



COMMISSION EUROPEENNE POUR L'EFFICACITE DE LA JUSTICE  
(CEPEJ)

QUESTIONNAIRE POUR ÉVALUER LES SYSTÈMES JUDICIAIRES 2009

Pays : Monténégro

Correspondant national

Nom Prénom : **MASANOVIC Lidija**

Profession : **Legal Advisor**

Organisation : **Ministry of Justice**

E-mail : **lead\_ija@yahoo.com**

N° Téléphone : **381 81 407 528**

## 1. Données démographiques et économiques

### 1. 1. Généralités

#### 1. 1. 1. Habitants et informations économiques

##### 1) Nombre d'habitants

620145

##### 2) Dépenses publiques totales annuelles de l'Etat / le cas échéant dépenses publiques des collectivités territoriales ou entités fédérales (en €)

	Montant
Niveau national	680351924
Niveau territorial / entités	NAP

##### 3) PIB par habitant (en €)

4908

##### 4) Salaire moyen brut annuel (en €)

7308

##### 5) Taux de change de la monnaie nationale (zone non Euro) en € au 1 janvier 2009

#### Veillez indiquer les sources des réponses aux questions 1 à 4 et tout commentaire relatif à l'interprétation des données fournies, le cas échéant:

- 1- Last census in Montenegro was held in 2003. - 620.145 inhabitants (Monstat- Statistical office of Montenegro)
- 2- Montenegro is not divided on regions
- 3- Data for 2007. (Monstat- Statistical office of Montenegro)
- 5- Currency in Montenegro is EURO

SOURCE 1-4: Monstat- Statistical office of Montenegro

### 1. 2. Données budgétaires relatives au système judiciaire

#### 1. 2. 1. Budgets (tribunaux, ministère public, aide judiciaire, frais)

##### 6) Budget total annuel approuvé et alloué à l'ensemble des tribunaux (en €)

19779371

##### 7) Veillez préciser

Law on Amendments to the Budget Law of Montenegro for the year 2008.

##### 8) Le budget approuvé pour les tribunaux inclut-il les postes suivants? Veillez préciser

**pour chaque poste (ou pour certains d'entre eux) les montants concernés ou indiquer NA (non disponible) dans le cas où ce montant est impossible à évaluer:**

**Veillez ajouter tout commentaire utile pour l'interprétation des données ci-dessus:**

Budget public annuel alloué aux salaires (bruts)	<input checked="" type="checkbox"/> Oui	14895844
Budget public annuel alloué aux nouvelles technologies de l'information (équipements, investissements, maintenance)	<input checked="" type="checkbox"/> Oui	144000
Budget public annuel alloué aux frais de justice	<input checked="" type="checkbox"/> Oui	3646500
Budget public annuel alloué aux bâtiments (maintenance, budget de fonctionnement)	<input checked="" type="checkbox"/> Oui	220000
Budget public annuel alloué à l'investissement en nouveaux bâtiments (tribunaux)	<input type="checkbox"/> Oui	
Budget public annuel alloué à la formation	<input type="checkbox"/> Oui	
Autres (Veillez préciser)	<input checked="" type="checkbox"/> Oui	873026

Commentaire :

The section of the Budget earmarked for the judiciary includes the expenses as follows: gross earnings and contributions borne by employers, other personal income, expenditure for materials and services, current maintenance and other expenses.

Law on Amendments to the Budget Law of Montenegro for the year 2008.

**9) Le budget public annuel alloué à l'ensemble des tribunaux a-t-il été modifié (augmentation – diminution) lors des cinq dernières années ?**

- Oui  
 Non

Si oui, veuillez préciser (par exemple en fournissant une indication sur l'augmentation ou la diminution du budget lors des cinq dernières années):

Since recognising that strengthening of independence of the judiciary as one of the priorities in the reform of the administration of justice, one of the measures aimed at that purpose is increase in earnings of agents of the administration of justice function and improvement of working conditions and access to the courts of justice. In the course of previous evaluation, i.e. in 2006, the earmarked funds amounted to 8664682.03 euros, therefore considerable increase in funds earmarked for the judiciary from the Budget of Montenegro is evident.

**10) Existe-t-il une règle générale selon laquelle une personne doit payer une taxe ou des frais pour intenter une procédure devant une juridiction de droit commun :**

- en matière pénale ?  
 en matière autre que pénale ?

Si oui, existe-t- il des exceptions ? Veuillez préciser:

Law on Court Fees ( "Sl. Gazette, br.76/2005) provides that in proceedings before the court court fee is to be paid by the person who proposed or has an interest to take action in court proceedings. For the court decision of first instance court person obliged to pay fee is plaintiff and proposer, and for a judicial settlement this is obligation of both parties, unless otherwise agreed.

Fee obligation arises for the court filings (complaints, answers to the complaint, proposals, legal remedies and other statements), for the court transcripts if requested, for a court decision (if published, and if the party is not present or if the decision was not released when making a handout of written decision), for the court concluded settlements and other activities, when the request to carry out such actions is filed. Income fees represent part of the budget of Montenegro.

In civil dispute, fees are paid in accordance with the value of dispute. In the enforcement procedure, fees are paid in accordance with the value of subject of enforcement or ensuring. In extrajudicial, criminal proceedings by a private complaint, in an administrative dispute and procedures on the insolvency of business companies, fees are paid in accordance with The fee tariff.

**11) Si oui, veuillez préciser le montant annuel des frais (ou taxes) perçus par l'Etat (en €)**

8335936

**12) Budget total annuel approuvé pour l'ensemble du système de justice (en €)**

**Veuillez préciser les éléments composant ce budget de l'ensemble du système judiciaire:**

.  Montant 37358769

Commentaire :

In pursuance with the Additional Instructions for Filling In of this Questionnaire, the said amount includes the funds earmarked for the courts of justice, prosecutorial system, the Ministry of Justice, the Judicial Council, misdemeanour bodies and the Institution for Enforcement of Criminal Sanctions.

**13) Budget public annuel approuvé et alloué à l'aide judiciaire (en €)**

**Veuillez ajouter tout commentaire utile pour l'interprétation des données ci-dessus:**

.  Montant 153427

Commentaire :

At the time of replying this Evaluation scheme, the drafting of the Law on Free Legal Aid is in progress, which will regulate this area in a detailed way. However, the amount of funds from the budget that was paid to lawyers in 2008. year for the Appointment of Defence attorney for the Indigent Person was 153,427.88 €.

**14) Si possible, veuillez préciser (dans les cas où les données ne sont pas disponibles (NA) ou ne s'appliquent pas (NAP), veuillez l'indiquer en utilisant les bonnes abréviations).**

	Budget public annuel alloué à l'aide judiciaire dans les affaires pénales	Budget public annuel alloué à l'aide judiciaire dans les affaires autres que pénales
Montant	153427	

Commentaire :

**15) Le budget public annuel alloué à l'aide judiciaire est-il compris dans le budget des tribunaux ?**

- Oui  
 Non

**16) Budget public annuel approuvé et alloué au Ministère public (en €)**

**Veillez ajouter tout commentaire utile pour l'interprétation des données ci-dessus:**

Montant 4998279

Commentaire :

The section of the Budget earmarked for the prosecutorial system includes the following expenses: gross earnings and contributions borne by employers, other personal income, expenditure for materials and services, current maintenance, other expenses and capital expenditure. Law on Changes and Amendments to the Budget Law of Montenegro for the year 2008.

**17) Le budget public annuel alloué au Ministère public est-il compris dans le budget des tribunaux ?**

- Oui  
 Non

**18) Instances formellement responsables des budgets alloués aux tribunaux :**

	Préparation du budget global des tribunaux	Adoption du budget global des tribunaux	Gestion et répartition du budget entre les tribunaux	Evaluation de l'utilisation du budget au niveau national
Ministère de la justice	Non	Non	Non	Non
Autre ministère	Non	Non	Non	Oui
Parlement	Non	Oui	Non	Oui
Cour Suprême	Non	Non	Non	Non
Conseil Supérieur de la Magistrature	Oui	Non	Oui	Non
Tribunaux	Non	Non	Non	Non
Organisme d'inspection	Non	Non	Non	Non
Autre	Non	Non	Non	Non

**19) Si autre ministère et/ou organisme d'inspection et/ou autre, veuillez préciser (au regard de la question 18) :**

The Ministry of Finance – Sector for Vault controls spending of budgetary funds at the state level.

**Vous pouvez indiquer ci-dessous :**

- tout commentaire utile pour l'interprétation des données indiquées dans ce chapitre
- les caractéristiques de votre système budgétaire et les réformes majeures mises en œuvre au cours des deux dernières années

**- si possible un organigramme avec une description des compétences des différentes instances responsables des procédures budgétaires**

Commentary: Financial funds for operation of the courts of justice are provided for in a separate section of the Budget of Montenegro. The budget of the courts of justice is separated from the budget earmarked for the Prosecutorial system. The Judicial Council gives proposes the section of the annual budget for operation of the courts of justice and submits this proposal to the Government. The Ministry of Finance, the Government proposes the budget to be adopted by the Parliament, the Chairperson of the Judicial Council has the right to participate in work of the Parliament's sitting at which the budget of the courts of justice is discussed. Also, as a form of ex-post control, the Parliament adopts the Budget's Annual Statement of Accounts - a detailed document containing all the specified revenues and expenditures for the given year. As a control mechanism, there is internal and external control of budgetary funds. The Ministry of Finance supervises the spending of the budgetary funds.

The same procedure applies in case of preparing budget earmarked for the Prosecutorial system. As concerning financial operations of the courts of justice, the chairperson of a court of justice is the financial principal in that court of justice.

**Veillez indiquer les sources des réponses aux questions 6, 8, 11, 12, 13, 14 et 16**

Source for 6,8,11,12 and 16 - Law on Changes and Amendments to the Budget Law of Montenegro for the year 2008.

Source for 13 and 14 - The Secretariat of The Judicial Council

## 2. Accès à la justice et à l'ensemble des tribunaux

### 2. 1. Aide judiciaire

#### 2. 1. 1. Principes

#### 20) L'aide judiciaire concerne-t-elle :

	Affaires pénales	Affaires autres que pénales
Représentation devant les tribunaux	Oui	Oui
Conseil juridique	Oui	Oui
Autres	Oui	Oui

#### 21) Si autres, veuillez préciser (au regard de la question 20):

Law on court fees prescribes that the court may exempt a person from payment of taxes, if paying taxes would significantly reduce means and funds for sustenance of such person and members of his family. The court decides by ruling on the proposal for exemption from payment of court tax.

#### 22) L'aide judiciaire prévoit-elle la couverture ou l'exonération des frais de justice?

- Oui  
 Non

Si oui, veuillez préciser:

Law on court fees prescribes that the court may exempt a person from payment of taxes, if paying taxes would significantly reduce means and funds for sustenance of such person and members of his family . The court decides by ruling on the proposal for exemption from payment of court tax.

In cases when a person does not have sufficient means to finance the costs of defence and court proceedings, that person may submit a request to the court of justice to exempt them from these costs. If the court of justice finds that the request is merited and that all the conditions defined by the law are fulfilled, such request shall be granted.

Please see the explanation of the answer to the 24th question.

#### 23) Est-il possible de bénéficier de l'aide judiciaire pour des frais relatifs à l'exécution des décisions de justice ?

- Oui  
 Non

#### 24) Nombre d'affaires ayant bénéficié de l'aide judiciaire publique octroyée au niveau national, régional ou local (dans les cas où les données ne sont pas disponibles (NA) ou ne s'appliquent pas (NAP), veuillez l'indiquer en utilisant les bonnes abréviations).

	Nombre
Total	1162
en matière pénale	1156
en matière autre que	



pénale

6

## Commentaire :

Explanation: Total - there were 231 cases where the persons were exempted from paying fees (225 in criminal + 6 in civil cases), and 931 case where taxes are paid from the budget for defence ex officio (in criminal cases).

Adoption of the Law on Free Legal Aid is under preparation in Montenegro. Until it has been passed, court proceedings costs are decided about on the basis of procedural laws.

The Law on Criminal Proceedings, Title XIV, specifies that a defendant found guilty shall indemnify the costs of the criminal proceedings (Article 202 paragraph 1), while if the same is abandoned or when a verdict of release is reached or when a verdict to reject the statement of claim is reached, costs of criminal proceedings shall debit the budgetary funds of the court of justice concerned (Article 203 paragraph 1).

In pursuance with Article 202 paragraph 4 of the Law on Criminal Proceedings, a court of justice may release the defendant from the obligation to indemnify, fully or partially, the costs of the criminal proceedings, if their payment would compromise subsistence of the defendant or of persons that the defendant is obliged to support. The decision on this matter is made by the court of justice further to the request of the defendant.

Costs of criminal proceedings as well as the necessary expenses of the court-imposed defence lawyer and court-imposed attorney-in-fact of the injured party as a plaintiff, as well as the fees for the defence lawyer and the attorney-in-fact appointed ex officio shall be paid from the budgetary funds of the court of justice concerned.

The Law on Civil Proceedings also provides for release from payment of costs of a legal procedure. In pursuance with Article 166 of the Law on Civil Proceedings, a court of justice shall release such party from payment of costs of a legal procedure who on the basis of their general material situation is not able to bear the costs without prejudice to indispensable subsistence of themselves or their family. The decision on release from payment of costs of a legal procedure is made by the court of justice upon a proposal of the party concerned who has submitted the proposal accompanied by evidence of the party's material situation – Article 167 of the Law on Civil Proceedings.

A court of first instance shall appoint a representative to a party who according to their general material situation is not able to bear the costs of a qualified attorney-in-fact, at the request of such party, when this is necessary in order to protect a reasonable interest of the party – Article 168 of the Law on Civil Proceedings.

In an administrative dispute, when deciding on the costs of the proceedings at oral hearing, the decision is made on the basis of the above mentioned provisions of the Law on Civil Proceedings.

With a view to the essence of the question asked and of the legal provisions, we point out that there have not been any cases in which free legal aid has been granted, but there have been cases in which defendants, i.e. parties in civil proceedings, have been released from payment of the costs of a legal procedure, as well as cases in which defendants have been provided with an ex officio defence lawyer and the costs have been paid from budgetary funds of the court of justice, as said above.

**25) En matière pénale, toute personne qui n'en a pas les moyens peut-elle bénéficier de l'assistance gratuite (ou financée par un budget public) d'un avocat ?**

- Oui  
 Non

**26) Votre pays procède-t-il à un examen des revenus et biens du demandeur avant d'octroyer l'aide judiciaire :**

	Oui	Montant en €
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en matière pénale	yes	
en matière autre que pénale ?	yes	

Commentaire :

Procedural laws prescribe that a court of justice shall in each individual case assess the economic situation of a party to a legal procedure with a view to their possible release from payment of costs.

**27) En matière autre que pénale, est-il possible de refuser l'aide judiciaire pour absence de bien- fondé de l'action (par exemple pour caractère abusif de l'action en justice)?**

- Oui  
 Non

Veillez ajouter tout commentaire utile pour l'interprétation des données ci-dessus:  
 See comment for Q.26.

**28) Si oui, la décision pour accorder ou refuser l'aide judiciaire est-elle prise par :**

- le tribunal ?  
 une instance extérieure au tribunal ?  
 une instance mixte tribunal/organe externe?

**29) Existe-t-il un système privé d'assurance de protection juridique permettant aux justiciables de financer une action en justice?**

- Oui  
 Non

Veillez préciser:

**30) La décision judiciaire peut-elle porter sur la manière dont les frais de justice payés par les parties au cours de la procédure seront partagés :**

	Oui (la décision judiciaire peut porter sur la manière dont les frais de justice sont payés par les parties)
en matière pénale ?	Oui
en matière autre que pénale ?	Oui

**Vous pouvez indiquer ci-dessous :**

**- tout commentaire utile pour l'interprétation des données indiquées dans ce chapitre  
 - les caractéristiques de votre système d'aide judiciaire et les réformes majeures mises en œuvre au cours des deux dernières années**

In civil proceedings, each party must previously bear the costs that they caused by their actions by themselves. The party that has lost the lawsuit in whole is obliged to indemnify the costs of the opposing party and their intervener. Regardless of the outcome of a lawsuit, a party is obliged to indemnify the costs that have been caused by their fault or by a case that occurred to them to the opposing party.

In criminal proceedings, the law prescribes appointment of a defence lawyer due to poor material

situation, when there are no conditions for mandatory defence and the proceedings are conducted for a criminal offence for which imprisonment for a period longer than three years is prescribed, and in other cases, if required so by interests of fairness, a defendant may be granted a defence lawyer at the defendant's request if they are not able to bear the costs of defence due to their material situation. The request is decided upon by an investigative judge, while when the defendant is found guilty in the proceedings, the chairperson of the court of justice shall rule in their verdict that the defendant is obliged to indemnify the costs of the criminal proceedings.

Within the comprehensive reform of the administration of justice (judiciary), the reform of the system of free legal aid has been commenced in Montenegro through adoption of a separate law on free legal aid.

