

## **MONTENEGRO RESPONSES TO QUESTIONNAIRE FOR CCJE OPINION NO 18**

1. How does the Constitution, or the other laws of your country, if there is no written Constitutional document, regulate relations between the judicial power on one side, and the executive and legislative powers on the other side?

The Constitution of Montenegro ("Official Gazette of Montenegro", No.1 / 2007 of 25.10.2007.), introduced a commitment to a parliamentary system of division of power, through the promotion of division of power based on the principle of division between the legislative, executive and judicial branch. Legislative authority is vested in Parliament, the executive in Government, and judicial in courts. Mutual relations of power is based on balance and mutual control. The Constitution pays special section to judicial power in the framework of the structure of government. As the basic principles of judicial authority, the Constitution provides the independence and autonomy of the courts, the obligation of the court to rule on the basis of the Constitution, laws and ratified international treaties and a ban to the establishment of extraordinary courts. Autonomy and independence of the courts represents an organizational and functional principle of the separation of judicial and other branches of power. Principle of the obligation of the Court to rule on the basis of the Constitution, laws and applicable international treaties establishes the legality of the work of the courts, as a fundamental principle of their operation.

The Constitution provides for the permanence of the judicial function as a guarantee of the independence of the judiciary, but also provides for the grounds for termination of judicial office and dismissal of judicial duties.

The Constitution stipulates that a judge may not be a MP or perform any other public office or perform some other activity, and can not be a member of a political organization.

The Constitution nominates the Supreme Court as the highest court in Montenegro, and leaves to the Law to regulate its organization and competence. However, the Constitution, as one of the most important functions of the Supreme Court underlines its competence to provide uniform application of law. This means that the Supreme Court should contribute to the realization of the principle of equal treatment and equal decision-making in equal matters, and thus to the principle of legal certainty of legal entities.

The Constitution specifies that judges and court presidents are elected and dismissed by the Judicial Council. The Judicial Council is introduced in the Constitution for the first time in the constitutional system of Montenegro, as an independent and autonomous body, which should ensure the independence and impartiality of judges and courts.

According to Amendment VIII to the Constitution of Montenegro (Official Gazette of Montenegro No.38 of 02.08.2013.) The Judicial Council shall have the president and nine members. The members are: President of the Supreme Court, four judges appointed and dismissed by the conferences of judges, taking into account the equitable representation of judges and courts, four prominent lawyers appointed and dismissed by the Assembly on the proposal of the competent Working body of the Assembly through a public tender and a Minister of Justice. President of the Judicial Council is elected by the Judicial Council by a two thirds majority of its members, who are not holders of judicial office, except that the President of the Judicial Council can not be a Minister of Justice. The President of the Judicial Council shall have a casting vote in the event of an equal number of votes.

The main competence of the Judicial Council is to decide on the appointment and dismissal of judges and ensure the independence and impartiality of courts. In addition to these responsibilities Constitution granted to Judicial Council another six competencies that are indicative of the aforementioned determinations that the Judicial Council performs other tasks stipulated by law.

2. Is there now, or has there been in the last 10 years, any important discussion in your country on this topic, either in the political/legal field, in university/academic circles, by NGOs, or in the media?

Questions of strengthening the independence, efficiency and functionality of the judicial authorities are a matter of intense discourse of actors of political and judicial scene in Montenegro, in the course of preparation of normative acts and other activities in the field of creation and development of the legal system and the realization of its practical effectiveness. However, the above question asks for a specific response in terms of contribution of political and social actors in the debate on autonomy, independence and impartiality of the courts. In this regard it should be noted that an important political discussion was within the legislative and executive branches. The judges were consulted in the development of normative solutions as experts - members of working groups involved in drafting legislation in the field of justice. Also, the draft normative acts and proposals were submitted to the courts for their comments. Non-governmental organizations were engaged as partners to public authorities, providing incentives for the introduction or modification of normative solutions, participating in drafting legislation or through the communication of comments or objections to the proposed solutions. It can be said that in this respect there were no observable organized public debates in university and academic circles, except, in general public not quite remarkable activities of the Montenegrin

