

24 Annex - Justice, freedom and security

163. LAW ON COURTS

LAW ON COURTS

(Official Gazette of the Republic of Montenegro 5/2002 and 49/2004 and the Official Gazette of Montenegro 22/2008)

Title I

GENERAL PROVISIONS

Subject matter of the Law

Article 1

This Law shall regulate establishment, organisation and jurisdiction of the courts; requirements for the election of judges and lay judges; organisation of the work in courts; judicial administration; financing of the courts and other issues relevant to orderly and timely functioning of the courts.

Judicial power

Article 2

The court is a State body exercising judicial power.

Judges and lay judges shall exercise judicial office.

Independence and autonomy

Article 3

Judges shall adjudicate and decide independently and autonomously.
Judicial office must not be performed under anybody's influence.
Nobody shall influence the judge in the performance of judicial office.

Mandatory character of judicial power

Article 4

The court shall have a duty to render decisions in legal matters for which it has jurisdiction in a lawful, objective and timely manner.

Accessibility of the courts and equality of parties

Article 5

Everyone shall have the right of access to court for the purpose of exercising his/her rights.
Everyone is equal before the court.

Openness

Article 6

The work of the court shall be open to the public, except in cases laid down by law.

Impartiality

Article 7

Everyone is entitled to an impartial trial within a reasonable time.

Right to a randomly allocated judge

Article 8

Everyone has the right to have his/her legal matter heard and determined by a randomly selected judge, regardless of the parties to the case and the nature of the case.

Election of judges and lay judges

Article 9

- repealed -

Funds for the functioning of the courts

Article 10

The funds and conditions for the functioning of the courts shall be provided by Montenegro.

Salaries of judges

Article 11

Judges shall have the right to salaries and other income in accordance with a separate law.

Right to form associations

Article 12

Judges shall have the right to form professional associations.

Title II

ESTABLISHING, ORGANISATION AND JURISDICTION OF COURTS

Establishing the courts

Article 13

The courts shall be established by this Law.

Courts

Article 14

The courts shall be:

- 1) basic courts;
- 2) higher courts;
- 3) commercial courts;
- 4) Appellate Court of Montenegro (hereinafter referred to as the "Appellate Court");
- 5) Administrative Court of Montenegro (hereinafter referred to as the "Administrative Court");
- 6) Supreme Court of Montenegro (hereinafter referred to as the "Supreme Court").

1. Basic courts

Establishing basic courts

Article 15

Basic courts are established as:

- 1) Basic Court in Bar – for the territory of the municipality of Bar;
- 2) Basic Court in Berane – for the territory of the municipalities of Berane and Andrijevica;
- 3) Basic Court in Bijelo Polje – for the territory of the municipalities of Bijelo Polje and Mojkovac;
- 4) Basic Court in Danilovgrad – for the territory of the municipality of Danilovgrad;
- 5) Basic Court in Žabljak – for the territory of the municipality of Žabljak and Šavnik;
- 6) Basic Court in Kolašin – for the territory of the municipality of Kolašin;
- 7) Basic Court in Kotor – for the territory of the municipalities of Kotor, Budva and Tivat;
- 8) Basic Court in Nikšić – for the territory of the municipalities of Nikšić and Plužine;
- 9) Basic Court in Plav – for the territory of the municipality of Plav;
- 10) Basic Court in Pljevlja – for the territory of the municipality of Pljevlja;
- 11) Basic Court in Podgorica – for the territory of the Capital of Podgorica;
- 12) Basic Court in Rožaje – for the territory of the municipality of Rožaje;
- 13) Basic Court in Ulcinj – for the territory of the municipality of Ulcinj;
- 14) Basic Court in Herceg Novi – for the territory of the municipality of Herceg Novi;

15) Basic Court in Cetinje – for the territory of the Historic Royal Capital of Cetinje.

Jurisdiction

Article 16

Basic courts shall have jurisdiction:

1. In criminal cases:
 - a) to hear and determine at first instance 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 determined for specific types of these criminal offences;
 - b) to hear and determine at first instance those criminal offences which are by special legislation prescribed to fall within the jurisdiction of basic courts;
 - c) to conduct proceedings and decide on requests for expunging of sentence, termination of security measures or legal consequences of sentence; decide in those matters when basic court has pronounced such sentence or measures.
2. In civil cases, to hear and determine at first instance:
 - a) disputes relating to property, matrimony, family, personal rights, copyrights and other matters except in those disputes where the law prescribes the jurisdiction of another court;
 - b) 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. In labour law cases to hear and determine at first instance 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;
 - d) appointment and removal of bodies in companies and other legal entities;
4. In other legal matters:
 - a) to resolve at first instance non-contentious cases, unless otherwise provided by this Law;
 - b) to resolve matters related to enforcement and disputes which arise in the course or due to enforcement proceedings, unless otherwise provided by this Law;
 - c) to decide on recognition and enforcement of foreign judgments, except for those falling within the jurisdiction of the commercial court;
 - d) to perform duties concerning legal assistance.

Basic courts shall have jurisdiction to decide at first instance in other matters as well, unless the jurisdiction of another court is prescribed by law.

Basic courts shall also perform other duties laid down by law.

