



EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE  
(CEPEJ)

SCHEME FOR EVALUATING JUDICIAL SYSTEMS 2013

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 (if possible on 1 January 2013)

620 029

#### 2) Total of annual public expenditure at state level and where appropriate, public expenditure at regional or federal entity level (in €) - (If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP).

	Amount
State or federal level	1 454 584 148
Regional / federal entity level (total for all regions / federal entities)	NAP

#### 3) Per capita GDP (in €)

5 063

#### 4) Average gross annual salary (in €)

8 652

#### 5) Exchange rate of national currency (non-Euro zone) to € on 1 January 2013

Currency in Montenegro is Euro.

#### A1. Please indicate the sources for questions 1 to 4 and give comments concerning the interpretation of the figures supplied if appropriate:

- 1) Population census from 2011 - Statistical Office of Montenegro
- 2) Law on Final Accounts of the State Budget for 2011
- 3) Data from 2012, Statistical Office of Montenegro, Report No. 247, September, 25th 2013;
- 4) Data from September 2013, Statistical Office of Montenegro, Report No. 270, October, 21st 2013.

#### 1. 1. 2. Budgetary data concerning judicial system

#### 6) Annual approved public budget allocated to the functioning of all courts, in € (if possible without the budget of the public prosecution services and without the budget of legal aid):

TOTAL annual approved budget allocated to the functioning of all courts (1 + 2 + 3 + 4 + 5 + 6 + 7)	<input type="checkbox"/> Yes	19 252 931
1. Annual public budget allocated to (gross) salaries	<input type="checkbox"/> Yes	14 469 947
2. Annual public budget allocated to computerisation (equipment, investments, maintenance)	<input type="checkbox"/> Yes	180 000
3. Annual public budget allocated to justice expenses (expertise, interpretation, etc), without legal aid. NB: this does not concern the taxes and fees to be paid by the parties.	<input type="checkbox"/> Yes	2 615 000
4. Annual public budget allocated to court buildings (maintenance, operating costs)	<input type="checkbox"/> Yes	50 000
5. Annual public budget allocated to investments in new (court) buildings		NAP
6. Annual public budget allocated to training and education	<input checked="" type="checkbox"/> Yes	28 454
7. Other (please specify):		NAP

#### 7) If you cannot separate the budget of the public prosecution services and the budget of legal aid from

**the budget allocated to all courts, please indicate it clearly. If "other", please specify:**

[Mail from the NC sent on 19/05/2014: There is no specific budgetary unit for legal aid, and we cannot provide exact sum of money spent for this purpose, but we can confirm that those resources are part of the budget for courts. ]

**8) Are litigants in general 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 to the rule to pay court a tax or fee? Please provide comments on those exceptions:

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

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

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

In criminal procedure taxes are payed only by person filing private suit.

**8.1) Please briefly present the methodology of calculation of courts fees?**

In civil procedure, the court fee will be calculated on the basis of the value of disputed matter.

In enforcement proceedings, the court fee will be calculated on the basis of the value of executed matter.

In extra-judicial, criminal proceedings upon a private complaint, administrative proceedings, and in proceedings on insolvency of companies, court fee will be paid in accordance with established fee tariff.

Law on Court Fees prescribes fee tariff for submissions, decisions and settlement in civil and enforcement proceedings, fees for extra judicial proceedings, fees in insolvency proceedings of companies, fees for submissions and decisions in criminal proceedings conducted by private action and fees in administrative dispute.

**8.2) Please indicate, if possible, the amount of court fees to commence an action for 3000€ debt recovery?**

70 €

**9) Annual income of court taxes or fees received by the State (in €)**

3 918 273

**12) Annual approved public budget allocated to legal aid, in €. - If one or several data are not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP. (Question modified)**

**If your system enables to be granted legal aid for cases which are non litigious or not brought to court, please specify:**

	Amount (in €)
Total annual approved public budget allocated to legal aid (12.1 + 12.2)	NA
12.1 Annual public budget allocated to legal aid for cases brought to court	NA
12.1.1 in criminal law cases	NA
12.1.2 in other than criminal law cases	NA
12.2 Annual public budget allocated to legal aid for non litigious cases or cases not brought to court (legal consultation, ADR, etc)	NA

Comment :

In the Budget for 2012 in budgetary unit "Judiciary", funds for legal aid had been granted, but not specifically expressed. Total legal aid expenses during fiscal 2012 amounted to 19881 €.

**13) Total annual approved public budget allocated to the public prosecution services (in €). Please indicate in the "comment" box below any useful information to explain the figures provided .**

Amount 5 543 766

Comment :

After the revision of the Budget for 2012, funds allocated to the State Prosecutor's Office in 2012 amounted to 5543766 €.

**14) Authorities formally responsible for the budgets allocated to the courts (multiple options possible) :**

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

**14.1) If any other Ministry and/or inspection body and/or other, please specify (considering question 14):**

State Audit Institution

**A.2 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

Funding for courts are provided in a separate budgetary unit of the Budget of Montenegro.

The Judicial Council proposes the annual budget for the courts to the Government.

President of the Judicial Council is entitled to participate in the session of the Assembly when discussing the proposal for budget of the courts.

Mail from the NC sent on 07/05/2014:

There are no particular reasons of the decrease of the annual public budget allocated to "computerisation" and the annual public budget allocated to "court buildings" compared to data provided for 2010. In the budgetary request for 2012 the Judicial Council planned those funds, but the Ministry of Finance approved amount submitted in the Evaluation Scheme.

**Please indicate the sources for answering questions 6, 9, 12 and 13.**

Q 6, 9, 12 - Secretariat of the Judicial Council Q 13 - Supreme State Prosecutor's Office

[1. 1. 3. Budgetary data concerning the whole justice system](#)

**15) The following data would be useful for information**

**15.1) (Former question 10) Annual approved public budget allocated to the whole justice system, in € (this global budget does not include only the court system as defined under question 6, but also the prison system, the judicial protection of juveniles, the operation of the Ministry of Justice, etc.)**

 NA

35944997

**15.2) (Former question 11) Please indicate the budgetary elements that are included in the whole justice system. If "other", please specify in the "comment" box below.**

Court (see question 6)	Yes
Legal aid (see question 12)	Yes
Public prosecution services (see question 13)	Yes
Prison system	Yes
Probation services	NAP
Council of the judiciary	Yes
Constitutional court	Yes
Judicial management body	NAP
State advocacy	NAP
Enforcement services	Yes
Notariat	No
Forensic services	No
Judicial protection of juveniles	Yes
Functioning of the Ministry of Justice	Yes
Refugees and asylum seekers services	No
Other	Yes

Comment :

Other - Misdemeanour authorities

## 2. Access to justice

### 2. 1. Legal aid

#### 2. 1. 1. Principles

#### 16) Does legal aid apply to:

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

#### 17) Does legal aid include the coverage of or the exemption from court fees?

- Yes  
 No

If yes, please specify:

Legal aid implies the provision of resources for full or partial coverage of costs for legal counselling, preparation of pleadings, representation in proceedings before the court, the State Prosecution and the Constitutional Court of Montenegro and any procedure for out-of-court dispute settlement, as well as exemption from payment of the costs of court proceedings.

#### 18) Can legal aid be granted for the fees that are related to the enforcement of judicial decisions (e.g. fees of an enforcement agent)?

- Yes  
 No

If yes, please specify:

#### 19) Can legal aid be granted for other costs (different from questions 16 to 18, e.g. fees of technical advisors or experts, costs of other legal professionals (notaries), travel costs etc ? If yes, please specify it in the "comment" box below).

Criminal cases	Other than criminal cases
No	No

Comment :

#### 20) Number of cases referred to the court for which legal aid has been granted. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

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Please specify in the "comment" box below, when appropriate.

[This question concerns only the annual number of cases for which legal aid has been granted to those referring a case to a court. It does not concern legal advice provided for cases that are not brought before the court.]

	Number
Total	241
in criminal cases	NA
other than criminal cases	NA

Comment :

In 2012, 427 applications for granting legal aid had been submitted. Legal aid had been granted for 304 applications, for 70 application legal aid had been refused, 31 application had been rejected, in 24 cases, proceedings for granting legal aid had been suspended. At the end of the 2012, decisions on 2 applications were pending.

Mail from the NC sent on 29/04/2014:

Figure 304 represents overall number of cases granted with legal aid (cases referred to court + cases not brought to court).  
Out of this figure, 63 cases were not referred to court.

**20.1) Number of cases not brought to court (see 12.2 above) for which legal aid has been granted. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

Number of cases
63

Comment :

Following forms of legal aid were provided:

- 1) Legal counselling - 11;
- 2) Preparation of pleadings - 50;
- 3) Legal advice and representation in a procedure before the State Prosecution - 2;
- 4) Legal advice and representation in proceedings before first and second instance courts - 263.

**21) In criminal cases, can individuals who do not have sufficient financial means be assisted by a free of charge (or financed by a public budget) lawyer?**

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**Please specify in the "comment" box below.**

Accused individuals	Yes
Victims	Yes

Comment :

The Criminal Procedure Code ("Official Gazette" of Montenegro, no. 57/09 and 49/10) prescribes that when conditions for mandatory defense are not met, but it is required so by the interests of fairness, at the request of the accused persons, they may be appointed a defense attorney if they are not able to bear the costs of defense under their financial situation.

The decision on the request shall be rendered by the competent State Prosecutor in the preliminary investigation and in the investigation and after the indictment is brought, the President of the Court in accordance with the order on the list of the Bar Chamber.

When the procedure is conducted under the charges of the subsidiary prosecutor for a criminal offence punishable under law by imprisonment for a term exceeding five years, the court

may upon the request of the subsidiary prosecutor appoint a proxy to him/her if that is to the benefit of the procedure and if the subsidiary prosecutor is financially unable to meet the expenses of legal representation. The Chair of the Panel shall decide on this request, and the President of the Court shall appoint a proxy among the members of the Bar.

In cases when the criminal procedure is conducted for a criminal offence punishable by an imprisonment sentence exceeding three years and the injured party can not bear representation expenses according to his/her financial standing, s/he may be appointed a proxy at his/her request if the

representation of the injured party by the proxy is in the interest of fairness.



**22) If yes, are individuals free to choose their lawyer within the framework of the legal aid system**

- Yes  
 No

**23) Does your country have an income and assets evaluation for granting legal aid to the applicant ? If you have such a system but no data available, please indicate NA. If you do not have such a system, please indicate NAP.**

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**Please provide in the "comment" box below any information to explain the figures provided.**

	amount of annual income (if possible for one person) in €	amount of assets in €
for criminal cases	1760 + X * 876	NA
for other than criminal cases?	1760 + X * 876	NA

Comment :

In view of the exercise of the right to fair trial, an individual who is unable, given his/her financial situation, to exercise the right to judicial protection without damage to the minimum subsistence level for himself and his family shall be provided legal aid.

The financial situation of the applicant for granting legal aid shall be determined based on his income and property, and income and property of his family members.

General conditions for exercising the right to legal aid are:

- 1) a Montenegrin nationality;
- 2) a stateless person lawfully residing in Montenegro and a person seeking asylum in Montenegro;
- 3) an alien with permanent residence or approved temporary residence and other person legally residing in Montenegro; and
- 4) other person in terms with ratified international treaties.

In addition to general conditions, person shall have the right to legal aid provided that he is:

- 1) a beneficiary of family cash benefits or other social security right pursuant to the law governing social and child protection,
- 2) a child without parental care,
- 3) a person with special needs,
- 4) a victim of the crime of family or domestic violence and of human trafficking,
- 5) a person of unfavorable financial situation.

A person of unfavorable financial situation shall mean a person owning no property whose monthly income and overall monthly income of his family members does not exceed the amount of 30% of average income in Montenegro for one member and 15% of average income for each subsequent member.

Pursuant to paragraph 1 herein, family members shall mean spouses or common-law-marriage partners and their children, adopted children, and other relatives living in the same domestic unit that he is obliged to support.

**24) In other than criminal cases, is it possible to refuse legal aid for lack of merit of the case (for example for frivolous action or no chance of success)?**

- Yes  
 No

If yes, please explain the exact criteria for denying legal aid:

When deciding on an Application, the Competent Authority shall assess all circumstances and facts of the Application subject matter, and in particular whether the complaint or other claim in case for which the Application was filed is manifestly unfounded, or whether there are probable chances of successful action.

The case in relation to which an Application was filed is deemed as manifestly unfounded if:

- 1) the value of the claim is disproportionate to the actual state of affairs,
- 2) the Applicant is abusing the possibility of being granted legal aid for a legal matter for which the Applicant would not have otherwise sought legal services even if his financial situation would allow that, or
- 3) it is contrary to the case law in legal matters with similar factual state and legal grounds.

**25) In other than criminal cases, is the decision to grant or refuse legal aid taken by:**

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

**26) Is there a private system of legal expense insurance enabling individuals (this does not concern companies or other legal persons) to finance court proceedings?**

- Yes  
 No

If appropriate, please inform about the current development of such insurances in your country; is it a growing phenomenon?

**27) Can judicial decisions direct how legal costs, paid by the parties during the procedure, will be shared, in:**

criminal cases?	Yes
other than criminal cases?	Yes

**B.1 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

Mail from the NC sent on 29/04/2014:

Q. 22: There are two different situations according to the Criminal Code of Procedure of Montenegro: 1) Cases in which the defendant must have a defence attorney (a) If the accused person is a person with special needs due to which s/he is incapable to defend himself/herself, or if the procedure is conducted for a criminal offence punishable by the maximum term of imprisonment, the accused person shall have a defense attorney at his/her first hearing. (b) When the indictment is brought for a criminal offence punishable under law by the imprisonment of ten years, the accused person shall have a defense attorney when the indictment is served on him/her. (c) Accused persons against whom detention is ordered shall have a defense attorney while they are in detention. (d) The accused persons who are tried in absence shall have a defense attorney as soon as the court renders a decision on the trial in absence. In those cases, if the accused persons fail to retain a defense attorney, the competent State Prosecutor shall render a decision on the appointment of a public defender to represent them up to the presentation of indictment, the President of the Court after the presentation of indictment until the judgment becomes final and in case the longest imprisonment sentence was imposed, for the procedure of filing extraordinary judicial remedies as well. In cases when a public defender is appointed to the accused persons after the indictment has been brought, the accused persons shall be informed thereon at the time the indictment is served on them. In cases of mandatory defense, if accused persons are left without a defense attorney in the course of procedure and they do not retain another defense attorney, the President of the Court before which the procedure is being conducted shall appoint a public defender. In those cases, defense attorney from the list of the Bar Chamber of Montenegro shall be appointed to the accused persons according to their choice. If the accused persons do not use this right, the defense attorney shall be appointed by the order on the Bar Chamber's list. 2) Second situation is the one that question 22 refers to - Appointment of Defense Attorney Due to Adverse Financial Situation. When conditions for mandatory defense are not met, but it is required so by the interests of fairness, at the request of the accused persons, there may be appointed a defense attorney if they are not able to bear the costs of defense under their financial situation.

The decision on the request shall be rendered by the competent State Prosecutor in the preliminary investigation and in the investigation and after the indictment is brought, the President of the Court in accordance with the order on the list of the Bar Chamber.

[Q22 Mail from the NC sent on 13/05/2014:  
The Law on Free Legal Aid is in force from January 2012.]

**Please indicate the sources for answering questions 20 and 23:**

**2. 2. Users of the courts and victims**

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

**28) Are there official internet sites/portals (e.g. Ministry of Justice, etc.) for which the general public may have free of charge access to the following:**  
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**The websites mentioned could appear in particular on the internet website of the CEPEJ. Please specify in the "comment" box below what documents and information the addresses for "other documents" include:**

- |   |   |   |
|---|---|---|
| legal texts (e.g. codes, laws, regulations, etc.)? Internet address(es):              | <input checked="" type="checkbox"/> Yes | <a href="http://sudovi.me/">http://sudovi.me/;</a><br><a href="http://www.pravda.gov.me;">http://www.pravda.gov.me;</a><br><a href="http://www.tuzilastvocg.me;">http://www.tuzilastvocg.me;</a><br><a href="http://www.sluzbenilist.me">http://www.sluzbenilist.me</a> |
| case-law of the higher court/s? Internet address(es):                                 | <input checked="" type="checkbox"/> Yes | <a href="http://www.sluzbenilist.me">http://www.sluzbenilist.me</a><br><a href="http://sudovi.me">http://sudovi.me</a>  |
| other documents (e.g. downloadable forms, online registration)? Internet address(es): | <input checked="" type="checkbox"/> Yes | <a href="http://sudovi.me/">http://sudovi.me/</a><br><a href="http://www.sluzbenilist.me">http://www.sluzbenilist.me</a>  |

Comment :

Trial schedule, decisions of the ECHR in Strasbourg against Montenegro, selected judgments and Publications of the ECHR, the conclusions of the meetings of the President of the courts, memorandum and protocols, international cooperation, guidelines for access to information held by the court, the brochure on the work of professional services, informants exercising various rights , press releases, reports on the work of the courts, internal documents of the court (regulations, decisions, etc.)

