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REPORT
TO THE PRESIDENCY COMMITTEE OF THE INTERNATIONAL ASSOCIATION OF
JUDGES
ON
THE APPLICATION FOR MEMBERSHIP OF THE
ASSOCIATION OF JUDGES OF REPUBLIC OF MONTENEGRO

I. Introduction

Association of Judges of Montenegro¹ made application to the Presidency Committee of International Association of Judges (IAJ) for membership to IAJ.

Rapporteurs have been appointed by Presidency Committee, Ms Loulou Hung – Judges Association of ROC, Taiwan and Duro Sessa Association of Croatian Judges.

Methodology chosen to fulfil the task delivered by Precedency Committee was that rapporteurs jointly studied relevant documents regarding position and organization of judiciary in Republic of Montenegro, and Mr Duro Sessa also paid visit to the Montenegro² and through meetings he had with officials of the Association and Montenegro officials to find out all relevant facts and information to make this Report as accurate as possible.

The visit to Montenegro took place from 10th to 12 of April 2013.

¹ Furthermore –Association

² Reasons why both rapporteurs did not pay visit to Montenegro are more than obvious

During visit, Mr Duro Sessa had interviews and meetings with:

1. Meeting with representatives of Supreme Court of Montenegro
 - Ms Natalija Filipovic- justice of Supreme Court and member of State Judiciary Council
 - Mr Radule Kojovic- justice of Supreme Court of Montenegro and former member of State Judiciary Council
2. Meeting at Ministry of Justice with Minister and Vice-president of Government of Montenegro Mr Duško Makovic
3. Meeting at Constitutional Court of Montenegro with Ms Desanka Lopicic –judge of Constitutional Court and her associates.
4. Meeting at State Prosecutor office with deputy State Prosecutor Mr Veselin Vuckovic
5. Join Meeting with representatives of NGO organizations in Montenegro
 - Mr Slobodan Franović- Helsinki Committee of Montenegro
 - Mr Sinisa Bjekovic- professor at Faculty of Law in Podgorica and head person at Centre for Human Rights
 - Mr. Zoran Vujcic and Boris Ristovic – Civic Alliance and co-partner of US AID in Montenegro
6. Meeting with representative of Bar Association in Montenegro Mr Dražen Medojević – member of Governing Board
7. Meeting with representative of OSCE office in Montenegro Ms Marina Lutovac
8. Meeting with representatives of Association of Judges of Montenegro- President of Association Ms. Hasnija Simonovic

Documents which have been studied are:

1. Constitution of Montenegro
2. Law on Courts of Montenegro
3. Law on State Judiciary Council of Montenegro

4. Statute of the Association
5. Progress Report on Application of Montenegro to join EU from October 10th 2012
6. Monitoring of Work of Courts in Montenegro- Report by Civic Alliance and ABA CELLI
– March 2013
7. Answers to the Questionnaire

II. Structure of the Report

In this Report we are going to stress main points and accents which we feel should be underlined under each Chapter of the Report and for all detailed information we shall refer to the relevant legal texts which are going to be attached to this Report in purpose of support and additional clarification.

III. Basic information about Association

Association of Judges of Montenegro was founded in 1998 , and represents judges of all Montenegrin courts. It is voluntary, professional, non-profit and non-political association and its work is transparent and public.

The main objective of the Association is to contribute the protection of independence of the judiciary, to improve social status and reputation of the bearers of judicial function, professional development and promotion of the legal science and practice.

Association has a Statute as well as steering bodies – the Assembly of the Association, Executive Committee, the President of Association and Secretary General of Association.

Assembly is the highest body of the Association and has 34 members. Assembly is composed of representatives of all Courts in Montenegro, elected by following rule: one representative of the Courts which have up to ten Judges, two representatives of the Courts which have up to twenty Judges and three representatives of Courts which have over twenty Judges.

Members structure of Assembly of Association of Judges of Montenegro (AJM) is following:

- ☐ ☐ Supreme court of Montenegro – 2 Members
- ☐ ☐ Administrative court of Montenegro – 1 Member
- ☐ ☐ Appellate court of Montenegro – 2 Members
- ☐ ☐ High court in Podgorica – 3 Members

- High court in Bijelo Polje – 2 Members
- Commercial court in Podgorica – 2 Members
- Commercial court in Bijelo Polje – 1 Member
- Basic court in Plav – 1 Member
- Basic court in Podgorica – 3 Members
- Basic court in Bijelo Polje – 2 Members
- Basic court in Berane – 1 Member
- Basic court in Kolašin – 1 Member
- Basic court in Cetinje – 1 Member
- Basic court in Kotor – 2 Members
- Basic court in Nikšić – 2 Members
- Basic court in Bar – 2 Members
- Basic court in Rozaje – 1 Member
- Basic court in Ulcinj – 1 Member
- Basic court in Danilovgrad – 1 Member
- Basic court in Žabljak – 1 Member
- Basic court in Herceg Novi – 1 Member
- Basic court in Pljevlja – 1 Member

Comparing above-mentioned data, there is 13.02% of total number of judges who are members in Assembly of Association of Judges of Montenegro (AJM). By this percent, quality and proportional representation of all Montenegrin courts in Association of Montenegrin Judges is established and guaranteed.

The Executive Committee is an executive body of the Association. It has seven members, and they are elected from Assembly members, on period of four years.

The President of Association represents Association in country and abroad, while Secretary General provides assistance to the President of Association in his work and performs and coordinates administrative work of the Association.

President and Secretary General are elected by the Assembly of Association on period of four years.

Association is financed primarily from membership fees, donations and other revenues.

The President and Secretary General are responsible for finances of the Association. (For more information please see Statute of Association attached to this Report).

All judges of Montenegro are members of the Association

Membership in Association is completely free.

