JUDICIAL SYSTEM IN MONTENEGRO (HISTORICAL DEVELOPMENT, BASIC PRINCIPLES, AND ORGANISATION)

KARADAĞ ADLİ SİSTEMİ

(Tarihsel Gelişimi, Temel İlkeler ve Organizasyon)

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ABSTRACT

The content of the paper is divided in two parts. The first part tackles historical development of judiciary in Montenegro whereas the second part discusses the constitutional principles underlying the Montenegrin judiciary as well as its organisation and jurisdictions. The aim of the paper is to demonstrate in a synthesized way pivotal milestones of development of Montenegrin judiciary and traditional legal culture which is inter alia an inspiration for contemporary architecture of the court organisation in Montenegro. Understanding the basic features of Montenegrin judiciary requires presentation of historical context of its development. Recently, judiciary has gone through substantial reforms as a result of harmonisation with the EU standards. Amendments of the Constitution and of the relevant legislation aimed at redefining the network of court organisation as well as at improvement of specific institutions such as the Judicial Council. Further strengthening of independence and autonomy of judicial branch of power is the key subtexts of the on-going reforms.

Keywords: Montenegro, judiciary, courts, historical development, organisation, principle of independence, Constitution, judicial reforms, appointment, promotion, professional evaluation, EU membership, Judicial Council,

ÖZET

Bu tebliğin içeriği iki bölüme ayrılır. Birinci bölüm, Karadağ'da yargının tarihsel gelişimini ele alırken, ikinci bölüm Karadağ yargısının yanı sıra organizasyonunun ve yetki sınırının temelindeki anayasal ilkeleri tartışır. Çalışmanın amacı, diğer hususların yanısıra Karadağ yargısı ve Karadağ'daki mahkeme organizasyonundaki çağdaş mimarinin ilham kaynağı da olan geleneksel hukuk kültüründeki gelişmenin önemli kilometer taşlarını sentezlenmiş bir şekilde ortaya koymaktır. Karadağ yargısının temel özelliklerini anlamak, gelişimindeki tarihsel kaynağın tanıtımını gerektirmektedir .Son zamanlarda, yargı, AB standartlarına uyum sonucunda önemli reformlar geçirmiştir. Anayasa ve ilgili mevzuattaki değişiklikler, Mahkeme kuruluş ağını yeniden tanımlamanın yanı sıra Yargı Konseyi gibi belirli kurumların iyileştirilmesini amaçlamıştır. Bağımsızlığın daha da güçlendirilmesi ve gücün yargı alanındaki özerkliği, devam eden reformların anahtar alt metinleridir.

Anahtar Kelimeler: Karadağ, yargı, mahkemeler, tarihsel gelişim, organizasyon, bağımsızlık ilkesi, Anayasaya, yargı reformları, atama, terfi, mesleki değerlendirme, AB üyeliği, Yargı Konseyi

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INTRODUCTION

The legal system in Montenegro is associated with the continental European legal tradition and has roots in Roman law. The contemporary justice system has evolved over a thousand years of history of state consolidation, going through different epochs. The territory of present Montenegrin state was characterized by legal particularism as over the centuries it didn't included areas which includes today. Early written legal documents as well as rudimentary forms of judicial authority were strongly influenced by the norms of Roman law embodied through the legal culture of Byzantine Empire and Venetian Republic. Following the arrival of the Ottomans in the Balkans, the unwritten or customary law takes the primacy and the justice is organized under the patronage of the Montenegrin rulers.

After achieving *de iure* independence at the Congress of Berlin of 1878, the need for comprehensive legal regulation of social life in Montenegro arose. At the time, the *General Property Code for the Principality of Montenegro* was developed and is, according to many, the best legal writing on the Balkans. The Code codified customary law and functionally embodied contemporary principles of civil law, at the same time incorporating national legal tradition. Such a code provided an incentive for progressive development of judicial institutions modelled after modern European legal systems. However, stability of the institutions as well as of the legal system in general relied to the great extent on rulers' discretion.

Following the WWI, Montenegro loses its independence and engages into various forms of state associations of south Slavic nations (with different forms of economic systems) up till 2006, when Montenegro regained its independence. Today, Montenegrin judiciary undergoes comprehensive reforms inspired by aspiration for full-fledged membership in the European Union (EU) through meeting relevant standards. Given this, both the Constitution and the legislation related to organisation and hierarchy of court as well as substantial and procedural legislation were significantly amended.

1. HISTORICAL DEVELOPMENT OF THE JUDICIARY IN MONTENEGRO (One of the most important references for the research of the history of Montenegrin judiciary is a monograph of Cedomir Bogicevic, *History of Montenegrin Judiciary*, Podgorica, 2009. This paper goes along the results of Bogicevic`s study).

Evolvement of justice at the territory of Montenegro was carried out within different societal set ups which have had either stateless or features of the state. Several statehood forms existed on the territory of Montenegro starting from the Illyrian state. Slavic tribes that inhabited concerned

territories were receiving influences from the Byzantine Empire as well as from the coastal Roman cities for a long time. Christianization of Slavs took place mainly during the IX century, and firmly continued during the X century. The Christian church boosted this process by spreading itself among the Slavic tribes around parishes of *Doclea*. In general, one can say that Montenegro has built its foundations on the legacy of Greco-Roman culture.

At the time, there is an interweaving of religious, moral and legal norms. This can be particularly seen in the *Chronicle of Priest Dukljanin*, the most important historical and legal source for the research of the period concerned. In time of the first state – *Doclea*[1], the written legal heritage of Byzantine was incorporated into the customary law of the newcomer nations. This customary law was preserved in accordance with the continuously changing historical circumstances till the appearance of first written legal acts in XIX century.

Following the battle of *Tudjemil* (1042), a place close to the coastal town Bar, and reception of royal insignias from the Pope (1077), the *Doclea* gained independence from Byzantine. Judicial and administrative power was conferred to *Ban*[2] and *Zupan*, but their attribution were functionally separated thus making *Ban*`s courts and *Zupan*`s courts two types of courts. The justice was delivered in accordance with the customary law which was codified in the code called *Methodes* (*Rationale*). In addition to regulation of the relations between the rulers and the people as well as of defence, this code included provisions on respective areas of law such as property, family, administration, inheritance, commerce, penal law and finance. Such a legal order was kept even at the time of the rulership of the Serbian dynasty of Nemanjic (1186-1360). At the time, Stephen Dusan`s Code (1349) was extensively used at the territory of Montenegro as well.

Zeta is the new name of the medieval state existed in the territory of current Montenegro since mid-14th century (1355-1496). After fall of *Zeta* under Ottoman rule (1449), the independent state organization in the territory of Montenegro disappeared. Since then, this region was under domination of foreign powers. Most of the territory was under administration of Ottoman Empire whereas the smaller part of the country was under administration of western powers – Venetian Republic, Austria, and France[3]. Medieval territories of current state of Montenegro were characterized by fragmentation of legal sources which were mainly of ecclesiastical nature.