**29) Is there an obligation to provide information to the parties concerning the foreseeable timeframes of proceedings?**

- Yes
- No
- Yes only in some specific situations

If yes only in some specific situations, please specify:

**30) Is there a public and free-of-charge specific information system to inform and to help victims of crime?**

- Yes
- No

If yes, please specify:

**31) Are there special favourable arrangements to be applied, during judicial proceedings, to the following categories of vulnerable persons. If "other vulnerable person" and/or "other special arrangements", please specify it in the "comment" box below.**

**[This question does not concern the police investigation phase of the procedure and does not concern compensation mechanisms for victims of criminal offences, which are addressed under questions 32 to 34.]**

Victims of sexual violence/rape	court hearings		
	No	Yes	No

Victims of terrorism	No	Yes	No
Children (witnesses or victims)	Yes	Yes	No
Victims of domestic violence	Yes	Yes	Yes
Ethnic minorities	No	Yes	No
Disabled persons	No	Yes	Yes
Juvenile offenders	No	Yes	No
Other (e.g. victims of human trafficking, forced marriage, sexual mutilation)	Yes	Yes	Yes

Comment :

[Synthesis of mail sent by the NC sent on 29/04/2014 and of initial comment]

The Criminal Procedure Code ("Official Gazette of MNE", No. 57/09 and 47/10) defines protection of "vulnerable" persons, namely: the possibility for members of the minority nations and ethnic communities to use in criminal proceedings other than the official Montenegrin language and their right to interpretation regardless of their statute – parties, witnesses, detainees ... – (articles 7, 8, 9); the establishment of categories of persons forbidden to take an oath (article 118); the definition of a special regime of protection of witnesses and injured parties from intimidation (article 120) as well as of special ways of participating and hearing protected witnesses and injured parties and protection of data (articles 121 and 122); the possibility to grant to the injured party a special protection while giving a statement (article 124);

The Act on Treatment of Juveniles in Criminal Proceedings ("Official Gazette" MNE no.64/2011) govern treatment of juveniles as criminal offenders and treatment of children and juveniles as parties to proceedings. Treatment is based on respect for human rights and fundamental freedoms, guided by the best interest of the minors whilst taking into account their maturity, developmental level, abilities and personal characteristics, as well as the seriousness of the crime committed, for the purpose of their rehabilitation and social reintegration.

Proceedings against juveniles and proceedings involving juvenile victims of crimes shall be urgency proceedings.

A juvenile public prosecutor, juvenile judge and judges of a juvenile panel shall be the persons with specialized knowledge of the rights of the child and rules for treatment of juvenile offenders and juveniles as parties to criminal proceedings.

A professional support service shall be set up with high courts and Supreme State Prosecution Office to provide the courts and public prosecution service with assistance in their proceedings against juvenile offenders.

A juvenile may not be tried in absentia.

In taking measures in the presence of a juvenile, in particular during their hearing, the parties to the proceeding must act with due care, bearing in mind the maturity, personal characteristics and need for protection of juvenile's privacy. A juvenile must have a defense counsel who may only be a lawyer. No one may be exempted from the duty to testify on the circumstances required to evaluate the juvenile's maturity, assess their character, or their living environment. When adjudicating a juvenile, the court shall always exclude the public. In criminal proceedings with a juvenile as a victim of the offence or with a juvenile heard in the capacity of a witness, as a rule, actions shall be taken by persons who have acquired specialized knowledge.

Hearing of a juvenile shall be performed, as a rule, by a public prosecutor and a judge of the same sex as the juvenile in a separate room equipped with technical devices for audiovisual recording. By exception, a juvenile may be heard again if there are justified reasons for doing so. Hearing shall be carried out in the presence of the juvenile's legal custodian and, as a rule, with the assistance of professional support staff, unless when it is contrary to the interests of proceedings or the juvenile.

A person with special needs, victim of the crime of family or domestic violence and of human trafficking shall have the right to legal aid.

In all the courts that are in charge for criminal cases support services had been established. Those services provide support to the victims/witnesses of criminal offences for trafficking in persons, trafficking in children for adoption and domestic violence.

The task of the service is to create conditions for a safe and secure testimony, to explain the functioning of the court, the criminal proceeding and to provide answers to all questions.

Regarding column "Other", it is important to point out that a law on Legal Aid has been adopted in 2011, enabling, among the others, a person with special needs, a victim of crime of family or domestic violence and of human trafficking, with the right to a legal aid.

Also, a law on Domestic Violence Protection has been adopted in 2010. It prescribes that the public administration agency in charge of police affairs ('Police'), misdemeanour body, public prosecution service, social work center or other social and child protection agency, health care institution, and other agency or institution acting as care provider, have the duty to provide victims with full and coordinated protection, within their respective powers and depending on the severity of violations.

A non-governmental organization, other legal or natural person, may provide protection in accordance with law. Those bodies and institutions shall act in accordance with law in setting incidences of violence in the order of priority, and shall ensure mutual communication and provide assistance in order to prevent and detect violence, eliminate causes, and provide assistance to victims in regaining security in life.

Also, the Government has established a shelter for victims of human trafficking as well as a SOS line by which victims can be informed and report criminal offences.

It is also important to mention that non-governmental organizations play important role in protection of women and children victims of domestic violence.

**31.1) Is it possible for minors to be a party to a judicial proceedings :**

Yes

No

If yes, please specify which procedure can be concerned (civil, criminal, administrative/normal or accelerated procedure) and at which conditions (can children benefit from legal aid, be represented by a lawyer, etc.) :

Act on Treatment of Juveniles in Criminal Proceedings ("Official Gazette" MNE no.64/2011) govern treatment of juveniles as criminal offenders and treatment of children and juveniles as parties to proceedings. Proceedings against juveniles and proceedings involving juvenile victims of crimes shall be urgency proceedings. A juvenile must have a defense counsel who may only be a lawyer. When adjudicating a juvenile, the court shall always exclude the public.

Civil Code Procedures prescribes that any natural and legal person may be party to the procedure. A juvenile who has not acquired full legal competence shall be considered to have litigation capacity within the limits of his/her recognized legal competence. A party without litigation capacity shall be represented by his/her legal representative. Legal representative shall be determined by Law or act of the competent public authority. For legal aid, please see answer to question 23.

**32) Does your country allocate compensation for victims of crime?**

Yes

No

If yes, for which kind of offences  
For all criminal offences.

**33) If yes, does this compensation consist in:**

a public fund?

damages to be paid by the responsible person (decided by a court decision)?

a private fund?

**34) Are there studies that evaluate the recovery rate of the damages awarded by courts to victims?**

Yes

No

If yes, please illustrate with available data concerning the recovery rate, the title of the studies, the frequency of the studies and the coordinating body:

**35) Do public prosecutors have a specific role with respect to the victims (protection and assistance)?**

Yes

No

If yes, please specify:

In the course of investigation, injured parties shall be entitled to call attention to all facts and to offer evidence important for the criminal case and for their claim under property law.

At the main hearing, the injured party and the private prosecutor shall be entitled to offer evidence, to examine the defendant, witnesses and expert witnesses and to put forward remarks and explanations as regards their statements as well as to make other statements and proposals.

The injured party, the subsidiary prosecutor and the private prosecutor shall be entitled to inspect files and objects serving as evidence. The inspection of the files may be denied to the injured party until an order on the conduct of investigation has been made or until s/he has been examined as a witness.

The injured party who is the victim of a criminal offence against sexual freedom shall have the right to be heard and to have the procedure be conducted by a judge of the same sex, if so allowed by the staff composition of the court. The State Prosecutor and Chair of the Panel shall inform the injured party and the private prosecutor of those rights.

When a State Prosecutor establishes that there is no basis for prosecution for a criminal offence that is prosecuted by virtue of office or that there is no basis to prosecute someone of reported accomplices, s/he shall inform the injured parties thereon within eight days, instruct them that they may take over the prosecution themselves and deliver them a decision on the rejection of the criminal charge. The notification of the State Prosecutor, i.e. of the court that the injured party may assume prosecution shall also contain an instruction as to which actions s/he may undertake in order to exercise that right.

The State Prosecutor shall notify in a convenient manner the defense attorney, the injured party, proxy of the injured party, and the accused person of the time and place of taking evidence gathering actions they are entitled to attend, unless there is a risk of delay.

### **36) Do victims of crime have the right to dispute a public prosecutor's decision to discontinue a case?**

**Please verify the consistency of your answer with that of question 105 regarding the possibility for a public prosecutor "to discontinue a case without needing a decision by a judge".**

- Yes  
 No  
 NAP (the public prosecutor cannot decide to discontinue a case on his/her own. A decision by a judge is needed).

If necessary, please specify:

Victim do not have the right to dispute a public prosecutor's decision by submitting legal remedy against decision. When a State Prosecutor establishes that there is no basis for prosecution for a criminal offence that is prosecuted by virtue of office or that there is no basis to prosecute someone of reported accomplices, s/he shall inform the injured parties thereon within eight days, instruct them that they may take over the prosecution themselves and deliver them a decision on the rejection of the criminal charge. The injured party shall have the right to undertake, i.e., continue prosecution, within 15 days as of the receipt of notification. If the State Prosecutor has withdrawn the indictment, the injured party may, when assuming the prosecution, abide by the existing indictment or file a new one. The injured party who has not been notified that the State Prosecutor did not undertake prosecution or has withdrawn from prosecution may make his/her statement before the competent court specifying that s/he assumes or continues proceedings, within six months from the day the State Prosecutor rejected the charge or discontinued investigation, i.e. from the day the decision on the cessation of procedure was rendered.

Mail from the NC sent on 29/04/2014:

If "dispute" means that injured party has the right to appeal, the answer is "No". But if the term "dispute" is understood broadly, than this right of the injured party to take over prosecution may be understood as a right to dispute a public prosecutor's decision which would justify the answer "Yes".

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

### **37) Is there a system for compensating users in the following circumstances:**

- excessive length of proceedings?  
 non execution of court decisions?

- wrongful arrest?  
 wrongful condemnation?

Where appropriate, please give details on the compensation procedure, the number of cases, the result of the procedures and the existing mechanism for calculating the compensation (e.g. the amount per day for unjustified detentions or convictions):

Law on Protection of the Right to Court Trial in Reasonable Time ("Official Gazette of MNE", No. 11/2007) defines the protection of the right to trial in reasonable time, and just compensation for breach of this right.

Right to court protection for breach of right to a trial in a reasonable time have the party, and a third party in a civil proceeding, party and interested person in administrative proceeding, accused and damaged person in a criminal proceeding if the proceedings are referring to protection of their rights in sense of European Convention of Human Rights and Fundamental Freedoms.

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

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

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

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

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

Sum of money is between 300 and 5.000 euros.

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

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

U 2010. there were 13 Claims for Fair Redress.

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

In accordance with The Criminal Procedure Code, in the Ministry of Justice agreement is being concluded, on existence of damage, sort and amount of compensation for 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.

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

**38) Does your country have surveys aimed at legal professionals and court users to measure their trust and/or satisfaction with the services delivered by the judicial system? (multiple options possible)**

- (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 the parties
- (Satisfaction) surveys aimed at other court users (e.g. jurors, witnesses, experts, interpreters, representatives of governmental agencies)
- (Satisfaction) surveys aimed at victims

If possible, please specify their titles, object and websites where they can be consulted:  
NAP

**39) If possible, please specify:**

	Surveys at a regular interval (for example annual)	Occasional surveys
Surveys at national level	No	No
Surveys at court level	No	No

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

- Yes
- No

**41) Please specify which authority is responsible for dealing with such complaints and inform whether there is or not a time limit to respond and/or a time limit for dealing with the complaint (multiple options possible). Please give information concerning the efficiency of this complaint procedure in the "comment" box below.**

	Time limit to respond (e.g. to acknowledge receipt of the complaint, to provide information on the follow-up to be given to the complaint, etc.)	Time limit for dealing with the complaint
Court concerned	Yes	No
Higher court	Yes	No
Ministry of Justice	Yes	No
High Council of the Judiciary	Yes	No
Other external bodies (e.g. Ombudsman)	No	No

**Comment :**

Complaint on the work of the judge can be filed to president of the court in which judge performs his function. An allocated case shall be withdrawn from a judge or a panel of judges only if it has been established that they have not been making progress in the case without a justified reason or if they have been disqualified or if the judge has been unable to attend to his or her judicial duties for more than three months.

In accordance with the Courts rules of procedure, president of the court shall examine, either personally or through a person duly assigned by him, every customer complaint concerning the work of either the court or individual judges, officers, and employees.

Before responding to the complaint in the shortest time possible, president will notify of the complaint the person whose work it refers to, request from that person an explanation verbally or in writing, review the case files, and take other steps necessary to assess the validity of the complaint.

In The Supreme Court of Montenegro there is a Office for reception and complaints of the citizens. Every citizen can file a complaint to this Office.

In accordance with the art. 128 of The Constitution of Montenegro one of the competences of the Judicial Council is to analyse petitions and complaints on the work of the judges, and defines stands upon these.

Rules on Judicial Council prescribes that every natural and legal person is entitled to file a complaint on the work and conduct of a judge.

The complaint shall be submitted in writing. The complaint may also be anonymous. The complaint shall be submitted to the Judicial Council.

The Judicial Council shall submit the complaint to the President of the court where a judge against whom the complaint was filed is working, in order to verify the allegations of the later. President of the Court shall submit to the Disciplinary Commission the entire file with the proposal for disciplinary proceedings, if after the conducted verification finds that there were grounds for disciplinary proceedings.

Of its decision to initiate disciplinary proceedings the President of the court shall inform the complainant and a judge against



whom the complaint was filed.

President of the Court shall submit the entire case file to the Judicial

Council, if finds that there were no grounds for disciplinary action, with indicating the reasons why there were no grounds for disciplinary action.

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

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

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

Law on Courts prescribes competencies of the Ministry of justice in this matter. Namely, The Ministry of Justice shall, through its authorized officer, perform supervision in the courts, in relation to handling applications and complaints. If the authorized officer, in the course of supervision, finds irregularities, he or she shall issue a warning to the president of court or a judge and give them 15 days to rectify irregularities found.

The State Prosecution Office

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

Protector of the Human Rights and Fundamental Freedoms is authorized to act upon complaints relating to the work of courts in case of delay in the proceedings, abuse of procedural authorizations or failure to execute court decisions. The complaint is to be filed within six months as of the day of cognition about the

violation of human rights and freedoms, or within one year as of the day of violation. Exceptionally, the Protector may act even after the expiration of the deadline if he considers that the importance of the case so requires. he Protector shall inform about the complaint and its content the Head or the person

managing the authority on whose act, action or failure to act the complaint refers to, for the purpose of taking the statement and shall set a deadline that cannot be shorter than eight days. If the Head or to the person managing the authority fails to comply with the request

within a specified period of time, he/she shall be obliged to, without delay, inform the Protector about the reasons.

Upon completion of examining the violation of human rights and freedoms, the Protector shall issue an opinion on whether, how and to what extent the violation of human rights and freedoms occurred.

When the Protector finds that the violation of human rights and freedoms occurred, the opinion shall also contain a recommendation on what needs to be done to remedy the violation, as well as the deadline for its remedy.

