



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

QUESTIONNAIRE POUR ÉVALUER LES SYSTÈMES JUDICIAIRES 2011

Pays : Monténégro

Correspondant national

Nom Prénom : **MASANOVIC Lidija**

Profession : **Sector for International Legal Assistance and EU Integrations**

Organisation : **Ministry of Justice**

E-mail : **lead_ija@yahoo.com**

N° Téléphone : **382 20 407 510**

1. Données démographiques et économiques

1. 1. Généralités

1. 1. 1. Habitants et informations économiques

1) Nombre d'habitants (si possible au 1er janvier 2011)

620 029

2) Total des dépenses publiques annuelles au niveau national et le cas échéant, les dépenses publiques des collectivités territoriales ou entités fédérales (en €) - (Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP)

	Montant
Niveau national	1 465 410 000
Niveau territorial / entités fédérales (total pour l'ensemble des niveaux territoriaux/entités fédérales)	NAP

3) PIB par habitant (en €)

5 006

4) Salaire moyen brut annuel (en €)

8 580

5) Taux de change de la monnaie nationale (zone non Euro) en € au 1 janvier 2011

National currency in Montenegro is Euro.

A.1

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

1. The figure shows number on the date March 31st 2011. (Census of population, households and apartments was made in 2011.). Source: Statistical Office of Montenegro (Monstat)

2. Ministry of Finance

3. Source: Statistical Office of Montenegro (Monstat)

4. Source on data on earnings is existing financial-bookkeeping documentation, as well as documentation of the HR services which is being kept by reporting units, in accordance with The Law on records in the area of labor and employment ("Official Gazette of RME", no.69/03). Source: Statistical Office of Montenegro (Monstat)

1. 2. Données budgétaires relatives au système judiciaire

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

6) Budget public annuel approuvé pour le fonctionnement de l'ensemble des tribunaux, en € (si possible sans le budget du ministère public et de l'aide judiciaire) :

TOTAL du budget public annuel approuvé pour

le fonctionnement de l'ensemble des tribunaux (1 + 2 + 3 + 4 + 5 + 6 + 7)	<input checked="" type="checkbox"/> Oui	19 943 898
1. Budget public annuel alloué aux salaires (bruts)	<input checked="" type="checkbox"/> Oui	13 968 319
2. Budget public annuel alloué à l'informatisation (équipements, investissements, maintenance)	<input checked="" type="checkbox"/> Oui	430 535
3. Budget public annuel alloué aux frais de justice (frais d'expertise, d'interprètes, etc.), sans l'aide judiciaire. NB: ne concerne pas les taxes et frais à payer par les parties.	<input checked="" type="checkbox"/> Oui	2 918 231
4. Budget public annuel alloué aux bâtiments des tribunaux (maintenance, budget de fonctionnement)	<input checked="" type="checkbox"/> Oui	69 750
5. Budget public annuel alloué à l'investissement en nouveaux bâtiments (tribunaux)		NAP
6. Budget public annuel alloué à la formation		NAP
7. Autres (Veuillez préciser)	<input checked="" type="checkbox"/> Oui	2 557 061

7) Dans le cas où vous ne pouvez pas distinguer le budget du ministère public et de l'aide judiciaire du budget alloué à l'ensemble des tribunaux, veuillez l'indiquer clairement. Si "autres", veuillez le préciser :

Category "7. Other" includes the payments for: other personal incomes /868.781 eus), and meal allowances and reimbursements, fees for renting an apartment of judges, compensation for the including judges in other courts, compensations to judges for fulfilling a double scores, compensations to officials and judges to help in health treatments and in cases of the death of a member of the family, rewards to officials for the achievements in work, payments to commercial court for expenses in liquidation procedures, purchase of office material, small inventory, hygienic goods, business trips, representation, payment of electricity, fuel for official vehicles, heating of court rooms, telephones, mail services, payment of the agreed services and lease of the premises.

"Other" includes also the expenses for material, business trips, representation, energy, phone services, postal and comunal taxes, renting of objects): 1.688.279,69

Note: Having in mind the Montenegro being devoted to EU Acession, numerous activites of strengthening capacities of Justice authorities is being constantly performing. Also, area of Justice is being supported by EU and many other Internatoinal partners, which provide donor support in both trainig and supplying equipment for the judiciary authorities.

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

- en matière pénale ?
- en matière autre que pénale ?

Si oui, existe-t-il des exceptions à la règle de payer une taxe ou des frais ? Veuillez préciser ces exceptions:

Law on Court Fees („Official Gazette of RME“, no 76/2005 and 40/2010) defines releases from paying fees to: The State, State authorities and public institutions; local government, humanitarian organizations, persons who are in a proceeding of realization of the right from labour or official relation, supported persons in the proceeding of legal support, prosecutors in court proceeding for acknowledging parenthood, prosecutors in cases on keeping and raising of children, as well as marriage partner, child or parent of the missing person in the proceeding of proclamation of missing person as ded and proving of death. Foreign state and foreign nationals are released from paying taxes only if it is foreseen by international agreement or under the conditions of reciprocity.

Law defines that the Court may release the person from paying court fees if such payment would severely diminish the funds for supporting such person or members of his family. On such release, rules of The Law on civil procedure are applied. Release from paying taxes in civil, extra-judicial or criminal proceeding upon private complaint, as in administrative proceeding applies in proceeding of enforcement of decisions brought in that proceedings, if the proposal for enforcement is filed within three months from the time of decision becoming final. Release from paying taxes given in extra-judicial and enforcement proceeding also applies for civil proceeding, which derives during or after these proceedings.

The Court may abolish the decision on release from taxes during the proceeding, in case it determines that the Party is able to pay the taxes. If in civil, enforcement, criminal or a procedure upon private lawsuit, party released from paying taxes succeeds in a procedure, taxes will be payed by other side in ration in which the other side succeeded in a proceeding. In case the Court determines that other side which is not released from paying court taxes is not able to pay the taxes, it can decide that total or part of taxes should be payed by the party which was released from paying taxes, from what is given to it upon the decision.

Un criminal procedure taxes are payed only by person filin private suit.

9) Montant annuel des taxes ou frais judiciaires perçus par l'Etat (en €)

6 239 721

10) Budget public annuel approuvé et alloué à l'ensemble du système de justice, en €(ce budget n'inclut pas seulement le budget approuvé pour le fonctionnement de l'ensemble des tribunaux comme défini à la question 6, mais aussi le système pénitentiaire, la protection judiciaire de la jeunesse, le fonctionnement du ministère de la Justice, etc.)

NA

38 236 480

11) Veuillez préciser les éléments composant le budget de l'ensemble du système de justice.

Si "autre", veuillez préciser dans la case "commentaire" ci-dessous.

Système des juridictions	Oui
Aide judiciaire	Oui
Ministère public	Oui
Système pénitentiaire	Oui
Service de probation	NAP
Conseil de la justice	Non
Protection judiciaire de la jeunesse	Non
Fonctionnement du ministère de la justice	Oui
Services des demandeurs d'asile et	Non

réfugiés	
Autres	Oui

Commentaire :

Court system: 20.497.283,05 eur

State Prosecution Office: 5.176.984,74 eur

The Prison Administration: 8.214.810,15 eur

Ministry of Justice: 1.385.793,76 eur

Other - Misdemeanour authorities: 2.961.609,13 eur.

In total: 38.236.480,83 eur

Comment: Probation service did not exist in 2010.

The court system budget includes the budget of the Constitutional Court

12) Budget public annuel approuvé et alloué à l'aide judiciaire, en €- Si une ou plusieurs données ne sont pas disponibles, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.

	Total du budget public annuel approuvé et alloué à l'aide judiciaire (12.1 + 12.2)	12.1 Budget public annuel alloué à l'aide judiciaire en matière pénale	12.2 Budget public annuel alloué à l'aide judiciaire en matière autre que pénale
Montant (en €)	169921	NA	NA

13) Budget public annuel approuvé et alloué au Ministère public (en €). Veuillez ajouter dans la boîte "commentaire" ci-dessous toute information utile à l'interprétation des données.

Montant

5 176 984

Commentaire :

14) Instances formellement responsables des budgets alloués aux tribunaux (réponses multiples possibles) :

	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	Non
Parlement	Non	Oui	Non	Non
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	Oui

15) Si autre ministère et/ou organisme d'inspection et/ou autre, veuillez préciser (au regard de la question 14) :

Other- State Audit Institution.

A.2

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**

Veillez indiquer les sources des réponses aux questions 6, 9, 10, 11, 12 et 13.

6,9,10,11,13 - MInistry of Finance

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

2. 1. Aide judiciaire

2. 1. 1. Principes

16) L'aide judiciaire concerne-t-elle :

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

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

- Oui
 Non

Si oui, veuillez préciser:

Law on free legal aid ("Official Gazette of MNE", No.20/2011) adopted by the Parliament of Montenegro in April 2011., defines that free legal aid encompasses providing necessary funds for total or partial covering of expenses of legal advise, creating documents, representation in the proceedings before court, State Prosecutor's Office and Constitutional court of Montenegro, and in proceeding for extrajudicial resolution of disputes, as well as exemption from expenses of court proceeding.

Law on court fees ("Official Gazette of RMNE", No.76/2005) 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 .

18) Est-il possible de bénéficier de l'aide judiciaire pour des frais relatifs à l'exécution des décisions de justice (par exemple : honoraires d'un agent d'exécution) ?

- Oui
 Non

Si oui, veuillez préciser:

19) L'aide judiciaire peut-elle être allouée pour d'autres frais (différents de ceux indiqués aux questions 16 à 18, par exemple honoraires d'un conseiller technique ou expert, honoraires d'autres professionnels de la justice (notaires), frais de voyage, etc.) ? Si oui, veuillez préciser dans la boîte "commentaire" ci-dessous.

	Affaires pénales	Affaires autres que pénales
	Non	Non

Commentaire :

Please see explanation of answer to Q17.

20) Nombre d'affaires portées devant les tribunaux et ayant bénéficié de l'aide judiciaire. Veuillez préciser dans la boîte "commentaire" ci-dessous, le cas échéant. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.

[Cette question porte sur le nombre annuel de décisions octroyant l'aide judiciaire aux justiciables qui ont saisi un tribunal. Elle ne concerne pas le conseil juridique fourni pour des affaires qui ne sont pas portées devant un tribunal.]

	Nombre
Total	NA
en matière pénale	NA
en matière autre que pénale	NA

Commentaire :

21) En matière pénale, les personnes n'ayant pas les moyens financiers suffisants peuvent-elles bénéficier de l'assistance gratuite (ou financée par un budget public) d'un avocat ? Veuillez préciser dans la boîte "commentaire" ci-dessous.

Personnes mises en cause	Oui
Victimes	Non

Commentaire :

The Constitution of Montenegro guarantees equal protection of human rights and freedoms. Everybody has a right to a legal aid, which is provided by lawyer profession as independent service and other services. Legal aid can be free, in accordance with the law.

Criminal procedure is defined by Criminal Procedure Code ("Official Gazette of MNE, No.57/09 and 49/10) which prescribes Appointment of Defense Attorney Due to Adverse Financial Situation, in sense that when conditions for mandatory defense are not met, but it is required so by the interests of fairness, at the request of the accused persons, they may be appointed a defense attorney if they are not able to bear the costs of defense under their financial situation. The decision on the request shall be rendered by the competent State Prosecutor in the preliminary investigation and in the investigation and after the indictment is brought, the President of the Court in accordance with the order on the list of the Bar Association.

22) Si oui, ont-elles le libre choix de l'avocat dans le cadre de l'aide judiciaire?

Oui

Non

23) Votre pays procède-t-il à un examen des revenus et/ou des biens (patrimoine) du demandeur avant d'octroyer l'aide judiciaire ? Veuillez ajouter dans la boîte "commentaire" ci-dessous les informations utiles à l'interprétation des données fournies. Si un tel système existe, mais que les données ne sont pas disponibles, veuillez indiquer NA. Si un tel système n'existe pas, veuillez indiquer NAP.

	montant du revenu (si possible pour une personne) en €	valeur des biens (patrimoine) en €
en matière pénale	NA	NA
en matière autre que pénale ?	NA	NA

Commentaire :

Right to a free legal aid, in accordance with the law can be given to:

- 1) citizen of Montenegro;
- 2) person without citizenship who is legally staying in Montenegro and asylum seeker in Montenegro;
- 3) foreigner with permanent residence or approved temporary staying or other person legally staying in Montenegro;
- 4) other person in accordance with ratified and published international treaties.

These persons have the right to free legal aid if they are:

1. users of material security of the family or some other right of social protection in accordance with the law regulating social and child protection;
2. children without parental care;
3. persons with special needs;
4. victims of criminal offences Violence in the family or in the family community and Trafficking of human beings;
5. persons of poor material status (considered person who does not have property, and his monthly income and total monthly income of the family is not over 30% of average salary in Montenegro for one member and 15% of the average income for every following member). In the proceeding of deciding upon request for allowing free legal aid, Law on administrative procedure is being applied.

24) 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 ou en raison de l'absence d'un éventuel succès) ?

- Oui
 Non

Si oui, veuillez expliquer les critères concrets pour refuser l'aide judiciaire :

25) La décision d'accorder ou de refuser l'aide judiciaire est-elle prise par :

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

26) Existe-t-il un système privé d'assurance protection juridique permettant aux personnes physiques (cela ne concerne pas les entreprises ou autres personnes morales) de financer une action en justice ?

- Oui
 Non

Le cas échéant, veuillez donner des indications sur le développement actuel de ce type d'assurance dans votre pays; s'agit-il d'un phénomène grandissant ?

27) 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:

en matière pénale ?	Yes
en matière autre que pénale ?	Yes

B.1

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

Veillez indiquer les sources des réponses aux questions 20 et 23:

2. 2. Usagers des tribunaux et victimes

2. 2. 1. Droit des usagers et victimes

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

Les sites internet mentionnés pourraient figurer notamment sur le site internet de la CEPEJ. Veuillez préciser dans la boîte "commentaire" ci-dessous quels documents et informations sont inclus aux adresses concernant "autres documents" :

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.sllistcg.me
The Constitutional Court of Montenegro
www.ustavnisudcg.co.me
Courts of Montenegro
www.sudovi.me

à la jurisprudence des hautes juridictions ? adresse Internet:

Oui

Courts of Montenegro
www.sudovi.me
The Supreme State Prosecution Office
www.tuzilastvocg.co.me
Bar Association of Montenegro
www.advokatskakomora.me
Judicial Training Center
www.coscg.org

à d'autres documents (par exemple le téléchargement de formulaires, l'enregistrement en ligne) ?

Oui

Courts of Montenegro
www.sudovi.me
The Secretariat of The Judicial Council
www.sudskisavjet.gov.me
Ombudsman of Montenegro
www.ombudsman.co.me
Bar Association of Montenegro
www.advokatskakomora.me
Center for Mediation
www.posredovanje.me
Judicial Training Center
www.coscg.org
Central Registry of The Commercial Court
www.crps.me

Commentaire :

29) Votre système prévoit-il une obligation d'informer les parties concernant les délais prévisibles de la procédure judiciaire?

- Oui
 Non

Si oui, veuillez préciser:

Parties can be informed on the average length of proceedings.

30) 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:

31) Existe-t-il des modalités favorables particulières applicables aux catégories de personnes vulnérables suivantes, au cours des procédures judiciaires. Si "autres personnes vulnérables" et/ou "autres modalités particulières", veuillez le préciser dans la boîte "commentaire" ci-dessous.

[Cette question ne concerne pas la phase d'investigation par la police et elle ne concerne pas l'indemnisation des victimes d'infractions traitée aux questions 32 à 34.]

	Dispositif d'information	Modalités particulières pour les audiences	Autres
Victimes de viol	Non	Oui	Non
Victimes du terrorisme	Non	Oui	Non
Enfants (témoins ou victimes)	Non	Oui	Non
Victimes de violence domestique	Non	Oui	Non
Minorités ethniques	Non	Oui	Non
Personnes handicapées	Non	Oui	Non
Délinquants mineurs	Non	Oui	Non
Autres (par exemple, les victimes de la traite des êtres humains)	Non	Oui	Non

Commentaire :

Criminal Procedure Code ("Official Gazette of MNE", No. 57/09 and 47/10) defines protection of "wunerable persons, relevant articles are layed down:

"Official Language in Criminal Proceedings

Article 7

(1) In criminal proceedings, the official language shall be the Montenegrin language.

(2) In courts having jurisdiction over the territory in which members of minority nations and other minority ethnic communities (hereinafter: minorities) constitute a substantial part of inhabitants, their respective language shall be in the official use in criminal proceedings in accordance with law.

Right to Use One's Own Language in Criminal Proceedings

Article 8

- (1) The criminal proceedings shall be conducted in the Montenegrin language.
- (2) Parties, witnesses and other persons participating in the proceedings shall have the right to use their own language or the language they understand in the proceedings. If proceedings are not conducted in a language those persons understand, interpretation of statements and translation of documents and other written evidence shall be provided.
- (3) Persons referred to in paragraph 2 of this Article shall be instructed of their right to interpretation, and they may waive that right if they understand the language in which the proceedings are being conducted. A note shall be made in the record that the participants of the proceedings have been so instructed, and their statement thereto shall also be recorded.
- (4) Interpretation shall be entrusted to an interpreter.

Language Used for Presenting Submissions to Courts and for Remitting Submissions by Courts

Article 9

- (1) Complaints, appeals and other submissions shall be filed to the court in the Montenegrin language.
- (2) Persons deprived of liberty may file submissions to the court in their language or in the language they understand.
- (3) Court shall issue summonses, decisions and other writs in the Montenegrin language.
- (4) If the language of a minority is also in the official use in the court, the court shall deliver writs in that language to persons belonging to the respective national minority if they have used that language in the course of the proceedings. Those persons may request that writs be delivered to them in the Montenegrin language.
- (5) An accused person in detention, a person serving a sentence or a person against whom a security measure in a medical institution is being enforced, shall also receive a translation of the writs referred to in paras. 1 and 3 of this Article in the language used by this person during the proceedings.

.....

Art 113 par 4

- "(4) When a minor is heard, especially if a minor was injured by the criminal offence, special care shall be taken in order to ensure that the hearing would not have an adverse effect on the minor's mental condition. When necessary, the minor shall be heard with assistance of a psychologist or another expert.
- (5) Injured parties who are victims of a criminal offence against sexual liberty, as well as children being examined as witnesses, shall be entitled to testify in separate premises before a judge and a court reporter, whereas the Prosecutor, accused person and defense attorney shall be given the possibility to view the course of hearing from other premises and to put questions to the witness, after having been duly instructed by the court thereon. The instruction shall be entered in the record.
- (6) The court may decide that the provision of paragraph 5 of this Article be also applied to the testimony of the injured party who is the victim of discrimination."