IV. Legal frame and position of the Judiciary

IV.1. Constitution

In the Constitution, according to Article 11 the state powers are formed and regulated following the principle of the division of powers into the legislative, executive and **judicial**.

The legislative power is exercised by the Parliament, the executive power is executed by the Government and **the judicial power is exercised by the courts**.

All state powers shall be limited by the Constitution and the law and the relationship between powers shall be based on balanced and mutual control.

Constitutionality and legality is be protected by the Constitutional Court.

In Montenegro the freedom of peaceful assembly, without approval, with prior notification of the competent authority is guaranteed in Article 52 of the Constitution.

The freedom of assembly may be only temporarily restricted by the decision of the competent authority in order to prevent disorder or execution of a criminal offence, threat to health, morality or security of people and property, in accordance with the law.

Article 118. of the Constitution regulates that courts are autonomous and independent, and that courts shall rule on the basis of the Constitution, laws and confirmed and published international agreements.

It is important to stress that according to the provision in the same Articles establishment of court marshals and extraordinary courts is prohibited.

Hearings before the courts are public and the ruling shall be pronounced publicly. Only exceptionally, the court may exclude the public from the hearing or one part of the hearing for the reasons necessary in a democratic society and only to the extent which is necessary. The Constitution defines that those reasons should be when it is in the interest of morality; public order; when minors are trialed; in order to protect private life of the parties; in marital disputes; in the proceedings related to guardianship or adoption; in order to protect military, business or official secret; and for the protection of security and defense of Montenegro.

The judicial duty in the Constitution is defined permanent and the duty of the judge can be terminated only of reasons as stated in the constitution:

- at his/her own request,
- when he/she fulfills the requirements for age pension
- if the judge has been sentenced to an unconditional imprisonment sentence,
- if he/she has been convicted of an act that makes him/her unworthy of the judicial duty,
- if he/she performs the judicial duty in an unprofessional or negligent manner
- if loses permanently the ability to perform the judicial duty.

It is forbidden to send or transfer the judge to another court against his/her will, except by the decision of the Judicial Council in case of reorganization of courts.

The judges in Montenegro enjoy functional immunity as it is stated in Article 112 of Constitution.

The judge cannot be held responsible for the expressed opinion or vote at the time of adoption of the decision of the court, unless this represents a criminal offense.

In the proceedings initiated because of the criminal offense made in the performance of judicial duty, the judge shall not be detained without the approval of the State Judicial Council

Judges are not allowed to discharge duties of a Member of the Parliament or other public duties or professionally perform some other activity.

The position of the Supreme Court is defined as the highest court in the Country.

The main role of the Supreme Court is to secure unified enforcement of laws by the courts.

The President of the Supreme Court shall be elected and dismissed from duty by the Parliament at the joint proposal of the President of Montenegro, the Speaker of the Parliament and the Prime Minister.

If the proposal for the election of the President of the Supreme Court fails to be submitted within 30 days, the President of the Supreme Court shall be elected at the proposal of the responsible working body of the Parliament.

Judges and presidents of the courts are elected and dismissed from duty by the decision Judicial Council. As it is already mentioned term of office of judges is permanent but the presidents of courts are elected for the period of five years and they are not allowed to be members of Judicial Council.

The Judicial Council is autonomous and independent authority that secures autonomy and independence of the courts and the judges.

President and nine members constitute the Judicial Council.

The President of the Judicial Council is the President of the Supreme Court and members of the Judicial Council are as follows:

- 1) Four judges elected and dismissed from duty by the Conference of Judges;
- 2) Two Members of the Parliament elected and dismissed from duty by the Parliament from amongst the parliamentary majority and the opposition;
- 3) Two renowned lawyers elected and dismissed from duty by the President of Montenegro;
- 4) The Minister of Justice.

The mandate of the Judicial Council is four years.

President of Montenegro proclaims the composition of Judicial Council.

Constitution also gives basic frame in ordering what are duties and authorities The Judicial Council shall:

- 1) Elect and dismiss from duty a judge, a president of a court and a lay judge;
- 2) establish the cessation of the judicial duty;
- 3) determine number of judges and lay judges in a court;

- 4) Deliberate on the activity report of the court, applications and complaints regarding the work of court and take a standpoint with regard to them;
- 5) decide on the immunity of a judge;
- 6) propose to the Government the amount of funds for the work of courts;
- 7) perform other duties stipulated by the law.

The Judicial Council shall decide by majority vote of all its members.

In the procedures related to disciplinary responsibility of the judges, the Minister of Justice shall not vote.

IV.2. Law on Courts

Law on Courts has been delivered in 2002. and has been published in Official Gazette No.5/2002.

IV.2.1. Main principles

Law establishes main principles of organization of judiciary in Montenegro and in the Law those basic principles are formulated as is it stated that:

- Courts are State body performing judicial power.
- Judges and lay judges shall perform the judicial office.
- Judges shall judge and decide independently and autonomously.
- The judicial office must not be performed under anybody's influence.
- Nobody shall influence the judge in performance of the judicial office.
- The Court shall be under a duty to issue legal decisions for which it has competence in a lawful, objective and timely manner.
- Every person shall have the right of access to the court for in order to exercise of his/her rights.
- Everyone is equal before the court.
- The work of the court shall be public, except in cases provided for by the law.

- Every person shall have the right to impartial judicial proceedings within a reasonable deadline. 2
- Every person shall have the right to have his/her legal issue heard by a randomly selected judge, regardless of the capacity of parties to the case or the virtue of the legal issue.
- Resources and the conditions for the functioning of the courts are provided by the Republic of Montenegro (hereinafter the Republic).
- Judges shall have the right to wages and other entitlements in accordance with a special law.
- Judges have the right to establish professional associations.

The courts in Montenegro can be established only by Law.