**41.1) Please indicate the number of complaints that are upheld and the amount of compensation given to users in 2012 for complaints about the functioning of the judicial system**

NA

### 3. Organisation of the court system

#### 3. 1. Functioning

##### 3. 1. 1. Courts

**42) Number of courts considered as legal entities (administrative structures) and geographic locations. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

	Total number
42.1 First instance courts of general jurisdiction (legal entities)	15
42.2 First instance specialised Courts (legal entities)	3
42.3 All the courts (geographic locations) (this includes 1st instance courts of general jurisdiction, first instance specialised courts, all second instance courts and courts of appeal and all supreme courts)	22

**43) Number (legal entities) of first instance specialised courts (or specific judicial order). If data is not available, please indicate NA.**

-----  
**If the situation is not applicable in your country, please indicate NAP.**

	Number
Total (must be the same as the data given under question 42.2)	3
Commercial courts (excluded insolvency courts)	2
Insolvency courts	NAP
Labour courts	NAP
Family courts	NAP
Rent and tenancies courts	NAP
Enforcement of criminal sanctions courts	NAP
Fight against terrorism, organised crime and corruption	NAP
Internet related disputes	NAP
Administrative courts	1
Insurance and / or social welfare courts	NAP
Military courts	NAP
Other specialised 1st instance courts	NAP

Comment :

Within the two High Courts in Podgorica and Bijelo Polje, specialized divisions are established to work on these criminal offences of organized crime, corruption, terrorism and war crimes in the first instance.

**44) Is there a foreseen change in the structure of courts [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:

Ministry of Justice produced and the Government of Montenegro adopted Analysis towards Rationalization of the Judicial Network and Analysis of the Network of Misdemeanor bodies. Aim of this Analysis was to review the existing organisational structure of the judicial bodies, the existing number of judges, public prosecutors, court officers and other employees working in the judicial bodies, and the effect of new laws on reducing the number of judges, prosecutors and clerical staff, specifically the application of the new Criminal Procedure Code. The Analysis also took into consideration situation in and standing of the Montenegrin judiciary according to the CEPEJ 2010 Report and the court network was analysed using the basic indicators of the European Commission for the Efficiency of Justice (CEPEJ).

The results of the Analysis show that rationalisation of the existing court network should be carried out in normative and institutional level.

Institutional changes will encompass:

- Merging the two commercial courts into one that would be based in Podgorica;
- Centralizing jurisdiction by forming one special department at the High Court in Podgorica for organised crime, corruption, terrorism and war crimes;
- Changes to the organisation of the Special Division for organised crime, corruption, terrorism and war crimes at the Supreme Public Prosecutor's Office.

**45) Number of first instance courts (geographic locations) competent for the following cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

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

**Please give the definition for small claims and indicate the monetary value of a small claim:**

Law on Civil Procedure defines small claims disputes.

Small claim disputes are those in which the statement of claims refers to the pecuniary claim that does not exceed the amount of EUR 500. Small claim disputes shall also include disputes in which the statement of claims is not of pecuniary nature and the plaintiff has stated in the complaint that he/she will accept certain monetary sum that does not exceed the amount of 500 EUR in lieu of the obligation disclosed in the complaint. Small claim disputes shall also include those disputes in which the statement of claims is not of pecuniary nature, but the transfer of a moveable asset whose value, as stated in the complaint by the plaintiff, does not exceed the amount of 500 EUR. Disputes concerning real estate, labor relations and trespassing shall not fall within the category of small claim disputes

[Q45 : comment deleted in upper cell "a robbery" : 15+2]

**Please indicate the sources for answering questions 42, 43 and 45:**

Law on Courts

### 3. 1. 2. Judges, court staff

**46) Number of professional judges sitting in courts (if possible on 31 December 2012) (please give the information in full-time equivalent and for permanent posts actually filled for all types of courts - general jurisdiction and specialised courts). If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

**Please provide in the "comment" box below any useful comment for interpreting the data above.**

\*\*\*\*\*

**[Please make sure that public prosecutors and their staff are excluded from the following figures (they will be part of questions 55-60). If a distinction between staff attached to judges and staff attached to prosecutors cannot be made, please indicate it clearly.**

**Please indicate the number of posts that are actually filled at the date of reference and not the theoretical budgetary posts.]**

	Total	Males	Females	NAP
Total number of professional judges (1 + 2 + 3)	263	116	147	
1. Number of first instance professional judges	180	81	99	

2. Number of second instance (court of appeal) professional judges	65	26	39	
3. Number of supreme court professional judges	18	9	9	

Comment :

Mail from the NC sent on 07/05/2014:

For 2012 the number of second instance (court of appeal) professional judges implies both number of judges in high courts and Appellate courts. High court adjudicates in the first but also in second instance, and Appellate court is court of second instance.

**47) Number of court presidents (professional judges). If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

	Total	Males	Females	NAP
Total number of court presidents (1 + 2 + 3)	22	15	7	
1. Number of first instance court presidents	18	13	5	
2. Number of second instance (court of appeal) court presidents	3	2	1	
3. Number of supreme court presidents	1		1	

**48) Number of professional judges sitting in courts on an occasional basis and who are paid as such (if possible on 31 December 2012).**

-----

**Please provide in the "comment" box below any information to explain the answer under question 48.**

Gross figure  Yes 11  
 If possible, in full-time equivalent NAP

Comment :

There are 11 professional judges sitting in courts on an occasional basis.

In accordance with Article 42 of the Law on Judicial Council, Judicial Council may permanently or temporarily sent judge with his consent to another court of the same, lower or higher level. During the 2012, according to above stated Law, the Judicial Council adopted 7 decisions on sending judges to other courts, and earnings have been paid to the judges who meet the norm in the Court in which they were elected, as in the court to which they were sent.

Mail from the NC sent on 07/05/2014:

In 2010 for the number of second instance (court of appeal) court presidents, only the president of the Appellate court was included, while in data for 2012 this number includes the presidents of two high court and Appellate court.

[Mail from the NC sent on 19/05/2014 : Mail from the NC sent on 19/05/2014:

The total sum of the remunerations for judges in euros is 101 611.]

**49) Number of non-professional judges who are not remunerated but who can possibly receive a simple defrayal of costs (if possible on 31 December 2012) (e.g. lay judges and "juges consulaires", but not arbitrators and persons sitting in a jury):**

-----

**If such non-professional judges exists in your country, please specify it in the "comment" box below:**

Gross figure NAP

Comment :

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

- Yes  
 No

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

Mail from the NC sent on 29/04/2014:

The new Criminal Procedure Code has been adopted in 2009, and entered into force in 2010. It does not prescribe possibility of trial by jury with the participation of citizens.

Mail from the NC sent on 07/05/2014:

Regarding entering into force of the Criminal Procedure Code, it has entered into force in 2009, but not all of the parts of the Criminal Procedure Code were enforced (applied) in 2009. Some of the parts were applied in 2010 (In procedures for the criminal offences of the organized crime, corruption, terrorism and war crimes and provisions on Agreement on the Admission of Guilt). Criminal Procedure Code became entirely applicable on 1st of September 2011.

**51) Number of citizens who were involved in such juries for the year of reference:**

NAP

**52) Number of non-judge staff who are working in courts for judges (if possible on 31 December 2012) (this data should not include the staff working for public prosecutors; see question 60) (please give the information in full-time equivalent and for permanent posts actually filled). If "other non-judge staff", please specify it in the "comment" box below.**

Total non-judge staff working in courts (1 + 2 + 3 + 4 + 5)  Yes (among which women) 1 0 51

1. Rechtspfleger (or similar bodies) with judicial or quasi-judicial tasks having autonomous competence and whose decisions could be subject to appeal NAP

2. Non-judge staff whose task is to assist the judges (case file preparation, assistance during the hearing, court recording, helping to draft the decisions) such as registrars  Yes (among which women) 138

3. Staff in charge of different administrative tasks and of the management of the courts (human resources management, material and equipment management, including computer systems, financial and budgetary management, training management)  Yes (among which women) 62

4. Technical staff  Yes (among which women) 677

5. Other non-judge staff  Yes (among which women) 174

Comment :

Due to technical difficulties, we could not provide number of women in the scheme, so we would give exact explanation in the box "Comment"

Total non-judge staff working in courts: 1051 among which 873 women.

1. Rechtspfleger (or similar bodies) with judicial or quasi-judicial tasks having autonomous competence and whose decisions could be subject to appeal: NAP
2. Non-judge staff whose task is to assist the judges (case file preparation, assistance during the hearing, court recording, helping to draft the decisions) such as registrars: 138 among which 101 women
3. Staff in charge of different administrative tasks and of the management of the courts (human resources management, material and equipment management, including computer systems, financial and budgetary management, training management): 62 among which 42 women
4. Technical staff: 677 among which 576 women
5. Other non-judge staff: 174 among which 154 women

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

**54) Have the courts delegated certain services, which fall within their powers, to private providers (e.g. IT services, training of staff, security, archives, cleaning)?**

Yes No

If yes, please specify:

**C1 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 have been implemented over the last two years

Please indicate the sources for answering questions 46, 47, 48, 49 and 52

Secretariat of the Judicial Council

## 3. 1. 3. Public prosecutors and staff

**55) Number of public prosecutors (if possible on 31 December 2012) (please give the information in full-time equivalent and for permanent posts actually filled, for all types of courts – ordinary and specialised jurisdictions). If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP. Please provide in the "comment" box below any useful information for interpreting the data.**

	Total	Males	Females	NAP
Total number of prosecutors (1 + 2 + 3)	91	34	57	
1. Number of prosecutors at first instance level	62	24	38	
2. Number of prosecutors at second instance (court of appeal) level	15	4	11	
3. Number of prosecutors at supreme court level	7	2	5	

Comment :

Total number of deputies in the Specialized department for fight against organized crime, corruption, terrorism and war crimes is 7, among which 4 men and 3 women.

Mail from the NC sent on 29/04/2014:

The reason for the decreasing number of public prosecutors is that some of them retired, while some left the prosecutorial organization. Furthermore, a number of deputies in first instance have been promoted and deputies of basic public prosecutors have become deputies of high public prosecutors. Depending on the intersection, the number of deputies in one year may vary because it is possible that some deputies were in process of re-election.

**56) Number of heads of prosecution offices. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

-----  
Please provide in the "comment" box below any useful information for interpreting the data.

	Total	Males	Females	NAP
Total number of heads of prosecution offices (1 + 2 + 3)	17	10	7	
1. Number of heads of prosecution offices at first instance level	13	9	4	
2. Number of heads of prosecution offices at second instance (court of appeal) level	2	1	1	
3. Number of heads of prosecution offices at supreme court level	1	0	1	

Comment :

Mail from the NC sent on 29/04/2014:

Discrepancies between the totals and the sum of the subcategories are due to the fact that the special prosecutor competent for criminal offences of organized crime, corruption, terrorism and war crimes has been included in the figures 17 (total) and 7 (total of females)

**57) Do other persons have similar duties to public prosecutors?**

 Yes

No

NA

Number (full-time equivalent)

**58) If yes, please specify their title and function:**

**59) If yes, is their number included in the number of public prosecutors that you have indicated under question 55?**

Yes

No

**59.1) Do all prosecution offices have specially trained prosecutors in domestic violence and sexual violence etc.?**

Yes

**60) Number of staff (non-public prosecutors) attached to the public prosecution service (if possible on 31 December 2012) (without the number of non-judge staff, see question 52) (in full-time equivalent and for permanent posts actually filled).**

Number  NA 140

Among which women  NA 97

**C2 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 have been implemented over the last two years

**Please indicate the sources for answering questions 55, 56 and 60.**

Supreme State Prosecutor's Office

3. 1. 4. Management of the court budget

**61) Who is entrusted with responsibilities related to the budget within the court?**

-----

**If "other", please specify it in the "comment" box below.**

	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	Yes	Yes	Yes	No
Court administrative director	No	No	No	No
Head of the court clerk office	No	No	No	No
Other	No	No	No	Yes

Comment :

Bureau for Finance - established within the Secretariat of Judicial Council, makes payments for all courts in Montenegro. In this way, control of the budget execution is done at the same time.

Mail from the NC sent on 07/05/2014:

According to the Law on Courts, the funds for the work of courts shall be provided from a special section of the Budget of Montenegro. The Judicial Council shall propose the section of the annual budget for the work of courts. The Judicial Council shall submit the proposal for the annual budget for the work of courts to the Government. The President of the Judicial Council shall have the right to participate in the sitting of the Parliament discussing the proposal for the budget of courts. But

once this procedure is done, the president of court shall be the financial principal in the court.

### 3. 1. 5. Use of Technologies in courts

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

Word processing	100% of courts
Electronic data base of caselaw	100% of courts
Electronic files	100% of courts
E-mail	100% of courts
Internet connection	100% of courts

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

Case registration system	100% of courts
Court management information system	100% of courts
Financial information system	100% of courts
Videoconferencing	100% of courts

#### 64) For the electronic communication and exchange of information between the courts and their environment, what are the computer facilities used by the courts ?

-----  
**Si "autres moyens de communication électronique", veuillez le préciser dans la boîte de commentaires ci-dessous.**

Electronic web forms	100% of courts
Website	100% of courts
Follow-up of cases online	100% of courts
Electronic registers	100% of courts
Electronic processing of small claims	100% of courts
Electronic processing of undisputed debt recovery	100% of courts
Electronic submission of claims	0 % of courts
Videoconferencing	0 % of courts
Other electronic communication facilities	0 % of courts

Comment :

#### 65) The use of videoconferencing in the courts (details on question 63).

-----  
**Please indicate in the "comment" box below any clarification on the legal framework and the development of videoconferencing in your country.**

65.1 In criminal cases, do courts or prosecution offices use videoconferencing for hearings in the presence of defendants or witnesses or victims?	Yes
65.2 Can such court hearing be held in the police station and/or in the prison?	No
65.3 Is there any specific legislation on the conditions for using videoconferencing in the courts / prosecution offices, especially in order to protect the rights of the defence?	Yes
65.4 Is videoconferencing used in other than criminal cases?	No

Comment :

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

Also, special ways of participating and hearing witnesses and injured party in the criminal procedure are: hearing under pseudonym,



hearing with assistance of technical devices (protective wall, voice simulators, devices for transmission of image and sound) and alike.

**C3 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 have been implemented over the last two years

### 3. 2. Monitoring and evaluation

#### 3. 2. 1. Performance and evaluation

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

- Yes  
 No

If yes, please indicate the name and the address of this institution:  
 Secretariat of the Judicial Council, Miljana Vukova bb, 81000 Podgorica

**66.1) Does this institution publish statistics on the functioning of each court on the internet:**

- Yes  
 No, only in an intranet website  
 No

**67) Are individual courts required to prepare an annual activity report (that includes, for example, data on the number of cases processed or pending cases, the number of judges and administrative staff, targets and assessment of the activity)?**

- Yes  
 No, only in an intranet website

**68) Do you have, within the courts, a regular monitoring system of court activities concerning:**

-----  
**The monitoring system aims to assess the day-to-day activity of the courts (namely, what the courts produce) thanks in particular to data collections and statistical analysis (see also questions 80 and 81).**

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

If other, please specify:

**69) Do you have a system to evaluate regularly the activity (in terms of performance and output) of each court?**

-----  
**The evaluation system refers to the performance of the court systems with prospective concerns, using indicators and targets. The evaluation may be of more qualitative nature (see questions 69-77). It does not refer to the evaluation of the overall (good) functioning of the court (see question 82).**

- Yes  
 No

If yes, please specify:  
 Courts submit performance report twice a year, on six months each.