"Persons Forbidden to Take an Oath

Article 118

The following persons shall not take an oath:

- 1) who are not of age at the time of hearing;
- 2) for whom it has been proved or grounded suspicion exists that they have committed or participated in the commission of an offence for which they are being heard;
- 3) who due to their mental conditions are unable to comprehend the importance of the oath.

....

Protection of Witnesses from Intimidation

Article 120

- (1) If reasonable concern exists that by giving a statement or answering certain questions witnesses would put in danger their, their spouse's, close relative's or a close person's life, health, physical integrity, freedom or property of great value, witnesses may withhold from giving the data referred to in Article 113, paragraph 3 of the present Code, answering certain questions or giving the statement altogether until their protection is secured. If it finds that the refusal to give a statement is manifestly ill-founded, the authority conducting the proceedings shall caution witnesses that fines specified in Article 119 of the present Code may be imposed on them.

- (2) Witness protection shall consist of special ways of participating and hearing witnesses in the criminal procedure.
- (3) Protection of witnesses and other persons referred to in paragraph 1 of this Article may be secured beyond the criminal procedure as well, in line with the law regulating witness protection.
- (4) The court shall inform the witness on the rights referred to in paragraphs 1, 2 and 3 of this Article.

Special Ways of Participating and Hearing Protected Witnesses

Article 121

- (1) Special ways of participating and hearing witnesses in the criminal procedure are: hearing of witnesses under pseudonym, hearing with assistance of technical devices (protective wall, voice simulators, devices for transmission of image and sound) and alike.
- (2) If special way of hearing of witnesses in the procedure consists only of withholding data referred to in Article 113, paragraph 3 of the present Code, the hearing shall be done under pseudonym, while in other part of the procedure, the hearing shall be done in accordance with general provisions of the present Code on the hearing of witnesses.
- (3) If special ways of participating and hearing witnesses in the procedure consists of withholding data referred to in Article 113, paragraph 3 of the present Code as well as of hiding the face of the witness, hearing shall be done through technical devices for transmission of image and sound. The specialist referred to in Article 282, paragraph 8 of the present Code shall operate a technical device. During the hearing, face and voice of the witness shall be changed. During the hearing, witnesses shall be in the room other than the one where the investigating judge and other persons present at the hearing are. The investigating judge shall ban all the questions which could lead to revealing the identity of witnesses.
- (4) After the hearing has been completed, witnesses shall sign the record using pseudonym only in the presence of the investigative judge and court reporter.
- (5) Persons who in whatever capacity, learn the details about the witness referred to in paragraphs 2 and 3 of this Article shall keep them secret.

Deciding on Special Ways of Participating and Hearing Witnesses and Protection of Data

Article 122

- (1) The ruling on the special manner of participation and hearing of the protected witness in investigation shall be issued by the investigative judge at the motion of witnesses, the accused person, the defence counsel or the State Prosecutor, whereas at the main hearing it shall be issued by the Panel. The motion shall contain a statement of reasons.
- (2) The investigating judge shall, prior to issuing the ruling, ascertain as to whether the testimony of the witness is of such a relevance to be given the status of a protected witness. For the purpose of ascertaining these facts, the investigating judge may fix a hearing for the State Prosecutor and the witness to appear in court.
- (3) Details of the witness who is to participate in a special way in the procedure shall be sealed in a special cover and kept by the investigative judge. A note shall be put on the cover saying "Protected Witness – Secret". The cover envelope may be opened only by the panel adjudicating at the main hearing and the second instance court in the appellate procedure, but the opening thereof shall be entered into the record together with the names of the members of the panel who came to the knowledge of its contents. After this the cover shall be sealed again and returned to the investigative judge.

...

Protection of the Injured Party while Giving a Statement

Article 124

Provisions of Articles 120 to 123 of the present Code shall be applied accordingly to participation and hearing of the injured party in the criminal proceedings as well.

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

Oui

Non

Si oui, pour quels types d'infractions

For all criminal offences.

33) Si oui, cette procédure d'indemnisation consiste-t-elle en:

- un dispositif public ?
- des dommages et intérêts à payer par la personne responsable (par décision du tribunal) ?
- un dispositif privé ?

34) 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 le taux de recouvrement, le nom des études, la fréquence des études et l'organe responsable :

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

- Oui
- Non

Si oui, veuillez préciser :

In accordance with art. 58 of The Law on State Prosecution office, damaged person-victim of criminal offence has the right to, during the investigation, provide with all the facts and propose evidence important to criminal issue and his request for compensation.

On main hearing, the damaged person has the right to propose evidence, ask questions to the defendant, witnesses and court experts, to object and give explanations on their statements and to give other statements and proposals, and to examine documents and see files which serve as the evidence.

The damaged person who is a victim of criminal offence against sexual liberty, has the right to hear, and the procedure is run by the judge of the same sex, if it is possible by the staff structure of the court.

The State prosecutor and the president of the court panel are obliged to inform the damaged person about his rights.

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

Veuillez vérifier la cohérence de votre réponse avec celle de la question 105 qui traite de la possibilité pour un procureur "de classer une affaire sans suite, sans avoir besoin d'obtenir une décision du tribunal".

- Oui
- Non
- NAP (le procureur ne peut pas décider de classer une affaire de son propre chef. Une décision judiciaire est nécessaire)

Le cas échéant, veuillez préciser :

In terms of art. 59 of The Criminal Procedure Code, when the state prosecutor finds that there is no base to initiate criminal prosecution for the criminal offence for which the prosecution is initiated upon official duty, or that there are no grounds to initiate proceeding against some of the registered participants, he is obliged to, in period of 8 days, inform the damaged person accordingly, and inform him that he can initiate prosecution by himself and deliver to him the decision on rejecting the criminal application, except in the cases of postponing of criminal prosecution in accordance with art.272, for which consent of the damaged person is necessary, and of rejecting of criminal application from the reasons of equity in accordance with art. 273. If the criminal procedure is initiated against certain person for criminal offence prosecuted on official duty, the damaged person has the right in each phase of the proceeding to take over prosecution before the court, if the State Prosecutor abandons the prosecution.

2. 2. 2. Confiance des citoyens dans leur justice

37) 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 ?

Le cas échéant, veuillez fournir des renseignements concernant la procédure d'indemnisation, le nombre d'affaires, le résultat des procédures et le dispositif actuel permettant de calculer le montant de l'indemnisation (par exemple, le tarif journalier pour une arrestation ou une condamnation injustifiée) :

1. In december the Law on Protection of the Right to Court Trial in Reasonable Time ("Official Gazette of MNE", No. 11/2007) was adopted . This Law defines the protection of the right to trial in reasonable time, and just compensation for breach of this right. Right to court protection for breach of right to a trial in a reasonable time have the party, and a third party in a civil proceeding, party and interested person in administrative proceeding, accused and damaged person in a criminal proceeding if the proceedings are referring to protection of their rights in sense of European Convention of Human Rights and Fundamental Freedoms.

The Law defines two legal means: Request to Accelerate the Proceedings and the Claim for Fair Redress.

Request to Accelerate the Proceedings is filed to the court in which the case is in procedure and the president of the court decides upon the Request.

Claim for Fair Redress is filed to The Supreme Court of Montenegro which decides upon it in panel of three judges.

Fair Redress for breach of the right to a trial in a reasonable time can be achieved:

- by payment of money sum for caused damaged from breach of right to a trial in a reasonable time and/or
- publishing a verdict that the right of a party to a trial in a reasonable time has been violated.

Sum of money is between 300 and 5.000 euros.

When defining sum of money, the following elements are especially being taken into consideration:

- the factual and legal complexity of the subject,
- behaviour of the person filing a legal mean,
- behavior of the court and other state authorities, local self-government, public services and other holders of public authorities,
- the interest of the person filing the legal mean.

U 2010. there were 13 Claims for Fair Redress.

2. The Crminal Procedure Code 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 euros per month of unmerited detention should be paid for mental anguish caused by unmerited limitation 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 wrongfull 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.

Accordance with court practice, for a month of injustice staying in detention, the amount of 3000-4000 euros is determined. What amount will be determined depends from severeness and type of criminal offence for which the person was accused, earlier life of the accused person (convicted or not convicted), how much the arrest of the accused person and the criminal proceeding against him was under attention of the media.

"Before initiating the procedure, it is obligatory to try to conclude with party concerned the Agreement on compensation for damages". (cf.13/7)

38) Votre pays a-t-il mis en place des enquêtes auprès des professionnels de la justice et

des usagers des tribunaux pour mesurer leur confiance dans la justice et leur degré de satisfaction par rapport au service rendu ? (plusieurs options possibles)

- 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 parties
- enquêtes (de satisfaction) auprès d'autres usagers des tribunaux (par exemple jurés, témoins, experts, interprètes, représentants des agences gouvernementales)
- Enquêtes (de satisfaction) auprès des victimes

Si possible, veuillez préciser leurs titres, objets et sites internet où elles peuvent être consultées :

39) Si possible, veuillez préciser :

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

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

- Oui
- Non

41) Veuillez préciser l'autorité compétente pour traiter de telles plaintes et informer si l'autorité doit ou ne doit pas respecter un délai pour répondre et/ou un délai pour traiter la plainte (plusieurs réponses possibles). Veuillez donner des informations sur l'efficacité de cette procédure de plainte dans la boîte "commentaire" ci-dessous.

	Délai pour répondre (par exemple pour accuser réception de la plainte, pour informer des suites qui lui seront données, etc.)	Délai pour traiter la plainte	Pas de délais
Tribunal concerné	Oui	Non	Non
Instance supérieure	Oui	Non	Non
Ministère de la Justice	Oui	Non	Non
Conseil supérieur de la magistrature	Oui	Non	Non
Autres organisations extérieures (ex. médiateur)	Oui	Non	Non

Commentaire :

Q40.

Complaint on the work of the judge can be filed to president of the court in which judge performs his function. Acting upon this complaint, the president of the court, in accordance with the art.93 par 1 of The Law on Courts ("Official Gazette of MNE" no. 5/02,49/04 and 22/08) can bring decision to take the

referred case from the judge or panel and assign it to other judge or panel. The time frame in which the president of the court is obliged to decide is not defined by the law, and if he does not decide upon petition or complaint, this is a reason for responsibility of the president of the court (art. 95 of The Law on Courts).

Complaint on a work of the judge can be filed also to a president of the court of higher instance.

Complaint on a work of the judge can be filed also to The Judicial Council.

In accordance with the art. 128 of The Constitution of Montenegro ("Official Gazzete of MNE", no. 1/07) one of the competences of the Judicial Council is to analyse petitions and complaints on the work of the judges, and defines stands upon these.

In The Supreme Court of Montenegro there is a Office for reception and complaints of the citizens.

Every citizen can file a complaint to this Office.

In terms of the means provided by Law on Trial in a reasonable time, these are Request to accelerate proceedings (control request) and Claim for Fair Redress.

The Control request is filed to the president of the refered court and he is obliged to decide upon the request in 60 days. If the president of the court rejects the Control request or omits to decide in the due time, the complaint can be filed to the president of the court of higher instance in 8 days. The president of the court of higher instance is obliged to decide upon complaint in 60 days since the receipt.

The decision upon Claim for Fair Redress is competence of the Supreme court, which is obliged to decide upon claim in 4 months since the receipt of the complaint.

The Stae Prosecution Office

In accordance with The Rules of Procedure of The State Prosecution Office, complaints on the work is filed to the state prosecutor for deputy prosecutor or officer, and to the directly higher state prosecutor for lower state prosecutor. On the complaint or statement the state prosecutor is obliged to inform the person filing a complaint in the timeframe of 15 days.

Ministry of Justice

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. After receiving all the informations, these are being forwarder to the person that filed a complaint.

Also, in accordance with the art. 101 of the Law in State Prosecutor, Ministry of Justice through authorised officer performs supervision over the work of the state prosecutors office in terms of the handling of complaints or notes.

In the 2010. Ministry of Justice received 139 complaints and acted upon all of them.

3. Organisation des tribunaux

3. 1. Fonctionnement

3. 1. 1. Tribunaux

42) Nombre de tribunaux considérés comme entités juridiques (structures administratives) et implantations géographiques. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.

	Nombre total
42.1 Tribunaux de droit commun de 1ère instance (entités juridiques)	17
42.2 Tribunaux spécialisés de 1ère instance (entités juridiques)	3
42.3 Tous les tribunaux (implantations géographiques) (ce chiffre inclut les tribunaux de droit commun de 1ère instance, les tribunaux spécialisés de 1ère instance, tous les tribunaux de seconde instance et cours d'appels et toutes les cours suprêmes)	22

43) Nombre (entités juridiques) de tribunaux spécialisés (ou ordre judiciaire spécifique) de 1ère instance. Si "autres tribunaux spécialisés de 1ère instance", veuillez donner des précisions dans la boîte "commentaire" ci-dessous. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.

Total (il doit correspondre au nombre indiqué à la question 42.2)	3
Tribunaux commerciaux	2
Tribunaux du travail	NAP
Tribunaux des affaires familiales	NAP
Tribunaux des affaires locatives (tribunaux des baux)	NAP
Tribunaux de l'exécution des sanctions pénales	NAP
Tribunaux administratifs	1
Tribunaux des assurances et/ou de la sécurité sociale	NAP
Tribunaux militaires	NAP
Autres tribunaux spécialisés de 1ère instance	NAP

Commentaire :

44) 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 :

With aim to strengthen efficiency of the judiciary, Innovated Action plan for the implementation of the Strategy for the Reform of the Judiciary 2007 - 2012 defines rationalization of courts and prosecution network.

45) Nombre de tribunaux de 1ère instance (implantations géographiques) compétents pour les affaires suivantes. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.

	Nombre de tribunaux
le recouvrement d'une petite créance.	17
le licenciement	15
le vol avec violence	17

Veuillez préciser la définition d'une petite créance et indiquer le montant financier en dessous duquel une créance est considérée comme telle :

Cases of small value are cases where request of the plaintiff is related to money claim not exceeding 500 €. Cases of small value are also disputes where complaining request is related to money claim, but the plaintiff stated that he accepts that, instead of fulfilling certain request, takes certain money value not exceeding 500 €. Cases of small claims are also disputes in which the subject of the plaintiff's request is not money, but giving movable asset whose value is not exceeding 500 €. Cases on immovable property, labor cases and cases for disturbing possession are not considered as cases of small value.

In the proceeding in commercial disputes, cases of small value are cases in which the plaintiff's request is related to money claim not exceeding 5.000 €. Cases of small claims are also disputes in which the subject of the plaintiff's request is not money, but but the plaintiff stated that he accepts that, instead of fulfilling certain request, takes certain money value not exceeding 5.000€. Cases of small claims are also disputes in which the subject of the plaintiff's request is not money, but giving movable asset whose value is not exceeding 5.000 €.

Cases of small value between national and foreign companies, other legal persons and entrepreneurs (commercial subjects) form their commercial-legal relations and disputes in which parties are not commercial subjects, but they are in material co-competitors are in the competence of the commercial courts. Therefore, as there are 15 basic and 2 commercial courts in Montenegro, the answer to the question „Number of first instance courts competent for the cases of collecting claims in small claim cases” is 17.

Criminal offence Robbery is defined in the art. 242 of The Criminal Code. For the criminal offence from the art. 242 par.1 the prescribed punishment is imprisonment from two to ten years., and for criminal offence from the art. 242 par.1 in relation to par. 1 is imprisonment sentence to three years, so the trial is under competence of the Basic courts; when for the other forms of the criminal offence punishment is over 10 years, these cases are under the competence of the High courts. Therefore, the answer to question "Number of first instance cases competent for criminal offence of Robbery is 17 (15 basic and 2 high courts.)

Veuillez indiquer les sources utilisées pour les réponses aux questions 42, 43 et 45 :

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

Criminal Code("Official Gazette of RMN", no. 70/03, 13/04, and "Official Gazette of MNE" no.47/06, 48/08, 25/10 and 32/11).

3. 1. 2. Juges et personnels non-juges

46) Nombre de juges professionnels siégeant en juridiction (si possible au 31 décembre 2010)

(veuillez fournir l'information en équivalent temps plein et pour des postes permanents effectivement occupés, pour tous les types de juridictions confondus – droit commun et spécialisées). Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.

Veuillez ajouter dans la boîte "commentaire" ci-dessous toute information utile à l'interprétation des données ci-dessus.

[Veuillez vous assurer que les procureurs et leurs personnels sont exclus des réponses suivantes (ils sont concernés par les questions 55-60). Si la distinction entre personnels attachés aux juges et personnels attachés aux procureurs n'est pas possible, merci de l'indiquer clairement.

Veuillez indiquer le nombre de postes effectivement pourvus à la date de référence et non pas les effectifs budgétaires théoriques.]

	Total	Hommes	Femmes
Nombre total de juges professionnels (1 + 2 + 3)	260	117 (45%)	143 (55%)
1. Nombre de juges professionnels de première instance	207	91	116
2. Nombre de juges professionnels dans les cours d'appel (2ème instance)	35	17	18
3. Nombre de juges professionnels dans les cours suprêmes	18	9	9

Commentaire :

In the second instance proceeding judges of Appellate court and high courts decide. Therefore, answer to the question „Number of second instance (court of appeal) professional judges“ encompasses also judges of high courts who work in departments of second instance.

47) Nombre de présidents de tribunaux (juges professionnels). Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.

	Total	Hommes	Femmes
Nombre total de juges professionnels (1 + 2 + 3)	22	17	5
1. Nombre de président(e)s de tribunaux de première instance	20	16	4
2. Nombre de président(e)s de cours d'appel (2ème instance)	1	1	0
3. Nombre de président(s) de cours suprêmes	1	0	1

48) Nombre de juges professionnels exerçant à titre occasionnel et rémunérés comme tel (si possible au 31 décembre 2010). Si nécessaire, veuillez indiquer dans la boîte "commentaire" ci-dessous toute information utile pour l'interprétation de la réponse à la question 48.

Donnée brute	<input checked="" type="checkbox"/> Oui	25
Si possible, donnée en équivalent temps plein		NA

Commentaire :

For 25 people, gross figure 409.241,84 euro.

In accordance with Article 42 of the Law on Judicial Council, Judicial Council may permanently or temporarily sent judge with his consent to another court of the same, lower or higher level. During the 2010., according to Article 43 of the same Law, the Judicial Council adopted 13 decisions on sending judges to other courts, and earnings have been paid to the judges who meet the norm in the Court in which they were elected, as in the court to which they were sent. 12 decisions were also brought on the termination of the work of judges in the courts where they were temporarily sent, at their request.