2. High courts

Establishing high courts

Article 17

High courts are established as:

- 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 18

High courts shall, at first instance:

1) hear and determine criminal proceedings for criminal offences 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 criminal offences of:

- manslaughter,
- rape,
- endangering the safety of an aircraft in flight by violence,
- unauthorised production, keeping and releasing for circulation of narcotic drugs,
- calling for violent change of constitutional order,
- disclosure of state secret,
- 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.

2) hear and determine criminal proceedings for criminal offences of organised crime regardless of the severity of prescribed punishment;

3) hear and determine criminal proceedings for criminal offences with the elements of corruption:

- money laundering,
- violation of equality in performance of business activity,
- abuse of monopolistic position,
- causing bankruptcy,
- causing false bankruptcy,
- trading in influence,
- false financial statement,
- abuse of appraisal,
- disclosure of business secret,
- disclosure and use of stock-exchange secret,
- passive bribery,
- active bribery,
- disclosure of official secret,
- abuse of official position, fraud in performance of official duties and abuse of powers in commerce punishable by imprisonment of eight years or more severe punishment.

4) hear and determine those criminal offences which are by special legislation prescribed to fall within the jurisdiction of high courts;

5) conduct proceedings and decide on requests for extradition of accused and sentenced persons.

High courts shall decide at second instance on appeals against decisions rendered by the basic courts.

Beyond trials, the high courts shall:

- 1) resolve conflict of jurisdiction between basic courts from their territory;
- 2) decide on requests for expunging of sentence based on judicial decision and on requests for termination of security measures or legal consequences of sentence regarding the prohibition to acquire certain rights, when high court has pronounced such sentence or measure;
- 3) perform duties of international legal assistance in criminal matters;
- 4) perform other duties laid down by law.

3. Commercial courts

Establishing commercial courts

Article 19

Commercial Courts are established as:

- 1) Commercial Court in Bijelo Polje – for the territory of the municipalities of Bijelo Polje, Andrijevica, Berane, Žabljak, Kolašin, Mojkovac, Plav, Pljevlja and Rožaje; and
- 2) Commercial Court in Podgorica – for the territory of the Capital of Podgorica, for the territory of the Historical Royal Capital of Cetinje, and for the territory of the municipalities of Bar, Budva, Danilovgrad, Kotor, Nikšić, Plužine, Tivat, Ulcinj, Herceg-Novi and Šavnik.

Jurisdiction

Article 20

Commercial courts shall hear and determine at first instance:

- 1) disputes between domestic and foreign companies, other legal persons and entrepreneurs (commercial entities) arising from their commercial law relationships (arising from the performance of activities which are intended to generate certain gain to parties), as well as disputes where parties are not commercial entities but are connected with commercial entities as substantive joint litigants.
- 2) disputes relating to registration of commercial entities as well as disputes arising from relationships governed by company law;
- 3) disputes relating to compulsory settlement, bankruptcy and liquidation of commercial entities, regardless of the capacity of the other party or the time when the dispute was initiated, unless otherwise provided by law;
- 4) disputes relating to copyrights and industrial property rights between parties referred to in item 1 of this paragraph;
- 5) disputes relating to rights of artists, rights concerning the multiplication, duplication and releasing for circulation of audiovisual works as well as disputes relating to computer programs and their use and transfer between the parties referred to in item 1 of this paragraph;
- 6) disputes relating to disturbance of possession between the parties referred to in item 1 of this paragraph;
- 7) disputes relating to distortion of competition, abuse of monopolistic or dominant position on the market and entering into monopolistic agreements;
- 8) disputes relating to ships and navigation at sea and in internal waters as well as disputes governed by navigation law, except for disputes relating to the transport of passengers;
- 9) disputes relating to aircrafts and disputes governed by air law, except for disputes relating to the transport of passengers;
- 10) disputes in other legal matters which the law prescribes as falling within the jurisdiction of commercial courts.

Commercial courts shall, at first instance:

- 1) hear and determine economic offences;
- 2) conduct the proceedings of compulsory settlement, bankruptcy and liquidation;
- 3) conduct the procedure for registering companies and other entities in the court registry when the law has established their jurisdiction in those matters;
- 4) decide on and conduct the proceedings for enforcement and security when the enforceable instrument has been issued by the commercial court or arbitration, or when the authentic document originates from the entities referred to in paragraph 1 item 1 of this Article; decide on and conduct proceedings for enforcement and security on board ships and aircraft, regardless of the capacity of parties;
- 5) decide in non-contentious proceedings concerning ships and aircraft;

- 6) decide on the recognition and enforcement of foreign judicial decisions rendered by commercial courts as well as of foreign arbitral awards;

Commercial courts shall also perform other duties laid down by law.

By way of exception from the rules on territorial jurisdiction, the Commercial Court in Podgorica shall determine disputes referred to in paragraph 1 items 2, 4, 7, 8 and 9 and matters referred to in paragraph 2 items 3 and 6 of this Article.

4. Appellate Court

Establishing the Appellate Court

Article 21

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

Jurisdiction

Article 22

The Appellate Court shall:

- 1) decide on appeals against first-instance decisions of high courts, as well as appeals against decisions of commercial courts;
- 2) resolve conflict of jurisdiction between: basic courts from the territories of different high courts; between basic and high courts; between high courts; between commercial courts;
- 3) perform other duties laid down by law.

