

Strasbourg, 10 September 2006

CEPEJ (2006)
Version finale

**Answer to the
REVISED SCHEME
FOR
EVALUATING JUDICIAL SYSTEMS
2004 Data**

**Réponse à la
GRILLE REVISEE
POUR
L'ÉVALUATION DES SYSTÈMES JUDICIAIRES
Données 2004**

MONTENEGRO

Strasbourg, 15 September 2005

CEPEJ (2005) 2 REV 2

**EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE
(CEPEJ)**

REVISED SCHEME FOR EVALUATING JUDICIAL SYSTEMS

**adopted by the CEPEJ at its 5th Plenary Meeting (Strasbourg, 15 – 17 June 2005) and
approved by the Committee of Ministers on 7 September 2005
(936th meeting of the Ministers' Deputies)**

Contents

I. Demographic and economic data	p. 3
I. A. General information	p. 3
I. B. Budgetary data concerning judicial system	p. 3
II. Access to Justice and to all courts	p. 5
II. A. Legal aid	p. 5
II.B. Users of the courts and victims	p. 6
II.B.1. Rights of the users and victims	p. 6
II.B.2. Confidence of citizens in their justice system	p. 8
III. Organisation of the court system	p. 9
III.A. Functioning	p. 9
III.B. Monitoring and evaluation	p. 13
IV. Fair trial	p. 15
IV.A. Fundamental principles	p. 15
IV.B. Timeframes of proceedings	p. 16
IV.B.1. General	p. 16
IV.B.2. Civil and administrative cases	p. 17
IV.B.3. Criminal cases	p. 18
V. Career of judges and prosecutors	p. 20
V.A. Appointment and training	p. 20
V.B. Practice of the profession	p. 22
V.C. Disciplinary procedures	p. 23
VI. Lawyers	p. 24
VII. Alternative Dispute Resolution	p. 27
VIII. Enforcement of court decisions	p. 29
VIII.A. Execution of decisions in civil matters	p. 29
VIII.B. Enforcement of decisions in criminal matters	p. 31
IX. Notaries	p. 32

REVISED SCHEME FOR EVALUATING JUDICIAL SYSTEMS

COUNTRY: MONTENEGRO

National correspondent

First Name – Name MS. NEVENKA MUGOSA

Position SENIOR ADVISER

Organisation MINISTRY OF JUSTICE OF THE REPUBLIC OF MONTENEGRO

E-mail nevenkam@cq.yu

Telephone + 381 81 407 519

I. Demographic and economic data

I. A. General information

1.	Number of inhabitants	620.533
----	-----------------------	---------

Source Statistical Office of the Republic of Montenegro

2. Total of annual State public expenditure / where appropriate, public expenditure at regional or federal entity level

State level	450.738.778,56	€
-------------	----------------	---

State 1979:	Region 1979:
Regional / entity level	€

Source Law on Budget of the Republic of Montenegro for 2004, Official Gazette of the Republic of Montenegro No. 68/03.

3.	Per capita GDP	2.113	€ (from 2002, last data)
----	----------------	-------	--------------------------

Source Statistical Office of the Republic of Montenegro

4.	Average gross annual salary	302,81	€
----	-----------------------------	--------	---

Source Statistical Office of the Republic of Montenegro

I. B. Budgetary data concerning judicial system

5.	Total annual budget allocated to all courts	6.791.731,41	€
----	---	--------------	---

Source Law on Budget of the Republic of Montenegro for 2004, Official Gazette of the Republic of Montenegro No. 68/03.

Please specify:

6. Within this budget, can you isolate the following budgets and specify, if appropriate, their amount:

	Yes	Amount
▪ Salaries?	Yes. <input type="text"/>	5.000.000,01 €
▪ IT?	Yes. <input type="text"/>	30.000,00 €
▪ Justice expenses borne by the State?	Yes. <input type="text"/>	1.374.429,00 €

The rest of the budget (387.302,40€) concerns other additional payments related to food expenses and holidays expenses of the courts' employees.

Source Law on Budget of the Republic of Montenegro for 2004, Official Gazette of the Republic of Montenegro No. 68/03.

7. Annual public budget spent on legal aid €

Source

8. If possible, please specify:

- the annual public budget spent on legal aid in criminal cases €
- the annual public budget spent on legal aid in other court cases €

Source

9. Annual public budget spent on prosecution system 1.197.046,85 €

Source Law on Budget of the Republic of Montenegro for 2004, Official Gazette of the Republic of Montenegro No. 68/03.

10. Bodies formally responsible for budgets allocated to the courts:

	Preparation of the budget (Yes/No)	Adoption of the budget (Yes/No)	Management and allocation of the budget among courts (Yes/No)	Evaluation of the use of the budget (Yes/No)
Ministry of Justice				
Other ministry. Please specify				
Parliament		Yes		Yes-adoption of the Final Budgetary Report of the State
Supreme Court			Yes	
Judicial Council	Yes			
Courts				

Inspection body. Please specify.				Yes-Ministry of Finance
Other. Please specify				

You can indicate below:

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of your budgetary system**

Judicial Council drafts the courts' budget proposal and sends it to the Ministry of Finance. This proposal includes the courts' budget allocation among the courts themselves.
The Parliament adopts the Final State Budgetary Report. The Ministry of Finance-Department for Budgetary Affairs controls the budgetary expenditure. The president of the court approves the decisions related to the financial issues within his/her court.