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1 The territory was named after the former Roman province – Doclea.

2 In his province he acted as satraps in Persian Empire or praetors in Roman Empire.

3 Marijana Pajvančić, Mladen Vukčević, Ustavno pravo, Podgorica 2012, str. 69.

Medieval coastal cities, centres of merchantry and handicraftery, had their own autonomy. At the time, Kotor spawned several important legal sources among which the Kotor Statute of the XIV century (*Statuta et leges civitatis Cathari*) stand out. The Statute regulated internal autonomy and established municipal administration and judiciary. The local government was headed by *Knez*, who shared the power with three judges and city councils (*Consilim minus, Consilim maius, Consilium Rogatorum*). Altogether with city judges, *Knez* adjudicated both criminal and civil cases. When adjudicating cases *Knez* was on equal foot with the judges so verdicts were rendered by majority of votes. Similar to Kotor, medieval coastal town Budva had a Statute which very much alike regulated local self-government.

Charters of *Zeta`s* rulers enacted by Balsic and Crnojevic`s dynasties (proclaimed in 1368 and 1485) are extremely precious legal sources from that period of history regardless of their lack of statutory features. They mainly touched upon agrarian and commercial relations as well as upon monastery estate.

The *Code of Ivan Crnojevic* of 1482, which mainly dealt with clerical issues, established one of the most primordial institutional forms of court organization in Montenegro – *the Imperial and Patriarchate`s Court*.

The present name of Montenegro[4] emerged during the rule of Stefan Crnojevic (1455-1464). At the time of Crnojevic`s dynasty there were people`s courts that adjudicated blood feuds and state border demarcation disputes. At the time of rule of Montenegrin prince-bishops (*vladike*), the people`s court was composed of 24 members and it passed judgements over monastery and civil cases. During the period of Danilo Petrovic`s rule (1696-1730), people`s court passed judgements respectively over criminal cases, debt collections, appraisal of real estates, inheritance, land distribution, thefts, revision of an old judgements, or doing reconciliation over blood feuds. People`s court ceased to operate in 1831 when Petar II Petrovic – Njegos established *the Governing Senate* (Praviteljstvujušči Senat Crnogorski i Brdski) as a state institution supplied with judicial functions and administrative prerogatives, also known as the *Supreme Court*.

During the first dynasts from line Petrovic, the courts were named after their founders so there were *General Montenegrin Court* (Opštecrnogorski sud) also known as the *Court of Vladika Danilo* (1713), then the *Court of Vladika Vasilije* (1751), and the *Court of Scepan Mali* (Stephen the Little) (1771). These courts dealt mainly with blood feuds, pacification of blood

[4] The name Montenegro (Italian: monte - mountain, hill; nero – black) emerged in Venetian sources at the beginning of XIV century. Ottoman sources use the name Karadag.

revenge, serious crime but they were also dealing with assets seizure. A kind of courts of arbitration (in Boka Kotorska such an entity was called *the Court of Good People* (Sud dobrih ljudi)) and the reconciliation councils (e.g. *serfs courts* (kmetovski sudovi)) to settle petty disputes also existed at the medieval territory of Montenegro. The judgements in these cases were grounded on customary law. Under Venetian, and later on, under influence of Austro-Hungarian legal tradition, there was a highly developed organization of courts in the new age coastal cities (particularly in Boka Kotorska). These courts had different names (*Curia* or *Pretoria*).

The tribal – clans' justice existed in Montenegro up until the sett up of the central state government. The judicial function for the most serious crimes was exercised by the *tribal assembly* (treason, desertion, exile and other serious crimes punishable by death penalty). As for the other crimes, the judicial function was exercised by the *head of the tribe* (plemenski knez). Petty cases were adjudicated by a type of reconciliation individuals known as *poljaci* or *globari* who were assistants of *Knez* or *Kapetan*. At first, these courts passed the decisions upon customary law and in the spirit of people`s understanding of justice and fairness, and later on upon written law.

During the period of existence of Montenegro as an independent state there was an unlimited right of citizens to lodge an application to the Sovereign (*Gospodar*) in case they were not happy with judgements. In addition to his regular duties, *the Sovereign* conducted trials through his secretary[5]. Inter-tribal courts (*stanci*) also existed and they dealt with criminal and property cases. In the areas of Montenegro inhabited with Muslim population, Sharia courts applied Sharia law. Decisions of Sharia courts were fully respected by Montenegrin authorities[6].

The process of development of modern Montenegrin state and its territorial expansion started in 1796 following the battles of national liberation and enactment of the document called *Stega*. *Stega*, as the first written law of this period, proclaimed territorial and political unity of Montenegro and its neighbouring regions (*Brda*). It also embodied basic principles related to the duty of the tribes and individuals to be engaged in the joint fight for establishment and sustainment of the national state. The central court (*Praviteljstvo Suda Crnogorskog i Brdskog*) was introduced for the first time through the *Common Montenegrin Legal Code* (*Zakonik Obšči Crnogorski i Brdski*) known as the Code of Petar the First. In

[5] Soon after, this right was limited to be exercised only on specific days (on Saturdays) by Decree of the Ministry of Justice of 14 December 1896. As a rule the right can be exercised only for cases which did not go through all court instances.

[6] See in detail in: Čedomir Bogićević, Istorija crnogorskog sudstva, Podgorica, 2009.

addition to judicial function, this court also had administrative jurisdiction.[7] At the time, great attention was paid to the organisation of courts as well as to the judicial proceedings grounded on the principle of impartiality. The relevant literature points out that the enactment of the new code laid the foundation for the early modern state, raised the legal awareness, and heralded the basics of the law creation that had arisen from political and legal philosophy of the Montenegrin ruler Petar I Petrovic Njegos.[8]

Judicial branch of power was further strengthened by virtue of introduction of *Praviteljstvo Senata Crnogorskog i Brdskog* (*Senate*, the highest institution of authority and a court of last resort) in 1832. Furthermore, the lower courts were established such as court of *Kapetans* (first instance court) as well as the central state court – *Senate* (second instance court). *Common Legal Code* (Opšti zemaljski zakonik), known as the *Code of Knjaz Danilo I* of 1855, laid down in detail the judicial proceedings, crimes and criminal penalties. The Code affirmed the basic legal principles such as legality, independence of judicial function, the principle of equality before the court etc. The Great Reform of the State (1879) introduced instead of the *Senate* specific bodies – The State Council, The Ministry, and the Grand Court as the highest judicial instance in the country thus making separate judicial from executive power. The Grand Court was an appeal court against judgements of the county (*oblasni*) and of the regional (*okružni*) courts. It also acted as the court of first instance passing judgements for the most serious crimes: transgressions and felonies. Judgements of the Grand Court could have been challenged before the *Sovereign* who could then recommend reconsideration of the case. *The Law on Court Organisation* of 1902 envisaged that the Grand Court decides over appeals in criminal and civil cases exclusively against judgements of the regional courts. It`s judgements were final. In addition, it resolved conflicts of jurisdiction between lower courts.