### **Veillez indiquer les sources des réponses aux questions 24 et 26:**

Source for Q.24 - The Supreme court of Montenegro.

## **2. 2. Usagers des tribunaux et victimes**

### **2. 2. 1. Droit des usagers et victimes**

#### **31) Existe-t-il des sites/portails Internet officiels (ex: Ministère de la Justice, etc.) à partir desquels le public a accès gratuitement:**

aux textes juridiques (codes, lois, règlements, etc.) ? adresse Internet:

Oui

Parliament of Montenegro  
www.skupstina.me  
Government of Montenegro  
www.gov.me  
Ministry of Justice  
www.pravda.gov.me  
Official Gazette  
www.sllrcg.co.me  
The Constitutional Court of Montenegro  
www.ustavnisudcg.co.me  
Courts of Montenegro  
www.sudovi.co.me  
The Administrative Court of Montenegro  
www.upravnisudcg.org  
The Supreme State Prosecution Office  
www.tuzilastvocg.co.me  
Bar Association of Montenegro  
www.advokatska.komora.me  
Center for education of Agents of the Administration of Justice www.coscg.org

à la jurisprudence des hautes juridictions ? adresse Internet:

Oui

The Supreme Court of Montenegro  
www.vrhsudcg.gov.me  
The Higher Court in Podgorica  
www.visisudpg.gov.me  
The Higher Court in Bijelo Polje www.visisudbp.gov.me  
The Court of Appeal of Montenegro  
www.apelacionisudcg.gov.me

à d'autres documents (par exemple formulaires) ? adresse Internet:

Oui

The Administrative Court of Montenegro  
www.upravnisudcg.org  
The Secretariat of The Judicial Council  
www.sudskisavjet.gov.me  
Ombudsman of Montenegro  
www.ombudsman.co.me  
Bar Association of Montenegro  
www.advokatska.komora.me  
Center for Mediation  
www.posredovanje.me  
Center for education of Agents of the Administration of Justice www.coscg.org  
Central Registry of The Commercial Court  
www.crps.co.me

**32) Votre système prévoit-il une obligation d'information des parties concernant les délais prévisibles de la procédure judiciaire ?**

Oui

Non

Si oui, veuillez préciser:

The Constitution of Montenegro provides for the universal right to fair and public court trial in reasonable time before an independent, unbiased and legally established court of justice. Court trial in reasonable time is an obligation of the courts of justice laid down by procedural laws as well. This right is reflected in the right to court trial in the shortest possible time and without postponement, in the obligation of the court of justice to conduct the proceedings without procrastination and to prevent any abuse of rights that pertain to the persons who are involved in the proceedings. Additionally, within the criminal proceedings, duration of detention must be as short as possible.

In accordance with the Law on Protection of the Right to Court Trial in Reasonable Time, the parties are provided with the possibility to use two legal instruments for execution of the right to court trial in reasonable time. These are the Request to Accelerate the Proceedings and the Claim for Fair Redress.

**33) Existe-t-il un système d'information spécifique, public et gratuit, pour informer et aider les victimes d'infractions?**

Oui

Non

Si oui, veuillez préciser:

Montenegro ratified the European Convention on the Compensation of Victims of Violent Crimes. In line with the Convention, it is necessary to adopt new law, which will define the issue of compensation to victims of violent crimes and ensure the right on reparation money to such victims, assumptions and the procedure for realization of such rights, the authorities competent for decision making in these procedures, as well as other institutions and the procedure to be applied in the cross-border cases.

**34) Existe-t-il des modalités favorables particulières applicables, au cours des procédures judiciaires, aux catégories de personnes vulnérables suivantes :**

	Dispositif d'information	Modalités d'audition	Droits procéduraux	Autres
Victimes de viol	Non	Oui	Oui	Non
Victimes du terrorisme	Non	Oui	Oui	Non
Enfants/Témoins/Victimes	Non	Oui	Oui	Non
Victimes de violence domestique	Non	Oui	Oui	Non
Minorités ethniques	Non	Oui	Oui	Non
Personnes handicapées	Non	Oui	Oui	Non
Délinquants mineurs	Non	Oui	Oui	Non
Autres	Non	Non	Non	Non

#### Commentaire :

The Code of Criminal Proceedings provides for hearing via video link/ compensation of victims of violent crimes (the Convention was ratified in December 2009 in the Parliament of Montenegro) /exclusion of the public from sessions in proceedings in which minors present themselves/ the rights of minorities to use their native language, hearing assisted by a court interpreter, translation of documents, etc. The criminal proceeds are conducted in the language officially used in the court of justice. Parties, witnesses and other persons involved in the proceedings have the right to use their own language in the proceedings. If the proceedings are not conducted in the language of such person, interpretation of that person's statements and of statements of others shall be provided, as well as translation of documents and other written evidence. The said person shall be instructed about the right to interpretation/translation, and that person may waive this right if he/she understands and speaks the language in which the proceedings are conducted.

The right to use own language is guaranteed in civil proceedings as well. The law lays down that parties and other participants in the proceedings who do not understand or do not speak the language in official use in the court of justice have the right to use their own language or a language that they understand.

As concerning victims of family violence, drafting of the Law on Protection from Family Violence is underway, as well as of the Law on Juvenile Justice, which will, in addition to the procedural law, define this field more specifically.

#### 35) Votre pays dispose-t-il d'une procédure d'indemnisation des victimes d'infractions ?

- Oui  
 Non

#### 36) Si oui, cette procédure d'indemnisation consiste-t-elle en

- un dispositif public ?  
 une décision du tribunal ?  
 un dispositif privé ?

Si oui, quels sont les types d'affaires entrant dans le cadre de cette procédure ?

Compensation shall be determined by a court decision which establishes execution of a criminal offence. Also, European Convention on the Compensation of Victims of Violent Crimes was ratified in the Parliament of Montenegro in December 2009.

#### 37) Existe-t-il des études permettant d'évaluer le taux de recouvrement des dommages et intérêts prononcés par les juridictions pour les victimes?

- Oui  
 Non

Si oui, veuillez préciser :

Compensation shall be determined by the court of justice depending on the circumstances in each individual case.

**38) Le procureur a-t-il un rôle spécifique au regard des victimes (protection et assistance)**

- Oui  
 Non

Si oui, veuillez préciser :

**39) Les victimes d'infractions peuvent-elles contester une décision du procureur de classer une affaire ?**

- Oui  
 Non

Si oui, veuillez préciser :

In any proceedings, the prosecutor may desist from persecution at any time before conclusion of the main trial. In such a case, the court of justice shall stop the proceeding by bringing a Decision on stopping of the proceeding. Nevertheless, the law provides the injured party with the possibility to continue the persecution in the capacity of a subsidiary Prosecutor.

2. 2. 2. [Confiance des citoyens dans leur justice](#)

**40) Existe-t-il un système d'indemnisation pour les usagers dans les circonstances suivantes :**

- durée excessive de la procédure ?  
 non exécution des décisions de justice?  
 arrestation injustifiée ?  
 condamnation injustifiée ?

Si oui, veuillez préciser (dispositif, tarif journalier) :

1. As concerning excessive length of the proceedings, in accordance with the Law on Protection of the Right to Court Trial in Reasonable Time, fair redress due to violation of the right to court trial in reasonable time may be effectuated by payment of monetary compensation for the damage caused by violation of the right to court trial in reasonable time and/or by announcement of the judgment that a party's right to court trial in reasonable time was violated.

2. The Code on Criminal Proceedings lays down the right to compensation of damages, rehabilitation and execution of other rights of persons unfairly sentenced and unmeritedly apprehended. These provisions regulate the liability for the damages based exclusively on objective circumstances, i.e. on unfair sentence and unmerited apprehension – which is a consequence of striving to protect human rights and assets, his/her physical integrity and personal freedom. In order to proclaim detention unmerited, the proceedings should be stayed by an enforceable decision or completed by an enforceable verdict of release or by a verdict which dismisses the charges. As a consequence of unmerited apprehension i.e. unfair sentence, tangible or intangible damages might occur. The court of justice assesses the amount of compensation for both tangible and intangible damages, and the legal position is that 3,000 to 4,000 thousand euros per month of unmerited detention should be paid for mental anguish caused by unmerited bereavement of freedom (apprehension), depending on the circumstances in the case concerned as laid down by the Obligations Act.

In accordance with The Criminal Procedure Code, in the Ministry of Justice agreement is being concluded, on existence of damage, sort and amount of compensation for wrongful arrest. Funds for payment of compensation for these damages are earmarked to the Ministry of Justice in a separate budgetary item, in accordance with which the amount of up to 2,000 euros is paid for a month, depending on the circumstances in a case concerned.

**41) Votre pays a-t-il mis en place des enquêtes auprès des usagers ou des professions juridiques (juges, avocats, fonctionnaires, etc.) pour mesurer leur confiance dans la justice et leur degré de satisfaction par rapport au service rendu ?**

- enquêtes (de satisfaction) auprès des juges
- enquêtes (de satisfaction) auprès du personnel des tribunaux
- enquêtes (de satisfaction) auprès des procureurs
- enquêtes (de satisfaction) auprès des avocats
- enquêtes (de satisfaction) auprès des citoyens (visiteurs des tribunaux)
- enquêtes (de satisfaction) auprès d'autres usagers des tribunaux

Si possible, veuillez préciser leurs titres, comment se les procurer, etc. :

**42) Si possible, veuillez préciser :**

	Oui (enquêtes systématiques : par exemple annuelles)	Oui (enquêtes occasionnelles)
Enquêtes au niveau national	Non	Non
Enquêtes au niveau des tribunaux	Non	Non

**43) Existe-t-il un dispositif national ou local permettant de déposer une plainte concernant le fonctionnement (par exemple le traitement d'une affaire par un juge ou la durée d'une procédure) du système judiciaire?**

- Oui

Non

**44) Si oui, veuillez préciser :**

**Veillez donner quelques éléments d'information sur l'efficacité de cette procédure de plainte ?**

	Délai pour répondre (Oui)	Délai pour traiter la plainte (Oui)
Tribunal concerné	Oui	Oui
Instance supérieure	Oui	Oui
Ministère de la Justice	Oui	Oui
Conseil supérieur de la magistrature	Oui	Oui
Autres organisations extérieures (ex. médiateur)	Oui	Oui

**Commentaire :**

The Law on Protection of the Right to Court Trial in Reasonable Time was applied in the course of the reporting year, which provides for the mechanisms for protection of this right in the course of the proceedings themselves (control request to accelerate the proceedings), and there were 40 such requests submitted and all of them were resolved. After the completion of court proceedings in accordance with the standards of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the right to file a claim for fair redress is acquired, and the claim is to be filed with the Supreme Court of Montenegro; there were 11 such claims filed in the reporting year and all of them were resolved. This has created the prerequisites to use an effective legal instrument for protection of the said right at the national level and thus to reduce the number of appeals to European Court of Human Rights.

Complaints on the work of the court administration can be applied to the authorised officials of The Ministry of Justice. In accordance with The Law on Courts, The Ministry of Justice is acting upon these complaints without delay. The procedure is such that the complaint is being put into the procedure, the authorised official is seeking for the information from the court in question of the complaint. The courts will, at the request of The Ministry of Justice, submit all the data and informations needed for the follow up of the organization and work of the courts, and the application of The Court Operating Regulations, and also for the acting upon the complaints of the citizens. After receiving all the informations, these are being forwarder to the person that filed a complaint. In 2008. The authorised officials of The Ministry of Justice had received 162 complaints, and acted upon all of them.



### 3. Organisation des tribunaux

#### 3. 1. Fonctionnement

##### 3. 1. 1. Tribunaux

**45) Nombre de tribunaux considérés comme entités juridiques (structures administratives) et implantations géographiques (compléter le tableau). Dans les cas où les données ne sont pas disponibles (NA) ou ne s'appliquent pas (NAP) veuillez l'indiquer dans le tableau en utilisant les bonnes abréviations.**

	Nombre total
Tribunaux de droit commun de 1ère instance (entités juridiques)	17
Tribunaux spécialisés de 1ère instance (entités juridiques)	3
Tous les tribunaux (implantations géographiques) (ce chiffre inclut également les cours suprêmes et/ou les juridictions supérieures)	22

**46) Veuillez préciser les différentes sphères de spécialisation (et, si possible, le nombre de tribunaux concernés):**

There are two types of specialised courts: two Commercial Courts and one Administrative Court. Administrative Court decides in administrative disputes on lawfulness of administrative acts, as well as on lawfulness of other individual acts when provided so by the law; it decides on extraordinary legal remedies against enforceable decisions in misdemeanour proceedings and performs other tasks laid down by the law.

Commercial Court adjudicates in first instance in disputes between domestic companies, foreign companies, other legal entities and entrepreneurs (economic entities) concerning their commercial-legal relations (arisen in connection with exercise of the activities of the parties aimed at gaining of profit), as well as in disputes in which the parties are not economic entities, but they are in the relation of material joinder of parties with economic entities; with reference to registration of economic entities as well as in disputes arisen from relations to which statute (company) law applies; with reference to compulsory settlement, bankruptcy and winding-up of economic entities, regardless of the capacity of the other party and notwithstanding the time of institution of the dispute, unless otherwise provided for under the law; with reference to copyrights and industrial property rights between the parties referred to in item a) of this paragraph; in disputes concerning the rights of artists, rights of reproduction, re-recording and trading with audio-visual works, as well as in disputes concerning computer programs and their use and transfer between the parties referred to in item a) of this paragraph; with regard to disturbance of possession between the parties referred to in item a) of this paragraph; with reference to distortion of competition, abuse of monopolistic and dominating position in the market and conclusion of monopolistic agreements; in disputes regarding vessels and sailing at sea and in internal waters, as well as in disputes in which maritime law applies, except for disputes concerning transportation of passengers; in disputes which refer to aircrafts and in disputes to which air law applies, except for disputes concerning transportation of passengers; in other legal matters put under its jurisdiction by the law.

The Commercial court adjudicates in first instance over economic offences; conducts the procedure of compulsory settlement, bankruptcy and winding-up; conducts the procedure of entering in the registry of the court the companies and other entities for which it has been provided for by the law; determines and conducts execution and security when the writ of execution has been adopted by the commercial court or the arbitration committee, i.e. when the veracious writ originates from the entity referred to in paragraph 1 item 1 of this Article; determines and conducts execution and security on vessels and aircrafts, regardless of the

capacity of parties; decides in extra-judicial proceedings that concern vessels and aircrafts; decides about recognition and execution of foreign court decisions rendered by commercial courts, as well as foreign arbitration decisions, and performs other tasks laid down by the law.

**47) Une réforme dans la structure des tribunaux est-elle envisagée (par exemple une diminution du nombre de tribunaux (implantations géographiques) ou une réforme de la compétence des tribunaux).**

- Oui  
 Non

Si oui, veuillez préciser:

Drafting of the Analysis of the existing network of judicial bodies with respect to jurisdiction and staff capacity is underway, which will indicate the needs regarding reforming of the structure with a view to improvement of efficiency of judicial bodies and which will result in proposals for new organisation in the field of judicial bodies in Montenegro.

**48) Nombre de tribunaux de 1ère instance compétents pour une affaire concernant (dans les cas où les données ne sont pas disponibles (NA) ou ne s'appliquent pas (NAP) veuillez l'indiquer dans le tableau en utilisant les bonnes abréviations):**

	Nombre
un recouvrement d'une petite créance.	17
un licenciement	15
un vol avec violence	17

**Veuillez préciser ce qu'est une petite créance dans votre pays (ne répondre que si la définition a changé par rapport à l'exercice d'évaluation précédent):**

Disputes of minor value, in terms of the Law on Civil Proceedings, are those disputes in which the statement of claim regards monetary claim not greater than €500. Disputes in which the statement of claim does not refer to monetary claim and the plaintiff stated in the statement of claim that they agree to receive certain amount of money not greater than €500 instead of fulfilment of a certain request are also regarded as disputes of minor value. Disputes in which the subject of the statement of claim is not an amount of money but surrender of a movable asset whose value as specified by the plaintiff in their statement of claim does not exceed the amount of €500 are also regarded as disputes of minor value.

Disputes over immovable property, disputes arising from labour relations and disputes due to disturbance of possessions are not regarded as disputes of minor value.

**Veuillez indiquer la source pour les réponses aux questions 45 et 48:**

Law on Courts ("Official Gazette of RoM", no.5/2002,49/2004 and "Official Gazette of MNE", no.22/2008).

**3. 1. 2. Juges, personnels des tribunaux**

**49) Nombre de juges professionnels siégeant en juridiction (répondre en équivalent temps plein et pour les postes permanents; si les données ne sont pas disponibles veuillez l'indiquer avec NA)**

**Veuillez ajouter tout commentaire utile pour l'interprétation des données ci-dessus:**

Nombre

□.

246

Commentaire :

The number of professional judges in courts in 2008. is 246, and all of them were working in full working hours.

The number of judges in the courts is established by The Decision on the number of judges in courts in Montenegro.

The position of judges is permanent - art. 121 par. 1 of The Constitution of Montenegro.