**70) Concerning court activities, have you defined performance and quality indicators (if no, please skip to question 72)**

- Yes  
 No

**71) Please select the 4 main performance and quality indicators that have been defined:**

- incoming cases  
 length of proceedings (timeframes)  
 closed cases  
 pending cases and backlogs  
 productivity of judges and court staff  
 percentage of cases that are processed by a single sitting judge  
 enforcement of penal decisions  
 satisfaction of court staff  
 satisfaction of users (regarding the services delivered by the courts)  
 judicial quality and organisational quality of the courts  
 costs of the judicial procedures  
 other:

If other, please specify:

**72) Are there quantitative performance targets (for instance a number of cases to be addressed in a month) defined for each judge?**

- Yes  
 No

**73) Who is responsible for setting the targets for each judge?**

- executive power (for example the Ministry of Justice)?  
 legislative power  
 judicial power (for example a High Judicial Council, Higher Court)  
 President of the court  
 other

If other, please specify:

**74) Are there performance targets defined at the level of the court (if no please skip to question 77)?**

- Yes  
 No

**75) Who is responsible for setting the targets for the courts?:**

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

If other, please specify:

**76) Please specify the main targets applied to the courts:**

Standards for the types of cases annually:

Basic courts:

Criminal - 230 cases  
 Criminal juvenile - 230 cases  
 Investigative and preparatory proceedings against juveniles - 300 cases  
 Investigative actions - 400 cases  
 Criminal out of main hearing - 800 cases  
 Litigious - 300 cases  
 Litigious small claims - 500 cases  
 Inheritance - 800 cases  
 Complex litigious - 300 cases  
 Other litigious - 800 cases  
 Enforcement - 400 cases  
 Enforcement on the basis of authentic documents - 5000 cases  
 Pardon - 1000 cases

High Courts :

Criminal First Instance - 60 cases  
 Criminal juvenile first instance - 60 cases  
 Investigation or preparatory proceedings against Juveniles - 140 cases  
 Investigative actions - 350 cases  
 Criminal second instance - 300 cases  
 Criminal without main hearing - 700 cases  
 Appellate litigation - 250 cases

The criteria for determining the number of judges in the specialized departments for the trial of criminal offences of organized crime, corruption, terrorism and war crimes in the High Court are as follows :

Type of cases per year

First instance for criminal offenses of organized crime, terrorism and war crimes - 5 cases  
 First instance for criminal offenses with elements of corruption - 60 cases  
 For investigating organized crime, terrorism and war crimes - 10 cases  
 Investigative for criminal offenses with elements of corruption - 130 cases  
 Investigative actions for crimes within the jurisdiction of this department - 170 cases

Commercial courts :

Commercial disputes - 300 cases  
 Small claims - 500 cases  
 Complex bankruptcy - 35 cases  
 Other bankruptcy and judicial liquidation - 800 cases  
 Non-litigious - 800 cases  
 Enforcement - 5000 cases

Appellate Court :

Criminal second instance - 120 cases  
 Criminal second instance for organized crime, terrorism and war crime - 10 cases  
 Criminal second instance for criminal offences with elements of corruption - 120 cases  
 Various criminal - 350 cases  
 Commercial second instance - 230 cases

Administrative Court :

Administrative Dispute - 250 cases  
 Request for extraordinary review of the final decision on misdemeanor - 300 cases  
 Request for protection of legality in misdemeanor proceedings - 300 cases

**77) Who is responsible for evaluating the performance of the courts (see questions 69 to 76)? (multiple options possible)**

- High Council of judiciary
- Ministry of Justice
- Inspection authority
- Supreme Court
- External audit body

Other

If other, please specify :

**78) Are quality standards determined for the whole judicial system (are there quality systems for the judiciary and/or judicial quality policies)?**

Yes

No

If yes, please specify:

Promptness of the court, quality of court decisions.

**79) Do you have specialised court staff that is entrusted with these quality standards?**

Yes

No

**80) Do you monitor backlogs and cases that are not processed within a reasonable timeframe for ?**

in civil law cases

in criminal law cases

in administrative law cases

**81) Do you monitor waiting time during court procedures?**

Yes

No

If yes, please specify:

Court rules of Procedure ("Official Gazette" MNE, no. 26/2011 and 44/2012) prescribes that the chief judge, in order to secure proper and timely court operation, oversees the work of court divisions and services by, inter alia, inspecting court registers and accompanying books, calendar books, hearing books, by continually updating a register of cases pending for an excessive time period, and by requesting reports.

Where the annual report indicates that a court or any of its divisions has a backlog bigger than the

three month new caseload, the chief judge shall enact a program for elimination of backlog ("Program") by not later than 31 January of the next business year.

The Program shall specify the steps to be introduced to secure timely performance of court functions including the following: making changes in the internal court organization; introducing extra work hours; making temporary changes in the organization of work hours; organizing business meetings, and other steps as may be set by law and the Rules.

In designing and enforcing the Program, the chief judge may propose that judges be assigned to other courts and that amendments to the annual assignment schedule be enacted.

The chief judge shall submit the draft Program to the meeting of judges for their consideration.

The chief judge shall notify the chief judge of an immediately superior court and the chief judge of the Supreme Court of the Program enacted.

The chief judge shall monitor and oversee on a monthly basis the status of Program implementation and decide on any modifications and amendments to the Program or termination of its implementation.

Court records and statistics shall serve as basis for periodic and ad hoc reports on court operation made to supervise and better organize court operation.

Statistics and records shall be maintained in compliance with the instructions issued by the chief judge of the Supreme Court and the state administration statistics authority.

A court registry office shall maintain for every register a repertory of resolved cases for the reporting period where, in chronological order, entries are made of the marks of all resolved cases by their category and the manner in which it was resolved.

The repertory shall be used for drafting regular reports on all the cases resolved within the reporting period, together with a specification of the manner in which they were resolved.

**82) Is there a system to evaluate the overall (smooth) functioning of courts on the basis of an evaluation plan (plan of visits) agreed beforehand?**  
-----

**This question does not concern the specific evaluation of performance indicators.**

- Yes  
 No

Please specify the frequency of the evaluation:

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

**83) Is there a system for monitoring and evaluating the performance of the public prosecution service?**

- Yes  
 No

If yes, please give further details:

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

**C.4 You can indicate below:**

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

## 4. Fair trial

### 4. 1. Principles

#### 4. 1. 1. General principles

**84) Percentage of first instance criminal in absentia judgments (cases in which the suspect is not attending the hearing in person nor represented by a lawyer)?**

NA

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

NA

**86) Number of cases regarding Article 6 of the European Convention of Human Rights on duration and non-execution. If data is not available, please indicate NA.**

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

**Please indicate the sources:**

**D.1 You can indicate below any useful comments for interpreting the data mentioned in this chapter**

### 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?
- there is no specific procedure

If yes, please specify:

In civil cases the law requires urgency in resolving labor disputes, lawsuits for trespassing, in proceedings relating to family relations in case of a child or parent who exercises parental rights.

In criminal cases proceedings against minors are urgent, proceedings for offenses committed in an organized manner, detention cases.

The procedure for adopting temporary measures in administrative proceedings is urgent.

**88) Are there simplified procedures for:**

- civil cases (small disputes)?
- criminal cases (small offences)?
- administrative cases?
- there is no simplified procedure

If yes, please specify:

Law on Civil Procedure ("Official Gazette of RM" no. 22/2004, 28/05 and 76/06) provides special simplified rules on small claims dispute procedure.

Criminal Procedure Code ("Official Gazette" MNE, no. 57/09 and 49/10) regulates Summary Proceedings for criminal offences punishable by fine or imprisonment for a term not exceeding five years as a principal punishment.

Also, for criminal offences punishable by a fine or the sentence of imprisonment for a maximum term not exceeding three years as principal punishment, upon a motion of the State Prosecutor, and with the consent of the accused person, the judge may issue a penal order even without holding a main hearing.

Simplified procedure is prescribed for judicial admonition. The ruling on judicial admonition, together with essential reasons, shall be announced immediately after the completion of the main hearing. In the statement of reasons for the ruling, the court shall state the reasons it was guided by in the imposition of judicial admonition.

Also in an administrative dispute, procedures can be simplified, in accordance with The Law on Administrative Disputes ("Official Gazette of RM" no. 60/2003 and 32/2011):

"If Administrative court does not reject the suit in accordance with the law, and finds that the contested administrative or other act contains such deficiencies which prevent form evaluation of legality of the act, the court may annul the act by a verdict even without submitting suit in order to receive reply.

If more suits were filed to the Administrative court against acts in which rights and obligations are referring to similar factual state and same legal basis, the court may, after receiving replies to suits, do a procedure based on one suit, and stop the other proceedings until the final decision in selected case (procedure upon sample). Before bringing conclusion to stop the procedure, the Administrative court must allow to the prosecutor to give statement about answer to a suit and interruption of the proceeding.

Against conclusion on interruption of proceeding, the complaint is not allowed.

Administrative court shall, after the verdict becomes final, in selected case, without verbal session, although the parties requested it, decide in cases in which proceeding was stopped, if they do not have factual or legal specifics.

**88.1) For these simplified procedures, may judges deliver an oral judgement with a written order and dispense with a full reasoned judgement?**

- Yes  
 No

**89) Do courts and lawyers have the possibility to conclude agreements on arrangements 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:

Mail from the NC sent on 29/04/2014:

In the view of the national correspondent, the question could be understood in different ways, but for 2012, it has been confirmed that "no" seems to be the more appropriate answer.

**4. 2. 2. Case flow management and timeframes of judicial proceedings**

**90) Comment:**

**The national correspondents are invited to pay special attention to the quality of the answers to questions 91 to 102 regarding case flow management and timeframes of judicial proceedings. The CEPEJ agreed that the subsequent data would be processed and published only if answers from a significant number of member states – taking into account the data presented in the previous report – are given, enabling a useful comparison between the systems.**

**91) First instance courts: number of other than criminal and criminal law cases.**

**Number of other than criminal law cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

**Note 1: cases mentioned in categories 3 to 5 (enforcement, land registry, business register) should be presented separately in the table. Cases mentioned in category 6 (administrative law) should also be separately mentioned for the countries which have specialised administrative courts or separate administrative law procedures or are able to distinguish in another way between administrative law cases**

and civil law cases.

**Note 2: check if the figures submitted are (horizontally and vertically) consistent. Horizontal consistent data means: "(pending cases on 1 January 2012 + incoming cases) – resolved cases" should give the correct number of pending cases on 31 December 2012. Vertical consistency of data means that the sum of the individual case categories 1 to 7 should r**

	Pending cases on 1 Jan. '12	Incoming cases	Resolved cases	Pending cases on 31 Dec. '12
Total of other than criminal law cases (1+2+3+4+5+6+7)*	183840	107679	108449	183070
1. Civil (and commercial) litigious cases (if feasible without administrative law cases, see category 6)*	14817	20514	20828	14503
2. General civil (and commercial) non-litigious cases, e.g. uncontested payment orders, request for a change of name, etc. (if feasible without administrative law cases; without enforcement cases, registration cases and other cases, see categories 3-7)*	2586	7310	7545	2351
3. Non litigious enforcement cases	165168	76453	77110	164511
4. Non litigious land registry cases**	NA	NA	NA	NA
5. Non litigious business registry cases**	NA	NA	NA	NA
6. Administrative law cases	1264	3400	2963	1701
7. Other cases (e.g. insolvency registry cases)	5	2	3	4

**92) If courts deal with "civil (and commercial) non-litigious cases", please indicate the case categories included:**

Inheritance cases, complex non-litigious cases.

**93) If "other cases", please indicate the case categories included:**

Liquidation cases

**94) Number of criminal law cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

**Note: please check if the figures submitted are (horizontally and vertically) consistent. Horizontal consistent data means that: "(pending cases on 1 January 2012 + incoming cases) – resolved cases" should give the correct number of pending cases on 31 December 2012. Vertical consistency of data means that the sum of the categories 8 and 9 for criminal cases should reflect the total number of criminal cases.**

	Pending cases on 1 Jan. '12	Incoming cases	Resolved cases	Pending cases on 31 Dec. '12
Total of criminal cases (8+9)	2441	5791	5574	2658
8. Severe criminal cases	2433	5772	5552	2653
9. Misdemeanour and / or minor criminal cases	8	19	22	5

**95) To differentiate between misdemeanour / minor offenses and serious offenses and ensure the consistency of the responses between different systems, the CEPEJ invites to classify as misdemeanour / minor all offenses for which it is not possible to pronounce a sentence of deprivation of liberty. Conversely, should be classified as severe offenses all offenses punishable by a deprivation of liberty (arrest and detention, imprisonment). If you cannot make such a distinction, please indicate the categories of cases reported in the category "serious offenses" and cases reported in the category "minor offenses":**

**96) Comments on questions 90 to 95 (specific situation in your country e.g. NA-answers and the calculation of the total number of other than criminal law cases, differences in horizontal consistency etc.)**

Mail from the NC sent on 07/05/2014:

Q. 91:

Within the Judicial Council there is no Department for Monitoring and Data Analysis, hence changes in number of pending, incoming, resolved cases are not particularly monitored.

At the end of every year a Plan for resolving old cases is adopted, so this type of cases has priority.

Mail from the NC sent on 07/05/2014:

Q. 94:

Data given for 2010 and 2012 are submitted in accordance with the explanatory note. Since this methodology differs from the data collected by the Secretariat of the Judicial Council, there is a mismatch of data.

Criminal Code was amended in 2011. In accordance with those changes, for some of the criminal offences punishments that can be imposed are increased.



**97) Second instance courts: total number of cases****Number of "other than criminal law" cases.**

If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Pending cases on 1 Jan. '12	Incoming cases	Resolved cases	Pending cases on 31 Dec. '12
Total of other than criminal law cases (1+2+3+4+5+6+7)	3 156	12 320	11 337	4 139
1. Civil (and commercial) litigious cases (if feasible without administrative law cases, see category 6)*	1 842	8 507	7 994	2 355
2. General civil (and commercial) non-litigious cases, e.g. uncontested payment orders, request for a change of name, etc. (if feasible without administrative law cases; without enforcement cases, registration cases and other cases, see categories 3-7)*	50	413	380	83
3. Non litigious enforcement cases	NA	NA	NA	NA
4. Non litigious land registry cases	NA	NA	NA	NA
5. Non litigious business registry cases	NA	NA	NA	NA
6. Administrative law cases	1 264	3 400	2 963	1 701
7. Other cases (e.g. insolvency registry cases)				

**98) Number of criminal law cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

	Pending cases on 1 Jan. '12	Incoming cases	Resolved cases	Pending cases on 31 Dec. '12
Total of criminal cases (8+9)	151	3557	3576	132
8. Severe criminal cases	137	3543	3563	117
9. Misdemeanour and/or minor criminal cases	14	14	13	15

Comment :

Mail from the NC sent on 07/05/2014:

The number of pending cases at the end of the year may be explained by different reasons: temporary number of judges, total number of cases in work and any other procedural actions that are conducted in proceedings etc.

**99) Highest instance courts: total number of cases****Number of "other than criminal law" cases:**

If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Pending cases on 1 Jan. '12	Incoming cases	Resolved cases	Pending cases on 31 Dec. '12
Total of other than criminal law cases (1+2+3+4+5+6+7)	16	1513	1500	29
1. Civil (and commercial) litigious cases (if feasible without administrative law cases, see category 6)	5	1195	1194	6
2. General civil (and commercial) non-litigious cases, e.g. uncontested payment orders, request for a change of name, etc. (if feasible without administrative law cases; without enforcement cases, registration cases and other cases, see categories 3-7)	NAP	NAP	NAP	NAP
3. Non litigious enforcement cases	NAP	NAP	NAP	NAP
4. Non litigious land registry cases**	NAP	NAP	NAP	NAP
5. Non litigious business registry cases	NAP	NAP	NAP	NAP
6. Administrative law cases	11	318	306	23
7. Other cases (e.g. insolvency registry cases)	NAP	NAP	NAP	NAP

**99.1) At the level of the Higher court, is there a procedure of manifest inadmissibility?**

Yes. If yes, please indicate the number of cases closed by this procedure?

No

Number

**100) Number of criminal law cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

	Pending cases on 1 Jan. '12	Incoming cases	Resolved cases	Pending cases on 31 Dec. '12
Total of criminal cases (8+9)	0	63	63	0
8. Severe criminal cases	0	63	63	0
9. Misdemeanour and/or minor criminal cases	NAP	NAP	NAP	NAP

Comment :

**101) Number of litigious divorce cases, employment dismissal cases, insolvency, robbery cases and intentional homicide cases received and processed by first instance courts. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

	Pending cases on 1 January 2012	Incoming cases	Resolved cases	Pending cases on 31 December 2012
Litigious divorce cases	366	1130	812	684
Employment dismissal cases	25	55	26	54
Insolvency	226	444	411	259
Robbery cases	0	8	3	5
Intentional homicide	0	1	1	0

**102) Average length of proceedings, in days (from the date the application for judicial review is lodged). If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

-----  
**[The average length of proceedings has to be calculated from the date the application for judicial review is lodged to the date the judgment is made, without taking into account the enforcement procedure.]**

	% of decisions subject to appeal	% pending cases more than 3 years	Average length in 1st instance (in days)	Average length in 2nd instance (in days)	Average length in 3rd instance (in days)	Average total length of the total procedure (in days)
Litigious divorce cases	6,16	0,12	120	30	150	240
Employment dismissal cases	50	3,84	240	120	0	420
Insolvency	15,08	2,18	180	30	0	540
Robbery cases	60	0	90	60	0	270
Intentional homicide	100	0	307	113	0	420

**103) Where appropriate, please inform about the specific procedure as regards divorce cases (litigious and non-litigious):**

**104) How is the length of proceedings calculated for the five case categories? Please give a description of the calculation method.**

In civil cases, the length of the proceedings is calculated from the date the lawsuit is filed to the court until the final verdict.