II. Access to Justice and to all courts

II. A. Legal aid

11. Does legal aid concern:

	Criminal cases	Other than criminal cases
Representation in court (Yes/No)	Yes.	
Legal advice (Yes/No)	Yes.	
Other (Yes/No). Please specify		In case when person does not have enough funds to cover expenses of the court proceeding he/she can request the court to let him/her free of these expenses. The court will accept this request if it estimates that all the conditions in this context are fulfilled. In addition, general legal principle of the civil procedure is that the court is obliged to warn the party about all the procedural rights he/she has and about their concrete application.

12. Number of legal aid cases:

- total
- criminal cases
- other than criminal cases

Source

13. In a criminal case, can any individual who does not have sufficient financial means be assisted by a free of charge (or financed by public budget) lawyer?

Yes ☒

No ☐

14. Does your country have an income and asset test for granting legal aid:

- | | No | Yes/Amount |
|----------------------------------|--------------------------|-------------------------------------|
| ▪ for criminal cases? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ▪ for other than criminal cases? | <input type="checkbox"/> | <input type="checkbox"/> |

Source ☐

Please see question number 8 and 11.

15. In other than criminal cases, is it possible to refuse legal aid for lack of merit of the case (for example for frivolous action)?

Yes ☐

No ☐

16. If yes, is the decision taken by:

- | | Yes |
|--|--------------------------|
| ▪ the court? | <input type="checkbox"/> |
| ▪ a body external to the court? | <input type="checkbox"/> |
| ▪ a mixed decision-making body (court and external)? | <input type="checkbox"/> |

17. In general are litigants required to pay a court tax or fee to start a proceeding at a court of general jurisdiction:

- | | Yes | No |
|----------------------------------|-------------------------------------|--------------------------|
| ▪ for criminal cases? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ▪ for other than criminal cases? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

If yes, are there exceptions? Please specify:

Yes, there are exceptions – in the cases when litigants do not have the funds to pay a court tax. It is defined in the Civil Procedure Code, Criminal Procedure Code and Law on the Court Taxes.

18. Is there a private system of legal expense insurance for individuals in order to finance legal proceedings to court?

No ☐

No. ☐

Yes ☐

Please specify:

19. Do judicial decisions have an impact on who bears the legal costs which are paid by the parties during the procedure in:

- | | Yes | No |
|------------------------------|-------------------------------------|--------------------------|
| ▪ criminal cases? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ▪ other than criminal cases? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

You can indicate below:

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of your legal aid system**

Decisions concerning bearing of the procedure expenses are always included in the judgement/court decision.

II. B. Users of the courts and victims

II. B. 1. Rights of the users and victims

20. Are there official internet sites/portals (e.g. Ministry of Justice, etc.) for the following, which the general public may have free of charge access to:

Yes No
 ▪ **legal texts (e.g. codes, laws, regulations, etc.)?** Yes. ☐ No. ☐

Internet address(es): www.vlada.cg.yu, etc.; www.skupstina.cg.yu

▪ **case-law of the higher court/s?** ☐ No. ☐

Internet address(es): www.sudovi.cg.yu ☐

▪ **other documents (for examples legal forms)?** Yes. ☐ No. ☐

Internet address(es): www.sudovi.cg.yu; www.coscg.org; www.crps.cg.yu

21. Is there an obligation to provide information to the parties concerning the foreseeable timeframe of the proceeding?

Yes ☐ No ☐ No. ☐

If yes, please specify:

22. Is there a public and free-of-charge specific information system to inform and to help victims of crimes?

Yes ☐ No ☐ No. ☐

23. Are there special arrangements to be applied, during judicial proceedings, to the following categories of vulnerable persons:

	Information mechanism (Yes/No)	Hearing modalities (Yes/No)	Procedural rights (Yes/No)	Other (Yes/No). Please specify
Victims of rape	No.	Yes.	Yes.	

Victims of terrorism				
Child/Witness/Victim	Yes.	Yes.	Yes.	
Victims of domestic violence	Yes.	Yes.	Yes.	
Ethnic minorities	Yes.	Yes.	Yes.	Meaning: use of their own language-translation of the documents, interpreter, etc.
Disabled persons	Yes.	Yes.	Yes.	
Juvenile offenders	Yes.	Yes.	Yes.	
Other				

24. Does your country have compensation procedure for victims of crimes?

Yes ☒ Yes.

No ☐

25. If yes, does this compensation procedure consist in:

- a public fund?
- a court order?
- private fund?

Yes ☒

Compensation is to be determined by the court order. It is required from the sentenced person.

26. If yes, which kind of cases does this procedure concern?

Compensation is to be required from the sentenced person, both in the criminal (compensation request) and civil procedure (action for compensation).

27. For victims, are there studies to evaluate the recovery rate of the compensation awarded by courts?

No ☐

No. ☒

Yes ☒ Please specify:

The compensation is determined by the court depending on the circumstances of the case.

II. B.2. Confidence of citizens in their justice system

28. Is there a system for compensating users in the following circumstances:

	Yes	No
▪ excessive length of proceedings?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
▪ wrongful arrest?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
▪ wrongful condemnation?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

If yes, please specify (fund, daily tariff):

Daily tariff exists.

29. Does your country have surveys on users or legal professionals (judges, lawyers, officials, etc.) to measure public trust and satisfaction with the services delivered by the judiciary system?

Yes ☐ No ☐

If possible, please specify their titles, how to find these surveys, etc:

30. If yes, please specify:

	Trough systematic surveys (Yes/No)	Through ad hoc surveys (Yes/No)
Surveys at national level	<input type="checkbox"/>	<input type="checkbox"/>
Surveys at court level	<input type="checkbox"/>	<input type="checkbox"/>

31. Is there a national or local procedure for making complaints about the performance of the judicial system?

Yes ☒ No ☐

32. If yes, please specify:

	Time limit to respond (Yes/No)	Time limit for dealing with the complaint (Yes/No)
Court concerned	Yes-urgent response required (for example 3 days)	Yes- 15 days maximum
Higher court	Yes-urgent response required (for example 3 days)	Yes- 15 days maximum
Ministry of Justice	Yes-3-7 days	Yes- 15 days maximum
High Council of Justice	Yes	Yes

Other external organisations (e.g. Ombudsman)	Yes	Yes
---	-----	-----

Can you give information elements concerning the efficiency of this complaint procedure?