**50) Nombre de juges professionnels exerçant à titre occasionnel et rémunérés comme tel:**

	Nombre
donnée brute	
si possible, donnée en équivalent temps plein	

**51) Veuillez ajouter tout commentaire utile pour l'interprétation de la réponse à la question 50 ci-dessus:**

In accordance with The Constitution of Montenegro, the position of judges is permanent. Judge can not perform as member of The Parliament or any other public duty, nor professionally work in other fields.

**52) Nombres de juges non professionnels, non rémunérés (y compris "lay judges") percevant, le cas échéant, un simple défraiement. Veuillez indiquer NA si les données ne sont pas disponibles.**

**Veuillez ajouter tout commentaire utile pour l'interprétation des données ci-dessus:**

	Oui	Nombre
Avez vous dans votre système des catégories de juges non professionnels ?	yes	148

Commentaire :

The Constitution prescribes that apart from professional judges, lay judges also participate in a court trial in cases for which this is laid down by the law.

The number of appointed lay judges is 211, of which 148 participated in proceedings during 2008.

**53) Votre système judiciaire prévoit-il un jury de jugement avec une participation des citoyens ?**

Oui

Non

Si oui, pour quel(s) type(s) d'affaire(s) ?

**54) Si possible, veuillez indiquer le nombre de citoyens ayant participé à de tels jurys pour l'année de référence?**

NAP

**55) Nombre de personnel non juge travaillant dans les tribunaux (répondre en équivalent temps plein et pour les postes permanents). Veuillez indiquer NA si les données ne sont pas disponibles**

**Veuillez ajouter tout commentaire utile pour l'interprétation des données ci-dessus:**

Nombre  . 854

Commentaire :

In the course of 2008, 854 court officers and employees who are not judges worked in the courts. All court officers and employees worked in positions which are classified as permanent positions/jobs by the Rulebook on Internal Organisation and Job Classification, adopted by a president of each court separately, subject to prior approval of the Ministry of Finance, Human Resources Administration and the Judicial Council.

Also, 175 trainees (graduate lawyers who are employed for the first time for the purpose of training in accordance with a special programme adopted by the chairperson of the court – Article 116 of the Law on Courts of Justice) worked in the courts during 2008. A trainee is employed for the period of two years.

**56) Si possible, veuillez distinguer ce personnel selon les 4 catégories suivantes. Dans les cas où les données ne sont pas disponibles (NA) ou ne s'appliquent pas (NAP) veuillez l'indiquer dans le tableau en utilisant les bonnes abréviations.**

- personnels non juge (Rechtspfleger ou organes équivalents), chargé de tâches juridictionnelles ou para juridictionnelles, ayant des compétences autonomes et dont les décisions peuvent être susceptibles de recours		NAP
- personnels non juge chargés d'assister les juges (préparation des dossiers, assistance à l'audience, tenue des procès verbaux, aide à la préparation de la décision) à l'instar des greffiers	<input checked="" type="checkbox"/> Oui	102
- personnels chargés de tâches relatives à l'administration et la gestion des tribunaux (gestion des personnels, gestion des moyens matériels y compris de l'informatique, gestion financière et budgétaire, gestion de la formation)	<input checked="" type="checkbox"/> Oui	15
- personnels techniques	<input checked="" type="checkbox"/> Oui	534

Commentaire :

In the aim of clarifying the structure of the court staff, it is necessary to add another category - "other staff", where there are 203 employees.

**57) S'il existe dans votre système la fonction de Rechtspfleger (ou fonction équivalente), veuillez décrire brièvement leur statut et leurs fonctions:**

NAP

### 3. 1. 3. Procureurs

**58) Nombre de procureurs (répondre en équivalent temps plein et pour les postes permanents). Si les données ne sont pas disponibles veuillez le préciser (NA).**

Nombre  . 86

Commentaire :

This function was performed in 2008 by 13 Basic public prosecutors with 42 deputies, 2 High public prosecutors with 15 deputies, The Supreme Public Prosecutor of Montenegro with 7 deputies, The Special Prosecutor and 5 deputies of the special prosecutor.

**59) D'autres personnes ont-elles des fonctions comparables à celles des procureurs ?**

- Oui  
 Non

Si oui, veuillez préciser :

**60) Nombre de personnels (non procureurs) attachés au Ministère public (répondre en équivalent temps plein et pour les postes permanents) Si les données ne sont pas disponibles veuillez le préciser (NA)**

**Veuillez ajouter tout commentaire utile pour l'interprétation des données ci-dessus:**

Nombre  . 118

Commentaire :

Number of such employes in the Supreme State prosecutor's Office in 2008. was 23.  
 Number of such employes in the High Prosecutor's Offices in 2008. was 21.  
 Number of such employes in the Basic State Prosecutor's Offices in 2008. was 74.

All the non-prosecutors staff are working on permanent basis with full working hours.

**3. 1. 4. Budget des tribunaux et nouvelles technologies**

**61) Qui est responsable du budget du tribunal ?**

	Préparation du budget	Arbitrage et répartition du budget	Gestion quotidienne du budget	Evaluation et contrôle de l'utilisation du budget
Conseil d'administration	Non	Non	Non	Non
Président du tribunal	Non	Non	Oui	Non
Directeur administratif du tribunal	Non	Non	Non	Non
Greffier en chef	Non	Non	Non	Non
Autre	Oui	Oui	Non	Oui

**62) Vous pouvez indiquer ci-dessous :**

- tout commentaire utile pour l'interprétation des données ci-dessus
- si possible un organigramme avec une description des compétences des différentes instances responsables des procédures budgétaires au sein des tribunaux

In accordance with the Constitution, the Judicial Council proposes to the Government funds for the work of the courts.

President of the Court gives the financial orders in the court, and daily financial activities are performed by the financial department of the Court.

Control of spending of budget funds is performed by the Ministry of Finance - Department of Vault, through the examination of annual accounts of consumers units that are users of the budget.

**63) Pour l'assistance directe au travail du juge/du greffier, quelles sont les possibilités offertes par le système informatique existant dans les juridictions ?**

	100% des tribunaux	+50% des tribunaux	-50% des tribunaux	-10% des tribunaux
Traitement de texte	Oui	Non	Non	Non
Base de données électronique pour la jurisprudence	Non	Non	Oui	Non
Dossiers électroniques	Non	Non	Oui	Non
E-mail	Oui	Non	Non	Non
Connexion internet	Oui	Non	Non	Non

**64) Pour l'administration et gestion, quelles sont les possibilités offertes par le système informatique existant dans les juridictions ?**

	100% des tribunaux	+50% des tribunaux	-50% des tribunaux	-10% des tribunaux
Enregistrement des affaires	Oui	Non	Non	Non
Système d'information sur la gestion du tribunal	Non	Oui	Non	Non
Système d'information financière	Non	Non	Non	Oui

**65) Pour la communication entre le tribunal et les parties, quelles sont les possibilités offertes par le système informatique existant dans les juridictions ?**

	100% des tribunaux	+50% des tribunaux	-50% des tribunaux	-10% des tribunaux
Formulaire électronique	Non	Non	Non	Non
Site internet spécifique	Non	Non	Oui	Non
Autres moyens de communication électronique	Non	Non	Oui	Non

**66) Existe-t-il une institution centralisée responsable de la collecte de données statistiques concernant le fonctionnement des tribunaux et du système judiciaire?**

- Oui  
 Non

Si oui, veuillez préciser le nom et les coordonnées de cette institution:

The Secretariat of The Judicial Council  
[www.sudskisavjet.gov.me](http://www.sudskisavjet.gov.me)

**Vous pouvez indiquer ci-dessous :**

**- tout commentaire utile pour l'interprétation des données indiquées dans ce chapitre  
- les caractéristiques de votre système judiciaire et les réformes majeures mises en œuvre au cours des deux dernières années**

Q.63 – Electronic files – if this refers to court cases, all files originated in the court and received from the institutions which are users of the Judicial Information System -PRIS system (the public prosecutor's office, the Ministry of Justice and the Institution for Enforcement of Criminal Sanctions and Offices for misdemeanours) will be available in electronic form through the said PRIS system.

Q.64 – Annual schedule, distribution of cases, filing of cases and handling of the cases is maintained through the Judicial Information System - PRIS. A financial information system in use is the SAP and it is used only in the Secretariat of the Judicial Council to which all the courts submit documents and data to be entered and processed.

Q.65 – Web forms for communication with parties do not exist. E-mail addresses of the courts are available for communication with parties. A number of courts have their web pages, and there are LCD displays in three courts in Podgorica on which the schedule of trials for the court concerned is displayed and which serve to inform the parties.

### 3. 2. Suivi et évaluation

#### 3. 2. 1. Suivi et évaluation

**67) Les tribunaux doivent-ils établir un rapport annuel d'activités ?**

- Oui  
 Non

**68) Existe-t-il un système régulier de suivi des activités des tribunaux concernant:**

- Le nombre de nouvelles affaires ?  
 Le nombre de décisions rendues ?  
 Le nombre d'affaires faisant l'objet d'un renvoi ?  
 La durée des procédures (délais)?  
 autre ?

Veillez préciser :

The preparation of this informations is obligation of all courts individually. The courts give the statistical overview in their annual reports.

**69) Existe-t-il un système régulier d'évaluation de l'activité (en termes de performance, rendement) de chaque tribunal?**

- Oui  
 Non

Veillez préciser :

All courts are obliged to submit annual reports to the Supreme Court and Judicial Council. At the request of the Judicial Council President of the Court is obliged to provide special or periodic reports within the time specified by the Judicial Council. Additionally, the Supreme Court is performing the annual general control over the lower courts (through visits to the courts, control of their work on site, etc.).

**70) Concernant l'activité des tribunaux, avez-vous défini des indicateurs de performance (si non, veuillez passer à la question 72):**

- Oui  
 Non

**71) Veuillez préciser les 4 principaux indicateurs de performance et de qualité d'une bonne justice :**

- nouvelles affaires  
 durée des procédures (délais)  
 affaires terminées  
 affaires pendantes et stocks d'affaires  
 productivité des juges et des personnels des tribunaux  
 pourcentage d'affaires traitées par un juge unique  
 exécution des décisions pénales  
 satisfaction du personnel des tribunaux  
 satisfaction des usagers (au regard des services rendus par les tribunaux)  
 qualités judiciaire et organisationnelle des tribunaux  
 coûts des procédures judiciaires  
 autre

Veuillez préciser :

The specified criteria are considered crucial for assessment of efficiency of work and quality of work of each individual court of justice, since completion of cases in reasonable time and lawfulness of decisions rendered depend on these criteria. Furthermore, fulfilment of other specified criteria depends on organisation of work in each court of justice.

**72) Existe-t-il des objectifs de performance pour chaque juge? (si non, veuillez passer à la question 74)?**

- Oui  
 Non

**73) Veuillez préciser qui fixe ces objectifs:**

- pouvoir exécutif (par exemple Ministère de la justice)  
 pouvoir législatif  
 pouvoir judiciaire (par exemple un Conseil supérieur de la Magistrature ou une instance supérieure)  
 Autre

Si autre, veuillez préciser :

**74) Existe-t-il des objectifs de performance au niveau des tribunaux (si non, veuillez passer à la question 77)?**

- Oui



Non

**75) Veuillez préciser qui fixe ces objectifs:**

- pouvoir exécutif (par exemple Ministère de la justice)
- pouvoir législatif
- pouvoir judiciaire (par exemple un Conseil supérieur de la Magistrature ou une instance supérieure)
- autre

Si autre, veuillez préciser :

**76) Veuillez préciser les principaux objectifs retenus :**

The most important objectives of the comprehensive reform of administration of justice in Montenegro (which is implemented through the Action Plan for Implementation of the Strategy of Reform of Judiciary 2007-2012) is reform of the existing judicial network with the aim to increase independence of agents of the administration of justice function, efficiency of work of judicial bodies, availability of judicial bodies regulations and decisions to the citizens, harmonisation of regulations with international standards, decreasing of the backlog of cases and strengthening of confidence of the citizens in the judicial system, as well as modernisation of the said system from the technical point of view by establishing a judicial information system.

Drafting of the Analysis of the network of courts in Montenegro is underway, which will indicate the needs regarding reorganisation of the judiciary with a view to strengthening the efficiency of their work.

**77) Quelle est l'autorité chargée d'évaluer ces indicateurs de performance des tribunaux :**

- Conseil Supérieur de la Magistrature
- Ministère de la justice
- organe d'inspection
- Cour Suprême ?
- organe d'audit extérieur ?
- autre

Si autre, veuillez préciser :

**78) Existe-t-il des standards de qualité (politiques de qualité d'organisation et/ou de qualité judiciaire) définis pour les tribunaux (existence d'un système qualité au sein du système judiciaire) ?**

- Oui
- Non

Si oui, veuillez préciser :

Operation of courts of justice is clearly defined by the Law on Courts of Justice and by a Court's rules of procedure. Court decisions are written and announced in a manner defined by the law. Furthermore, there are strict deadlines regarding announcement of decisions for a range of procedural acts as well. All this is aimed at more efficient procedure and higher quality of rendering of decisions. Also, the Law on Protection of the Right to Court Trial in Reasonable Time is in force in Montenegro.

**79) Existe-t-il des personnels spécialisés dans les tribunaux responsables d'une politique de qualité et/ou de systèmes de qualité de la justice ?**

- Oui  
 Non

**80) Existe-t-il un système permettant de mesurer le stock d'affaires en cours et de repérer les affaires non traitées dans un délai raisonnable :**

- en matière civile ?  
 en matière pénale ?  
 en matière administrative ?

**81) Disposez-vous d'un moyen de mesurer les temps morts durant les procédures judiciaires?**

- Oui  
 Non

Si oui, veuillez préciser :

In cases when it is found out by means of an analysis that there is considerable backlog of cases (if the number of pending cases is greater than the number of cases received in a quarterly period), the chairperson of the court initiates the programme of processing of the backlog of cases. Such programmes may include overtime work of judges, changes in internal organisation of the court, temporary changes of working hours, etc. The president supervises realisation of such programmes.

At the same time, the Law on Protection of the Right to Court Trial in Reasonable Time has specified that practice of the European Court of Human Rights shall be regarded as the standard for interpretation of reasonable duration of proceedings before the courts.

**82) Existe-t-il un système d'évaluation du fonctionnement des tribunaux basé sur un plan d'évaluation (calendrier de visites) convenu a priori ?**

- Oui  
 Non

Veuillez préciser (y compris en indiquant la fréquence de l'évaluation):

In addition to regular Control of the courts by the Supreme Court, the authorized officers of the Ministry of Justice in accordance with the Law on Courts supervise the affairs of judicial administration. The authorized officers in accordance with the plan perform annual visits to each of the judicial authority. If necessary, in order to inspect the individual subject, they visit the judicial bodies ad hoc. After such visits, the officers take the minutes - the report, which is being submitted to the Minister of Justice and President of the Court.

**83) Existe-t-il un dispositif régulier de suivi et d'évaluation de l'activité du Ministère public?**

- Oui  
 Non

Si oui, veuillez préciser :

Monitoring and appraisal of the public prosecutorial system operation is carried out by means of: presentation of Annual Reports on Operation of the Public Prosecutor's Office before the Parliament; submission of annual reports of inferior prosecutor's offices to superior prosecutor's offices; inspection control of authorised officers of the Ministry of Justice over the work of the judicial bodies – continuous control (in offices and by on-the-spot visits) over administrative operations of the public prosecutorial system; through special reports of the Supreme Public Prosecutor's Office on the situation in the area of fight against crime, corruption and other similar problems, upon the request of the Parliament of Montenegro.

**Vous pouvez indiquer ci-dessous :**

- tout commentaire utile pour l'interprétation des données indiquées dans ce chapitre
- les caractéristiques du système de suivi et d'évaluation des tribunaux

Q.79-There are no specialised officers/employees in the courts of justice to whom the quality policy, i.e. the systems of quality in administration of justice is delegated.

There is the Centre for Education of Agents of the Administration of Justice Function at the Supreme Court of Montenegro, delegated with education of judges, while education of court employees is delegated to the Human Resources Administration as a separate independent body. The chairperson of the court manages the court, organises the work in the court, allocates tasks and undertakes measures aimed at due and timely execution of tasks in the court – Article 84 of the Law on the Courts of Justice.

The Judicial Council controls the work of courts and judges.

## 4. Procès équitable

### 4. 1. Principes

#### 4. 1. 1. Principes généraux

**84) Quel est le pourcentage de jugements de première instance en matière pénale dans lesquels le suspect n'est pas présent ou représenté par un professionnel (ex. avocat) durant l'audience (jugements par défaut)? Dans les cas où les données ne sont pas disponibles (NA) ou ne s'appliquent pas (NAP) veuillez l'indiquer dans le tableau en utilisant les bonnes abréviations.**

Trial in absentia was held concerning 953 accused persons. In all these cases the accused person had a defence lawyer, since Article 69 paragraph 4 of the Law on Criminal Proceedings lays down that an accused person adjudicated in absentia must have a defence lawyer as soon as the court has rendered a decision of trial in absentia.