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

**105) Role and powers of the public prosecutor in the criminal procedure (multiple options possible):**

- to conduct or supervise police investigation
- to conduct investigations
- when necessary, to request 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 the enforcement procedure

- to discontinue a case without needing a decision by a judge (ensure consistency with question 36!)
- to end the case by imposing or negotiating a penalty or measure without requiring a judicial decision
- other significant powers

If "other significant powers", please specify:

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

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

- Yes
- No

If yes, please specify:

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

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

**106.1) Does the public prosecutor also have a role in insolvency cases?**

- Yes
- No

If yes, please specify:

**107) Case proceedings managed by the public prosecutor**

**Total number of 1st instance criminal cases.**

**If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

	Received by the public prosecutor	Cases discontinued by the public prosecutor (see 108 below)	Cases concluded by a penalty or a measure imposed or negotiated by the public prosecutor	Cases charged by the public prosecutor before the courts
Total number of 1st instance criminal cases	10948	NA	1022	5554

**107.1) Among cases charged by the public prosecutor before the courts, how many were brought to court under a guilty plea procedure or similar ?**

	Before the court case:	During the court case:
If possible, please distinguish the number of guilty plea procedure:	22	0

**108) Total cases which were discontinued by the public prosecutor. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

	Number
Total cases which were discontinued by the public prosecutor (1+2+3)	NA
1. Discontinued by the public prosecutor because the offender could not be identified	1 477
2. Discontinued by the public prosecutor due to the lack of an established offence or a specific legal situation	3 345
3. Discontinued by the public prosecutor for reasons of opportunity	NA

**109) Do the figures include traffic offence cases?**

Yes

No

**D.2 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 108

In 2012 public prosecutor discounted 3345 cases due to lack of reasonable suspicion that a certain person has committed a criminal offence that is prosecuted ex officio.

Mail from the NC sent on 29/04/2014:

Q. 107:

The new Criminal Procedure Code has been adopted in 2009. This Law is in force from the 1st September 2011. One of the novelties of this Code is the "plea bargaining". The Code prescribes that in the case of criminal proceedings for a criminal offence or concurrence of criminal offences for which a prison sentence of up to 10 years is envisaged, the State Prosecutor or the accused person and his/her defense attorney may propose that an agreement on the admission of guilt be concluded.

[Mail from NC 19/05/2014 Q108 : It seems that we do not have total number of cases discontinued by the public prosecutors, but just a number for two categories.

There were 3354 cases discontinued by the public prosecutor due to a reason that the act in question is not a criminal offence prosecuted by virtue of office. (In our legal system there are criminal offences prosecuted by a virtue of office - by a public prosecutor and those prosecuted upon a private complaint. This is just one of the reasons for the discontinuation of case in our legal system, and in Evaluation Scheme there is no adequate column for this category. Column which is the most appropriate for this category is "Discontinued by the public prosecutor due to the lack of an established offence or a specific legal situation", referring to the second part of the category "specific legal situation". ]

**Please indicate the sources for answering questions 91, 94, 97, 98, 99, 100, 101, 102, 107 and 108.**

Q 91 - 102 - Secretariat of Judicial Council

Q 107, 108 - Supreme State Prosecutor's Office

## 5. Career of judges and public prosecutors

### 5. 1. Recruitment and promotion

#### 5. 1. 1. Recruitment and promotion

##### **110) How are judges recruited?**

- Mainly through a competitive exam (for instance, following a university degree in law)
- Mainly through a recruitment procedure for legal professionals with long-time working experience in the legal field (for example lawyers)
- A combination of both (competitive exam and working experience)
- Other

If "other", please specify:

Judges in Montenegro are appointed by the Judicial Council as autonomous and independent authority.

Law on Judicial Council ("Official Gazette" MNE, no. 13/2008, 39/2011, 31/2012, 46/2013 i 51/2013", regulates procedure for appointment of judges and presidents of courts.

A judge and court president shall be appointed on the basis of a public announcement. The Judicial Council shall notify the court president when a vacancy for the position of a judge is open. In the event a vacancy for court president is open the Judicial Council shall notify the president of the court that is of the next higher instance.

The Judicial Council shall publish announcements of vacant positions of judge and court president in the Official Gazette of Montenegro and in one of the print media.

Law prescribes criteria for the appointment of a judge appointing for the first time: 1) Professional knowledge gained that is assessed on the basis of: Average grade and the duration of studies; Professional training; Degree awarded; Computer literacy and foreign language skills; 2) Ability to perform judicial office that is assessed on the basis of: written examination, work experience and communication skills and personal conduct 3) Worthiness for the performance of judicial office that is assessed on the basis of: the fact that he/she has not been convicted for criminal offences that would render him/her unworthy of judicial office, nor sentenced in a misdemeanor procedure; Reputation and irreproachable conduct; Relationship with colleagues and clients.

Criteria for the appointment of an advancing judge are: 1) Knowledge that is assessed on the basis of: professional training; degree awarded; published scientific papers and expertise and other professional activities; computer literacy and foreign languages skills. 2) Capability of holding a judicial office that is assessed on the basis of: work experience; work performance during the last three years assessed on the basis of: number and type of resolved cases and the manner of resolving the cases; the number of confirmed, altered, abolished judgments and the judgement resulting in trials conducted upon legal remedies; percentage of resolved cases in relation to approximate norms; resolving cases in the order of their receipt; acting in a timely manner and the time needed for drafting judgments; the number of cases which resulted in the statute of limitations; the number of justified review requests; - Communication skills and personal conduct. 3) Worthiness for holding a judicial office assessed on the basis of: Violations of the Code of Ethics for judges; Relationship with colleagues and clients; Reputation and irreproachable conduct.

A court president, in addition to above stated criteria shall be capable of managing and organizing the work in a court, which comprises the following: Ability to organize work; Knowledge of court administration; Reputation that a candidate enjoys among the judges of the court in which he/she performs judicial office; Dedication to preserve the independence of courts and judges.

For the judges that are appointed for the first time, law prescribes written examination conducted by the Commission for testing that is appointed by the Judicial Council. Written examination is anonymous and questions available on the website of the Judicial Council. After the examination, the President and members of the Judicial Council shall interview the candidate who meets the criteria for the appointment.

A candidate applying for a judge office may score the total of 100 points on the basis of: 1) acquired knowledge – up to 20 points; 2) capability of holding a judicial office – up to 60 points; 3) worthiness for holding a judicial office – up to 20 points.

A candidate to be appointed as a judge for the first time, within the score prescribed, shall score at least 40 points at the written examination. A candidate who scores less than 60 points is assessed by "unsatisfactory".

On the basis of the interview and the acquired documentation, members of the Judicial Council shall assess a candidate according to the criteria, fulfilling the special form prescribed by the Rules of Procedures of the Judicial Council.

Members of the Judicial Council shall submit the assessment form with total score of points gained to the Commission that shall establish the average number of points scored on the basis of the number of points awarded to each candidate by each member of the Judicial Council.

On the basis of the average number of points the Commission shall compile the ranking list that shall be submitted to the Judicial Council for taking decision.

The Judicial Council shall make the decision on the appointment through voting by secret ballot, and the decision shall include a written reasoning.

Applicants shall be entitled to have an insight in their own entire documentation, as well as in the written test and the final score of other applicants who applied for the vacancy for a judge position within 30 days following the day of the decision on the appointments. The Judicial Council's decision on the appointment of a judge is final but an administrative proceeding may be instituted to contest the decision.

President of the Supreme Court is elected by the Judicial Council.

**110.1) Are there specific provisions for facilitating gender equality within the framework of the procedure for recruiting judges?**

- Yes  
 No

If "yes", please specify:

Law on Judicial Council prescribes that in making a decision on the appointment of judges and presidents of courts, the Judicial Council shall maintain a proportional representation of minorities and other minority ethnic groups and gender-balanced representation.

**111) Authority(ies) in charge: are judges initially/at the beginning of their carrier recruited and nominated by:**

**[This question strictly concerns the authority entrusted with the decision to recruit (not the authority formally responsible for the nomination if different from the former)].**

- An authority made up of judges only?  
 An authority made up of non-judges only?  
 An authority made up of judges and non-judges?

Please indicate the name of the authority(ies) involved in the whole procedure of recruitment and nomination of judges. If there are several authorities, please describe their respective roles:

Judicial Council is responsible for election of judges and presidents of courts.  
Please, see Q 110.

**112) Is the same authority competent for the promotion of judges?**

- Yes  
 No

If no, which authority is competent for the promotion of judges ?

Judicial Council is competent for the promotion of judges.  
Please, see Q 110.

**112.1) Are there specific provisions for facilitating gender equality within the framework of the procedure for promoting judges?**

- Yes  
 No

If "yes", please specify:

Yes, there are special provisions for facilitating gender equality within the framework of the procedure for promoting judges.  
Please, see Q 110.1.

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

Please, see Q 110.

**114) Is there a system of qualitative individual assessment of the judges' activity?**

- Yes  
 No

If yes, please indicate the frequency  
Twice a year.

**115) Is the status of prosecution services:**

- Independent?
- Under the authority of the Minister of justice ?
- Other?

Please specify:

Constitution of Montenegro envisaged that the State Prosecution shall be a unique and independent state authority that performs the affairs of prosecution of the perpetrators of criminal offenses and other punishable acts who are prosecuted ex officio.

**116) How are public prosecutors recruited?**

- Mainly through a competitive exam (for instance, following a university degree in law)
- Mainly through a recruitment procedure for legal professionals with long-time working experience in the legal field (for example lawyers)
- A combination of both (competitive exam and working experience)
- Other

If "other", please specify:



A manager of a state prosecutor's office and state prosecutor shall be elected on the basis of a public vacancy notice.

The Prosecutorial Council shall issue a vacancy notice for a manager of a state prosecutor's office no later than two months prior to the expiry of his or her terms of office, and a vacancy notice for a state prosecutor no later than 15 days as of learning of the vacancy, in the Official Gazette of Montenegro and one of the print media outlets. Requirements for first election as a state prosecutor shall be as follows:

- (1) acquired knowledge assessed by the following sub criteria:
  - (a) average grade and length of studies,
  - (b) professional trainings,
  - (c) title awarded,
  - (d) computer literacy and foreign language skills.
- (2) ability to execute prosecutor's office assessed on the basis of the following sub criteria:
  - (a) written examination;
  - (b) work experience;
  - (c) communication skills and personal conduct.
- (3) decency to execute prosecutor's office assessed on the basis of the following sub criteria:
  - (a) the fact that he/she has not been convicted for criminal offences which renders him/her unworthy of holding a prosecutorial office, nor sentenced in a misdemeanor procedure;
  - (b) reputation and irreproachable conduct,
  - (c) Relationship with colleagues and clients.

Criteria for the election of an advancing state prosecutor shall be as follows:

- (1) acquired knowledge being assessed based on:
  - (a) professional development;
  - (b) scientific title awarded;
  - (c) published science and technical work and other professional activities,
  - (d) computer literacy and foreign languages skills;
- (2) capacity to perform prosecutor's office being assessed based on the following sub criteria:
  - (a) work experience;
  - (b) work performance during the last three years assessed on the basis of: number and type of resolved cases in a year, the manner of resolving the cases (regular or summary proceedings, the alternative resolution of disputes, financial investigations); quality of work (the number of confirmed indictments and legal remedies afforded); resolving cases in the order of their receipt; acting in a timely manner and meeting the legal deadlines for initiating and conducting activities in a proceedings,
  - (c) communication skills and personal conduct
- (3) worthiness to execute prosecutor's office being assessed based on the following sub criteria:
  - (a) observance of the Code of Prosecution Ethics;
  - (b) relationship with colleagues and clients.
  - (c) reputation and irreproachable conduct.

In addition to the criteria above stated, a manager of a state prosecution office shall have the ability of managing and organizing the work in the State Prosecutor's Office that refers to the following:

- 1) ability to organize work;
- 2) knowledge of Prosecutor's Administration affairs;
- 3) the reputation that the candidate has in the Prosecutor's office in which he/she is employed;
- 4) commitment to preserve the reputation of the State Prosecution Service in the public.

The Prosecutorial Council shall arrange interviews with the applicants who meet the requirements for election.

Immediately after the interview, the Prosecutorial Council shall fill in a standard candidate assessment form, which shall contain an assessment of each candidate and an explanatory note on the assessment.

The Prosecutorial Council, through its three-member Commission with at least two members from among the state prosecutors, shall conduct written testing of the candidates being elected for a state prosecutor for the first time prior to the interview. The Commission shall prepare and assess the test which is anonymous. The written test shall be composed of a group of questions published on the website of the Prosecutorial Council.

A candidate being elected for a manager of a state prosecution office or state prosecutor may score 100 points in total based on:

1. acquired knowledge up to 20 points;
2. ability to execute prosecutor's office up to 60 points;

3. worthiness to execute prosecutor's office up to 20 points.

A candidate to be elected a state prosecutor for the first time, within the total score shall score at least 40 points at the written examination.

A candidate who scores less than 60 points shall be graded as "unsatisfactory".

Based on the conducted interview, the obtained documentation and the opinion on candidates' professional and working qualities given by their employer, the members of the Prosecutorial Council assess the candidates according to the prescribed criteria by fulfilling the form prescribed by the Rules of Procedure of the Prosecutorial Council. Members of the Prosecutorial Council shall submit the fulfilled form for assessment of candidates determining the total number of points that the candidate achieved, to the Commission which shall determine the average number of points earned, on the basis of the assessment made by each member of the Prosecutorial Council.

The Prosecutorial Council shall make a decision on election of a manager of a state prosecution office or a state prosecutor at a closed session.

A manager of state prosecution office shall at the same time be elected as state prosecutor in the state prosecution office he or she heads, except if the elected manager has already been elected a state prosecutor in the same state prosecutor's office.

If he or she is not re-elected, a manager of a state prosecutor's office shall remain at the position of a state prosecutor upon expiry of his or her term of office in the state prosecutor's office he or she headed.

The decision on election must include a written justification.

The Prosecutorial Council shall publish the decision on election in the Official Gazette of Montenegro and shall inform the elected candidate, the state prosecutor's office he or she is elected to and the Ministry of Justice about the decision on election.

When making the decision on election the Prosecutorial Council is under a duty to take account of proportional representation of members of minority peoples and other minority ethnic communities and gender balance.

A candidate shall be entitled to have an insight in their own documentation, as well as in the written test, the opinion and in the final score of other applicants who applied for the vacancy for a position of a manager of a state prosecutor's office or a state prosecutor within 30 days following the day of the decision on the election.

Decision of the Prosecutorial Council on the election of a manager of a state prosecutor's office or a state prosecutor shall be final and an administrative dispute may be instituted against it.

Procedure for the election of the Chief State Prosecutor is different. The Supreme State Prosecutor shall be elected and released from duty by the Parliament of Montenegro after the hearing with the competent working body of the Parliament, at proposal of the Prosecution Council, upon the announced public invitation.

The Supreme State Prosecutor and the heads of state prosecution offices shall be elected for the period of five years.

The Prosecutorial Council shall establish a proposal for election of the Supreme State Prosecutor at a closed session on the basis of the list of candidates and submit a reasoned proposal for election to the Parliament of Montenegro with the list of candidates.

The Parliament shall elect and release from duty the Supreme State Prosecutor by two-third majority vote in the first voting and by three-fifth majority in the second voting of all the Members of the Parliament no sooner than a month.

