (except when the

²³ Ibid.

²⁴ See: Commentary on the Criminal Code of Montenegro, Prof. Dr. Zoran Stojanović, Podgorica, 2010, p. 111.

eparatory acts themselves are prescribed as a separate criminal offense²⁵ and then, formally, they are not merely preparatory acts because the law defines them as an act of committing a criminal offense).

According to the mixed, objective-subjective theory regarding the legal nature of an attempt, an attempt to commit a criminal offense exists when the action taken expresses the perpetrator's will directed at endangering the protected object. The distinction between an attempt and certain types of preparatory acts—those that create the conditions for the immediate commission of a criminal offense and are closely linked to the legally protected act—is particularly complex,²⁶ as was the case here. The Criminal Code of Montenegro equally values the perpetrator's intent (*mens rea*) and the actions undertaken, and for that reason, it can be considered to adopt precisely this mixed theory. In practical terms, this means that the undertaken action must be assessed from the perspective of life experience to determine whether it forms a whole with the act of committing the criminal offense. Additionally, the action must be connected to the protected object, meaning it must be determined whether the action directly endangered the object.²⁷

The defendants' intent to take the life of the victim indisputably arises from the actions they undertook and the messages they exchanged, and this was established by all courts in this proceeding. The preparatory acts were clearly already completed, and they were waiting for the victim's arrival with a loaded pistol in hand. However, since the victim was not yet at the scene and the defendant was taken into custody beforehand, the question arises whether the act of execution had actually been undertaken and whether the defendant's actions were sufficiently close to the act of murder to constitute an attempt—that is, whether the victim was directly endangered, as concluded by the Supreme Court.

For example, the Supreme Court of the Republic of Serbia holds the opposite view from the Supreme Court of Montenegro. It considers that when the victim is not present at the scene, there is both a temporal and physical distance from the immediate commission of the criminal act. Waiting for or summoning the victim to a specific location where they would be killed creates the conditions for the immediate execution of the crime of murder, but this does not yet constitute the commencement of the act of taking the victim's life and therefore does not constitute an attempted murder.²⁸

Thus, even though the preparatory acts were clearly completed—since the arrival or delivery of the victim was being awaited and the defendant was taken into custody before the victim arrived—the interpretation that this constituted an attempt, i.e., that the act of murder had already commenced, can also be seen as an unjustified expansion of the “criminal zone” to actions that the Criminal Code does not define as a criminal offense. In this case, it represents a legitimate difference in views between the Supreme Court and the lower courts.

In addition to the violation of the law established by the Supreme Court of Montenegro, as indicated above (III.2.1), it turns out that the indictment in this case was also incomprehensible.

25 For example, criminal offenses under Article 262 of the Criminal Code, making, obtaining, and providing to another person means and materials for forgery, or Article 373 of the Criminal Code, preparation of acts against the constitutional order and security of Montenegro.

26 See Commentary on the Criminal Code of Montenegro, Prof. Dr. Zoran Stojanović, Podgorica, 2010, p. 111.

27 Ibid.

28 Judgment of the Supreme Court of the Republic of Serbia No. Kr. 425/62 of June 21, 1962.

Namely, from the judgment of the Supreme Court it follows that the lower courts concluded that it remained unclear why the defendant who, according to the allegations in the indictment, began the act of committing the criminal offense of attempted murder, was not himself charged with that offense, while three other defendants were charged as co-perpetrators who, according to the indictment, significantly contributed to the commission of the crime. Such an indictment is indeed incomprehensible because it implies that even if it had been confirmed, the direct perpetrator of the attempted murder could not have been convicted of that crime, since he was not charged with it in the first place. It is unclear how the prosecution charged three defendants with the offense of attempted murder as co-perpetrators, but not the direct perpetrator who was waiting with a pistol loaded and ready to fire.

3.2.2. No indictment for aiding and abetting attempted murder

In connection with the same incident, the Supreme Court of Montenegro upheld another request for the protection of legality²⁹ and by its judgment found that the decisions of the High Court in Podgorica³⁰ and the Court of Appeal of Montenegro³¹ violated the law in favor of two defendants who had been charged with the criminal offense of attempted murder through aiding and abetting.

The High Court in Podgorica and the Court of Appeal of Montenegro both held that the act described in the indictment did not constitute a criminal offense, and therefore the criminal proceedings against the defendants for that offense were terminated.

At the same time, the Special State Prosecutor's Office (SDT) indictment against the same two defendants was confirmed in the part charging one defendant with the offense of creating a criminal organization,³² and the other with the same offense plus two offenses of abuse of office.³³

By a ruling of the Court of Appeal of Montenegro, the SSP's appeal was dismissed, and thus the High Court's ruling became final.

In this case as well, the lower courts held the same view—that the defendant who was waiting for the victim with a pistol “loaded and ready to fire” had not undertaken the act of executing the crime, but only preparatory acts, and therefore there was no basis for indicting the two defendants charged with aiding and abetting the same crime, since complicity (in this case, aiding) requires that the principal perpetrator must have undertaken the act of execution.

Thus, regarding the same event, the Supreme Court twice found that the law had been violated in favor of the accused. First, three co-perpetrators avoided prosecution for attempted murder; the defendant who was the direct perpetrator of the attempted murder avoided prosecution because the prosecution failed to charge him with that offense in the indictment; and finally, the two defendants charged with aiding and abetting attempted murder also avoided prosecution because the courts violated the law in their favor. In total, six individuals avoided prosecution for attempted murder due

29 Judgment of the Supreme Court of Montenegro KZZ No. 13/24 of October 14, 2024.

30 Paragraph 2 of the ruling of the High Court in Podgorica KvsO No. 16/23 of September 12, 2023.

31 Ruling of the Court of Appeal of Montenegro KvsŽ No. 349/23 of February 20, 2024.

32 Article 401a, paragraph 2, in connection with paragraph 1 of the Criminal Code.

33 Article 416, paragraph 1 of the Criminal Code

to the omissions established by the Supreme Court in the actions of both the lower courts and the prosecution.