5. Administrative Court

Establishing the Administrative Court

Article 23

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

Jurisdiction

Article 24

The Administrative Court shall decide:

- 1) in administrative disputes on the legality of administrative acts, and legality of other individual acts as provided by law;
- 2) on extraordinary legal remedies against final and enforceable rulings in misdemeanour proceedings.

The Administrative Court shall also perform other duties laid down by law.

6. Supreme Court

Establishing the Supreme Court

Article 25

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

Jurisdiction

Article 26

The Supreme Court shall:

- 1) decide in third instance as provided by law;
- 2) decide on extraordinary legal remedies against decisions of the courts in Montenegro;
- 3) decide against decisions of its panel of judges, as provided by law;
- 4) decide on transfer of territorial jurisdiction when it is obvious that another court that has subject-matter jurisdiction will be able to conduct proceedings more efficiently or for other important reasons;
- 5) decide 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) resolve conflict of jurisdiction between different types of courts in the territory of Montenegro, except when the jurisdiction of another court has been established;
- 7) perform other duties laid down by law.

In matters relating to the transfer of territorial jurisdiction, designation of the court having territorial jurisdiction and conflict of jurisdiction, the Supreme Court shall decide in a panel of three judges without conducting a hearing.

Supreme Court Bench

Article 27

The Supreme Court Bench shall:

- 1) adopt legal positions of principle and legal opinions of principle with a view to ensuring uniform application of the Constitution, laws and other regulations in the territory of Montenegro;
- 2) consider issues in relation to the functioning of courts, application of laws and other regulations and exercise of judicial power and inform the Parliament thereof when it deems necessary.
- 3) adopt rules of procedure of court divisions and those of the Supreme Court Bench;
- 4) deliver opinions on candidates for the positions of the President and judges of the Supreme Court; and
- 5) also perform other duties laid down law.

Legal position of principle and legal opinion of principle

Article 28

Legal position of principle is a rule on a point of law of general significance to proceedings in legal matters decided by the Supreme Court and points of law which have bearing on equality of persons before the law and respect for other rights and freedoms guaranteed by the Constitution and international treaties. Every court may request the adoption of or amendment to a legal position of principle.

Legal opinion of principle is delivered in relation to a particular point of law, which has arisen from the case law of the Supreme Court or lower courts and one that has bearing on uniform application of the Constitution and laws in the territory of Montenegro.

The manner of maintaining records on and publication of legal positions of principle and legal opinions of principle shall be regulated by the Rules of Procedure of the Supreme Court Bench.

7. Days of Courts and case law records

Days of Courts

Article 29

Judicial office shall be exercised in the seat of the court.

Judicial office may be exercised outside the seat of the court (Days of Courts) for the purpose of faster and more direct determination.

Case law records

Article 30

Courts shall maintain case law records.

The manner of maintaining case law records and publication of decisions shall be laid down by the Court Rules.

Title III

REQUIREMENTS FOR ELECTION OF JUDGES AND DISCIPLINARY RESPONSIBILITY

1. Requirements for election of judges

General requirements

Article 31

A person may be elected as a judge if he/she:

- 1) is a national of Montenegro;
- 2) is medically fit and possesses capacity to exercise rights;
- 3) has a university degree in the field of law;
- 4) has passed bar examination;

Special requirements

Article 32

In addition to the general requirements, a person may be elected as a judge if he/she possesses work experience of the following duration in the field of law:

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

A person may be elected as a judge if he/she possesses professional impartiality, high moral qualities and demonstrated professional competences.

Additionally to the criteria referred to in paragraph 2 of this Article, when a judge is elected to a higher judicial office, special account shall be taken of efficiency, responsibility and quality of performance of judicial duty, if the candidate exercised judicial office.

Requirements for election of a president of court

Article 33

A president of court is a judge.

The person elected as a president of court is at the same time elected as a judge of that court.

The president of court shall continue to serve as judge of the court after: the expiry of his/her term of office, removal from the office of the president of court and submission of request for termination of office of the president of court.

2. Disciplinary responsibility of a judge

Exercising judicial office in a negligent manner

Article 33a

A judge shall be deemed to exercise judicial office in a negligent manner if he/she without justified reason:

- 1) fails to take up cases in the order they have been received,
- 2) fails to schedule hearings or trials in cases assigned to him/her,
- 3) is late for scheduled hearings or trials,
- 4) makes supervision carried out by immediate superior court impossible,
- 5) is absent from the sessions of judges and court divisions;
- 6) is absent from work;
- 7) in other cases when law prescribes that certain acts or omissions to act by a judge amount to negligent exercise of judicial office.

Harming reputation of judicial office

Article 33b

A judge shall be deemed to harm the reputation of judicial office, in particular if:

- 1) he/she appears at work and comes into contact with parties in a state that is inappropriate to the exercise of judicial office (under the influence of alcohol or narcotic drugs etc.),
- 2) his/her behaviour in public places disturbs law and order.