49) Nombres de juges non professionnels, non rémunérés, percevant, le cas échéant, un simple défraiement (si possible au 31 décembre 2010) (y compris les "lay judges" et juges consulaires ; les arbitres et les jurés sont exclus de cette donnée).

Donnée brute	<input checked="" type="checkbox"/> Oui	2
--------------	---	---

50) 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) ?

During the 2010th The jury has participated in the first instance criminal cases except for cases of criminal offenses of organized crime, corruption, terrorism and war crimes. Namely, the Code of Criminal Procedure ("Official Gazette of RM" no. 71/03 and 47/06), stipulated jury participation in the first instance criminal proceedings, except for offenses that carry a fine or imprisonment up to three years .

The Criminal Procedure Code ("Official Gazette of Montenegro",no. 57/09 and 49/2010) does not define participation of juries in criminal cases. This Code has begun to be applied in criminal proceedings for criminal offenses of organized crime, corruption, terrorism and war crimes in September of 2010. year. For other offenses the Code started full application in September 2011th.

51) Veuillez indiquer le nombre de citoyens ayant participé à de tels jurys pour l'année de référence :

148

52) Nombre de personnel non-juge travaillant dans les tribunaux (si possible au 31 décembre 2010) (cette donnée ne devrait pas inclure le personnel travaillant pour les procureurs, voir question 60) (répondre en équivalent temps plein et pour les postes permanents effectivement occupés). Si « autres personnels non juges », veuillez le préciser dans la boîte "commentaire" ci-dessous.

Nombre total de personnel non juge travaillant dans les tribunaux (1 + 2 + 3 + 4 + 5)	<input checked="" type="checkbox"/> Oui	1065
---	---	------

1. Rechtspfleger (ou organes équivalents) chargés de tâches juridictionnelles ou para-

juridictionnelles, ayant des compétences autonomes et dont les décisions peuvent être susceptibles de recours.	<input checked="" type="checkbox"/> Oui	1
2. Personnels non juges chargés d'assister les juges à l'instar des greffiers (préparation des dossiers, assistance à l'audience, tenue des procès verbaux, aide à la préparation de la décision)	<input checked="" type="checkbox"/> Oui	111
3. Personnels chargés de tâches relatives à l'administration et la gestion des tribunaux (gestion des ressources humaines, gestion des moyens matériels y compris de l'informatique, gestion financière et budgétaire, gestion de la formation)	<input checked="" type="checkbox"/> Oui	62
4. Personnels techniques	<input checked="" type="checkbox"/> Oui	691
5. Autres personnels non juges	<input checked="" type="checkbox"/> Oui	200

Commentaire :

5. Other non-judge staff are judicial trainees.

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

Registrar of The Commercial Court in accordance with The Law on Business entities ("Official Gazette of RMN", no. 6/02, 17/2007, 80/2008 i 40/2010) is a person employed in the Commercial court which can, but not mandatory, be a judge and who is performing duties without authorisation of a judge. His duties are strictly administrative and his actions are not considered as actions of the judge.

Duties of the registrar are to perform supervision over registration of forms of commercial activities, issue confirmation of registration, confirmation on expiration of registration and extract from the register. Registrar can have additional tasks related to registration that he received from the President of The Commercial Court. In accordance with Law on changes and amendments of The Law on Business entities new paragraph was introduced, stating that acts of the registrar are final and administrative proceeding can be filed against these decisions.

54) Les tribunaux ont-ils délégué certains services, relevant de leur compétence, à un service privé (par exemple, la maintenance informatique, la formation continue du personnel, la sécurité, les archives, le nettoyage)

Oui

Non

Si oui, veuillez préciser :

C.1

Vous pouvez indiquer ci-dessous :

- tout commentaire utile à 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.49

Section 101 of the Law on Courts ("Official Gazette of RM" no.5/02, 49/04 and 22/08), provides that the president may hire a person who has expertise, or form a team of experts or an expert working party for clarification of certain technical issues that arise in the work of the court, as well as to clarify the issues and attitudes within the scope of court classes and sessions of judges, to assist judges in the professional preparation of cases for trial and judgment making, research and

studying of case law and other issues are of importance for the efficient operation of courts and judges. The persons referred to are entitled to compensation in the amount fixed by the court president.

Based on these statutory provisions the President of the Supreme Court of Montenegro during the 2010th hired one person (retired judge) to assist judges in making judgments, and President of the Administrative Court one person (retired judge).

Veillez indiquer les sources utilisées pour les réponses aux questions 46, 47, 48, 49 et 52

Supreme Court of Montenegro.

3. 1. 3. Procureurs et personnel

55) Nombre de procureurs au 31 décembre 2010 (veuillez fournir l'information en équivalent temps plein et pour des postes permanents effectivement occupés, auprès de tous les types de juridictions confondus – droit commun et spécialisées). Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP. Veuillez ajouter dans la boîte "commentaire" ci-dessous toute information utile à l'interprétation des données.

	Total	Hommes	Femmes
Nombre total de procureurs (1 + 2 + 3)	129	61	68
1. Nombre de procureurs auprès des tribunaux de première instance	111	57	54
2. Nombre de procureurs auprès des cours d'appel (2ème instance)	9	2	7
3. Nombre de procureurs auprès des cours suprêmes	9	2	7

Commentaire :

56) Nombre de chefs des ministères publics. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP. Veuillez ajouter dans la boîte "commentaire" ci-dessous toute information utile pour l'interprétation des données.

	Total	Hommes	Femmes
Nombre total de chefs de ministères publics (1 + 2 + 3)	17	11	6
1. Nombre de chefs de ministères publics auprès de tribunaux de première instance	16	11	5
2. Nombre de chefs de ministères publics auprès des cours d'appel (2ème instance)	1	0	1
3. Nombre de chefs de ministères publics auprès des cours suprêmes	1	0	1

Commentaire :

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

- Oui
 Non

Nombre (en équivalent temps plein)

58) Si oui, veuillez préciser leurs noms et fonctions :**59) Si oui, est-ce que leur nombre est inclus dans le nombre de procureurs que vous avez indiqué à la question 55 ?**

- Oui
 Non

60) Nombre de personnels (non procureurs) rattachés au ministère public (si possible au 31 décembre 2010) (sans le nombre de personnels non juges, v. question 52) (répondre en équivalent temps plein et pour les postes permanents effectivement pourvus)

Nombre Oui 134

C.2

Vous pouvez indiquer ci-dessous :

- tout commentaire utile à 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.60

From 134 persons, 10 are professional associates, 27 trainees, 10 volunteers-graduated lawyers, and 87 employees.

Veuillez indiquer la source des réponses aux questions 55, 56 et 60

The Supreme State Prosecutor's Office.

3. 1. 4. Budget du tribunal et nouvelles technologies

61) Quelles instances possèdent des compétences budgétaires au sein des tribunaux ? Si "autre", veuillez le préciser dans la boîte "commentaire" ci-dessous.

	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

Commentaire :

Bureau of Finance Secretariat of the Judicial Council is preparing the draft budget of spending unit

JUDICIARY on the basis of the processed data on the costs of all courts, which were submitted by the presidents of the courts for the previous year.

According to the expressed needs of the budget shall be allocated to all courts - 22, Secretariat and the Judicial Training Center.

Court presidents manage the allocated budget.

Control of the use of budget spending of this unit is performed by the State Audit Institution and in the future Internal audit formed within The Secreary pursuant to Art.3 of The Regulation on the establishment of internal audit in the public sector.

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

Traitement de texte	100% of courts
Base de données électronique pour la jurisprudence	-50% of courts
Dossiers électroniques	0 % of courts
E-mail	100% of courts
Connexion internet	100% of courts

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

Enregistrement des affaires	100% of courts
Système d'information sur la gestion du tribunal	100% of courts
Système d'information financière	100% of courts
Vidéoconférence	-10% of courts

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

Formulaire électronique	-10% of courts
Site internet	100% of courts
Suivi électronique des affaires	+50% of courts
Registres électroniques	-10% of courts
Recouvrement électronique d'une petite créance	0 % of courts
Recouvrement électronique d'une créance non contestée	0 % of courts
Dépôt d'un recours depuis un poste informatique	0 % of courts
Vidéoconférence	0 % of courts
Autres moyens de communication électronique	-10% of courts

65) L'utilisation de la vidéoconférence dans les tribunaux (détails de la question 65).

Veillez indiquer dans la boîte "commentaire" ci-dessous toute précision sur le cadre juridique et le développement de la vidéoconférence dans votre pays.

	65.1 En matière pénale, les tribunaux et les parquets ont-ils recours à la vidéoconférence pour des auditions de prévenus ou de témoins ?	65.2 Ces auditions par le juge / le procureur peuvent-elles avoir lieu dans les services de police ou/et les établissements pénitentiaires ?	65.3 Existe-t-il une législation spécifique sur les conditions d'utilisation de la vidéoconférence par les tribunaux ou les parquets, en particulier pour préserver les droits de la défense ?	65.4 La vidéoconférence est-elle utilisée en matière autre que pénale ?
	Oui	Non	Oui	Oui

Commentaire :

Article 112, paragraph 1 of the Criminal Procedure Code provides for the possibility of questioning witnesses located in another state, as well as of a person who because of age and illness are not able to give their statements in court premises. The witness statements can be made using the equipment for the transmission of sound and picture (videoconferencing devices), with the possibility of answering questions of other participants in the proceedings.

C.3

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.64

The availability of informations was provided by publishing news and press releases, decisions and legal opinions on the websites, and some courts have established an electronic bulletin board, which contain information on trial schedules. Competent serices are currently working on establishing a web portal of the judiciary that will allow the publishing of statements, decisions, case law and informations to all courts in Montenegro.

Q64 : (cf. 13/7) : The box "If there are "other electronic communication facilities", please specify" should be filled with the following text:

"Access to information is enabled trough the publication of news and press releases, decisions taken and legal views on the web pages, and some courts have placed electronic message boards, with information about hearing schedules. We are currently working on establishing a web portal of judiciary that will provide publication of statements, decisions, case law and information to all courts in Montenegro."

3. 2. Performance et évaluation

3. 2. 1. Performance et évaluation

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 Judicial Council provides annual report on work of each court during year. Address of The Judicial Council is Podgorica - Miljana Vukova b.b e-mail: sudski.savjet@sudstvo.me
 Statistical office of Montenegro-MONSTAT; IV Proleterske 2, 81 000 Podgorica, Montenegro.

67) Les tribunaux individuels doivent-ils établir un rapport annuel d'activités (qui présente par exemple le nombre d'affaires traitées, d'affaires en instance, le nombre de

juges et de personnels administratifs, les objectifs à atteindre et un bilan d'évaluation) ?

- Oui
 Non

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

Le système de suivi des activités vise à contrôler l'activité quotidienne des tribunaux (en particulier la production des tribunaux) notamment au travers de collectes de données et d'analyses statistiques (v. aussi les questions 80 et 81).

- 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 ?

Si autre, veuillez préciser :

Each court constitutes a monthly report on the work of the previous month (the number of unresolved cases at the beginning of the month, the number of cases received during the month, the number of cases completed during the month, the number of unresolved cases at the end of the month).

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

Le système d'évaluation concerne la performance des systèmes judiciaires, incluant une vision à plus long terme et utilisant des indicateurs et des objectifs. Cette évaluation peut avoir une nature plus qualitative (v. questions 69-77). Elle ne concerne pas l'évaluation globale du (bon) fonctionnement des tribunaux (v. question 82).

- Oui
 Non

Veuillez préciser :

Each month the President of The Supreme court organizes meetings with presidents of all courts during which the work of every court in the previous month is being analyzed, deficiencies are detected and the president of the court is obliging to bring the program for overcoming of perceived problems.

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

- Oui
 Non

71) Veuillez préciser les 4 principaux indicateurs de performance et de qualité qui ont été définis :

- 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

Si autre, veuillez préciser :

72) Existe-t-il des objectifs quantitatifs de performance (par exemple un nombre d'affaires à traiter par mois) pour chaque juge ?

- Oui
- Non

73) Veuillez préciser qui fixe les objectifs individuels des juges :

- 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 :

Orientation benchmarks are brought by the Minsitry of Justice upon the proposition of The Judicial Council.

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 les objectifs des tribunaux :

- 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 :

The president of the court.

76) Veuillez préciser les principaux objectifs appliqués aux tribunaux:

Promptness of the court, and thus reducing the length of the proceedings, quality of decisions.

77) Quelle est l'autorité chargée d'évaluer la performance des tribunaux (v. questions 69 à 76) (réponses multiples possible):

- 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 définis pour l'ensemble du système judiciaire (existe-t-il un système de qualité et/ou une politique de qualité de la justice) ?

- Oui
- Non

Si oui, veuillez préciser :

Promptness of the court, quality of court decisions.

79) Existe-t-il des personnels spécialisés dans les tribunaux responsables de ces standards de qualité ?

- Oui
- Non

80) Existe-t-il une procédure d'évaluation permettant de mesurer le stock d'affaires en instance et de repérer les affaires non traitées dans un délai raisonnable :

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

81) Disposez-vous d'une procédure d'évaluation permettant de mesurer les temps morts durant les procédures judiciaires ?

- Oui
- Non

Si oui, veuillez préciser :

Court Rules of Procedure provide following: Where the annual report indicates that a court or any of its divisions has a backlog bigger than the three month new caseload, the chief judge shall enact a program for elimination of backlog ("Program") by not later than 31 January of the next business year. The Program shall specify the steps to be introduced to secure timely performance of court functions including the following: making changes in the internal court organization; introducing extra work hours; making temporary changes in the organization of work hours; organizing business meetings, and other steps as may be set by law and the Rules. In designing and enforcing the Program, the chief judge may propose that judges be assigned to other courts and that amendments to the annual assignment schedule be enacted. The chief judge shall submit the draft Program to the meeting of judges for their consideration. The chief judge shall notify the chief judge of an immediately superior court and the chief judge of the Supreme Court of the Program enacted. The chief judge shall monitor and oversee on a monthly basis the status of Program implementation and decide on any modifications and amendments to the Program or termination of its implementation. (cf.NC 12/7)

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

Cette question ne concerne pas l'évaluation spécifique d'indicateurs de performance.

- Oui
 Non

Veillez préciser la fréquence de l'évaluation:

Each year the Judicial Council forms a committee with the task to visit all courts for the evaluation of each individual judge and the court as a whole. The decision of establishing the commission determines its composition (judges of the Supreme, Appellate and high courts), commission tasks and schedule of the visits.

83) Existe-t-il une procédure régulière de suivi et d'évaluation de l'activité du ministère public ?

- Oui
 Non

Si oui, veuillez préciser:

Monitoring and evaluation of performance is done through the regular submission of all decisions of state prosecutors directly to senior state prosecutor's office in order to control, through a three-month, six month and annual reports on the work of state prosecutors and through annual review of the comprehensive work of basic and high state prosecutions by the Supreme State Prosecution Office. At the end of the year Supreme State Prosecutor of Montenegro is filing to the Parliament of Montenegro annual report on the State Prosecutor's Office work that contains a description and analysis of the State Prosecutor's Office, detailed information for each prosecution relating to the number of received and resolved cases during the year for which the report is made, as the problems and shortcomings in the work. Annual report on the work is published on the website of the Supreme State Prosecutor of Montenegro.

C.4

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**

4. Procès équitable

4. 1. Principes

4. 1. 1. Informations générales

84) Pourcentage de jugements par défaut de première instance en matière pénale (affaires dans lesquels le suspect n'est ni présent ni représenté par un professionnel juridique durant l'audience) ?

6

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):

104

86) Nombre d'affaires relatives à l'Article 6 de la Convention Européenne des Droits de l'Homme (durée et non-exécution). Si la donnée n'est pas disponible, veuillez 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)	4	0	2	0
Procédures civiles - Article 6§1 (non-exécution)	1	0	0	0
Procédures pénales - Article 6§1 (durée)	3	0	1	1

Veuillez préciser les sources :

The Supreme Court of Montenegro.

D.1

Vous pouvez indiquer ci-dessous tout commentaire utile à l'interprétation des données indiquées dans ce chapitre

Q.84

During the 2010. in the criminal matters in the first instance 6.567 judgment was issued. In 406 cases the defendant was tried in absence.

During the 2010. in the first instance criminal cases 6.19% of the judgments was issued with the defendant who was tried in absence.

A defensor is posted to the defendant, on trial in the absence at the moment of bringing the decision on trial in absence, because article 69 paragraph 4 of the Code of Criminal Procedure ("Official Gazette of RM" no. 71/03 and 47/06) stipulated that defendant who is being tried in absence must have a lawyer as soon as the court issues a decision on the trial in absence.

And now the current Code of Criminal Procedure ("Official Gazette of Montenegro", no. 57/09 and 49/2010) in article 69 paragraph 4 contains an identical provision.

Q.86

The data relating to Claims for fair satisfaction.

As stated in the previous response during 2010 there were 13 such legal suits filed, and the table above indicated total of 12 cases. This is for the reason that in one case the complaint was lodged for violation of right to trial within a reasonable time in an administrative proceeding.

Data are given on the basis of records of the Supreme Court which has jurisdiction to rule on these complaints.

In an earlier response it was indicated that in accordance with the Law on Protection of right to trial within a reasonable time the party has the right to file a request for accelerated procedure (control request).

There were 95 such requests during the 2010.

Deciding upon them the following decisions were rendered:

- 16 applications rejected because of sloppiness,
- 4 requests rejected as manifestly unfounded,
- 34 requests have been rejected as unfounded
- 40 applications were adopted,
- 1 request remains unresolved.

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 ?
- il n'y a pas de procédure spécifique

Si oui, veuillez préciser:

In civil cases the law requires urgency in resolving labor disputes- Article 434 Code of Civil Procedure, in lawsuits for trespassing- Article 440 of The Code of Civil Procedure, in proceedings relating to family relations in case of a child or parent who exercises parental rights - Article 317 § . 1 of the Law on family Relations.

In criminal cases proceedings against minors are urgent - Article 476 of the Criminal Procedure Code; proceedings for offenses committed in an organized manner - Article 507 of the Criminal Procedure Code and detention cases -Article 147 of the Criminal Procedure Code.

88) Existe-t-il des procédures simplifiées :

- en matière civile (petits litiges) ?
- en matière pénale (petites infractions) ?
- en matière administrative ?
- il n'y a pas de procédure simplifiée

Si oui, veuillez préciser:

The Law on Civil Proceedings ("Official Gazette of RM" no. 22/2004, 28/05 and 76/06) provides special provisions of the proceedings in disputes of minor value (Chapter XXX).