IV.2.2. Courts and Jurisdiction

In Montenegro there are various courts with various jurisdictions. According to the Law there are :

basic courts;

higher courts;

commercial courts;

Appellate Court of the Republic of Montenegro (hereinafter: Appellate Court);

Administrative Court of the Republic of Montenegro

Supreme Court of the Republic of Montenegro

The **basic courts** have jurisdiction in criminal and civil field of law:

1. In criminal cases:

a) to judge at first instance, criminal offences for which a fine or imprisonment up to 10 years is prescribed by the law as the principal punishment, regardless of the character, profession and position of the person against whom the proceedings are instituted and regardless whether the criminal offence has been committed in peace, extraordinary circumstances, in a state of

imminent war danger or in a state of war, if for the particular types of these criminal offences the jurisdiction of another court has not been provided for;

b) to judge at first instance those criminal offences which are by special legislation prescribed to be within the jurisdiction of basic courts;

c) to conduct proceedings and decide upon requests for cancellation of a sentence, termination of security measures or legal effects of a sentence;

d) decide in those matters when it has pronounced such measures or sentence.

2. In civil cases, as a court of first instance to judge:

a) disputes relating to property, matrimony, family, persons, copyright and other matters except in those disputes for which the law prescribes the jurisdiction of another court;

b) disputes relating to the amendment or reply to any information provided by the media and petitions relating to the injury of personal rights committed through the media;

3. In labour law cases to judge at first instance the disputes related to:

- a) employment rights;
 - b) conclusion and application of collective contracts, as well as all disputes between the employer and trade unions;
 - c) application of the rules on strike;
 - d) appointment and removal of bodies in companies and other legal entities;
4. in other legal matters:
- a) to rule at first instance on non-litigation cases, unless otherwise provided for in the present law;
 - b) to rule on matters related to execution and disputes which arise in the course or due to execution proceedings, unless otherwise provided for by the present law;
 - c) to decide on recognition and execution of foreign judgements, except for those falling within the jurisdiction of the commercial court;
 - d) to perform duties concerning legal assistance.

The **high courts** (there are two in Montenegro -Bijelo Polje and Podgorica) have dual jurisdiction as first instance courts and as appellate courts.

At first instance the High Courts:

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

In the second instance the High Courts shall decide on appeals against decisions of the Basic Courts.

.In Montenegro **Commercial Courts** as first instance courts are also established, as Commercial Court in Bijelo Polje and Podgorica . Basic jurisdiction of these courts is to judge in cases related to :

- litigation between domestic and foreign companies, other legal persons and entrepreneurs (commercial entities) resulting from their commercial legal relations (as result of performing

activities which are intended to procure certain gain to parties) as well as cases where parties are persons who are not commercial entities but are connected as material co-litigant with commercial entities.

- registration of commercial entities as well as disputes that arise from the application of company law;
- compulsory settlement, bankruptcy and liquidation of commercial entities, regardless of character of the other party or the time when the dispute was initiated, unless otherwise provided for by the law;
- copyright and industrial property between parties from item 1) of this paragraph;
- rights of artists, rights concerning the multiplication, tape-recording and marketing of audio-visual products as well as cases concerning computer programs and their usage and transfer between parties from item 1 of this Article;

Montenegrin judicial system also has an **Appellate Court**. There is only one Appellate Court established for the territory of the Republic with seat in Podgorica.

Jurisdiction of Appellate Court is to:

- decide on appeals against decisions of high courts at first instance, as well as appeals against decisions of commercial courts,
- decide on conflict of jurisdiction between: basic courts from the territory of several high courts; between basic and high courts; between high courts; between commercial courts.

The Administrative Court is established for the territory of the Republic, with the seat in Podgorica and with jurisdiction to decide on legality of definite administrative acts in administrative disputes and to decide on extraordinary legal remedies against final and binding rulings in misdemeanor procedures.

The highest court in the Country is **Supreme Court**, with the seat in Podgorica.

Jurisdiction of the Supreme Court is to:

- decide on extraordinary legal remedies against the decisions of the courts in the Republic;

- decide against decisions of its panel, when it is required so by the law;
- decide on transferring the territorial jurisdiction when it is obvious that a court which has real jurisdiction shall be able to conduct proceedings more efficiently or for other important reasons; -
- decide which court shall have territorial jurisdiction when the jurisdiction of the courts of the Republic is not excluded, and when, in accordance with the rules on territorial jurisdiction, it is not possible to reliably ascertain which court in a particular legal matter has territorial jurisdiction;
- rule on conflict of jurisdiction between different types of courts within the territory of the Republic, except in cases when the jurisdiction of another court has been established;

IV.2.3.

Condition for appointment of judges

Law on Courts sets up general conditions which have to be met for any person who seeks the post for a judge . General conditions are:

- he or she is a citizen of the Republic of Montenegro or the Federal Republic of Yugoslavia;
- he or she is in a generally healthy state and possesses capacity to transact business;
- he or she has a Bachelor's degree in Law;
- he or she has passed the Bar exam;

Persons who are seeking judicial post must possess certain working experience in field of law and this working experience differs as follows

- for a judge of the basic court – five years,
- for a judge of the commercial court – six years,
- for a judge of the higher court – eight years,
- for a judge of the Appellate and Administrative Courts – ten years,
- for a judge of the Supreme Court – fifteen years.

In case of the president of courts only a judge can be elected as the president of court and if a person is elected as president of court he/she is elected as a judge of that court as well.

The President of the Court is elected for a period of four years and is eligible for re-election.

The President of the Court shall continue to serve as judge of the court after:

- the expiry of his/her term of office,
- removal from the office of the President of the Court .

A judge and a President of Court can be elected only on the basis of a public announcement if vacant post is announced in “Official Gazette”

IV.2.4.