The accused who were identified as accomplices in this case are members of the same criminal organization formed by Radoje Zvicer: two police officers, namely the fugitive officer Ljubo Milović and his colleague from the service, Marko Novaković.

Furthermore, the delay in handling the first case led to another violation of the law in favor of the defendants in the second case. Had the indictment review in the first case not lasted an unreasonable nine months, or had the Supreme Court of Montenegro issued its judgment earlier—finding that the acts in that case did indeed constitute attempted murder—the Court of Appeal of Montenegro and the High Court in Podgorica would have been obliged to apply that position in the second case. The Court of Appeal of Montenegro decided the second case on February 20, 2024, while in the first case the Supreme Court rendered its decision in July 2024.

3.2.3. An investigative judge freezes assets, criminal panel unlawfully unfreezes them

The following two examples show how the criminal panel of the High Court in Podgorica, without valid justification, violated the law in favor of the defendants by overturning temporary measures imposed by the investigative judge, who had “frozen” real estate assets on reasonable suspicion that they had been acquired through the criminal activities of organized crime groups.

3.2.3.1. Lifting of property freeze on real estate owned by criminal clan leader Radoje Zvicer

In the case conducted against the accused for the creation of a criminal organization and several other criminal offenses, the investigative judge of the High Court in Podgorica, on September 7, 2023, issued a temporary measure prohibiting the use and disposal of real estate — with a corresponding note in the land registry — covering five properties totaling 363 m², due to suspicion that they had been acquired through criminal activity.³⁴

The listed properties were registered in the real estate cadastre as the ownership of a legal entity, but the investigative judge held that there were grounds to suspect that the assets had been obtained through criminal activity conducted by a criminal organization that operated during the second half of 2020 across Montenegro, South America, Africa, Europe, and Australia. This organization, among other activities, trafficked cocaine, hashish, and cigarettes, and its members allegedly included officers of the Police Directorate and the National Security Agency.³⁵

The legal representative of the company registered as the owner of the frozen properties filed an appeal against the investigative judge’s decision, and the criminal panel of the High Court in Podgorica revoked the temporary security measure, reasoning **that there was insufficient evidence of a reasonable suspicion that the property for which the temporary measure had been imposed**

³⁴ Decision of the Higher Court in Podgorica, Kris No. 86/22 of 07.09.2023.

³⁵ Ibid.

was acquired through criminal activity. The panel concluded that there was no proof that the legal entity — the registered owner — had obtained the properties through crime.³⁶

However, the Supreme Court of Montenegro upheld the request for protection of legality submitted by the Supreme State Prosecutor's Office (VDT) and found that the High Court panel had violated the law in favor of the accused, identified as the leader of a criminal group.³⁷

The Supreme Court determined that there were reasonable grounds to suspect that the **properties in question were in the de facto ownership of the accused clan leader**, rather than of the registered legal entity, which in turn indicated that the properties were criminally acquired. Supporting this conclusion was the content of telephone communications between the accused's wife and workers engaged in furnishing the apartments. According to the Court, the communications showed that the wife of the first defendant was actively involved in all details related to furnishing the apartments — giving instructions, suggestions, and orders concerning the purchase of missing equipment, inquiring about completion deadlines, the entry code for the building, and the keys to the apartments — behavior characteristic of actual owners of residential units.³⁸

The Supreme Court, among other things, pointed to a communication in which the wife of the first defendant, after learning that the relevant inspectors were visiting the apartments, warned a worker not to reveal who the apartments belonged to and expressed displeasure that the workers had shown the apartments to the inspectors. Because of this, the Supreme Court concluded that the reasoning of the High Court panel in Podgorica—that there was no reasonable suspicion that the property had been obtained through the criminal activities of the organization led by the accused—was unclear and illogical, especially since it was undisputed that his wife was responsible for furnishing the apartments and was interested in concealing the identity of their true buyer.

We consider it highly problematic that the High Court failed to assess the content of the communications between the accused's wife and the workers furnishing the apartments, as these conversations show that she behaved like the actual owner of those properties, even though a legal entity was listed as the owner in the land registry. The Supreme Court emphasized that the fact that the listed legal entity was formally registered as the owner of the properties in question, by itself, is not sufficiently convincing and cannot, as the High Court panel in Podgorica erroneously reasoned, serve as the sole basis for concluding that there was no reasonable suspicion that the assets were acquired through the criminal activities of a criminal organization.

The Law on Seizure of Property Derived from Criminal Activity clearly provides that “property for which there is a reasonable suspicion that it was acquired through criminal activity shall be confiscated from the perpetrator, as well as from their legal predecessors, legal successors, family members, and third parties, and shall also **be confiscated if it was acquired for another person**”.³⁹

Thus, through the unjustified decision of the High Court in Podgorica, the freezing of real estate totaling 363 m²—for which there existed reasonable suspicion that it had been acquired through the criminal activities of a criminal organization—was prevented. According to the indictment, that

³⁶ Decision of the Higher Court in Podgorica, Kvs No. 503/23 of 10.10.2023.

³⁷ Judgment of the Supreme Court of Montenegro, Kzz No. 6/24 of 02.07.2024.

³⁸ Ibid.

³⁹ Article 2, paragraphs 2 and 3 of the Law on the Confiscation of Property Acquired Through Criminal Activity.

organization engaged in international drug trafficking, arms procurement, murders and aggravated murders, and money laundering, and included members of the security services who abused their official positions to pass confidential information and data about planned operations of the Police Directorate of Montenegro and the Special State Prosecutor's Office (SDT) to the leader of the criminal organization—both regarding his own associates and members of rival criminal groups.