The parties address the president of the court. He/she checks the complaint. If it is justified he introduces the responsible person (usually judge) with the complaint, asks this person to express his/her position about the complaint, checks the case files and takes all the other steps needed in this situation.

III. Organisation of the court system

III. A. Functioning

33. Total number of courts (administrative structure):

- **first instance courts of general jurisdiction** 15 + 2

Source Law on Courts

- **specialised first instance courts** 3

Source Law on Courts

Please specify the different areas of specialisation (and, if possible, the number of courts concerned):

Commercial courts – two
Administrative Court

34. Total number of courts (geographic locations) 22–total number of courts

Source Law on Courts

For geographic locations please visit www.sudovi.cg.yu

35. Number of first instance courts competent for a case concerning:

- **a debt collection for small claims** 15 courts

Please specify what is meant by small claims in your country:

claim less than 500 Eur before the courts of general jurisdiction
claim less than 5000 Eur before the commercial courts

- **a dismissal** 15
- **a robbery** 15

36. Number of professional judges sitting in courts 242
(present the information in full time equivalent and for permanent posts)

Source Judicial Training Center of the Republic of Montenegro

37. Number of professional judges sitting in courts on an occasional basis and who are paid as such:

- *gross figure*
- *if possible, in full time equivalent*

Source

Please specify:

There are no such judges in Montenegro. All the judges are permanently appointed.

38. Number of non-professional judges (including lay judges) who are not remunerated but who can possibly receive a simple defrayal of costs

544

Source Courts.

Please specify:

This number concerns lay judges. The number of lay judges was reduced in 2005 due to the changes in the Civil Procedure Code (the participation of lay judges was completely cancelled in the civil procedure).

39. Does your judicial system include trial by jury with the participation of citizens?

No

Yes **Yes.** For which type of case(s)?

The participation of citizens is realized through the participation of lay judges in the trials. The participation of lay judges in civil procedure was cancelled in the middle of 2004. It was not the case with the criminal procedure.

If possible, number of citizens who were involved in such juries for the year 2004?

Please see question number 38.

40. Number of non-judge staff who are working in courts

830

(present the information in full time equivalent and for permanent posts)

Source Courts.

41. If possible, could you distribute this staff according to the 3 following categories:

- **non-judge staff whose task is to assist the judges (case file preparation, assistance during the hearing, keeping the minutes of the meetings, helping to prepare the decisions) such as registrars:**

77

In Montenegro there are so called expert assistants in the courts. They assist judges in their work as described under this first category.

- **staff in charge of different administrative tasks as well as of the management of the**

courts (human resources management, material and equipment management, including computer systems, financial and budgetary management, training management):

▪ **technical staff:**

There is no data on these two categories separately. Total number of staff under both of these categories is 753.

42. In courts, do you have non-judge staff entrusted with judicial or quasi-judicial tasks having autonomous competence and whose decisions could be subject to appeal (such as German and Austrian Rechtspfleger):

No

No.

Yes

Number of staff

43. Number of public prosecutors

83

(present the information in full time equivalent and for permanent posts)

Source Supreme State Prosecutor

44. Do you have persons who have similar duties as public prosecutors?

No

No.

Yes

Please specify:

45. Is the status of prosecutors:

- independent within the judiciary?
- independent from the judiciary ?
- under the authority of the Ministry of Justice?

Yes

Yes.

Prosecutors are independent from the judiciary (judiciary here meaning judges/courts).

46. Number of staff (non prosecutors) attached to the public prosecution service

116

(present the information in full time equivalent and for permanent posts)

Source Supreme State Prosecutor

47. Who is entrusted with the individual court budget?

	Preparation of the budget (Yes/No)	Arbitration and allocation (Yes/No)	Day to day management of the budget (Yes/No)	Evaluation and control of the use of the budget (Yes/No)
Management Board				

Court President	Yes.	Yes.		Yes.
Court administrative director				
Head of the court clerk office				
Other. Please specify			President of the court approves the financial decisions. The daily financial work is conducted by the Financial Department of the court.	

48. In general, do the courts in your country have computer facilities?

Yes **Yes.**

No

49. What are the computer facilities used within the courts?

Functions	Facilities	100% of courts	+50% of courts	-50% of courts	- 10 % of courts
Direct assistance to the judge/court clerk	Word processing		Yes.		
	Electronic data base of jurisprudence				
	Electronic files				
	E-mail				Yes.
	Internet connection				Yes.
Administration and management	Case registration system				
	Court management information system				
	Financial information system				
Communication between the court and the parties	Electronic forms				
	Special Website				Yes.
	Other electronic communication facilities				

Source **Ministry of Justice.**

50. Is there a centralised institution which is responsible for collecting statistical data regarding the functioning of the courts and judiciary?

No
Yes

No.

Please specify the name and the address of this institution:

You can indicate below:

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of your judicial system**

The Law on Court defines founding of the Administrative Office of the Supreme Court of Montenegro. This Office is responsible for the above mentioned activities. It has been founded in the meantime (in 2005).

