



Strasbourg, 20 October 2014

CDL-REF(2014)043
Engl.Only

Opinion no. 790 / 2014

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW

ON COURTS

OF MONTENEGRO

DRAFT**LAW ON COURTS****I BASIC PROVISIONS****Scope****Article 1**

The present Law shall regulate establishment, organisation, and jurisdiction of courts; organisation of work of courts and judicial administration, and other matters of importance for orderly and timely functioning of courts.

Judicial Power**Article 2**

Judicial power shall be exercised by courts established under the present Law.
Courts shall decide on legal matters under their jurisdiction in a lawful, objective, and timely manner.

Judicial office shall be exercised by judges and lay judges.

Accessibility of Courts and Equality of Arms**Article 3**

Everyone shall have the right to address a court for the purpose of exercising his/her rights.

Everyone shall be equal before a court.

Publicity**Article 4**

The work of courts shall be public.

Public nature of the work of courts shall be ensured in accordance with law.

Impartiality**Article 5**

Everyone shall have the right to an impartial trial within a reasonable time and to have their legal matter, notwithstanding the parties and the characteristics of the legal matter, heard by a judge to whom the case was allocated randomly.

Resources for Work of Courts**Article 6**

The resources and conditions for work of courts shall be ensured in the budget of Montenegro.

II ESTABLISHMENT, ORGANISATION AND JURISDICTION OF COURTS**Courts****Article 7**

Courts are:

- 1) misdemeanour court;
- 2) basic court;
- 3) High Misdemeanour Court of Montenegro (hereinafter referred to as the "High Misdemeanour Court");
- 4) high court;
- 5) commercial court;
- 6) Administrative Court of Montenegro (hereinafter referred to as the "Administrative Court");

- 7) Appellate Court of Montenegro (hereinafter referred to as the "Appellate Court");
- 8) Supreme Court of Montenegro (hereinafter referred to as the "Supreme Court").

Misdemeanour Court

Establishment Article 8

Misdemeanour courts are:

- 1) Misdemeanour Court in Bijelo Polje, for the territories of municipalities: Bijelo Polje, Andrijevica, Berane, Gusinje, Žabljak, Kolašin, Mojkovac, Petnjica, Plav, Pljevlja and Rožaje, with two local units in:
 - Berane - for the territories of municipalities Berane, Andrijevica, Gusinje, Petnjica, Plav and Rožaje and
 - Pljevlja - for the territories of municipalities Pljevlja and Žabljak;
- 2) Misdemeanour Court in Budva, for the territories of municipalities: Budva, Bar, Kotor, Tivat, Herceg Novi and Ulcinj, with two local units in:
 - Bar - for the territories of municipalities Bar and Ulcinj and
 - Herceg Novi - for the territory of municipality Herceg Novi.
- 3) Misdemeanour Court in Podgorica, for the territories of capital city Podgorica, historic royal capital Cetinje and municipalities: Danilovgrad, Nikšić, Plužine and Šavnik, with a local unit in Nikšić for the territories of municipalities Nikšić, Plužine and Šavnik.

Jurisdiction Article 9

The misdemeanour court shall have jurisdiction to adjudicate upon petitions for initiating misdemeanour proceedings and upon petitions for court determination.

High Misdemeanour Court

Establishment Article 10

High Misdemeanour Court shall be established for the territory of Montenegro and its seat shall be in Podgorica.

Jurisdiction Article 11

High Misdemeanour Court shall rule on appeals against the decisions of misdemeanour courts, on the conflict of jurisdiction between misdemeanour courts and it shall perform other tasks stipulated in the law.

1. Basic Court

Establishment Article 12

Basic courts are:

- 1) Basic Court in Bar – for the territory of Bar municipality;
- 2) Basic Court in Berane – for the territories of Berane, Andrijevica and Petnjica municipalities;
- 3) Basic Court in Bijelo Polje - for the territories of Bijelo Polje and Mojkovac municipalities;
- 4) Basic Court in Danilovgrad - for the territory of Danilovgrad municipality;

- 5) Basic Court in Žabljak - for the territories of Žabljak and Šavnik municipalities;
- 6) Basic Court in Kolašin - for the territory of Kolašin municipality;
- 7) Basic Court in Kotor - for the territories of Kotor, Budva and Tivat municipalities;
- 8) Basic Court in Nikšić - for the territories of Nikšić and Plužine municipalities;
- 9) Basic Court in Plav – for the territories of Plav and Gusinje municipalities;
- 10) Basic Court in Pljevlja – for the territory of Pljevlja municipality;
- 11) Basic Court in Podgorica – for the territory of capital city Podgorica;
- 12) Basic Court in Rožaje – for the territory of Rožaje municipality;
- 13) Basic Court in Ulcinj – for the territory of Ulcinj municipality;
- 14) Basic Court in Herceg Novi – for the territory of Herceg Novi municipality;
- 15) Basic Court in Cetinje – for the territory of historic royal capital Cetinje.