In the first voting the Parliament shall elect the Supreme State Prosecutor at proposal of the Prosecution Council. If the proposed candidate is not supported by the required majority, in the second voting the Parliament shall elect the Supreme State Prosecutor from among all the candidates that meet the legal requirements.

**117) Authority(ies) in charge: are public prosecutors initially/at the beginning of their carrier recruited by:**

**[This question concerns the authority entrusted with the responsibility to recruit only (not the authority formally responsible for the nomination if different from the former).]**

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

Please indicate the name of the authority(ies) involved in the whole procedure of recruitment

and nomination of public prosecutors. If there are several authorities, please describe their respective roles:

According to the Constitution of Montenegro, Prosecutorial Council appoints and dismisses managers of state prosecutor's offices and state prosecutors. The Prosecutorial Council have a chair and ten members. The Chief State Prosecutor is the chair of the Prosecutorial Council. Members of Prosecutorial Council are as follows:

- five state prosecutors with permanent office and no less than five years of working experience in the performance of prosecutor's office, four of whom are from the Supreme Prosecutor's Office and high prosecutor's offices and one from basic prosecutor's offices; they shall all be elected and dismissed by the Conference of State Prosecutors;
- four prominent lawyers, who shall be elected and dismissed by the Parliament, at a proposal of a relevant working body;
- one representative of the Ministry of Justice, who shall be appointed by the Minister of Justice from among Ministry of Justice staff.

The composition of the Prosecutorial Council shall be promulgated by the President of Montenegro.

**117.1) Are there specific provisions for facilitating gender equality within the framework of the procedure for recruiting prosecutors?**

- Yes  
 No

If "yes", please specify:

Law on State prosecutor's Office prescribes that when making the decision on election of a manager of a state prosecution office or a state prosecutor, the Prosecutorial Council is under a duty to take account of proportional representation of members of minority peoples and other minority ethnic communities and gender balance.

**118) Is the same authority formally responsible for the promotion of public prosecutors?**

- Yes  
 No

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

**119) Which procedures and criteria are used for promoting public prosecutors? Please specify:**

Please, see Q 116.

**119.1) Are there specific provisions for facilitating gender equality within the framework of the procedure for promoting prosecutors?**

- Yes  
 No

If "yes", please specify:

Please, see Q 116 and 117.

**120) Is there a system of qualitative individual assessment of the public prosecutors' activity?**

- Yes  
 No

**121) Are judges appointed to office for an undetermined period (i.e. "for life" = until the official age of retirement)?**

-----

**If yes, are there exceptions (e.g. dismissal as a disciplinary sanction)? Please specify in the "comment" box below**

Yes. If yes, please indicate the compulsory retirement age	67
--	----

No	
----	--

Comment :

Constitution of Montenegro envisages that the judicial duty shall be permanent.

The duty of a judge shall cease at his/her own request, when he/she fulfills the requirements for age pension and if the judge has been sentenced to an unconditional imprisonment sentence.

The judge shall be released from duty if he/she has been convicted for an act that makes him unworthy of the position of a judge; performs the judicial duty in an unprofessional or negligent manner or loses permanently the ability to perform the judicial duty.

**121.1) Can a judge be transferred to another court without his consent:**

- For disciplinary reasons  
 For organisational reasons  
 For other reasons. Please specify modalities and safeguards

Please specify modalities and safeguards

Law on Judicial Council ("Official Gazette" MNE, no. 13/2008, 39/2011, 31/2012, 46/2013 i 51/2013) prescribes that in the event of a reorganization of the courts due to which judicial positions are reduced or abolished, the Judicial Council may reassign or transfer a judge to another court without his/her consent.

Costs incurred due to the reassignment or transfer of a judge to another court, without his/her consent, shall be borne by the court to which the judge has been reassigned or transferred, except for the salary that the judge receives from the court from which he/she has been reassigned or transferred.

**122) If there is a probation period for judges (e.g. before being appointed "for life"), how long is this period? If the situation is not applicable in your country, please indicate NAP.**

	Duration of the probation period (in years)
Yes	
No	NO
NAP	

**123) Are public prosecutors appointed to office for an undetermined period (i.e. "for life" = until the official age of retirement)?**

-----  
**If yes, are there exceptions (e.g. dismissal as a disciplinary sanction)? Please specify in the "comment" box below:**

Yes. If yes, please indicate the compulsory retirement age	67
No	

Comment :

According to the Amendments to the Constitution of Montenegro, function of the state prosecutor is permanent.

Exceptionally, the person that is elected for the state prosecutor for the first time shall be elected for the period of four years.

The term of office of the head of the state prosecution office and the state prosecutor shall cease or the same shall be released from duty in the cases and according to the procedure as defined by the law.

The head of the state prosecution office and the state prosecutor shall be released from duty if they are convicted to effective prison term by the final and binding judgment.

Law on State Prosecutor's Office regulates this issue in a more detailed way. According to the Law, The office of a manager of a state prosecutor's office or of a state prosecutor shall be terminate:

- 1) at the expiry of the term of office,
- 2) on resignation,
- 3) on meeting the requirements for retirement,
- 4) on cessation of citizenship,
- 5) if he or she becomes a member of political party bodies.

The Supreme State Prosecutor, a manager of a state prosecutor's office or a state prosecutor shall be removed from duty in the case laid down by the Constitution or if:

- 1) he or she has been convicted of a criminal offence which makes him or her unworthy of performing prosecutor's office;
- 2) he or she performs prosecutor's office unprofessionally or negligently;
- 3) he or she has permanently lost the ability to perform the office.

A manager of a state prosecutor's office shall also be removed from duty if:

- 1) he or she fails to achieve satisfactory results in managing tasks that form the core of prosecutor's office;
- 2) fails to initiate procedure for removal or disciplinary responsibility of a state prosecutor when authorized to do so and when he or she is aware of the reasons for removal or ought to have been aware of such reasons;
- 3) if he or she has been imposed a disciplinary measure twice during his or her term of office.

**124) Is there a probation period for public prosecutors? If yes, how long is this period? If the situation is not applicable in your country, please indicate NAP.**

	Duration of the probation period (in years)
Yes	4 for the first appointment
No	
NAP	

**125) If the mandate for judges is not for an undetermined period (see question 121), what is the length of the mandate (in years)? Is it renewable?**

NAP

**126) If the mandate for public prosecutors is not for an undetermined period (see question 123), what is the length of the mandate (in years)? Is it renewable?**

NAP

**E.1 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 public prosecutors and the main reforms that have been implemented over the last two years

## 5. 2. Training

### 5. 2. 1. Training

#### 127) Training of judges

Initial training (e.g. attend a judicial school, traineeship in the court)	Optional
General in-service training	Compulsory
In-service training for specialised judicial functions (e.g. judge for economic or administrative issues)	Compulsory
In-service training for management functions of the court (e.g. court president)	Optional
In-service training for the use of computer facilities in courts	Optional

#### 128) Frequency of the in-service training of judges:

General in-service training	Annual / Regular (e.g. every 3 months)
In-service training for specialised judicial functions (e.g. judge for economic or administrative issues)	Annual / Regular (e.g. every 3 months)
In-service training for management functions of the court (e.g. court president)	Annual / Regular (e.g. every 3 months)
In-service training for the use of computer facilities in courts	Occasional (e.g. at times)

**129) Training of public prosecutors**

Initial training	Optional
General in-service training	Compulsory
In-service training for specialised functions (e.g. public prosecutor specialised on organised crime)	Compulsory
In-service training for management functions of the court (e.g. Head of prosecution office, manager)	Optional
In-service training for the use of computer facilities in office	Optional

**130) Frequency of the in-service training of public prosecutors**

General in-service training	Annual / Regular (e.g. every 3 months)
In-service training for specialised functions (e.g. public prosecutor specialised on organised crime)	Annual / Regular (e.g. every 3 months)
In-service training for management functions of the court (e.g. Head of prosecution office, manager)	Occasional (e.g. at times)
In-service training for the use of computer facilities in office	Occasional (e.g. at times)

**131) Do you have public training institutions for judges and / or prosecutors? If yes, please indicate the budget of such institution(s) in the "comment" box below.**

-----  
**If your judicial training institutions do not correspond to these criteria, please specify it:**

	Initial training only	Continuous training only	Initial and continuous training	2012 budget of the institution, in €
One institution for judges	No	No	No	No
One institution for prosecutors	No	No	No	No
One single institution for both judges and prosecutors	No	No	Yes	Yes

Comment :

Judicial Training Center is organized as a separate organizational unit of the Supreme Court of Montenegro and thus do not have separate budget.

This does not imply that other sources of finance are not possible. On the contrary, other funding options are completely open (donations, grants, etc.)

In 2012, approximately 90000 euros had been spent on the activities of the Center, including salaries of the employees (4).

**131.1) If there is no initial training for judges and/or prosecutors in such institutions, please indicate briefly how these judges and/or prosecutors are recruited and trained ?****E.2 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 public prosecutors and the main reforms that have been implemented over the last two years**

Mail from the NC sent on 07/05/2014:

Q. 128:

Except the "in-service training for the use of computer facilities in courts", the other types of training were indicated as "regular" in 2010 and according to data for 2012, they are "occasional". This is due to the fact that all of the judges participated in trainings during 2010.

**5. 3. Practice of the profession****5. 3. 1. Practice of the profession****132) Salaries of judges and public prosecutors.**

	Gross annual salary, in €, on 31	Net annual salary, in €, on 31
--	----------------------------------	--------------------------------

	December 2012	December 2012
First instance professional judge at the beginning of his/her career	20170	13514
Judge of the Supreme Court or the Highest Appellate Court (please indicate the average salary of a judge at this level, and not the salary of the Court President)	27934	18716
Public prosecutor at the beginning of his/her career	21872	NA
Public prosecutor of the Supreme Court or the Highest Appellate Instance (please indicate the average salary of a public prosecutor at this level, and not the salary of the Public prosecutor General)	26892	NA

**Comment :**

Annual gross salary for deputies of the prosecutor in basic prosecution offices was around 21872 €, for the deputies in high prosecution offices - 25449 €, for the deputies of the Supreme state prosecutor - 26892 €, and for the deputies of the specialized prosecutor - 35937 €.

Sources: Secretariat of the Judicial Council and Supreme State Prosecutor's Office.

**133) Do judges and public prosecutors have additional benefits?**

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

**134) If other financial benefit, please specify:**

In accordance with the Law on Salaries and Other Emoluments of Holders of Judicial and Constitutional Court Offices ("Official Gazette" RMNE, no.53/2007), judges and prosecutors are entitled to a supplement for function, in the amount of 30% of the salary determined.

Holder of judicial function that does not have an apartment, condominium building owned, co-owned or jointly owned, or not living with the parent or spouse is entitled to reimbursement of part of the cost of renting an apartment in the amount of three minimum wages per month.

Holder of judicial function is entitled to life insurance.

Law on courts prescribes that a judge adjudicating criminal offences of organized crime, corruption, terrorism and war crimes shall be entitled to the monthly salary amounting to the salary of a judge of the Supreme Court, as well as to a special hardship allowance. The amount of the special allowance shall be set by the Judicial Council, in the amount of up to one average salary in Montenegro.

Law on State Prosecutor's Office prescribes that the Special Prosecutor, a Deputy Special Prosecutor, shall be entitled to special hardship allowance of up to one average salary in Montenegro.

Mail from the NC sent on 29/04/2014:

In 2012 prosecutors were entitled to a special allowance for paying the rent while in 2010 they were not.

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

	With remuneration	Without remuneration
Teaching	Yes	Yes
Research and publication	Yes	Yes
Arbitrator	No	No
Consultant	No	No
Cultural function	No	No
Political function	No	No
Other function	No	No

**136) If rules exist in your country (e.g. authorisation needed to perform these activities), please specify. If "other function", please specify.**

Constitution of the Montenegro envisages that the judge may not perform the duty of a Member of the Parliament or other public duty or professionally be engaged in any other activity.

Law on Judicial Council prescribes that a judge may seek the opinion of the Judicial Council on whether certain activities are incompatible with his/her judicial office and the Judicial Council shall take a decision regarding the matter.

[Q135 Mail NC 19/05/2014 : Mail from the NC sent on 19/05/2014:

Please note that the Constitution of Montenegro envisages that the judge shall not discharge duties of a Member of the Parliament or other public duties or professionally perform some other activity.

The Law on Judicial Council prescribes that a judge may seek the opinion of the Judicial Council on whether certain activities are incompatible with his/her judicial office and the Judicial Council shall take a decision regarding the matter. So maybe different answers are due to the fact that Judicial Council can decide upon every particular case what activity may be performed by the judge and there is no document stating explicitly what activities judge can perform.]

**137) Can public prosecutors combine their work with any of the following other functions ?**

	With remuneration	Without remuneration
Teaching	Yes	Yes
Research and publication	Yes	Yes
Arbitrator	No	No
Consultant	No	No
Cultural function	No	No
Political function	No	No
Other function	No	No

**138) Please specify existing rules (e.g. authorisation to perform the whole or a part of these activities). If "other function", please specify:**

The head of the state prosecution office and the state prosecutor may not perform the duty of a Member of the Parliament or other public duty or professionally be engaged in any other activity.

Law on State Prosecutor's Office prescribes that a manager of the state prosecutor's office and a state prosecutor may request the Prosecutorial Council to issue an opinion as to whether the performance of specific tasks is incompatible with the performance of prosecutor's office.

Mail from the NC sent on 29/04/2014:

A new Ethical Code of Prosecutors has been adopted, containing provisions on incompatibilities concerning the function of the state prosecutor

**139) Productivity bonuses: do judges receive bonuses based on the fulfilment of quantitative objectives in relation to the delivery of judgments (e.g. number of judgments delivered over a given period of time)?**

- Yes  
 No

If yes, please specify the conditions and possibly the amounts:

**5. 4. Disciplinary procedures**

**5. 4. 1. Disciplinary procedures**

**140) Who has been authorised to initiate disciplinary proceedings against judges (multiple options possible)?**

- Citizens  
 Relevant Court or hierarchical superior  
 High Court / Supreme Court  
 High Judicial Council  
 Disciplinary court or body  
 Ombudsman  
 Parliament  
 Executive power



- Other  
 This is not possible

If "executive power" and/or "other", please specify:

A proposal for determining the disciplinary liability of a judge may be submitted by a court president, the president of a court of the next higher instance and the President of the Supreme Court, and by the general session of the Supreme Court for the President of the Supreme Court.

The Commission for the Code of Ethics for Judges may submit the proposal for establishing disciplinary liability of a judge and a court president for the acts against the honor of a judicial office, in cases specified by law.

**141) Who has been authorised to initiate disciplinary proceedings against public prosecutors: (multiple options possible):**

- Citizens  
 Head of the organisational unit or hierarchical superior public prosecutor  
 Prosecutor General /State public prosecutor  
 Public prosecutorial Council (and Judicial Council)  
 Disciplinary court or body  
 Ombudsman  
 Professional body  
 Executive power  
 Other  
 This is not possible

If "executive power" and/or "other", please specify:

A proposal to establish responsibility of the Supreme State Prosecutor, a manager of a state prosecutor's office or a state prosecutor shall be submitted to the Prosecutorial Council.

The proposal may be submitted as follows: for the Supreme State Prosecutor – by the session of the Supreme State Prosecutor's Office, for a manager of a state prosecutor's office – by the Supreme State Prosecutor and the manager of immediately superior prosecutor's office, for state prosecutors – by the manager of the state prosecutor's office in which the state prosecutor performs his or her office.

A person entitled to initiate disciplinary proceedings request the Commission for the Code of Prosecution Ethics to issue an opinion as to whether a specific conduct of a manager of a state prosecution office or of a state prosecutor is in line with the Code of Prosecution Ethics. A request for an opinion may also be made by a manager of state prosecution office and/or state prosecutor.

**142) Which authority has disciplinary power on judges? (multiple options possible):**

- Court  
 Higher Court / Supreme Court  
 Judicial Council  
 Disciplinary court or body  
 Ombudsman  
 Parliament  
 Executive power  
 Other

If "executive power" and/or "other", please specify:

The procedure for establishing disciplinary liability of a judge shall be conducted by the Disciplinary Committee, which shall be appointed by the Judicial Council for a two-year term. Disciplinary Commission shall have a president and two members. President of the Disciplinary Committee shall be appointed from among lay members of the Judicial Council, while two members of the Commission shall be appointed from among judges who are not members of the Judicial Council and who have at least 15 years of work experience.