The percentage of verdicts in criminal proceedings of first instance in which accused persons were adjudicated in absentia in relation to the total number of verdicts rendered in 2008 is 8.86%.

In pursuance with Article 69 paragraph 2 of the Law on Criminal Proceedings, after bringing an indictment for a criminal offence for which the law provides that imprisonment for the period of ten years may be imposed, the accused person must have a defence lawyer at the time of delivery of the indictment. Due to such legal provision, all accused persons adjudicated before the high courts had a defence lawyer (this relates to the accused persons who were present at the main trial).

The accused persons adjudicated for minor criminal offences under jurisdiction of courts of first instance did not have a defence lawyer in 5044 cases, since in such cases the accused person has the right to make a statement about whether or not they desire to have a defence lawyer.

**85) Existe-t-il une procédure permettant la récusation effective d'un juge si une partie estime qu'il n'est pas impartial ?**

Oui

Non

Si possible, nombre de récusations qui ont abouti (en une année):

224

**86) Veuillez préciser les données suivantes concernant le nombre d'affaires relatives à l'Article 6 de la Convention européenne des Droits de l'Homme (durée et non-exécution), pour l'année de référence. Si les données ne sont pas disponibles veuillez l'indiquer (NA).**

	Affaires déclarées irrecevables par la Cour	Règlements amiables	Jugements constatant une violation	Jugements constatant une non violation
Procédures civiles - Article 6§1 (durée)				
Procédures civiles - Article 6§1 (non-exécution)				
Procédures pénales - Article 6§1 (durée)				

### 4. 2. Durée des procédures

#### 4. 2. 1. Généralités

**87) Existe-t-il des procédures spécifiques pour les affaires urgentes :**

- en matière civile ?
- en matière pénale ?
- en matière administrative ?

Veillez préciser:

With the Rules of procedure of courts of justice, it is prescribed that actions in the proceedings which are urgent by their nature, can not be delayed, so they are acted upon without regard regarding working hours, holidays etc. Also, in accordance with this, when making a schedule for holidays etc. plan is being made in a way that there is sufficient number of judges and other staff in the courts, to ensure efficient proceedings which are defined by the law as urgent - detention, investigation, cases of criminal proceedings towards minors, labour disputes, disputes on legal obligation of maintenance, disturbing of factual holding, keeping and raising of children, disputes in the field of securities, land registry and commercial disputes during the procedure of bankruptcy, on cases upon requests for securing evidence, requests for ordering, limiting or cancelling of temporarily measures etc.

The procedure in civil proceedings from the area of labour relations and in civil proceedings due to disturbance of possession is urgent in its nature, in accordance with the Law on Civil Proceedings. Also, the judge is authorised to summon the parties to appear at the court by phone or by telegram (Article 456 of the Law on Civil Proceedings). The Law on Criminal Proceedings prescribes urgency of action in detention cases. Also, urgency is prescribed in cases involving minors and in criminal proceedings for offences perpetrated in organised manner.

#### **88) Existe-t-il des procédures simplifiées :**

- en matière civile (petits litiges) ?
- en matière pénale (petites infractions) ?
- en matière administrative ?

Veillez préciser (par exemple si une nouvelle loi sur les procédures simplifiées a été adoptée):

The Law on Civil Proceedings provides for special provisions of the proceedings in disputes of minor value (Chapter XXX).

The Code of Criminal Proceedings provides for special provisions for summary procedure (Chapter XXVI of the Criminal Procedure Code).

The Law on General Administrative Proceedings provides for the possibility of summary procedure for the bodies deciding in administrative matters (Article 133 of The Law on general administrative procedure).

#### **89) Les tribunaux et les avocats ont-ils la possibilité de conclure des accords sur les modalités de traitement des affaires (présentation des dossiers, fixation des délais pour conclure et des dates d'audience) ?**

- Oui
- Non

Si oui, veuillez préciser :

#### **4. 2. 2. Affaires pénales, civiles, et administratives**

#### **90) Nombre total d'affaires en 1ère instance (contentieuses et non contentieuses): veuillez compléter le tableau. Dans les cas où les données ne sont pas disponibles (NA)**

**ou ne s'appliquent pas (NAP) veuillez l'indiquer dans le tableau en utilisant les bonnes abréviations.**

	Affaires pendantes au 1 janvier 2008	Nouvelles affaires	Affaires terminées	Affaires pendantes au 31 décembre 2008
Nombre total d'affaires civiles, commerciales et administratives	34883	76298	77371	33951
1 Affaires civiles (et commerciales) contentieuses*	13345	14680	16273	11752
2 Affaires civiles (et commerciales) non contentieuses*	4730	11883	12503	4110
3 Affaires relatives à l'exécution	15182	23805	22555	16432
4 Affaires relatives au registre foncier**	NA	NA	141	NA
5 Affaires relatives au registre du commerce**	107	23842	23912	37
6 Affaires administratives*	1519	2088	1987	1620
7 Autres				
Nombre total d'affaires pénales (8+9)	28566	26025	33521	21070
8 Affaires pénales (infractions graves)	8348	8501	10752	6097
9 Petites infractions	20218	17524	22769	14973

**91) Commentaires (y compris concernant les types d'affaires inclus dans le total des affaires civiles, commerciales et administratives et les types d'affaires pénales - définition des petites infractions et des infractions graves):**

- a) Civil cases are the cases in disputes concerning proprietary, marital, family, personal-legal, copyright and other relations.
- b) in disputes due to a correction or reply to a piece of information contained in public information media and about requests regarding violation of personal rights done in public information media.
- c) in labour legal cases (from a labour relation; on conclusion and implementation of collective bargaining agreements, as well as all disputes between an employer and the trade union, on implementation of regulations about strike; on appointment and dismissal of bodies in companies and other entities).

Commercial legal cases are the cases formed due to disputes between domestic companies, foreign companies, other legal entities and entrepreneurs concerning their commercial-legal relations, as well as in disputes in which the parties are not economic entities, but they are in the relation of material joinder of parties with economic entities; in disputes concerning copyrights and industrial property rights between domestic companies, foreign companies, other legal entities and entrepreneurs; in disputes concerning the rights of artists, rights of reproduction, re-recording and trading with audio-visual works, as well as in disputes concerning computer programs and their use and transfer between domestic companies, foreign companies, other legal entities and entrepreneurs; with regard to disturbance of possession between the above mentioned parties; with reference to distortion of competition, abuse of monopolistic and dominating position in the market and conclusion of monopolistic agreements; in disputes regarding vessels and sailing at sea and in internal waters, as well as in disputes in which maritime law applies, except for disputes concerning transportation of passengers; in disputes which refer to aircrafts and in disputes to which air law applies, except for disputes concerning transportation of passengers; in other legal matters put under the jurisdiction of the commercial court by the law.

Administrative legal cases are the cases formed due to claims which contest lawfulness of an individual administrative act or other individual act in other legal matters, when different court protection is not provided for.

Data on "cadastral cases" are provided only in part – the number of cases of this type concluded during 2008 is stated. This is due to the fact that such cases are registered as per the indicted body, and the indicted body here is a second-instance body – the Ministry of Finance, and therefore it is not possible to determine from the register the number of received cases and the number of cases being processed, that refer to "cadastral cases". In these cases the first-instance administration body is the Real-Estate Administration. The number of completed cases has been determined in accordance with the records of completed cases, these records being maintained with the Administrative Court of Montenegro per fields due to the needs of the website.

Misdemeanours are not under jurisdiction of ordinary courts of justice and are not registered as criminal cases. The total number of criminal cases that were processed by courts of first instance and high courts is stated.

**\*\*Clarification of the category 9 – Misdemeanours in Montenegro**

Misdemeanour proceedings are conducted at first-instance level by local misdemeanour bodies, ministries and other administration bodies and local administration bodies. Misdemeanour proceedings at second-instance level are conducted by the Misdemeanour Council of the Republic of Montenegro. Bodies of local administration conduct misdemeanour proceedings for misdemeanours defined by a decision of the assembly of a local self-administration unit, as well as for misdemeanours defined by the law or a decree directly implemented by a local self-government unit. Bodies that conduct misdemeanour proceedings independently decide thereon on the basis of the Constitution, law and other regulations.

The category 9 contains the number of cases that local misdemeanour bodies were processing, assorted in 2 categories: requests to institute misdemeanour proceedings (2471/5255/6554/1172) and requests of other bodies for execution of a sanction, safeguard measures and correctional measures ruled in misdemeanour proceedings, as well as costs of misdemeanour proceedings, and requests for execution made by other bodies that conduct misdemeanour proceedings (17747/12269/16215/13801). Figures in this column stand for the sum of these two categories of cases.

**92) Nombre total d'affaires en 2ème instance (appel) (contentieuses et non contentieuses): veuillez compléter le tableau. Dans les cas où les données ne sont pas disponibles (NA) ou ne s'appliquent pas (NAP) veuillez l'indiquer dans le tableau en utilisant les bonnes abréviations.**

**\* Veuillez indiquer (dans les commentaires ci-dessous) quels types d'affaires sont inclus dans le total des affaires civiles, commerciales et administratives**

**\*\* le cas échéant**

**Veuillez vérifier la cohérence des données tel qu'expliqué à la question 91.**

**Commentaires (y compris concernant les types d'affaires inclus dans le total des affaires civiles, commerciales et administratives et les types d'affaires pénales et, si possible les taux d'appel pour certaines catégories d'affaires):**

	Affaires pendantes au 1 janvier 2008	Nouvelles d'affaires	Affaires terminées	Affaires pendantes au 31 décembre 2008
Nombre total d'affaires civiles, commerciales et administratives (contentieuses et non contentieuses)	6284	6354	7384	5254
1 Affaires civiles (et commerciales) contentieuses*				
2 Affaires civiles (et commerciales) non contentieuses*				
3 Affaires relatives à				

l'exécution				
4 Affaires relatives au registre foncier**				
5 Affaires relatives au registre du commerce**				
6 Affaires administratives				
7 Autres				
Nombre total d'affaires pénales (8+9)	1497	4658	4402	1753
8 Affaires pénales (infractions graves)				
9 Petites infractions	0	2582	2582	0

Commentaire :

Second-instance courts of justice in Montenegro are the Appellate Court of Montenegro and high courts (the High Court in Podgorica and the High Court in Bijelo Polje).

The Appellate Court of Montenegro decides on appeals against first-instance decisions of high courts and on appeals against decisions of the commercial courts. Since the high courts are courts of first instance only in criminal matters, the Appellate Court of Montenegro decides on appeals against first-instance decisions of high courts in criminal matters.

The high courts decide at second-instance level on appeals against decisions of courts of first instance in criminal and civil matters.

Having regard to divided jurisdiction between the Appellate Court of Montenegro and high courts, we stated hereunder separate data for these courts in 4 time categories:

The Appellate Court of Montenegro

Total number of commercial legal cases - 377/728/844/261

Total number of criminal cases - 214/761/752/223

The High courts

Total number of civil legal cases of appeal - 5907/5626/6540/4993

Total number of criminal cases of appeal - 1283/3897/3650/1530

In the tables above, commercial legal cases include all the cases under jurisdiction of the commercial court, since all of them are registered under the designation "Pž" with the Appellate Court.

Cases denoted as civil legal cases under jurisdiction of high courts include all the cases from that subject matter under jurisdiction of courts of first instance, all of them are registered under the designation "Gž".

The right to appeal against decisions of the Administrative Court of Montenegro is not provided for by the Law on Administrative Dispute, and therefore there are no administrative legal cases of appeal. There are two extraordinary legal remedies allowed against decisions of the Administrative Court – a request for extraordinary reconsidering of a court decision and a request for repetition of proceedings. The Supreme Court of Montenegro decides upon requests for extraordinary reconsidering of a court decision, while the Administrative Court of Montenegro decides upon requests for repetition of proceedings.

\*\* Clarification of the category 9 – Misdemeanours in Montenegro

In Montenegro, in accordance with the law, misdemeanour proceedings at second-instance level are conducted by the Misdemeanour Council of the Republic of Montenegro. In the course of 2008, the Misdemeanour Council had 2582 cases under processing, all of them received in that year. There was no backlog of cases from previous years. On the day of 31 December 2008 all cases of the Misdemeanour Council were resolved, so there was no carrying forward of cases into the year 2009.

**93) Nombre total d'affaires au niveau des cours suprêmes (contentieuses et non**



**contentieuses: veuillez compléter le tableau. Dans les cas où les données ne sont pas disponibles (NA) ou ne s'appliquent pas (NAP) veuillez l'indiquer dans le tableau en utilisant les bonnes abréviations.**

**\* Veuillez indiquer (dans les commentaires ci-dessous) quels types d'affaires sont inclus dans le total des affaires civiles, commerciales et administratives**

**\*\* le cas échéant**

**Veuillez vérifier la cohérence des données tel qu'expliqué à la question 88.**

**Commentaires (y compris concernant les types d'affaires inclus dans le total des affaires civiles, commerciales et administratives et les types d'affaires pénales, ainsi que les possibles limitations des recours devant la plus haute juridiction):**

	Affaires pendantes au 1 janvier 2008	Nouvelles d'affaires	Affaires terminées	Affaires pendantes au 31 décembre 2008
Nombre total d'affaires civiles, commerciales et administratives	77	855	930	2
1 Affaires civiles (et commerciales) contentieuses*	26	645	669	2
2 Affaires civiles (et commerciales) non contentieuses*	26	64	90	0
3 Affaires relatives à l'exécution				
4 Affaires relatives au registre foncier**				
5 Affaires relatives au registre du commerce**				
6 Affaires administratives	25	146	171	0
7 Autres				
Nombre total d'affaires pénales (8+9)	0	925	925	0
8 Affaires pénales (infractions graves)				
9 Petites infractions				

Commentaire :

The Supreme Court of Montenegro, as the highest court in Montenegro, is in charge of deciding per reviews against enforceable decisions in civil and commercial matters.

Review is allowed in proprietary legal matters in which the statement of claim refers to monetary claim, surrender of an asset or execution of some other obligation, as well as in proprietary legal disputes in which the statement of claim does not refer to monetary claim, surrender of an asset or execution of some other obligation if the value of the subject matter of the dispute exceeds 10,000 euros.

Notwithstanding the value of a dispute, review is always allowed:

- in disputes concerning maintenance when maintenance is established and revoked for the first time,
- in disputes concerning compensation of damages for lost maintenance due to the death of maintenance provider and due to lost earnings or other income from labour when these compensations are established or revoked for the first time,
- in proprietary disputes arisen due to anti-constitutional and unlawful individual acts and actions which put legal entities or natural persons, depending on their registered office i.e. residence, to unequal position in the market or which disturb the market in another manner, including also disputes over compensation of damages caused by the above said acts or actions.

In labour relation disputes review is allowed only in disputes concerning entering into employment, existence of the employment and termination of the employment.

In commercial disputes review is allowed if the value of the subject matter of the dispute of the refuted part of the enforceable verdict exceeds the amount of 30,000 euros.

Civil legal cases include all cases from that field in which review has been appealed for.

Commercial legal cases include all cases in which review has been appealed for against decisions of commercial courts.

Administrative legal cases include all cases in which a request for extraordinary reconsideration of an enforceable decision of the Administrative Court is submitted.

In criminal matters the Supreme Court decides on appeals at third-instance level, when such legal instrument is allowed by the law, and on extraordinary legal remedies – a request for protection of lawfulness, a request for examination of lawfulness of an enforceable verdict and extraordinary mitigation of sentence.

The Supreme Court is in charge of deciding on extension of detention period prior to bringing an indictment when three months of detention have passed, which is the period for which a court of first instance may order i.e. extend detention.

Also, the Supreme Court is in charge of deciding on devolving of territorial jurisdiction and to determine a court which shall have territorial jurisdiction when jurisdiction of courts in Montenegro is not precluded and when it is not possible to determine on the basis of the rules on territorial jurisdiction which court has territorial jurisdiction over certain matter.

The table above contains a figure referring to all criminal cases which the Supreme Court processed during 2008.

**94) Nombre d'affaires de divorces contentieux, licenciements, vols avec violence et homicides volontaires reçues et traitées par les tribunaux de 1ère instance: veuillez compléter le tableau. Dans les cas où les données ne sont pas disponibles (NA) ou ne s'appliquent pas (NAP) veuillez l'indiquer dans le tableau en utilisant les bonnes abréviations.**

	Affaires pendantes au 1er janvier 2008	Affaires nouvelles	Affaires terminées	Affaires pendantes au 31 décembre 2008
Divorces contentieux	530	1212	1260	482
Licenciements	135	275	222	188
Vols avec violence	51	51	49	53
Homicides volontaires	43	22	30	35

**95) Durée moyenne des procédures, en jours (à partir de la date de saisine du tribunal), nombre d'affaires pendantes de plus de 3 ans et % d'affaires ayant fait l'objet d'un appel: veuillez compléter le tableau Dans les cas où les données ne sont pas disponibles (NA) ou ne s'appliquent pas (NAP) veuillez l'indiquer dans le tableau en utilisant les bonnes abréviations.**

**Veuillez ajouter tout commentaire utile pour l'interprétation des données ci-dessus:**

	% des décisions ayant fait l'objet d'un appel	% d'affaires pendantes de plus de 3 ans	1ère instance (durée moyenne)	2ème instance (durée moyenne)	Total de la procédure (moyenne durée totale)
Divorces contentieux	2,67%	3,12%	103,86 days	120,46 days	224,32 days
Licenciements	51%	4,09%	306,06 days	316,13 days	622,19 days
Vols avec violence	27,35&88,46%	0,70% &27,13%	131,46&708,5	123,20&311,5	254,66&1020
Homicides volontaires	90%	18,75%	999,04 days	269,6 days	1268,64 days

Commentaire :

In cases of theft in the nature of robbery / robbery - The first amount in all 4 boxes is statistics regarding Basic courts, and the second amount in boxes is the statistics regarding the high courts.