Academy of Sciences and Arts in preparation of a study titled "Montenegro in XXI century - in the era of competitiveness - construction and operation of the state of Montenegro ", published in 2010, in which 60 pages of study is devoted to the judiciary is. In negligibly small number of cases there were the individual positions of the academic community on this issue, which were brought before the media. Also, in the opinion of the Supreme Court of Montenegro, it can be objected to the editorial policy of the media, especially electronic, that did not sufficiently devoted particular attention to the creation of the normative and institutional framework in the field of justice. True, the electronic media in news broadcasts and print media have reported on these activities, giving more or less summary reports. But, the special themed tv shows were absent, when systemic regulations in the field of justice were passed. Especially in this regard drew attention the fact that nor the public service or the independent electronic media have not organized thematic programs on the adoption of constitutional amendments during 2013, although the motive of the framers of the Constitution was to further enhance the independence of the judiciary through its adoption.

3. Has there been any significant debate on the issue of "judicial restraint" or "judicial moderation" with regard to the exercise of the judicial function vis-a-vis the other powers of the state? In particular, are there examples where public opinion and/or the other powers of state have suggested that the judiciary (or an individual judge/court in a particular decision) has impermissibly interfered in the field of executive or legislative power or discretion?

The Constitution provides that an individual legal act shall be in conformity with the law and that the final individual acts enjoys legal protection. Law on Courts, gives the Administrative Court of Montenegro the jurisdiction to decide in administrative disputes on the legality of administrative acts. Against the decision of Administrative Court of Montenegro, the party that participated in the administrative dispute may submit a request for extraordinary review of a court decision, by which the Supreme Court decides.

In the case law so far there were no complaints that the courts in any way contrary to the legal system, interfered with the powers of the executive and the legislative branch, when deciding on the legality of administrative acts.

4. a) In your country, in the last 10 years, have there been any changes in the constitution/law regarding the judiciary (in the widest sense: structure, courts, judges) which have, arguably, affected the relationship between the judiciary and the other powers of the state or the separation of powers in your country?

b) In your country, are there any current proposals for changes in the law as referred to under a)? In each case, please indicate the “official” reason for the changes or proposed changes.

c) In your country, are there any serious discussions or debates (in political circles, by the public generally or in the media) with a view of introducing changes in the law as referred to under a)?

a) After the independence of Montenegro, the Constituent Assembly adopted the Constitution of Montenegro. The Constitution was adopted and entered into force in October 2007.

In order to strengthen the guarantees of independence of the judiciary and creating a consistent constitutional and legal framework in the judiciary, the Parliament of Montenegro on 31 July 2013, adopted and proclaimed the Amendments to the Constitution of Montenegro. Constitutional amendments provided that the President of the Supreme Court shall be appointed and dismissed by the Judicial Council by a two thirds majority on a proposal of the General session of the Supreme Court. Altered is the composition of the Judicial Council in order to eliminate political influence on its work. List of its jurisdiction is expanded. However, the competencies are indicatively enumerated, because they left the option to lay down by the law any other activities for which the Judicial Council would be competent.

Constitutional law for the implementation of Amendments have predicted obligations to harmonize laws with amendments, and gave deadline of only 45 days for adjustment of the Law on the Judicial Council and Law on Courts. In this sense, in September 2013, certain changes were made in order to implement news that constitutional amendments have brought. The changes were related to the creation of conditions for the selection of the Judicial Council and the election of the President of the Supreme Court of Montenegro. These changes represented the first stage at the legislative level to strengthen the independence of the judiciary.

b) At the present time there are ongoing activities for the adoption of new laws - the Law on Courts and the Law on the Judicial Council and rights and duties of judges. This legislative activity is anticipated by a strategic document for the judiciary. Namely, the Action Plan for the chapter 23 - Judiciary and

Fundamental Rights and Judicial Reform Strategy 2014 - 2018, envisages the improvement of legislation regarding the establishment of a unified system of election judges at the state level, on the basis of the procedure which is transparent and based on merit, establishing a periodic evaluation of judges, the introduction of the system of promotion based on the results, and revision of procedures of disciplinary responsibility of judges and the system of disciplinary offenses.

In order to implement the above objectives and integrate the authorities for misdemeanor offences into the court system of Montenegro, we have drafted proposals of the organizational laws.