**143) Which authority has the disciplinary power on public prosecutors? (multiple options possible):**

- Supreme Court  
 Head of the organisational unit or hierarchical superior public prosecutor  
 Prosecutor General /State public prosecutor  
 Public prosecutorial Council (and Judicial Council)  
 Disciplinary court or body  
 Ombudsman  
 Professional body  
 Executive power  
 Other

If "executive power" and/or "other", please specify:

Mail from the NC sent on 29/04/2014:

The Law on State Prosecutor's Office had been amended.

**144) Number of disciplinary proceedings initiated against judges and public prosecutors. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP. If "other", please specify it in the "comment" box below.**

**[If disciplinary proceedings are undertaken because of several mistakes, please count the proceedings only once and for the main mistake.]**

	Judges	Public prosecutors
Total number (1+2+3+4)	1	2
1. Breach of professional ethics	1	0
2. Professional inadequacy	0	0
3. Criminal offence	NAP	NAP
4. Other	0	2

Comment :

Other - The disciplinary proceeding against two public prosecutors had been initiated for exercising prosecutor's office in a negligent manner.

[Mail from NC 19/05/2014 : Mail from the NC sent on 13/05/2014:

The Law on Courts prescribes disciplinary responsibility of a judge in case of: undue performance of judicial duties, harming reputation of judicial office, unprofessional and negligent performance of the judicial duty. The Law on Courts prescribes in a detailed manner what each of these disciplinary reasons includes.

The Law on State Prosecutor's Office prescribes that the Chief State Prosecutor, a manager of a state prosecution's office or state prosecutor shall be subject to disciplinary proceedings if he or she exercises his or her office in a negligent manner or if he or she harms the reputation of the prosecutorial office.

Also, the Law on State Prosecutor's Office prescribes in a detailed manner what each of these disciplinary reasons includes.

Explanation of the column 4 "Other" - The disciplinary proceedings against two public prosecutors had been initiated for exercising prosecutor's office in a negligent manner.]

**145) Number of sanctions pronounced in 2012 against judges and public prosecutors. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

**If "other", please specify it in the "comment" box below. If a significant difference between the number of disciplinary proceedings and the number of sanctions exists, please indicate the reasons in the "comment" box below.**

	Judges	Public prosecutors
Total number (total 1 to 9)	1	2
1. Reprimand	1	0
2. Suspension	NAP	NAP
3. Removal of cases	NAP	NAP
4. Fine	0	2
5. Temporary reduction of salary	NAP	NAP
6. Position downgrade	NAP	NAP
7. Transfer to another geographical (court) location	NAP	NAP
8. Resignation	NAP	NAP

9. Other	NAP	NAP
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Comment :

**E.3 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 public prosecutors and the main reforms that have been implemented over the last two years

Q 143 - The procedure to establish disciplinary liability of a manager of a state prosecutor's office or a state prosecutor shall be conducted by the Disciplinary Committee appointed by the Prosecutorial Council (hereinafter referred to as "the Disciplinary Committee").

The Disciplinary Committee shall have a Chairman and two members.

The Chairman of the Disciplinary Committee shall be appointed from among members of the Prosecutorial Council who are not managers of state prosecutor's office or state prosecutors. The members of the Disciplinary Committee shall be appointed from among the prosecutors or deputies not being members of the Prosecutorial Council upon the proposal of those members of the Prosecutorial Council who are prosecutors and deputies.

**Please indicate the sources for answering questions 144 and 145**

Secretariat of the Judicial Council and Supreme State Prosecutor's Office

## 6. Lawyers

### 6. 1. Status of the profession and training

#### 6. 1. 1. Status of the profession and training

**146) Total number of lawyers practising in your country.**

704

**147) Does this figure include "legal advisors" who cannot represent their clients in court (for example, some solicitors or in-house counsellors)?**

- Yes  
 No

**148) Number of legal advisors who cannot represent their clients in court:**

NA

**149) Do lawyers have a monopoly on legal representation in (multiple options are possible):**

- Civil cases?  
 Criminal cases - Defendant?  
 Criminal cases - Victim?  
 Administrative cases?  
 There is no monopoly

If there is no monopoly, please specify the organisations or persons that may represent a client before a court (for example a NGO, a family member, a trade union, etc) and for which types of cases:

**150) Is the lawyer profession organised through? (multiple options possible)**

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

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

- Yes  
 No

If not, please indicate if there are other specific requirements as regards diplomas or university degrees :

**152) Is there a mandatory general system for lawyers requiring in-service professional training?**

- Yes  
 No

**153) Is the specialisation in some legal fields tied with specific training, levels of qualification, specific diploma or specific authorisations?**

- Yes  
 No

If yes, please specify:

**Please indicate the sources for answering questions 146 and 148:**

Bar Association of Montenegro

**F1 Comments for interpreting the data mentioned in this chapter:****6. 2. Practising the profession****6. 2. 1. Practising the profession****154) Can court users establish easily what the lawyers' fees will be (i.e. do users have easy access to prior information on the foreseeable amount of fees, is the information transparent and accountable)?** Yes No**155) Are lawyers' fees freely negotiated?** Yes No**156) Do laws or bar association standards provide any rules on lawyers' fees (including those freely negotiated)?** Yes laws provide rules Yes standards of the bar association provide rules No, neither laws nor bar association standards provide rules**F2 Useful comments for interpreting the data mentioned in this chapter:**

Lawyer's Fee is regulated by the special act which determines costs for each legal service performed by lawyer.

Also, it prescribes that fee may be subject to mutual agreement of the client and the lawyer.

**6. 3. Quality standards and disciplinary proceedings****6. 3. 1. Quality standards and disciplinary proceedings****157) Have quality standards been determined for lawyers?** Yes No

If yes, what are the quality criteria used?

Pursuant to the Law on Advocacy ("Official Gazette" RMNE, no: 79/2006), advocacy may be practiced by advocates that are enrolled in the directory of the Bar Association. The right on the enrollment has the person who fulfills conditions prescribed by the Law. Among other conditions, one must meet the requirements for trustworthy to practice advocacy. This means that the Steering Committee of the Bar Association has the discretion to refuse an enrollment, if it assesses that person does not meet this requirement.

**158) If yes, who is responsible for formulating these quality standards:** the bar association? the Parliament? other?

If "other", please specify:

**159) Is it possible to file a complaint about :**

- the performance of lawyers?
- the amount of fees?

Please specify:

Every person who believes that the attorney in performing his duty had violated some of professional obligations, is entitled to file disciplinary complaints against lawyer. This right is also referred to the amount of fees. Such complains should be submitted in the form of disciplinary report to the Disciplinary Prosecutor of the Bar Association of Montenegro.

**160) Which authority is responsible for disciplinary procedures?**

- the judge
- the Ministry of justice
- a professional authority
- other

If other, please specify:

Disciplinary court, composed of the president (lawyer) and two members - judges (also lawyers) is responsible for disciplinary procedures upon the indictment of a Disciplinary prosecutor of The Bar Association of Montenegro.

**161) Disciplinary proceedings initiated against lawyers. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP. If "other", please specify it in the "comment" box below.**

**[If disciplinary proceedings are undertaken because of several mistakes, please count the proceedings only once and for the main mistake.]**

	Number
Total number of disciplinary proceedings initiated (1 + 2 + 3 + 4)	5
1. Breach of professional ethics	5
2. Professional inadequacy	NAP
3. Criminal offence	NAP
4. Other	0

Comment :

Mail from the NC sent on 07/05/2014:

In 2012 - 35 disciplinary charges were filed, and 5 disciplinary proceedings were initiated against lawyers. Figure of 49 in 2010 exercise refers to the number of filed disciplinary charges, not to the number of disciplinary proceedings. So, in 2010 - 49 disciplinary charges were filed, but no disciplinary proceedings were initiated, due to the fact that all of the charges were rejected as unfounded.

[Mail from NC 19/05/2014 : Mail from the NC sent on 19/05/2014:

The Statute of the Bar Association prescribes that the reasons of disciplinary responsibility are: breach of duty and damaging the reputation of legal profession. These reasons may be easier (disciplinary irregularities) and heavier (disciplinary offense). The Statute prescribes in a detailed manner what each of these disciplinary reasons includes.]

**162) Sanctions pronounced against lawyers.**

**If "other", please specify it in the "comment" box below. If a significant difference between the number of disciplinary proceedings and the number of sanctions exists, please indicate the reasons in the "comment" box below.**

Total number of sanctions (1 + 2 + 3 + 4 + 5)	0
1.Reprimand	0

2. Suspension	0
3. Removal	0
4. Fine	0
5. Other (e.g. disbarment)	0

**Comment :**

From a total of five disciplinary proceedings that were conducted against a lawyer in 2012 three proceeding are combined into one, because all of them were against same lawyer and the charges were related to the same events. In this process, disciplinary measures - removal from the list of lawyers for a period of one year had been imposed.

The other two disciplinary proceedings indictment was dismissed because statutory limitations were in place for initiating or conducting proceedings.

**F3 You can indicate below any useful comments for interpreting the data mentioned in this chapter:**

## 7. Alternative Dispute Resolution

### 7. 1. Mediation and other forms of ADR

#### 7. 1. 1. Mediation and other forms of ADR

**163) Does the judicial system provide for judicial mediation procedures? If no skip to question 168**  
-----

**Judicial mediation: in this type of mediation, there is always the intervention of a judge or a public prosecutor who facilitates, advises on, decides on or/and approves the procedure. For example, in civil disputes or divorce cases, judges may refer parties to a mediator if they believe that more satisfactory results can be achieved for both parties. In criminal law cases, a public prosecutor can propose that he/she mediates a case between an offender and a victim (for example to establish a compensation agreement).**

- Yes  
 No

**163.1) In some fields, does the judicial system provide for mandatory mediation procedures?**  
-----

**If there are mandatory mediation procedures, please specify which fields are concerned in the "comment" box below.**

- Before going to court  
 Ordered by a judge in the course of a judicial proceeding

If there are mandatory mediation procedures, please specify which fields are concerned:

In the disputes for divorce of marriage upon the action of one of the spouses, the procedure of mediation shall be conducted in accordance with the Law on Mediation and this Law.

Upon receiving the action the court shall schedule hearing and ask the spouses to make statements immediately as for which mediator they want to approach for the purposes of the attempt at reconciliation or i.e. achieving agreement on regulation of the legal consequences of the divorce of their marriage.

If spouses do not reach the agreement about the mediator, the mediator shall be appointed by the court.

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

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

**164) Please specify, by type of cases, the organisation of judicial mediation:**

	Court annexed mediation	Private mediator	Public authority (other than the court)	Judge	Public prosecutor
Civil and commercial cases	No	No	Yes	No	No
Family law cases (ex. divorce)	No	No	Yes	No	No
Administrative cases	No	No	No	No	No
Employment dismissals	No	No	Yes	No	No
Criminal cases	No	No	Yes	No	No

**165) Is there a possibility to receive legal aid for judicial mediation procedures?**

- Yes  
 No

If yes, please specify:

Law on legal aid prescribes that the person entitled to legal aid pursuant to this Law shall be referred to a mediation procedure or some other form of out of-court dispute settlement, provided the relevant legal requirements are met.



**166) Number of accredited or registered mediators who practice judicial mediation:**

95

**167) Number of judicial mediation procedures.**

-----

**Please indicate the source in the "comment" box below:**

Total number of cases (total 1+2+3+4+5)	<input checked="" type="checkbox"/> Yes	497
1. civil cases	<input checked="" type="checkbox"/> Yes	9
2. family cases	<input checked="" type="checkbox"/> Yes	269
3. administrative cases		NAP
4. employment dismissals cases	<input checked="" type="checkbox"/> Yes	1
5. criminal cases	<input checked="" type="checkbox"/> Yes	58

Comment :

Family disputes: Total - 269

Resolved: 129; unsolved:58; unfulfilled: 82

Property disputes: Total 2

Resolved: 0, unsolved: 1; unfulfilled: 1

Commercial Disputes - Total: 7

Resolved: 4; unsolved 3; unfulfilled: 0

Disputes before court proceedings: Total: 143

Resolved: 137; unsolved 5; unfulfilled: 1

Criminal cases: Total: 58

Resolved: 48; Unsolved 3; unfulfilled 7

Labour disputes: Total: 7

Resolved: 3; Unsolved 3; unfulfilled: 1

Other: Total 11

Resolved: 6; Unsolved 4, unfulfilled: 1

**168) Does the legal system provide for the following ADR :**

**If "other", please specify it in the "comment" box below:**

Mediation other than judicial mediation?	Yes
Arbitration?	Yes
Conciliation?	Yes
Other alternative dispute resolution?	No

Comment :

**G.1 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**

**Please indicate the source for answering question 166:**

Center for Mediation of Montenegro

## 8. Enforcement of court decisions

### 8. 1. Execution of decisions in civil matters

#### 8. 1. 1. Functioning

**169) Do you have enforcement agents in your judicial system?**

- Yes  
 No

**170) Number of enforcement agents**

54

**171) Are enforcement agents (multiple options are possible):**

- judges?  
 bailiffs practising as private professionals under the authority (control) of public authorities?  
 bailiff working in a public institution?  
 other enforcement agents?

Please specify their status and powers:

Law on Enforcement and Security Procedure prescribes that court has jurisdiction over the enforcement process and implement execution of court decisions:

- For surrender and seizure of the child;
- To restore the employee to work;
- By which the debtor is obliged to do a certain action that cannot be done by another person.

In every other case, public bailiffs are competent for execution procedure.

Public Bailiffs perform their duty as a public service, independently, professionally and as a sole occupation.

First public bailiffs are appointed in December 2013 by the decision of the Minister of Justice, upon the public call and examination conducted by special Commission.

Law on Public Bailiffs prescribes conditions, procedure for appointment as well as rights and duties of public bailiffs.

Number of public bailiffs is determined by the Ministry of Justice.

**172) Is there a specific initial training or examination to become an enforcement agent?**

- Yes  
 No

**173) Is the profession of enforcement agents organised by?**

- a national body?  
 a regional body?  
 a local body?  
 NAP (the profession is not organised)

**174) Are enforcement fees easily established and transparent for the court users?**

- Yes  
 No

**175) Are enforcement fees freely negotiated?**

- Yes  
 No

**176) Do laws provide any rules on enforcement fees (including those freely negotiated)?**

- Yes  
 No

**Please indicate the source for answering question 170:**

Bailiffs are appointed by the decision of the Minister of Justice.  
Ministry of Justice keeps records on persons who had passed examination for bailiffs.

**8. 1. 2. Efficiency of enforcement services****177) Is there a body entrusted with supervising and monitoring the enforcement agents' activity?**

- Yes  
 No

**178) Which authority is responsible for supervising and monitoring enforcement agents?**

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

If other, please specify:

**179) Have quality standards been determined for enforcement agents?**

- Yes  
 No

If yes, what are the quality criteria used?

**180) If yes, who is responsible for establishing these quality standards?**

- a professional body  
 the judge  
 the Ministry of Justice  
 other

If "other", please specify:

**181) Is there a specific mechanism for executing court decisions rendered against public authorities, including for supervising such execution?**

- Yes  
 No

if yes, please specify

**182) Is there a system for monitoring how the enforcement procedure is conducted by the enforcement**

**agent?**

- Yes  
 No

If yes, please specify

Control of public bailiffs shall be done by the Chamber.

The Chamber performs control at least once a year.

Chamber may inspect records, financial record, stored objects; receipts for amounts paid on behalf of awards and fees, and to take all other actions in accordance with law and other regulations.

If irregularities are found in the work of public bailiffs, measures prescribed by the law shall be taken.

The report on control performed shall be submitted to the Ministry of Justice.

Supervision of the work of public bailiffs and the Chamber shall be done by the Ministry, ex officio or at the request of the President of the court in whose territory the public bailiff is appointed, President of the Chamber, as well as upon the initiative of the parties and participants in the procedure.

In the framework of supervision over the legality of the performance of public bailiffs and the Chamber, authorized official of the Ministry of Justice, may order measures to eliminate shortcomings in the work of public bailiffs and set a deadline for acting on these measures.