3.2.3.1. Lifting of the property freeze of the criminal clan leader Milan Janković

In another case conducted against the accused for creating a criminal organization and for unauthorized production, possession, and distribution of narcotic drugs, the investigating judge of the High Court in Podgorica issued, on December 8, 2023, a temporary measure prohibiting the use and disposal of several real properties — specifically, three residential units totaling 219 m² and 24,563 m² of land, with a record of restriction entered in the land registry. Additionally, two passenger vehicles and one cargo vehicle were temporarily seized, due to suspicion that all of this property had been acquired through criminal activity.⁴⁰

As in the previous case, the criminal panel of the High Court upheld the appeal against the investigating judge's decision and revoked the temporary security measure.⁴¹ The panel again reasoned that there was insufficient evidence to establish a reasonable suspicion that the property had been obtained through criminal activity, once more disregarding evidence of de facto ownership.

The Supreme Court again found a violation of the law in favor of the accused, identified as the leader of a criminal group.⁴² It established that there was reasonable suspicion that the disputed properties were in the factual ownership of the accused — the leader of the criminal clan — as indicated by telephone communications obtained through covert surveillance measures. These communications revealed that the first defendant, as the organizer of the criminal group, had repeatedly communicated with various persons regarding the purchase of the movable and immovable property in question, as well as the intended use of the purchased land. The Supreme Court particularly emphasized that the first defendant had stated in one message, "Everything is under S," referring to the name of the formal owner of the properties. Therefore, it was unclear why the High Court in Podgorica had concluded that there was no reasonable suspicion that the assets were obtained through the criminal activities of the organization.

The Supreme Court further noted that the criminal panel of the High Court had not even attempted to obtain the case files or verify the content of the communications mentioned in the investigating judge's decision, even though the law explicitly provides that the reporting judge may, if necessary, obtain a report from the first-instance court regarding procedural violations, and may verify the allegations of the appeal concerning new evidence or facts, or obtain necessary reports or documents from other authorities or organizations.⁴³

Such conduct, according to the Supreme Court, indicates a severe form of negligence — or possibly corruption.

40 Decision of the Higher Court in Podgorica Kri-S No. 141/23 of 8.12.2023.

41 Decision of the Higher Court in Podgorica Kvs No. 745/23 of 2.2.2024.

42 Judgment of the Supreme Court of Montenegro Kzz No. 15/24 of 8.11.2024.

43 Article 392, paragraph 3 of the Criminal Procedure Code (CPC).

3.2.3.2. Unlawful Termination of Proceedings Against Members of the Svetozar Marović Criminal Organization

The Supreme Court of Montenegro upheld another request for the protection of legality submitted by the Supreme State Prosecutor's Office (VDT) in a case against several natural persons and one legal entity charged with the criminal offense of fraud committed in an organized manner, the extended criminal offense of aiding and abetting fraud, and abuse of official position.

The case concerned members of a criminal organization organized and led by convicted Svetozar Marović, a former high-ranking official of Montenegro and the former state union of Serbia and Montenegro, who fled to Serbia after his conviction. Serbia has since refused to extradite him to Montenegro to serve his prison sentence. In this case as well, the violation of the law by lower courts was only acknowledged by the Supreme Court, without altering the final decision — meaning that the accused avoided criminal prosecution due to unlawful decisions of the High Court in Podgorica and the Appellate Court of Montenegro.

During the indictment control and confirmation procedur,⁴⁴ the High Court in Podgorica issued a decision terminating the criminal proceedings against seven individuals and one legal entity, finding that there was insufficient evidence to establish a reasonable suspicion that the defendants had committed the offenses alleged in the indictment.⁴⁵ Upon the appeal filed by the Special State Prosecutor's Office (SDT), the Appellate Court of Montenegro confirmed the decision of the High Court, thus rendering the termination of proceedings final.⁴⁶

However, acting upon the request for the protection of legality submitted by the VDT, the Supreme Court determined that both courts violated the law in favor of the defendants.⁴⁷

The Court found that the operative part (dispositive) and the reasoning of the lower courts' decisions were contradictory regarding the grounds for terminating the proceedings — the operative part stated that there was insufficient evidence to establish reasonable suspicion, while the reasoning implied that the act described in the indictment did not constitute a criminal offense. Since these are two distinct legal grounds for terminating proceedings, it was unclear on what legal basis the termination was made.⁴⁸

The Supreme Court further concluded that the lower courts' finding of insufficient evidence for reasonable suspicion was unfounded, as the courts failed to assess all the evidence presented in the indictment. The Court held that the first-instance court selectively evaluated evidence, and that the proposed evidence in fact supported the factual allegations in the indictment, which established a reasonable suspicion against the accused.

44 Pursuant to Article 293, paragraph 1 of the CPC, it is prescribed that the indictment is submitted to the court for review and confirmation.

45 Decision of the Higher Court in Podgorica KvsO No. 11/23 of 10.4.2023.

46 Decision of the Court of Appeal of Montenegro Kvsž No. 134/23 of 4.7.2023.

47 Judgment of the Supreme Court of Montenegro Kzz No. 7/23 of 25.3.2024.

48 Pursuant to Article 294 of the CPC, it is prescribed that, acting under Article 293, paragraph 1 of the CPC, the court shall decide that the indictment is unfounded and the criminal proceedings shall be terminated if it establishes that:

- 1) the act which is the subject of the indictment is not a criminal offense;
- 2) criminal prosecution is time-barred, or the act is covered by amnesty or pardon, or there are other circumstances that permanently exclude criminal prosecution;
- 3) there is insufficient evidence to reasonably suspect that the accused committed the act which is the subject of the indictment.

