



EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE
(CEPEJ)

SCHEME FOR EVALUATING JUDICIAL SYSTEMS 2009

Country: Montenegro

National correspondent

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1. Demographic and economic data

1. 1. General information

1. 1. 1. Inhabitants and economic information

1) Number of inhabitants

620145

2) Total of annual State public expenditure / where appropriate, public expenditure at regional or federal entity level (in €)

	Amount
State level	680351924
Regional / entity level	NAP

3) Per capita GDP (in €)

4908

4) Average gross annual salary (in €)

7308

5) Exchange rate from national currency (non-Euro zone) to € on 1 January 2009

Please indicate the sources for questions 1 to 4 and give comments concerning the interpretation of the figures supplied if appropriate:

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

SOURCE 1-4: Monstat- Statistical office of Montenegro

1. 2. Budgetary data concerning judicial system

1. 2. 1. Budget (courts, public prosecution, legal aid, fees)

6) Total annual approved budget allocated to all courts (in €)

19779371

7) Please specify

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

8) Does the approved budget of the courts include the following items? Please give for

each item (or some of them) a specification of the amount concerned or indicate NA (not available) in case that the information cannot be supplied

Please provide comments to explain the data provided under question 8:

Annual public budget allocated to (gross) salaries	<input checked="" type="checkbox"/> Yes	14895844
Annual public budget allocated to computerisation (equipment, investments, maintenance)	<input checked="" type="checkbox"/> Yes	144000
Annual public budget allocated to justice expenses	<input checked="" type="checkbox"/> Yes	3646500
Annual public budget allocated to court buildings (maintenance, operation costs)	<input checked="" type="checkbox"/> Yes	220000
Annual public budget allocated to investments in new (court) buildings	<input type="checkbox"/> Yes	
Annual public budget allocated to training and education	<input type="checkbox"/> Yes	
Other (please specify):	<input checked="" type="checkbox"/> Yes	873026

Comment :

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

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

9) Has the annual public budget of the courts changed (increased or decreased) over the last five years?

- Yes
 No

If yes, please specify (i.e. provide an indication of the increase or decrease of the budget over the last five years:

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

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

- for criminal cases?
 for other than criminal cases?

If yes, are there exceptions? Please specify:

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

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

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

11) If yes, please specify the annual income of court fees (or taxes) received by the State (in Euros)

8335936

12) Total annual approved budget allocated to the whole justice system (in €)

Please provide information concerning the budgetary elements that included in the whole justice system budget:

. Amount 37358769

Comment :

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

13) Total annual approved public budget allocated to legal aid (in €)

Please provide comments to explain the figure provided under question 13:

. Amount 153427

Comment :

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

14) If possible, please specify (if no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation):

	Annual public budget allocated to legal aid in criminal law cases	Annual public budget allocated to legal aid in non criminal law cases
Amount	153427	

Comment :

15) Is the public budget allocated to legal aid included in the court budget ?

- Yes
 No

16) Total annual approved public budget allocated to the public prosecution system (in €)

Please provide comments to explain the figure provided under question 16:

Amount 4998279

Comment :

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

17) Is the budget allocated to the public prosecution included in the court budget?

- Yes
 No

18) Authorities formally responsible for the budget allocated to the courts:

	Preparation of the total court budget	Adoption of the total court budget	Management and allocation of the budget among the individual courts	Evaluation of the use of the budget at a national level
Ministry of Justice	No	No	No	No
Other ministry	No	No	No	Yes
Parliament	No	Yes	No	Yes
Supreme Court	No	No	No	No
Judicial Council	Yes	No	Yes	No
Courts	No	No	No	No
Inspection body	No	No	No	No
Other	No	No	No	No

19) If other Ministry and/or inspection body and/or other, please specify (in regards to question 18):

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

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your budgetary system and the main reforms that have been implemented over the last two years
- if available an organisation scheme with a description of the competencies of the different authorities responsible for the budget process

Commentary: Financial funds for operation of the courts of justice are provided for in a separate section of the Budget of Montenegro. The budget of the courts of justice is separated from the

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

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

Please indicate the sources for answering the questions 6, 8, 11, 12, 13, 14 and 16.

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

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

2. Access to Justice and to all courts

2. 1. Legal aid

2. 1. 1. Principles

20) Does legal aid concerns:

	Criminal cases	Other than criminal cases
Representation in court	Yes	Yes
Legal advice	Yes	Yes
Other	Yes	Yes

21) If other, please specify (in regards to question 20):

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

22) Does legal aid foresee the covering or the exoneration of court fees?

- Yes
 No

If yes, please specify:

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

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

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

23) Can legal aid be granted for the fees that are related to the execution of judicial decisions?

- Yes
 No

24) Number of cases granted with legal aid provided by (national, regional, local) public authorities (if no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation):

	Number
Total	1162
in criminal cases	1156
Other than criminal	

cases

6

Comment :

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

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

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

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

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

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

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

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

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

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

Yes

No

26) Does your country have an income and asset test for granting legal aid:

	Yes	Amount in €
for criminal cases		

	yes	
for other than criminal cases?	yes	

Comment :

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

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

- Yes
 No

Please provide comments to explain the answer under question 27:
 See comment for Q.26.

28) If yes, is the decision for granting or refusing legal aid taken by:

- the court?
 an authority external to the court?
 a mixed decision-making authority (court and external)?

29) Is there a private system of legal expense insurance enabling individuals to finance court proceedings?

- Yes
 No

Please specify:

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

	Yes (the decision has an impact on who bears the legal costs)
criminal cases?	Yes
other than criminal cases?	Yes

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your legal aid system and the main reforms that have been implemented over the last two years

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

In criminal proceedings, the law prescribes appointment of a defence lawyer due to poor material situation, when there are no conditions for mandatory defence and the proceedings are

conducted for a criminal offence for which imprisonment for a period longer than three years is prescribed, and in other cases, if required so by interests of fairness, a defendant may be granted a defence lawyer at the defendant's request if they are not able to bear the costs of defence due to their material situation. The request is decided upon by an investigative judge, while when the defendant is found guilty in the proceedings, the chairperson of the court of justice shall rule in their verdict that the defendant is obliged to indemnify the costs of the criminal proceedings.