Procedure for the election of a judge

The candidates’ applications must be submitted to the Judicial Council within 15 days as of the day of the public announcement and Judicial Council has authority to disregard those applications which have not been submitted timely or are incomplete.

An applicant has the right to file a complaint with the Judicial Council against a decision of dismissal of such an application within three days of receipt of the decision of the Judicial Council.

The decision of the Judicial Council on the complaint shall be final and no court proceedings may be instituted against it.

The Judicial Council takes the procedure to obtain an assessment of the professional and working qualities for the performance of the judicial office in respect of all candidates from:

- bodies, companies or other legal persons in which the candidates have worked;
- the meeting of the judges of the court to which the candidate is being elected;
- the meeting of judges of the immediately higher court.

Each candidate has the right to inspect the assessment of his/her professional and working qualities as well as the professional and working qualities of other candidates. Candidate is also entitled to make a written statement of his/her opinion thereon to the Judicial Council within three days after having had inspected the decision.

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The Judicial Council shall organize interviews of candidates who are applying for the first time during its term of office.

IV.2. 5.

Transfer of a judge

Basic rule is that the judge shall sit in in the court to which he or she has been elected.

Exception is the judge may be temporarily assigned to another court of the same or lower jurisdiction, if he **or she consents thereto**, for not more than six months in any given calendar year, only in the event that regular performance of duties in the court to which the judge is being assigned has been brought into question due to the disqualification of a judge or his/her inability to attend to his/her duties or due to other justified reasons.

IV.2.6.

Disciplinary responsibility

A judge may be subject to disciplinary proceedings if he or she performs judicial duty in a negligent manner and if he or she harms the reputation of judicial office.

Disciplinary measures shall comprise of a reprimand and salary reduction.

The salary reduction, which shall not exceed 20 %, may be imposed for no longer than six months.

Disciplinary offences are defined by law.

A judge shall be considered **as performing the judicial duties negligently** if he or she, without justified reason,

- 1) does not take cases in the order they are registered;
- 2) does not schedule the time for a public hearing or a public sitting for the cases assigned to him/her or is tardy in attending to these;
- 3) he or she is habitually late scheduled hearings and trials ;

4) in other cases when the present law prescribes that certain actions or omissions of the judge amount to negligent discharge of the judicial office.

The judge shall be considered **as harming the reputation** of the judicial office if:

1) he appears in the court or comes into contact with parties in a state that is not appropriate to performance of the judicial office (for example: under the influence of alcohol or intoxicating drugs);

2) disturbs public peace and order by the way he or she behaves.

A proposal for the establishment of the responsibility of a judge shall be submitted to the Judicial Council by the President of the court, the President of the immediately higher court and the President of the Supreme Court within the time period of 15 days as of the day he or she learns of the reasons prescribed by Article 45 of this Law and not later than 60 days from the day these reasons emerge.

The body which has authority to conduct proceedings to establish the existence of disciplinary responsibility of the judge is disciplinary committee of the Judicial Council.

The disciplinary committee shall have a Chairman and two members, who will be appointed by the Judicial Council from amongst its members.

In the procedure of establishing the responsibility of a judge the Disciplinary committee may:

- reject the proposal as unfounded;
- accept the proposal and impose a disciplinary measure;
- terminate the proceedings if it is established that there are reasons for the removal of the judge and refer the case to the Judicial Council.

The decisions made by the Disciplinary committee shall be furnished to the submitter of the proposal, to the judge whose responsibility is being examined and to the Judicial Council.

Above mentioned persons (judge and person who submitted the proposal) may file the complaint against the decision of the Disciplinary Committee to the Judicial Council within eight days of the receipt of the decision.

Judicial Council may:

- 1) Dismiss the complaint as untimely and inadmissible;
- 2) Reject the complaint as unfounded;
- 3) Vacate the decision and remand the case to the Disciplinary Committee for reconsideration;
- 4) Revise the decision of the Disciplinary Committee.

The members of the Disciplinary committee may not be involved in the work of the Judicial Council when the latter is deciding upon the complaint.

Proceedings to establish disciplinary responsibility of a judge must be **completed within three months after the day the proposal was submitted.**

Should the proceedings not be completed within three months they shall be deemed suspended.

IV.2.7.

Removal of the judge

A judge can be removed from office only for the reasons envisaged in the Constitution.

A substantiated initiative for the removal of a judge may be submitted by: the President of the Court to which the judge has been elected, at least three members of the Judicial Council, the President of the immediately higher court, the President of the Supreme Court and the Minister of Justice.

An initiative for removal shall be submitted to the Judicial Council.

Should the Judicial Council establish that there are grounds to conduct the proceedings, it shall set up the Commission for examination of the conditions for removal from office.

The Commission shall have a Chairman and two members, who shall be appointed by the Judicial Council from amongst its members, at least two of whom must be judges. The Commission shall collect information and evidence relevant for determination whether or not the initiative is founded.

The judge whose removal is being sought is entitled to be present during the Commission's work. The Commission shall submit the report on its work to the Judicial Council within 30 days as of the day of setting up the Commission.

A copy of the report shall be furnished to the judge whose removal is being sought.

When deciding upon the initiative, the Judicial Council may:

- 1) Reject the initiative as unfounded;
- 2) Establish a proposal for removal of the judge.

The Judicial Council shall submit the proposal for the removal to the Assembly.

The judge shall be removed from office on the day the decision for removal is adopted.

IV.2.8

The Judicial Council

Judicial council has an authority to:

- 1) define the proposal for the election and removal of judges and lay judges;
- 2) conduct proceedings for establishing the responsibility of judges and lay judges as regards the timely and orderly functioning of the court as well as the preservation of the dignity of the judicial office;
- 3) determine the number of judicial posts and number of lay judges for each court;
- 4) determine the method for substituting the President of the Judicial Council;
- 5) adopt the Rules of Procedure of the Judicial Council;
- 6) propose to the Government special appropriations in the budget destined to the needs of the courts;
- 7) perform other duties provided by the law.