Namely, the lower courts concluded that the allegation in the indictment—that the accused acted according to the instructions of the organizer of the criminal organization and then conveyed those instructions to other persons—was not supported by any evidence showing that she did so for the purpose of executing the criminal plan of a previously organized criminal group. However, the Supreme Court rightly pointed out that the lower courts failed to evaluate all the evidence presented in the indictment, noting that the first-instance court selectively assessed the evidence. The Court emphasized that the fact that the documents in question were copies of contract annexes—which the lower courts dismissed as inadmissible because they were copies—could not be decisive in concluding that there was no evidence of reasonable suspicion that the alleged criminal offense had been committed. Contrary to the position of the lower courts, the financial documentation, as well as the expert report and its supplement by a court expert in financial and economic matters, showed that those contract annexes produced legal effects—specifically, they enabled the transfer of funds, which resulted in multi-million-euro damage to the injured individuals and unlawful financial gain for the legal entity established precisely under the instructions of the accused to carry out the criminal plan.

The Supreme Court also noted that the proposed evidence established a reasonable suspicion that one of the accused had engaged in incriminating acts, namely delivering forged contract annexes (a fact not disputed by the lower courts), that these annexes led to illegal money transfers, that the owners of the funds—the victims—were unaware of this, and that who drafted, obtained, or delivered them was not specified in the indictment’s dispositive, as it could not be established. However, this was not a decisive fact that could exonerate the accused, given that the forged annexes were handed over to a bank official by the accused precisely to facilitate the unlawful transfer of funds.

Contrary to the lower courts’ view, the Supreme Court held that the indictment clearly listed all the legal elements of the criminal offense charged to the accused: the time and place of the offense, a factual description of the actions taken by the defendants, the consequences that ensued, and finally the legal classification of the offense—all in accordance with Article 292 of the Criminal Procedure Code (CPC).

It was concluded that the evidence proposed in the indictment established that each member of the organization had a predetermined role and task, as described in the introductory section of the indictment.

3.2.4. Minutes of the lawful search of the ship “Jadran” deemed invalid as evidence

In the case against five defendants charged with the criminal offenses of forming a criminal organization and trafficking 56 kg of cocaine, a search was conducted on the ship “Jadran”, where the narcotics were found. However, the Higher Court in Podgorica excluded from the case file the minutes of the search of the transport vehicle, passengers, luggage, and other movable property by the Police Directorate, as well as the photographic documentation from the Tivat Security Department, considering them legally invalid evidence.⁴⁹

49 Ks No. 38/19 of 21.03.2023.

The decision of the Higher Court in Podgorica was confirmed by the Appellate Court of Montenegro, which rejected the SDT's appeal.⁵⁰

Both the Higher Court and the Appellate Court concluded that the evidence was legally invalid because the search of the training ship "Jadran" was conducted without the presence of two witnesses, even though it was possible to secure their attendance.

On the other hand, the Supreme Court of Montenegro accepted the request for protection of legality, determining that both lower courts violated the law in favor of the defendants, because they disregarded the fact that the presence of two witnesses is not required for the search of a ship, unlike in the case of searching an apartment or a person.⁵¹

The Supreme Court pointed out the special rules for searching a ship as prescribed in paragraph 6 of Article 81 of the Criminal Procedure Code, where the presence of witnesses is not mandatory.⁵² In this particular case, the search order had to be delivered to the ship's captain, and based on paragraph 6, "he or the person he appoints attends the search." The Supreme Court concluded that the captain was delivered the search order and was present during the search. When examined as a witness, the ship's captain confirmed before the court that at the time of the search on the training ship "Jadran", he was performing his duties as captain, and that the search was conducted according to the order, which he allowed.

The Supreme Court of Montenegro therefore concluded that the lower courts' finding that the search was illegal and the evidence legally invalid was unclear.

This criminal procedure is still ongoing before the first-instance Higher Court in Podgorica, so it remains to be seen what consequences the unlawful exclusion from the case file of evidence—deemed lawful by the Supreme Court—will have. Since the Supreme Court only established a violation of the law without overturning the final decision made in favor of the defendants, the question arises whether there will be sufficient evidence for a conviction, as all evidence obtained during that search, wrongly labeled as illegal, can no longer be used in the court proceedings.

It is concerning that both the Higher Court in Podgorica and the Appellate Court of Montenegro ignored the provision defining the rules for searching a ship, instead applying the provision related to searching an apartment or a person, thereby removing from the case file a series of material evidences that corroborated the allegations in the indictment.

50 Decision of the Court of Appeal of Montenegro Kvsž No. 230/23 of 31.08.2023.

51 Judgment of the Supreme Court of Montenegro Kzz No. 16/24 of 7.10.2024.

52 "If a search must be carried out on a ship or aircraft, the search warrant shall be delivered to the commander of the ship or aircraft. The commander of the ship or aircraft, or a person designated by them, shall be present during the search." Article 81, paragraph 6, Criminal Procedure Law, op. cit.

3.3. Drug trafficking

3.3.1. Defendants “pardoned” from over two years of imprisonment

In two cases, the Appellate Court of Montenegro violated the law and acquitted the defendants, who had been sentenced to prison terms in first-instance judgments for drug trafficking.

The Higher Court in Bijelo Polje issued a judgment⁵³ sentencing a defendant to two years and five months of imprisonment for unauthorized production, possession, and trafficking of narcotic drugs.⁵⁴ As an aggravating circumstance in determining the type and length of the sentence, the court considered the defendant’s previous conviction for the same criminal offense.⁵⁵

The Appellate Court of Montenegro overturned this verdict and acquitted the defendant, finding that the act for which he was accused was not a criminal offense.⁵⁶ The three-judge panel of the Appellate Court stated that the indictment and the operative part of the first-instance judgment described **the acts of committing the crime as gifting hashish and selling cannabis**, but it should have specified that these acts were carried out **without authorization**, which was not the case. Due to the absence of the word “unauthorized” in the operative part of the first-instance judgment, the Appellate Court concluded that a key element of the offense was missing, and therefore the act for which the defendant was convicted was not a criminal offense, and acquitted him.