During the said period, the monumental legal reading *General Code on Property for the Principality of Montenegro* (*Opšti imovinski zakonik za Knjaževinu Crnu Goru*) emerged in 1888 (translated to five languages). The author of the Code is widely- known jurist Valtazar Bogisic.[9] The Code represents codification of property law during which development Bogisic intended to reconcile endeavours to have a modern civil code of the young state modelled as per Napoleon`s *Code Civil* with the strive to have a

[7] See in detail in : Svetislav Marinović, Ratko Vukotić, Marko Dakić, Crnogorsko sudstvo kroz istoriju, Cetinje, 1998, str. 217 - 221.

[8] Mladen Vukčević, Komentar Ustava Crne Gore, izdavač Univerzitet „Mediteran", 2015, str. 18.

[9] Juristic mission of Valtazar Bogisic was subject of many scholar writings. The most important writing in this regard is monograph of Surja Pupovci, „Valtazar Bogišić – život i djelo", Podgorica, 2004.

code that instantiate Montenegrin customs, notably convenient to common people. Thus, many provisions of the code were shaped in formulaic language. The Code was in force until 1970s when the former Yugoslavia replaced its previous private law with the *Law of obligations*.

The judiciary reforms of 1902 *inter alia* set in detail organization and jurisdiction of then courts so the judicial power was respectively exercised by village leaders (*seoski kmetovi*) as reconciliation judges, courts of *Kapetans*, five county courts, and the Grand Court. Proceedings before courts were regulated by the Law on judicial proceedings in civil cases and by the Law on judicial proceedings in criminal cases of 1910.

According to the *Constitution of Kingdom of Montenegro* of 1905 there were *Kapetan* courts, county courts, and the Grand Court. The Law on court organization of 1910 envisaged that the Grand Court was the court of last resort and that it operated within to sections – civil and criminal. By virtue of decrees, the Ministry of Justice regulated procedural and organisation aspects of the judiciary (the same did the Grand Court). All the judges were appointed by the *Sovereign*. Furthermore, the principles of independence, public trial, and right to defence were laid down as well as the criteria for appointment of judges.

The profession of legal assistance found its place in Montenegrin judiciary system of that time through enactment of the *Law on public legal representation* (1909). Military justice was exercised by military courts such as *Division courts* (first instance court) and the *Grand Marshal Court* (second instance court). The organisation and the jurisdiction of military courts were set by the *Law on organisation of military courts of the Kingdom of Montenegro* (1910).

Multi-century existence of Montenegro as an independent state was discontinued after the WWI when it entered the Kingdom of Serbs, Croats, and Slovenians (hereinafter: KSCS). As an administrative territorial unit within the KSCS named *Banovina of Zeta*, Montenegro existed until 1941. The result was discontinuity in all domains of state life including judiciary.

According to the KSCS Constitution (1921) legislative power was exercised both by the King and the parliament. Courts could be established only by law. For the whole territory of KSCS there was only one Court of Cassation. It judges were appointed by the King. According to the *Law on organisation of regular courts* (1928), judicial power was exercised by district, county, and commercial courts as well as by the court of appeal and the court of cassation. The *Imposed Constitution* (1931) kept the similar court organisation while adjusting it to the new territorial division of the country. Family and inheritance cases of Muslim population were handled both by secular and Sharia judges.

Following the WWII and the socialist revolution, Montenegro becomes one out of six federal units within the federal Yugoslavia. Immediately after the war, revolutionary authorities established people`s courts: the Supreme Court, county courts, and district courts. According to *the Constitution of People`s Republic of Montenegro* (1946), judges of the Supreme Court were appointed and dismissed by the People`s Parliament whereas the judges of county and district courts were appointed by the district and municipal people`s committees.

Chairpersons of the parliament determined the bodies, the time, the manner, and the procedure of appointment of judges and lay judges in all the courts in Montenegro. Complete organisation of judicial power was achieved by endorsement of the federal *Law on Courts* (1954) which elaborated constitutional principles on judiciary such as independence and impartiality; two-level adjudication, public conduct of a trial and so forth. In accordance with the new concept of socialist self management,[10] the constitutions of former Yugoslavia and of Montenegro (1976) envisaged that judicial function is exercised by regular courts as well as by self-management courts – employment tribunals, designated courts, arbitrations, whereas the safeguarding of constitutionality was entrusted to the Constitutional Court of Montenegro. The feature of self-management courts was that they settled disputes over employment as well as the labour disputes within the socialist companies. These courts ceased to exist in 1991.

Following the dissolution of socialist Yugoslavia and constitution of the specific two-member federation of Federal Republic of Yugoslavia at the beginning of 1990s (which was later reconstituted as State Union of Serbia and Montenegro) the judicial organisation was keeping up with the process of transition of Montenegrin society. The legal system of Montenegro as well as the judiciary had to adapt to the different economy systems during the transition from socialism to capitalism and subsequently to the harmonisation with the EU *acquis communautaire*. Social and economic development in Montenegro was to a great extent determined by devastating ramifications of the civil war that took place at the territories of the former Yugoslavia. In contrast to all former federal units of Yugoslavia, the war did not take place only in Montenegro.

The *Constitution of Montenegro* of 1992 laid down the basic principles of the judicial office such as independence, sitting in a collegiate composition, and permanent tenure of judicial office. The laws on courts (dating from 1991 and 1995) established the following courts: 15 basic courts, two high courts, two

[10] This concept of Yugoslav economy and society should have been opposition to that of etatist socialism as developed in Soviet Union.

commercial courts, and the Supreme Court. *The 1991 Law on courts* inaugurated the parliamentary body - the Judicial Council - responsible to put forward proposals of the candidates for judges to the Parliament as well as to conduct dismissal procedures. Parliament's involvement in personnel management in the judiciary raised serious concerns for the independence of the judicial system. There is a clear risk of political interference in appointments and dismissals.[11] *The 2002 Law on courts* introduced two new types of courts: the Court of Appeal and the Administrative Court. They become fully operational in 2004.

From 2002 to 2006 Montenegro existed within the new political entity called *State Union of Serbia and Montenegro*. One can say that this political arrangement, agreed under patronage of the European Union (EU), was a transition to full independence of Montenegrin nation.