Public announcement

Article 34

- repealed -

2. – Chapter repealed –

Procedure upon applications

Article 35

- repealed -

Opinion of professional and working qualities of candidates

Article 36

- repealed -

Insight into the opinion of professional and working qualities of candidates

Article 37

- repealed -

Interviewing candidates

Article 38

- repealed -

Adoption of proposal to elect a judge

Article 39

- repealed -

3. – Chapter repealed –

Oath and taking up office

Article 40

- repealed -

Wording of the oath

Article 41

- repealed -

Right and duty of the judge to hear and determine cases in the court he/she has been elected to

Article 42

- repealed -

Title IV

- title heading repealed -

Disciplinary responsibility

Article 43

- repealed -

Disciplinary measure

Article 44

- repealed -

Disciplinary responsibility of a judge in discharge of judicial duties

Article 45

- repealed -

Initiating disciplinary proceedings

Article 46

- repealed -

Disciplinary body

Article 47

- repealed -

Disqualification

Article 48

- repealed -

Statement and absence of judge

Article 49

- repealed -

Decisions of the Disciplinary Committee

Article 50

- repealed -

Second-instance proceedings

Article 51

- repealed -

Statute of limitations

Article 52

- repealed -

Title V

- title repealed -

1. Termination of judicial office

Grounds for termination of judicial office

Article 53

- repealed -

2. Dismissal from judicial office

Dismissal of judge

Article 54

- repealed -

Time limits

Article 55

- repealed -

Setting up the Commission

Article 56

- repealed -

Composition of the Commission

Article 57

- repealed -

Disqualification

Article 58

- repealed -

Work of the Commission

Article 59

- repealed -

Opinion of initiative

Article 60

- repealed -

Work of the Judicial Council

Article 61

- repealed -

Decisions

Article 62

- repealed -

Defence

Article 63

- repealed -

Time limits

Article 64

- repealed -

Submitting the proposal to the Parliament

Article 65

- repealed -

Annulment of decision on the election of a judge

Article 66

- repealed -

Effect of termination of judicial office

Article 67

- repealed -

Suspension

Article 68

- repealed -

Notification by the Parliament

Article 69

- repealed -

Title VI

LAY JUDGES

Requirements for election of lay judges

Article 70

A person may be elected as a lay judge if he/she:

- 1) possesses capacity to exercise rights and has reached 30 years of age;
- 2) is a national of Montenegro.

A person selected to participate in juvenile proceedings as a lay judge, shall, as a rule, possess professional experience of working with minors in addition to the requirements provided by this Law; a person selected as a lay judge of the commercial court shall, as a rule, have professional experience in commercial trade and business.

A person may not be elected as a lay judge if:

- 1) he/she has been convicted of criminal offence by final and enforceable judgment and sentenced to unsuspended imprisonment or other punishment for an offence that makes him/her unfit to exercise the office of a lay judge;
- 2) he/she is a member of a political party body;
- 3) he/she is a judge, lawyer, prosecutor or deputy prosecutor, a Member of the Parliament, councillor, person elected or appointed to a position within state bodies or local self-government bodies or an officer of the Ministry of Interior.

Procedure for election of a lay judge

Article 71

- repealed -

The oath of the lay judge

Article 72

- repealed -

Organising participation of lay judge in a trial

Article 73

More detailed rules on participation of lay judges in trial shall be laid down by the Court Rules and the annual allocation of tasks in the court.

Employer must allow a lay judge to be absent from work in order to participate in a trial.

The lay judge shall be entitled to remuneration and a fee for the participation in a trial, the amount and conditions of which shall be determined by the Government of Montenegro (hereinafter referred to as the "Government").

Termination of office and dismissal of lay judge

Article 74

The office of lay judge shall terminate on his/her own request, when he/she reaches 70 years of age or if he/she was sentenced to unsuspended imprisonment.

The lay judge shall be dismissed from office if he/she was convicted of an offence making him/her unfit to exercise his/her office; if he/she exercises his/her office unconscientiously or if he/she loses permanently the ability to exercise his/her office.

Disciplinary responsibility

Article 74a

A lay judge shall be deemed to exercise his/her office in a negligent manner if he/she fails to appear or is late for scheduled hearings or trials without justified reason.

A lay judge shall be deemed to harm the reputation of his/her office in particular if:

- 1) he/she comes to court and in contact with parties in a state that is inappropriate to the exercise of his/her office (under the influence of alcohol or narcotic drugs etc.);
- 2) his/her behaviour in public places disturbs law and order.

Title VII

- repealed -

Powers

Article 75

- repealed -

Composition of the Judicial Council

Article 76

- repealed -

Term of office of the Judicial Council

Article 77

- repealed -

Proposing a member of the Judicial Council

Article 78

- repealed -

Proposing a judge for a member of the Judicial Council

Article 79

- repealed -

Voting for a judge to be member of the Judicial Council

Article 80

- repealed -

Termination of office in the Judicial Council

Article 81

- repealed -

Manner of work and decision-making

Article 82

- repealed -

Title VIII

ORGANISATION OF WORK OF THE COURT

Organisational activities

Article 83

The organisation of work of the court shall mean: managing the court, organisation of court divisions and session of all judges, organisation of trials and judicial administration activities.

1. President of Court

Management

Article 84

The president of court shall manage the work of the court.

The president of court shall organise the work in the court, allocate tasks and take measures for orderly and timely performance of tasks in the court.

The president of court shall be responsible, within the limits of his/her powers, for orderly and timely performance of tasks in the court.

The president of court shall pass the act on internal organisation and job descriptions of the court, with the consent of the Government, following prior opinion from the Judicial Council on the number of posts.

The president of court whose office terminated due to expiry of term for which he/she was appointed shall continue to perform his/her duty with all rights and obligations appertaining to the president of court, until the new president of court is appointed.