Judicial Council has a Chairman and 9 members. (for composition, please refer to the part of this Report dealing with the Constitution)

IV.2.9.

Resources

Resources for the work of courts are allocated in a special part of the budget of the Republic.

The Judicial Council shall determine a proposal of this part of the budget and shall convey it to the Government

V. Law on Judicial Council

V.1..

Task of the Council

The Judicial Council achieves the task of ensuring the maintenance of an Independent, autonomous, accountable and professional judiciary, in accordance with the Constitution and law.

V.2.

Principle of composition and perform of the task od the Council

Members of the Judicial Council have be persons of high moral character and possess professional qualities as it is stated in Article 3.of the Law.

Members of the Judicial Council must perform their duties independently and impartially.

When nominating and electing members of the Judicial Council, an effort must be made to achieve a balanced gender representation.

The Judicial Council has also a role to protect the courts and judges from any political interference.

The activities of the Judicial Council are public and should be transparent, unless otherwise specified by this Law.

The means and conditions for the operation of the Judicial Council shall be provided for by the State.

V.3.

Election of judges as members of JC

The judge members of the Judicial Council shall be elected to and dismissed from office by the Judges' Conference by way of secret ballot.

The Judges' Conference is made up of **all the judges and court presidents.**

Decisions at the Conference of judges are delivered by majority vote from those who are present at the Conference but only if at least one third of members are present at the Conference.

To provide representation of the judiciary in the Council it is stated in the law that two judge members shall be elected from amongst the judges of the Supreme Court, the Appellate Court of Montenegro, the Administrative Court of Montenegro and the higher courts and two judge members shall be elected from amongst the judges of all of the courts.

The judge members of the Judicial Council shall be elected to and dismissed from office by the Judges' Conference by way of secret ballot.

Before voting is to take place at the Conference the nomination of judge members to the Judicial Council, ta special sessions of the judges of the Supreme Court, the Appellate Court of Montenegro and the Administrative Court of Montenegro, at which one candidate from each of those courts shall be nominated, and at joint sessions of the higher courts, at which one candidate from those courts shall be nominated.

Right to nominate has each judge and each president of court and those judges who get most of the nominations form a list (eight candidates) which goes to the Conference for wotting.

The nominations are collected by the President of Supreme Court and the list is formed by him/her.

The lists of candidates nominated for election to the Judicial Council as members, must be submitted to the Judges' Conference no later than three months before the expiry of the mandate of the members of the Judicial Council.

The President of the Supreme Court shall convoke the Judges' Conference no later than two months before expiry of the mandate of the members of the Judicial Council.

Judge members of the Judicial Council shall be elected from amongst the candidates on the lists of nominated candidates

V.4.

Reelection, Termination of office, Suspension and Dismissal of members of JC

Judge members of the Judicial Council **may be re-elected** as members of the Judicial Council another four years after the expiry of his/her previous mandate.

The mandate of a member of the Judicial Council **can be terminated** before expiry of the period he/she was elected to only if some of following is fulfilled:

- Upon cessation of the function by virtue of which he/she was elected to the Judicial Council;
- In the event he/she is a judge member of the Judicial Council and is elected as judge to a higher instance court or court president;
- In the event he/she is a non-judge member of the Judicial Council and is elected to hold a judicial office (as a judge or court president);
- By resignation;
- Upon his/her final conviction for any criminal offense punishable by a prison sentence.

A member of the Judicial Council can be **dismissed** if he/she:

- fails to perform his/her duties in a conscientious and professional manner;

- is convicted of committing an act that renders him/her unworthy to perform his/her duties in the Judicial Council.

In the event the mandate of a judge member of the Judicial Council is terminated prior to the expiration of the term he/she was elected to, the procedure for nominating candidates is going to be repeated.

In the event the mandate of a member of the Judicial Council appointed by the Parliament of Montenegro or the President of Montenegro is terminated before the expiration of the term he/she was elected to, accordingly the Parliament or the President of Montenegro shall immediately appoint a new member.

The mandate of a member of the Judicial Council appointed in case of dismissal or termination of office shall expire on the day of the termination of the mandate of the Judicial Council.

Members of the Judicial Council can be **suspended** from duty:

- If he/she is confined to pretrial detention. The suspension shall be in effect for the entire duration of the detention;
- If he/she is suspended from the function by virtue of which he or she was elected or appointed to the Judicial Council.

The Judicial Council adopts a decision on the suspension of a member of the Judicial Council.

V.5.

Competences of the JC

The Judicial Council, apart from the competences specified in the Constitution³

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- ³ 1) elect and dismiss from duty a judge, a president of a court and a lay judge;
 - 2) establish the cessation of the judicial duty;
 - 3) determine number of judges and lay judges in a court;

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, also have competences to:

- Control the work of the courts and judges;
- Decide on the disciplinary liability of judges;
- Provide opinions on draft laws and secondary legislation that are relevant to the judiciary and initiate the adoption of legislation and other regulations pertaining to the judiciary;
- Ensure the application, maintenance and uniformity of the Judicial Information System as pertaining to the courts;
- Provide for the training of holders of judicial office in cooperation with the Prosecutors' Council;
- Keep and maintain records on judges;
- Rule on complaints filed by judges who consider that their independence and autonomy are threatened;
- Propose guiding measures for determining the necessary number of judges and other court officials and employees;
- Establish the methodology for preparing a report on the work of the courts and annual work schedules;
- Draft a Code of Ethics, which shall be adopted at the Judges Conference; Exercise all other competencies as stipulated by law.
- Determine the number of judges in each court
- Adopt the rules of procedure

V.6.