III. B. Monitoring and evaluation

51. Are the courts required to prepare an annual activity report?

Yes **Yes.**

No

52. Do you have a regular monitoring system of court activities concerning the:

	Yes	No
▪ number of incoming cases?	Yes.	
▪ number of decisions?	Yes.	
▪ number of postponed cases?	Yes.	
▪ length of proceedings?	Yes.	
▪ other?	Yes.	

Please specify:

Number of appeals; when relation between the courts of lower and higher instance is concerned the evidence is taken on the following data: number of confirmed decisions of the lower courts by the higher courts, number of the changed decisions of the lower courts by the higher courts; number of the cancelled decisions of the lower courts by the higher courts...

53. Do you have a regular evaluation system of the performance of the court?

No

Yes

Yes.

Please specify:

All courts are obliged to send annual reports concerning their work to the Supreme Court of Montenegro, Judicial Council and Ministry of Justice. The courts of lower instance are also obliged to send annual reports to the directly responsible court of higher instance. In addition, the Supreme Court of Montenegro conducts annual general control of all courts' work (through visiting of the courts, controlling of their work at the spot, etc.).

The Ministry of Justice, i.e. the authorised officer of the Ministry of Justice oversees the administrative work of the courts.

54. Concerning court activities, have you defined:

- **performance indicators?** Yes ☒ Yes. No ☐

Please specify the 4 main indicators for a proper functioning of justice:

Please see questions number 52 and 53. The stress is on the length of proceedings, which is regularly yearly followed especially in the first instance courts, but also in others. This means length of first instance procedure, length of the appellate procedure, length of complete court procedure, etc.

- **targets?** Yes ☒ Yes. No ☐

Primarily, all courts.

Please specify who is responsible for setting the targets:

- executive power? Yes ☐
- legislative power? ☐
- judicial power? Yes. ☐
- other? ☐ **Please specify:**

Please specify the main objectives applied:

Source ☐

55. Which authority is responsible for the evaluation of the performances of the courts:

- **the High Council of judiciary?** Yes ☐
▪ **the Ministry of justice?** Yes. ☐
▪ **an Inspection body?** ☐
▪ **the Supreme Court?** Yes. ☐
▪ **an external audit body?** ☐
▪ **other?** ☐ **Please specify:**

56. Does the evaluation system include quality standards concerning judicial decisions?

No ☐

Yes ☒ **Yes. Please specify:**

Judicial decisions have to be written in a concrete form which is defined by the law. In addition, there are strict deadlines concerning writing of decisions and concerning number of procedural actions. It is for the purpose of more efficient procedure and decisions of a better quality.

Source **Procedural laws of Montenegro.**

57. Is there a system enabling to measure the backlogs and to detect the cases which are not processed within an acceptable timeframe for:

▪ **civil cases?**

Yes ☒ No ☐

▪ **criminal cases?**

Yes. ☒

▪ **administrative cases?**

Yes. ☒

Yes. ☒

If it is noted (by analyses of the annual reports of courts) that there is a significant backlog of cases (if number of pending cases is higher than 3-months income of cases), the president of the court drafts the program of solving of this case backlog. This program can include overtime work of judges, change of the internal organization of the court, temporary change of the working time, etc. The president oversees the monthly realization of this program. Please see also questions number 52, 53 and 54.

58. Do you have a way of analysing queuing time during court procedures?

No ☐

Yes ☒ **Please specify:**

59. Do you monitor and evaluate the performance of the prosecution services?

No ☐

Yes ☒ **Yes. Please specify:**

- through annual report of the Supreme State Prosecutor to the Parliament;
- through annual reports of the low instance prosecution office to the directly responsible higher instance prosecution office;
- The Ministry of Justice, i.e. the authorised officer of the Ministry of Justice oversees the administrative work of the prosecution offices;
- through special reports of the Supreme State Prosecutor on the situation concerning crime and other similar issues, upon the request of the Parliament and Government of Montenegro.

You can indicate below:

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of your court monitoring and evaluation system**

IV. Fair trial

IV. A. Fundamental principles

60. Is there in your judicial system:

- a right for an interpreter for all those within your jurisdiction who cannot understand or speak the language used in court?
Yes **Yes.** No
- the right to have reasons given for all prisons sentences?
Yes **Yes.** No
- for all cases, an effective remedy to a superior jurisdiction?
Yes **Yes.** No

61. Which is the percentage of judgements in first instance criminal cases in which the suspect is not actually present or represented?

Source

62. Is there a procedure to effectively challenge a judge if a party consider he/she is not impartial?

No

Yes **Yes.** If possible, number of successful challenges (in a year): there was 188 challenges in all the courts in Montenegro, but those are only requests, this data does not include information on successfulness of these request.

63. Please give the following data 2003 and 2004 concerning the number of cases regarding the violation of Article 6 of the European Convention of Human Rights:

		Cases communicated by the Court		Cases declared inadmissible by the Court		Friendly settlements		Judgements establishing a violation		Judgements establishing a non violation	
		2003	2004	2003	2004	2003	2004	2003	2004	2003	2004
Criminal proceedings	Article 6§1 (equity)										
	Article 6§1 (duration)										
	Article 6§2										
	Article 6§3a										
	Article 6§3b										
	Article 6§3c										

	Article 6§3d										
	Article 6§3e										
Civil proceedings	Article 6§1 (equity)										
	Article 6§1 (duration)										
	Article 6§1 (non execution only)										

Source

IV.B. Timeframes of proceedings
IV. B. 1. General

64. Are there specific procedures for urgent matters in:

- | | Yes | No |
|-------------------------|------|---|
| ▪ civil cases? | Yes. | |
| ▪ criminal cases? | Yes. | |
| ▪ administrative cases? | Yes. | |

65. Are there simplified procedures for:

- | | Yes | No |
|------------------------------------|------|---|
| ▪ civil cases (small claims)? | Yes. | |
| ▪ criminal cases (petty offences)? | Yes. | |
| ▪ administrative cases? | Yes. | |

66. Is it possible for a second instance court to send back a case to a first instance court for a new examination?

Yes No

67. Do courts and lawyers have the possibility to conclude agreements on modalities for processing cases (presentation of files, binding timeframes for lawyers to submit their conclusions and dates of hearings)?