However, the Supreme Court disagreed and, acting on a request for protection of legality, determined that the final judgment of the Appellate Court violated the Criminal Code in favor of the defendant.⁵⁷

The Supreme Court noted that production, distribution, or enabling the distribution of narcotic drugs constitutes an offense only when carried out without authorization. The Law on the Prevention of Drug Abuse regulates when the production, processing, and trafficking of these substances are allowed and by whom, and in all other cases, these activities are considered unauthorized. The Law on the Prevention of Drug Abuse and the Rulebook establishing the list of drugs, psychotropic substances and plants that can be used for drug production explicitly prohibit **physical persons from using, producing, or distributing narcotic drugs listed as psychoactive substances, which includes hashish and cannabis (marijuana)**.

According to the Supreme Court, the absence of the word “unauthorized” does not mean the absence of unlawfulness, contrary to the erroneous conclusion of the Appellate Court.

The Criminal Code was violated in favor of the defendant in another case in the same manner. The Higher Court in Podgorica sentenced the defendant to two years and six months of imprisonment

⁵³ Judgment of the Higher Court in Bijelo Polje K No. 38/23 of 29.3.2024.

⁵⁴ Article 300, paragraph 1 of the Criminal Code of Montenegro.

⁵⁵ This concerned a defendant who had been convicted twice for the same criminal offense: the first time to a prison sentence of three years, and the second time to a prison sentence of two years. Prior to that, this defendant had been convicted three times for theft, three times for aggravated theft, and once for vehicle appropriation.

⁵⁶ Judgment of the Appellate Court of Montenegro Kž No. 80/24 of 10.9.2024.

⁵⁷ Judgment of the Supreme Court of Montenegro Kzz No. 21/24 of 3.2.2025.

for selling a small plastic bag of cocaine to another person.⁵⁸ The three-judge panel of the Appellate Court of Montenegro also overturned this verdict, acquitting the defendant on the same basis—that the act for which he was convicted was not a criminal offense due to the absence of the word “unauthorized” in the description of the act.⁵⁹

In this case, the Supreme Court ruled with the same reasoning as in the previous case.⁶⁰

Thus, by violating the Criminal Code, the Appellate Court of Montenegro in these two cases freed the defendants from a total of four years and eleven months of imprisonment.

3.4. Corruption cases

3.4.1. Violation of the Law in Favor of the Former Mayor of Žabljak, Veselin Vukićević

Doubts regarding the reasons for the violation of the law in favor of the defendant are evident in the criminal proceedings conducted against the Mayor of Žabljak Municipality.

The Special State Prosecutor (SSP) charged the defendant with committing a severe form of the criminal offense of abuse of official position.⁶¹ He was accused of, as a public official and Mayor of Žabljak, using his official position and authority to secure financial gain for another person exceeding €3,000, by appointing someone to the position of acting Head of the Municipal Police without a public advertisement and contrary to regulations, even though the person did not meet the prescribed requirements for the position, specifically lacking the required exam to perform Municipal Police duties.

The Higher Court in Podgorica acquitted the defendant, stating that there was no evidence he committed the alleged offense.⁶² The court reasoned that in this specific case, no damage occurred to the Municipality of Žabljak, as the acting Head of the Municipal Police regularly attended work and conscientiously performed his duties. The court also noted that two public recruitment processes had no applicants, that there was an extraordinary situation due to the coronavirus pandemic, and that Žabljak is a tourist destination where maintaining municipal order is crucial for city functioning and tourism revenue. Under these circumstances, ahead of the winter tourist season, the defendant issued the decision in the interest of the service, and there was no evidence that his intent was to exploit his official position.

These reasons were also upheld by the Appellate Court of Montenegro.⁶³

However, the Supreme Court reached a different conclusion.⁶⁴ It found that the lower courts’ reasoning regarding the needs of the tourist season was unclear, given the well-known fact that

58 Judgment of the Higher Court in Podgorica K No. 112/20 of 24.5.2024.

59 Judgment of the Appellate Court of Montenegro Kž No. 108/24 of 1.10.2024.

60 Judgment of the Supreme Court of Montenegro Kzz No. 2/25 of 24.3.2025..

61 Article 416, paragraph 2 in connection with paragraph 1 of the Criminal Code.

62 Judgment of the Higher Court in Podgorica Ks No. 51/21 of 17.2.2023.

63 Judgment of the Appellate Court of Montenegro Kž-S No. 9/23 of 8.11.2023.

64 Judgment of the Supreme Court of Montenegro Kzz No. 6/23 of 4.3.2024.

in the summer of 2020, foreign entry to Montenegro was prohibited, and for a certain period, even Montenegrin citizens were prohibited from traveling to other municipalities without special permission. Therefore, it was unclear what “winter tourist season” the defendant could have reasonably expected that would justify unlawfully appointing the acting Head of the Municipal Police.

Furthermore, the Supreme Court emphasized that the lower courts failed to consider a crucial fact: the appointed acting Head of the Municipal Police was the Chief Administrator of Žabljak Municipality, who after this position retained the right to receive the Chief Administrator’s salary until 30 September 2020. As the witness himself stated, the defendant issued the contested decision immediately before this date, which clearly indicates that it was done to secure a benefit for the witness by allowing him to establish a temporary employment relationship.