Jurisdiction

Article 13

Basic courts shall have the following jurisdiction:

- 1) in criminal cases:
 - a) to adjudicate, at first instance, on criminal offences punishable by law with a fine or a prison term of up to ten years as the principal punishment, regardless of the capacity, profession or position of the person that the proceedings are brought against and regardless of whether the offence was committed in peacetime, during an emergency situation, imminent war danger, or a state of war, unless some of those criminal offences are placed under the jurisdiction of another court;
 - b) to adjudicate, at first instance, on criminal offences that are placed by a separate law under the jurisdiction of the basic court;
 - c) to conduct procedures and decide on petitions to delete a conviction from records, to suspend security measures, or terminate the legal consequences of conviction, and to decide on those matters whenever the basic court concerned was the court that had imposed such conviction or measure;
- 2) to adjudicate, in civil cases, at first instance:
 - a) disputes regarding property, matrimonial, family, personal status and other relations, save where those disputes are placed by law under the jurisdiction of another court;
 - b) disputes regarding correction notices or replies to information published in the media, and requests relating to breaches of personal rights committed in the media;
- 3) in labour law cases, at first instance, to adjudicate on disputes regarding:
 - a) employment relations;
 - b) conclusion and implementation of collective agreements, and any other disputes between employers and trade unions;
 - c) implementation of regulations governing strikes;
- 4) at first instance, adjudicate on misdemeanours upon petitions for initiating misdemeanour proceedings and upon petitions for court determination.
- 5) in other legal matters, to:
 - a) adjudicate at first instance on non-contentious matters unless otherwise provided by the present Law;
 - b) adjudicate on enforcement and security of claims matters in accordance with the law governing enforcement and security of claims;
 - c) rule on the recognition of foreign judicial decisions, and on enforcement of foreign judicial decisions when so provided by law, with the exception of those falling under the jurisdiction of the commercial court;
 - d) provide legal aid;
 - 6) provide mutual legal assistance in criminal matters under letters rogatory for service of process.

The basic courts shall also have jurisdiction to adjudicate on other cases at first instance, unless such other cases have been placed by law under the jurisdiction of another court.

The basic courts shall also perform other tasks provided by law.

2. High Court

Establishment

Article 14

High courts are:

- 1) High Court in Bijelo Polje - for the territories of basic courts in Bijelo Polje, Berane, Žabljak, Kolašin, Plav, Pljevlja and Rožaje and
- 2) High Court in Podgorica - for the territories of basic courts in Podgorica, Bar, Danilovgrad, Kotor, Nikšić, Ulcinj, Herceg-Novi and Cetinje.

Jurisdiction

Article 15

High courts shall have the following jurisdiction:

1) to adjudicate at first instance in criminal procedures on criminal offences punishable by a prison term exceeding ten years as the principal punishment, regardless of the capacity, profession or position of the person that the proceedings are brought against and regardless of whether the offence was committed in peacetime, during an emergency situation, imminent war danger, or a state of war, and on the following criminal offences:

- manslaughter,
- rape,
- endangering the security of air traffic,
- calling for a violent change of constitutional order,
- disclosure of confidential data,
- causing national, racial and religious hatred, discord and intolerance,
- violation of territorial sovereignty,
- conspiracy to commit unconstitutional activity,
- preparatory offences against the constitutional order and security of Montenegro,
- against humanity and other values protected by international law,

2) to adjudicate at first instance on criminal offences that are placed by separate law under the jurisdiction of the high court;

3) to rule at second instance on appeals against the decisions of basic courts;

4) to conduct the procedure of deciding upon requests to extradite accused and convicted persons as well as the procedure of recognition and enforcement of foreign judicial decisions in criminal matters;

5) to resolve conflicts of jurisdiction arising between the basic courts within their territory;

6) to rule on petitions to delete a conviction from records on the basis of a judicial decision and on petitions to suspend security measures, or terminate the legal consequences of conviction relating to disqualification from a right, where the concerned high court was the authority that had imposed the sanction or measure;

7) to provide mutual legal assistance in criminal matters upon letters rogatory for hearing persons, for conducting special evidentiary actions, and other forms of international criminal law assistance;

8) to perform other tasks stipulated by law.

Notwithstanding the rules on territorial jurisdiction, the High Court in Podgorica shall adjudicate on criminal proceedings conducted on charges for criminal offences of:

- 1) organized crime, regardless of the prescribed punishment;
- 2) having elements of corruption, regardless of the prescribed punishment, more specifically:
 - violation of equality in the conduct of economic activities,
 - abuse of monopolistic position,
 - abuse of office in business operations,

- causing false bankruptcy,
- abuse of authorizations in economy,
- passive bribery in business operations,
- active bribery in business operations,
- abuse of evaluation of assets,
- misuse of privileged information,
- manipulation in the market of securities or of other financial instruments,
- abuse of an official position,
- fraud in the conduct of an official duty,
- trading in influence,
- instigation to trading in influence,
- passive bribery,
- active bribery,
- 3) money laundering;
- 4) trafficking in persons.