No No. Please specify:

IV. B. 2. Civil and administrative cases

68. Total number of civil cases in courts (litigious and not litigious):

Please specify the main types of cases:

Source

69. Litigious administrative and civil cases in courts – please complete this table concerning the number of cases/length of proceedings/pending cases and specify definitions of incoming cases, starting and ending point of length and pending cases:

		Civil cases	Administrative cases	Divorce	Employment dismissal
Total number (1st instance)	Incoming cases	15.462		1536	7.532
	Decisions on the merits	11.996		1.090	4.771
	Percentage of decisions subject to appeal in a higher court	21,66%		4,03%	17,69%
	Pending cases by 1 January 2005	3.466	834	446	2.761
	Percentage of pending cases of more than 3 years	8,4%		11%	
Average length (from date of lodging of court proceedings*)	1st instance decisions	189 days		98 days	150 days
	2nd instance decisions	220 days		165 days	182 days
	Total procedure	441 days		300 days	386 days

* If you cannot calculate the average length from the date of lodging of court proceedings, how do you calculate length of proceedings?

Where appropriate, please specify the specific procedure as regards divorce:

The only specificity of the procedure concerning divorce is that there is a compulsory hearing at which the parties try to reconcile.

Source Annual reports of the Basic Courts.

IV. B. 3. Criminal cases

70. Please describe the role and powers of the prosecutor in the criminal procedure:

	Yes	No
▪ to conduct or supervise police investigation?	Yes.	
▪ to conduct investigation?		No.
▪ when necessary, to demand investigation measures from the judge?	Yes.	
▪ to charge?	Yes.	
▪ to present the case in the court?	Yes.	
▪ to propose a sentence to the judge?	Yes.	
▪ to appeal?	Yes.	
▪ to supervise enforcement procedure?	Yes (the prosecutor can ask for postponing of the execution of the sentence, if such a right is taken into account by this question)	

- to end the case by dropping it without the need for a judicial decision? Yes. ☐
- to end the case by imposing or negotiating a penalty without a judicial decision? ☐ No ☐
- other significant powers? Please specify:

71. Does the prosecutor also have a role in civil and/or administrative cases?

No ☐
 Yes ☒ **Yes. Please specify:**

Represents the State in property related cases.

72. Functions of the public prosecutor in relation to criminal cases– please complete this table:

		Total number of 1st instance criminal cases
Received by the public prosecutor		
Discontinued by the public prosecutor	In general	
	Because the offender could not be identified	
	Due to the lack of an established offence or a specific legal situation	
Concluded by a penalty, imposed or negotiated by the public prosecutor		
Charged by the public prosecutor before the courts		

Source Supreme State Prosecutor ☐

Due to possible misunderstandings we present the data received from the Supreme State Prosecutor outside of the given chart:

In general, the statistical data are evidenced by the prosecution office by person not by the cases as such. According to this:

- total number of criminal reports was against 10.535 persons;
- total number of rejected criminal reports by the prosecutors was against 1.815 persons;
- total number of criminal cases in which the prosecutors given up the criminal prosecution due to lack of evidence was against 554 persons;
- number of criminal reports which were rejected due to the fact that the persons who had committed a crime were not identified was against 6.458 persons;
- total number of proceedings conducted by the prosecutors in the sense of reaching necessary information and conducting certain investigation actions was against 4.197 persons;
- total number of pending cases in the prosecution office of Montenegro is 12.422;
- total number of criminal cases received by the courts from the state prosecutors is:

- requests for conducting the investigation - against 3.289 persons and
- charges against 5.214 persons.

73. Criminal cases in courts – please complete this table concerning the number of cases/length of proceedings/pending cases and specify definitions of incoming cases, starting and ending point of length and pending cases:

		Criminal cases	Robbery cases	Intentional homicides
Total number (1st instance)	Incoming cases	5.190 (Basic Courts)	662 (Basic Courts)	61-received cases (High Courts)
	Judicial decisions	3.459 (Basic Courts)	470 (Basic Courts)	64 (including cases from previous years-High Courts)
	Convicted persons	3.000 (Basic Courts)	315 (Basic Courts)	60
	Acquitted persons	585 (Basic Courts)	63 (Basic Courts)	71
	Percentage of decisions subject to appeal in a higher court	32,32% (Basic Courts)	27% (Basic Courts)	79,68% (52 appeal) - including cases from previous years-High Courts)
	Pending cases by 1 January 2005	1.731 (Basic Courts)	192 (Basic Courts)	156 (High Courts)
	Percentage of pending cases of more than 3 years	5,1% (Basic Courts)	9,7 % (Basic Courts)	22,72 % (High Courts)
Average length*(from the date of official charging)	1st instance decision	200 days (Basic Courts)	158 days (Basic Courts)	535,90 days
	2nd instance decision	198 days	163 days	205 days
	Total procedure	412 days	315 days	714,88 days

* If you cannot calculate the average length from the date of official charging, how do you calculate length of proceedings?

Source Annual reports of the Basic Courts and High Courts.

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your system concerning timeframes of proceedings

V. Career of judges and prosecutors

V. A. Appointment and training

74. Are judges initially/at the beginning of their carrier recruited and nominated by:

- a body composed of members of the judiciary?