In the end, the Supreme Court determined that the lower courts had applied a provision of the Criminal Code that could not be applied – specifically, a provision that prescribed “obtaining unlawful financial gain” as a consequence of the criminal offense. However, this provision ceased to be in force in 2010 (ten years before the commission of the offense for which the defendant was charged). For the criminal offense of abuse of official position, under the law applicable in this specific case, the prescribed consequence of the offense is “obtaining benefit for oneself or another”, not “unlawful financial gain.”

Thus, according to the Supreme Court’s findings, all essential elements of the offense of abuse of official position were proven in this case. However, due to the violation of the law by the lower courts, this public official was acquitted of the charges and avoided criminal conviction.

3.4.2. Violation of the law in favor of the former Mayor of the Capital City, Miomir Mugoša

At the beginning of October 2025, the Supreme Court of Montenegro upheld another request for protection of legality submitted by the Supreme State Prosecutor’s Office and determined that the Higher Court in Podgorica and the Appellate Court of Montenegro violated the law in favor of the accused, former Mayor of the Capital City, Miomir Mugoša, when they acquitted him of charges for a serious form of the criminal offense of abuse of official position, which had caused damage of €6.7 million to the Capital City.

The Supreme Court of Montenegro found that the Higher and Appellate Courts had misinterpreted the applicable regulations regarding the transfer of rights to municipal construction land. When the accused made decisions to transfer land to the company “Carine” DOO Podgorica, there was no legal possibility to transfer the land through a direct contract, as he did; the transfer could only legally be carried out through a public tender.⁶⁵ The land was paid for by the Capital City at a price of €165 per square meter, while the actual market value of the land ranged from €384.88 to €857.02 per square meter, depending on the plots.

The applicable Law on Construction Land and the 2003 Government Regulation at the time prescribed the obligation to conduct a public tender, with exceptions only for cases when land was

⁶⁵ Judgment of the Supreme Court of Montenegro Kzz No. 11/25 of 6.10.2025.

being transferred for the needs of state authorities or for expropriated land. The possibility of direct transfer by contract was introduced only by the Law on State Property in 2009, which was not in force at the time of the actions attributed to the accused.

Moreover, the accused did not have the legal authority to make decisions on the transfer of rights to the land parcels independently, as such authority exclusively belonged to the Assembly of the Capital City of Podgorica.

The above facts were undisputed by the lower courts. However, they concluded that there was no indisputable evidence that the accused, as an official and public functionary, used his official position, exceeded his official authority, and acted contrary to the official interests and the interests of the Capital City, all with the intention of obtaining benefit for another. Applying the principle of “in dubio pro reo” (when in doubt, decide in favor of the defendant), the lower courts acquitted him of the charge of committing the criminal offense of abuse of official position.

Lower courts believed that in the specific case, it concerned the completion of urban parcels and that the transfer of rights to municipal construction land in such cases could be carried out without a public tender, i.e., through a direct contract.⁶⁶ They concluded that there was no indisputable evidence that the accused intended to harm the Capital City or cause it damage, and that this also followed from his actions taken after the Supreme Court of Montenegro had determined that the 2007 Contracts were null and void, when he issued a decision to repeal all previously mentioned decisions on the transfer of ownership rights.⁶⁷

However, the Supreme Court found that the then-applicable regulations – the Law on Construction Land⁶⁸, the Government Regulation on the Method and Procedure for Conducting Public Tenders or Collecting Offers in the Process of Transferring Rights to Municipal Construction Land⁶⁹ and the Decision of the Assembly of the Municipality of Podgorica on Municipal Construction Land⁷⁰ – did not provide for the possibility of transferring rights to municipal construction land for the purpose of completing an urban parcel via a direct contract.

This possibility was prescribed two years after the actions attributed to the accused, i.e., only in 2009 by the Law on State Property,⁷¹ which stipulated that the sale or lease of items and property in state ownership is carried out through public tender or based on collected offers, and **exceptionally through direct contract**, including in cases where the cadastral parcel owner **is obliged to accept changes in urban parcel boundaries** according to the parcelation plan (completion of an urban parcel).⁷²

The Supreme Court also found that the accused persisted in violating the regulations—seeking modalities to essentially maintain the legal consequences achieved by the disputed decisions—even after the Supreme Court of Montenegro ruled in December 2010 that the contracts for the transfer of rights to municipal construction land were null and void because they were concluded via direct contract contrary to the legally prescribed public tender procedure, and that the contracting parties

66 Judgment of the Higher Court in Podgorica Ks No. 10/23 of 22.7.2024.

67 Ibid.

68 "Official Gazette of RCG", No. 55/2000.

69 "Official Gazette of RCG", No. 38/2003.

70 "Official Gazette of RCG", No. 30/2003.

71 "Official Gazette of RCG", No. 21/2009.

72 Article 40, paragraph 2, item 3.

were obliged to return the land and received benefits. For this reason, the Supreme Court noted that the reasons of the lower courts for not proving that the accused acted with intent to benefit another and cause damage to the Capital City are unclear. The Supreme Court emphasized that the accused insisted that the construction land be transferred by agreement to the company at a significantly lower price than would have been achieved through a public auction. Considering the chronological sequence of his actions in seeking ways to act contrary to the regulations at the time (justifying it as being in line with prevailing practice), the reasons given by the lower courts that his intent was not proven are not clear.

It is particularly concerning that the Supreme Court found the lower courts assessed the existence of intent based on the view that transfer of rights to municipal construction land via direct contract was allowed by customary practice, i.e., by relying on regulations that were not in force at the time of the relevant actions, and ignored the authorities prescribed by the regulations in effect at that time.