Substitute

Article 85

Should the president of court be absent or indisposed, he/she shall be substituted by the judge of that court designated by the session of judges, on a proposal from the president of court, for each calendar year.

2. Allocation of tasks in court

Adoption of annual allocation of tasks

Article 86

The president of court shall adopt the annual allocation of tasks in the court not later than 15 January for the current year.

In the process of adoption of proposal for the annual allocation of tasks, the president of court shall:

- take account of balanced allocation of tasks in the court and specialisation of judges;
- provide opportunity to each judge to express his/her opinion concerning the proposal.

The proposal for the annual allocation of tasks shall be considered by the session of judges.

The president of court shall provide a written response concerning the proposal made by the judge or the session of judges which he /she has rejected no later than eight days after the date of their submission.

The judges or the session of judges may notify the president of immediate superior court about their disagreement with the annual allocation of tasks.

Amendment to the annual allocation of tasks

Article 87

The president of court may amend the annual allocation of tasks in the court if:

- the number of positions of judges in the court decreases or increases;
- the number or a type of cases in the court considerably decreases or increases.

Annual allocation of tasks shall be amended in such manner as to interfere as little as possible with the annual allocation of tasks in the court already established.

Delivery and publication of annual allocation of tasks

Article 88

The president of court shall deliver the annual allocation of tasks and amendments thereto to all the judges and shall post it on the notice board of the court.

3. Random allocation of cases

Allocation of cases

Article 89

The cases shall be allocated without delay according to the annual allocation of tasks and according to a method of random allocation of cases which shall depend solely on the designation and number of the case.

The judge shall exercise judicial office in one or more areas of law he/she was assigned to at the beginning of the calendar year within the annual allocation of tasks.

Methods of random allocation of cases

Article 90

In a specific area of law to which two or more judges have been assigned, a case shall be allocated to a judge according to daily order in which requests to initiate judicial proceedings have been filed, in accordance with the Cyrillic alphabetical order of initial letters of judges' surnames.

If more than one request to initiate judicial proceedings in the same area of law or related to specific types of cases determined in advance within the same area of law were filed on the same day, such cases shall firstly be classified according to the Cyrillic alphabetical order of the initial letters of surnames or forenames of the parties or the participants against whom the procedural act was filed, and then they shall be allocated according to the Cyrillic alphabetical order of initial letters of judges' surnames.

The cases referred to high courts or to the Supreme Court for a ruling upon ordinary or extraordinary legal remedy shall be allocated to a judge according to the daily order in which the case files were received, in a manner as specified in paragraphs 1 and 2 of this Article.

Random allocation of cases prescribed by Court Rules

Article 91

The method of random allocation of cases shall be laid down in more detail under the Court Rules.

The Court Rules shall define in particular the rules for allocation of cases in the event when more requests to initiate judicial proceedings have been filed against the same party; when more requests to initiate judicial proceedings with the same factual and legal status have been registered on the same day or in a short period of time; or when the allocation of new cases to the judge whose calendar is full should be temporarily suspended or in other similar cases.

Special cases

Article 92

The cases that were allocated to a judge who no longer exercises judicial office in that court, to a judge who has been unable to attend to his/her judicial duties for more than three months, to a judge from whom the case has been withdrawn, as well as in the event of disqualification of a judge, shall be allocated to other judges of the same court in accordance with the allocation of cases referred to in Article 90 of this Law.

Withdrawal of allocated case

Article 93

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

The cases which are defined as urgent by law may be withdrawn from a judge if the judge, due to absence or inability to attend to his/her duties, is unable to proceed in such cases timely and within time limit prescribed by law.

The president of court shall withdraw a case by way of decision.

The decision on withdrawal shall be delivered to the judge or the panel of judges the case has been withdrawn from.

The decision to withdraw the case may be appealed against with the president of immediate superior court and the decision of the President of the Supreme Court may be appealed against with the Supreme Court Bench, within three days from the day of receipt of decision.

The decision on appeal shall be made within two days from the day of receipt of appeal.

The appeal shall not stay the enforcement of decision.

Should the appeal be upheld, the case shall remain with the judge or the panel of judges it has been withdrawn from.

Right to insight into court case

Article 94

The president of court shall have the right to insight into the cases of that court concerning:

- an application of a party;
- initiation of the proceedings for establishing responsibility of a judge for negligent work and for the protection of reputation of judicial office;
- initiation of the proceedings for dismissal of a judge;
- motion for disqualification of a judge;
- deviating from determined allocation of cases;
- withdrawal of allocated case; and
- in other cases when according to the law it is necessary to examine the cases for the purpose of management of the court or complying with time limits.

In the cases referred to in paragraph 1 of this Article, the president of court may request the judge to submit him/her in writing information or report about the cases and reasons for not completing cases within time limits prescribed by law or within a reasonable time.

Accountability of president of court

Article 95

The president of court shall be held liable in particular if he/she:

- 1) amends the annual allocation of tasks in the court contrary to law;
- 2) allocates cases contrary to law;
- 3) does not act on applications and complaints;
- 4) fails to initiate the proceedings for dismissal of a judge although he/she knows or must have known that the reasons for dismissal exist.