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

Please indicate the sources for answering the questions 24 and 26

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

2. 2. Users of the courts and victims

2. 2. 1. Rights of the users and victims

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

legal texts (e.g. codes, laws, regulations, etc.)? Internet address(es): Yes

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

case-law of the higher court/s? Internet address(es): Yes

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

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

other documents (for examples forms)? Yes
 Internet address(es):

32) Is there an obligation to provide information to the parties concerning the foreseeable timeframe of the proceeding?

- Yes
 No

If yes, please specify:

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

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

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

- Yes
 No

If yes, please specify:

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

34) Are there special favourable arrangements to be applied, during judicial proceedings, to the following categories of vulnerable persons:

	Information mechanism	Hearing modalities	Procedural rights	Other
Victims of rape	No	Yes	Yes	No
Victims of terrorism	No	Yes	Yes	No
Children/Witnesses/Victims	No	Yes	Yes	No
Victims of domestic violence	No	Yes	Yes	No
Ethnic minorities	No	Yes	Yes	No
Disabled persons	No	Yes	Yes	No
Juvenile offenders	No	Yes	Yes	No
Other	No	No	No	No

Comment :

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

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

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

35) Does your country have a compensation procedure for victims of crimes?

- Yes
 No

36) If yes, does this compensation procedure consist in:

- a public fund?
 a court decision?
 a private fund?

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

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

37) Are there studies to evaluate the recovery rate of the compensation awarded by courts to victims?

Yes

No

If yes, please specify:

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

38) Is there a specific role for the public prosecutor with respect to the (protection of the position and assistance of) victims?

Yes

No

If yes, please specify:

39) Do victims of crimes have the right to contest to a decision of the public prosecution to discontinue a case?

Yes

No

If yes, please specify:

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

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

40) Is there a system for compensating users in the following circumstances:

excessive length of proceedings?

non execution of court decisions?

wrongful arrest?

wrongful condemnation?

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

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

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

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

41) Does your country have surveys aimed at users or legal professionals (judges, lawyers, officials, etc.) to measure their trust and/or satisfaction (with the services delivered by the judiciary system)?

- (Satisfaction) surveys aimed at judges
- (Satisfaction) surveys aimed at court staff
- (Satisfaction) surveys aimed at public prosecutors
- (Satisfaction) surveys aimed at lawyers
- (Satisfaction) surveys aimed at citizens (visitors of the court)
- (Satisfaction) surveys aimed at other clients of the courts

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

42) If possible, please specify:

	Yes (surveys at a regular interval: for example annual)	Yes (incidental surveys)
Surveys at national level	No	No
Surveys at court level	No	No

43) Is there a national or local procedure for making complaints about the functioning (for example the treatment of a case by a judge or the duration of a proceeding) of the judicial system?

- Yes

No

44) If yes, please specify:

Please give elements of information concerning the efficiency of this complaint procedure:

	Time limit to respond (Yes)	Time limit for dealing with the complaint (Yes)
Court concerned	Yes	Yes
Higher court	Yes	Yes
Ministry of Justice	Yes	Yes
High Council of the Judiciary	Yes	Yes
Other external organisations (e.g. Ombudsman)	Yes	Yes

Comment :

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

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

3. Organisation of the court system

3. 1. Functioning

3. 1. 1. Courts

45) Number of courts considered as legal entities (administrative structures) and geographic locations (please, complete the table. If no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation.

	Total number
First instance courts of general jurisdiction	17
Specialised first instance Courts (legal entities)	3
All the Courts (geographic locations) * (this includes Supreme Courts and/or High Courts)	22

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

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

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

The Commercial court adjudicates in first instance over economic offences; conducts the procedure of compulsory settlement, bankruptcy and winding-up; conducts the procedure of entering in the registry of the court the companies and other entities for which it has been provided for by the law; determines and conducts execution and security when the writ of execution has been adopted by the commercial court or the arbitration committee, i.e. when the veracious writ originates from the entity referred to in paragraph 1 item 1 of this Article; determines and conducts execution and security on vessels and aircrafts, regardless of the capacity of parties; decides in extra-judicial proceedings that concern vessels and aircrafts; decides about recognition and execution of foreign court decisions rendered by commercial courts, as well as foreign arbitration decisions, and performs other tasks laid down by the law.

47) Is there a change in the structure in the courts foreseen (for example a reduction of the number of courts (geographic locations) or a change in the powers of courts)?

Yes

No

If yes, please specify:

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

48) Number of first instance courts competent for a case concerning (if no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation):

	Number
a debt collection for small claims	17
a dismissal	15
a robbery	17

Please specify what is meant by small claims in your country (answer only if the definition has been changed since the previous evaluation cycle):

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

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

Please indicate the sources for answering the questions 45 and 48:

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

3. 1. 2. Judges, courts staff

49) Number of professional judges sitting in courts (please give the information in full time equivalent and for permanent posts; if there is no data please indicate this with NA)

Please provide comments to explain the answer under question 49:

Number

.

246

Comment :

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

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

Montenegro.

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

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

	Number
gross figure	
if possible, in full time equivalent	

51) Please provide comments to explain the answer under question 50:

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

52) Is there in the legal system non-professional judges (including lay judges and excluding jurees) who are not remunerated but who can possibly receive a simple defrayal of costs? (Please indicate NA if no figures are available).

Please provide comments to explain the answer under question 52:

	Yes	Number
Do you have non-professional judges?	yes	148

Comment :

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

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

53) Does your judicial system include trial by jury with the participation of citizens?