Yes
- a body composed of members external to the judiciary?
- a body composed of members of the judiciary and external to the judiciary?

Yes.

75. Are prosecutors initially/at the beginning of their carrier recruited and nominated by:

- a body composed of members of the prosecution system?

Yes
- a body composed of members external to the prosecution system?
- a body composed of members of the prosecution system and external to the prosecution system?

Yes.

76. Is the mandate given for an undetermined period for:

- judges?

Yes

No
- prosecutors?

Yes.

No.

Are there exceptions ? Please specify:

If no, what is the length of the mandate:

Is it renewable?

- of judges?

Yes

No
- of prosecutors?

5 years

Yes.

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of the selection and nomination procedure of judges and prosecutors

77. Nature of the training of judges:

	Compulsion (Yes/No)		Frequency (Yes/No)	
Initial training	Compulsory			
	Highly recommended			
	Optional			
General in-service training	Compulsory		Annual	
	Highly recommended	Yes.	Regular	Yes.
	Optional		Occasional	
In-service training for specialised functions (e.g. judge for economic or administrative issues)	Compulsory		Annual	
	Highly recommended	Yes.	Regular	Yes.
	Optional		Occasional	
In-service training for specific functions (e.g. head of court)	Compulsory		Annual	
	Highly recommended	Yes.	Regular	Yes.
	Optional		Occasional	

78. Nature of the training of prosecutors:

	Compulsion (Yes/No)		Frequency (Yes/No)	
Initial training	Compulsory			
	Highly recommended			
	Optional			
General in-service training	Compulsory		Annual	
	Highly recommended	Yes.	Regular	
	Optional		Occasional	Yes.
Specialised in-service training	Compulsory		Annual	
	Highly recommended	Yes.	Regular	
	Optional		Occasional	Yes.

You can indicate below:

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of of your training system for judges and prosecutors**

The Law on Education of Members of the Judicial Authorities is being drafted in Montenegro, with the experts support of the Council of Europe. This Law will introduce important novelties when training of judges and prosecutors is concerned. The Judicial Training Center (JTC) will widen its target group to prosecutors too (up until now it has only been working with judges). In addition, initial training will be introduced by this Law for judges and prosecutors and it will be defined as their right and obligation. This training will include starting and final exam, and in the end forming a list of the candidates (according to the exam results). This list will be sent to the Judicial and Prosecutorial Council. The financing of the JTC by the State will be provided. For details contact JTC (coscg@cg.yu; www.coscg.org)

V. B. Practice of the profession

79. Gross annual salary of a first instance professional judge at the beginning of his/her career €

Source

80. Gross annual salary of a judge of the Supreme Court or of the highest appellate court €

Source

81. Gross annual salary of a public prosecutor at the beginning of his/her career 6.841,92 €

Source Supreme State Prosecutor

82. Gross annual salary of a public prosecutor of the Supreme Court or of the highest appellate court 64.288,86 €

Source Supreme State Prosecutor (this data is related to the Supreme State Prosecutor and his/her six deputies)

83. Do judges and public prosecutors have additional benefits?

	Judges (Yes/No)	Public prosecutors (Yes/No)
Reduced taxation	No.	No.
Special pension	No.	No.
Housing	Yes.	Yes.
Other financial benefit (If yes, please specify)	Mobile phones, using of official car, additional payments for food and holiday expenses, additional payments for eventual overtime work.	Mobile phones, using of official car, additional payments for food and holiday expenses, additional payments for eventual overtime work.

84. Can judges or prosecutors combine their work with any of the following other professions?

	Judges			Prosecutors		
	Yes with remuneration	Yes without remuneration	No	Yes with remuneration	Yes without remuneration	No
Teaching	Yes-not professionally but <i>ad hoc</i>					Yes-not profess

						ionally but <i>ad hoc</i>
Research and publication	Yes-not professionally but <i>ad hoc</i>					Yes-not professionally but <i>ad hoc</i>
Arbitrator			No.			No.
Consultant	Yes-not professionally but <i>ad hoc</i> (here meaning for example being a member of working group for drafting a law)					Yes-not professionally but <i>ad hoc</i> (here meaning for example being a member of working group for drafting a law)
Cultural function			No.			No.
Other function to specify						

85. Do judges receive bonus based on the fulfilment of quantitative objectives relating to the delivering of judgments?

No

No.

Yes

Please specify:

V. C. Disciplinary procedures

86. Types of disciplinary proceedings and sanctions against judges and prosecutors:

		Judges	Prosecutors
	Total number		

Reasons for disciplinary procedures	Breach of professional ethics (Yes/No) If yes, please specify the number		
	Professional inadequacy (Yes/No) If yes, please specify the number		
	Criminal offence (Yes/No) If yes, please specify the number		
	Other (Yes/No) If yes, please specify		
Types of sanctions	Total number		
	Reprimand (Yes/No) If yes, please specify the number		
	Suspension (Yes/No) If yes, please specify the number		
	Dismissal (Yes/No) If yes, please specify the number		
	Fine (Yes/No) If yes, please specify the number		
	Other (Yes/No) If yes, please specify		

You can indicate below:

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of your system concerning disciplinary procedures for judges and prosecutors**

VI. Lawyers

87. Number of lawyers practising in your country

462

Source Bar Association of Montenegro

88. Does this figure include legal advisors (solicitors or in-house counsellor) who cannot represent their clients in court?

Yes ☐

No ☒ No.