4. Supreme Court Bench, session of judges and court divisions

Work of the Supreme Court Bench

Article 96

The Supreme Court Bench shall be convened and chaired by the President of the Supreme Court, on his/her own initiative, on a proposal from the president of division or on a proposal from the court requesting adoption of or amendment to the legal position of principle.

The Supreme Court Bench shall make valid decisions if more than a half of judges of the Supreme Court are present.

Decisions of the Supreme Court Bench shall be valid if supported by a majority of judges of the Supreme Court.

The Rules of Procedure of the Supreme Court Bench shall lay down the manner of work of the Supreme Court Bench.

Session of judges

Article 97

The session of judges shall comprise all judges of the respective court.

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

The president of court shall convene the session of judges on the request from at least one third of all judges.

The session of judges shall work and make decisions if at least two thirds of all judges of the court are present and decision shall be valid if supported by a majority of all judges.

The manner of work of court divisions and the sessions of judges shall be regulated in more detail by the Court Rules.

Scope of work of the session of judges

Article 98

The session of judges shall:

- 1) deliver opinion on candidates for the position of president of court and candidates for judges;
- 2) **repealed** –
- 3) take legal positions concerning the cases falling within the jurisdiction of that court and deliver legal opinions relevant to case law;
- 4) propose modification of legal positions of principle and legal opinions of principle adopted by the Supreme Court Bench or a division of the Supreme Court;
- 5) consider reports on the work of the court;
- 6) consider issues relevant to trials, professional training, organisation of work of the court and perform other duties provided by this Law.

In the courts where divisions have not been organised, additionally to the duties prescribed by this Law, the session of judges shall perform the duties of the session of division.

Court divisions

Article 99

Court divisions shall be established within courts, depending on the number of judges, scope and type of cases:

- 1) in a basic court – civil, criminal, enforcement and other divisions;
- 2) in a high court – criminal, civil and other divisions;
- 3) in a commercial court – division for commercial disputes, registration and bankruptcy division, division for economic offences and division for enforcement and security and non-contentious matters;
- 4) in the Appellate Court – civil and commercial division and criminal division;
- 5) in the Administrative Court – administrative division;
- 6) in the Supreme Court – civil, criminal, administrative and case-law divisions.

Specialised division shall be organised within high court to try the criminal offences of organised crime, corruption, terrorism and war crimes.

A judge sitting in the specialised division referred to in paragraph 2 of this Article shall be entitled to monthly salary equal to that of a Supreme Court judge and to a special bonus payment due to onerous working conditions and specific nature of the tasks he/she performs.

Composition and scope of work of court divisions

Article 100

The court division shall comprise judges and panels of judges assigned by way of the annual allocation of tasks.

The president of court shall determine the composition of court divisions by the annual allocation of tasks.

The president of division who is, as a rule, the judge with the longest working experience in the court concerning legal matters falling within the scope of work of the division, shall convene and chair the sessions of court division.

The court division shall consider legal issues falling within its scope of work, take legal positions concerning issues falling within its competence, and perform other duties prescribed by this Law.

The court division shall make decisions pursuant to Article 97 of this Law.

Expert assistance

Article 100a

The president of court may engage a person who possesses required expertise or set up a team of experts or an expert working body in order to clarify specific issues arising in the course of work of the court, as well as to clarify issues and take positions falling within the scope of work of court divisions and sessions of judges, to assist judges in expert preparation of cases for trial and drafting of judgments, to study and monitor case law and other issues relevant to the efficient work of courts and judges.

The persons referred to in paragraph 1 of this Article shall be entitled to a fee in the amount determined by the president of court.

1. Administration of the court

Judicial administration activities

Article 101

The administration of the court shall include the activities ensuring orderly and timely work and operations of the court and in particular: internal allocation of tasks in the court; allocation of lay judges; activities related to expert witnesses and court interpreters; considering complaints and applications; managing information system; maintaining prescribed records and reports; the work of registry office and archive office; financial and material operations; handling deposits and notarisation of documents to be used abroad.

Work report

Article 101a

The president of court shall submit the work report of the court to the Judicial Council and the Ministry of Justice not later than 10 February of the current year for the previous year.

On the request from the Judicial Council, the president of court shall submit special and/or interim reports within time limit determined by the Judicial Council.

The president of court shall be responsible for the accuracy of data mentioned in the report.

Administrative office

Article 102

- repealed -

Managing Administrative Office

Article 103

- repealed -

Title IX

JUDICIAL ADMINISTRATION

Supervision over the court administration

Article 104

Supervision over the performance of administration activities in courts shall be exercised by the Ministry of Justice.

When carrying out supervision, the Ministry of Justice may not undertake actions which would influence decision-making of the court in court cases.

Delivering data to the Ministry of Justice

Article 105

The courts shall, on the request of the Ministry of Justice, deliver data and information required by the Ministry of Justice in order to monitor organisation and work of courts and application of the Court Rules, as well as those required for handling the applications and complaints of the citizens.

Competence of the Ministry of Justice

Article 106

The Ministry of Justice shall, through its authorised officer, perform supervision in the courts, in relation to:

- 1) organisation of the work in courts in accordance with the Court Rules;
- 2) handling applications and complaints;
- 3) work of the Judicial Council Secretariat as regards the part of its activities related to judicial administration;
- 4) work of registry office and archive office;
- 5) collection of fines, costs of criminal proceedings and confiscated assets;
- 6) handling deposits;
- 7) keeping business books with respect to financial and material operations with parties;
- 8) maintaining appropriate prescribed records;
- 9) other activities relating to proper functioning and discharge of judicial administration activities.