Procedure for Appointment of Judges

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- 4) deliberate on the activity report of the court, applications and complaints regarding the work of court and take a standpoint with regard to them;
 - 5) decide on the immunity of a judge;
 - 6) propose to the Government the amount of funds for the work of courts;
 - 7) perform other duties stipulated by the law.

Vacancy post is publicly announced and after the term for applications expired, Candidate applications are submitted to the Judicial Council no later than 15 days after the day the vacancy was announced and published.

Each applicant is entitled to appeal the Judicial Council's decision to reject his/her application as untimely or incomplete no later than three days after receiving the decision of the Judicial Council.

The decision of the Judicial Council on the appeal is final and binding, and an administrative proceeding may not be instituted against the decision.

The Judicial Council seeks the opinions on the expertise and professional qualities of each applicant with regards to holding judicial office from :

- 1) The bodies, businesses or other legal entities in which the candidate is currently or was previously employed;
- 2) Sessions of the judges of the court the candidate is being considered for;
- 3) Sessions of the judges of the court that is of the next higher instance.

Law also defines the criteria for the election of a judge. Those criteria according to the law are:

- 1) Professional knowledge, work experience and performance;
- 2) Published academic works and other professional activities;
- 3) Continuous professional development;
- 4) Ability to perform impartially, conscientiously, diligently, decisively and responsibly the duties of the office for which he/she is being considered;
- 5) Communication skills;
- 6) Relations with colleagues, conduct out of office, professionalism, impartiality and reputation.

For the appointment of president of courts also organizational abilities of the candidate for court president have also be taken into account.

Judicial Council Commission, which is composed of at least three members of the Judicial Council, shall conduct an interview with the candidates that fulfill the criteria for the position for which they have applied.

Exceptions for not performing the interview are also proscribed by Law . this can occur if the candidate was interviewed for a position in a court of the same or higher instance within the past twelve months and received an unsatisfactory score at the interview; if the candidate was interviewed for a position in a court of the same or higher instance on several occasions and on more than one occasion received an unsatisfactory score at the interview, regardless as to when he/she was last interview.

Commission assesses and scores each candidate, taking into account the criteria set out in the Law.

The Commission decides on the candidate's score by a majority vote on the basis of standard form immediately after the interview.

The scoring method and the contents of the candidate assessment form shall be regulated by the Rules of Procedure of the Judicial Council.

The Judicial Council may hold a written examination for the candidates prior to the interview.

In the event that a written examination is held, as provided for in paragraph of this Article, the Commission draws up a list ranking the candidates on the basis of the results of the written test. The list shall be subject to change, as it may later be altered on the basis of the candidate's performance at the interview.

On the basis of the interview and the applicant's documentation the Commission, provided for in Article 33, paragraph (1) of this Law, shall form a list of candidates that have achieved satisfactory results.

The list of candidates includes the scores of all of the candidates that were interviewed and tested, as well as a brief summary of the candidate assessment results.

The list of candidates is submitted to the Judicial Council.

The Judicial Council shall make a decision on the appointment of a candidate at a closed session and the decision on the appointment of a candidate must include a written explanation.

The Judicial Council notifies the successful applicant, the relevant court and the Ministry of Justice of its appointment decision.

The applicants are entitled to review their application and documentation, as well as the applications and documentation of other candidates that applied for the vacancy, the results of the written examination, the candidate assessment and the opinions on the candidates, and to submit a written comment to the Judicial Council, no later than three days following the day the review was performed.

The Judicial Council's decision on the appointment of a judge is final and an administrative proceeding may not be instituted against the decision but proceeding before Constitutional Court can be initiated.

The decision of Judicial Council on the appointment shall can be annulled the if there is a proof that at the time of the appointment the judge did not satisfy all of the selection criteria or if the Judicial Council receives information that would, had it been known at the time of appointment, have given the Judicial Council reason not to appoint the judge in question.

V.7.

Disciplinary responsibility and procedure

Judge shall be liable for disciplinary action in the event he/she negligently performs his/her judicial duties or harms the reputation of the judicial office he/she holds.

) The procedure for establishing disciplinary liability of a judge is conducted by the **Disciplinary Committee**, which shall be appointed by the Judicial Council for a one year term and consists of president and two members, as well as their deputies.

The President of the Disciplinary Committee and his/her deputy shall be appointed from amongst the members of the Judicial Council, whilst the members and their deputies shall be appointed from amongst the judges that are not members of the Judicial Council.

Disciplinary measures that may be imposed are a reprimand and a salary decrease.

A salary decrease may not exceed 20% and may not be imposed for a period longer than six months.

The judge has a right to have legal representation during the proceedings.

A proposal to determine the disciplinary liability of a judge shall be submitted to the Disciplinary Committee by a court president, the president of a court of the next higher instance and the President of the Supreme Court.

The Disciplinary Committee shall send a proposal to the judges in respect along with a notice informing them of their right to legal representation.

The request for initiating disciplinary proceedings against a judge shall be presented by the person who submitted the proposal.

During the proceedings for determining disciplinary liability, the Disciplinary Committee must hear the judge against whom the proceedings were initiated.

The Disciplinary Committee has to consider and hear the evidence to correctly establish all of the facts of the case.

The proceedings shall be dismissed in the event that the person who submitted the proposal fails to appear before the Disciplinary Committee. In the event the judge against whom the proposal

was submitted fails to appear before the Disciplinary Committee, the proceedings shall take place in his absence.

After the proceeding is finalized, the Disciplinary Committee may render the **following decisions:**

- 1) Reject the proposal as unfounded;
- 2) Accept the proposal and impose a disciplinary sanction;

An appeal against the decision of the Disciplinary Committee may be submitted to the Judicial Council no later than eight days following the receipt of the decision.