89. Do lawyers have a monopoly of representation:

	Monopoly (Yes/No)		If no, possible representation by (Yes/No)	
Civil cases*	No.		Member of family	Yes.
			Trade Union	
			NGO	
			Other	Yes.
Criminal cases*	Defendant	Yes.	Member of family	
			Trade Union	
			NGO	
			Other	
	Victim	No.	Member of family	Yes.
			Trade Union	
			NGO	
			Other	Yes.
Administrative cases*	No.		Member of family	Yes.
			Trade Union	
			NGO	
			Other	Yes.

* If appropriate, please specify if it concerns first instance and appeal.

90. Is the lawyer profession organised through?

- a national bar?
- a regional bar?
- a local bar?

Yes

☒ Yes.

Please specify:

91. Is there a specific initial training or examination to enter the profession of lawyer?

Yes ☒ Yes.

No ☐

92. Is there a mandatory general system for lawyers requiring continuing professional development?

Yes ☐

No ☒ No.

93. Is the specialisation in some legal fields tied with a specific level of training/ qualification/ specific diploma or specific authorisations?

No ☒ No.

Yes ☐ Please specify:

94. Can users establish easily what the lawyers' fees will be?

Yes ☒ No ☐

95. Are lawyers fees:

- regulated by law? ☒
- regulated by Bar association? ☒
- freely negotiated? ☐

96. Have quality standards been formulated for lawyers?

Yes ☒ No ☐

97. If yes, who is responsible for formulating these quality standards:

- the bar association? ☒
- the legislature? ☐
- other? ☐ Please specify:

98. Is it possible to complain about :

- the performance of lawyers? ☐ No ☒ Yes. Please specify:

- complains to the Bar Association
- disciplinary procedure

- the amount of fees? ☒ Yes ☐ No

99. Disciplinary proceedings and sanctions against lawyers:

	Yes /No (If yes, please specify the annual number)	
Reasons for disciplinary proceedings	Breach of professional ethics	Yes.
	Professional inadequacy	Yes.
	Criminal offence	Yes.
	Other	
Type of sanctions	Reprimand	Yes.
	Suspension	Yes.
	Removal	Yes.

Fine	Yes.
Other	

100. Who is the authority responsible for the disciplinary procedures:

☐ a professional body? Yes
Yes. Please specify:

- disciplinary court and disciplinary prosecutor responsible for the disciplinary procedures against lawyers

☐ the judge?
☐ the Ministry of justice?
☐ other? Please specify:

You can indicate below:

- *any useful comments for interpreting the data mentioned above*
- *the characteristics of your system concerning the organisation of the Bar*

VII. Alternative Dispute Resolution

101. If appropriate, please specify, by type of cases, the organisation of the judicial mediation:

	Compulsion (Yes/No)		Body providing mediation (Yes/No)	
Civil cases	Compulsory stage prior to court proceedings		Private mediator	
			Public or authorised by court body	
			Court	
	Compulsory stage in court proceedings		Judge	
	Ordered by judge in certain cases		Prosecutor	
			Private mediator	

Family cases	Compulsory stage prior to court proceedings		Public or authorised by court body	
			Court	
	Compulsory stage in court proceedings		Judge	
	Ordered by judge in certain cases		Prosecutor	
Administrative cases	Compulsory stage prior to court proceedings		Private mediator	
			Public or authorised by court body	
			Court	
	Compulsory stage in court proceedings		Judge	
	Ordered by judge in certain cases		Prosecutor	
Employment dismissals	Compulsory stage prior to court proceedings		Private mediator	
			Public or authorised by court body	
			Court	
	Compulsory stage in court proceedings		Judge	
	Ordered by judge in certain cases		Prosecutor	
Criminal cases	Compulsory stage prior to court proceedings		Private mediator	
			Public or authorised by court body	
			Court	
	Compulsory stage in court proceedings		Judge	
	Ordered by judge in certain cases		Prosecutor	

102. Can you provide information about accredited mediators?

103. Can you provide information about the total number of mediation procedure concerning:

- civil cases?
- family cases?
- administrative cases?
- employment dismissals?
- criminal cases?

Source 

104. Can you give information concerning other alternative dispute resolution (e.g. Arbitration)?
Please specify:

You can indicate below:

- *any useful comments for interpreting the data mentioned above*
- *the characteristics of your system concerning ADR*

The Law on Mediation was adopted in 2005. This Law introduces the institute of mediation as a method of alternative dispute resolution for the first time in Montenegro. The appointment of mediators and other actions related to implementation of this Law have been conducted during 2005. The pilot court for implementation of this Law, i.e. mediation is Basic Court in Podgorica.

VIII. Enforcement of court decisions

VIII. A. Execution of decisions in civil matters

105. Are enforcement agents:

- judges?
 - bailiff practising as private profession ruled by public authorities?
 - bailiff working in a public institution?
 - other enforcement agents?
- Please specify their status:

Yes



Yes.

Enforcement agents work in the courts. Please note that in Montenegro there is a special enforcement procedure which is conducted by the so called "enforcement judges". Enforcement agents are part of the so called "Enforcement Department" of the court (together with judges and other staff who work in this Department).

106. Number of enforcement agents 26

Source Courts.

107. Is there a specific initial training or examination to enter the profession of enforcement agent?

Yes ☐ No ☐

108. Is the profession of enforcement agent organised by?

- Yes ☐
- a national body?
 - a regional body?
 - a local body?

It is organized within the court. ☐

109. Can users establish easily what the fees of the enforcement agents will be?

Yes ☐ No ☐

Enforcement agents have a salary (they work in the courts).

110. Are enforcement fees:

- Yes ☐
- regulated by law?
 - freely negotiated?

Costs of enforcement procedure are defined in the decision about the enforcement. They depend on the price/value of the object/s of enforcement. These costs are to be paid by the enforcement debtor (the one whose property is object of enforcement).