1. % of decisions subject to appeal:27,35% in the Basic courts and 88,46% in the High courts

2. % of pending cases more than 3 years:0,70% in the Basic courts and 27,13% in the High courts
3. 1st instance (average length):131,46 days in the Basic courts and 708,5 days in the High courts
4. 2nd instance (average length):123,20 days in the Basic courts and 311,5 days in the High courts
5. total procedure (average totallength): 254,66 ays in the Basic courts and 1020 days in the High courts

**96) Le cas échéant, veuillez préciser les procédures propres au divorce (contentieux et non contentieux):**

**97) Comment est calculé le délai de procédure pour les quatre catégories d'affaires ? Veuillez décrire la méthode de calcul.**

The average length of proceedings is calculated by analyzing the relation between the length of the proceedings and number of cases.

**98) Veuillez décrire le rôle et les attributions du procureur dans la procédure pénale (plusieurs choix possibles):**

- diriger ou superviser l'enquête policière
- mener des enquêtes
- quand cela est nécessaire, saisir le juge pour qu'il ordonne des mesures d'enquêtes
- porter une accusation
- soumettre l'affaire au tribunal
- proposer une peine au juge
- faire appel
- superviser la procédure d'exécution
- classer l'affaire sans suite, sans avoir une décision du tribunal
- clore l'affaire par une sanction ou une mesure imposée ou négociée sans décision d'un juge
- autre attribution significative

Veuillez préciser :

\*\*\*The newly adopted Law on Criminal Proceedings provides for modifications of criminal proceedings in terms of introduction of the notion of prosecutorial investigation. In accordance with the above said, upon coming into force of the provisions of this law, the prosecutor shall have the power to conduct and supervise investigation. Establishment of the system in which the prosecutor instead of an investigative judge governs investigation entails the duty of the public prosecutor to establish with equal care in investigation both facts that charge the accused person and facts that favour the accused person.

Beside the existing powers and powers in conducting an investigation, the power to conclude an agreement on admission of guilt with the accused person is significant.

**99) Le procureur a-t-il également un rôle dans les affaires civiles et/ou administratives ?**

- Oui
- Non

Si oui, veuillez préciser :

\*\*\*The Constitution of Montenegro from October 2007 exempted the function of representation of the state in proprietary-legal relations from competences of the public prosecutor's office. Accordingly, the Law on Amendments to the Law on Public Prosecutor («Official Gazette of Montenegro» 40/08), the provision of Article 133 c lays down that the provisions of the Law on Public Prosecutor that refer to representation of Montenegrin proprietary legal relations shall cease to have effect on the day of appointment of the Protector of Proprietary Legal Interests of Montenegro, hence the public prosecutor's office continued to perform the representative function since the above said body was not appointed in 2008.

**100) Fonctions du procureur concernant les affaires pénales – veuillez compléter le tableau. Dans les cas où les données ne sont pas disponibles (NA) ou ne s'appliquent pas (NAP) veuillez l'indiquer dans le tableau en utilisant les bonnes abréviations.**

**Veuillez ajouter tout commentaire utile pour l'interprétation des données ci-dessus, et préciser notamment si les données indiquées incluent ou non le contentieux en matière de code de la route:**

	Reçues par le procureur	Classées sans suite par le procureur parce que l'auteur de l'infraction n'a pas pu être identifié	Classées sans suite par le procureur en raison d'une impossibilité de fait ou de droit	Classées sans suite par le procureur pour raison d'opportunité	Terminées par une sanction ou par une mesure imposée ou négociée par le procureur	Portées par le procureur devant les tribunaux
Nombre total d'affaires pénales de 1ère instance	10859	1550	1260	25	72	7795

Commentaire :

Informations enclose traffic offences.

**Vous pouvez indiquer ci-dessous :**

**- tout commentaire utile pour l'interprétation des données indiquées dans ce chapitre  
- les caractéristiques de votre système concernant la durée des procédures et les réformes majeures mises en œuvre au cours des deux dernières années**

Q. 86.-The Law on Protection of the Right to Court Trial in Reasonable Time was applied in the course of the reporting year, which provides for the mechanisms for protection of this right in the course of the proceedings themselves (control request to accelerate the proceedings), and there were 40 such requests submitted and all of them were resolved. After the completion of court proceedings in accordance with the standards of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the right to file a claim for fair redress is acquired, and the claim is to be filed with the Supreme Court of Montenegro; there were 11 such claims filed in the reporting year and all of them were resolved. This has created the prerequisites to use an effective legal instrument for protection of the said right at the national level and thus to reduce the number of appeals to European Court of Human Rights. At the beginning of implementation of the said laws, training of chairpersons of courts and judges of the Supreme Court were conducted and these trainings dealt with practical aspects adopted by the European Court, on which the implementation of the Law on Court Trial in Reasonable Time relies. The courts process the legal instruments provided for by the said law and render decisions in this field in urgent proceedings.

**Veuillez indiquer les sources pour les réponses aux questions 90 à 95 et 100:**

The Supreme court of Montenegro, The Supreme State Prosecutor's office of Montenegro and The Council for Misdemeanours of Montenegro.

## 5. Carrière des juges et procureurs

### 5. 1. Désignation et formation

#### 5. 1. 1. Recrutement, nomination et promotion

##### 101) Comment les juges sont-ils recrutés ?

- Par concours (par exemple après un diplôme universitaire en droit)
- Une procédure de recrutement spécifique pour des professionnels du droit ayant une longue expérience juridique (par exemple des avocats)
- Une combinaison des deux
- Autres

Si autres, veuillez préciser:

Following the adoption of the Constitution in 2007, comprehensive reform of the system of administration of justice (judiciary) has been carried out. Namely, by means of the new constitutional solution which delegates selection of judges to the Judicial Council (which was previously under the competences of the Parliament), greater independence of the judicial authority has been achieved. Depoliticisation of the judicial authority, displacement of selection of agents of the judicial function away from the Parliament and conferring new powers to institutions of the judicial authority created the framework for its independence, in accordance with internal responsibility, judgment of the public and parliamentary control within the limits set by the Constitution and the laws of the state of Montenegro. Such system reclines on international legal standards that incorporate the principles of independence of courts and judges, while its material legal framework and additional form of external control is based on international law.

The President of the Supreme Court and the President and judges of the Constitutional Court are appointed to and removed from office by the Parliament of Montenegro.

Judges, presidents of courts and lay judges are appointed to and removed from office by the Judicial Council. Also, the Judicial Council determines termination of judicial function and decides on the number of judicial positions and the number of lay judges in a court. Judges and chairpersons of courts are appointed on the basis of public announcement of vacancies. Following the reception of applications from the candidates, the Judicial Council acquires the opinion about professional and working qualities for execution of the judicial function for each candidate from the bodies where the said candidates worked, from the bench of judges of the court that a candidate applied to and from the bench of judges of a directly superior court. The Committee of the Judicial Council interviews the candidates who fulfil the requirements for appointment to the vacant position. The Judicial Council may also conduct written examination of the candidates prior to interviewing them. On the basis of the interviews and the acquired documentation, the Committee creates the list of candidates who accomplished satisfactory results. The list is submitted to the Judicial Council, which renders a decision on appointment in a non-public session. The decision must contain a written statement of reasons.

##### 102) Les juges sont-ils recrutés et nommés, initialement, en début de carrière, par :

- une instance composée seulement de juges?
- une instance composée seulement de non juges?
- une instance composée de juges et de non juges?

##### 103) La même instance est-elle compétente pour la promotion des juges ?

- Oui  
 Non

Si non, veuillez préciser quelle instance est compétente pour la promotion des juges

**104) Quels critères et procédures sont utilisés pour promouvoir les juges ? Veuillez préciser:**

The criteria for selection of judges are as follows:

- 1) professional knowledge, work experience and work results;
- 2) published scientific papers and other professional activities;
- 3) professional development;
- 4) ability to perform the function for which he/she applied in an unbiased, conscientious, assiduous, decisive and responsible manner;
- 5) good communication abilities;
- 6) relations with colleagues, behaviour outside of work, professionalism, unbiased behaviour and good reputation.

In addition to the above listed criteria, organisational skills of candidates are taken into consideration when selecting a chairperson of a court.

**105) Comment sont recrutés les procureurs ?**

- Par concours (par exemple après un diplôme universitaire en droit)  
 Une procédure de recrutement spécifique pour des professionnels du droit ayant une longue expérience juridique (par exemple des avocats)  
 Une combinaison des deux  
 Autres

Si autres, veuillez préciser:

The same as regarding selection of judges, the Constitution from 2007 introduced innovations into organisation and operation of the public prosecutorial system as well. The Constitution of Montenegro from the year 2007 provided for existence of the Prosecutorial Council, appointed by the Parliament of Montenegro, whose duty is to ensure independence of the public prosecutorial system and of public prosecutors. On the day of 04 July 2008, the Law on Amendments to the Law on Public Prosecutor came into force, which created legal grounds for achieving greater degree of independence of prosecutorial function through modified jurisdiction of the Prosecutorial Council.

In accordance with the Constitution, the Supreme Public Prosecutor and public prosecutors shall be appointed and dismissed by the Parliament of Montenegro. In accordance with the new legal powers of the Prosecutorial Council, the Prosecutorial Council is authorised to appoint, dismiss and determine termination of the function of a deputy public prosecutor, to whom the new Law guarantees permanency of function as well.

**106) Les procureurs sont-ils recrutés et nommés, en début de carrière, par :**

- une instance composée seulement de procureurs ?  
 une instance composée seulement de non procureurs?  
 une instance composée de procureurs et de non procureurs?

**107) La même instance est-elle compétente pour la promotion des procureurs ?**

Oui

Non

Si non, veuillez préciser quelle instance est compétente pour la promotion des procureurs

**108) Quels critères et procédures sont utilisés pour promouvoir les procureurs? Veuillez préciser.**

In addition to the criteria determined by the law, more detailed criteria for appointment of deputies who are appointed for the first time are as follows:

\* Professional knowledge, which includes:

- professionalism in execution of tasks, assessed on the basis of independence, creativity and quality of the executed tasks,
- results of a written test,
- familiarity with information technology,
- foreign languages skills,
- mark obtained at the final exam of the initial education;

\* Work experience, which includes:

- length of the work experience and type of work positions previously held by a candidate (court, prosecutor's office, practice of law, administration, commerce);

\* Work results, which include:

- professionalism, volume of work and timely execution of tasks,
- appraisal, i.e. opinion on the previous work of a candidate acquired from a body or other entity in which the candidate worked,
- professional progress;

\* Published professional papers and other professional activities, which include:

- published papers,
- reports submitted at seminars and other professional gatherings,
- participation in work of commissions for drafting of laws, secondary legislation, comments on regulations, expert analyses, informative papers, etc.
- participation in education in the capacity of a lecturer;

\* Professional development, which includes:

- magister and doctoral degrees,
- master degree,
- completed specialist trainings and
- participation in seminars and other forms of education.

In addition to the criteria determined by the law, in the procedure of appointment of a deputy public prosecutor, who is re-appointed, due to expiry of his/her term of office in pursuance with Article 133a of the Law on Public Prosecutor's Office, i.e. due to appointment to the high public prosecutor's office, the following will be regarded as a special advantage:

\* Work results, which include:

- number of completed cases (total number in the course of a year and as a percentage), and for specifically complicated cases the number of such cases in the three years preceding the application to the competition,
- manner of resolving of cases (number of cases resolved in an ordinary or summary procedure and specifically by using an alternative manner of resolving of cases),
- quality of work, expressed through the number of adopted accusations, adopted appeals and adopted extraordinary legal remedies,
- processing of cases as per the order of their arrival,
- complying with legal deadlines for actions in proceedings and in submission of accusatory and other acts,
- number of proposed and conducted financial investigations and number of proposals for temporary confiscation of assets, property and material gain,
- adherence to working hours,
- imposed disciplinary measures;

\* Ability to perform the function unbiasedly, which includes: conscientious, assiduous, decisive and responsible execution of the function for which the candidate has applied.

\* Good communication abilities and professionalism, which includes:

- relations with colleagues,

- team work ability,
- written and oral articulation,
- established cooperation with colleagues,
- readiness to transfer his/her own know-how to colleagues and
- behaviour in compliance with the ethical code of public prosecutors.

In the course of the interview with a candidate, special emphasis is placed on questions which refer to the manner of organisation of tasks, governing the public prosecutorial system, prosecutor's administration affairs and ideas for improvement of due and timely work.

**109) Le mandat est-il à durée indéterminée pour les juges?**

- Oui  
 Non

Existe-t-il des exceptions ? Veuillez préciser :

The presidents of the courts have limited mandate on which they are elected.

**110) Une période probatoire est-elle instaurée pour les juges? Si oui, quelle en est la durée?**

	Oui	Durée de la période probatoire (en années)
Durée de la période probatoire pour les juges		

**111) Le mandat est-il à durée indéterminée pour les procureurs?**

- Oui  
 Non

Existe-t-il des exceptions ? Veuillez préciser :

The Supreme State Prosecutor and State prosecutors are appointed on period of 5 years.

The function of Deputy prosecutors is permanent, except in cases when The Deputy of The Basic prosecutor is being appointed for the first time - when the mandate is 3 years.

**112) Une période probatoire est-elle instaurée pour les procureurs? Si oui, quelle en est la durée?**

	Oui	Durée de la période probatoire (en années)
Durée de la période probatoire pour les procureurs		

**113) Si le mandat n'est pas à durée indéterminée pour les juges/procureurs, qu'elle est la durée du mandat ? Est-il renouvelable?**

**Veuillez préciser la durée**

- pour les juges?  Oui  
pour les procureurs  Oui



**Vous pouvez indiquer ci-dessous :**

- tout commentaire utile pour l'interprétation des données indiquées dans ce chapitre
- les caractéristiques de votre système de sélection et de nomination des juges et des procureurs et les réformes majeures mises en œuvre au cours des deux dernières années

## 5. 1. 2. Formation

**114) Nature de la formation des juges. Est-elle obligatoire ?**

- Formation initiale
- Formation continue générale
- Formation continue pour des fonctions spécialisées (ex. juge pour les affaires économiques ou administratives)
- Formation continue pour des fonctions spécifiques de gestion (ex. présidence d'un tribunal)
- Formation continue pour l'utilisation des outils informatiques au sein des tribunaux

**115) Fréquence de la formation des juges**

	Annuelle	Régulière	Occasionnelle
Formation initiale	Non	Oui	Non
Formation continue générale	Non	Oui	Non
Formation continue pour des fonctions spécialisées (ex. juge pour les affaires économiques ou administratives)	Non	Oui	Non
Formation continue pour des fonctions spécifiques de gestion (ex. présidence d'un tribunal)	Non	Non	Non
Formation continue pour l'utilisation des outils informatiques au sein des tribunaux	Non	Oui	Non

**116) Nature de la formation des procureurs. Est-elle obligatoire ?**

- Formation initiale
- Formation continue générale
- Formation continue spécialisée (ex. procureur spécialisé)
- Formation continue pour des fonctions spécifiques de gestion (ex. procureur général et/ou gestionnaire)
- Formation continue pour l'utilisation des outils informatiques au sein des tribunaux

**117) Fréquence de la formation des procureurs**

	Annuelle	Régulière	Occasionnelle
Formation initiale	Non	Oui	Non
Formation continue	Non	Oui	Non

générale			
Formation continue spécialisée (ex. procureur spécialisé)	Non	Oui	Non
Formation continue pour des fonctions spécifiques de gestion (ex. procureur général et/ou gestionnaire)	Non	Non	Non
Formation continue pour l'utilisation des outils informatiques au sein des tribunaux	Non	Oui	Non

**Vous pouvez indiquer ci-dessous :**

- **tout commentaire utile pour l'interprétation des données indiquées dans ce chapitre**
- **des commentaires sur l'attention portée dans les curricula à la Convention européenne des Droits de l'Homme et à la jurisprudence de la Cour**
- **les caractéristiques de votre système de formation des juges et des procureurs et les réformes majeures mises en œuvre au cours des deux dernières années**

In accordance with the Law on Education of Agents of the Administration of Justice Function, continuous training of judges and prosecutors is a right and an obligation of theirs. This law introduced initial training for future agents of judicial and prosecutorial functions. Continued education of agents of the administration of justice function is delegated with the Centre for Education of Agents of the Administration of Justice Function. Trainings are also carried out in cooperation with the Human Resources Administration.