Yes

No

If yes, for which type of case(s)?

54) If possible, indicate the number of citizens who were involved in such juries for the year of reference?

NAP

55) Number of non-judge staff who are working in courts (in full time equivalent and for permanent posts). Please indicate NA if no figures are available.

Please provide comments to explain the answer under question 55:

Number

.

854

Comment :

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

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

56) If possible, could you distribute this staff according to the 4 following categories. If no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation).

- non-judge staff (Rechtspfleger or similar bodies), with judicial or quasi-judicial tasks having autonomous competence and whose decisions could be subject to appeal		NAP
- non-judge staff whose task is to assist the judges (case file preparation, assistance during the hearing, keeping the minutes of the meetings, helping to prepare the decisions) such as registrars	<input checked="" type="checkbox"/> Yes	102
- staff in charge of different administrative tasks as well as of the management of the courts (human resources management, material and equipment management, including computer systems, financial and budgetary management, training management)	<input checked="" type="checkbox"/> Yes	15
- technical staff	<input checked="" type="checkbox"/> Yes	534

Comment :

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

57) If there are Rechtspfleger (or similar bodies) in your judicial system, please describe briefly their status and functions:

NAP

3. 1. 3. Prosecutors

58) Number of public prosecutors (in full time equivalent and for permanent posts). If there is no data available please indicate it (NA).

Number	<input type="checkbox"/> .	86
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Comment :

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

59) Do any other persons have similar duties as public prosecutors?

- Yes
- No

If yes, please specify:

60) Number of staff (non prosecutors) attached to the public prosecution service (in full time equivalent and for permanent posts). If there is no data available please indicate it (NA).

Please provide comments to explain the answer under question 60:

Number 118

Comment :

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

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

3. 1. 4. Court budget and new technologies

61) Who is entrusted with the individual court budget?

	Preparation of the budget	Arbitration and allocation	Day to day management of the budget	Evaluation and control of the use of the budget
Management Board	No	No	No	No
Court President	No	No	Yes	No
Court administrative director	No	No	No	No
Head of the court clerk office	No	No	No	No
Other	Yes	Yes	No	Yes

62) You can indicate below:

- any useful comments for interpreting the data mentioned above
- if available an organisation scheme with a description of the competencies of the different authorities responsible for the budget process in the court

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

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

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

63) For direct assistance to the judge/court clerk, what are the computer facilities used within the courts?

--	--	--	--	--

Word processing	Yes	No	No	No
Electronic data base of jurisprudence	No	No	Yes	No
Electronic files	No	No	Yes	No
E-mail	Yes	No	No	No
Internet connection	Yes	No	No	No

64) For administration and management, what are the computer facilities used within the courts?

	100% of courts	+50% of courts	-50% of courts	-10% of courts
Case registration system	Yes	No	No	No
Court management information system	No	Yes	No	No
Financial information system	No	No	No	Yes

65) For the communication between the court and the parties, what are the computer facilities used within the courts?

	100% of courts	+50% of courts	-50% of courts	-10% of courts
Electronic web forms	No	No	No	No
Special Website	No	No	Yes	No
Other electronic communication facilities	No	No	Yes	No

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

- Yes
 No

If yes, please specify the name and the address of this institution:

The Secretariat of The Judicial Council
www.sudskisavjet.gov.me

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your judicial system and the main reforms that has been implemented over the last two years

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

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

Q.65 – Web forms for communication with parties do not exist. E-mail addresses of the courts are available for communication with parties. A number of courts have their web pages, and

there are LCD displays in three courts in Podgorica on which the schedule of trials for the court concerned is displayed and which serve to inform the parties.

3. 2. Monitoring and evaluation

3. 2. 1. Monitoring and evaluation

67) Are the courts required to prepare an annual activity report?

- Yes
 No

68) Do you have a regular monitoring system of court activities concerning the

- number of incoming cases?
 number of decisions?
 number of postponed cases?
 length of proceedings (timeframes)?
 other?

Please specify:

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

69) Do you have a regular system to evaluate the performance of each court?

- Yes
 No

Please specify:

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

70) Concerning court activities, have you defined performance indicators (if no, go to question 72)?

- Yes
 No

71) Please select the 4 main performance and quality indicators that is used for a proper functioning of courts:

- incoming cases
 length of proceedings (timeframes)
 closed cases
 pending cases and backlogs

- productivity of judges and court staff
- percentage of cases that are treated by a single sitting judge
- enforcement of penal decisions
- satisfaction of employees of the courts
- satisfaction of clients (regarding the services delivered by the courts)
- judicial quality and organisational quality of the courts
- costs of the judicial procedures
- other:

Please specify:

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

72) Are there performance targets defined for individual judges (if no go to question 74) ?

- Yes
- No

73) Please specify who is responsible for setting the targets:

- executive power (for example the ministry of Justice)?
- legislative power
- judicial power (for example a High Judicial Council or a Higher Court)
- other

If other, please specify:

74) Are there performance targets defined at the level of the courts (if no go to question 77)?

- Yes
- No

75) Please specify who is responsible for setting the targets:

- executive power (for example the ministry of Justice)?
- legislative power
- judicial power (for example a High Judicial Council or a Higher Court)
- other

If other, please specify:

76) Please specify the main targets applied

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

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

77) Which authority is responsible for the evaluation of the performances of the courts:

- High Council of judiciary
- Ministry of justice
- inspection authority
- Supreme Court
- external audit body
- other

If other, Please specify:

78) Are there quality standards (organisational quality and/or judicial quality policy) formulated for the courts (existence of a quality system for the judiciary)?

- Yes
- No

If yes, please specify:

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

79) Do you have specialised court staff which is entrusted with quality policy and/or quality systems for the judiciary?