A special division shall be established at the High Court to adjudicate on criminal offences referred to in paragraph 2 of this Article.

3. Commercial Court

Establishment Article 16

The Commercial Court shall be established for the territory of Montenegro and shall have its seat in Podgorica.

Jurisdiction Article 17

The Commercial Court shall adjudicate the following disputes at first instance:

- 1) disputes between business organizations, entrepreneurs, and other legal persons engaged in economic activities (commercial entities) relating to their commercial law relations, and disputes between commercial entities and other legal persons that arise in the conduct of commercial entities' activities, as well as where one of the parties to those disputes is a physical person if such a physical person is a material co-litigant on the same question of law as one of the parties;
- 2) disputes regarding registration of commercial entities as well as disputes regarding the relations governed by company law;
- 3) disputes regarding bankruptcy and liquidation of commercial entities irrespective of the capacity of the other party, or the time when the dispute was initiated, unless otherwise provided by law;
- 4) disputes in relation to copyrights and related rights, industrial property rights and protection of trademarks and other intellectual property rights regardless of the capacities of parties;
- 5) disputes regarding rights of artists, rights of duplication, copying and releasing for circulation of audio-visual works as well as disputes regarding computer programs and their use and transfer between the parties under item 1 of this paragraph;
- 6) disputes regarding disturbance of possession between the parties under item 1 of this paragraph;
- 7) disputes related to distortion of competition, misuse of monopoly and dominant position in the market, and conclusion of monopolistic agreements;
- 8) disputes regarding vessels and navigation at sea and in internal waters, as well as disputes that are subject to navigation law, with the exception of the disputes regarding the carriage of passengers;
- 9) disputes regarding aircrafts and disputes governed by aviation law, with the exception of disputes regarding the carriage of passengers;

10) disputes regarding other legal matters that are placed by law under its jurisdiction. At first instance, the Commercial Court shall:

- 1) conduct bankruptcy and liquidation proceedings;
- 2) order and carry out enforcement when so provided by law where the enforceable title was issued by the Commercial Court or arbitration when so provided by a separate law, order security of claims procedure between the parties under paragraph 1, item 1 of this Article, and order and carry out enforcement and security of claims procedure on board vessels and aircrafts, irrespective of the capacities of parties;
- 3) rule in non-contentious proceedings relating to vessels and aircrafts;
- 4) rule on recognition of foreign judicial decisions rendered by courts having jurisdiction over commercial matters, as well as of foreign arbitration awards.

The Commercial Court shall provide mutual legal assistance in matters within its jurisdiction and other tasks provided by law.

4. Appellate Court

Establishment Article 18

The Appellate Court shall be established for the territory of Montenegro, and shall have its seat in Podgorica.

Jurisdiction Article 19

The Appellate Court shall:

- 1) rule on appeals against first instance decisions of higher instance courts, as well as on appeals against the decisions of the Commercial Court;
- 2) resolve conflicts of jurisdiction between:
 - basic courts from the territories of different high courts;
 - basic and high courts;
 - high courts.
- 3) perform other tasks stipulated by law.

5. Administrative Court

Establishment Article 20

The Administrative Court shall be established for the territory of Montenegro, and shall have its seat in Podgorica.

Jurisdiction Article 21

The Administrative Court shall rule on administrative disputes regarding the legality of administrative acts, as well as the legality of other individual acts, when so provided by law, and shall perform other tasks prescribed by law.

6. Supreme Court

Establishment Article 22

The Supreme Court shall be the highest instance court in Montenegro, and shall have its seat in Podgorica.

Jurisdiction
Article 23

The Supreme Court shall:

- 1) rule at third instance, when so provided by law;
- 2) rule on extraordinary legal remedies against the decisions of courts in Montenegro;
- 3) rule against the decisions of its own panel upon legal remedies, when so provided by law;
- 4) rule on the transfer of territorial jurisdiction where it is evident that another court having subject-matter jurisdiction would conduct the procedure with less effort or due to other important reasons;
- 5) designate the court that has territorial jurisdiction when jurisdiction of the courts in Montenegro is not excluded and where, based on the rules of territorial jurisdiction, it cannot be reliably determined which court has territorial jurisdiction over a particular legal matter;
- 6) resolve conflicts of jurisdiction between different types of courts in the territory of Montenegro, except where the resolving of conflicts of jurisdiction has been placed under the jurisdiction of another court;
- 7) perform other tasks stipulated by law.

The Supreme Court shall rule on the transfer of territorial jurisdiction, designation of the court having territorial jurisdiction, and on the conflict of jurisdiction without a hearing, in a panel of three judges.