An appeal may be filed by the person who submitted the proposal, the judge against whom the proposal was submitted and the judge's defiance counsel.

Judicial Council decides upon the appeal and may deliver decisions as follows:

- 1) Dismiss the appeal as unfounded;
- 2) Vacate the decision of the Disciplinary Committee and remand the case for reconsideration to the Disciplinary Committee;
- 3) Revise the decision of the Disciplinary Committee.

The President of the Disciplinary Committee is prohibited from participating in the activities of the Judicial Council concerning the taking of a decision on the appeal.

Proceedings to determine disciplinary liability of a judge must be initiated no later than three months after the day it was established that reasons for initiating proceedings exist. Proceedings to determine disciplinary liability of a judge must be completed within three years of the date it was established that reasons for initiating proceedings exist.

Rules of disqualifications of a member of the Council are basically the same as rules which exist in event of disqualification of a judge in any case before him/her.

The decision issued by the Judicial Council on the disciplinary liability of a judge is final and binding and administrative proceedings may not be initiated to contest the decision.

VI. Situation in the Judiciary during the rapporteur's visit

Information collected through interviews and relevant documents could be summarized in a short and concise manner as follows:

During the last twenty years, Montenegrin judiciary has transformed in many areas, reaching international standards for strengthening and improving judiciary. The most efficient reforms of judiciary in Montenegro started with the beginning of European Union integration process.

This is also stated as well in last EC Progress Report about EU integrations in Montenegro⁴, overall opinion is that independence and impartiality of the judiciary, implementation of the legislation on courts, the Judicial Council and the State prosecutor's office, amended in July 2011 to strengthen judicial accountability and independence, continued.

The action planning to implement the judicial reform strategy for the period 2007-2012 was revised in December 2012, amending a number of measures on the independence and efficiency of the judiciary and the relevant deadlines. Implementation of the strategy and the action plan has advanced.

With regard to the independence and impartiality of the judiciary, procedures for amending the Constitution are still on-going with a view to further enhancing judicial independence, in particular through a de-politicised and merit-based system of appointments of members of the Judicial and Prosecutorial Councils and of state prosecutors. Draft constitutional amendments were enacted by the Parliament with the required 2/3 majority in September 2011.

The Judicial Council adopted rules of procedure setting out their organisational structure, functioning and decision-making procedures. The new Judicial Council was constituted in June 2012. The first written tests for judges were held in February, in accordance with the new criteria.

⁴ http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/mn_rapport_2012_en.pdf

Random allocation of cases continues to be ensured in courts with the aid of an IT system, with the exception of smaller courts with limited staff.

Some progress was made in the field of accountability of the judiciary. All decisions of the Administrative Court and the Appellate Court became publicly accessible. Commissions for monitoring compliance with the Codes of Ethics of judges and prosecutors were appointed in October 2011. The Commission for monitoring compliance with the judges' Code of Ethics acted on two complaints, both of which were rejected as unfounded.

Members of the Disciplinary Commissions were appointed, together with two staff to investigate complaints of corruption in the judiciary.

Regarding the efficiency of the judiciary, the backlog of cases has been further reduced by approximately 4%. Initial steps have been taken to rationalise the court network, but Montenegro remains one of the countries with the highest number of basic courts, judges, prosecutors and administrative staff per capita in Europe.

Regarding the efficiency of the judiciary, Montenegro has taken further measures to reduce the backlog of cases. With around 11,500 unresolved cases from previous years in all courts at the end of 2011, the backlog was approximately 4% lower in 2011 than in 2010.

Initial steps have been taken to rationalise the court network, but Montenegro continues to be one of the countries with the highest number of basic courts, judges, prosecutors and administrative staff per capita in Europe.

With a view to increasing the efficiency of the overall judicial system, the Judicial Council began setting up special units of judges dealing with juvenile justice at the High Courts of Podgorica (Administrative Capital of Montenegro) and Bijelo Polje (The biggest municipality on the north of the state). The parliament enacted a Juvenile Justice Code in December and the Judicial Training Center adopted a dedicated programme for training of judges and prosecutors.

The current IT system allows case-tracking, automatic allocation of cases and electronic filing of judicial acts but is not yet used for statistical reporting or for assessing the performance of courts.

Montenegro being devoted to EU accession, numerous activities for strengthening justice capacities are supported by the EU and other international partners, which provide donor support in both training and supplying equipment for the judicial authorities.⁵

According to EC Progress Report, Implementation of recently adopted legislation has started.

As it mentioned before, procedures for amending the Constitution are still ongoing with a view to further enhancing judicial independence, in particular through a de-politicised and merit-based system of appointments of members of the Judicial and Prosecutorial Councils and of state prosecutors.

The amended legislation on the Judicial Council established a set of promotion criteria for judges and prosecutors. The criteria lack clarity and objectivity due to the lack of regular professional assessment of judges' and prosecutors' performance.

The judges' Code of Ethics was amended in March. Further efforts have been made to establish a track record of fighting corruption in the judiciary. A special allowance has been given to those judges working on organised crime and corruption, and two staff appointed to help the Disciplinary Commission investigating complaints of corruption in the judiciary.

Amendments to the law on Mediation, enacted in May, regulated the status of the Mediation center. As regards access to justice, following the entry into force of the Law on Free Legal Aid in January 2012, three implementing acts were adopted and free legal aid offices were opened in all basic courts. The implementation of the law is hampered by the offices' insufficient budget.

In February 2012, Montenegro ratified the Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children.

As regards judicial cooperation in criminal matters, the legal framework for fighting serious and organised crime at regional and international levels has been further strengthened. In September 2011, Montenegro ratified an agreement with Croatia on mutual enforcement of judgments in criminal matters. Further

⁵ CEPEJ Evaluation report on European judicial systems,
http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2012/Rapport_en.pdf

efforts are needed to fully align the legal framework with the *acquis*, in particular by applying the legislation on the European evidence warrant and the principle of mutual recognition of judgments and probation decisions.