- Yes
- No

80) Is there a system which measures the backlogs and which detects the cases not processed within a reasonable timeframe for:

- civil cases?
- criminal cases?
- administrative cases?

81) Do you have a way of analysing waiting time during court procedures?

- Yes
 No

If yes, please specify:

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

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

82) Is there a system to evaluate the functioning of courts on the basis of an evaluation plan (timetable for visits) agreed a priori?

- Yes
 No

Please specify (including an indication of the frequency of the evaluation):

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

83) Is there a system for monitoring and evaluating the functioning of the prosecution services?

- Yes
 No

If yes, please specify:

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

You can indicate below:

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

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

There is the Centre for Education of Agents of the Administration of Justice Function at the

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

The Judicial Council controls the work of courts and judges.

4. Fair trial

4. 1. Principles

4. 1. 1. General principles

84) What is the percentage of judgements in first instance criminal cases in which the suspect is not attending in person or not represented by a legal professional (i.e. lawyer) during a court session (in absentia judgements)? If no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation).

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

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

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

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

85) Is there a procedure to effectively challenge a judge if a party considers that the judge is not impartial?

- Yes
 No

If possible, number of successful challenges (in a year):

224

86) Please give the following data concerning the number of cases regarding Article 6 of the European Convention of Human Rights (on duration and non-execution), for the year of reference. If there is no data available, please indicate it (NA).

	Cases declared inadmissible by the Court	Friendly settlements	Judgements establishing a violation	Judgements establishing a non violation
Civil proceedings - Article 6§1 (duration)				
Civil proceedings - Article 6§1 (non-execution)				
Criminal proceedings - Article 6§1 (duration)				

4. 2. Timeframes of proceedings

4. 2. 1. General information

87) Are there specific procedures for urgent matters as regards:

- civil cases?
- criminal cases?
- administrative cases?

Please specify:

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

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

88) Are there simplified procedures for:

- civil cases (small claims)?
- criminal cases (petty offences)?
- administrative cases?

Please specify (for example if you have introduced a new law on simplified procedures):

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

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

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

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

- Yes
- No

If yes, please specify:

4. 2. 2. Penal, civil and administrative law cases

90) Total number of cases in the first instance courts (litigious and non-litigious): please complete the table. If the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

	Pending cases on 1 Jan. '08	Incoming cases	Resolved cases	Pending cases on 31 Dec. '08
Total of civil, commercial and administrative law cases (litigious and non litigious)*	34883	76298	77371	33951
1 Civil (and commercial) litigious cases*	13345	14680	16273	11752
2 Civil (and commercial) non-litigious cases*	4730	11883	12503	4110
3 Enforcement cases	15182	23805	22555	16432
4 Land registry cases**	NA	NA	141	NA
5 Business register cases**	107	23842	23912	37
6 Administrative law cases	1519	2088	1987	1620
7 Other				
Total criminal cases (8+9)	28566	26025	33521	21070
8 Criminal cases (severe criminal offences)	8348	8501	10752	6097
9 Misdemeanour and / or minor offences cases	20218	17524	22769	14973

91) Comments (including an indication of the cases that are included in the total figures of civil, commercial and administrative law case and types of criminal law cases - definition of misdemeanour cases, minor offences and severe criminal cases):

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

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

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

Data on "cadastral cases" are provided only in part – the number of cases of this type concluded during 2008 is stated. This is due to the fact that such cases are registered as per the indicted

body, and the indicted body here is a second-instance body – the Ministry of Finance, and therefore it is not possible to determine from the register the number of received cases and the number of cases being processed, that refer to "cadastral cases". In these cases the first-instance administration body is the Real-Estate Administration. The number of completed cases has been determined in accordance with the records of completed cases, these records being maintained with the Administrative Court of Montenegro per fields due to the needs of the website.

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

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

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

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

92) Total number of cases in the second instance (appeal) courts (litigious and non-litigious): please complete the table. If the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations).

*** Please indicate (in the comments below) which types of cases are included in the total figures of civil, commercial and administrative law cases.**

**** if applicable**

Please check the consistency of data as mentioned under question 91.

Comments (including an indication of the cases that are included in the total figures of civil, commercial and administrative law case and types of criminal law cases and possibly the existence of appeal rates for some case categories):

Total of civil, commercial and administrative law cases (litigious and non-litigious)*	6284	6354	7384	5254
1 Civil (and commercial) litigious cases*				
2 Civil (and commercial) non-litigious cases*				
3 Enforcement cases				
4 Land registry cases**				
5 Business register cases**				
6 Administrative law cases				

7 Other				
Total criminal cases (8+9)	1497	4658	4402	1753
8 Criminal cases (Severe criminal offences)				
9 Misdemeanour and/or minor offences cases	0	2582	2582	0

Comment :

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

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

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

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

The Appellate Court of Montenegro

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

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

The High courts

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

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

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

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

The right to appeal against decisions of the Administrative Court of Montenegro is not provided for by the Law on Administrative Dispute, and therefore there are no administrative legal cases of appeal.

There are two extraordinary legal remedies allowed against decisions of the Administrative Court – a request for extraordinary reconsidering of a court decision and a request for repetition of proceedings.

The Supreme Court of Montenegro decides upon requests for extraordinary reconsidering of a court decision, while the Administrative Court of Montenegro decides upon requests for repetition of proceedings.

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

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

93) Total number of cases in the highest instance courts (litigious and non-litigious): please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

*** Please indicate (in the comments below) which types of cases are included in the total figures of civil, commercial and administrative law cases.**

**** if applicable**

Please check the consistency of data as mentioned under question 88.