It follows that the accused, who had been a high-ranking government official for years, avoided conviction for a corrupt criminal offense because the courts, **instead of relying on the law, referred to “customary practice,” applied regulations that were not in force at the time of the actions taken by the accused, and disregarded the authorities prescribed by the applicable regulations.**

Such failings in favor of the accused are hardly attributable to negligence, misinterpretation of regulations, or lack of expertise, but rather may indicate suspicions that the law was deliberately violated in favor of the accused, and that the lower court judgments were the result of unlawful influence.

3.5. Aggravated rape

3.5.1. The sentence for rape of a minor was nearly halved

The High Court in Podgorica sentenced the accused to the maximum prescribed prison term of 15 years for the prolonged criminal offense of rape.⁷³ In the verdict, it was stated that from early January to June 2020, the accused repeatedly forced a minor victim, fifteen years old, into sexual acts by using force and threats to immediately harm the life and body of her parents. He took advantage of neighborly relations and, knowing the victim was fifteen, invited her to his home, where, by using force and threatening to kill her father and leave her mother without a job, he brought her into the house against her will and raped her multiple times.

In the reasoning of the verdict regarding the type and severity of the criminal sanction, the High Court stated that it did not find any mitigating circumstances in favor of the accused, while among the aggravating circumstances it considered his prior convictions and the number of acts by which the accused committed the prolonged rape, and therefore sentenced him to the maximum prison term of 15 years.

Acting on the appeal of the accused’s defense attorney, the Court of Appeal amended the High Court’s verdict regarding the sentence, reducing the prison term from 15 to eight years.⁷⁴ The Court of Appeal stated that the 15-year sentence was strictly measured, taking into account the

⁷³ Judgment of the Higher Court in Podgorica K No. 206/22 of 3.11.2023.

⁷⁴ Judgment of the Appellate Court of Montenegro KŽ No. 34/24 of 18.4.2024.

legal limits prescribed for the offense (from five to fifteen years), and that the High Court had given “excessive weight” to the established aggravating circumstances, which were not of such a nature as to warrant the maximum sentence in this particular case, and found that the eight-year sentence was proportionate to the severity of the committed crime and the degree of the accused’s guilt.

The Supreme Court then, by upholding the request for protection of legality from the Prosecutor General’s Office, determined that the Court of Appeal violated the law in favor of the accused by reducing the prison sentence.⁷⁵

The Supreme Court found⁷⁶ “the Court of Appeal, in the reasoning of the cited judgment regarding the decision on the sentence, provided completely unclear reasons and did not state the grounds regarding the decisive facts that led it to amend the first-instance judgment concerning the sentence,” and that it violated the provisions of the Criminal Code that prescribe the purpose of punishment⁷⁷ and the general rules on sentencing,⁷⁸ especially “considering the fact that the first-instance court (Higher Court in Podgorica) correctly established the factual situation, which the second-instance court (Court of Appeal of Montenegro) itself confirms in the reasoning of its judgment”.

The Supreme Court noted that the Court of Appeal did not provide concrete reasons for assessing that the eight-year prison sentence was proportionate to the gravity of the committed crime and the degree of the accused’s guilt, even though it acknowledged that there were no mitigating circumstances on the part of the accused. Moreover, the Court of Appeal did not explain why it considered that imposing an eight-year sentence would achieve the purpose of punishment, i.e., influence the accused and others not to commit criminal offenses in the future.

In other words, it was established that the Court of Appeal, arbitrarily and without justification, almost halved the sentence of a convicted individual for the serious criminal offense of rape of a minor, committed over an extended period.

The Supreme Court also referred to the case law of the European Court of Human Rights, emphasizing that rape and severe sexual abuse constitute acts governed by Article 3 of the Convention – the prohibition of torture – and also involve fundamental values and essential aspects of “private life” under Article 8 of the Convention – the right to respect for private and family life. It highlighted that the European Court of Human Rights has also stressed that national courts must under no circumstances allow serious attacks on physical and psychological integrity to go unpunished or result in an obvious disproportion between the gravity of the crime and the severity of the sentence, as such conduct fosters a sense of impunity for violence rather than serving as a mechanism showing that such abuse will not be tolerated, and may in turn discourage victims from reporting such crimes.

The Supreme Court further noted that the European Court of Human Rights holds that a victim is additionally traumatized in cases where a second-instance court, even while acknowledging the aggravating circumstances identified by the first-instance court, reduces the sentence without providing a thorough and detailed explanation, since a reduction in sentence is not a matter of discretionary judgment but is subject to the principle of legality and governed by the Constitution and the Convention.

⁷⁵ Announcement of the Supreme Court of Montenegro available at: <https://sudovi.me/vrhs/sadrzaj/pnQG>

⁷⁶ Ibid. (The Supreme Court judgment was not published, only the announcement of the judgment.)

⁷⁷ Article 32 of the Criminal Code.

⁷⁸ Article 42 of the Criminal Code.

Thus, in this case, the Court of Appeal did not contribute to combating this type of violence, but through discretionary reduction of the sentence, created a sense of impunity for sexual violence and discouraged potential victims from reporting criminal acts.

However, as in other cases where a request for the protection of legality was filed to the detriment of the accused, only a violation of the law was established, while the final decision reducing the sentence remained in force.

4. CONCLUSIONS AND RECOMMENDATIONS

4.1. Conclusions

There has been a significant increase in cases in which the Supreme Court of Montenegro, during 2024 and 2025, upheld the requests of the State Prosecutor's Office for the protection of legality and found violations of the law by lower courts.

Particularly concerning is the fact that there has been a rise in the number of cases in which courts violated the law in favor of defendants charged with the most serious criminal offenses.

Violations of the law in favor of defendants in cases involving serious crimes such as organized crime, corruption, drug trafficking, and aggravated rape of a minor have had serious consequences that undermine public confidence in the judiciary, as they create an impression of impunity and do not contribute to crime prevention.