Also in an administrative dispute procedures can be simplified, in accordance with The Law on Administrative Disputes ("Official Gazette of RM" no. 60/2003):
 "If Administrative court does not reject the suit in accordance with the law, and finds that the contested administrative or other act contains such deficiencies which prevent from evaluation of legality of the act, the court may annul the act by a verdict even without submitting suit in order to receive reply.
 If more suits were filed to the Administrative court against acts in which rights and obligations are referring to similar factual state and same legal basis, the court may, after receiving replies to suits, do a procedure based on one suit, and stop the other proceedings until the final decision in selected case (procedure upon sample). Before bringing conclusion to stop the procedure, the Administrative court must allow to the prosecutor to give statement about answer to a suit and interruption of the proceeding. Against conclusion on interruption of proceeding, the complaint is not allowed.
 Administrative court shall, after the verdict becomes final, in selected case, without verbal session, although the parties requested it, decide in cases in which proceeding was stopped, if they do not have factual or legal specifics."

For minor criminal offences Criminal Procedure Code ("Official Gazette of RMN", no. 71/03, 47/06) defines shortened procedure and punishment without main hearing, in accordance with the law. Criminal Procedure Code ("Official Gazette of RM" no. 57/08 and 49/10) provides a procedure of Agreement on the Admission of Guilt.

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 accordés aux avocats pour soumettre leurs conclusions et des dates d'audience) ?

- Oui
 Non

Si oui, veuillez préciser :

At the main trial, main hearing, courts and lawyers can agree on the appointment of a new trial, or hearing, and on the timeframe in which the lawyer is obliged to submit his filings.

[4. 2. 2. La gestion des flux d'affaires et la durée des procédures judiciaires](#)

90) Note:

Les correspondants nationaux sont invités à faire particulièrement attention à la qualité des réponses aux questions 91 à 102 concernant la gestion des flux d'affaires et la durée des procédures judiciaires. La CEPEJ a convenu que les données correspondantes ne seront traitées et publiées que dans la mesure où un nombre significatif d'Etats membres – tenant compte des données présentées dans le précédent rapport – y aura répondu, permettant une comparaison utile entre les systèmes.

91) Tribunaux de 1ère instance : nombre total d'affaires "autres que pénales". Si la donnée n'est pas disponible, indiquer NA. Si la situation n'est pas applicable dans votre pays, indiquer NAP.

Note 1: les affaires des catégories 3 à 5 (exécution, registres foncier et du commerce) doivent être présentées séparément dans le tableau. Les affaires de la catégorie 6 (administratives) doivent aussi être mentionnées séparément pour les pays disposant de tribunaux spécialisés, ayant des procédures spécifiques de droit administratif ou capables de distinguer affaires administratives et affaires civiles.

Note 2: vérifier la cohérence horizontale et verticale des données fournies. La cohérence horizontale des données signifie: "(affaires pendantes au 1er janvier 2010 + nouvelles

affaires) – affaires terminées" doit correspondre au nombre d'affaires pendantes au 31.12.2010. La cohérence verticale des données signifie que la somme des catégories 1 à 7 doit correspondre au total des affaires "autres que pénales".

	Affaires pendantes au 1 janvier 2010	Nouvelles affaires	Affaires terminées	Affaires pendantes au 31 décembre 2010
Nombre total d'affaires "autres que pénales" (1+2+3+4+5+6+7) *	28 010	78 683	78 097	28 407
1. Affaires civiles (et commerciales) contentieuses (si possible sans les affaires administratives, v. catégorie 6)*	12 122	20 168	18 530	13 760
2. Affaires civiles (et commerciales) non contentieuses, par exemple des créances incontestées, de requêtes en changement de nom, etc. (si possible sans les affaires administratives ; sans les affaires relatives à l'exécution et/ou à un registre et/ou autres affaires, v. catégories 3-7)*	2 737	7 413	7 523	2 627
3. Affaires relatives à l'exécution	11 498	28 070	29 229	10 339
4. Affaires relatives au registre foncier**	131	162	252	41
5. Affaires relatives au registre du commerce**	69	17 828	17 652	245
6. Affaires administratives (contentieuses et non contentieuses)	1 151	3 637	3 610	1 179
7. Autres affaires (par exemple affaires relatives au registre d'insolvabilité)	212	1 405	1 301	216

92) Si les tribunaux traitent des "affaires civiles (et commerciales) non contentieuses", veuillez indiquer les catégories incluses :

In non litigious proceedings the courts decide on the settlements of personal status (seizure and return of legal capacity, involuntary placement in a psychiatric institution, designating the disappeared person and dead and proving of death), setting of family relationships (extension and termination of prolonged parental rights, depriving and returning of parental rights, issuing a permit for marriage when required by law, designating a child as born in marriage), regulate property relations (deciding on inheritance; determination of compensation for expropriated real estate, structuring of management and use of common things, and division of assets, determination of land borders), prepare court testament and court deposit.

93) Si "autres affaires", veuillez indiquer les catégories incluses :

In reply to Q.91 under "other" are cases of deciding upon insolvency and liquidation of commercial enterprises.

94) Tribunaux de 1ère instance : nombre d'affaires pénales. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.

Note : Veuillez vérifier que les données fournies sont cohérentes (horizontalement et verticalement). La cohérence horizontale des données signifie que : "(affaires pendantes au 1er janvier 2010 + nouvelles affaires) – affaires terminées" doit correspondre au nombre d'affaires pendantes au 31 décembre 2010. La cohérence verticale des données

signifie que la somme des catégories 8 et 9 en matière pénale doit correspondre au nombre total d'affaires pénales.

	Affaires pendantes au 1 janvier 2010	Nouvelles affaires	Affaires terminées	Affaires pendantes au 31 décembre 2010
Nombre total d'affaires pénales (8+9)	4 033	6 856	7 541	3 306
8. Affaires pénales (infractions graves)	520	487	685	280
9. Petites infractions	3 513	6 369	6 856	3 026

95) La classification entre affaires pénales graves et petites infractions peut être difficile. Certains pays peuvent connaître d'autres voies de traitement des petites infractions (par exemple par la procédure administrative).

**-----
 Veuillez indiquer, si possible, les catégories d'affaires comprises dans la catégorie infractions graves et les affaires à inclure dans la catégorie petites infractions :**

Note:

"Severe criminal offences" encompasses cases from the competence of high courts, which are competent for cases as stated in the art. 18 of The Law on Courts (Official Gazette of RMN", no. 5/02, 49/04 and 22/08):

"At first instance the High Courts shall:

1) judge in criminal proceedings for criminal offences for which imprisonment in excess of 10 years is prescribed by the law as the principal punishment, regardless of the character, profession and position of the person against whom the proceedings are instituted and regardless whether the criminal offence has been committed in peace, extraordinary circumstances, in a state of imminent war danger or in a state of war, and in criminal cases concerning:

- Manslaughter,
- Rape,
- Endangering the safety of the air traffic,
- Unauthorized manufacturing, possessing and putting on the market intoxicating drugs,
- Incitement to a violent abolition of the constitutional order,
- Disclosure of classified information,
- Provocation of national, racial and religious hatred, conflict or intolerance,
- Violation of territorial sovereignty,
- Associating for unconstitutional activities,
- Preparing actions against constitutional order and security of Montenegro,
- Money laundering;

2) judge in criminal proceedings for criminal offences of organized crime, regardless of the seriousness of the imposed sanction;

3) judge in criminal proceedings for criminal offences with elements of corruption, such as:

- Violation of equality in the conduct of business activities;
 - Abuse of monopolistic position;
 - Causing bankruptcy;
 - Causing false bankruptcy;
 - Trading in influence;
 - False balance of accounts;
 - Abuse of appraisal;
 - Disclosure of business secret;
 - Disclosure and usage of stock-exchange secret;
 - Passive bribery;
 - Active bribery;
 - Abuse of an official position; abuse of a position in business operations; frauds during service; and abuse of authorities practiced in economy, for which eight-year imprisonment or even a more serious sanction is prescribed;
- 4) judge in those criminal offences which are prescribed by special legislation to fall within the jurisdiction of the high court;

"Minor criminal offences" encompasses cases from competence of the basic courts, which try for other criminal offences (criminal offences which are not under the competence of the high court). The figure incorporates data of first instance criminal cases, witought investigations and

investigative actions and preparatory proceeding against minor.

96) Commentaires relatifs aux questions 91 à 95. Vous pouvez indiquer par exemple une situation particulière dans votre pays, expliquer vos réponses NA ou NAP ou expliquer le calcul du total d'affaires « autres que pénales » ou la différence au niveau de la cohérence horizontale etc.

Q.91 Note: "Land registry cases" (4) listed in the table are the cases under the jurisdiction of the Administrative Court and are included in the total number of cases of the Administrative Court. On January 1st 2010. The Administrative Court had a total backlog of 1283 cases, and of that number 131 were land registry cases., - During the Administrative Court received a total of 3799 complaint to initiate an administrative dispute, and of that number 162 were land registry cases. During the year 3862 cases were initiated, and of that number 252 were cadastral objects. At 31.12.2010 there were 1220 unresolved cases, out of which 41 are cadastral objects.

Register of commercial companies is in competence of Central Registry Office of The Commercial Court. Registrar of The Central Registry Office of The Commercial Court is an employee of the Commercial Court, which may or may not be the judge and the registrar performs duties without authorities of a judge. The duties of Registrar are purely administrative, and his actions are not considered as actions of the judge - Article 84 of the Law on Business Companies.

"Negative trend of clearance rate in 2010 compared to the previous period (2008) is made due to the increase of civil and commercial litigious cases for 6480, while the number of judges remained same". (cf.NC 12/7)

97) Tribunaux de 2ème instance (appel) : Nombre total d'affaires « autres que pénales ». Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.

Note: le nombre total d'affaires « autres que pénales » inclut tous les catégories d'affaires présentés (chiffre 1 à 7).

	Affaires pendantes au 1 janvier 2010	Nouvelles d'affaires	Affaires terminées	Affaires pendantes au 31 décembre 2010
Nombre total d'affaires "autres que pénales" (1 + 2 + 3 + 4 + 5 + 6 + 7)	1 657	9 439	10 422	674
1. Affaires civiles (et commerciales) contentieuses (si possible sans les affaires administratives, v. catégorie 6)*	NA	NA	NA	NA
2. Affaires civiles (et commerciales) non contentieuses, par exemple des créances incontestées, de requêtes en changement de nom, etc. (si possible sans les affaires administratives ; sans les affaires relatives à l'exécution et/ou à un registre et/ou autres affaires, v. catégories 3-7)*	NA	NA	NA	NA
3. Affaires relatives à l'exécution	NA	NA	NA	NA
4. Affaires relatives au registre foncier	NAP	NAP	NAP	NAP
5. Affaires relatives au registre du commerce	NAP	NAP	NAP	NAP
6. Affaires administratives (contentieuses et non contentieuses)	NAP	NAP	NAP	NAP
7. Autres affaires (par				

exemple affaires relatives au registre d'insolvabilité)	NA	NA	NA	NA
---	----	----	----	----

98) Tribunaux de 2ème instance (appel) : Nombre total d'affaires pénales. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.

	Affaires pendantes au 1 janvier 2010	Nouvelles d'affaires	Affaires terminées	Affaires pendantes au 31 décembre 2010
Nombre total d'affaires pénales (8+9)	1 274	4 690	5 641	323
8. Affaires pénales (infractions graves)	275	1 010	1 161	124
9. Petites infractions	999	3 680	4 480	199

Commentaire :

Category 8. - Severe criminal offences, contains cases under jurisdiction of Appellate court, which decides upon appeals on verdicts of high courts.

Category 9. - In minor criminal cases, number contains cases under jurisdiction of the high courts which decide upon appeals on decisions of basic courts.

99) Cours suprêmes : nombre total d'affaires "autres que pénales". Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.

Note: le nombre total d'affaires « autres que pénales » inclut tous les catégories d'affaires présentés (chiffre 1 à 7).

	Affaires pendantes au 1 janvier 2010	Nouvelles d'affaires	Affaires terminées	Affaires pendantes au 31 décembre 2010
Nombre total d'affaires "autres que pénales" (1 + 2 + 3 + 4 + 5 + 6 + 7)	147	2 268	2 313	102
1. Affaires civiles (et commerciales) contentieuses (si possible sans les affaires administratives, v. catégorie 6)	147	1 803	1 852	98
2. Affaires civiles (et commerciales) non contentieuses, par exemple des créances incontestées, de requêtes en changement de nom, etc. (si possible sans les affaires administratives ; sans les affaires relatives à l'exécution et/ou à un registre et/ou autres affaires, v. catégories 3-7)	NAP	NAP	NAP	NAP
3. Affaires relatives à l'exécution	NAP	NAP	NAP	NAP
4. Affaires relatives au registre foncier	NAP	NAP	NAP	NAP
5. Affaires relatives au registre du commerce	NAP	NAP	NAP	NAP
6. Affaires administratives (contentieuses et non contentieuses)	0	344	340	4
7. Autres affaires (par exemple affaires relatives au registre d'insolvabilité)	0	121	121	0

100) Cours suprêmes : Nombre total d'affaires pénales. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.

	Affaires pendantes au 1 janvier 2010	Nouvelles d'affaires	Affaires terminées	Affaires pendantes au 31 décembre 2010
Nombre total d'affaires pénales (8+9)	0	421	421	0
8. Affaires pénales (infractions graves)	0	421	421	0
9. Petites infractions	NAP	NAP	NAP	NAP

Commentaire :

101) Nombre d'affaires de divorces contentieux, licenciements, vols avec violence et homicides volontaires reçues et traitées par les tribunaux de 1ère instance. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.

	Affaires pendantes au 1er janvier 2010	Affaires nouvelles	Affaires terminées	Affaires pendantes au 31 décembre 2010
Divorces contentieux	249	1 107	1 067	289
Licenciements	117	293	209	201
Vols avec violence	56	114	136	34
Homicides volontaires	31	30	31	30

102) Durée moyenne des procédures, en jours (à partir de la date de saisine du tribunal). Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.

[La durée moyenne des procédures est calculée à partir de l'introduction du recours jusqu'au prononcé du jugement, sans tenir compte de la phase d'exécution. Nouveau : elle concerne la première, la deuxième et la troisième instance.]

	% des décisions ayant fait l'objet d'un appel	% d'affaires pendantes de plus de 3 ans	Durée moyenne en 1ère instance (en jours)	Durée moyenne en 2ème instance (en jours)	Durée moyenne en 3ème instance (en jours)	Durée moyenne de la procédure complète (en jours)
Divorces contentieux	5,13	0,37	125,14	55,45	NAP	180,60
Licenciements	89	0,49	210,58	77	73,25	361,06
Vols avec violence	51,54	1,75	268,86	75,67	NAP	343,53
Homicides volontaires	96,45	1,88	680	95,5	NAP	775,5

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

Proceeding in cases of divorce of marriage is prescribed by The Family Law ("Official Gazette of RMN", no.1/2007) which was not changed or amended since the last evaluation.

Relevant articles of The Family law:

"Art. 322

The proceeding in matrimonial dispute shall be initiated by an action.

The proceedings for divorce by mutual consent shall be initiated by a joint proposal of spouses (proposal for divorce by mutual consent).

If one spouse brings an action for divorce of the marriage, and the other spouse at latest before the closure of the main hearing explicitly states that he/she does not dispute the merits of the statement of claim, it shall be considered that the spouses have submitted a proposal for divorce by mutual consent.

.....

Art. 326

In the disputes for divorce of marriage upon the action of one of the spouses, the procedure of mediation shall be conducted in accordance with the Law on Mediation and this Law. Upon receiving the action the court shall schedule hearing and ask the spouses to make statements immediately as for which mediator they want to approach for the purposes of the attempt at reconciliation or i.e. achieving agreement on regulation of the legal consequences of the divorce of their marriage. If spouses do not reach the agreement about the mediator, the mediator shall be appointed by the court.

Art. 327

The court shall without any delay forward the action to the mediator, together with the enactment of appointing him/her as mediator, the names and addresses of spouses and data on joint children, if any.

Art. 328

The mediator shall, within eight days from the day of receiving the enactment of appointment, invite the spouses, according to the rules of direct service, to attend the procedure of reconciliation without their legal prerepresentatives in which they will attempt to resolve the disturbed relations without conflicts and without divorce of marriage.

Art. 329

If spouses reconcile in the reconciliation hearing, it shall be considered that the action for divorce has been withdrawn.

Art. 330

If one or both spouses, although duly summoned, fail to respond to the mediator's invitation to reconciliation, and they do not justify their absence, it shall be considered that reconciliation was unsuccessful and the procedure of mediation shall continue in the aim of reaching the agreement of spouses on exercising parental rights after the divorce and agreement on settlement of joint property.

Both spouses and their legal representatives shall be invited to the meeting aimed at reaching the agreement.

Art. 331

The procedure of mediation aimed at attempting reconciliation of spouses must be conducted within a month from the day of forwarding the action to the mediator/ The procedure of mediation aimed at achieving agreement on consequences of the divorce must be conducted within 60 days from the day of termination of the reconciliation procedure.

Art. 332

Mediator shall be obliged to inform the court the action was brought to about the success of mediation and to deliver to the court the minutes on reconciliation and the minutes containing the agreement of the spouses about exercising of parental rights and about the settlement of joint property, i.e. the statements of spouses that the agreement was not achieved.

Art. 333

The agreement of spouses about the settlement of joint property shall be entered into the declaration of court judgment on divorce of the marriage.

The agreement of spouses about exercising parental rights shall be entered into the declaration of court judgment on divorce of the marriage if the court estimates that the agreement is in the best interest of the child.

Art. 334

If one or both spouses, although duly summoned, fail to appear upon the invitation of the mediator related to reaching the agreement on exercising parental rights or settlement of joint property, and they do not justify their absence, the mediation shall be considered unsuccessful and the proceedings upon the action for divorce of marriage shall continue.

Art. 335

Procedure of mediation for the purposes of reaching the agreement on exercising parental rights and agreement on settlement of joint property after annulment of the marriage shall be completed within 60 days after forwarding the court decision on annulment of the marriage to the mediator.

Art. 336

During the whole proceedings for divorce of marriage the court shall be obliged to cooperate with the custody agencies and other professional services which deal with the issues of marriage and family, especially when spouses have joint minor children.

Art. 337

The main hearing may not be scheduled before the expiry of the term of a month from the day of unsuccessful reconciliation or from the decision of the court not to attempt the reconciliation because it is impossible or it is connected to extreme difficulties.

.....