Given the proclaimed independence of Montenegro in 2006, all necessary preconditions were met to carry out deep reforms in all areas of social life thus and so in the judiciary. Next step was implementation of the new Constitution adopted in 2007. This constitution brought on board some important reforms of the judiciary. Involvement of the legislative power in appointments and dismissals of judges was considerably reduced due to entrustment of personnel management in the judiciary to the newly established independent body - *the Judicial Council*. The role and duties of the Judicial Council are fully defined by *the Law on Judicial Council* of 2008 as well as by subsequent amendments of this law (occurred in 2011, 2012, 2013, and 2015). A set of judiciary related laws were endorsed while the current legislation was considerably amended. Significant changes were introduced into the procedural and substantive legislation. *The Judicial Training Centre* was established whereas the living standard of judges was improved through *the Law on Remunerations of Judicial Offices' Holders.* The laws on organisational set up of courts were also amended to the great extent with an aim of increasing the efficiency of the judiciary. Acquirement of the status of the candidate country for the EU membership (2010) gave a new impetus to the reform process.

II. CONSTITUTIONAL PRINCIPLES ON JUDICIARY

In order to understand importance and role of judiciary in the legal order of Montenegro it is necessary to present the constitutional principles which determine its status. These principles can be found in the Constitution and the Law on courts.

In the most general sense, the Constitution`s Preamble attributes significance to the judiciary and contains expression of citizens' commitment

[11] The 2006 EU Progress Report for Montenegro.

to live in a state in which *inter alia* there is rule of law embodied among other social values.[12]

In addition to the Preamble, the principles on judiciary are contained in several normative sections of the Constitution (part I – Basic Provisions, part II – Human rights and freedoms, and part III – Organization of powers) that are characterized by mutual interaction and interdependence. Apart from these three parts of the Constitution, provisions on judiciary can be implicitly found in most of its 158 articles.

The very concept of the notion *court* enshrined by the Constitution – as an „autonomous and independent" body (Article 118 par. 1 of the Constitution) - implies fundamental principle of a modern judiciary – *the principle of independence and autonomy.* The principle is based on the separation of powers (Art. 11, paragr. 1-2 of the Constitution) according to which the judiciary constitutes one of three branches of government, in addition to legislative and executive. The content of this principle in general entails that the exercise of judicial power is independent not only from involvement of legislative and executive government but also from any other influence, commands or control of any institution (including other courts), any centre of power or individual. In the context of Montenegrin legal order, this principle assumes several guarantees: life tenure (irremovability) for judges,[13] modality of appointments and dismissals of judges, securing adequate resources for work of judges and so forth.

The principle of independence is affected by number of legal and non-legal (cultural, historical, religious, etc.) factors which make independence of judiciary a "problem of common sense in every culture". With regard to legal factors, special importance can be attributed to the organization of courts. Some scholars argue that there are some essential elements of the court organization which can contribute to the consolidation of the independence principle.[14]

The principle of constitutionality and legality is a fundamental principle for all state institutions and a guarantee that the respect of this principle

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12 The Preamble of the Constitution (paragraph 2) is pointed out "the commitment of the citizens of Montenegro to live in a state in which the basic values are freedom, peace, tolerance, respect for human rights and liberties, multiculturalism, democracy and the rule of law". The English version of the Constitution available at http://www.skupstina.me/images/documents/constitution-of-montenegro.pdf .

13 During the time of one-party system, gurantees of judicial independence had an oposite direction. For example, it was argued that the principle of electivity of judges (not the irremovability of judicial office) is a guarantee of judicial independence.

14 Vesna Rakić - Vodinelić, Pravosudno organizaciono pravo, Beograd, 1994. , str. 19.

would ensure protection of fundamental social values such as freedom, order, peace, and legal order. When it comes to courts, this principle is embodied in the constitutional provision that "the court shall rule on the basis of the Constitution, laws and confirmed and published international agreements"(Art. 118 paragr. 2 of the Constitution). This means that courts should be free of any arbitrary performance, rulings based on political and similar documents, frivolous delivering of justice or reconsideration of court decisions in a way which is not underpinned by constitutional and law provisions. Consequently, this implies boundedness of a court both by substantial and procedural legislation. However, the conduct of a trial according to law does not entail that this should be done in a verbatim or mechanical way but court is rather perceived as a creative institution in the process of law application.

The principle of public trial (Art. 120 of the Constitution) is manifested in two aspects: 1) hearing before court is open to public; and 2) judgments have to be pronounced publicly. The Constitution envisages that public may be excluded (from all or a part) of the trial for the reasons necessary in a democratic society, only to the extent necessary: in the interest of morality; public order; in order to protect military, business or official secret and for other relevant reasons. This principle comes to a life along these lines: the right of media to report on the work of court as well as on the conduct of a specific trial; publication of a yearbooks of judgements and similar publications; organizing seminars, conferences and symposiums related to the work of courts; analysis of case law and so forth.

The principle of judicial (functional) immunity (Art. 122 of the Constitution) stands in a close relationship with other principles given that this principle is a prerequisite for their fulfilment. The judge (and lay judge) would not 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 (immunity *ratione materiae*, immunity of unaccountability). Integral part of this principle is a restriction on prosecuting a judge suspected of a criminal offence committed in the performance of judicial office without the approval of the Judicial Council.

The principle of group decision making (Art. 119 of the Constitution) means that a trial shall be conducted by the panel of judges except when the law provides that an individual judge shall rule (e.g. in petty cases, in non-contentious cases etc.). Panel of judges allows to make all-around, comprehensive, and impartial review of the factual and legal circumstances of a case and to have a well-grounded decision made in accordance with the law. Panels of judges represent „a unique decision making groups that are better equipped with knowledge than a single individual. Through mutual

control, corrections, holding back, panels are providing guarantees that their decisions would be reasonable, objective, balanced and fair."[15]

The principle of incompatibility of judicial office with accessory activities (Art. 123 of the Constitution) involves prohibition for judges to discharge duties of a Member of the Parliament or other public duties or professionally perform some other activity. The prohibition aims at independent, autonomous, and impartial approach of a judge and objective exercise of judicial office.

In addition to the Constitution, *the fundamental principles of judicial office are contained in the Law on courts*. In order to improve and protect human rights and freedoms, the law affirmed other principles that correspond to the international standards on efficiency of courts. These are:

The principle of independence and autonomy entails that judicial office is exercised free of influence whosoever, namely that no person cannot influence the work of a court;

The principle of adherence to the judicial office;

The principle of free access to courts and equality of parties aim at ensuring equality before the law as well as to secure everyone's right to lodge a claim with court in order protect his/her rights;

The principle of impartiality can be described as an unbiased personal relation of a judge with a case which also includes a right of a party to request judicial disqualification;

The right to a "natural judge", or in another words, in determination of his/her rights everyone is entitled to have a randomly designated judge. This is also an international standard according to which random allocation of cases have to be fully objective, that is to say, free of influence of parties to the case;

In addition to constitutional and legal principles related to the judicial office, one can also refer to the *ethical principles and codes of conduct for judges*. These rules contained in the Code of Judicial Ethics must be followed in order to maintain, affirm and upgrade authority and reputation of judges and judiciary.[16]

All the above-mentioned principles have been defined as strategic goals of judiciary reforms in Montenegro. After all, these principles constitute basis for the mission and the vision of the Montenegrin

[15] Triva, S., Belajac,V., Dika, M., Građansko parnično procesno pravo, Zagreb, 1986, str.176.