The Internet address of the Centre for Education of Agents of the Administration of Justice Function is [www.coscg.org](http://www.coscg.org)

The Internet address of The Human Resources Administration is [www.uzk.co.me](http://www.uzk.co.me)

## 5. 2. Exercice de la profession

### 5. 2. 1. Salaires

**118) Salaires des juges et des procureurs: veuillez compléter le tableau. Dans les cas où les données ne sont pas disponibles (NA) ou ne s'appliquent pas (NAP) veuillez l'indiquer dans le tableau en utilisant les bonnes abréviations.**

**Veuillez ajouter tout commentaire utile pour l'interprétation des données ci-dessous:**

	Salaire annuel brut (€)	Salaire annuel net (€)
Juge professionnel de 1ère instance au début de sa carrière	19.755,72	13.164,72
Juge de la Cour suprême ou de la dernière instance de recours	25.035,00	16.649,16
Procureur au début de sa carrière	19.755,72	13.164,72
Procureur auprès de la Cour suprême ou de la dernière instance de recours	25.035,00	16.649,16

Commentaire :

**119) Les juges et les procureurs bénéficient-ils des avantages complémentaires suivants :**

	Juges	Procureurs
--	-------	------------

Imposition réduite	Non	Non
Retraite spécifique	Non	Non
Logement de fonction	Non	Non
Autre avantage financier	Oui	Oui

**120) Si autre avantage financier, veuillez préciser:**

In accordance with the Law on Earnings and other income of agents of administration of justice and constitutional-judicial functions, during execution of these functions their agents are entitled to salary, compensation of costs and other rights in connection with execution of the function concerned.

**Salary**

In addition to salary, an agent of an administration of justice and constitutional-judicial function is entitled to allowance for the function in the amount of 30% of his/her salary.

**Compensation of cost**

An agent of an administration of justice and constitutional-judicial function who do not own, co-own or jointly own an apartment or a family house and does not reside with his/her parents or spouse in his/her parents' or spouse's house or apartment is entitled to compensation of a part of costs of renting an apartment in the amount of three lowest prices of labour per month.

**Rights in connection with execution of the function concerned**

As concerning other rights in connection with execution of above said functions, an agent of an administration of justice and constitutional-judicial function is entitled to life insurance.

**121) Un juge peut-il cumuler son travail avec les autres fonctions suivantes :**

	Oui rémunéré	Oui non rémunéré	
Enseignement	Oui	Non	Non
Recherche et publication	Oui	Non	Non
Non	Non	Non	Non
Consultant	Oui	Non	Non
Fonction culturelle	Oui	Non	Non
Autre fonction	Non	Non	Non

**122) Si autre fonction, veuillez préciser :**

**123) Un procureur peut-il cumuler son travail avec les autres fonctions suivantes :**

	Oui rémunéré	Oui non rémunéré	
Enseignement	Oui	Non	Non
Recherche et publication	Oui	Non	Non
Non	Non	Non	Non
Consultant	Oui	Non	Non
Fonction culturelle	Oui	Non	Non
Autre fonction	Non	Non	Non

**124) Si autre fonction, veuillez préciser :**

**125) Des indemnités sont-elles accordées aux juges en fonction du respect d'objectifs quantitatifs de production de décisions ?**

Oui

Non

Si oui, veuillez préciser :

**Veuillez indiquer la source pour répondre à la question 118:**

Ministry of Finance of Montenegro.

**5. 2. 2. Procédures disciplinaires**

**126) Quelle autorité peut engager des procédures disciplinaires contre les juges et/ou les procureurs ? Veuillez préciser:**

A proposal for ascertaining disciplinary responsibility of a judge may be submitted by the president of the court, the president of a directly superior court and the president of the Supreme Court.

A proposal for ascertaining disciplinary responsibility of a public prosecutor or a deputy public prosecutor may be submitted by: minister of justice for the Supreme Public Prosecutor, the Supreme Public Prosecutor, a high public prosecutor and a basic public prosecutor for his/her deputy, the Supreme Public Prosecutor for a high public prosecutor and a basic public prosecutor, and a high public prosecutor for a basic public prosecutor.

**127) Quelle autorité détient le pouvoir disciplinaire à l'encontre des juges et des procureurs ? Veuillez préciser:**

The Judicial Council performs control of work of courts and judges and decides on disciplinary responsibility of judges. The Judicial Council is appointing Disciplinary Committee.

The judge shall be held disciplinary responsible if he/she performs the judicial function in an undue manner or if he/she insults good reputation of the judicial function in cases provided for by the law. The procedure of ascertaining disciplinary responsibility of judges is conducted by the Disciplinary Committee, appointed by the Judicial Council for the period of one year. The chairperson of the Disciplinary Committee and his/her deputy is selected among members of the Judicial Council, while members of the Committee and their deputies are selected among judges who are not members of the Judicial Council.

The Prosecutorial Council appoints Disciplinary Council as a first-instance body for ascertaining of disciplinary responsibility of public prosecutors, i.e. deputies, in accordance with Article 44 of the Law on Public Prosecutor's Office. Disciplinary procedure is instituted by a proposal for ascertaining disciplinary responsibility of a public prosecutor or his/her deputy. The proposal is submitted to the Prosecutorial Council in written form. Timely proposal, submitted by an authorised person is forwarded by the Prosecutorial Council to the Disciplinary Committee. The proposal for ascertaining responsibility is submitted by the Prosecutorial Council to a public prosecutor or his/her deputy whose responsibility is questioned, accompanied by a notice that he/she has the right to engage a defender.

**128) Nombre de procédures disciplinaires intentées à l'encontre des juges et des procureurs: veuillez compléter le tableau. Dans les cas où les données ne sont pas disponibles (NA) ou ne s'appliquent pas (NAP) veuillez l'indiquer dans le tableau en utilisant les bonnes abréviations.**

**Veuillez ajouter tout commentaire utile pour l'interprétation des données ci-dessus:**

	Juges	Procureurs
Nombre total (1+2+3+4)	6	0
1. Faute déontologique	-	
2. Insuffisance professionnelle	6	
3. Délit pénal	-	
4. Autre	-	

**Commentaire :**

In accordance with Article 33-a and 33-b of the Law on Courts, a judge shall be held disciplinary responsible if he/she performs judicial function or insults good reputation of the judicial function.

A judge is considered to perform judicial function unduly if:

1. he/she does not process cases in the order in which they were received,
2. he/she does not schedule trials or inquests in cases allocated to him/her to be processed,
3. he/she is late to scheduled hearings or inquests,
4. he/she obstructs supervision by a directly superior court,
5. he/she is absent from meetings of judges and judicial departments,
6. he/she is absent from work,
7. and in other cases when it is provided by the law that certain actions or omissions of a judge are considered as undue execution of the judicial function.

A judge is considered to have insulted good reputation of the judicial function especially if:

1. he/she comes to work and in contact with parties in a condition which is not appropriate for execution of the judicial function (in alcoholic condition, in a condition induced by narcotics, and the like.
2. in public places he/she disturbs public order and peace by his/her behaviour.

All disciplinary procedures instituted against judges in the course of 2008 have been initiated due to reasons as under Article 33-a (a judge does not process cases in the order in which they were received or he/she did not schedule trials or inquests in cases allocated to him/her to be processed), and therefore these procedures are filed under the designation "professional inactivity".

Execution of a criminal offence by a judge is not a reason for institution of a disciplinary procedure but it is a reason for institution of a procedure for his/her dismissal, i.e. termination of the function. This is due to the reason that Article 121 paragraph 2 of the Constitution of Montenegro prescribes that the function of a judge shall be terminated if he/she is unconditionally sentenced to imprisonment, and paragraph 3 of the same article prescribes that a judge shall be dismissed from his function if he/she is convicted for an offence which makes him/her unworthy of execution of the judicial function.

When investigation against a judge for a criminal offence which makes him/her unworthy of execution of the judicial function is approved, a decision on temporary removal from duty shall be rendered. Also, the judge shall be temporarily removed from duty when detention is ordered against him/her.

There were no disciplinary proceedings against prosecutors.

**129) Nombre de sanctions prononcées à l'encontre des juges et des procureurs: veuillez compléter le tableau. Dans les cas où les données ne sont pas disponibles (NA) ou ne s'appliquent pas (NAP) veuillez l'indiquer dans le tableau en utilisant les bonnes abréviations.**

**Veuillez ajouter tout commentaire utile pour l'interprétation des données ci-dessus**

	Juges	Procureurs
Nombre total (total 1 à 9)	10	0
1. Réprimande	1	
2. Suspension	4	
3. Révocation	1	
4. Amende		
5. Diminution de salaire temporaire	2	
6. Rétrogradation de poste		
7. Mutation dans un autre tribunal géographiquement		
8. Démission	2	
9. Autre		

**Commentaire :**

Article 52 of the Law on Judicial Council prescribes that the following disciplinary measures may be imposed against a judge:

- admonition
- reduction of salary in the amount of 20% for the period of up to six months.

In the course of the year 2008 four proposals for dismissal of judges were submitted and two judges were dismissed, while in two cases proposals for dismissal of judges were refused.

There were no proceedings, and consequently no sanctions imposed to the prosecutors.

**Vous pouvez indiquer ci-dessous :**

- tout commentaire utile pour l'interprétation des données indiquées dans ce chapitre
- les caractéristiques de votre système de procédures disciplinaires pour les juges et les procureurs et les réformes majeures mises en œuvre au cours des deux dernières années

## 6. Avocats

### 6. 1. Statut de la profession

#### 6. 1. 1. Profession

**130) Nombre d'avocats exerçant dans votre pays. Si les données ne sont pas disponibles, veuillez l'indiquer (NA).**

Around 515 - note from the Bar Association of Montenegro - around 515, due to time of collection of this data.

**131) Ce nombre inclut-il la catégorie « conseiller juridique » (« solicitor/in-house counsellor ») qui ne peut pas représenter en justice ? Si non, veuillez aller à la question 133**

- Oui
- Non
- Non applicable

**132) Nombre de conseillers juridiques. Si les données ne sont pas disponibles, veuillez l'indiquer (NA)**

Around 150 - note from the Bar Association of Montenegro - around 150, due to time of collection of this data.

**133) Les avocats ont-ils le monopole de la représentation en justice? (plusieurs options sont possibles)**

- Affaires civiles\*
- Affaires pénales\* - Défendeur
- Affaires pénales\* - Victime
- Affaires administratives\*

\*Le cas échéant, veuillez préciser si cela concerne tous les niveaux d'instance. En cas de non monopole, veuillez préciser les organismes ou personnes pouvant représenter les clients devant un tribunal (par exemple une ONG, membre de la famille, syndicat, etc....) et pour quelles affaires.

Lawyers can also provide legal and expert assistance to the parties in civil, non-civil, executive, administrative and other proceedings. In civil cases of protection of parties in civil procedure, protection of parties in criminal proceedings and in administrative proceedings, there is a possibility of representing the party by legal representative.

**134) La profession d'avocat est-elle organisée à travers :**

- un barreau national ?
- un barreau régional ?
- un barreau local ?

Veuillez préciser :

Lawyers of Montenegro are associated in national association - bar Association of Montenegro  
www.advokatskakomora.me

**Veillez indiquer les sources des réponses aux questions 130 et 132:**

Bar Association of Montenegro

## 6. 1. 2. Formation

**135) Existe-t-il une formation initiale ou un examen spécifique pour accéder à la profession d'avocat ?** Oui Non**136) Existe-t-il un système de formation continue générale obligatoire pour les avocats ?** Oui Non**137) La spécialisation dans certains domaines est-elle liée à certaines formations/à un certain niveau de diplôme/à certaines autorisations ?** Oui Non

Si oui, veuillez préciser :

## 6. 1. 3. Honoraires

**138) Pour le justiciable, existe-t-il une transparence sur les honoraires prévisibles des avocats ?** Oui Non

Veillez apporter toute précision permettant d'interpréter la réponse ci-dessus  
the Lawyers tariff is posted on web page of The Bar Association of Montenegro.

**139) Les honoraires des avocats sont-ils** réglementés par la loi ? réglementés par le Barreau ? librement négociés ?

Veillez ajouter tout commentaire utile pour l'interprétation des données ci-dessus:  
Lawyers tariff is defined by The Bar Association of Montenegro.

## 6. 2. Evaluation



### 6. 2. 1. Plaintes et sanctions

#### 140) Des normes de qualité ont-elles été formulées pour les avocats ?

- Oui  
 Non

#### 141) Si oui, qui est responsable de la formulation de ces normes de qualité:

- le Barreau ?  
 le législateur ?  
 autre ?

Veillez préciser (y compris une description des critères de qualité utilisés):

Attorneys and attorney trainees are obliged to perform practice of law i.e. training practice in a responsible and conscientious manner, as well as to maintain good reputation of legal profession.

In cases of violation of their duties and impairment of good reputation of legal profession, attorneys and attorney trainees shall be held disciplinary responsible as per the provisions of the law, Statute and the Code of Professional Ethics of Attorneys. Additionally, laws in the area of judiciary prescribe their obligations and responsibilities.

#### 142) Existe-t-il une possibilité de déposer une plainte concernant

- la prestation de l'avocat ?  
 le montant des honoraires ?

Veillez préciser :

Violation of duties and impairment of good reputation of legal profession may be minor (disciplinary inordinateness) and major (disciplinary offences).

Minor violations of duties of attorneys (disciplinary inordinateness) are as follows: consecutive, unjustified absence from meetings of a body of the Bar Association to which he/she was appointed; minor violations of a legal obligation towards a trainee; minor violations of the Code of Professional Ethics of Attorneys;

Major violations of duties of an attorney (disciplinary offences) are as follows: representation before courts, state bodies and other organisation in a manner which is against the law, the Statute and the Code of Professional Ethics of Attorneys; unconscientious and untimely representation; failure to return records and documents at request of a party; inappropriate conduct towards another attorney, an attorney trainee, the opposing or his/her party, the court, a witness, an expert witness, a court interpreter or a participant in the proceedings who has the capacity of an official.

Inappropriate behaviour in public activities or in his/her private life when he/she is available to inspection and appraisal of the public, by which he/she damages good reputation of legal profession; unconscientious management of affairs and loss of documentation of a party; retaining of money collected on behalf of a party, abuse of confidence of a party represented by him/her; unjustified refusal to provide legal assistance; stipulating a fee or compensation of costs contrary to the provisions of the Tariff for Fees and Compensations of Costs for Work of an Attorney or requesting a fee from a party whom he/she is obliged to represent free of charge etc.

#### 143) Quelle est l'autorité compétente pour traiter des procédures disciplinaires

- le juge ?  
 le ministère de la justice ?  
 une instance professionnelle ou autre ?

Veillez préciser :

Attorneys shall be held disciplinary responsible for violations of their duty before the disciplinary bodies established by the Statute of the Bar Association. Minor and major violations of duty of attorneys and the manner of conducting a disciplinary procedure are regulated by the Statute.

The disciplinary prosecutor, the disciplinary court and the high disciplinary court are bodies of the Bar Association.

The Disciplinary Prosecutor is an independent body of the Bar Association. This body institutes a disciplinary procedure, represent the indictment before the Disciplinary Court, the High Disciplinary Court, lodges legal remedies and undertakes all necessary actions in the disciplinary procedure.

The Disciplinary Court conducts disciplinary procedure and renders decisions at the first-instance level. It consists of a chairperson and two judges. The disciplinary court is competent to adjudicate at the first-instance level per indictments of the disciplinary prosecutor; renders decisions on provisional prohibition of the right to perform legal profession; renders decisions on abolishment of provisional prohibition of the right to perform legal profession in cases when the said provisional prohibition was ruled by the Disciplinary Court itself and performs other tasks, in accordance with the law and the Statute.

The High Disciplinary Court renders decision at the second-instance level. It is composed of a president and two judges.

The Law on Criminal Proceedings is applied analogously in a disciplinary procedure, unless otherwise provided by the Statute.

**144) Procédures disciplinaires initiées à l'encontre des avocats: veuillez compléter le tableau. Dans les cas où les données ne sont pas disponibles (NA) ou ne s'appliquent pas (NAP) veuillez l'indiquer dans le tableau en utilisant les bonnes abréviations.**

**Veillez ajouter tout commentaire utile pour l'interprétation des données ci-dessus:**

	Faute déontologique	Insuffisance professionnelle	Délit pénal	Autre
Nombre annuel	18	0	0	0

Commentaire :

The greatest number of complaints concerning work of attorneys in 2008 regarded major violations of duty of attorneys, ref. Article 89 of the Statute of the Bar Association of Montenegro, which refer to representation contrary to the law, the Statute, the Code of Professional Ethics; unconscientious, untimely representation; failure to return records and documents at request of a party; inappropriate behaviour.