Art. 340

When the procedure is initiated by the proposal of the spouses for divorce of marriage by mutual consent the facts on which the proposal is based shall not be examined, but the court may decide to conduct the evidence procedure, as in the case of the action for divorce of marriage, if the court estimates that the justified interests of the joint minor children require for the marriage to survive. If the proposers have children together the court may examine the facts and conduct the evidence procedure, related to the part of the proposal of the spouses which refers to exercising parental rights, if the court is of the opinion that the agreement of the parents about these issues cannot provide sufficient guarantees that the interests of their minor and incapable children shall be sufficiently protected by such an agreement.

Art. 342

In the judgment on matrimonial dispute the court shall be obliged to decide on exercising parental rights.

In the judgment on matrimonial dispute the court may decide on limitation or deprivation of parental rights.

Art. 343

The judgment by which marriage is divorced upon the proposal of spouses for divorce by mutual consent, can be attacked in the part referring to the divorce of marriage, only due to significant violation of provisions of litigation procedure or due to the fact that the proposal was given in delusion, or under the influence of force or fraud.

Art. 344

If a marriage was divorced by a final verdict or annuled, extraordinary legal remedy can not change the decision on stopping of the marriage, regardless weather some of the parties concluded new marriage".

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

In civil cases (divorce and labor disputes for dismissal notice), the length of the proceedings is calculated from the date the lawsuit is filed to the court until the final verdict. The judgment becomes final when it can no longer be contested by an appeal if it decided upon request of claim or counterclaims - Article 352, Paragraph 1 of the Code of Administrative Procedure. The judgment can not be contested by an appeal when the deadline for appeal expires. If the appeal is filed, the judgment becomes final after deciding on appeal.

Judgement acts upon the parties from the the date of enactment or the date when it was delivered - Article 355 of the Code of Administrative Procedure.

For the purposes of answering questions from the table data had been given for the process of 3rd level (in the lawsuit for the review procedure when the same is allowed).

Length of criminal proceedings is counted from the date of initiation of criminal proceedings until the judgment becomes final.

105) 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 besoin d'obtenir une décision du tribunal (observer la cohérence avec la question 36!)
- clore l'affaire par une sanction ou une mesure imposée ou négociée sans décision d'un juge

autre attribution significative

Si "autres attributions significatives", veuillez préciser :

Issues a decision on detention of persons suspected; proposes to investigative judge ordering detention and other measures that provide a presence of the defendant, filing a request for provisional seizure of property or gain; by order initiates financial investigation or extended confiscation, proposes to court measures for secret surveillance of Article 157, paragraph 1 of the Criminal Procedure Code and defines measures of secret surveillance under Article 157, paragraph 2 of the Criminal Procedure Code.

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

Oui

Non

Si oui, veuillez préciser :

The State Prosecutor is authorized that as an independent state agency, in addition to the functions of prosecution of perpetrators of crimes and other offenses that are prosecuted ex officio, take other legal actions that fall within its jurisdiction by special provisions or special laws, namely: Law on Civil procedure; law on Extra-Judicial proceedings; Law on General administrative Procedure, Law on Administrative Disputes, Law on misdemeanors, the Law on State Property, the Law on borrowing and management of Public sector debt, Family Law, Law of Obligations and Law on the restitution of seized property rights and indemnification.

In particular we stress the authority of state prosecutors to raise an extraordinary legal remedy against the final judgments in civil, administrative and misdemeanor procedure, and the right to file a complaint to initiate an administrative dispute in the cases foreseen by the Law on Administrative Disputes, which is in accordance with the determination that the function of Public Prosecutor is done in the public interest, in order to assure the application of law, and to provide the fulfillment of human rights and freedoms.

107) La gestion des affaires par le procureur: ombre total des affaires pénales en 1ère instance. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.

	Reçues par le procureur	Classées sans suite par le procureur (v. 108 ci-dessous)	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	13 039	2 815	382	

108) Total des affaires classées sans suite par le procureur. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.

	Nombre
Total des affaires classées sans suite par le procureur (1 + 2 + 3)	519
1. Classées sans suite par le procureur parce que l'auteur de l'infraction n'a pas pu être identifié	NAP
2. Classées sans suite	NA

par le procureur en raison d'une impossibilité de fait ou de droit	
3. Classées sans suite par le procureur pour raison d'opportunité	NA

109) Est-ce que ces données incluent le contentieux routier ?

- Oui
 Non

D.2

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**

Note 1: In civil matters, second instance court for basic courts is high court, and for commercial courts is Appellate court. Numbers contain cases from column 1, 2 and 3 – because in first instance courts all are led under same code, therefore it is not possible to distinguish cases of non-litigious and execution. Land registry cases are in jurisdiction of the Administrative court, and appeal is not allowed against decision of the Administrative court. Extraordinary legal remedy is allowed against decisions of the Administrative Court – a request for extraordinary reconsidering of a court decision. The Supreme Court of Montenegro decides upon requests for extraordinary reconsidering of a court decision. Character of decisions of the business register cases is explained in comments in Q.96 Note 2: Reform of misdemeanor system In the previous period, until September 1st, 2010, jurisdiction for misdemeanor proceeding in a first instance did not in whole belong to the authorities for misdemeanors, namely these proceedings were mainly the jurisdiction of authorised officers for misdemeanor proceeding in the ministries, other state authorities and local self-government. In accordance with Law on misdemeanors applicable until September 1st, 2010 („Official Gazette of RMN“, No. 25/94 & 48/99), misdemeanor proceeding in first instance was under jurisdiction of authorities for misdemeanors, ministries, other state authorities and local self-government. This Law also prescribed that Authorities for misdemeanors dealt with proceedings for misdemeanors for misdemeanor offences for which imprisonment sentence is prescribed; imprisonment sentence and fine; imprisonment sentence or fine; proceedings against minor; and proceedings for which jurisdiction of other authority was not prescribed and in cases when they were competent for one perpetrator that they are competent for other perpetrators, in case the responsibility derives from that event. Having this in mind, as misdemeanors for which fine was prescribed were not in exclusive jurisdiction of authorities for misdemeanors (also to ministries, other state authorities and local self-government), and having in mind that in most misdemeanor offences from different legislation areas was prescribed by a fine, most of the cases were in a first instance jurisdiction of ministries, state authorities and local self-government. While authorities for misdemeanors were competent only for minor number of misdemeanors for which also imprisonment sentence was prescribed and cases against minor and procedure of replacing fine in imprisonment sentence in accordance with art 216 of the stated law. Having this in mind, it was a complex misdemeanor system which was mostly under competence of the ministries, other state authorities and local self-government. On September 1st, 2010, application of the new Law on misdemeanors („Official Gazette of MNE“, No.1/2011)started, which transferred subject matter jurisdiction for deciding on misdemeanors in all legislation areas exclusively to courts. Due to this mixed system in 2010., it is not possible to give comprehensive and precise data on whole misdemeanor system in 2010. Note 3 – Regarding Q. 107: In 2010. The State Prosecution Office had in work criminal charges against 13.039 known adult perpetrators. Against 2.815 persons criminal charges were dropped because of absence of founded suspicion that criminal offence prosecuted ex officio was perpetrated. By application of the institute of Postponed criminal prosecution 382 cases were solved and on this basis 127.339, 00 eur were charged from the suspected, which were payed for the humanitarian organisations. Investigation was led against 2.923 persons. Number of prosecuted perpetrators of criminal offences is 5.588, out of which figure against 2.473 persons indictments were raised based on conducted investigation, and against 210 persons direct indictments were raised based on results of inquest (indictments without conducting investigation), while against 2.905 persons indict proposal was filed. Acting upon

indictments of the State Prosecutor, courts brought decisions against 7.014 persons, out of which against 5.977 persons conviction verdicts, against 602 persons acquittal verdicts and against 435 persons rejecting verdicts. The State Prosecutor's Office, dissatisfied by the penal policy of the courts, filed complaints on first instance verdicts against 1.606 persons, and complaints from all reasons to appeal against acquittal verdicts against 721 persons. Note 4- Regarding Q.108 After investigation was finished, The State Prosecution Office quit from prosecution of 400 persons, so the court brought acts on discontinuation of the investigation, and after prosecution the court brought a verdict which drops charges against 119 persons, based on withdrawing from the prosecution by The State Prosecutor.

Veillez indiquer les sources pour les réponses aux questions 91, 94, 97, 98, 99, 100, 101, 102, 107 et 108.

Q.91-102, The Supreme Court of Montenegro

Q. 107,108,The Supreme State Prosecutor's Office

5. Carrière des juges et procureurs

5. 1. Recrutement et promotion

5. 1. 1. Recrutement et promotion

110) Comment les juges sont-ils recrutés ?

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

Si autres, veuillez préciser:

Judges are chosen on the basis of public advertising. A candidate for a judge must meet the general requirements:

- To be a citizen of Montenegro;
- To have a general health and capacity;
- To be a lawyer;
- That he passed the bar exam.

Besides the general requirements the special conditions prescribed by in terms of work experience as follows:

For the judge:

- Municipal Court five years;
- Commercial Court six years;
- A higher court eight years;
- Court of Appeal and Administrative Court of 10 years,
- Supreme Court 15 years.

Criteria that are taken into consideration when selecting judges are:

1. expertise, work experience and performance,
2. published scientific papers and other activities in the profession,
3. professional development,
4. ability to impartially, conscientiously, diligently, decisively and responsibly perform the function for which the person is applying;
5. communication skills;
6. relationships with colleagues, conduct out of work, professionalism, impartiality and reputation.

These criteria are determined in detailed manner, so that for the election judge who was firstly elected Professional knowledge is measured by:

- success of study performance, which is expressed through the length of study and the average score,
- The results of written tests that are performed during the election,
- Ability to use information and communication technologies,
- Knowledge of foreign languages,
- Assessment of the final exam given at the initial training organized by the Centre for Education holders of judicial offices,
- Promotion at work.

Working experience is valued on the basis of:

- Length of service and the place where the same is done (the court, prosecution, advocacy, administration, economy),

Operational results are evaluated on the basis of:

- Work in progress,
- Opinion of an institution in which the candidate has worked.

Published scientific papers and other activities are evaluated on the basis of:

- Filed papers at seminars at home and abroad,
- Participation in the commission for drafting laws and bylaws;
- Lectures at the Centre for Education and bearers of judicial functions organized by the Directorate for Human Resources,
- Mediation.

Professional training is valued on the basis of:

- Magistrate and a doctorate;
- The training organized by the Centre for Education bearers of judicial functions and organizations, has the international organizations,
- Presence of seminars and other forms of education

111) Autorité(s) responsable(s): les juges sont-ils recrutés et nommés, initialement, en début de carrière, par :

[Cette question ne concerne que l'autorité qui est responsable de la décision de recrutement (elle ne touche pas l'autorité formellement responsable de la nomination si elle est différente de la première).]

- Une instance composée seulement de juges?
- Une instance composée seulement de non juges?

Une instance composée de juges et de non juges?

Veillez indiquer le nom de l'autorité responsable de la procédure globale de recrutement et de nomination des juges. S'il existe plusieurs autorités impliquées, veuillez décrire leurs rôles respectifs :

Judges are elected by The Judicial Council. The Judicial Council has President and nine members.

The president of The Judicial Council is The President of The Supreme Court of Montenegro. Members of The Judicial Council are:

1. four judges elected and dismissed by Conference of Judges
2. two members of the Parliament elected and dismissed by the Parliament from amongst the parliamentary majority and the opposition;
3. two respectable lawyers elected and dismissed by the President of Montenegro;
4. the Minister of Justice.

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

- Oui
 Non

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

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

Vacancies in judicial structure are publicly advertised. Length of work experience for judges of higher courts is set out in answer to previous question.

Criteria for the selection of judges to be elected to a higher court (the judge who progresses) are: Work experience, which is priced based on length of service as judge ';

Work results, which are valued for:

- Number of completed cases (total number per year and percentage) in the last three years prior to application on the ad;
- A way of resolving cases (number of cases resolved on the basis of contentious debate, or trial, settlement, mediation or otherwise;
- Quality of work is expressed through the number of confirmed, modified and reversed the decision in the last three years;
- Taking cases to the date of receipt of the Court
- Compliance with statutory deadlines for action in the proceedings;
- Compliance with statutory deadlines in making judicial decisions,
- Respect of working time;
- Number of control requirements which are assessed by the court president established pursuant to Article 18 of the Law on Protection of right to trial within a reasonable time;
- Number of items seized pursuant to Article 19 of the Law on Protection of right to trial within a reasonable time;
- Imposed disciplinary actions;

Published papers and other activities in the profession, which are valued on the basis of:

- Participation in the commission for drafting laws and by-laws;
- Mediation;
- Lecture organized by The Judicial Training Centre,
- Working at universities in the clinic;
- Filed papers at seminars at home and abroad.

Further education, which is based on the price.

- The training organized by The Judicial Training Centre and international organizations
- Presence of seminars or other forms of education.

The selection procedure and criteria for selection during the 2010. were prescribed by the Law on Courts ("Official Gazette of RM" no. 5/02, 49/04 and 22/08), the Law on the Judicial Council

("Official Gazette of Montenegro", no. 13/07 and 13 / 08), the Judicial Council Rules of Procedure ("Official Gazette of Montenegro", no. 35/08 and 38/08).

114) Existe-t-il un système d'évaluation individuelle qualitative de l'activité professionnelle du juge ?

- Oui
 Non

115) Le statut du ministère public est-il:

- Indépendant?
 Sous l'autorité du ministre de la Justice?
 Autre?

Veillez préciser:

The State Prosecution Office is a specific independent state authority, in accordance with the art. 134 - 138 of The Constitution of Montenegro and art. 3 and 6 of The Law on State Prosecutor's Office.

116) Comment sont recrutés les procureurs ?

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

Si "autres", veuillez préciser:

State prosecutors and deputies are appointed on the basis of public advertisement. The state prosecutor and deputy may be a person who is a citizen of Montenegro, with the medical and legal capacity, being a lawyer with the bar exam. Besides the general requirements, special conditions in terms of experience in the legal profession are also defined, and that for the Supreme Public Prosecutor and his deputies - 15 years, for senior state prosecutor and his deputy - 10 years, for basic state prosecutor - 6 years, and his deputy - 3 years.

Criteria for appointment of Public Prosecutor and Deputy are:

- Knowledge,
- The ability to perform prosecutorial functions,
- Suitability for the performance of prosecutorial functions,

In addition to the criteria, for the appointment of state prosecutors, the candidate must have the capacity for leadership and organization of work in the state prosecutor's office, which includes the ability to organize work, knowledge of prosecutorial administration tasks, the reputation candidate has in the state prosecution, and efforts to preserve reputation in public.

Law on State Prosecutor defines closely these criteria, so for the first appointment of a deputy the following is assessed:

1. Acquired knowledge on the basis of subcriteria:

- The average score and length of study,
- Training, completed the initial training, seminars and workshops,
- Master of science degree, master, doctorate,
- Computer literacy and knowledge of foreign languages,

2. Ability to perform prosecutorial functions is assessed:

- Based on the results of written tests,
- Work experience (length of work that the candidate has previously served),
- Length of work experience (results of work, career advancement, etc.)

and based on communication skills and personal appearances;

3. Dignity to perform prosecutorial functions are valued on the basis of the facts:

- That the candidate has not been convicted of criminal offenses or convicted of offenses which makes him unworthy of the prosecutorial function,
- On the basis of reputation and proper behavior and relationships with colleagues and clients,

And for deputy who is progressing:

- Knowledge is valued on the basis of:
- Professional training-going training and other forms of training,
- Scientific title
- Published scientific papers and other activities in the profession,
- Computer literacy and knowledge of foreign languages.

Ability to perform prosecutorial functions are valued on the basis of:

- Experience in the public prosecutors and other work experience,
- Results of the last three years that the prices on the basis of the complexity of completed cases during the year,
- Ways of solving the case,
- Quality of work,
- Taking the items in order of receipt and compliance with statutory deadlines for taking action and implementing the procedure, as well as communication skills, and personal appearances.

Dignity to perform prosecutorial functions are valued on the basis of:

- Compliance with the Code of Ethics for Prosecutors,
- Relationships with colleagues and clients and
- Proper reputation and behavior.

117) Autorité(s) responsable(s): les procureurs sont-ils recrutés et nommés, en début de carrière, par :

[Cette question ne concerne que l'autorité qui est responsable de la décision de recrutement (elle ne touche pas l'autorité formellement responsable de la nomination si elle est différente de la première).]

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

Veillez indiquer le nom de l'autorité responsable de la procédure globale de recrutement et de nomination des procureurs. S'il y a plusieurs autorités impliquées, veuillez décrire leurs rôles respectifs :

Prosecutorial Council which consists of a president and 10 members, from which six are state prosecutors and deputies, appoints, dismisses and determines the termination of a deputy prosecutor and the Deputy Special Prosecutor function, and determines the proposal for the appointment and dismissal of state prosecutor, when a decision in relation to State prosecutors is brought by the Parliament of Montenegro. The process of appointing a deputy prosecutor who was firstly appointed, shall be conducted on the basis of criteria and subcriteria prescribed by the Law on State prosecutor's Office and the Rules of work of The Prosecutorial Council, based on previous testing of candidates, assessment test, determining the list of candidates and an interview with the candidate.

118) 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

119) Quels critères et procédures sont utilisés pour promouvoir les procureurs? Veuillez préciser:

The procedure and criteria for promotion of state prosecutors are defined by art. 33b of The Law on State Prosecutor's Office, and the subcriteria are defined in Rulebook of Prosecutorial Council.

120) Existe-t-il un système d'évaluation individuelle qualitative de l'activité professionnelle du procureur ?

- Oui
- Non

121) Le mandat des juges est-il à durée indéterminée (à savoir "à vie" = jusqu'à l'âge officiel de la retraite) ?

- Oui
- Non

Si oui, existe-t-il des exceptions ? (ex: la révocation comme sanction disciplinaire) ? Veuillez préciser :

Article 121, paragraph 2 of the Constitution of Montenegro stipulates that judges shall cease to function when they ask, when they meet the requirements for of old-age pension and, if sentenced to unconditional imprisonment.

When the judge is sentenced to unconditional imprisonment Judicial Council finds the termination of function.

Article 121 para 3 of the Constitution of Montenegro stipulates that the judge is dismissed:

- If convicted of the offense that makes him unworthy to exercise judicial functions,
- If performs his duties improperly or carelessly,
- If he becomes permanently incapacitated for the performance of judicial functions.

The decision on dismissal is brought by the Judicial Council, nad the procedure is prescribed by the Law on Judicial Council.

122) S'il existe une période probatoire pour les juges (par exemple avant d'être nommé "à vie"), quelle en est la durée ? Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.