Full Bench of the Supreme Court
Article 24

The Full Bench of the Supreme Court shall:

- 1) adopt legal positions of principle;
- 2) deliberate on matters regarding the work of courts, application of laws and other regulations, exercise of judicial power, and, where it finds appropriate, report to the Parliament thereon;
- 3) adopt Rules of Procedure governing the work of the Full Bench of the Supreme Court;
- 4) nominate a candidate for the chief justice of the Supreme Court, make proposals for confirming termination of office, disciplinary accountability, and dismissal of the chief justice of the Supreme Court and give opinions on the candidates for judges of the Supreme Court;
- 5) perform other tasks stipulated by law.

Enlarged Session of the Supreme Court
Article 25

The Enlarged Session of the Supreme Court shall be composed of: the Full Bench of the Supreme Court and presidents of the Appellate Court, Administrative Court, Commercial and high courts.

The Enlarged Session shall perform tasks provided by law.

Legal Position of Principle
Article 26

A legal position of principle shall be taken on contested legal matters arising from case law in view of ensuring uniformity in the application of laws by courts.

A legal position of principle may be developed ex officio or upon the request of a court.

Legal positions of principle shall be mandatory on all the courts.

The manner of record keeping and publicizing legal positions of principle shall be governed by the Rules of Procedure of the Full Bench of the Supreme Court.

III ORGANISATION OF WORK OF COURTS

Organizational Tasks

Article 27

Organisation of work of courts shall include court management, organisation of court divisions and of the general meeting of judges, organisation of trials, and internal operations in courts.

The organization and manner of internal operations of courts shall be regulated by the court's Rules of Procedure issued by the public administrative body in charge of judicial tasks (hereinafter: the Ministry of Justice) after having obtained the opinion of the Judicial Council.

Internal Operations in Courts

Article 28

Internal operations within the meaning of the present Law shall include court administration and administrative and technical tasks, as well as tasks related to the use of the judicial information system.

The judicial information system shall be a unique electronic system for the management of court cases in which data from registers in courts are entered, stored and through which these are forwarded.

Indicative Benchmarks

Article 29

The required number of judges and senior and junior court employees shall be determined according to the indicative benchmarks of work (standards) prescribed by the Ministry of Justice upon the proposal of the Judicial Council.

1. *President of Court*

Management

Article 30

The work of courts shall be managed by presidents of courts.

Presidents of courts shall organise work in courts, develop the schedule of assignments and take measures necessary to secure orderly and timely performance of tasks in courts.

Presidents of court shall adopt an internal organisation and job descriptions act of the court, subject to approval of the Government of Montenegro (hereinafter: the Government).

Presidents of court whose office terminated upon expiry of the term they were appointed for shall continue to hold the office including all the rights and obligations pertaining to the president of court until a new president of court has been appointed and at the longest for six months.

The president of court shall be replaced by the judge so designated in the court's annual schedule of assignments.

2. Court's Schedule of Assignments

Adoption of Annual Schedule of Assignments

Article 31

The court's annual schedule of assignments shall be adopted by the president of court no later than by 15 January for the current year.

In the procedure of adopting the proposal for the court's annual schedule of assignments, the president of court shall:

- give due consideration to achieving a balanced distribution of tasks within the court and to specialization of judges;

- enable all judges to give their opinion on the proposed schedule;

The president of court shall designate a judge in the annual schedule of assignments, to replace him/her in case of his/her absence or inability to work (hereinafter referred to as the "deputy president of court").

The president of court shall designate a person responsible for public relations in the annual schedule of assignments.

The proposal for court's annual schedule of assignments shall be examined by the general meeting of judges.

The president of court shall make a written statement concerning the proposal of a judge or of the general meeting of judges that s/he did not accept, within eight days of receipt of such proposal.

Judges or the general meeting of judges may inform the president of the court of the next higher instance of their disapproval of the court's annual schedule of assignments.

Modifications of the Annual Schedule of Assignments

Article 32

The president of court may modify the court's annual schedule of assignments if:

- the number of judicial posts or of judges in the court has increased or decreased;

and

- the number or the type of cases in the court has increased or decreased considerably.

Modifications of the court's annual schedule of assignments shall be made in such a way to least interfere with the already adopted court's annual schedule of assignments.

All modifications in the annual schedule shall be made in accordance with Article 31 of the present Law.

Delivery and Publication of the Annual Schedule of Assignments

Article 33

The president of court shall deliver the annual schedule of assignments, together with any modifications thereto, to all the judges and shall place it on the court's bulletin board.

2. Random Allocation of Cases

Allocation of Cases

Article 34

Cases shall be allocated without delay, according to the annual schedule of assignments, and using the random method of case allocation.

The cases allocated to a judge who does not hold the judicial office in that court any longer shall be re-allocated to a newly appointed judge, or to another judge who has been assigned to hear the cases in a particular legal field under the annual schedule of assignments, and where that is not possible, such cases shall be allocated as provided in paragraph 1 of the present Article.