[16] The very first Code of Ethics for Judges was adopted by the Conference of all judges at its session of 26 July 2008. The current Code of Ethics was adopted in 2015.

judiciary. *Mission* – to protect human rights and to efficiently conduct fair trials and; the *Vision* – to have an open judiciary for everyone, trusted by public thus securing justice for each and every citizen.[17] Important precondition for implementation of the said principles is an adequate organization of courts and of the judiciary in general.

III. ORGANISATION OF MONTENEGRIN COURT SYSTEM

The establishment, organization and jurisdiction of courts, the organization ofworkofcourts,and judicial administration are regulated by the *Law on courts*.[18] The law enshrined the respective principles of legality, right to access to justice, equality, publicity, impartial trial within a reasonable time, and the principle of natural judge.

In Montenegro there are courts of general jurisdiction and the specialized courts. The courts of general jurisdiction are: misdemeanour courts, basic courts, high courts, the Court of Appeal, and the Supreme Court. The specialized courts are: the Commercial Court and the Administrative Court.

III. 1. Misdemeanour courts

There are three misdemeanour courts for the whole territory of Montenegro (in Bijelo Polje, Budva, and Podgorica) and are deciding over misdemeanour offences. The High Misdemeanour Court decides over appeals to the decisions of the mentioned misdemeanour courts.

III. 2. Basic courts

There are 15 basic courts in Montenegro. Basic courts have jurisdiction over:

1) Criminal cases, notably to: **a)** adjudicate in the first instance on criminal offences punishable by law by a fine or imprisonment of up to 10 years as principal punishment, regardless of the character, profession and position of the person against whom the proceedings are conducted and regardless of whether the criminal offence was committed in peace, state of emergency, in a state of imminent war danger or in a state of war, unless the jurisdiction of another court is prescribed for specific types of these criminal offences; **b)** adjudicate in the first instance on those criminal offences which are by separate law prescribed to fall within the jurisdiction of basic courts; **c)** conduct proceedings and decide on requests for expunging of a sentence,

[17] Judicial Reform Strategy for the period 2014 -2018.
[18] Official Gazzette of Montenegro No. 11/15.

requests for termination of security measures or legal consequences of a sentence and adjudicate in those matters when they have imposed such a sentence or measures;

2) Civil cases, to adjudicate in the first instance: **a)** on disputes relating to property, matrimony, family, personal-legal and other relationships, except in those disputes where the law prescribes the jurisdiction of another court; **b)** On disputes relating to correction or reply to information provided by the media and petitions relating to violation of personal rights committed through the media;

3) Labour law cases, to adjudicate in the first instance on disputes relating to:

a) employment,

b) conclusion and application of collective bargaining agreements, as well as all disputes between employers and trade unions;

c) application of the rules on strike;

4) Other legal matters:

a) to resolve non-contentious cases in the first instance;

b) to resolve cases of enforcement and security;

c) to decide on recognition of foreign judgments, as well as on the enforcement of foreign judgments when so prescribed by law, except for those falling within the jurisdiction of the Commercial Court;

5) Free legal aid; and

6) International legal assistance in criminal matters under a *letter rogatory* for service of documents.

III. 3. High courts

There are two high courts with the seats in Bijelo Polje and Podgorica. The high courts have a jurisdiction to decide *in first instance* over:

- Criminal cases for a crimes punishable by law by imprisonment in excess of 10 years as principal punishment, regardless of the character, profession and position of the person against whom the proceedings are conducted and regardless of whether the criminal offence was committed in peace, state of emergency, in a state of imminent war danger or in a state of war, and for the following crimes: manslaughter, rape, endangering the safety of air traffic, unauthorized production, keeping and putting into circulation of narcotic drugs, calling for violent change of the constitutional order, disclosure of secret

data, instigation of ethnic, racial and religious hatred, discord and intolerance, violation of territorial sovereignty, associating for anti-constitutional activity, preparing acts against the constitutional order and security of Montenegro, against humanity and other goods protected by international law. Higher courts also decide in the first instance over those crimes which are by separate law prescribed to fall under their jurisdiction.

The high courts have a jurisdiction to decide *in the second instance* over appeals against decisions of basic courts both in criminal and civil cases.

In addition, the high courts are dealing with: conduct of a proceedings for establishment of circumstances regarding the request for extradition of accused and convicted persons and the procedure of recognition and enforcement of foreign judgments in criminal matters; resolve conflict of jurisdiction between basic courts from their territory; decide upon requests for expunging of a sentence based on judicial decision and upon requests for termination of security measures or legal consequences of a sentence relating to the prohibition to acquire certain rights, when they have pronounced such a sentence or measure; international legal assistance in criminal matters under a letter rogatory for a hearing person, implementation of special evidentiary actions, as well as other forms of international criminal legal assistance;

Irrespective of the rules on territorial jurisdiction, Special Division of Podgorica High Court decides over criminal cases for the following crimes:

1) organized crime, regardless of the sentence prescribed;

2) high-level corruption if a public official committed the following crimes: abuse of office, fraud in the conduct of official duty, illegal influence, incitement to illegal influence, passive bribery, active bribery. If the material gain exceeding the amount of forty thousand euro was obtained through the commission of the following criminal offences: abuse of position in business operations, and abuse of office in economy;

3) money laundering;

4) terrorism; and

5) war crimes.

III. 4. The Commercial Court

There is a single commercial court for the whole territory of Montenegro. It decides in the first instance over disputes between companies, entrepreneurs and other legal entities performing economic activity (commercial entities), which arise from their commercial-legal relationships and in the disputes arising between commercial entities and other legal persons in

the performance of the activity of commercial entities, as well as in the case where one party in those disputes is a natural person, if he / she is in relation of substantive joint litigant to one of the parties. *Ratione materiae* it decides over disputes relating to: registration of commercial entities as well as disputes arising from relationships governed by company law; bankruptcy and liquidation of commercial entities, regardless of the capacity of the other party and irrespective of the time when the dispute was initiated, unless otherwise provided by law; copyrights and related rights, industrial property rights and trademark protection, and other rights arising from intellectual property regardless of the capacity of the parties; rights of artists, rights concerning the multiplication, duplication and releasing for circulation of audio-visual works, as well as disputes relating to computer programmes and their use and transfer; disturbance of possession; distortion of competition, abuse of monopolistic or dominant position in the market and entering into monopolistic agreements; ships and navigation at sea and inland waters, as well as disputes governed by navigation law, except for disputes relating to the transport of passengers; aircrafts and disputes governed by air law, except for disputes relating to the transport of passengers; and other legal matters which the law places within the jurisdiction of the Commercial Court.