	Durée de la période probatoire (en années)
	NAP

123) Le mandat des procureurs est-il à durée indéterminée (à savoir « à vie » = jusqu'à l'âge officiel de la retraite) ?

- Oui
 Non

Si oui, existe-t-il des exceptions (la révocation comme sanction disciplinaire) ? Veuillez préciser :

Deputy prosecutor is firstly being appointed for period of three years,after which the function of the deputy is permanent in accordance with art. 28 of The Law on State Prosecution Office.

124) S'il existe une période probatoire pour les procureurs, quelle en est la durée? Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.

	Durée de la période probatoire (en années)

125) Si le mandat n'est pas à durée indéterminée pour les juges (voir question 121), est-il renouvelable ? Quelle est la durée du mandat (en années)?

NAP

126) Si le mandat n'est pas à durée indéterminée pour les procureurs (voir question 123), est-il renouvelable ? Quelle est la durée du mandat (en années)?

NAP

E.1

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. 2. Formation

5. 2. 1. Formation

127) Formation des juges

Formation initiale (par exemple fréquentation d'une école de la magistrature, stage dans un tribunal)	Optional
Formation continue générale	Compulsory
Formation continue pour des fonctions spécialisées (ex. juge pour les affaires économiques ou administratives)	Optional
Formation continue pour des fonctions spécifiques de gestion (ex. présidence d'un tribunal)	Optional
Formation continue pour l'utilisation des outils informatiques au sein des tribunaux	Optional

128) Fréquence de la formation continue des juges:

Formation continue générale	Regular (e.g. every 3 months)
Formation continue pour des fonctions spécialisées (ex. juge pour les affaires économiques ou administratives)	Regular (e.g. every 3 months)
Formation continue pour des fonctions spécifiques de gestion (ex. présidence d'un tribunal)	Annual
Formation continue pour l'utilisation des outils informatiques au sein des tribunaux	Occasional (e.g. at times)

129) Formation des procureurs

Formation initiale	Optional
Formation continue générale	Compulsory
Formation continue pour des fonctions spécialisées (ex. procureur spécialisé en crime organisé)	Optional
Formation continue pour des fonctions spécifiques de gestion (ex. Procureur Général, administrateur)	Optional
Formation continue pour l'utilisation des outils informatiques au sein des tribunaux	Optional

130) Fréquence de la formation continue des procureurs :

Formation continue générale	Regular (e.g. every 3 months)
Formation continue pour des fonctions spécialisées (ex. procureur spécialisé en crime organisé)	Regular (e.g. every 3 months)
Formation continue pour des fonctions spécifiques de gestion (ex. Procureur Général, administrateur)	Annual
Formation continue pour l'utilisation des outils informatiques au sein des tribunaux	Occasional (e.g. at times)

131) Disposez-vous d'(une) institution(s) publique(s) chargée(s) de la formation des juges et des procureurs? Si oui, quel est le budget de cette (ces) institution(s) ? Si vos institutions de formation judiciaire ne répondent pas à ces critères, veuillez le préciser.

	Formation initiale seulement	Formation continue seulement	Formation initiale et continue
Une institution pour les juges	NAP	NAP	NAP
Une institution pour les procureurs	NAP	NAP	NAP
Une institution commune pour juges et procureurs	Non	Non	Oui

Commentaire :

Q.131

Education in the judicial authorities in Montenegro is done through the Judicial Training Center, which is the only institution responsible for training and qualifying of judges and prosecutors and of the persons who are preparing to perform these functions.

Since the Judicial Training Center was organized as a separate organizational unit of the Supreme Court of Montenegro, the funds for financing education are provided as a separate item in the budget of the Supreme Court of Montenegro. In addition, financial support and implementation of continuing education activities is greatly contributed through contributions to the Center of relevant international organizations through various types of projects.

E.2

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

Q.127.

Basic preconditions for a person to become a judge are to have diploma of Faculty of Law, that he passed internship (2 years in judiciary authority, and 4 years in state authority), and that he/she passed Bar exam.

Initial training is not mandatory - but it is significant advantage in the proceeding for selecting judge or a prosecutor. Initial training is performed in The Judicial Training Center, aiming to prepare potential candidates - persons who met preconditions mentioned above - for a performing of judicial function.

Law on education of the judicial authorities specifies the manner and forms of education of judges and prosecutors, as well as persons who are preparing for the exercise of judicial functions, composition and jurisdiction of separate bodies, records and other issues relevant to education in the judicial authorities, which corresponds to the application of international and European standards and practices.

The law on education in the judicial authorities brought a new perspective when it comes to training personnel in the judiciary, and therefore the newspapers in the functioning of the Centre. Basic features and innovations are introduced by the education of the judicial authorities are the following:

- The Center for education of judges extends to state prosecutors, their deputies and advisors. Center changes its name to the Judicial Training Center. Training of judges and prosecutors through a center is a practical solution (with respect to the total number of judges and prosecutors, and the population size and Montenegro).
- In accordance with the Law, education of judges and prosecutors is a right and obligation. The independence of the judicial function imposes an obligation, first and foremost, to perform their functions professionally. The introduction of this article is education as a right and obligation of judges (and prosecutors) is introduced at the level of the law.
- The Center is organized as a separate organizational unit of the Supreme Court of Montenegro. Locating the center in the framework of the Supreme Court is supposed to provide funding through the Centre in particular budget line aimed at the Supreme Court.
- To organize and conduct training of judicial authorities special bodies are formed within the Centre, namely: The Coordination Committee, Programme Committee and Examination Committee. The Coordination Committee has a chairman and six members elected by all relevant institutions in the field of Justice (representatives of the Supreme Court of Montenegro, Montenegrin Supreme State Prosecutor, Judicial Council, Prosecutorial Council, the Ministry of Justice, Law Faculty in Podgorica). Represents the body with the highest authority that adopts an annual training program (which includes the prediction of areas in which training is conducted, the dynamics and limits of realization of decisions will, structure and number of participants, the structure of teachers, the necessary means and method of evaluation) and elects the members of program committees and Examination Board. For their work Coordinating Board is responsible to Judicial and Prosecutorial Council. Program committees develop annual program and special education programs and establish a plan of its realization. Examination Commission is organizing an entrance and final exam for initial training.
- For the first time this Law introduces the initial training and therefore makes a clear distinction between the initial and continuing training of personnel in the judiciary.
- Keeping records of the Center of the participation of the judiciary in the activities of the Centre.
- Introduction to the issuance of certificates by the Centre when it comes to initial training.

When it comes to education in the field of European law and the jurisprudence of European courts, this area is specially treated in the annual work program of the Center and divided to the part that deals with the European Convention on Human Rights and the part that deals with the law of the European Union.

In recent years, particularly the emphasis placed on education in the field of EU law that is being continuously carried out.

In the field of human rights education and standards of the Council of Europe, the Centre works with organizations that are specialized for carrying out such programs. In his previous work, since 2003. year to date, the Centre has over 80 activities in the field of education in the field of human rights and the ECHR. Training for trainers was organized in the area of the European Convention on Human Rights of 10 prominent representatives of the Montenegrin judiciary – 5 judges and 5 prosecutors.

Among other things, the Centre has continuously ensured the participation of judges in the Schools of Human Rights, and regularly distributed to all courts and prosecutor's offices in the country selected judgments of the European Court of Human Rights.

5. 3. Exercice de la profession

5. 3. 1. Exercice de la profession

132) Salaires des juges et des procureurs.

	Salaire annuel brut (€), en €, au 31 décembre 2010	Salaire annuel net (€), en €, au 31 décembre 2010
Juge professionnel de 1ère instance au début de sa carrière	24 142	14 500
Juge de la Cour suprême ou de la dernière instance de recours (veuillez indiquer le salaire moyen d'un juge de ce niveau, non pas le salaire du président de la cour)	32 202	19 341
Procureur au début de sa carrière	19 947	13 364
Procureur auprès de la Cour suprême ou de la dernière instance de recours (veuillez indiquer le salaire moyen d'un procureur de ce niveau, non pas le salaire du Procureur Général).	27 902	18 694

Commentaire :

Salary of judges is determined by the Law on earnings and other incomes of carriers of judiciary and constitutional court functions (Official Gazette of RMN" no. 36/07 and 53/07)

Source: Ministry of Finance and Judicial Council of Montenegro

133) 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	Non	Non

134) Si autre avantage financier, veuillez préciser:

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

	Rémunéré	Non rémunéré
Enseignement	Oui	Non
Recherche et publication	Oui	Non
Arbitrage	Oui	Non
Consultant	Non	Non
Fonction culturelle	Oui	Non
Fonction politique	Non	Non
Autre fonction	Non	Non

136) Si des règles existent dans votre pays (par exemple, une autorisation est exigée

pour exercer une fonction), veuillez les préciser. Si « autre fonction », veuillez préciser :
 In accordance with Article 45 of the Law on Judicial Council ("Official Gazette of Montenegro", no. 13/08), Judge may seek the opinion whether certain activities are incompatible with the exercise of judicial function, upon which the Judicial Council decides.

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

	Rémunéré	Non rémunéré
Enseignement	Oui	Oui
Recherche et publication	Oui	Oui
Arbitrage	Oui	Oui
Consultant	Non	Non
Fonction culturelle	Non	Non
Fonction politique	Non	Non
Autre fonction	Non	Non

138) Précisions s'il existe des règles particulières (par exemple autorisation nécessaire pour exercer tout ou partie de ces activités). Si « autre fonction », veuillez préciser :

State prosecutors may participate, as local experts, in training of judicial personnel, in the Judicial Training Center, Police academy and other educational institutions, and as experts engaged by international organizations, or perform scientific and research work, as well as in arbitration - mediation in civil and criminal matters, with or without compensation.

139) Prime de productivité : les juges ont-ils droit à des primes en fonction du respect d'objectifs quantitatifs de production de décisions (par exemple nombre de jugements rendus pour une période donnée) ?

- Oui
 Non

Si oui, veuillez préciser les conditions et éventuellement les montants:

In order to accelerate the work of the courts in 2010., pursuant to the decision of the Judicial Council, 36 judges (Court of Appeal, the Administrative Court, High Court) has been working overtime and for this work provided if they have achieved a double standard they were payed by monthly basic salary (without the addition of the judge and fees on the basis of past work if you fill a double standard).

5. 4. Procédures disciplinaires

5. 4. 1. Procédures disciplinaires

140) Qui peut engager des procédures disciplinaires contre les juges (choix multiples possibles) ?

- Citoyens
 Tribunal concerné ou supérieur hiérarchique
 Cour suprême
 Conseil Supérieur de la Magistrature
 Tribunal ou autorité disciplinaire
 Médiateur

- Parlement
- Pouvoir exécutif
- Autre ?
- Ceci n'est pas possible

Si "pouvoir exécutif" ou/et "autre", veuillez préciser :

The proposal to establish disciplinary liability of judges can be applied by the court president, the president of directly higher court and the president of the Supreme Court. - Article 54 paragraph 2 of the Law on Judicial Council.

Every natural or legal person is entitled to file a complaint on the operation and behavior of judge. When such a complaint reaches the Judicial Council it is submitted to the President of the Court in which the judge against whom a complaint is filed works, in order to be examined. If the President of the court after examining finds that there are grounds for initiating disciplinary proceedings, he submits whole file with proposal to initiate proceedings to the Disciplinary Commission of the Judicial Council.

If the court president finds that there are no grounds for initiating disciplinary proceedings, he submits all case files to the Judicial Council to take a stand on the complaint and notify the appellant.

141) Qui peut engager des procédures disciplinaires contre les procureurs (choix multiples possibles) :

- Citoyens
- Chef de l'unité organisationnelle ou supérieur hiérarchique
- Procureur Général/Procureur d'Etat
- Conseil Supérieur de la Magistrature
- Tribunal ou autorité disciplinaire
- Médiateur
- Organisme professionnel
- Pouvoir exécutif
- Autre?
- Ceci n'est pas possible

Si "pouvoir exécutif" ou/et "autre", veuillez préciser :

142) Quelle autorité détient le pouvoir disciplinaire à l'encontre des juges? (plusieurs options possibles)

- Tribunal
- Cour suprême
- Conseil Supérieur de la Magistrature
- Tribunal ou autorité disciplinaire
- Médiateur
- Parlement
- Pouvoir exécutif
- Autre?

Si "pouvoir exécutif" ou/et "autre", veuillez préciser :

143) Quelle autorité détient le pouvoir disciplinaire à l'encontre des procureurs ? (plusieurs options possibles)

- Cour suprême
- Chef de l'unité organisationnelle ou supérieur hiérarchique
- Procureur Général/Procureur d'Etat
- Conseil Supérieur de la Magistrature
- Tribunal ou autorité disciplinaire
- Médiateur
- Organisme professionnel
- Pouvoir exécutif
- Autre ?

Si "pouvoir exécutif" ou/et "autre", veuillez préciser :

Proposal for initiating disciplinary procedure can be filed by:

- Minister of Justice for Supreme State Prosecutor
- The Supreme State Prosecutor, High State Prosecutor and Basic State Prosecutor for his deputy
- The Supreme State Prosecutor for High State Prosecutor and Basic State Prosecutor

The proposal for initiating disciplinary procedure is filed to The Prosecutorial Council. The Prosecutorial Council elaborates the timeframe and basis for filing such proposal, and the procedure of establishing responsibility is under the competence of the Disciplinary board.

144) Nombre de procédures disciplinaires intentées à l'encontre des juges et des procureurs. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP. Si "autre", veuillez le préciser dans la boîte "commentaire" ci-dessous.

[Si la procédure disciplinaire est intentée sur la base de plusieurs manquements, veuillez ne compter ces procédures qu'une seule fois, pour le manquement principal.]

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

Commentaire :

145) Nombre de sanctions prononcées à l'encontre des juges et des procureurs. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.

Si « autre », veuillez le préciser dans la boîte "commentaire" ci-dessous. S'il existe une disparité entre le nombre de procédures disciplinaires intentées et le nombre de sanctions prononcées, veuillez préciser les raisons dans la boîte "commentaire" ci-dessous.

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

Commentaire :

Over 2010, three three proposals to institute disciplinary proceedings were submitted. One proposal has been rejected as unfounded, and one was adopted and the judge was imposed by the disciplinary measure on reducing 20% of net profit for one month due to infringement-disorderly conduct of judicial functions under Article 33a), paragraph 1, item 2 of the Law on Courts. The third procedure was interrupted due to the elements for the resolution and documents were submitted to the Judicial Council. During the proceedings, the judge filed a request for termination of judicial function.

In 2010 one proposition for dismissal of judge was filed. In accordance with the provisions of Article 63, paragraph 1 of the Law on the Judicial Council, the Judicial Council found that there are grounds for the proceedings for the dismissal and submitted filed proposal to the Disciplinary Commission to investigate the reasons for dismissal. During the proceedings, the judge filed a request for termination of function.

E.3

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

Veillez indiquer les sources aux questions 144 et 145

Judicial Council, Supreme State Prosecutor's Office

6. Avocats

6. 1. Statut de la profession et formation

6. 1. 1. Statut de la profession et formation

146) Nombre d'avocats exerçant dans votre pays.

620

147) Ce nombre inclut-il la catégorie « conseiller juridique » (« solicitor/in-house counsellor ») qui ne peut pas représenter en justice ?

- Oui
 Non

148) Nombre de conseillers juridiques qui ne peuvent pas représenter en justice

NA

149) Les avocats ont-ils le monopole de la représentation en justice ? (plusieurs options sont possibles) pour les :

- Affaires civiles
 Affaires pénales - Défendeur
 Affaires pénales - Victime
 Affaires administratives
 Il n'y a pas de monopole

En cas d'absence de monopole, veuillez préciser les organismes ou personnes pouvant représenter les clients devant un tribunal (par exemple une ONG, un membre de la famille, un syndicat, etc....) et pour quelles affaires :

150) La profession d'avocat est-elle organisée à travers (plusieurs réponses possibles):

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

151) Existe-t-il une formation initiale ou un examen spécifique pour accéder à la profession d'avocat ?

- Oui
 Non

Si non, veuillez indiquer s'il existe d'autres exigences spécifiques en matière de diplôme ou de niveau universitaire :

152) Existe-t-il un système de formation continue générale obligatoire pour les avocats ?

Oui

Non

153) La spécialisation dans certains domaines est-elle liée à certaines formations, à un certain niveau de compétence, à un certain diplôme ou à certaines autorisations ?

Oui

Non

Si oui, veuillez préciser :

F.1

Veillez indiquer les sources aux questions 146 et 148 :

Commentaires utiles à l'interprétation des données indiquées dans ce chapitre :

Lawyers are registered in the List of lawyers of The Bar Association of Montenegro.

There is no register of legal advisors.

Source:Bar Association of Montenegro

6. 2. Exercice de la profession

6. 2. 1. Exercice de la profession

154) Pour le justiciable, existe-t-il une transparence sur les honoraires prévisibles des avocats (à savoir, est-ce que les usagers peuvent aisément obtenir des informations préalables sur le montant des honoraires prévisibles, sont-ils transparents et loyaux) ?

Oui

Non

155) Les honoraires des avocats sont-ils librement négociés ?

Oui

Non

156) La loi ou les règlements du Barreau contiennent-ils des règles sur les honoraires des avocats (même s'ils sont librement négociés) ?

Oui, la loi contient des règles

Oui, les règlements du Barreau contiennent des règles

Non, ni la loi ni les dispositions du Barreau ne contiennent de règles

F.2

Commentaires utiles à l'interprétation des données indiquées dans ce chapitre :

Q.154

Clients of lawyers can be informed about lawyer's tariff on web page of Bar Association of Montenegro or directly in the administration office of Bar Association.

Q.155

The art. 3 of The Tarrif of Lawyers prescribes that beside the reward prescribed by the tariff lawyer and the clients can negotiate tariff in a flat rate or in a percentage amount.

Q.156

Prescribed by Tariff of Lawyers.

6. 3. Standards de qualité et procédures disciplinaires

6. 3. 1. Standards de qualité et procédures disciplinaires

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

- Oui
 Non

Si oui, quels sont les critères de qualité utilisés?

The quality standards are defined by the Law of Advocacy and Codex of Professional Ethics of Attorneys-at-law.

Law on advocacy prescribes that the lawyer is obliged to performs his duty truly and conscientiously. The lawyer can perform lawyers profession as an exclusive occupation. The lawyer is obliged to conscientiously provide legal assistance to a party, in accordance with the law, Statute of The Bar Association and Codex. The lawyer is obliged to, in accordance with the law, keep as a secret all the information he came upon in providing legal assistance.