**145) Sanctions prononcées à l'encontre des avocats: veuillez compléter le tableau. Dans les cas où les données ne sont pas disponibles (NA) ou ne s'appliquent pas (NAP) veuillez l'indiquer dans le tableau en utilisant les bonnes abréviations.**

**Veillez ajouter tout commentaire utile pour l'interprétation des données ci-dessus:**

	Réprimande	Suspension	Révocation	Amende	Autre
Nombre annuel					

Commentaire :

There were no sanctions pronounced to the attorneys in 2008.

**Vous pouvez indiquer ci-dessous :**

- **tout commentaire utile pour l'interprétation des données indiquées dans ce chapitre**
- **les caractéristiques de votre système d'organisation du Barreau et les réformes majeures mises en œuvre au cours des deux dernières années**

## 7. Mesures alternatives au règlement des litiges

### 7. 1. Médiation et autres formes de règlement des litiges

#### 7. 1. 1. Médiation

**146) Existe-t-il des procédures de médiation dans le système judiciaire ? Si non, veuillez aller à la question 151**

- Oui  
 Non

**147) Le cas échéant, veuillez préciser, par type d'affaires, l'organisation de la médiation**

	Possibilité de médiation privée proposée par le juge ou médiation annexée au tribunal	Médiateur privé	Instance publique (autre que le tribunal)	Juge	Procureur
Affaires civiles et commerciales	Oui	Oui	Non	Non	Non
Affaires familiales (ex. divorce)	Oui	Oui	Non	Non	Non
Affaires administratives	Non	Non	Non	Non	Non
Licenciements	Non	Non	Non	Non	Non
Affaires pénales	Oui	Oui	Non	Non	Non

**148) Est-il possible de bénéficier de l'aide judiciaire lors des procédures de médiation ?**

- Oui  
 Non

Si oui, veuillez préciser :

The law prescribes that if parties in the course of court proceedings are directed to mediation procedure, the provisions of the Law on Civil Proceedings which address exemption from payment of costs of proceedings accordingly apply to mediation proceedings.

**149) Nombre de médiateurs accrédités. Si les données ne sont pas disponibles, veuillez l'indiquer (NA)**

73

**150) Veuillez indiquer le nombre total de procédures de médiation par catégories d'affaires. Dans les cas où les données ne sont pas disponibles (NA) ou ne s'appliquent pas (NAP) veuillez l'indiquer dans le tableau en utilisant les bonnes abréviations.**

les affaires civiles ?	<input checked="" type="checkbox"/> Oui	13
les affaires familiales ?	<input checked="" type="checkbox"/> Oui	356
les affaires administratives ?	<input type="checkbox"/> Oui	
les affaires de licenciements ?	<input type="checkbox"/> Oui	
les affaires pénales ?	<input checked="" type="checkbox"/> Oui	64

**Veillez indiquer la source pour la réponse à la question 150 :**

Centre for Mediation of Montenegro.

**7. 1. 2. Autres formes de règlement des litiges****151) Pouvez-vous donner des informations sur les autres mesures alternatives au règlement des litiges (par ex. arbitrage, conciliation) ? Veuillez préciser:**

The procedure before the arbitration body exists as a form of alternative settlement of disputes in Montenegro. It is conducted on voluntary basis, at request of the parties.

In disputes in which parties are natural persons with abode or permanent residence i.e. legal entities with registered seat in Montenegro, parties may agree on domestic arbitration for settlement of disputes concerning rights on their free disposal, unless it is laid down by the law that certain disputes are to be settled by other courts exclusively.

In disputes in which at least one party is a natural person with abode or permanent residence abroad or a legal entity with registered seat abroad, parties may also agree on competence of a foreign arbitration body for settlement of disputes concerning rights on their free disposal, unless the law or an international agreement provides for exclusive jurisdiction of a national court.

Arbitration procedure may be conducted either before a permanent court or before an ad hoc selected arbitration court, depending on preference of parties. If parties have not agreed otherwise, judgment of an arbitration court has the power of an enforceable court verdict for the parties.

**Vous pouvez indiquer ci-dessous :**

- **tout commentaire utile pour l'interprétation des données indiquées dans ce chapitre**
- **les caractéristiques de votre système de mesures alternatives au règlement des litiges et les réformes majeures mises en œuvre au cours des deux dernières années**

Clarification for data in Q.150.-

Number of 64 criminal cases is referring to procedures of mediation in pre-trial proceedings where the perpetrator was a minor.

## 8. Exécution des décisions de justice

### 8. 1. Exécution des décisions civiles

#### 8. 1. 1. Fonctionnement

**152) Existe-t-il dans votre système judiciaire des agents d'exécution? Si non, veuillez aller à la question 154**

- Oui  
 Non

**153) Nombre d'agents d'exécution . Si la donnée n'est pas disponible, veuillez l'indiquer (NA).**

51

**154) Les agents d'exécution sont-ils (plusieurs choix possibles):**

- des juges ?  
 des huissiers de justice exerçant en profession libérale réglementée par les autorités publiques ?  
 des huissiers de justice attachés à une institution publique ?  
 d'autres agents d'exécutions ?

Veillez préciser leur statut et leurs compétences (pouvoirs):

Court enforcement officers work in the courts, in Montenegro there is a specific enforcement procedure run by judges in charge of enforcement cases. Court Enforcement officers work in Enforcement Departments in the courts.

**155) Existe-t-il une formation initiale ou un examen spécifique pour accéder à la profession d'agent d'exécution?**

- Oui  
 Non  
 Non applicable

**156) La profession d'agent d'exécution est-elle organisée par :**

- une instance nationale ?  
 une instance régionale ?  
 une instance locale ?  
 non applicable

**157) Pour le justiciable, existe-t-il une transparence sur le coût prévisible des frais d'exécution?**

- Oui  
 Non

Non applicable

**158) Les frais d'exécution sont-ils :**

- réglementés par la loi ?  
 librement négociés ?  
 non applicable

**Veillez indiquer la source de la réponse à la question 153:**

The Supreme court of Montenegro.

8. 1. 2. Supervision

**159) Existe-t-il un système de supervision et de contrôle de l'activité des agents d'exécution ?**

- Oui  
 Non  
 Non applicable

**160) Quelle est l'autorité chargée de superviser et de contrôler les agents d'exécution :**

- une instance professionnelle ?  
 le juge ?  
 le ministère de la justice ?  
 le procureur ?  
 autre ?

Veillez préciser :

The President of the court and judges working on enforcement cases.

**161) Des normes de qualité sont-elles formulées pour les agents d'exécution ?**

- Oui  
 Non  
 Non applicable

Si oui, quelle est l'autorité chargée de formuler ces normes de qualité et quels sont les critères de qualités utilisés?

**162) Disposez-vous d'un mécanisme spécifique pour l'exécution des décisions de justice rendues contre des autorités publiques, y compris pour assurer le suivi de cette exécution?**

- Oui

Non

Si oui, veuillez préciser :

**163) Disposez-vous d'un système de contrôle de l'exécution ?**

Oui

Non

Si oui, veuillez préciser :

The President of the court and judges working on enforcement cases are monitoring the execution by enforcement officers.

8. 1. 3. Plaintes et sanctions

**164) Quelles sont les principales plaintes des usagers concernant les procédures d'exécution ?**

**Veillez n'en indiquer que 3 au maximum**

absence de toute exécution ?

non exécution des décisions judiciaires rendues contre des autorités publiques ?

manque d'information ?

durée excessive ?

pratiques illégales ?

supervision insuffisante ?

coût excessif ?

autre ?

Veillez préciser:

1. "No executions/effectuations at all" because the debtor does not have any monetary funds and in most cases nobody applies at foreclosure sales.
2. "Exceedingly long duration of proceedings" is conditioned by a great number of cases regarding collection of bills (for consumed electricity, water, phone bills); by frequent changes of debtors' addresses or impossibility of identifying their addresses.

**165) Votre pays a-t-il préparé ou adopté des mesures concrètes pour changer la situation concernant l'exécution des décisions de justice – en particulier les décisions rendues contre les autorités publiques?**

Oui

Non

Si oui, veuillez préciser :



In Montenegro there is the ongoing reform of enforcement system. The drafting of the new Law on Enforcement Procedure is in progress, which will introduce a parallel system of enforcement agents - in addition to the existing judicial enforcement officers, the law will introduce a private bailiffs. Condition for their work will be completed law school and experience in execution. These private enforcement agents - bailiffs will be able to carry out all measures of execution, except:

1. enforcement action of taking and giving of children
2. returning the employee to work

These two measures will remain the exclusive competence of the judicial enforcement officers.

The system of private bailiffs will be organised analogue to notarial system.

**166) Existe-t-il un système mesurant la durée des procédures d'exécution :**

- pour les affaires civiles ?
- pour les affaires administratives ?

**167) Pour un jugement concernant un recouvrement de créances, pouvez-vous estimer le délai de notification aux parties habitant dans la ville du siège de la juridiction :**

- entre 1 et 5 jours
- entre 6 et 10 jours
- entre 11 et 30 jours
- plus

Veillez préciser

**168) Nombre de procédures disciplinaires initiées à l'encontre des agents d'exécution. Dans les cas où les données ne sont pas disponibles (NA) ou ne s'appliquent pas (NAP) veuillez l'indiquer dans le tableau en utilisant les bonnes abréviations.**

Nombre total de procédures disciplinaires initiées	<input checked="" type="checkbox"/> nombre :	2
pour faute déontologique	<input type="checkbox"/> nombre :	
pour insuffisance professionnelle	<input checked="" type="checkbox"/> oui, nombre :	2
pour délit pénal	<input type="checkbox"/> nombre :	
Autre	<input type="checkbox"/> nombre :	

**169) Nombre de sanctions prononcées à l'encontre des agents d'exécution. Dans les cas où les données ne sont pas disponibles (NA) ou ne s'appliquent pas (NAP) veuillez l'indiquer dans le tableau en utilisant les bonnes abréviations.**

Nombre total de sanctions	<input checked="" type="checkbox"/> nombre :	2
Réprimande	<input type="checkbox"/> nombre :	
Suspension	<input type="checkbox"/> nombre :	
Révocation	<input type="checkbox"/> nombre :	
Amende	<input checked="" type="checkbox"/> nombre :	2
Autre	<input type="checkbox"/> nombre :	

**Vous pouvez indiquer ci-dessous :**

- **tout commentaire utile pour l'interprétation des données indiquées dans ce chapitre**
- **les caractéristiques de votre système d'exécution des décisions civiles et les réformes majeures mises en œuvre au cours des deux dernières années**

**Veillez indiquer les sources pour les réponses aux questions 167, 168 et 169 :**

The Supreme court of Montenegro.

## 8. 2. Exécution des décisions pénales

### 8. 2. 1. Fonctionnement

**170) Existe-t-il un juge chargé spécifiquement de l'exécution ?**

- Oui  
 Non

Si oui, veuillez préciser ses fonctions et compétences (ex. fonctions d'initiative ou de contrôle).  
Si non, veuillez préciser quelle autorité est compétente pour l'exécution des jugements (par ex: procureur) :

A sentenced person is sent to serve the punishment of imprisonment by a court of first instance in whose area the sentenced person has abode or residence. The competent court of first instance is obliged to take necessary actions aimed at execution of a punishment of imprisonment immediately upon receiving an enforceable decision thereof and not later than three days therefrom. If the place of abode or residence of a sentenced person is not known, the court that ruled the decision at the first-instance level is competent for sending a sentenced person to serve the punishment of imprisonment, and if such decision has been ruled at the first-instance level by a high court, a court of first instance located at the seat of that court is competent for sending a sentenced person to serve the punishment of imprisonment.

Within 3 days the court is obliged to summon a sentenced person in order to deliver him/her the referral act for serving the punishment of imprisonment. When setting the date of summons and commencement of serving of the punishment of imprisonment, the court is obliged to allow for a period of at least eight days before departure of a sentenced person to a prison, but not more than 15 days, so that the sentenced person may prepare himself/herself. A copy of the referral act shall be accompanied by a counterpart of the verdict and an excerpt from the penal records.

If a sentenced person sent to serve the punishment of imprisonment has juvenile children or other persons in his/her custody, the competent court shall notify thereof the competent custodian body prior to sending the sentenced person to serve the punishment.

If a duly summoned sentenced person does not present himself/herself at the set date for serving of the punishment, the penal organisation shall notify thereof the competent court which shall issue an order to an administration authority competent for interior affairs to coercively bring that person for serving of the punishment.

For sentenced persons who are hiding or who are in escape, the competent court of first instance makes an order for issuance of a warrant and delivers the warrant to an administration authority competent for interior affairs.

Costs of coercive bringing of a sentenced person shall be borne by the court and finally by the sentenced person.

If in addition to the unconditional punishment of imprisonment the safety measure of mandatory medical treatment is imposed on the sentenced person as an alcohol or drug addict, the sentenced person may not be sent to serve the punishment of imprisonment before the safety measure has been executed.

**171) En matière d'amendes prononcées par une juridiction pénale, existe-t-il des**

**études permettant d'évaluer le taux de recouvrement effectif ?**

- Oui  
 Non

Si oui, veuillez préciser :

If an accused person is sentenced to a fine, the judge determines in the verdict the period in which the fine is to be paid and the method of replacement of the fine. The court that ruled a fine shall ex officio institute a procedure for collection of the fine. With respect to competence and procedure for collection of a fine, the provisions of the Law on Executive Procedure shall apply unless otherwise provided for by the law. With respect to replacement of a fine with a punishment of imprisonment, relevant provisions of the Criminal Code of Montenegro and the Law on Misdemeanours of Montenegro shall apply.

At the time of ruling a verdict, the criminal council also decides on costs of the criminal proceedings and on the proprietary legal request.

**Vous pouvez indiquer ci-dessous :**

- **tout commentaire utile pour l'interprétation des données indiquées dans ce chapitre**
- **les caractéristiques de votre système d'exécution des décisions pénales et les réformes majeures mises en œuvre au cours des deux dernières années**

## 9. Notaires

### 9. 1. Statut

#### 9. 1. 1. Fonctionnement

#### 172) Existe-t-il des notaires dans votre pays ? Si non allez à la question 177

- Oui  
 Non

#### 173) Les notaires ont-ils un statut (dans les cas où les données ne sont pas disponibles (NA) ou ne s'appliquent pas (NAP) veuillez l'indiquer dans le tableau en utilisant les bonnes abréviations):

- |  |                                 |
|--|---------------------------------|
| privé (sans contrôle par une autorité publique)?             | <input type="checkbox"/> nombre |
| de profession libérale réglementée par les pouvoirs publics? | <input type="checkbox"/> nombre |
| public?  | <input type="checkbox"/> nombre |
| autre ?  | <input type="checkbox"/> nombre |

#### Commentaire :

Q.172. Note\*\*\*: In legislative terms, the institute of notary is introduced in Montenegro by the Law on Notaries from the year 2005. Although the law governs notary tasks, organisation of the notary service, conditions for execution of notary profession and reasons for termination thereof, supervision over the work of notaries, disciplinary responsibility of notaries and other issues of significance for execution of notary profession, this institute has not been realised in practice yet. In November 2009 the first cycle of taking notarial exam was held, and selection and appointment of the first generation of notaries in Montenegro is planned soon. The quoted answers to the questions regarding notaries describe legislative solutions which shall be implemented by establishment of notaries in practice.

Q.173. In accordance with the Law on Notaries, notary performs notary service as public service, professionally and as exclusive occupation. Notary is the person who is a holder of public trust.

#### 174) Le notaire exerce-t-il une fonction :

- dans le cadre de la procédure civile ?  
 dans le domaine du conseil juridique ?  
 pour authentifier les actes/certificats ?  
 autre ?

Veuillez préciser :

Notary makes notary acts, taking in deposit valid documents, money, securities and other subjects; upon the order from the court, notary can perform affairs as follows: list and estimation of inheritance, keeping the inheritance documents, money, securities or other valuable assets, and other affairs delegated by law.

#### Veuillez indiquer la source pour répondre à la question 173

Law on Notaries.

### 9. 1. 2. Supervision

#### 175) Existe-t-il un système de supervision et de contrôle de l'activité des notaires ?

- Oui  
 Non

#### 176) Quelle est l'autorité chargée de superviser et de contrôler notaires:

- une instance professionnelle ?  
 le juge ?  
 le ministère de la justice ?  
 le procureur ?  
 autre ?  
 non applicable

Veuillez préciser :

Law on Notaries defines triple mechanism of control over the work of notaries:

1. Direct supervision over the work of notary is performed by Notary chamber.
2. Supervision over the legality in performing notary duties is entrusted to the Ministry of Justice.
3. Supervision over the legality in performing notary duties in subjects which are entrusted to notary by the court, is entrusted to the president of the court on whose area is seat of the notary.