The Government of Montenegro in December confirmed the proposals of both these laws, and the procedure of their adoption before the Parliament of Montenegro is in course.

c) Determination of the draft of Law on Courts and Law on the Judicial Council and the rights and duties of judges have preceded the drafting of these laws and extensive public debate on the solutions proposed in the draft law. In the public hearing representatives of all branches of government - legislative, judicial and executive took part. With the proposed laws they made the reports from the public debate. The media have reported on the public debate. We have not noticed significant participation of the academic community in the public hearings, except some small number of individual attitudes in the media.

5. In your country, have there been any significant comments by politicians or other relevant groups with respect to the role of the judiciary/courts in their capacity as the third power of the state? If so, please briefly identify their nature and content and indicate the reaction of the public or media reporting of "public opinion".

In the comments of politicians, NGOs and other relevant groups in terms of the role of the courts as the third branch of government, we have shown the need to further strengthen the institutional and judicial independence, on the one hand, and raising the level of judicial responsibility, on the other hand. Such attitudes were identified in media reporting and with public opinion. We did not see the public reaction to sporadic statements by politicians or other actors who unacceptably commented on the work of court in the particular pending cases

6. To what extent, if at all, is the proper administration of justice affected by the influence of the other state powers (e.g. the ministry of finance with respect to

administering budgets, the relevant ministry with respect to information technology in courts, the cour de compte, parliamentary investigations etc. or any other external influence by other powers of the state)?

Budget funds for the courts are limited by the economic situation in the country. Although there is a tendency to allocate funds to the courts in accordance with the possibilities of the state budget, the level of resources assigned to courts is a limiting factor for servicing the needs of the courts. Therefore, at this moment the courts are faced with inadequate spatial and technical capacities. Although in recent years the level of salaries of judges is raised, salary system in the courts, including administrative staff, does not correspond to the severity and complexity of the exercise of judicial functions. During the work on the Law on salaries in the public sector, which is in preparation, there was an attempt to make the salaries of the judges of the highest level below the level of salaries of the members of other branches of government, contrary to the decisions of the now existing regulations, by which the coefficients of the highest representatives of the three branches of government are equal. Discussions, which were conducted in the meantime, gives the basis for expectations that in finalizing the legal provisions we will comply with the principle of equality of all three branches of government. Retirement of Judges is part of the systemic Law on Pension and Disability Insurance, which does not prescribe any specialty for judges in relation to other addressees of this law. Therefore, the pensions of judges are extremely low, because they does not reach even half of the judicial salaries. We believe that in this respect we should amend the legal framework and adapt it to retirement systems in many countries which link the amount of pension to the amountt of the last salary or approximately its height.

We have established an information system in the courts. There is a continuing need for its further development and adaptation. Activities in this regard are being implemented on a satisfactorily manner, in partnership with line ministries and foreign donors.

At the meetings of the working bodies of the Parliament of Montenegro, on several occasions, initiatives to implement control hearing of the President of the Supreme Court of Montenegro were presented. However, they were not related to general issues of functioning of the courts, but the tendency to lead discussions on individual court cases, which would be unacceptable in terms of respect for judicial independence and avoiding external interference in the work of the courts. In response to the working body of the Parliament, the judiciary

have put to knowledge to the MP-s that the work of the court in the present case, especially when the court proceedings are pending, can not be a matter of a parliamentary debate.

The Judicial Council has a constitutional obligation to submit to Parliament an annual report on its work and on the overall situation in the judiciary. There were several examples that the discussion on the report is being used for the unacceptable marks on the work of courts in specific cases.

7. Do you have any other comments to make with regard to the relations between the judiciary and the other powers of state in your country?

We estimate that there is a general consensus that in Montenegro we should continue activities to further strengthen the independence, functionality and responsibilities of courts, where all three branches of government must give their full contribution. A challenge lies on the courts to raise the quality of work and judicial responsibility, and the other branches of government, through the creation of sustainable legislation and adequate practical action to make preconditions and contribute to an environment where the courts will be able to make better achieving its mission to the rule of law. If the trend of what has been done so far in the reform process continues, truly with its additional intensifying, we can expect that the process will result in effects that the judiciary would rise to the level of a reliable guarantor of the field of human rights and the rule of law.

**PRESIDENT**  
**OF THE SUPREME COURT**  
**Vesna Medenica**