"Codex of professional ethics of attorneys-at-law (hereafter referred to as Codex) is a set of rules about duties and rights of attorneys-at-law based upon a special type and high degree of their professional and moral liability.

2. Codex refers to attorneys-at-law and in appropriate way to law trainees registered in the registers of attorneys-at-law and registers of law trainees of all the bar associations on the territory.

3. Before starting with the activity, attorney-at-law is obliged to inform himself about the Codex and articles of association of the bar association (hereafter referred to as Articles of Association).

4. Lack of familiarity with the Articles of Association and Codex is unjustifiable.

5. When he/she does his job abroad, attorney-at-law should respect international principles of ethics and principles of ethics of professional rights of attorneys-at-law in the country in which he acts.

6. The bar association monitors that the Codex is followed, prescribes whether the violation of Codex has as a consequence a disciplinary liability of attorney-at-law and establishes and sanctions such liability.

7. If there is no rule for a specific case with direct meaning, Codex should be interpreted according to analogy, or according to aim and sense of its general rules."

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

- le Barreau ?
 le législateur ?
 autre ?

Si "autre", veuillez préciser :

159) Existe-t-il une possibilité de déposer une plainte concernant :

- la prestation de l'avocat ?

Le montant des honoraires ?

Veillez préciser :

The complaint is filed in a form of disciplinary complaint, to a disciplinary prosecutor of The Bar Association of Montenegro. If the disciplinary prosecutor (based on delivered evidence and statement of the lawyer upon which the complaint was given), finds that the complain is grounded, he indicts such lawyer, and this action is initiating disciplinary procedure. The decision is brought by Disciplinary court, composed of the president (lawyer) and two members - judges (also lawyers).

160) Quelle est l'autorité compétente pour traiter des procédures disciplinaires?

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

Si autre, veuillez préciser :

Please see answer to Q.159.

161) Procédures disciplinaires initiées à l'encontre des avocats. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP. Si « autre », veuillez spécifier dans la boîte "commentaire" ci-dessous.

[Si la procédure disciplinaire est intentée sur la base de plusieurs manquements, veuillez ne compter ces procédures qu'une seule fois, pour le manquement principal.]

	Nombre total de procédures disciplinaires initiées (1 + 2 + 3 + 4)	1. Faute déontologique	2. Insuffisance professionnelle	3. Délit pénal	4. Autre
Nombre	49	NA	NA	NA	NA

Commentaire :

The classification of disciplinary complaints is not being kept in named parameter. Total number of complaints for 2010. was 49.

162) Sanctions prononcées à l'encontre des avocats. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.

Si "autre", veuillez le spécifier dans la boîte "commentaire" ci-dessous. S'il existe une disparité entre le nombre de procédures disciplinaires initiées et le nombre de sanctions, veuillez indiquer les raisons dans la boîte "commentaire" ci-dessous.

	Nombre total des sanctions (1 + 2 + 3 + 4 + 5)	1. Réprimande	2. Suspension	3. Révocation	4. Amende	5. Autre (par exemple exclusion du barreau)
Nombre	0	NA	NA	NA	NA	NA

Commentaire :

In 2010. there were no sanctions pronounced against lawyers. In previous period, sanctions pronounced were deletion from the list of Lawyers for non-paying membership fee, and not because of complains from third persons.

F.3

Vous pouvez indiquer ci-dessous tout commentaire utile pour l'interprétation des données indiquées dans ce chapitre

7. Mesures alternatives au règlement des litiges

7. 1. Mesures alternatives au règlement des litiges

7. 1. 1. Mesures alternatives au règlement des litiges

163) Existe-t-il des procédures de médiation dans le système judiciaire ? Si non, veuillez aller à la question 168

[Médiation judiciaire : dans ce type de médiation, il y a toujours l'intervention d'un juge ou d'un procureur qui facilite, conseille, décide ou/et approuve la procédure. Par exemple, dans des litiges civils ou des cas de divorce, les juges peuvent diriger les parties vers un médiateur s'ils estiment que des résultats plus satisfaisants peuvent être obtenus pour les deux parties. En matière pénale, le procureur peut se proposer en tant que médiateur entre un délinquant et une victime (par exemple pour établir un accord d'indemnisation).]

- Oui
 Non

164) Veuillez préciser, par type d'affaires, l'organisation de la médiation judiciaire :

	Médiation annexée au tribunal	Médiateur privé	Instance publique (autre que le tribunal)	Juge	Procureur
Affaires civiles et commerciales	Non	Non	Oui	Non	Non
Affaires familiales (ex. divorce)	Non	Non	Oui	Non	Non
Affaires administratives	Non	Non	Non	Non	Non
Licenciements	Non	Non	Oui	Non	Non
Affaires pénales	Non	Non	Oui	Non	Non

165) 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.

166) Nombre de médiateurs accrédités ou enregistrés qui exercent la médiation judiciaire :

91

167) Nombre total de procédures de médiation judiciaire

Veuillez indiquer la source dans la boîte "commentaire" ci-dessous:

Nombre total (1+2+3+4+5)	<input checked="" type="checkbox"/> Oui	1 577
1. les affaires civiles	<input checked="" type="checkbox"/> Oui	87
2. les affaires familiales	<input checked="" type="checkbox"/> Oui	1 420

- | | | |
|----------------------------------|---|-----|
| 3. les affaires administratives | | NAP |
| 4. les affaires de licenciements | | NAP |
| 5. les affaires pénales | <input checked="" type="checkbox"/> Oui | 70 |

Commentaire :

Database of Center for mediation of Montenegro for the period 2008-2010.

168) Votre système judiciaire connaît-il les formes d'ADR suivantes.

Si "autres mesures", veuillez le spécifier dans la boîte "commentaire" ci-dessous.

la médiation autre que la médiation judiciaire?	Oui
l'arbitrage?	Oui
la conciliation?	Oui
d'autres mesures alternatives au règlement des litiges?	Non

Commentaire :

G.1

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**

Q166 : In 2008 – 73 and in 2010 – 91 Mediators

This is the case due to the activities defined in the Action plan for the implementation of the Judicial Reform Strategy 2007-2012 which contains Chapter devoted to Promotion Alternative Dispute Resolution and many activities such as:

- Promote alternative manners of dispute resolution
- Analyze the current number of mediators and their work and consider the needs to revise the status of mediators.

So mediators are appointed in the period since the last evaluation.

Veillez indiquer les sources des réponses à la question 166

List of Mediators, Ministry of Justice.

8. Exécution des décisions de justice

8. 1. Exécution des décisions civiles

8. 1. 1. Fonctionnement

169) Existe-t-il dans votre système judiciaire des agents d'exécution ?

- Oui
 Non

170) Nombre d'agents d'exécution

54

171) 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):

Enforcement agents are employees of the court to comply with the decision of execution issued by the executing judge.

The enforcement agent shall submit to a executing judge a report on the completed or non completed enforcement action, accompanied by the minutes of the performing of enforcement actions and eventual confirmation of the amounts collected during the implementation of enforcement actions.

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

- Oui
 Non

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

- une instance nationale ?
 une instance régionale ?
 une instance locale ?
 NAP (la profession n'est pas organisée)

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

- Oui
 Non

175) Est-ce que les frais d'exécution sont librement négociés ?

- Oui
 Non

176) Est-ce que la loi stipule des règles sur les frais d'exécution (même s'ils sont librement négociés) ?

- Oui
 Non

Veillez indiquer la source de la réponse à la question 170 :

Supreme Court of Montenegro.

8. 1. 2. Efficacité des services d'exécution**177) Existe-t-il un système de supervision et de contrôle de l'activité des agents d'exécution ?**

- Oui
 Non

178) 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 ?

Si autre, veuillez préciser :

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

- Oui
 Non

Si oui, quels sont les critères de qualités utilisés ?

180) Qui est chargé de formuler ces normes de qualité ?

- un organisme professionnel
 le juge
 Ministère de la Justice
 autre

Si "autre", veuillez préciser :

181) 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 :

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

- Oui
 Non

Si oui, veuillez préciser :

Control over the work of the enforcement agents is performed by the Enforcement judge, and control of his work is performed by the commission formed in order to control the work of all courts and judges.

183) 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 ?

Si autre, veuillez préciser:

The highest problem in the area of execution of court decisions is that the debtor does not have funds to pay debt, and when it comes to payment of debt by seizure and selling, there are no parties interested to buy such items, not even in cases in which the object is real estate.

184) 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 :

Please see Comments in H.1

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

- pour les affaires civiles ?
 pour les affaires administratives ?

186) 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

Si plus, veuillez préciser

187) Nombre de procédures disciplinaires initiées à l'encontre des agents d'exécution. Si "autre", veuillez le préciser dans la boîte "commentaire" ci-dessous.

[Si la procédure disciplinaire est intentée sur la base de plusieurs manquements, veuillez ne compter ces procédures qu'une seule fois, pour le manquement principal.]

Nombre total de procédures disciplinaires initiées (1+2+3+4)	<input checked="" type="checkbox"/> nombre :	2
1. pour faute déontologique	<input checked="" type="checkbox"/> nombre :	0
2. pour insuffisance professionnelle	<input checked="" type="checkbox"/> nombre :	2
3. pour délit pénal	<input checked="" type="checkbox"/> nombre :	0
4. Autre	<input checked="" type="checkbox"/> nombre :	0

Commentaire :

188) Nombre de sanctions prononcées à l'encontre des agents d'exécution.

Si "autre", veuillez le spécifier dans la boîte "commentaire" ci-dessous. S'il existe une disparité entre le nombre de procédures disciplinaires initiées et le nombre de sanctions, veuillez indiquer les raisons dans la boîte "commentaire" ci-dessous.

Nombre total de sanctions (1+2+3+4+5)	<input checked="" type="checkbox"/> nombre :	1
1. Réprimande	<input checked="" type="checkbox"/> nombre :	1
2. Suspension	<input checked="" type="checkbox"/> nombre :	0
3. Révocation	<input checked="" type="checkbox"/> nombre :	0
4. Amende	<input checked="" type="checkbox"/> nombre :	0
5. Autre	<input checked="" type="checkbox"/> nombre :	1

Commentaire :

In one case proceeding was suspended.

H.1

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

Within the reform of the procedure of execution of decisions in Montenegro, two new laws were adopted: Law on execution and security ("Official Gazette of MNE", no.36/11) and Law on public enforcement officers ("Official Gazette of MNE", no.66/11).

Law on public enforcement officers defines the organisation and actions of the public enforcement officer in enforcement procedure, and in transitional and concluding provisions it is defined that The Ministry of Justice is obliged to bring bylaws for implementation of the Law: Rulebook on determining number of positions and offices of public enforcement officers, Rulebook on official identity documents, Rulebook on work of public enforcement officers, Tariff of public enforcement officers and Rulebook on Programme and manner of testing on the exam for public enforcement officer, which will be brought in the time of 6 months. Also, changes will be made in terms of status, because the Law prescribes that public enforcement officers are public professional service, worthy of public trust, public enforcement officers to be graduated legal professionals with passed exam for public enforcement officers or bar exam. organizing of first exam for public enforcement officers is planned for September 2012., and their first appointment until the end of 2012. After appointing of first 10 public enforcement officers, forming of Association of public enforcement officers will be prescribed. Tariff for the work and paying for expenses of public enforcement officers will be brought by The Government. Supervision over the work of the public enforcement officers will be made by The Association and The Ministry of Justice.

Veillez indiquer les sources pour les réponses aux questions 186, 187 et 188 :

Reports of the Presidents of the Basic courts which are authorised to execute verdicts in civil cases.

8. 2. Exécution des décisions pénales**8. 2. 1. Exécution des décisions pénales****189) Qui est chargé de l'exécution des décisions pénales? (plusieurs options possibles)**

- Juge
- Procureur
- Services pénitentiaire et de probation
- Autre autorité

Veillez préciser ses fonctions et compétences (ex. fonctions d'initiative ou de contrôle). Si "autre autorité", veuillez préciser :

The execution of the prison sentence is under competence of the basic court in which area the sentenced person has temporary or permanent residence. If the place of temporary permanent residence is not known, referring to execution of sentence is under competence of the basic court which brought a verdict in a first instance, and if the first instance decision was brought by the high court, the competence is of the basic court in the seat of the high court.

when the court competent for enforcement receives the final decision, it is obliged to perform actions to enforce the sentence immediately, and in 3 days the latest. in that deadline, the court is obliged to call sentenced person in order to deliver Order for execution of sentence. Such order contains the date on which the convicted person is obliged to report in to the execution of criminal sanctions. When determining the period, court is obliged to leave a period of time of 8 days minimum, but not later then 15 days. if the summoned convicted person does not call in for execution of sanctions, the court issues order to a police to take him under force to the execution of prison sentence. if the sentenced person is hiding or running, the competent court issues order for wanted circular and delivers it to the police.

The Prison administration is administration authority in the structure of The Ministry of Justice. Also, the Probation office is being introduced in Montenegro (Law on changes and amendments of Law on execution of criminal sanctions ("Official Gazette of MNE", no.32/2011), as Department of The Sector for execution of criminal sanctions of The Ministry of Justice.

190) En matière d'amendes prononcées par une juridiction pénale, existe-t-il des études permettant d'évaluer le taux de recouvrement effectif ?

- Oui
 Non

191) Si oui, quel est le taux de recouvrement ?

- 80-100%
 50-79%
 moins de 50%
 ne peut être estimé

Veillez indiquer la source ayant permis de répondre à cette question:

H.2

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

Within the reform of the procedure of execution of decisions in Montenegro, two new laws were adopted: Law on execution and security ("Official Gazette of MNE", no.36/11) and Law on public enforcement officers ("Official Gazette of MNE", no.66/11).

Law on public enforcement officers defines the organisation and actions of the public enforcement officer in enforcement procedure, and in transitional and concluding provisions it is defined that The Ministry of Justice is obliged to bring bylaws for implementation of the Law: Rulebook on determining number of positions and offices of public enforcement officers, Rulebook on official identity documents, Rulebook on work of public enforcement officers, Tariff of public enforcement officers and Rulebook on Programme and manner of testing on the exam for public enforcement officer, which will be brought in the time of 6 months. Also, changes will be made in terms of status, because the Law prescribes that public enforcement officers are public professional service,

worthy of public trust, public enforcement officers to be graduated legal professionals with passed exam for public enforcement officers or bar exam. organizing of first exam for public enforcement officers is planned for September 2012., and their first appointment until the end of 2012. After appointing of first 10 public enforcement officers, forming of Association of public enforcement officers will be prescribed. Tariff for the work and paying for expenses of public enforcement officers will be brought by The Government. Supervision over the work of the public enforcement officers will be made by The Association and The Ministry of Justice.

9. Notaires

9. 1. Notaires

9. 1. 1. Notaires

192) Existe-t-il des notaires dans votre pays ? Si non allez à la question 197

- Oui
 Non

193) Les notaires ont-ils un statut :

Si "autre", veuillez le préciser dans la boîte "commentaire" ci-dessous.

privé (sans contrôle d'une autorité publique)?		NAP
de profession libérale réglementée par les pouvoirs publics ?	<input checked="" type="checkbox"/> nombre	34
public?		NAP
autre ?		NAP

Commentaire :

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.

194) Le notaire exerce-t-il une fonction (plusieurs réponses possibles):

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

Si "autre", veuillez préciser :

In accordance with Law on notaries ("Official Gazette of RMN" no.68/05 and "Official Gazette of MNE", no.49/08), Notary is authorized to perform the following actions:

1. makes notary acts;
2. takes into a deposit documents, money, securities and other objects;
3. upon the warrant of the court performs actions entrusted by Law on notaries (The court may delegate the notary the following tasks: 1) inventory and assessment of legacy; 2) keeping the probate documents, money, securities or valuables; 3) other activities determined by special laws)
4. performs other actions entrusted by special law.

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

- Oui
 Non

196) Quelle est l'autorité chargée de superviser et de contrôler les notaires :

- une instance professionnelle ?
 le juge ?

le ministère de la justice ?

le procureur ?

autre ?

Si "autre", veuillez préciser :

Professional body - The Notarial Chamber.

I.1

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**

Ministry of Justice issues rules of procedure for notary service (hereinafter: the Rulebook), which in a closer manner defines the issues determined by the Law on notaries, as well as issues of importance to the organization and manner of internal business of notary office and notary work.

Notaries are appointed by the Minister of Justice, upon receiving opinion of The Notary Chamber. Notary shall take an oath before the Minister, not later than 30 days from the date of appointment.

Q.196.

Law on Notaries defines triple mechanism of supervision 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.

1.

Direct supervision of the notaries is performed by The Notary Chamber.

Within the powers referred to, the Chamber may review files and records of the notary, business with documents taken into custody as well as operations related to the deposited documents, deposited money, securities and valuables, and to order to the notary to operate in accordance with the regulations, or to bring the documentations into the order.

2.

Supervision over the legality in performing notary duties is entrusted to the Ministry of Justice.

Within the powers referred to, the Ministry may: 1) review the operations of notary; 2) propose to conduct disciplinary proceedings against notaries; 3) conduct the review of operations of the Chamber bodies; 4) take other control measures in accordance with the law, especially in connection with the Regulation.

3.

Supervision over the legality of performing notary service by the court:

Supervision over the legality of performing notary service in connection with the matters entrusted to the notary by the court is entrusted to the president of the court in whose area is the seat of a notary.

President of the Court may: 1) determine the business overview of the notary or his deputy in the cases referred to; 2) proposed to the Ministry to review the entire business of notaries or their deputies; 3) propose the conducting of disciplinary proceedings against notaries, or deputies.

10. Interprètes judiciaires

10. 1. Interprètes judiciaires

10. 1. 1. Interprètes judiciaires

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

- Oui
 Non

198) La fonction d'interprète judiciaire est-elle régulée par des normes juridiques?

- Oui
 Non

199) Nombre d'interprètes judiciaires accrédités ou enregistrés :

368

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

- Oui
 Non

Si oui, veuillez préciser (par exemple avoir passé avec succès un examen particulier) :

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, upon passing an exam organised within the Ministry of Justice.

201) Les tribunaux sont-ils responsables de la sélection des interprètes judiciaires ? Si non, veuillez indiquer dans la boîte "commentaire" ci-dessous quelle autorité est responsable de la sélection.

- Oui pour les recruter et/ou les nommer pour un mandat d'une certaine durée
 Oui pour les recruter sur une base ad hoc en fonction des besoins d'une procédure spécifique
 - Non

Commentaire :

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.

The court interpreters are appointed by The Ministry of Justice after passing exam.

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.