The cases of a judge who is prevented from performing the tasks of judicial office for more than three months, or a judge from whom the case has been withdrawn, as well as in cases of a recusal of the judge, shall be re-allocated to other judges of the same court in accordance with paragraph 1 of the present Article.

Random Method of Case Allocation

Article 35

After the basic case data have been entered into the judicial information system, cases shall be allocated to judges using the random method of case allocation, in the manner specified in more detail in the court's Rules of Procedure.

Withdrawal of Allocated Cases

Article 36

An allocated case shall be withdrawn from a judge or a panel only where it is ascertained that they have unjustifiably failed to act upon the case, due to a recusal, or where a judge is prevented from performing the tasks of judicial office for more than three months.

The cases whose urgent nature has been identified in the law may be withdrawn from a judge where the judge, for reason of his/her absence or inability to work, cannot act upon them in due time and within the statutory time-limit.

A case shall be withdrawn by the president of court by means of a decision.

The decision withdrawing a case shall be delivered to the judge or to the panel from whom/which the case was withdrawn.

A complaint may be filed to the president of the court of the next higher instance against the decision on case withdrawal, and in case of complaints against a decision of the chief justice of the Supreme Court, such complaints shall be filed to the Full Bench of the Supreme Court, within three days of the receipt of such decision.

A decision on the complaint shall be taken within two days of receipt of the complaint.

The complaint shall not suspend enforcement of the decision in detention cases.

Where the complaint is upheld, the case shall remain with the judge or panel that it had been withdrawn from.

Right to Examine Court Case Files

Article 37

The president of court shall have the right to examine the files of a case assigned to a judge in relation to:

- a petition filed by a party to a proceeding;
- a request filed by the Protector of Human Rights and Freedoms;
- initiation of a procedure to establish disciplinary accountability;
- an application for recusal of a judge;
- an application to expedite proceedings (application for review);
- withdrawal of an allocated case, and
- in other cases where so stipulated by law.

In the cases referred to in paragraph 1 of the present Article, the president of court may request the judge to deliver him/her data in writing or a report on the cases and on the reasons due to which such cases were not finalised within the statutory deadline or within a reasonable time.

4. Full Bench, General Meeting of Judges, and Court Divisions

Work of the Full Bench of the Supreme Court

Article 38

The Full Bench of the Supreme Court shall be convened and chaired by the chief justice of the Supreme Court, on his/her own initiative, upon the proposal of the head of a division, or upon the proposal of the court which seeks a legal position of principle to be developed or modified.

The Full Bench convened to nominate a candidate for the post of the chief justice of the Supreme Court, or to decide on an application for termination of office, on establishing disciplinary accountability and on dismissing the chief justice of the Supreme Court, shall be convened and chaired by a judge of the Supreme Court assigned to replace the chief justice of the Supreme Court.

Decisions of the Full Bench shall be valid where more than a half of judges of the Supreme Court are attending and they shall be taken by majority vote of the total number of the Supreme Court judges.

By way of derogation from paragraph 3 of the present Article, nominations for the appointment of the chief justice of the Supreme Court shall be adopted by a two-thirds majority of all judges of the Supreme Court and by a secret ballot.

Where none of the nominees have won the required majority in the first round, voting shall be repeated for the two nominees having the most votes.

Where no nominee has won the two-thirds majority in the repeated round, the Full Bench shall state that it has not agreed on a nominee for the chief justice of the Supreme Court and it shall notify the Judicial Council thereon.

The Rules of Procedure shall govern the manner of work of the Full Bench of the Supreme Court.

General Meeting of Judges

Article 39

The general meeting of judges shall include all the judges of the said court.

The general meeting of judges shall be convened and chaired by the president of court.

The president of court shall convene the general meeting of judges at the request of a court division or a minimum one third of all judges.

The general meeting of judges shall be held and it shall take decisions where a minimum of two thirds of all judges in the court are present, whereas decisions shall be issued by majority vote of all judges.

The work of court divisions and general meetings of judges shall be governed in more detail by the court's Rules of Procedure.

Scope of Work of the General Meeting of Judges

Article 40

The general meeting of judges shall:

- 1) develop or modify legal positions in cases under the jurisdiction of the concerned court, where such cases are significant for the case-law;
- 2) propose that a legal position of principle be developed or modified;
- 3) analyse activity reports of the court;
- 4) analyse matters that are of significance to trials, professional development, and organisation of work of courts;
- 5) perform also other tasks stipulated by the present Law.

The general meeting of judges shall develop a legal principle when it finds that there are dissenting views between different panels or judges of the court concerned as to how a law should be applied or when an individual panel or a judge derogates from the previously established legal position.

Records shall be kept of the developed legal positions referred to in paragraph 2 of the present Article and their application shall be monitored.

In courts without court divisions, the general meeting of judges shall perform the tasks of the division's general meeting, in addition to the tasks provided by the present Law.