Comments (including an indication of the cases that are included in the total figures of civil, commercial and administrative law case and on possible limitations to the appeal to the highest instance court):

	Pending cases on 1 Jan. '08	Incoming cases	Resolved cases	Pending cases on 31 Dec. '08
Total of civil, commercial and administrative law cases* (litigious and non-litigious)	77	855	930	2
1 Civil (and commercial) litigious cases*	26	645	669	2
2 Civil (and commercial) non-litigious cases*	26	64	90	0
3 Enforcement cases				
4 Land registry cases**				
5 Business register cases**				
6 Administrative law cases	25	146	171	0
7 Other				
Total criminal cases (8+9)	0	925	925	0
8 Criminal cases (severe criminal offences)				
9 Misdemeanour cases (minor offences)				

Comment :

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

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

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

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

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

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

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

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

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

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

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

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

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

94) Number of litigious divorce cases, employment dismissal cases, robbery cases and intentional homicide cases received and treated by first instance courts: please complete the table. If the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

	Pending cases on 1 Jan. '08	Incoming cases	Resolved cases	Pending cases on 31 Jan. '08
Litigious divorce cases*	530	1212	1260	482
Employment dismissal cases*	135	275	222	188
Robbery cases	51	51	49	53
Intentional homicide	43	22	30	35

95) Average length of proceeding (from the date of lodging of court proceedings) in days, number of pending cases more than 3 years and percentage of cases subject to appeal: please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 92:

	% of decisions subject to appeal	% pending cases more than 3 years	1st instance (average length)	2d instance (average length)	Total procedure (average total length)
Litigious divorce cases*	2,67%	3,12%	103,86 days	120,46 days	224,32 days
Employment dismissal cases*	51%	4,09%	306,06 days	316,13 days	622,19 days
Robbery cases	27,35&88,46%	0,70% &27,13%	131,46&708,5	123,20&311,5	254,66&1020
Intentional homicide	90%	18,75%	999,04 days	269,6 days	1268,64 days

Comment :

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

1. % of decisions subject to appeal:27,35% in the Basic courts and 88,46% in the High courts
2. % of pending cases more than 3 years:0,70% in the Basic courts and 27,13% in the High courts
3. 1st instance (average length):131,46 days in the Basic courts and 708,5 days in the High courts
4. 2nd instance (average length):123,20 days in the Basic courts and 311,5 days in the High courts
5. total procedure (average total length): 254,66 ays in the Basic courts and 1020 days in the High courts

96) Where appropriate, please specify the specific procedure as regards (litigious and non-litigious) divorce:

97) How is the length of proceedings calculated for the four case categories? Please give a description of the calculation method.

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

98) Please describe the role and powers of the prosecutor in the criminal procedure (multiple options are possible):

- to conduct or supervise police investigation
- to conduct investigation
- when necessary, to demand investigation measures from the judge
- to charge
- to present the case in the court
- to propose a sentence to the judge
- to appeal
- to supervise enforcement procedure
- to end the case by dropping it without the need for a judicial decision
- to end the case by imposing or negotiating a penalty without a judicial decision
- other significant powers

Please specify:

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

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

99) Does the prosecutor also have a role in civil and/or administrative cases?

- Yes
- No

Please specify:

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

100) Functions of the public prosecutor in relation to criminal cases – please complete this table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 100 and indicate in particular if the data given include traffic offences:

	Received by the public prosecutor	Discontinued by the public prosecutor because the offender could not be identified	Discontinued by the public prosecutor due to the lack of an established offence or a specific legal situation	Discontinued by the public prosecutor for reason of opportunity	Concluded by a penalty, imposed or negotiated by the public prosecutor	Charged by the public prosecutor before the courts
Total number of 1st instance criminal cases	10859	1550	1260	25	72	7795

Comment :

Informations enclose traffic offences.

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your system concerning timeframes of proceedings and the main reforms that have been implemented over the last two years

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

Please indicate the sources for answering the questions 90 to 95 and 100:

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

5. Career of judges and prosecutors

5. 1. Appointment and training

5. 1. 1. Recruitment, nomination and promotion

101) How are judges recruited?

- Through a competitive exam (for instance after a law degree)?
- A specific recruitment procedure for legal professionals with long working experience in the legal field (for example lawyers)?
- A combination of both
- Other

Other, please specify:

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

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

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

102) Are judges initially/at the beginning of their carrier recruited and nominated by:

- An authority composed of judges only?
- An authority composed of non-judges only?
- An authority composed of judges and non-judges?

103) Is the same authority competent for the promotion of judges?

Yes

No

If no, please specify which authority is competent for the promotion of judges:

104) Which procedures and criteria are used for promoting judges? Please specify.

The criteria for selection of judges are as follows:

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

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

105) How are prosecutors recruited?

- Through a competitive exam? (for example after a law degree)
- A specific recruitment procedure for legal professionals with long working experience in the legal field (for example lawyers)?
- A combination of both
- Other

Other, please specify:

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

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

106) Are prosecutors initially/at the beginning of their carrier recruited and nominated by:

- An authority composed of prosecutors only?
- An authority composed of non-prosecutors only?
- An authority composed of prosecutors and non-prosecutors?

107) Is the same authority formally responsible for the promotion of prosecutors?

Yes

No

If no, please specify which authority is competent for promoting prosecutors:

108) Which procedures and criteria are used for promoting prosecutors? Please specify:

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

* Professional knowledge, which includes:

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

* Work experience, which includes:

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

* Work results, which include:

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

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

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

* Professional development, which includes:

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

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

*Work results, which include:

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

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

* Good communication abilities and professionalism, which includes:

- relations with colleagues,
- team work ability,

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

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

109) Is the mandate given for an undetermined period for judges?

- Yes
 No

Are there exceptions? Please specify:

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

110) Is there a probation period for judges? If yes, how long is this period?

	Yes	Duration of the probation period (in years)
Probation period for judges		

111) Is the mandate given for an undetermined period for prosecutors?

- Yes
 No

Are there exceptions? Please specify:

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

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

112) Is there a probation period for prosecutors? If yes, how long is this period?