The all major stakeholders in the judiciary in the Montenegro agree that future work needs to focus on setting up a single, country-wide recruitment system for judges and prosecutors, based on transparent and objective criteria. The promotion criteria for judges and prosecutors lack clarity and objectivity due to the lack of periodical professional assessment of judges and prosecutors' performance.

The work of the Judicial Council is hampered by insufficient administrative capacity and budget allocations. The on-going constitutional revision, aimed at addressing undue political influence in the judiciary, needs to be completed in line with European standards.

However, corruption and conflict of interest are still insufficiently monitored in the judiciary. The disciplinary system needs to be further strengthened and differentiated in line with the principle of proportionality, and the Disciplinary Commission's dual role in investigating and deciding on disciplinary proceedings reviewed. Procedures for removing professional immunity need to be strengthened to ensure that judges and prosecutors are fully accountable under criminal law. A reliable system of professional evaluation of judges and prosecutors still needs to be established. Plans to publish all court rulings have been only partially implemented.

Due to this high administrative cost, there are not enough budget resources to implement the new Law on Free Legal Aid or to remedy shortfalls in infrastructure and equipment, which continue to hinder judicial efficiency. The quality of judicial statistics needs to be improved and a system to monitor the length of trials introduced. The independence and the administrative and financial capacity of the Judicial Training Centre need to be strengthened and initial training with set curricula for all members of the judiciary established.

A reliable system of professional evaluation of judges and prosecutors still needs to be established. Plans to publish all court rulings have been only partially implemented.

Objective criteria and clear procedures for the permanent transfer of judges and prosecutors have not been introduced yet. The functioning of the Judicial and Prosecutorial Councils is hampered by their insufficient administrative capacity and budget.

Nevertheless, vacancies continue to be published for specific courts and a single, countrywide recruitment system on the basis of transparent and objective criteria remains to be established for judges and prosecutors.

The statistical indicators used do not provide full information about courts' performance, the duration of trials or the human and financial resources allocated. This lack of information creates problems with the consistency of data and effective follow-up. The quality of judicial statistics needs to be improved and a system to monitor the length of trials introduced. The independence and the administrative and financial capacity of the Judicial Training Centre needs to be strengthened and initial training with set curricula for all members of the judiciary introduced.

Nonetheless, enforcement of civil decisions remains weak, bailiffs still need to be recruited and the functioning of the bailiff system needs to be assessed.

The 2012 budget for the judiciary and the prosecution is € 24.9 million, which represents approximately 0.75 % of the GDP. As the salaries of magistrates and administrative staff continue to account for most of this total, there are not enough resources to remedy deficiencies in infrastructure and equipment, which continue to hinder efficiency.

Further efforts are needed to ensure merit based appointments and career development, as well as to strengthen accountability and integrity safeguards within the judiciary.

VII. Position and activities of Association

Association was established on 11th of December 1998 as the only judges' association in the Country. Association is nongovernmental, non-profit autonomous organization with aim to promote interests of judges and to promote independent and autonomous position of the Judiciary and to create laws which will be best frame for establishing efficient judiciary.

At the very beginning after Association was established it was active and started several projects in accordance of the Statute of the Association. In period from 2001 to 2006, Association was not active and it started to be active again in 2006 after group of judges revived the Association from state of “hibernation”.

From that time Association started couple of projects.

Association created two Guides one “Guide through courts of Montenegro” and another “Guide through civil and criminal proceedings. Both guides were created with cooperation with US AID office in Montenegro. The basic idea beside this project was to help transparency of the judiciary and to help to the citizens to raise their knowledge about functioning of the judiciary

President of the Association is member of Commission which has a task to negotiate in the accession process to the European Union regarding Chapter 23 Judiciary and Fundamental Rights.

President of Association is included in the process of monitoring implementation of Code of Judicial Ethic among judges.

Association is included in the process of creating, implementing and altering the Action plan for the reform of the judiciary as a project which Ministry of Justice is responsible for.

Position of the Association can be seen in the fact that President of the Republic is consulting the Association before proposing to the Supreme Court list of the candidates for the Judicial Council.

Association is partner of the Supreme Court in organizing “Days of Montenegrin Judiciary” which take place every year on 29th of November.

In recent years Association created close relations with Associations in neighbouring countries and with international organizations as “US AID” and Conrad Adenauer Foundation” , National Centre for State Courts in scope of their programs to strengthen rule of law.

In the role to protect interest of judges Association initiated three proceedings before Constitutional Court opposing and challenging Government decision of reducing salaries of judges, certain articles Law on Social Security which regulate position of judges and their salaries during sick leave and Law on salaries of judges .

Association launched the initiative to help judges in Montenegro to solve their housing problems approaching with this initiative all relevant officials of Montenegro including President of the Republic, Prime Minister and Minister of Justice.

Association started working on new Law on Salaries of Judges with aim to propose to the Legislative power new system of remuneration for judges based on best international standards.

Judges through Association started to improve or learn English with an aim to have as much as possible judges who will be able to work and act internationally and to make judges possible to consult the case law if international justice.

To improve administrative capacity of the Association it have full time employer as administrative secretary.

Last but not the least President of Association and other members of Association's bodies are involved in public debates, panels and round tables which are dealing with problems of judiciary in the Country.

VIII. Recommendation

Rapporteurs recommend, taking into consideration the requirements for a membership of IAJ in Article 3 and 4 of the Statute of the IAJ , the information from documents and interviews stated in this report and the observations in, to **approve** the application of the Montenegrin Association of Judges for membership of the International Association of Judges.

Appendix:

- 1. Statute of the Association**
- 2. Answers to the Questionnaire**