Court Divisions

Article 41

Court divisions may be established in courts, depending on the number of judges, caseload and types of cases, as follows:

- 1) in basic courts - civil, criminal, and enforcement divisions;
- 2) in high courts - criminal and civil divisions;
- 3) in the Commercial Court - commercial disputes division, bankruptcy division, enforcement and security of claims and non-contentious matters division;
- 4) in the Appellate Court - criminal and commercial divisions;
- 5) in the Administrative Court - administrative division;
- 6) in the Supreme Court - civil, criminal, administrative, and case law divisions.

Case-law divisions may be established in courts, as well as other divisions in line with the needs to specialise for certain types of tasks.

Court divisions shall be established by the court's annual schedule of assignments which defines the number, type and structure of court divisions.

Structure and Scope of Work of Court Divisions

Article 42

Court divisions shall be made of judges and panels so assigned in the court's annual schedule of assignments.

The president of court shall designate one or several judges to monitor and study case law in the court's annual schedule of assignments, where there is no case law division in charge of such tasks.

Division's general meetings shall be convened and chaired by the head of division so assigned in the court's annual schedule of assignments.

Court divisions shall analyse legal matters under their scope of work and shall take legal positions on issues under their jurisdiction, and perform other tasks provided by the present Law.

Court division's general meeting shall be held and it shall decide where at least two thirds of all judges of that division are present, and it shall issue decisions by majority vote of all judges of that division.

Expert Assistance

Article 43

The president of court may engage persons who possess the required expertise, or set up an expert team or an expert working body to clarify specific professional issues arising in the course of work of courts, as well as to clarify issues and take positions on matters within the scope of work of court divisions and general meetings of judges, and to assist judges in case preparation, in analysis and monitoring of case law and in other issues that are of importance for the efficient work of courts and judges.

The persons referred to in paragraph 1 hereof shall be entitled to a remuneration the amount of which shall be set by the president of court.

5. Court Days and Case-Law Records

Court Days

Article 44

Court functions shall be discharged at the seat of a court.

Court functions may also be discharged outside of the seat of a court (court days) for the purposes of faster and more immediate decision issuance.

Case-law Records
Article 45

The courts shall keep case-law records.

The manner of keeping case-law records and announcing decisions shall be governed by the court's Rules of Procedure.

6. Court Administration

Court Administration Tasks
Article 46

Court administration shall comprise tasks which ensure a proper and timely work and operations of the court, in particular: court's internal schedule of assignments, assignment of lay judges, tasks related to court witnesses and sworn court translators/interpreters, examination of complaints and petitions, judicial information system management, keeping the prescribed records and reports, work of the clerk's office and archives, financial and material operations, taking actions with respect to deposits, and certification of documents intended for use abroad.

Activity Report
Article 47

The president of court shall deliver the activity report of the court to the Judicial Council and to the Ministry of Justice by no later than 10 February of the current year for the previous year and s/he shall publish it on the court's webpage by the same deadline.

Upon the request of either the Judicial Council or the Ministry of Justice, the president of court shall deliver special or periodic reports which are necessary for the performance of tasks falling under their jurisdiction.

The president of court shall be responsible for accuracy of data contained in reports.

Court File
Article 48

Court file shall be comprised of a set of acts related to court proceedings in a given case and included into the inventory of files.

The method of marking court files that must be uniform for all courts of certain type and instance in Montenegro, and of keeping and storing court files shall be governed by the court's Rules of Procedure.

Restoration of Files
Article 49

If case files are wholly or partially lost, destroyed or damaged so that they are no longer suitable for use, a restoration of files procedure shall be initiated.

Restoring the case file shall be conducted under the rules of non-contentious proceedings, pursuant to relevant application of the provisions governing the annulment of documents in non-contentious proceedings.

Courts shall initiate the file restoration procedure by virtue of office where the case files relate to a procedure still not completed with final force and effect.

Where the files are from a case completed with final force and effect, the file restoration procedure shall be initiated by the party or another person who has a legal interest in the file restoration. This procedure may not be initiated after the expiration of the statutory term for storing files in the archives.

The file restoration procedure shall be managed by a single judge or the presiding judge of the panel that sat in the first instance procedure that the files refer to, and where that judge is not a judge of the concerned court any more, the president of court shall designate a judge to manage the file restoration procedure.

The file restoration procedure shall be subject to evidentiary rules set by the rules of the court procedure conducted in the case whose files need to be restored, given that the court shall always have the authority to use, for the purposes of case file restoration, transcripts of case files held by the parties, the court, or third parties, data from registry books and statements of witnesses, court witnesses, and other parties to the procedure whose files are being restored.

Where the case files restored are from a pending case, the court shall make effort to restore all the files, and where the files being restored are from a case completed with final force and effect, the court shall limit its efforts to the files that are of importance to the procedure and the legal interests of parties or of other persons.