	Yes	Duration of the probation period (in years)
Probation period for prosecutors		

113) If the mandate for judges/prosecutors is not for an undetermined period, what is the length of the mandate? Is it renewable?

Please specify the length

- for judges? Yes
 for prosecutors? Yes

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
 the characteristics of the selection and nomination procedure of judges and prosecutors and the main reforms that have been implemented over the last two years

5. 1. 2. Training

114) Nature of the training of judges. Is it compulsory?

- Initial training
- General in-service training
- In-service training for specialised judicial functions (e.g. judge for economic or administrative issues)
- In-service training for management functions of the court (e.g. court president)
- In-service training for the use of computer facilities in the court)

115) Frequency of the training of judges

	Annual	Regular	Occasional
Initial training	No	Yes	No
General in-service training	No	Yes	No
In-service training for specialised judicial functions (e.g. judge for economic or administrative issues)	No	Yes	No
In-service training for management functions of the court (e.g. court president)	No	No	No
In-service training for the use of computer facilities in the court	No	Yes	No

116) Nature of the training of prosecutors. Is it compulsory?

- Initial training
- General in-service training
- Specialised in-service training (specialised public prosecutor)
- In-service training for management functions of the prosecution services (e.g. head prosecutor and/or managers)
- In-service training for the use of computer facilities in the public prosecution service)

117) Frequency of the training of prosecutors

	Annual	Regular	Occasional
Initial training	No	Yes	No
General in-service training	No	Yes	No
Specialised in-service training (specialised public prosecutor)	No	Yes	No
In-service training for management functions of the prosecution services (e.g. head prosecutor and/or managers)	No	No	No

In-service training for the use of computer facilities in the public prosecution service)	No	Yes	No
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You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- comments regarding the attention given in the curricula to the European Convention on Human Rights and the case law of the Court
- the characteristics of your training system for judges and prosecutors and the main reforms that has been implemented over the last two years

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

The Internet address of the Centre for Education of Agents of the Administration of Justice Function is www.coscg.org

The Internet address of The Human Resources Administration is www.uzk.co.me

5. 2. Practice of the profession

5. 2. 1. Salaries

118) Salaries of judges and prosecutors: please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 118:

	Gross annual salary (€)	Net annual salary (€)
First instance professional judge at the beginning of his/her career	19.755,72	13.164,72
Judge of the Supreme Court or the Highest Appellate Court	25.035,00	16.649,16
Public prosecutor at the beginning of his/her career	19.755,72	13.164,72
Public prosecutor of the Supreme Court or the Highest Appellate Instance	25.035,00	16.649,16

Comment :

119) Do judges and public prosecutors have additional benefits?

	Judges	Public prosecutors
Reduced taxation	No	No
Special pension	No	No
Housing	No	No
Other financial benefit	Yes	Yes

120) If other financial benefit, please specify:

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

Salary

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

Compensation of cost

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

Rights in connection with execution of the function concerned

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

121) Can judges combine their work with any of the following other functions ?

	Yes with remuneration	Yes without remuneration	No
Teaching	Yes	No	No
Research and publication	Yes	No	No
Arbitrator	No	No	No
Consultant	Yes	No	No
Cultural function	Yes	No	No
Other function	No	No	No

122) If other function, please specify:**123) Can prosecutors combine their work with any of the following other functions ?**

	Yes with remuneration	Yes without remuneration	No
Teaching	Yes	No	No
Research and publication	Yes	No	No
Arbitrator	No	No	No
Consultant	Yes	No	No
Cultural function	Yes	No	No
Other function	No	No	No

124) If other function, please specify:**125) Do judges receive bonus based on the fulfilment of quantitative objectives relating to the delivering of judgments?**

- Yes
 No

If yes, please specify:

Please indicate the source for answering the question 118

Ministry of Finance of Montenegro.

5. 2. 2. Disciplinary procedures

126) Which authority is authorized to initiate disciplinary proceedings against judges and/or prosecutors? Please specify:

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

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

127) Which authority has the disciplinary power on judges and prosecutors? Please specify:

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

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

128) Number of disciplinary proceedings initiated against judges and prosecutors: please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 128:

	Judges	Prosecutors
Total number (1+2+3+4)	6	0
1. Breach of professional ethics	-	
2. Professional inadequacy	6	
3. Criminal offence	-	

4. Other	-	
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Comment :

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

A judge is considered to perform judicial function unduly if:

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

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

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

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

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

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

There were no disciplinary proceedings against prosecutors.

129) Number of sanctions pronounced against judges and prosecutors: please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 129

	Judges	Prosecutors
Total number (total 1 to 9)	10	0
1. Reprimand	1	
2. Suspension	4	
3. Withdrawal of cases	1	
4. Fine		
5. Temporary	2	

reduction of salary		
6. Degradation of post		
7. Transfer to another geographical (court) location		
8. Dismissal	2	
9. Other		

Comment :

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

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

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

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

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your system concerning disciplinary procedures for judges and prosecutors and the main reforms that have been implemented over the last two years

6. Lawyers

6. 1. Statute of the profession

6. 1. 1. Profession

130) Total number of lawyers practising in your country. If there is no data available, please indicate it (NA).

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

131) Does this figure include legal advisors (solicitors or in-house counsellor) who cannot represent their clients in court? If no go to question 133.

- Yes
- No
- Not applicable

132) Number of legal advisors. If there is no data available, please indicate it (NA)

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

133) Do lawyers have a monopoly of representation in (multiple options are possible):

- Civil cases*?
- Criminal cases - Defendant*?
- Criminal cases - Victim*?
- Administrative cases*?

* If appropriate, please specify if it concerns first instance and appeal. And in case there is no monopoly, please specify the organisations or persons which may represent a client before a court (for example a NGO, family member, trade union, etc) and for which types of cases:

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

134) Is the lawyer profession organised through?