111. Is there a body entrusted with the supervision and the control of the enforcement agents?

No ☐

Yes ☐ Yes. Which authority is responsible for the supervision and the control of enforcement agents:

- Yes ☐
- a professional body?
 - the judge?
 - the Ministry of justice?
 - the prosecutor?
 - other?

Please specify:

Presidents of the courts.

112. Have quality standards been formulated for enforcement agents?

No ☐

Yes ☐ Who is responsible for formulating these quality standards?

Source

113. What are the main complaints of users concerning the enforcement procedure:

	Yes	No
▪ no execution at all?	<div></div>	<div></div>
▪ lack of information?	<div></div>	<div></div>
▪ excessive length?	Yes. <div></div>	<div></div>
▪ unlawful practices?	<div></div>	<div></div>
▪ insufficient supervision?	<div></div>	<div></div>
▪ excessive cost?	<div></div>	<div></div>
▪ other?	<div></div>	<div></div>

Source

114. Does your country prepared or has established concrete measures to change the situation concerning the enforcement of court decisions?

No

Yes Yes. Please specify:

According to the analyses contained in the annular courts reports, the presidents of the courts reorganize the work of the enforcement departments of their courts and draft the programs for solving the problems related to the enforcement procedure in their courts.

115. Is there a system measuring the timeframes of the enforcement of decisions :

	Yes	No
▪ for civil cases?	Yes. <div></div>	<div></div>
▪ for administrative cases?	Yes <div></div>	<div></div>

Through the analyses contained in the annual courts reports.

116. As regards a decision on debts collection, can you estimate the average timeframe to notify the decision to the parties which live in the city where the court seats:

	Yes
▪ between 1 and 5 days	Yes. <div></div>
▪ between 6 and 10 days	<div></div>
▪ between 11 and 30 days	<div></div>
▪ more: please specify <div></div>	<div></div>

Source Law on Enforcement Procedure

The general principle of the enforcement procedure is urgency. The court is obliged to decide about the proposal for enforcement in 5 days from the moment when this proposal was officially received by the court.

117. Disciplinary proceedings and sanctions against enforcement agents:

Yes /No (If yes, please specify the total number)
--

Disciplinary proceedings	Breach of professional ethics	
	Professional inadequacy	
	Criminal offence	
	Other	
Sanctions	Reprimand	
	Suspension	
	Dismissal	
	Fine	
	Other	

You can indicate below:

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of your enforcement system of decisions in civil matters**

VIII. B. Enforcement of decisions in criminal matters

118. Is there a judge who has in charge the enforcement of judgments?

Yes ☒ **Yes.** Please specify his/her functions and activities (e.g. Initiative or control functions):

President of the basic court (on whose jurisdictional territory the sentenced person has its address) for example issues an act (document) by which the sentenced person is sent to prison.

No ☐ Please specify which authority is entrusted with the enforcement of judgements (e.g prosecutor):

119. As regards fines decided by a criminal court, are there studies to evaluate the effective recovery rate?

No ☐
Yes ☒ **Yes.** Please specify:

Criminal court decides about the fine according to the Criminal Code definitions for a concrete crime. In addition, the Criminal Code defines maximum and minimum daily amount of money/fine. In addition, the general rule is that the fine is decided based on the known income

and outcome of the sentenced person.

You can indicate below:

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of your enforcement system of decisions in criminal matters**

IX. Notaries

120. Is the status of notaries:

- **a private one?**
 - **a status of private worker ruled by the public authorities?**
 - **a public one?**
 - **other?**
- Please specify:**

Yes Number

--	--

Source 

121. Do notaries have duties:

- **within the framework of civil procedure?**
- **in the field of legal advice?**
- **to authenticate legal deeds?**
- **other?**

Yes No

--	--

If yes, please specify:

122. Is there a body entrusted with the supervision and the control of the notaries?

No
Yes

--

Which authority is responsible for the supervision and the control of the notaries:

- **a professional body?**

Yes

--

- the judge?
- the Ministry of justice?
- the prosecutor?
- other?



Please specify:

You can indicate below:

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of your system of notaries**

The Law on Notaries was adopted in the end of 2005. This Law introduces the institute of notary for the first time in Montenegro. The appointment of notaries and other actions related to implementation of this Law will be realized during 2006.

123. Please indicate main orientations for reform and concrete measures which could improve the quality and the efficiency of your judicial system:

In Montenegro, the Project of Reform of Judiciary was drafted and initiated in 2000. It relates to the period from 2000 to 2005. This Project has been realized to a large extent. It included four main components: intensive legislative reform, implementation of the newly adopted laws, introducing of information technology in the courts and improving of training of members of judiciary. This led to adoption and implementation of the large number of laws, computerization of all courts in Montenegro and founding and developing of the Judicial Training Center of Montenegro. More detailed information on these activities can be found on the web-sites of the Ministry of Justice, courts of Montenegro and Judicial Training Center (www.vlada.cg.yu; www.coscg.org; www.sudovi.cg.yu; etc.), as well as on many other sites. Of course, upon the request, relevant documentation can be given or sent to all the interested persons. As for the future period, it is important to stress that Ministry of Justice of Montenegro has drafted the Strategy of the further Reform of Montenegrin judiciary. This Strategy is in its drafting stage at the moment. It will be improved and finalized with the support of the experts included in the CARDS Regional Project 2003-Establishing of Independent, Reliable and Functioning Judiciary, and the Enhancing of the Judicial Co-operation in the Western Balkans. This expert support is expected to start very soon, which will lead to the quite soon adoption of the Strategy.