IV JUDICIAL ADMINISTRATION

Supervision of Court Administration

Article 50

The performance of court administration tasks shall be supervised by the Ministry of Justice.

In exercising its supervision functions, the Ministry of Justice may not take actions that interfere with court's decision issuance in legal cases.

Delivery of Data to the Ministry of Justice

Article 51

Upon the request of the Ministry of Justice, the courts shall communicate data and notifications that the Ministry of Justice needs to monitor the organisation and work of courts and their application of court's Rules of Procedure, and for the purposes of acting upon the petitions and complaints of citizens.

Inspection Control

Article 52

The Ministry of Justice shall carry out inspections in courts in relation to:

- 1) organisation of work in courts, in accordance with the present Law and the court's Rules of Procedure;
- 2) acting upon citizens' petitions and complaints against the work of courts;
- 3) work of the Secretariat of the Judicial Council, specifically, its activities relating to court administration;
- 4) work of the clerk's office and archives;
- 5) collection of fines, costs of criminal proceedings, confiscation of material gain, and court fees;
- 6) procedures relating to deposits;
- 7) keeping business books for financial and material operations with parties to proceedings;
- 8) keeping the prescribed records;
- 9) other tasks relating to the proper work and operations of court administration.

Judicial Inspector

Article 53

Inspection control over court administration tasks in courts shall be exercised by judicial inspectors.

Persons meeting the requirements for the post of an administrative court judge may be appointed judicial inspectors.

Exercising Inspection Controls

Article 54

Inspection control shall be conducted according to the annual inspection plan, which is adopted by the minister of justice by the end of the calendar year for the next year (regular inspection).

The annual inspection plan shall also include courts where, due to the results of inspection conducted during the calendar year, inspection must be repeated in the next calendar year (control inspection).

The annual inspection plan shall be communicated, by no later than 31 January of the current year, to the courts that will be inspected.

Extraordinary inspection control shall be ordered by the decision of the minister of justice, upon a proposal of the chief justice of the Supreme Court, president of the court of the next higher instance, or the president of the Judicial Council.

The decision on extraordinary inspection control shall be delivered to the inspected court no later than one day before the inspection control is to begin.

The Ministry of Justice shall carry out inspection control on the complaints and petitions of citizens relating to court administration tasks.

Conducting Inspections

Article 55

Inspection control shall be carried out by direct examination of documents, data and method of work in the court, or by examining the documents and data submitted by the inspected court.

The president of court shall enable unimpeded conduct of inspection control in court or the delivery of the requested documents and data.

Written Record

Article 56

A written record shall be compiled on the conducted inspection control, including data on identified facts, irregularities found and the measures that need to be taken to eliminate such irregularities, as well as the deadlines by which those measures should be taken.

The inspection control written record shall be delivered to the president of court.

Where the inspection control results in irregularities found, the president of court may make a statement in writing concerning the written record, at the latest within eight days of the date of receipt.

In cases referred to in paragraph 3 of the present Article, the inspection control written record, together with the statement of the president of court shall be delivered to the minister of justice, president of the court of the next higher instance, chief justice of the Supreme Court, and the president of the Judicial Council.

The president of court shall eliminate the irregularities found in the work of court administration within the deadlines set in the inspection control written record. The president of court shall inform in writing the minister of justice, president of the court of the next higher instance, chief justice of the Supreme Court, and the president of the Judicial Council of the measures taken.

V FINANCING THE WORK OF COURTS AND FINANCIAL AND MATERIAL OPERATIONS IN COURTS

Funds for the Work of Courts

Article 57

Funds for the work of courts shall be provided in a separate allocation of the budget of Montenegro, individually for each court.

The Judicial Council shall propose the annual budgetary allocation for the work of each court individually.

The Judicial Council shall submit to the Government the proposed annual budget for the work of courts.

The president of the Judicial Council shall be entitled to take part in the session of the Montenegrin Parliament debating on the proposed court budget.

Financial Principal in Courts

Article 58

The president of court shall be the party ordering financial transactions in that court.

Court Depository Safe

Article 59

The following shall be kept in the court depository safe: cash, valuables, securities, savings books, documents, other items stored there under a special court decision (hereinafter referred to as: "money and items").

The manner in which money and items referred to in paragraph 1 of this Article are received, stored, handled, dispensed, as well as the procedure in case of expiry of deadlines, shall be governed by the court's Rules of Procedure.

VI COURT EMPLOYEES

Senior Court Employees

Article 60

Courts shall have the necessary number of advisers, other senior and junior employees, in accordance with the indicative benchmarks referred to in Article 29 of the present Law.

Advisers

Article 61

Persons meeting the following criteria may be appointed advisers: law faculty graduate (higher education, 240 MCTS credits, VII1 qualifications level), passed bar exam, fulfilment of general and special requirements as provided by the court's internal organisation and job description act in accordance with law.