**183) What are the main complaints made by 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

If "other", please specify:

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

**184) Has your country prepared or 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:

New Law on Enforcement and Security Procedure and Law on Public Bailiffs were adopted. First public bailiffs are appointed in December 2013, and in the next period performance and efficiency of new system will be monitored and revised, if necessary.

**185) Is there a system measuring the length of enforcement procedures:**

- for civil cases?  
 for administrative cases?

**186) As regards a decision on debts collection, please estimate the average timeframe to notify the decision to the parties who 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

**187) Number of disciplinary proceedings initiated against enforcement agents.  
If other, please specify it in the "comment" box below.**

-----  
[If disciplinary proceedings are undertaken because of several mistakes, please count the proceedings only once and for the main mistake.]

Total number of initiated disciplinary proceedings (1+2+3+4)	<input checked="" type="checkbox"/> number:	0
1. for breach of professional ethics	<input checked="" type="checkbox"/> number:	0
2. for professional inadequacy	<input checked="" type="checkbox"/> number:	0
3. for criminal offence	<input checked="" type="checkbox"/> number:	0
4. Other	<input checked="" type="checkbox"/> number:	0

Comment :

First public bailiffs had been appointed by the decision of the Minister of Justice on December, 16th 2013. Thus, they have not yet started to exercise their function.

**188) Number of sanctions pronounced against enforcement agents.**

If "other", please specify it in the "comment" box below. If a significant difference between the number of disciplinary proceedings initiated and the number of sanctions exists, please indicate the reasons in the "comment" box below.

Total number of sanctions (1+2+3+4+5)	<input checked="" type="checkbox"/> number:	0
1. Reprimand	<input checked="" type="checkbox"/> number:	0
2. Suspension	<input checked="" type="checkbox"/> number:	0
3. Dismissal	<input checked="" type="checkbox"/> number:	0
4. Fine	<input checked="" type="checkbox"/> number:	0
5. Other	<input checked="" type="checkbox"/> number:	0

Comment :

Please see Q 187

**H.1 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 have been implemented over the last two years**

First public bailiffs had been appointed by the decision of the Minister of Justice on December, 16th 2013.

**Please indicate the sources for answering questions 186, 187 and 188:**

Ministry of Justice

**8. 2. Execution of decisions in criminal matters**

**8. 2. 1. Functioning**

**189) Which authority is in charge of the enforcement of judgments in criminal matters? (multiple options possible)**

- Judge  
 Public prosecutor  
 Prison and Probation Services  
 Other authority

Please specify his/her functions and duties (initiative or monitoring functions). If "other"

authority", please specify:

Criminal sanctions are executed in the Institute for Execution of Criminal Sanctions and specialized institutions.

The basic court in which area the sentenced person has temporary or permanent residence is competent for sending the sentenced person to the Institution for Execution of Criminal Sanctions.

The competent basic court shall take the necessary actions to enforce prison sentence immediately after the receipt of the final decision, but no later than three days.

**190) Are the effective recovery rates of fines decided by a criminal court evaluated by studies?**

Yes

No

**191) If yes, what is the recovery rate?**

80-100%

50-79%

less than 50%

cannot be estimated

Please indicate the source for answering this question:

**H.2 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. Functionning

**192) Do you have notaries in your country? If no please skip to question 197.**

- Yes  
 No

**193) Are notaries:**

-----

**If other, please specify it in the "comment" box below.**

- |  |  |    |
|--|--|----|
| private professionals (without control from public authorities)?           | <input type="checkbox"/> number            |    |
| private professionals under the authority (control) of public authorities? | <input checked="" type="checkbox"/> number | 44 |
| public agents?   | <input type="checkbox"/> number            |    |
| other?   | <input type="checkbox"/> number            |    |

Comment :

**194) Do notaries have duties (multiple options possible):**

- within the framework of civil procedure?  
 in the field of legal advice?  
 to certify the authenticity of legal deeds and certificates?  
 other?

If "other", please specify:

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

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

#### 9. 1. 2. Supervision

**195) Is there an authority entrusted with supervising and monitoring the notaries' activity?**

- Yes  
 No

**196) Which authority is responsible for supervising and monitoring notaries:**

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

If other, please specify:

Professional body - The Notarial Chamber

**I.1 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**

**Please indicate the sources for answering question 193:**

Website of the Notarial Chamber.

## 10. Court interpreters

### 10. 1. Court interpreters

#### 10. 1. 1. Functioning

**197) Is the title of court interpreters protected?**

- Yes  
 No

**198) Is the function of court interpreters regulated by legal norms?**

- Yes  
 No

**199) Number of accredited or registered court interpreters:**

544

**200) Are there binding provisions regarding the quality of court interpretation within judicial proceedings?**

- Yes  
 No

If yes, please specify (e.g. having passed a specific exam):

Rule book on permanent court interpreters prescribes the requirements that candidate for court interpreter must meet, the procedure of checking the knowledge on the Constitution and organisation of judicial authorities, and appointment of court interpreters.

These procedures are in competence of The Ministry of Justice, which is also appointing the court interpreters, upon passing an exam organised within the Ministry of Justice.

**201) Are the courts responsible for selecting court interpreters?**

-----

**If no, please indicate in the "comment" box below which authority selects court interpreters.**

- Yes  for recruitment and/or appointment for a specific term of office  
 Yes  for recruitment and/or appointment on an ad hoc basis, according to the specific needs of given proceedings  
 No .

Comment :

Court interpreters are appointed by the decision of Minister of justice, after passing the exam organized by the Ministry of Justice.

Ministry of Justice keeps record of the court interpreters and submits it to courts.

In a specific proceedings, the party proposing need for translation, shall indicate the subject and scope of translation in the proposal and shall also propose the person from the record of certified court interpreters who shall provide translation. The adverse party shall make statement on the proposed interpreter. If the parties fail to reach agreement, the court shall make decision thereon.

Regardless of the agreement between parties the court may designate other interpreter if it finds the translation is a complex one.

Mail from the NC sent on 07/05/2014:

When court interpreters are appointed by the Ministry of Justice, their contact details are added to the Record of court interpreters which keeps Ministry of Justice. This Record is submitted to all courts and it is available on the internet page of the Ministry. From this Record, court and parties in the proceeding can decide whom to engage. It is important to highlight that court interpreters are not court staff and they are not permanently working in courts, but they are engaged in particular proceedings when needed.

**J.1 You can indicate below any useful comments for interpreting the data mentioned in this chapter:**

**Please indicate the sources for answering question 199:**

Record of the permanent court interpreters kept by the Ministry of Justice.

## 11. Judicial experts

### 11. 1. Judicial experts

#### 11. 1. 1. Judicial experts

**202) In your system, what type of experts can be requested to participate in judicial procedures (multiple choice possible):**

- "expert witnesses", who are requested by the parties to bring their expertise to support their argumentation,  
 "technical experts" who put their scientific and technical knowledge on issues of fact at the court's disposal,  
 "law experts" who might be consulted by the judge on specific legal issues or requested to support the judge in preparing the judicial work (but do not take part in the decision).

**203) Is the title of judicial experts protected?**

- Yes  
 No

**204) Is the function of judicial experts regulated by legal norms?**

- Yes  
 No

**205) Number of accredited or registered judicial experts (technical experts)**

751

**206) Are there binding provisions regarding the exercise of the function of judicial expert within judicial proceedings?**

- Yes  
 No

If yes, please specify, in particular the given time to provide a technical report to the judge:

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

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

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

**207) Are the courts responsible for selecting judicial experts?**

-----

**If no, please specify in the "comments" box below which authority selects judicial experts?**

- Yes  for recruitment and/or appointment for a specific term of office  
 Yes  for recruitment and/or appointment on an ad hoc basis, according to the specific needs of given proceedings  
 No .

Comment :

The party proposing expert evaluation shall indicate the subject and scope of expert evaluation in the proposal and shall also propose the person from the list of certified expert witnesses who shall provide expert evaluation. The adverse party shall make statement on the proposed expert witness. If the parties fail to reach agreement on the person to be appointed as the expert witness and on the subject and scope of the expert evaluation, the court shall make decision thereon. Regardless of the agreement between parties the court may designate other expert if it finds the examination a complex one. Expert witnesses shall predominantly be appointed from among certified court experts for a specific type of expert

evaluation. More complex expert evaluation may also be entrusted with professional institutions (hospital, chemical laboratory, university and the like).

In criminal procedure, expertise shall be ordered by a written order of the authority conducting the procedure and it shall contain the following: the task and scope of expertise examination, deadline for submitting the findings in written form and designation of the person to carry out the examination that is enrolled in the Register of Court Experts (hereinafter: the Register). The order shall be delivered to the parties as well.

**You can indicate below any useful comments for interpreting the data mentioned in this chapter:**

**Please indicate the sources for answering question 205:**

Record of Court Experts

## 12. Foreseen reforms

### 12. 1. Foreseen reforms

#### 12. 1. 1. Foreseen reforms

**208) Can you provide information on the current debate in your country regarding the functioning of justice? Are there foreseen reforms? Please inform whether these reforms are under preparation or have only been envisaged at this stage. If possible, please observe the following categories:**

**1. (Comprehensive) reform plans**

**2. Budget**

**3. Courts and public prosecution services (e.g. powers and organisation, structural changes - e.g. reduction of the number of courts -, management and working methods, information technologies, backlogs and efficiency, court fees, renovations and construction of new buildings)**

**3.1 Access to justice and legal aid**

**4. High Judicial Council**

**5. Legal professionals (judges, public prosecutors, lawyers, notaries, enforcement agents, etc.): organisation, education, etc.**

**6. Reforms regarding civil, criminal and administrative laws, international conventions and cooperation activities**

**6.1 Personal status**

**7. Enforcement of court decisions**

**8. Mediation and other ADR**

**9. Fight against crim**

1. Ministry of Justice is preparing new Strategy for the Reform of the Judiciary 2014-2017. The strategic objectives are: Strengthening the independence, impartiality and accountability of the judiciary, Enhancing the efficiency of the judiciary, Montenegrin judiciary as part of the European judiciary and Enhancing accessibility, transparency and public confidence in the judiciary. For every of this strategic goals strategic guidance in this area are developed.

Strategy will provide guidance for the preparation of the judicial institutions and holder of judicial function for the challenges that EU membership entails. A particular challenge for the judicial institutions in the coming period will be effective implementation of the adopted legal framework, institutional and professional capacity building and their active contribution to the process of European and Euro-Atlantic integration of Montenegro.

In order to implement Strategy, Action plan will be developed as well as the financial implementation plan.

**2. Budget**

Strategy for the Reform of Judiciary will foreseen activities for strengthening the financial independence of the judiciary through disposition of the approved special part of budget for the judicial authorities, as well as strengthening of internal independence in order to enable every court, state prosecutor's office and Training Center to have identified funds within the budget for judiciary.

**3. Courts and public prosecution services (e.g. powers and organisation, structural changes - e.g. reduction of the number of courts -, management and working methods, information technologies, backlogs and efficiency, court fees, renovations and construction of new buildings)**

Ministry of Justice produced and the Government of Montenegro adopted Analysis towards Rationalization of the Judicial Network and Analysis of the Network of Misdemeanor bodies. Aim of this Analysis was to review the existing organisational structure of the judicial bodies, the existing number of judges, public prosecutors, court officers and other employees working in the judicial bodies, and the effect of new laws on reducing the number of judges, prosecutors and clerical staff, specifically the application of the new Criminal Procedure Code. The Analysis also took into consideration situation in and standing of the Montenegrin judiciary according to the CEPEJ 2010 Report and the court network was analysed using the basic indicators of the European Commission for the Efficiency of Justice (CEPEJ).

The results of the Analysis show that rationalisation of the existing court network should be carried out in normative and institutional level.

Institutional changes will encompass:

- Merging the two commercial courts into one that would be based in Podgorica;
- Centralizing jurisdiction by forming one special department at the High Court in Podgorica for organised crime, corruption, terrorism and war crimes;
- Changes to the organisation of the Special Division for organised crime, corruption, terrorism and war crimes at the Supreme Public Prosecutor's Office.

**3.1.**

Strategy for the Reform of Judiciary prescribes guidelines for enhancement of access to justice and legal aid:

- reinforce public awareness on the free legal aid system;
- improve the legal framework through amendments to the Law on Legal Aid in terms of specifying property threshold so to comply with changes to the Law on social protection of children and to the state on the market;
- develop mechanisms and indicators for monitoring the quality of legal aid;
- improve cooperation between the services of free legal assistance in basic courts and NGOs involved in the protection of vulnerable social groups in order to promote the institute of legal aid among potential users in this

group;

- promote free legal aid among students of legal science through the legal education at the University of Montenegro.

#### 4. High Judicial Council (Judicial Council)

Strategic guidelines for the Judicial Council in further period will be:

- enhancement of administrative capacities of the Secretariat of Judicial Council;
- new employment in especially in departments for the development of information systems, legal affairs and accounting;
- ensure funds for the smooth operation of the Judicial Council;
- conduct continuous training of staff in the Secretariat of the Judicial Council.

5. Legal professionals (judges, public prosecutors, lawyers, notaries, enforcement agents, etc.): organisation, education, etc.

Law on Courts, Law on Judicial Council and Law on Public State Prosecutor's Office will be changed in order to introduce unique system of election judges and prosecutors at the state level and criteria for voluntary permanent relocation, improve criteria for promotion of judges and prosecutors, establish a system for periodic evaluation of the holders of judiciary function.

New Law on Education in Judiciary will be adopted in order to improve the system of initial and continuous training of the judiciary and strengthen the independence of the Judicial Training Center. Reform of the Judicial Education needs to go in the direction that the need for initial training is estimated on the actual needs and that initial training is a mandatory requirement for the appointment of judges and state prosecutors.

#### 6. Reforms regarding civil, criminal and administrative laws, international conventions and cooperation activities

Law on Civil Procedure will be amended in terms of regulating hearing by using video-conference, audio recording sessions, electronic submission of briefs, shortening the deadlines for submitting response to the complaint, the possibility of waiver by the parties of the main hearing, and introducing new kind of revision, so called - approved revisions.

Family law will be amended in terms of prescribing the principles of prohibition of corporal punishment of children. Recent reform of enforcement procedure resulted by adopting two new laws - Law on Enforcement and Security Proceedings and Law on Public Bailiffs. First public bailiffs were introduced in the legal system in December 2013. In the next period, result of the new system will be monitored and revised if needed.

In the area of judicial cooperation in civil and commercial matters in addition to relevant laws, the legal basis for judicial cooperation are contained in international treaties. At this time Montenegro commits 18 multilateral and 32 bilateral agreements governing the area of international judicial cooperation in civil and commercial matters. In order to achieve the criteria for membership in the EU, it is necessary to continue the efforts on the legislative framework in this area to fully comply with the EU acquis. This involves taking measures to incorporate regulations into the Montenegrin legislation, and assessing the impact of these legislative reforms. In this regard, the Government of Montenegro adopted the new Law on Private International Law, which brought a number of absolute novelty that are inline with EU standards.

#### 8. Mediation and other ADR

In order to reinforce use of mediation and other ADR, training for mediators, judges, public prosecutors and lawyers will be organized. Rules regulating arbitration are now placed within the Law on Civil Procedure. In the next period, special Law on Arbitration will be adopted, which will be in line with the UNCITRAL rules on arbitration.

9. Fight against organized crime remains question of particular importance in Montenegro. It is important to continue with the activities of transmission of EU standards acquis into the legislation of Montenegro and to further reinforce international cooperation.

Normative changes will include the following:

- Adoption of specific legislation that includes substantive, procedural and enforcement provisions for the conduct of financial investigations and confiscation of proceeds of crime;
- Adoption of a special law that will govern the organization and jurisdiction of the Special State Prosecutor's Office for the fight against organized crime and corruption;
- Amendment of the Law on Protection of Witnesses in the terms of enhancing application, with special focus on the scope of the crimes that can ensure the protection of witnesses and structure of the Commission that decides upon the status of protected witness.

Also, some institutional changes will be undertaken: jurisdiction for the criminal offences of organised crime, corruption, terrorism and war crimes will be centralized by forming one special department at the High Court in Podgorica. This change will be followed by change in organisation of the Special Division for organised crime, corruption, terrorism and war crimes at the Supreme Public Prosecutor's Office.