At the same time, questions arise regarding the professional capacities and potential unlawful influence on the judges who issued such rulings. Moreover, the nature and severity of the violations in cases involving organized crime, corruption, drug trafficking and aggravated rape indicate serious suspicions of criminal conduct in the exercise of judicial functions rather than mere incompetence.

However, it should be noted that the adoption of requests for the protection of legality can also result from legitimate differences in the interpretation of the law between the Supreme Court and lower courts, which are not caused by incompetence or corruption. We believe that such a situation occurred in one of the analyzed cases, in which the Supreme Court concluded that an attempted murder took place when the accused, with a pistol loaded with a bullet, expected the victim to be brought to the police station but was arrested before the victim was brought there. While the Supreme Court considered this an attempted murder, the lower courts had sufficiently valid reasons to believe that under such circumstances, the attempt had not been completed. In other words, it was not an obviously incorrect application of the law, and it is conceivable that a different panel of the Supreme Court might have decided otherwise in such a case.

The analyzed judgments of the Supreme Court of Montenegro indicate the following consequences of legal violations by lower courts:

- Six defendants avoided criminal prosecution for organized attempted murder (one direct perpetrator, three co-perpetrators, and two accomplices);
- Seven natural persons and one legal entity avoided criminal prosecution for organized fraud, extended fraud through aiding, and abuse of official position;
- A defendant involved in organized crime avoided the seizure of five properties totaling 363 m² despite reasonable suspicion that they were acquired through criminal activity;
- A defendant involved in organized crime avoided the seizure of three residential units totaling 219 m² and a total of 24,563 m² of land despite reasonable suspicion that they were acquired through criminal activity;

Do violations of the law by courts in favor of the accused raise alarm?

- The ship search report, in which 60 kg of cocaine was found, was unlawfully deemed legally invalid as evidence, thereby jeopardizing the establishment of criminal liability for drug trafficking;
- Two defendants charged with drug trafficking avoided prison sentences—one for two years and five months, and the other for two and a half years;
- The municipal president avoided conviction for the criminal offense of abuse of official position through illegal employment of officials;
- The former mayor of Podgorica avoided conviction for abuse of official position, which caused damage to the Capital City in the amount of €6.7 million, and
- The sentence of a defendant convicted of prolonged rape of a minor was nearly halved, from 15 to 8 years in prison.

The phenomenon of the panel of the Higher Court in Podgorica deciding in favor of defendants in organized crime cases is particularly worrying, as it refrains from temporarily seizing their assets, claiming there is insufficient evidence that they were acquired through criminal activity, yet does so **without obtaining the case files or the content of communications from which such evidence could actually be derived**.

In the case against the former mayor of the Capital City, the violation of the law in his favor was the result of judges relying on **“customary practice”** instead of applicable regulations. Provisions that were not in force at the time of the actions taken by the defendant were applied, and the authorities’ competencies prescribed by the applicable regulations were ignored.

Violations of the law in favor of defendants, as determined by the Supreme Court of Montenegro in practice, have no consequences, except that they are intended to serve as guidance for courts in the future. These violations of the law **have no impact on the assessment of judges’ work quality or their career advancement**. Article 90 of the Law on the Judicial Council and Judges stipulates that the quality of work is assessed based on the ratio of overturned decisions by a judge—which is evaluated—relative to the total number of decisions issued by the judge during the assessment period and the number of decisions examined by the immediately higher court. In these cases, the decision is not overturned but remains in force, while the violation of the law is only recorded.

4.2. Recommendations

The Supreme Court of Montenegro should analyze the causes of the increase in the number of granted requests for the protection of legality, and in particular the reasons for all cases in which a violation of the law in favor of defendants was established.

The Supreme Court's analysis should assess the real impact of "declaratory" decisions on requests for the protection of legality on judicial practice, in order to determine whether, apart from the practical shortcomings of this legislative solution, there are also positive effects and to what extent.

The legal framework should be amended, primarily the Law on the Judicial Council and Judges, in the part regulating the evaluation of judges, so that **the sub-criterion of work quality is also assessed based on decisions in which the Supreme Court of Montenegro has found a violation of the law by a judge**. This does not mean that judges should automatically bear consequences for such decisions, as this would not be appropriate in cases of possible different interpretations of legal norms, which judges are entitled to exercise under their independent judicial discretion. However, the work of judges whose decisions are found by the Supreme Court of Montenegro to contain violations of the law in favor of defendants should be subject to special attention. In cases of errors resulting from negligence, such as incorrect application of an unambiguous legal norm, application of a norm that is not in force, or similar, it should be ensured that the judge bears certain consequences for such conduct, and that the **state prosecution conducts an investigation if it concludes that the incorrect application of the law may have resulted from unlawful influence**. This is especially important in cases where a violation of the law causes serious consequences, such as the avoidance or reduction of criminal liability, the inability to seize property acquired through criminal activity, or significant mitigation of sentences for the most serious criminal offenses.

Decisions of the Supreme Court of Montenegro in which a violation of the law by a court is established should mandatorily be submitted to the Commission for the Evaluation of Judges' Work via the Judicial Council.

Cases of organized crime in which defendants avoided criminal prosecution due to violations of the law by the court—where, due to court errors, assets were not temporarily seized, where the court unlawfully ruled a ship search report during which 60 kg of cocaine was found as legally invalid evidence, where defendants were released from prison sentences of nearly two years and five months, and two and a half years, where a defendant's sentence for prolonged sexual assault against a minor was unlawfully reduced by almost half (seven years), and where a former mayor was unlawfully acquitted for abuse causing damage of 6.7 million euros to the Capital City by relying on "customary practice" and regulations not in force—should be submitted to the Supreme State Prosecutor's Office of Montenegro, which should then assign the competent prosecution to conduct investigative actions to determine whether any of these cases involve a criminal offense with elements of corruption.