Advisers shall assist judges in their work, draft decisions and carry out, either independently or under the judge's supervision and according to the judge's instructions, other expert tasks as provided by law or regulations adopted on the basis of law.

Court Registrar

Article 62

Courts with at least ten judges shall have a court registrar who assists the president of court in discharging court administration tasks.

The court registrar shall meet the requirements set for the post of an adviser in that court.

Head of Clerk's Office

Article 63

Law faculty graduates (higher education, 180 MCTS credits, VI qualifications level) may be appointed heads of clerk's office.

Judicial Trainees

Article 64

Law faculty graduates (higher education, 240 MCTS credits, VII1 qualifications level) meeting the general requirements for work in state bodies may be employed as judicial trainees.

Special conditions and procedure for entering into employment, duration of traineeship and training during the traineeship shall be governed by a separate law.

Application of Other Law

Article 65

Regulations governing the rights, obligations and responsibilities of civil servants and state employees shall be applied to the employment and termination of employment of advisers, other senior and junior court employees, salaries and other rights and obligations and responsibilities, conditions for employment, conditions for taking the state licence exam, unless otherwise provided by the present Law.

VII RELATION BETWEEN COURTS, BETWEEN COURTS AND OTHER BODIES, AND BETWEEN COURTS AND PARTIES TO PROCEEDINGS

Relations between Courts

Article 66

Courts shall submit to higher instance courts, at their request, data and notifications and enable them to examine directly the work of courts and judges in view of monitoring and studying case-law and controlling court work in organisational and professional terms.

The general meetings of divisions of courts of the next higher instance shall also discuss matters of common interest to the lower instance courts from the territory of those courts.

Respect for the Dignity of Parties

Article 67

Court employees shall treat respectfully all the parties to court proceedings and other citizens who are in the courthouse or who attend the taking of certain actions in the course of court proceedings.

In the event that a court employee has breached the dignity of persons referred to in paragraph 1 of this Article, such persons shall be entitled to address the president of the court by means of a written complaint.

Right to Examine Case Files

Article 68

The court shall allow parties to proceedings and their representatives to examine, make transcripts, or photocopy court files immediately after such a request is filed, and no later than within three days.

A party to proceedings or another person who was denied the right to examine case files shall be entitled to file a complaint to the president of court, who shall issue a decision allowing examination of case files within the deadline referred to in paragraph 1 of the present Article.

The rules on examining court files, costs of transcriptions and photocopies, and obligations of court employees shall be governed by the court's Rules of Procedure.

Relations between the Court and the Public

Article 69

Information on the work of courts shall be provided by the president of court, person referred to in Article 31, paragraph 4 of the present Law or another person designated by the president of court.

Information shall be provided in accordance with the present Law, court's Rules of Procedure, and the Law on Free Access to Information.

Information that may have an impact on the conduct of court proceedings may not be disclosed to the media.

Ensuring Good Working Conditions

Article 70

Maintenance of order and protection of persons and property in courts shall be carried out by the administrative body in charge of policing duties in accordance with the powers laid down by the law governing police affairs.

Judicial Robe

Article 71

A judge shall wear a robe while sitting at the bench.

The design of the judicial robe and rules on how to wear it shall be governed by the court's Rules of Procedure.

Relations between the Court and Parties to Proceedings

Article 72

Relations between the court and parties to proceedings shall be regulated in more detail by the court's Rules of Procedure.

VIII TRANSITIONAL AND FINAL PROVISIONS

Article 73

Cases received before the entry into force of the present Law shall be finalised by courts which have jurisdiction according to the present regulations.

Where the first instance decision in criminal matters referred to in paragraph 1 of the present Article gets abolished after the entry into force of the present Law, such cases shall be ceded to the court having jurisdiction under the present Law.

Article 74

The Commercial Court in Podgorica shall take over cases from the jurisdiction of the Commercial Court in Bijelo Polje, within three months from the date of entry into force of the present Law.

Article 75

Judges for misdemeanour proceedings shall be appointed in line with the conditions for the appointment of judges of basic courts pursuant to the provisions of Articles 31 and 32 of the Law on Courts (Official Gazette of the Republic of Montenegro 5/02, 49/04 and Official Gazette of Montenegro 22/08, 39/11 and 46/2013) and pursuant to provisions stipulating the appointment of judges of basic courts from the Law on the Judicial Council (Official Gazette of Montenegro 13/08, 39/11, 46/11 and 51/13).

Article 76

Secondary legislation pursuant to the present Law shall be adopted within six months from the date of entry into force of the present Law.

Article 77

As of the effective date of the present Law, Articles 1 to 30 and Articles 32a to 139 of the Law on Courts (Official Gazette of the Republic of Montenegro 5/02, 49/04 and Official Gazette of Montenegro 22/08, 39/11 and 46/2013) shall be repealed.

Article 78

The present Law shall enter into force on the eighth day following that of its publication in the Official Gazette of Montenegro.