J.1

Vous pouvez indiquer tout commentaire utile à l'interprétation des données indiquées dans ce chapitre

Veillez indiquer la source pour répondre à la question 199 :

Ministry of Justice.

11. Experts judiciaires

11. 1. Experts judiciaires

11. 1. 1. Experts judiciaires

202) Dans votre système, les experts interviennent-ils durant la procédure judiciaire comme (choix multiple possible):

- "Experts témoins" à qui les parties demandent d'apporter leur expertise pour soutenir leur argumentation
- "Experts techniques" qui mettent à la disposition du tribunal leurs connaissances scientifiques et techniques sur des questions de fait
- "Experts juristes" qui peuvent être consultés par le juge pour des questions de droit spécifiques ou qui ont pour tâche de soutenir le juge dans la préparation du travail judiciaire (mais qui ne participent pas au jugement)

203) Le titre d'expert judiciaire est-il protégé ?

- Oui
- Non

204) La fonction d'expert judiciaire est-elle régulée par des normes juridiques?

- Oui
- Non

205) Nombre d'experts judiciaires (experts techniques) accrédités ou enregistrés.

520

206) Existe-t-il des critères relatifs à l'exercice de la fonction d'expert judiciaire dans le cadre des procédures judiciaires ?

- Oui
- Non

Si oui, veuillez préciser, notamment les délais impartis pour présenter un rapport technique au juge :

In accordance with Article 117 of the Code of Criminal Procedure ("Official Gazette of RM" no. 71/03 and 47/06) which was in force in 2010., technical expertise is determined by the authority conducting the procedure. This command defines the facts on which the technical expertise will refer, to whom is it entrusted and what is the period in which the expert shall submit his report.

The expert is obliged to submit an expert opinion within the time he has by the order, as defined by the art. 118 of The Criminal Procedure Code.

If the expert does not submit his findings and opinion in a given time limit he may be punished by a fine of up to 1,000 euros.

The Code of Criminal Procedure ("Official Gazette of Montenegro", no. 57/2009 and 49/2010) stipulates that technical expertise shall be determined by the order, the obligation of expert to submit findings in the determined timeframe.

In the Civil procedure, producing evidence by technical expertise is determined by the court decision, which contains the name and surname, profession of expert, subject matter, scope and subject of his expertise and the deadline for submission of written findings and opinion -Article 249 of the Code of Civil Procedure. If an expert in a given time limit unreasonably fails to submit his findings and opinion, the court will punish him by a fine of up to 500 euros.

The same punishment shall be imposed on an expert who refuses to perform technical expertise without just cause - Article 182 of the Code of Civil Procedure.

207) Les tribunaux sont-ils responsables de la sélection des experts judiciaires ?

Si non, veuillez indiquer dans la boîte "commentaire" ci-dessous quelle autorité est responsable de la sélection des experts judiciaires?

Oui pour les recruter et/ou la nommer pour un mandat d'une certaine durée

Oui pour les recruter sur une base ad hoc en fonction des besoins d'une procédure spécifique

Non .

Commentaire :

K.1

Vous pouvez indiquer tout commentaire utile à l'interprétation des données indiquées dans ce chapitre

Experts are selected by the Commission established by the President of the Supreme Court of Montenegro - Article 11 of the Law in court experts ("Official Gazette of RM" no. 79/04). This commission is consisted of five members:

- Two judges,
- Two from the Association of Court Experts
- One from the Ministry of Justice.

President of the Commission shall be appointed from the judges.

Members of the commission from among the judges are appointed on the proposal of General Session of the Supreme Court.

Veuillez indiquer la source pour répondre à la question 205 :

Secretariat of The Judicial Council.

12. Réformes envisagées

12. 1. Réformes envisagées

12. 1. 1. Réformes

208) Veuillez fournir des informations sur le débat actuel dans votre pays sur le fonctionnement de la justice. Des réformes sont-elles en préparation ou envisagées. Si possible, respectez les catégories suivantes:

1. Programmes de réforme généraux

2. Budget

3. Tribunaux et Ministère Public (par exemple pouvoir et organisation, modifications structurelles -par exemple la réduction du nombre des tribunaux-, gestion et méthodes de travail, technologies de l'information, arriéré judiciaire et efficacité, frais de justice, rénovation et construction de nouveaux bâtiments)

4. Conseil supérieur de la Magistrature

5. Professionnels de la justice (juges, procureurs, avocats, notaires, agents d'exécution, etc.) : organisation, formation, etc.

6. Réformes en matière civile, pénale et administrative, de conventions internationales et d'actes de coopération

7. Exécution des décisions de justice

8. Médiation et autres ADR

9. Lutte contre la criminalité et système pénitentiaire

10. Autres

1. (The overall) reform plan

The reform of Montenegrin judiciary is continuously ongoing in accordance with activities provided in the Strategy for the Reform of Judiciary 2007-2012 and the Action plan for implementation of the Strategy for the Reform of Judiciary 2007-2012. By monitoring the achieved results, analyses, practice and opinions of the relevant international stakeholders and the Progress Reports regarding accession of Montenegro to the EU, the Action Plan for implementation of Strategy for the Reform of Judiciary has been innovated in December 2011.

In the course of overall reform, legal system in Montenegro is aiming to harmonization with EU acquis communautaire and the best practice and international standards in all areas, including the judiciary. In this sense, set of legislation was adopted in 2010 and 2011:

1. The Law on Changes and Amendments to the Criminal Code ("Official Gazette of Montenegro", no. 25/10) adopted by the Parliament of Montenegro at its session convened on 22 April 2010. The same Law has been amended and supplemented in 2011, by means of the Law on Amendments to the Criminal Code ("Official Gazette of Montenegro", no. 32/11) adopted in the Parliament of Montenegro on 22 June 2011.

2. The Law on Protection against Domestic Violence ("Official Gazette of Montenegro", no. 46/2010) adopted by the Parliament at its session held on 27. July 2010.

3. The Law on Amendments to the Criminal Procedure Code ("Official Gazette of Montenegro", no. 49/2010) adopted by the Parliament at its session held on 27 July 2010.

4. The Law Confirming the European Convention on non-applicability of Statutory Limitation to War Crimes and Crimes against Humanity ("Official Gazette of Montenegro – International agreements", no. 11/2010) adopted by the Parliament at its session held on 9 July 2010.

5. The Law Confirming the European Convention on Exercise of Children's Rights ("Official Gazette of Montenegro – International agreements", no. 8/2010) adopted by the Parliament at its session held on 9 July 2010

6. The Law Confirming Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, adopted by the Parliament at its session held on 12 October 2010.

7. The Law Confirming the Agreement between Montenegro and Bosnia and Herzegovina on Legal Aid in Civil and Criminal matters ("Official Gazette of Montenegro – International agreements", no. 15/2010) adopted by the Parliament of Montenegro at its session held on 9 December 2010.

8. The Law Confirming the Agreement between Montenegro and Bosnia and Herzegovina on Mutual Enforcement of Court Decisions in Criminal Matters ("Official Gazette of Montenegro – International agreements", no. 15/2010) adopted by the Parliament of Montenegro at its session held on 9 December 2010.

9. The Law Confirming the Agreement between Montenegro and the Republic of Croatia on extradition (Official Gazette of Montenegro – International Agreements", no. 1/2011) – Agreement has been signed on 1 October 2010.

10. The Law on Free Legal Aid ("Official Gazette of Montenegro", no. 20/2011), adopted by the Parliament of Montenegro on 5 April 2011.
11. The Law on amendments to the Law on Enforcement of Criminal Sanctions ("Official Gazette of Montenegro", no. 32/11) adopted by the Parliament of Montenegro at its session held on 22 June 2011.
12. The Law on Enforcement and Security ("Official Gazette of Montenegro", no. 36/2011) adopted by the Parliament of Montenegro at its session held on 12 July 2011
13. The Law on Amendments to the Law on Courts ("Official Gazette of Montenegro", no. 39/11), adopted by the Parliament of Montenegro at its session held on 22 July 2011.
14. The Law on Amendments to the Law on Judicial Council ("Official Gazette of Montenegro", no. 39/11), adopted by the Parliament of Montenegro at its session held on 22 July 2011.
15. The Law on Amendments to the Law on the State Prosecutor, ("Sl. List CG", no. 39/11), adopted by the Parliament of Montenegro at its session held on 22 July 2011
16. The Law on Misdemeanor ("Official Gazette of Montenegro", no. 1/2011 and 6/2011) adopted by the Parliament at its session held on 22 December 2011.
17. The Law on Public Executors adopted by the Parliament of Montenegro in December 2011.
18. The Law on Treatment of Juveniles in the course of Criminal Procedure adopted by the Parliament of Montenegro in December 2011.
19. The Law Confirming the Agreement between Montenegro and the Republic of Serbia on amendments to the Agreement between Montenegro and the Republic of Serbia on Extradition ("Official gazette of Montenegro - International agreements", no. 4/2011), adopted by the Parliament of Montenegro on 22 March 2011.
19. The Law Conforming Convention on the Taking of Evidence Abroad in Civil and Commercial Matters ("Official Gazette of Montenegro – International agreements", no. 7/2011), adopted by the Parliament of Montenegro on 26 May 2011.
20. The Law Confirming the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters ("Official Gazette of Montenegro – International agreements", no. 7/2011), adopted by the Parliament of Montenegro on 26 May 2011.
21. The Law Confirming the International Convention on the Protection of All Persons from Enforced Disappearance ("Official Gazette of Montenegro – International agreements", no. 8/2011), adopted by the Parliament of Montenegro on 22 June 2011.
22. The Law Conforming the Agreement between Montenegro and the Republic of Croatia on Mutual Enforcement Court Decisions on Criminal Matters ("Official Gazette of Montenegro – International agreements", no. 17/201) adopted by the Parliament at its session held on 9 December 2010.
23. The Law on Amnesty of persons convicted for criminal offences prescribed by the laws of Montenegro and persons convicted by foreign criminal verdict enforced in Montenegro – the aforementioned Law has been enacted in August 2010 (Official Gazette 45/10).

3. Courts and the State Prosecutor (e.g. authorizations and organizations, structural changes – e.g. reducing the number of courts – management and method of work, information technology, pending cases and efficiency, court compensations, renovating and construction of new buildings)

The Supreme State Prosecutor and the Prosecution Council have undertaken several activities regarding provision of human resources, material and other conditions for more efficient and more successful conduct of prosecutorial function. Especially taking into account entry into force of the new Criminal Procedure Code which significantly changes criminal procedural system, mostly through the introduction of the state prosecutor-led investigation. Implementation of the new Criminal Procedure Code has commenced on 26 August 2010, in cases of organized crime, corruption, terrorism and war crimes. It has commenced to be implemented in its entirety as of 1 September 2011.

In Podgorica, a facility with audio and video equipment has been adapted and installed for the needs of special department and joint investigation team, having 110 m², for the Higher State Prosecutor having 85 m² and for the Basic State Prosecutor, having 60 m². In Bijelo Polje, for the needs of the Higher State Prosecutor and special department falling under jurisdiction of the Higher Court in Bijelo Polje and for the needs of Basic State Prosecutor, facility of 440 m² has been adapted and equipped.

4. Judicial council

- During 2010, the Judicial Council has convened 13 regular sessions, and since its establishment it has convened total 44 regular and one extraordinary session.
- In 2010, after expiry of one year term of office of Disciplinary Commission, the Judicial Council has elected a new one, with its term of office starting as of 28 April 2010 and having the same

members.

-Improvement of election process

During 2010, seminars on strengthening judiciary and public access to judiciary saw exchange of experiences with representatives of Judiciary Councils from the region, related to the process of election of judges: criteria and procedure, written exams, personal interviews, transparent evaluation systems; election process, transparency for both candidates and general public, appointment of judges and authorizations of authority in charge of appointing judges, all aiming to set up criteria for election in order to provide for the most qualified candidates to take over the judiciary function. Therefore, as of 19 April 2010, anonymous testing of candidates has been introduced, and candidates are marking their tests only with numbers which they receive prior to taking the test, without stipulating their names thereon. Only during the interview of the candidates, based on the number, the Commission for election identifies the candidate who took the test and informs him of the result.

Situation as of 31 December 2010

Out of total 260 anticipated judges, according to the Decision amending the Decision on the Number of Judges in Courts in Montenegro as of 31 December 2010, 260 judge positions were fulfilled.

5. Legal professionals (judges, state prosecutors, attorneys at law, notaries, court executors, etc.): organization, education, etc.

- Notary Chamber of Montenegro has been established on 9 April 2011 in Podgorica.

- At the fifth Plenary session of the Network of Pilot Courts CEPEJ, held on 13 April 2010 in Geneva, president of the Basic Court in Bijelo Polje was present, since this is the court which represents Montenegro in the Network of Pilot Courts of the Council of Europe Commission for efficiency of judiciary CEPEJ, as well as the president of the Higher Court in Podgorica.

6. Reforms with regards to civil, criminal and administrative law, international conventions and cooperation activities

Criminal legislation

Since the last evaluation, the Criminal Code was subject to two amendments (2010 and 2011). Aiming to achieve the full compliance with international standards, amendments to the Criminal Code included significant number of changes in current institutes of criminal substantive law and criminal offences. One of the most significant novelties also includes amendments of the criminal code with regards to introducing confiscation of property whose legal origin has not been proved (the so called "Extended confiscation"). In accordance with amendments of the Criminal Code (Official Gazette of Montenegro, no. 25/2010), article 113 of the Criminal Code stipulates that subject of confiscation from criminal offender may also be the property for which a reasonable doubt exists that it was obtained from criminal activity, except when the offender makes it plausible that its origin is legal (extended confiscation). Extended confiscation may be applied if the perpetrator has been convicted with a final judgment for:

1) one of criminal offences committed within the criminal alliance (article 401a);

2) one of the following criminal offences:

- against humanity and other goods protected by international law, committed for gain;

- money laundering;

- unlawful production, keeping and circulation of narcotics;

- against trade and commerce and abuse of powers, committed for gain, for which imprisonment of eight or more years is prescribed.

Significant novelty compared to previous evaluation cycle, is enactment of the new Criminal Procedure Code („Official Gazette of Montenegro“, no. 57/2009 and 49/2010), which significantly changed criminal procedural system – mostly through the introduction of the prosecutor-led investigation, but also by implementation of other institutes, such as the Agreement on admission of guilt, extended confiscation of property whose legal origin has not been proved and thereby related reverse burden of prove. Implementation of the new Criminal Procedure Code has commenced on 26 August 2010, in cases of organized crime, corruption, terrorism and war crimes. It started to be implemented in its entirety as of 1 September 2011.

Reform of misdemeanors system

The first step in the process of reforming misdemeanor system, following the Strategy, was establishment of a legal framework and this has been achieved by adopting The Law on Misdemeanors in December 2010 (Official Gazette of Montenegro, number 01/11) and The Law

amending the Law prescribing fines for misdemeanors (Official Gazette of Montenegro, number 40/11) in July 2011. This Law amended 184 laws, penalty policies and fines have been adjusted, while fines expressed in minimal wage have been provided in nominal amount, in accordance with the Law on Misdemeanors. Implementation of these laws commenced on 1 September 2011. New Law on Misdemeanors has set up a brand new and efficient procedure for processing misdemeanor cases in accordance with EKLJP and it anticipates introduction of a new system of collection of fines and keeping misdemeanors records - RNKiPE.

The new Law on Misdemeanors has introduced significant novelties, such as:

- misdemeanor order whose application leads to resolving many cases outside of the court;
- misdemeanor procedure has been simplified and it is completed in one hearing;
- agreement on accepting responsibility and sanctions, between the competent authority and accused, thereby simplifying and speeding-up the misdemeanor procedure;
- restitutio in integrum is introduced;
- subject matter jurisdiction for deciding in misdemeanor cases is transferred to courts. During the transitional period subject matter jurisdiction will be placed upon local authorities and Misdemeanor Council;
- New method of servicing the documents has been introduced;
- Fines can be collected: by passive collection through the Registry of Fines, enforcement and replacement of fine with imprisonment. Payment of fines at the spot has been eliminated and established the system of monitoring and securing the payment thereof.
- for the forts time, community service, has been introduced, which can be ordered instead of fine or imprisonment, but with the consent of the injured person;
- instead of imprisonment, probation can be ordered.

7. Enforcement of court decisions

Within a framework of reforming enforcement process in Montenegro, two new laws have been adopted: Law on Enforcement and Security (adopted in August 2011) and Law on Public Executors (adopted in December 2011).

The Law on Public Executors regulates organization and acting of the public executors in the enforcement procedure, while final and transitional provisions stipulate obligation of the Ministry of Justice to adopt bylaws for implementation of the Law. Deadline is 6 months following enactment of the Law, i.e. until June 2012.

Organization of the first exam for public executors is planned to take place in September 2012 and until the end of 2012 they will be appointed. Following appointment of first ten public executors, the Chamber of Public Executors will be established.

9. Combating crime and penitentiary system

In accordance with bilateral agreements with Republic of Serbia and Republic of Croatia, it is possible to extradite own national for listed criminal offences of organised crime and corruption. In practice, this has shown as effective mechanism in combating organised crime and corruption, beside it further improved regional cooperation.

In line with overall reforming policy of Government of Montenegro and measures defined in national strategic documents, the Ministry of Justice is continuously implementing activities regarding improvement of the system for enforcement of criminal sanctions in Montenegro. Reforms are related to all the aspects of the system – from amending legal framework to strengthening mechanisms of exercising and protecting the rights of imprisoned persons.

In September 2011, the Government of Montenegro has adopted the Action Plan for improvement of penitentiary system. One of the goals defined in the Action plan is improvement of conditions in prisons. Among the measures for achieving this goal, activities on preparation, definition and implementation of curriculum plan and program for staff of the Institution for Enforcement of Criminal Sanctions, have been defined in accordance with conventions and recommendations of the Council of Europe, European penitentiary rules and standards of the European Committee for prevention of torture and inhuman and degrading treatment or punishment (CPT), aiming to provide for the respect of human rights and freedoms among imprisoned population; including organization of consistent training of penitentiary staff with regards to respect of human rights and activities focused on rehabilitation of convicted persons.

In June 2011, the Parliament of Montenegro adopted The Law amending the Law on Enforcement of

Criminal Sanctions („Official Gazette of Montenegro“, no. 32/11)Th. This Law introduces new standards into Montenegrin legal system, the most important being establishment of special organizational unit Department for probation release. Department for probation release will monitor convicted persons while being free, during their probation release, probation conviction, probation under protective supervision, community service and other measures as stipulated by the Law. Newly established Probation department is organised as structural unit of The Ministry of Justice.

10. Other

In 2010, European day of Civil Justice has been celebrated for the first time in Montenegro (25 October).