In the first instance the Commercial Court also: 1) conducts the proceedings of bankruptcy and liquidation; 2) decides on and conduct enforcement when the enforceable instrument has been issued by the Commercial Court or arbitration when so defined by a separate law, decide on enforcement between the parties, and decides on and conduct enforcement and security on board ships and aircrafts, regardless of the capacity of parties; 3) decides in non-contentious proceedings concerning ships and aircrafts; 4) decides on the recognition of foreign judicial decisions rendered by commercial courts, as well as of foreign arbitral awards. It also provides mutual legal assistance in matters under its jurisdiction.

III. 5. The Court of Appeal

The Court of Appeal decides over appeals to the high court`s decisions in first instance as well as on appeals to the decisions of the Commercial Court and resolves conflicts of jurisdictions between: basic courts from the territories of the high courts, basic courts and the high courts, and between the high courts.

III. 6. The Administrative Court

The Administrative Court has its seat in Podgorica and decides over administrative cases.

III. 7. The Supreme Court

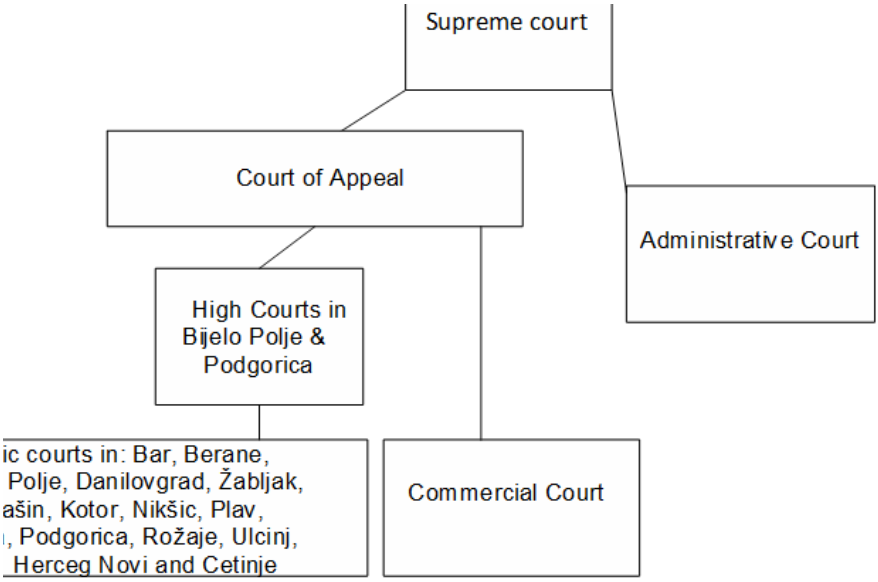
The Supreme Court is the court of last resort in Montenegro. Its seat is in Podgorica and has jurisdiction to decide: 1) in the third instance when so provided by law; 2) over extraordinary legal remedies against decisions of the courts in Montenegro; 3) over legal remedies against decisions of its panel, when so prescribed by law; 4) over the transfer of territorial jurisdiction when it is obvious that it will be easier for the other court that has *ratione materiae* jurisdiction to conduct the proceedings, or for other important reasons; 5) over establishing which court shall have territorial jurisdiction when the jurisdiction of the courts in Montenegro is not excluded, and when, in accordance with the rules on territorial jurisdiction, it is not possible to reliably determine which court has territorial jurisdiction in a particular legal matter; 6) over conflict of jurisdiction between different types of courts in the territory of Montenegro, except when the jurisdiction of another court has been prescribed to resolve the conflict of jurisdiction. The Supreme Court also decides over the matters relating to the transfer of territorial jurisdiction, determining the court having territorial jurisdiction and conflict of jurisdiction in a panel of three judges, without conducting a hearing.

At a General Session, the Supreme Court: 1) takes general legal standpoints; 2) considers issues in relation to the work of courts, implementation of laws and other regulations and exercise of judicial power, informing the Parliament of Montenegro thereof when it deems necessary; 3) adopts Rules of Procedure of the General Session of the Supreme Court; and 4) proposes candidates for the President of the Supreme Court, issue the proposal for establishing the termination of office, disciplinary liability and dismissal of the President of the Supreme Court and issue opinions on candidates for judges of the Supreme Court.

The general legal standpoints are being taken on disputable legal matters arising from case law, in view of ensuring uniformity in the application of law by the courts. The general legal standpoint may be taken *ex officio* or at the request of a court.

All-embracing session of the Supreme Court involves General Session of the Supreme Court and the presidents of the Court of Appeal, the Administrative Court, the Commercial Court, and the high courts.

Organization chart of Montenegrin court system



IV. CRITERIA AND PROCEDURE FOR THE APPOINTMENT, PROMOTION, EVALUATION, AND DISCIPLINARY LIABILITY OF JUDGES

Judicial function can be exercised either in the professional capacity (judges) or as a layman (lay judges). As a result, the criteria a judge has to meet vary.

One can become the candidate for a judge if he/she meets both the general criteria and the special criteria in accordance with the law.

The general criteria relate to appointments of judges in all the courts and require that a judge is: a citizen of Montenegro;[19] in good health condition; attributed with legal capacity; in possession of degree in law; and that he/she passed a bar exam.

The special criteria for appointment are reflected in adequate work experience in legal profession. The candidates for judges of the misdemeanour courts have to have **four years** of working experience. The candidates for judges of the basic courts have to have **four years** of experience in legal profession or alternatively if he/she, after passing the bar exam, worked for at least two years as an adviser in court or public prosecution office, as an attorney, notary

[19] According to the Basic Principles on the Independence of the Judiciary of 13 December 1985 a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

or Professor of Law. One is qualified to become a judge of the Commercial Court if he/she worked for at least **eight years** as a judge, public prosecutor, attorney, notary, Professor of Law, or on other legal matters. A person may be appointed as a judge of the Administrative Court if he/she worked for at least **eight years** as a judge, public prosecutor, attorney, notary, Professor of Law, or on other legal matters. The requirement of the High Misdemeanour Court is that the candidate worked as a judge or a misdemeanour judge, or as a public prosecutor, for at least **four years**. Adequate working experience in judiciary (as a judge or a prosecutor) is required for the candidates for judges of the High Court (**eight years**), the Court of Appeal (**ten years**), and the Supreme Court (**fifteen years**). Alternatively, a person may be appointed as a judge of the Supreme Court if he/she has at least **20 years** of work experience as a judge, public prosecutor, attorney, notary, Professor of Law or on other legal matters. The candidates for the presidents of the courts are required to possess a bit longer adequate working experience.