Authorised officer

Article 107

A person who meets requirements prescribed for a high court judge may be appointed as an authorised officer of the Ministry of Justice.

Work of authorised officer

Article 108

If the authorised officer, in the course of supervision, finds irregularities, he/she shall issue a warning to the president of court or a judge and give them 15 days to rectify irregularities found.

The record of supervision carried out and the warning shall be delivered to the president of that court, to the president of immediate superior court, to the President of the Supreme Court, to the Judicial Council and to the Minister of Justice.

General acts

Article 109

The Ministry of Justice shall:

- 1) adopt the Court Rules which regulate issues determined by this Law as well as issues relevant to the organisation of work of the courts, following a prior opinion from the Judicial Council;
- 2) prescribe requirements for appointment and duties of court interpreters;
- 3) prescribe form, manner, procedure for and records on issuance of official identity cards of judges;
- 4) determine framework criteria regarding necessary number of judges and other employees of the courts;
- 5) adopt other acts relevant to the work of courts and to judicial administration.

Title X

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

Financial resources for the work of courts

Article 110

The funds for the work of courts shall be provided from a special section of the Budget of Montenegro.

The Judicial Council shall propose the section of the annual budget for the work of courts.

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

The President of the Judicial Council shall have the right to participate in the sitting of the Parliament discussing the proposal for the budget of courts.

Financial principal in the court

Article 111

The president of court shall be the financial principal in the court.

Court deposit

Article 112

The following items shall be kept in the court deposit box: cash; valuables; securities; savings and deposit books; documents; other items on the basis of a special order of the court (hereinafter referred to as the “money and items”).

The method of accepting, keeping, handling, issuing, as well as proceeding in case when the time limit has expired, of money and items referred to in paragraph 1 of this Article shall be prescribed by the Court Rules.

Title XI

COURT EMPLOYEES

Officers

Article 113

The court shall have an adequate number of advisors, other officers, judicial trainees and administrative staff members.

Entering into employment and termination of employment of officers and administrative staff, salaries and other rights, obligations and responsibilities related to employment, required education level, duration of and undergoing traineeship, requirements for taking professional examination and other related issues, shall be governed by legislation relating to civil servants and state employees, unless otherwise provided by this Law.

Advisors

Article 114

A person who graduated from the law faculty, passed bar exam, who meets general and special requirements prescribed for the performance of specific duties in accordance with law and the act on internal organisation and job descriptions of the court, shall be eligible for the position of an advisor.

Advisors shall assist the judge in his/her work, make draft decisions and perform other specialised tasks prescribed by law or regulations adopted on the basis of the law, independently or under the supervision of and on the instructions of the judge.

Secretary of the Court

Article 115

The court may have a secretary of the court who must meet the requirements prescribed for the position of advisor.

Judicial trainee

Article 116

A law graduate meeting general requirements for admission to employment in state bodies may be admitted to employment as a judicial trainee for a period of two years.

Trainees shall be trained in accordance with a special programme adopted by the president of court.

Should a trainee, as evaluated by the session of judges, distinguish himself/herself through outstanding performance during the course of the training, his/her employment may be extended after the expiry of the training period for an additional year, provided that he/she passes the bar examination within three months.

Volunteer

Article 117

A court may admit law graduates to practice without remuneration, for the purpose of professional training.

The president of court shall decide on admission of the person referred to in paragraph 1 of this Article.

Administrative staff members

Article 118

A person who graduated from the faculty of law shall be eligible for the position of a Head of Registry Office.

A person who meets general and special requirements prescribed for the performance of specific duties in accordance with law and the act on internal organisation and job descriptions of the court, may be employed to perform administrative and other tasks in the court.

Other officers

Article 119

- repealed -

Title XII

RELATIONS BETWEEN COURTS, COURTS AND OTHER BODIES AND COURTS AND THE PARTIES

Relations between courts

Article 120

Lower courts shall have a the duty to provide the higher courts with data and information they need for the monitoring and studying of case-law and for conducting organisational and professional control of the functioning of the courts, for which purpose higher courts may have direct insight into the work of the lower courts and judges.

Respect of dignity of parties in the court building and during judicial proceedings

Article 121

Court employees shall be obliged to treat with respect all parties to judicial proceedings and other citizens who are in the court building or are present when certain actions are taken in the course of judicial proceedings.

The parties and other citizens whose dignity has been injured by persons referred to in paragraph 1 of this Article shall be entitled to address the president of court by way of written petition.

Right to inspect files

Article 122

The court shall have a duty to enable the parties and their representatives to inspect, transcribe and copy court files immediately after a request to that effect has been submitted and not later than three days.

The party or any other person who has been denied the right to inspect files shall be entitled to address the president of court by way of written petition and the president of court shall have a duty to rule that the files be made available for inspection within time limit specified in paragraph 1 of this Article.

The rules concerning the premises where the files are to be inspected, concerning the costs of transcribing and copying of files as well as the duties of the court employees shall be prescribed by the Court Rules.

Relations of the court with the public

Article 123

The information about the work of the court shall be disclosed by the president of court or person authorised by him/her.