#### **Vous pouvez indiquer ci-dessous :**

- **tout commentaire utile pour l'interprétation des données indiquées dans ce chapitre**
- **les caractéristiques de votre système notarial et les réformes majeures mises en œuvre au cours des deux dernières années**

## 10. Interprètes judiciaires

### 10. 1. fonction

#### 10. 1. 1. Statut

#### 177) Le titre d'interprète judiciaire est-il protégé?

- Oui  
 Non

#### 178) La fonction d'interprète judiciaire est-elle régulée?

- Oui  
 Non

#### 179) Nombre d'interprètes judiciaires. Dans les cas où les données ne sont pas disponibles (NA) ou ne s'appliquent pas (NAP) veuillez l'indiquer dans le tableau en utilisant les bonnes abréviations

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#### 180) Existe-t-il des critères relatifs à la qualité de l'interprétation dans les tribunaux?

- Oui  
 Non

Si oui, veuillez préciser :

Rulebook on permanent court interpreters prescribes the quality standards that accredited court interpreters must fulfill, the procedure of checking the knowledge on The Constitution and organisation of judicial authorities, and appointment of court interpreters. These procedures are in jurisdiction of The Ministry of Justice, who is also appointing the court interpreters.

#### 181) Les tribunaux sont-ils responsables de la sélection des interprètes judiciaires?

- Oui  
 Non

Veuillez ajouter tout commentaire utile pour l'interprétation des données ci-dessus (notamment: si non, quelle est l'instance chargée de sélectionner les interprètes?):

The court interpreters are appointed by The Ministry of Justice.

The right to use own language or a language which a person understands in a court procedure is a category guaranteed by the Constitution of Montenegro. This right and procedural laws provide parties, witnesses and other persons involved in the proceedings but who do not understand the language in official use in the court. The law prescribes that interpretation/translation is entrusted with an interpreter. Court interpreters are summoned by a judge for the needs of a procedure, from the list delivered to all judicial authorities by the Ministry of Justice which keeps records thereof.

## 11. Fonctionnement de la justice

### 11. 1. Réformes envisagées

#### 11. 1. 1. Réformes

**182) Pouvez-vous fournir des informations relatives au débat actuel dans votre pays en ce qui concerne le fonctionnement de la justice ? Des réformes sont-elles envisagées ? Par exemple modification de la législation, modification dans la structure judiciaire, programme d'innovation, etc. Veuillez préciser:**

Having regard to the aspiration of Montenegro to membership in the EU, harmonisation of the entire system with standards required by membership in the EU is underway. Such reforms are continuously developing in the area of judiciary and administration of justice as well. The standard and the core document in these activities is the Strategy of Reform of Judiciary 2007-2012 and the Action Plan for Implementation of the Strategy of Reform of Judiciary. This Action Plan lays down a range of fields in which reforms are planned, so due to the number of these fields reforms in judiciary since the last previous evaluation will be stated per these fields.

In the area of strengthening independence and autonomy of judiciary, in the period since the last previous evaluation a progress has been made through improvement of normative and institutional framework in the domain of strengthening independence and autonomy of judiciary. In accordance with a new role of the Judicial council, to whom the Constitution has granted the position of an autonomous and independent authority which ensures independence and autonomy of courts and judges, the Law on Judicial council has been passed which governs the manner of selection and termination of a term of office of members of the Judicial Council, organisation and method of work of this body, procedure of appointment of judges, manner to ascertain termination of judicial function, disciplinary responsibility and dismissal of judges and other issues of significance for work of the Judicial Council. Also, the Law on Amendments to the Law on Courts has been passed, thus harmonising the Law with the Constitution. Also, the Judicial Council has been constituted and premises and technical equipment provided for its work. Reforms have been implemented in the prosecutor's office organisation as well. The Law on Amendments to the Law on Public Prosecutor has been passed, which gives new competencies and powers to the Prosecutorial Council, and its organisation and method of work are defined similarly to legislative solutions concerning the Judicial Council. In accordance with differently defined constitutional competencies of the Public Prosecutor's Office, representation of the state in proprietary legal disputes is dislocated from the scope of work of this body and delegated to a separate body – the Protector of Proprietary Legal Interests of Montenegro. The Prosecutorial Council commenced its work on 30 August 2008. The Appointment Committee was established, which carries out legal obligations with respect to appointment of public prosecutors and their deputies. The adopted Rules of Procedure of the Prosecutorial Council elaborate in more detail the criteria and procedure for appointment of public prosecutors, the procedure of dismissal, the disciplinary procedure and the procedure of removal from office, the organisation and the method of work of the Prosecutorial Council.

In the area of strengthening the efficiency of judicial bodies, the biggest innovations have been introduced by reforming the legislative framework. After the Obligations Act was passed in July 2008, the new Code of Criminal Proceedings and the Law on Cooperation with the International Criminal Court were passed as well, the procedure of adoption of the Law on Amendments to the Criminal Code is underway, which will modify the Criminal Code in the aim of fuller harmonisation with the international standards. Also, the Law on Protection of the Right to Court Trial in Reasonable Time was passed, which provides for mechanisms for protection of this right in the course of proceedings themselves (control request to accelerate the proceedings) and after proceedings were completed (claim for fair redress), in accordance with the standards of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This has created the prerequisites to use an effective legal instrument for protection of the said right at the national level and thus to reduce the number of appeals to European Court of Human Rights. In the budgetary section for courts funds are earmarked for fair redress. Within the training programme seminars were organised for chairpersons of the courts with regard to implementation of this law.

Activities were taken to encourage alternative methods for settlement of disputes and the Centre

for Mediation was established.

Within the public prosecutorial organisation results of alternative settlement of cases for criminal offences of lesser degree of social hazard have been achieved.

The Strategy of Reform of Misdemeanour System in Montenegro has been adopted, as well as the Analysis of Work of Bodies Competent for Conducting of Misdemeanour Proceedings. A task force has been organised for drafting of the Law on Misdemeanour Proceedings, and Law on Enforcement procedure is being drafted as well.

Final preparations for establishment of the notary service in Montenegro are underway. The Law on Notaries from 2005 was amended in 2008, secondary legislation has been adopted as well, the Committee for Notarial Exam has been formed, the first cycle of taking notarial exam has been organised and preparations for appointment of the first notaries in Montenegro are underway.

Analysis of the existing network of courts is underway, which will point out to necessary measures in the aim of rationalisation, in order to improve efficiency of the judicial network. The representative of Montenegro before the European Court of Human Rights in Strasbourg has been appointed as well.

In the area of strengthening availability of judicial bodies, in compliance with the Action Plan, the procedure of adoption of the Law on Protection from Domestic Violence is underway.

The Ministry of Justice prepared the Analysis of the situation for needs of legislative regulation of the system of free legal aid, which was adopted by the Government in December 2008, and formed the Task Force for drafting of the Law on Free Legal Aid.

In January 2009 the Government adopted the Information on the current situation of buildings of judicial institutions, their equippedness and safety, prepared by the Ministry of Justice, and charged the Ministry of Justice with a task to prepare, in cooperation with relevant institutions, the Action Plan of needs for construction, reconstruction and adaptation of buildings of judicial bodies and to prepare innovated information about the structure of the required safety equipment for needs of judicial bodies. These activities are underway.

With regard to the activities on strengthening the confidence of the public with the judiciary, after the Judicial Council and the Prosecutorial Council have been formed, which was the first prerequisite for improvement of transparency of work of judicial bodies and for familiarisation of the public with the results of their work, strengthening of transparency of work of judicial bodies is being intensively worked on. In connection with annual reports on work of courts, regular press conferences are held. The Supreme Public Prosecutor regularly informs the public about actions of public prosecutors in significant and topical cases by means of public communications and via their web site. The Administrative Court prepares and publishes collections of court decisions and publishes decisions at the web page [www.upravnisudcg.org](http://www.upravnisudcg.org). Preparations have been carried out in courts for publishing of court decisions from 2008, while the collection of decisions of the Supreme Court is also in preparation.

With regard to education in judicial bodies, as for the reform carried out since the previous evaluation, numerous measures have been implemented for improvement of the initial and continuous education in accordance with the Law on Education of Agents of the Administration of Justice Function. Training is carried out on the basis of the programme of the Centre for Education of Agents of the Administration of Justice Function and in cooperation with the Centre for Education and with the Human Resources Administration.

With regard to reforms in the field of strengthening the international and regional judicial cooperation, the Law on the International Legal Aid in Criminal Matters has been adopted in Montenegro, which accepted the international standards in this field. This law has a subsidiary character, since its application is only possible if there is not an international agreement or if certain issues are not regulated by such agreement. All the relevant conventions of the Council of Europe in the area of international judicial cooperation have been ratified, as well as the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.

Memoranda of cooperation between the Ministry of Justice of Montenegro on the one part and the ministries of justice of the Republic of Albania, Bosnia & Herzegovina and Macedonia respectively on the other part were concluded. Also, in May 2009 3 bilateral agreements between Montenegro and the Republic of Serbia were concluded in the area of international legal assistance, in civil and in criminal matters, extraditions and mutual execution of court decisions in criminal matters. Drafting of the Law on Resolving of Clashes of Laws with Regulations of Other Countries and the



Law on international legal assistance in civil matters is in progress.

Reforms were also carried out in the field of alternative settlement of disputes. The Centre for Mediation in Podgorica was established and put in operation, as a non-profit institution, which plans and carries out training and continuous professional development of mediators, provides technical assistance for conducting of a mediation process and informs the citizens and interested parties about advantages of mediation in settlement of disputes. Centres for mediation were established in several Montenegrin cities. Records are kept in the Ministry of Justice about appointed mediators. Activities regarding training of judges and attorneys, activities regarding establishment of records of procedures that have been carried out and of their success, activities concerning public information as well as activities concerning provision of expert assistance to the institute of mediation are being carried out. Guide for Mediation (intended for citizens) and Handbook for Training of Mediators are published in edition of the Centre for Mediation and are being distributed.

In the area of fight against organised crime and corruption, in addition to implementation of the Action Plan for implementation of the Strategy of Reform of Judiciary, implementation of the Action Plan for carrying out the Programme of Fight Against Corruption and Organised Crime is continued. The Convention of the Council of Europe on Suppression of Terrorism and the Convention of the Council of Europe on Fight Against Human Trafficking have been ratified, as well as the Convention on the Compensation of Victims of Violent Crimes, Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crimes and on Financing on Terrorism, Convention on Suppression of Terrorism and the Second Additional Protocol to the European Convention on International Legal Aid in Criminal Matters. The Law on Amendments to the Law on Courts concentrated the competencies over cases of organised crime, corruption, terrorism and war crimes with two high courts, while the Law on Amendments to the Law Public Prosecutor extended the competencies of the Department for Fight Against Organised Crime to criminal offences of corruption, terrorism and war crimes. In accordance with the above said laws, specialised departments in two high laws were formed and judges, expert associates and employees for work in these departments were appointed. Also, the number of deputies of the Special Prosecutor has been increased in accordance with concentration of competencies of the Department managed by the Special Prosecutor.

Education of agents of the administration of justice function and of officials of other state bodies in this field is carried out in the Centre for Education of Agents of the Administration of Justice function and in the Human Resources Administration in accordance with programmes of initial and continued training.

The Ministry of Justice publishes on its web site ratified international agreements.

Since the last previous evaluation the imprisonment system has been reformed, concerning both the normative part (by adoption of the Law on Amendments to the Law on Enforcement of Criminal Sanctions) and the institutional part. Within the Institution for Enforcement of Criminal Sanctions measures have been taken for improvement of prison standards. Capacities of the prison have been enlarged, the prison hospital has been adapted and equipped, special prison vehicles have been procured and the collection of books intended for prisoners has been enriched. Professional training of prisoners is regularly carried out. Prisoners' workshops are equipped and put to use.

As regarding court practice, a department of court practice was established in the Supreme Court. Sentences of verdicts of the Supreme Court are published in the Bulletin of the Supreme Court and the Collection of Verdicts of the Supreme Court is in preparation. In the future period, in addition to activation of the Judicial Information System (PRIS), it is necessary to ensure that all the decisions important for the court practice are announced at the web site of the Supreme Court and published in some other manner. A positive example in terms of the above said is the Administrative Court of Montenegro, which publishes its decisions in this manner.

With a view to strengthening the efficiency of judicial institutions, their availability to the citizens and restoring of confidence in the institutions of administration of justice, the Government of Montenegro set the objective of full implementation of the Judicial Information System (PRIS) and defined the time schedule of its implementation and earmarked certain financial resources to that purpose through action plans, informative documents and strategies. Implementation of the PRIS takes significant place in the Action Plan of the Strategy of Reform of Judiciary 2007-2012

with a view that all procedures in the Ministry of Justice, administration of justice and in the segment of enforcement of criminal sanctions are based on a modern and integrated IT system. Sustained efforts are made on full establishment of the judicial information system PRIS. Implementation of the programme solution of the Judicial Information System implies a centralised single data base and safe access of all users to applications and data, all in accordance with their legal authorisations. The existing software solution encompasses all users within five segments: the Ministry of Justice, courts, prosecutorial organisation, misdemeanour authorities and the Institution for Enforcement of Criminal Sanctions, as well as the Central Registry of the Commercial Court in Podgorica. Complete establishment of a single data base and achievement of high level of up-to-date maintenance of data will enable quality statistical reporting, establishment of a system for sharing of data with institution in Montenegro and abroad, faster access to information for the citizens and improvement of work of the administration of justice in general.

## THE MOST IMPORTANT ACTIVITIES REALISED SINCE THE LAST PREVIOUS EVALUATION

### STRENGTHENING OF THE NORMATIVE FRAMEWORK

- The Law on Constitutional Court passed;
  - The Law on Judicial Council passed;
  - The Law on Amendments to the Law on Public prosecutor passed;
  - The Law on Amendments to the Law on Courts passed;
  - The Code of Criminal Proceedings passed;
  - The Law on Protection of the Right to Trial in Reasonable Time passed;
  - The Obligations Act passed;
  - The Law on Amendments to the Law on notaries passed;
  - The Law on Cooperation with the International Criminal Court passed;
  - The Law on State Property passed;
  - The draft Law on Amendments to the Law on Criminal Code adopted
  - The draft Law on Protection from Domestic Violence prepared;
  - Rulebooks on organisation and job classification in courts adopted;
  - The Rules of Procedure of the Judicial Council adopted;
  - The Rulebook on internal organisation and job classification of the Secretariat of the Judicial Council adopted;
  - The Prosecutorial Council adopted the Rules of Procedure of Work which lays down the method of work, decision making and other issues of significance for work of the Prosecutorial Council;
  - The Rulebook on the Manner of Taking Notarial Exam is adopted and will be followed by appointment of the first generation of notaries in Montenegro
- 
- The Convention on Fight Against Human Trafficking ratified;
  - The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crimes and on Financing of Terrorism ratified;
  - Convention on Prevention of Terrorism ratified;
  - The Council of Europe's Convention on Suppression of Terrorism ratified;
  - The Convention on Cyber Crime with the additional protocol ratified;
  - The Council of Europe's Convention on Actions against Human Trafficking ratified; - The Council of Europe's Convention on International Validity of Criminal Verdicts ratified;
  - The European Convention on the Compensation of Victims of Violent Crimes ratified;
  - The Additional Protocol to the criminal legal Convention on Corruption ratified;
  - The Second Additional Protocol to the European Convention on International Legal Aid in Criminal Matters ratified;
- 
- Analysis of the network of courts is underway;
  - The Strategy for Reform of the Misdemeanour System in Montenegro and the Analysis of Work of Bodies Competent for Conducting of Misdemeanour Proceedings adopted;
  - The Code of Judicial Ethics adopted;
  - The Ethical Code of Work of Mediators adopted

### STRENGTHENING OF THE INSTITUTIONAL FRAMEWORK

- The Judicial Council has been constituted and its working bodies established;
- The Prosecutorial Council has been appointed, in accordance with the Law on Amendments to the Law on Public Prosecutor;
- The Representative of Montenegro before the European Court of Human Rights in Strasbourg has been appointed;
- The Centre for Mediation has been established;
- Annual plans and programmes for education of agents of the administration of justice function have been adopted;
- Prison facilities have been built: pavilion D, the facility for enforcement of punishments of sentenced foreigners, minors and women and the facility for short-term punishments;
- Programs of resolving the backlog of cases are carried out in the consistent manner (reduction in the backlog from previous years of about 67 %);
- The Council for Realisation of Projects of the Judicial Information System has been constituted;
- The Operational Team of the Council has been formed and the manager of the project has been appointed;
- The Analysis of the condition of the existing court buildings has been conducted and activities have been taken for preparation of the project for construction of the Palace of Justice in Podgorica;
- The analysis of the existing work premises in the public prosecutorial system has been conducted and the need for its enlargement has been ascertained, in pursuance with the planned increase in the number of agents of the prosecutorial function and employees, stemming from introduction of prosecutorial investigation;
- In high courts two specialised departments have been formed for adjudication in cases of organised crime, corruption, war crimes and terrorism;
- The programme of priority processing of cases from the field of corruption and organised crime is being consistently implemented;
- Competencies of the Special Prosecutor for suppression of organised crime, corruption, terrorism and war crimes have been extended and the number of his/her deputies has been increased;

The Strategy for Reform of Judiciary 2007-2012 is posted on Country profile on CEPEJ web site and the web site of Ministry of Justice of Montenegro is [www.pravda.gov.me](http://www.pravda.gov.me) .