Furthermore, candidate for a judge has to meet the requirements of professional impartiality, high moral qualities, and proven professional ability. At the same time, the candidates are praised for efficiency, accountability, and the quality of judicial office exercise, in case he/she exercised judicial office. These criteria are set with a view of the international standard that "persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law" which implies that "any method of judicial selection shall safeguard against judicial appointments for improper motives". [20]

A longstanding process of reforming the modality of appointment of judges was completed in February 2015 by enactment of the *Law on Judicial Council and Judges*. [21] The law introduced a single countrywide recruitment system of judges and an objective and merit-based promotion system and reinforced accountability and integrity safeguards in the judicial system. New provisions reinforced the role of the Judicial Council thereby being perceived as the key actor of the judicial system expected to exercise its competences with full transparency, accountability and effectiveness. In a single piece of legislation can be found all the provisions related to the rights and duties of judges as well as of the Judicial Council as an independent body that has a fundamental function to appoints and dismisses judges and ensures independence and autonomy of judges and courts.

[20] Basic Principles on the Independence of the Judiciary of 13 December 1985, Article 10.
[21] Official Gazzette of Montenegro No. 11/05.

Judges and presidents of the courts are being **appointed and dismissed** by the Judicial Council. The appointment of judges starts with advertisement of vacant positions. Candidates for judges that are applying for the first time undergo written testing organized by the Judicial Council. On the basis of success in the written test or the bar exam and interview evaluation, the ranking list of candidates for judges is being formed. Best ranked candidates are filling the vacant judicial positions and are submitted to undergo 18-months (9 months in misdemeanour courts) initial training in Podgorica Basic Court, the Administrative Court, or the Commercial Court until the final decision on appointment is made.[22] The Judicial Council appoints for a judge of the basic court the candidate who passed the initial training and is evaluated with the grade "satisfactory". The right to choose the basic court where he/she will serve judicial tenure, the candidate acquire in accordance with his/her ranking. The employment of a candidate who acquired unsatisfactory grade or he/she refuses to be assigned to the specific court is being terminated. Criteria for appointment of the Supreme Court`s judges are professional knowledge and ability to exercise judicial office. The fulfilment of these criteria is assessed around different sub-criteria. This innovative legislative intervention aimed at objectification of the appointment procedure. Transparent evaluation of candidates and interviews with candidates at the sessions of the Judicial Council open to public brought a high level of transparency.

The Constitution provides that the Judicial Council appoints **the president of the Supreme Court** by two-third majority based on the proposal of the General Session of the Supreme Court. Following the interviews with candidates for the Supreme Court`s president, the General Session of the Supreme Court communicates its proposal to the Judicial Council.

In addition to the voluntary **deployment and transfer of judges**, new law envisages permanent horizontal transfer of judges. If a judge wants to be permanently transferred to the court of equal or lower level he/she applies to the internal vacancy announcement. Considering both on the results a judge had in last three years and the list of such candidates, the Judicial Council makes the final decision on transfer.

The second segment of the reforms included professional evaluation, respectively **the right of a judge to advance** to the court of higher instance in case his/her performance is evaluated with the mark "excellent" and if he/she meets criteria requested for appointment in that court. Criteria for professional evaluation are to the great extent objectified (evaluation of performance and evaluation of an interview with a candidate) while related issues are regulated in detail by the Judicial Council`s Rules of Procedures.

[22] A candidate for a judge is entitled to remuneration of 70% of remuneration of a judge in the basic court.

The system of professional evaluation envisages the intervention in the evaluation procedure by a plurality of evaluators and a plurality of reports. First of all the concerned judge expresses his/her own evaluation trough the self-evaluation report. Then, a judicial evaluation panel composed by the president of the court the evaluated judge belongs to, and four judges from higher instance courts, selected by the Judicial Council for the evaluation of judges draft the evaluation report and propose an evaluation grade. The draft report is then submitted to the evaluation committees in the Judicial Council which then performs the final evaluation.

Sources of evaluation for judges are: 1) 5 judgments extracted by lot; 2) 5 judgments offered by the evaluated judge; 3) 5 judgments that were reversed upon appeal, extracted by lot; 4) A statistical report on the work of the judge, containing information on the work of the judge, data from the records on judges as well as other all the relevant information about the judges' professional life; 5) records obtained through inspection of work of the court; and 6) reports by the Judicial Training Centre on training courses completed by the judge.

A judge who is evaluated either as a "satisfactory performer" or as a "non-satisfactory performer" must undergo a mandatory programme of continuous training. A judge who is evaluated as an "excellent performer" becomes eligible to be promoted to a higher court.

The system of professional evaluation system will become operational as of 1 January 2016. The system is expected to be tested as a pilot project in Podgorica Basic Court in order to establish its effectiveness.

Development of indicators for measuring work productivity of judges and the *case weighting study* will contribute to proper and objective setting of criteria for evaluation of judicial performance. One should be proud of this achievement because it makes the judicial system in Montenegro one step closer to the standards of the EU members.

The law has introduced the innovated **system of disciplinary liability** that fully meets requirements of legality principle. The law contain three lists of detailed infringements, divided, according their seriousness in: *minor disciplinary offences (*5 infringements), *severe disciplinary offences* (12 infringements) and *the most serious disciplinary offences* (5 infringements). The new provisions further respect the legality and proportionality principles for sanctions: they envisage four disciplinary sanctions: reprimand, fine, prohibition of promotion and dismissal, and they further associate each sanction to a group of disciplinary offences according to the seriousness of the violation. Dismissal shall be imposed for committing the most severe criminal offences. The laws consider dismissal of judges as a sanction for a disciplinary

infringement and clearly define the cases of dismissal, thus protecting the judges' independence and judges' and their irremovability.

As regards the disciplinary proceeding, the law provide for: a wide range of authorities, (including the Commission for Monitoring Compliance with the Code of Judicial Ethics) that are entitled and have the duty to file a motion for a disciplinary infringement*;* the regulation of the content of the disciplinary motion; the composition of the disciplinary panel and it`s competencies; the hearings; the decision-making process; and the temporary removal from office of the accused judge/prosecutor, in case of a criminal charge against him/her. Given the principle of fair conduct of disciplinary proceedings, the law established a disciplinary plaintiff. Consequently, there is no option that single entity "prosecute and adjudicate" in disciplinary proceedings. The law further established the principle of the mandatory prosecution, according to which the disciplinary plaintiff is not entitled to archive a case on his/her own discretionary decision but she/he has to seek the authorisation by the disciplinary panel of the Judicial Council. This panel is empowered to impose an obligation on the disciplinary plaintiff to conduct an investigation and bring an indictment in cases in which the plaintiff asks the panel to dismiss the disciplinary motion. The decision can be appealed with the Supreme Court.

The law also brought the novelty that a judge will be liable for intentional damage caused by unlawful, unprofessional or unscrupulous work in the exercise of judicial office. Naturally, the ultimate goal is neither expansion of disciplinary proceedings nor the "hunt for judicial errors".[23]

In addition, the Judicial Council established the Commission for monitoring the application on the Code of ethics. Every citizen can file a complaint alleging the violation of the code of ethics. In case the Commission establishes that no violation of the Code occurred, the procedure stops there, otherwise the case is forwarded to the Judicial Council for a disciplinary proceeding.