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

Please specify:

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

Please indicate the source for answering the questions 130 and 132:

Bar Association of Montenegro

6. 1. 2. Training

135) Is there a specific initial training and/or examination to enter the profession of lawyer?

- Yes
 No

136) Is there a mandatory general system for lawyers requiring continuing professional training?

- Yes
 No

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

- Yes
 No

If yes, please specify:

6. 1. 3. Fees

138) Can users establish easily what the lawyers' fees will be?

- Yes
 No

Please provide comments to explain the answer under question 138
the Lawyers tariff is posted on web page of The Bar Association of Montenegro.

139) Are lawyers fees

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

Please provide comments to explain the answer under question 139:
Lawyers tariff is defined by The Bar Association of Montenegro.

6. 2. Evaluation

6. 2. 1. Complaints and sanctions

140) Have quality standards been formulated for lawyers?

Yes

No

141) If yes, who is responsible for formulating these quality standards:

the bar association?

the legislature?

other?

Please specify (including a description of the quality criteria used):

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

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

142) Is it possible to complain about

the performance of lawyers?

the amount of fees?

Please specify:

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

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

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

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

143) Which authority is responsible for disciplinary procedures

the judge?

the Ministry of justice?

a professional authority or other?

Please specify:

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

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

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

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

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

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

144) Disciplinary proceedings initiated against lawyers: please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 141:

	Breach of professional ethics	Professional inadequacy	Criminal offence	Other
Annual number	18	0	0	0

Comment :

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

145) Sanctions pronounced against lawyers : please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 145:

	Reprimand	Suspension	Removal	Fine	Other
Annual number					

Comment :

There were no sanctions pronounced to the attorneys in 2008.

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter**
- the characteristics of your system concerning the organisation of the Bar and the main reforms that have been implemented over the last two years**

7. Alternative Dispute Resolution

7. 1. Mediation and other forms of ADR

7. 1. 1. Mediation

146) Does the legal system provide for mediation procedures? If no go to question 151

- Yes
 No

147) If applicable, please specify, by type of cases, the organisation of mediation

	Possibility for private mediation proposed by the judge or court annexed mediation	Private mediator	Public authority (other than the court)	Judge	Prosecutor
Civil and commercial cases	Yes	Yes	No	No	No
Family law cases (ex. Divorce)	Yes	Yes	No	No	No
Administrative cases	No	No	No	No	No
Employment dismissals	No	No	No	No	No
Criminal cases	Yes	Yes	No	No	No

148) Is there a possibility to receive legal aid for mediation procedures?

- Yes
 No

If yes, please specify:

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

149) Number of accredited mediators. If there is no data available, please indicate it (NA)

73

150) Please Indicate the total number of judicial mediation procedures per case category. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

civil cases?	<input checked="" type="checkbox"/> Yes	13
family cases?	<input checked="" type="checkbox"/> Yes	356
administrative cases?	<input type="checkbox"/> Yes	
employment dismissals?	<input type="checkbox"/> Yes	
criminal cases?	<input checked="" type="checkbox"/> Yes	64

Please indicate the source for answering the question 150:

Centre for Mediation of Montenegro.

7. 1. 2. Other forms of alternative dispute resolution**151) Can you give information concerning other forms of alternative dispute resolution (e.g. arbitration, conciliation)? Please specify:**

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

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

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

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

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter**
- the characteristics of your system concerning ADR and the main reforms that have been implemented over the last two years**

Clarification for data in Q.150.-

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

8. Enforcement of court decisions

8. 1. Execution of decisions in civil matters

8. 1. 1. Functioning

152) Do you have in your system enforcement agents (judicial officers)? If no go to question 154

- Yes
 No

153) Number of enforcement agents. If there is no data available, please indicate it (NA).

51

154) Are enforcement agents (multiple options are possible):

- judges?
 bailiff practising as private profession ruled by public authorities?
 bailiff working in a public institution?
 other enforcement agents?

Please specify their status and powers:

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

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

- Yes
 No
 Not applicable

156) Is the profession of enforcement agent organised by?

- a national body?
 a regional body?
 a local body?
 not applicable

157) Can users establish easily what the fees of the enforcement agents will be?

- Yes
 No
 Not applicable

158) Are enforcement fees:

- regulated by law?
 freely negotiated?
 not applicable

Please indicate the source for answering the question 153:

The Supreme court of Montenegro.

8. 1. 2. Supervision**159) Is there a body entrusted with the supervision and the control of the enforcement agents?**

- Yes
 No
 Not applicable

160) Which authority is responsible for the supervision and the control of enforcement agents:

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

Please specify:

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

161) Have quality standards been formulated for enforcement agents?

- Yes
 No
 Not applicable

If yes, who is responsible for formulating these quality standards and what are the quality criteria used?

162) Is there a specific mechanism for executing court decisions rendered against public authorities, including the follow up to this execution?

- Yes
 No

if yes, please specify

163) Is there a system for monitoring the execution?

- Yes
 No

If yes, please specify

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

8. 1. 3. Complaints and sanctions

164) What are the main complaints of users concerning the enforcement procedure? Please indicate a maximum of 3.

- no execution at all?
 non execution of court decisions against public authorities?
 lack of information?
 excessive length?
 unlawful practices?
 insufficient supervision?
 excessive cost?
 other?

Please specify:

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

165) Has your country prepared or has established concrete measures to change the situation concerning the enforcement of court decisions – in particular as regards decisions against public authorities?

- Yes
 No

If yes, please specify:

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

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

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

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

166) Is there a system measuring the timeframes of the enforcement of decisions :

- for civil cases?

for administrative cases?