Information that could affect the conduct of judicial proceedings may not be made available to the media.

Disclosure of information referred to in paragraph 2 of this Article shall be considered as harming the reputation of judicial office.

Court police

Article 124

The court police shall be in charge of providing conditions for undisturbed operation of the courts, maintenance of order, protection of persons and property, delivery and enforcement and other tasks as prescribed by law.

The scope and manner of work, organisation, powers and other issues relevant to the work of the court police shall be regulated by law.

Judicial robe

Article 125

A judge shall hear and determine cases wearing judicial robe.

The appearance of the judicial robe and the rules for wearing the robe shall be prescribed by the Court Rules.

Relations between the court and parties

Article 126

The relations between the court and the parties shall be prescribed in more detail by the Court Rules.

TITLE XIII

COURT FILES

Concept

Article 127

The court files are made up of case documents related to judicial proceedings and included in the list of files.

Designating, keeping and safeguarding

Article 128

The responsibility for safeguarding court files at individual stages of judicial proceedings shall be regulated by the Court Rules.

The method of designating of the court files shall be regulated by the Court Rules and must be uniform for all the courts of a certain type and level in Montenegro. As a rule, a combination of letters and numbers shall be used for designating the court files.

The Court Rules shall regulate the registers and electronic forms of registering files as well as the data which must be entered into those registers or in the electronic records of the court files.

The president of court shall be responsible for the accurate and orderly keeping, safeguarding and designating of court files, registers and electronic records.

Restoring court files

Article 129

If the court files have been totally or partially lost, destroyed or damaged so that they can no longer be used, the procedure for restoring the files shall be initiated.

Restoring of the court files shall be conducted according to the rules of non-contentious proceedings, and the provisions governing the annulment of documents shall apply *mutatis mutandis*.

The procedure for restoring court files shall be initiated by the court *ex officio* when the files relate to the proceeding which have not been completed by a final and enforceable decision.

If the proceedings the files relate to have been completed by a final and enforceable decision, the procedure for restoring the court files shall be initiated by the party or other person who has a legal interest to have the court files restored. This procedure may not be initiated upon the expiry of the time period set for keeping the court files in the archives.

The procedure for restoring the court files shall be conducted by a single judge or the presiding judge of the panel who conducted the first instance proceedings these files relate to, and if that judge is no longer a judge of that court, the president of court shall designate a judge who shall conduct the procedure for restoring the court files.

The procedure for restoring the court files shall be governed by the rules of evidence prescribed by the rules of such judicial proceedings as were conducted concerning the case the files of which need to be restored, but at all times the court shall have the power to, for the purpose of the restoring the files, use the transcripts of the files in possession of the parties, the court or third persons, the data from the registers and statements of witnesses, expert witnesses and other participants in the proceedings the files of which are being restored.

When restoring the files of pending proceedings the court shall endeavour to restore all the files, and when restoring the files of the case which was completed by a final and enforceable decision, the court shall limit itself to the files which are of considerable significance to the proceedings and legal interests of parties or other persons.

Title XIV

TRANSITIONAL AND FINAL PROVISIONS

Article 130

The cases received before the entry into force of this Law shall be completed by the courts having jurisdiction according to the previous legislation.

If after the entry into force of this Law the first instance decision has been reversed by a higher court, such cases shall be handed over to the court which has jurisdiction according to this Law.

Article 131

Basic, high and commercial courts and the Supreme Court shall continue their work within jurisdiction laid down by this Law.

Article 132

The Appellate Court and the Administrative Court shall commence their work not later than 31 December 2004 within jurisdiction laid down by this Law.

Until the courts referred to in paragraph 1 of this Article become operational the cases falling within their jurisdiction shall be handled by the courts which have jurisdiction pursuant to the Law on Courts (Official Gazette of the Republic of Montenegro 20/95).

The courts referred to in paragraph 1 of this Article shall take over the archives, documentation etc. for the cases falling within their jurisdiction no later than three months from the commencement of their work.

Article 133

The courts referred to in Article 132 paragraph 1 hereof shall be organised in accordance with this Law by 1 June 2003.

The cases shall be allocated in accordance with the provisions of Articles 89 and 93 of this Law thirty days following the day of entry into force of the Court Rules.

Article 134

The members of the Judicial Council shall be appointed in accordance with the provisions of this Law no later than six months from the day of entry into force of this Law.

Article 135

The election of judges in accordance with this Law shall be conducted after the Judicial Council has been constituted.

Until the Judicial Council has been constituted the election of judges shall proceed pursuant to the Law on Courts (Official Gazette of the Republic of Montenegro 20/95).

Article 136

A president of court elected pursuant to the Law on Courts (Official Gazette of the Republic of Montenegro 20/95) shall remain in office until expiry of his/her term of office.

Article 137

Regulations for the implementation of this Law shall be adopted no later than one year from the day of entry into force of this Law.

Regulations governing court guard shall apply until the regulations referred to in Article 124 paragraph 2 are adopted.

Article 138

The Law on Courts (Official Gazette of the Republic of Montenegro 20/95) shall be repealed on the day of entry into force of this Law, except for the provisions specified to be applicable until such time as laid down by this Law.

Article 139

This Law shall enter into force on the fifteenth day following that of its publication in the Official Gazette of the Republic of Montenegro.