V. THE JUDICIAL COUNCIL

In Montenegro there are separate councils in place for appointment of judges and prosecutors (the Judicial Council and the Prosecutorial Council). Specialized body that deals with personnel management in the judiciary was introduced by *1991 Law on courts*. Since then, the composition and competencies of the council has constantly been changing. The Judicial Council (hereinafter: *the Council*) become a constitutional category by adoption of the

[23] According to the CEPEJ`s Report on "European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice Montenegro is ranked 31 position in relation to number of disciplinary proceedings initiated against judges. The report is available at http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf.

current Constitution in 2007.[24]

The Constitution governs position, composition, and the competencies of the Council. The Council related issues are regulated in detail by *the Law on Judicial Council and Judges* (appointment of its members, termination of the mandate of its members, appointment of judges and lay judges, termination of judicial office, disciplinary liability, and dismissal of judges as well as other relevant issues).

The Council is an independent and autonomous body which ensures independence and impartiality of judges and courts. This is reflected in the fact that the Council is not just entitled to propose candidates for judges as per former legislation but it is fully responsible for appointment of judges. This way, the procedure of judicial appointments is dislocated from the Parliament and entrusted to the Council. The seat of the Council is in Podgorica.

V. 1. Composition

According to 2013 amendments of the Constitution, the Council is composed of president and nine members: the president of the Supreme Court, four judges (appointed by the Conference of all judges), four eminent jurists (appointed in public call procedure by the Parliament in accordance with the proposal of the relevant parliamentary committee), and the Minister of Justice. President of the Council is appointed from non-judicial members by two-third majority of votes of the Council`s members. The Minister of Justice cannot be appointed as the Council`s president. President of the Council has a casting vote in case of parity of votes. The four year mandate of the Council is promulgated by the President of the State.

Members of the Council from among judges[25] are appointed by the Conference of all judges by secret ballot. A member of the Council from among eminent jurists may be a person who has at least fifteen years of work experience in legal profession and enjoys personal and professional reputation and was not convicted of criminal offences that render judges unworthy for the exercise of judicial office.

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[24] Establishment of such a body was one of seven conditions recommended by the Constituent Parliament by the Venice Commission.

[25] These are three members from among the judges of the Supreme Court, the Court of Appeal, the Administrative Court, the High Misdemeanour, the Commercial Court and the High Courts, having at least ten years of work experience as judges as well as one member from among the judges of the basic courts and the misdemeanour courts, having at least five years of work experience as judges.

V. 2. Competences

According to the Constitution, the Council: 1) appoints and releases from duty the president of the Supreme Court; 2) appoints and releases from duty the president of the Judicial Council; 3) submits the Report on the performance of the judicial council and the overall judicial situation to the Parliament; 4) appoints and releases from duty the judge, the president of the court and the lay judge; 5) deliberates on the report on the court activities, applications and complaints regarding the work of the court and take a standpoint with regard to them; 6) establishes the termination of the judicial duty; 7) establishes the number of judges and lay judges; 8) proposes to the Government the amount of funds required for the work of courts; 9) performs other duties as stipulated by the law. The Council makes decisions by majority vote of all its members except in the cases provided by the Constitution. The Minister of Justice does not vote in disciplinary proceedings.

In addition to the competences entrusted by the Constitution, the Council: 1) decides on disciplinary liability of judges and court presidents; 2) provides for the use, functionality and uniformity of the judicial information system, in the part referring to the courts; 3) takes care of the training of judges and court presidents; 4) keeps records of data on judges and court presidents; 5) considers complaints against the work of judges and court presidents; 6) inspects complaints of judges and take positions regarding threats to their independence and autonomy; 7) proposes framework criteria on the necessary number of judges and court administration; 8) issues opinions on the incompatibility of performing certain duties with the exercise of judicial office; 9) establish the Commission for Professional Evaluation of Judges; 10) appoints the disciplinary plaintiff; 11) adopts it`s Rules of Procedure; 12) determines the methodology for preparation of reports on work of courts and the annual work distribution in court; 13) issues official identity cards of judges and court presidents and keep records of official identity cards; and 14) issues opinions on draft regulations in the field of judiciary.

One of the important activities of the Council is development of the annual reports which contains respective information about the work of the Council, the description and analysis of the state of play in the judiciary, detailed information for each court relating to the number of cases received and resolved on annual basis, the problems and deficiencies in their work, as well as measures to be taken to remedy identified deficiencies. The courts have a duty to communicate relevant information requested by the Council within the deadline set by the Council.

V. 3. Secretariat of the Judicial Council

Logistical support to the work of the Council is provided by its Secretariat in terms of all financial, administrative, IT, analytical and other tasks of the Council and activities of mutual interest to the courts. Secretariat is organized within the four departments: Department for legislation, status issues, and education of judges, Department for IT technologies and multimedia, Department for General Affair, and the Department for Internal Audit.

V. 4. Commissions

In order to implement properly the new legislation, the emphasis was put to the establishment of special commissions composed by the Council`s members for: the recruitment and the mobility of judges and the management of human resources; performing the individual professional evaluation; the establishment and the implementation of appropriate workload framework criteria; appointing heads of courts and promoting judges according to fair procedures; allocating the budget according to the needs, and for other relevant purposes. Hence, the Council set up the following commissions: Commission for Ethical Code for Judges, Commission for Appointment, Commission for Professional Evaluation, and the Commission for Testing. The Council`s Rules of Procedure provides that it can set more commissions in case of a need.

CONCLUSION

Montenegro truly belongs to the groups of countries with rich legal and judicial traditions and can serve as an interesting subject of studies in terms of comparative law. Since the most rudimentary forms of statehoods up to modern times, Montenegrin judiciary was changing in consonance with the needs of society and circumstances of different periods of history. The judiciary system in Montenegro is anchored to the well-known national legal culture but also embraced the features of great civilizations that reached areas of Montenegro.

During the time, Montenegrin judiciary evolved in relatively modern system as it is today. Given that Montenegro is a small and unitary country, courts are organized in single, integral way with simplified organization based on three layers of adjudication. Important advantage of such a system is its efficiency. A career judiciary exists in Montenegro where one can be entrusted with judicial office in early stage of judicial career. Independence of judiciary is one of the most important principles of the constitutional order in Montenegro. The recent reform interventions safeguard judges from undue influences of any kind, principally of the influences of legislative and executive

power. This ultimate goal can be achieved through fairly modernized system of appointments, promotion, professional evaluation, and disciplinary liability of judges which is harmonized with the highest standards followed by the EU members. Finally, there is probably no perfect judicial system and experience shows that judges are the heart of the controversy. Therefore, it is of paramount importance to ensure their independence.

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