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

- between 1 and 5 days
 between 6 and 10 days
 between 11 and 30 days
 more

If more, please specify

168) Number of disciplinary proceedings initiated against enforcement agents. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Total number of disciplinary proceedings	<input checked="" type="checkbox"/> number:	2
for breach of professional ethics	<input type="checkbox"/> number:	
for professional inadequacy	<input checked="" type="checkbox"/> yes, number:	2
for criminal offence	<input type="checkbox"/> number:	
Other	<input type="checkbox"/> number:	

169) Number of sanctions pronounced against enforcement agents. If the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Total number of sanctions	<input checked="" type="checkbox"/> number:	2
Reprimand	<input type="checkbox"/> number:	
Suspension	<input type="checkbox"/> number:	
Dismissal	<input type="checkbox"/> number:	
Fine	<input checked="" type="checkbox"/> number:	2
Other	<input type="checkbox"/> number:	

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
 the characteristics of your enforcement system of decisions in civil matters and the main reforms that has been implemented over the last two years

Please indicate the source for answering the questions 167, 168 and 169:

The Supreme court of Montenegro.

8. 2. Execution of decisions in criminal matters

8. 2. 1. Functioning

170) Is there a judge who is in charge of the enforcement of judgments? Yes No

If yes, please specify his/her functions and activities (e.g. Initiative or control functions). If no, please specify which authority is entrusted with the enforcement of judgements (e.g. prosecutor):

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

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

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

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

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

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

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

171) As regards fines decided by a criminal court, are there studies to evaluate the effective recovery rate? Yes No

If yes, please specify:

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

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

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter**
- the characteristics of your enforcement system of decisions in criminal matters and the main reforms that have been implemented over the last two years**

9. Notaries

9. 1. Statute

9. 1. 1. Functioning

172) Do you have notaries in your country? If no go to question 177

- Yes
 No

173) Is the status of notaries (if the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations):

- | | |
|---|---------------------------------|
| a private one (without control from public authorities)? | <input type="checkbox"/> number |
| a status of private worker ruled by the public authorities? | <input type="checkbox"/> number |
| a public one? | <input type="checkbox"/> number |
| other? | <input type="checkbox"/> number |

Comment :

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

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

174) Do notaries have duties:

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

Please specify:

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

Please indicate the source for answering the question 173

Law on Notaries.

9. 1. 2. Supervision

175) Is there an authority entrusted with the supervision and the control of the notaries?

- Yes
 No

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

- a professional body?
 the judge?
 the Ministry of justice?
 the prosecutor?
 other?
 not applicable

Please specify:

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

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

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
 the characteristics of your system of notaries and the main reforms that have been implemented over the last two years

10. Court interpreters

10. 1. function

10. 1. 1. Statute

177) Is the title of court interpreter protected?

- Yes
 No

178) Is the function of court interpreter regulated?

- Yes
 No

179) Number of certified court interpreters. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations

264

180) Are there binding provisions regarding the quality of court interpreting in judicial proceedings?

- Yes
 No

If yes, please specify:

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

181) Are the courts responsible for the selection of court interpreters?

- Yes
 No

Please provide comments to explain the answers to question 178 (in particular, if no, which authority selects court interpreters?) :

The court interpreters are appointed by The Ministry of Justice.

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

11. Functioning of justice

11. 1. Foreseen reforms

11. 1. 1. Reforms

182) Can you provide information on the current debate in your country regarding the functioning of justice? Are there foreseen reforms? For example changes in legislation, changes in the structure of the judiciary, innovation programmes, etc. Please specify:

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

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

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

Activities were taken to encourage alternative methods for settlement of disputes and the Centre for Mediation was established.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE MOST IMPORTANT ACTIVITIES REALISED SINCE THE LAST PREVIOUS EVALUATION

STRENGTHENING OF THE NORMATIVE FRAMEWORK

- The Law on Constitutional Court passed;
- The Law on Judicial Council passed;
- The Law on Amendments to the Law on Public prosecutor passed;
- The Law on Amendments to the Law on Courts passed;
- The Code of Criminal Proceedings passed;
- The Law on Protection of the Right to Trial in Reasonable Time passed;
- The Obligations Act passed;
- The Law on Amendments to the Law on notaries passed;
- The Law on Cooperation with the International Criminal Court passed;
- The Law on State Property passed;
- The draft Law on Amendments to the Law on Criminal Code adopted
- The draft Law on Protection from Domestic Violence prepared;
- Rulebooks on organisation and job classification in courts adopted;
- The Rules of Procedure of the Judicial Council adopted;
- The Rulebook on internal organisation and job classification of the Secretariat of the Judicial Council adopted;
- The Prosecutorial Council adopted the Rules of Procedure of Work which lays down the method of work, decision making and other issues of significance for work of the Prosecutorial Council;
- The Rulebook on the Manner of Taking Notarial Exam is adopted and will be followed by appointment of the first generation of notaries in Montenegro

- The Convention on Fight Against Human Trafficking ratified;
- The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crimes and on Financing of Terrorism ratified;
- Convention on Prevention of Terrorism ratified;
- The Council of Europe's Convention on Suppression of Terrorism ratified;
- The Convention on Cyber Crime with the additional protocol ratified;
- The Council of Europe's Convention on Actions against Human Trafficking ratified; - The Council of Europe's Convention on International Validity of Criminal Verdicts ratified;
- The European Convention on the Compensation of Victims of Violent Crimes ratified;
- The Additional Protocol to the criminal legal Convention on Corruption ratified;
- The Second Additional Protocol to the European Convention on International Legal Aid in Criminal Matters ratified;

- Analysis of the network of courts is underway;
- The Strategy for Reform of the Misdemeanour System in Montenegro and the Analysis of Work of Bodies Competent for Conducting of Misdemeanour Proceedings adopted;
- The Code of Judicial Ethics adopted;
- The Ethical Code of Work of Mediators adopted

STRENGTHENING OF THE INSTITUTIONAL FRAMEWORK

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

The Strategy for Reform of Judiciary 2007-2012 is posted on Country profile on CEPEJ web site and the web site of Ministry of Justice of Montenegro is www.pravda.gov.me .