**MONTENEGRO - *submission to the report on national judicial council***

***Questionnaire of the Special Rapporteur on the independence***

***of judges and lawyers***

***1. Please indicate whether there is a national body or mechanism in charge of selecting, appointing, transferring suspending or removing judges in your country. What is the exact denomination of this body or mechanism? What are the legal bases for its establishment (eg. constitutional provisions; ordinary law or other)?***

**Judicial Council** is an autonomous and independent body which regulates appointment and termination of office of judges in Montenegro.

**Article 128 of the Constitution of Montenegro** states that Judicial Council shall: 1.) elect and dismiss from duty a judge, a president of a court and lay judge, 2.) establish the cessation of the judicial duty; 3.) determine number of judges and lay judges in court; 4.) deliberate on the activity report of the court, applications and complaints regarding the work of court and take standpoint with regard to them; 5.) decide on the immunity of the judge; 6.) propose to the Government the amount of funds for the work of courts; 7.) performs other duties stipulated by the Law.

**The Law on Judicial Council and Judges regulates the procedure** for the appointment of judges and lay judges, rights and duties, the manner of determining the termination of judicial office, disciplinary liability and dismissal of judges and lay judges and other issues decided upon by the Judicial Council.

***2. Please provide information on the composition of the body of mechanism (number and qualifications of members), the procedures for the appointment of its members and the duration of their office. Please also provide information on the human and financial resources of this body of mechanism (e.g. number of employees and their qualifications; annual budget).***

(According to the Article 127 of the Constitution of Montenegro**), the Judicial Council shall have the president and nine members**.

**The president of the Judicial Council shall be the President of the Supreme Court.**

Members of the Judicial Council shall be as follows:

**Four judges elected** and dismissed from duty by the Conference of Judges;

**Two Members of the Parliament** elected and dismissed from duty bythe Parliament from amongst the parliamentary majority and the opposition;

**Two renowned lawyers** elected and dismissed from duty by the President of Montenegro

**The Minister of Justice.**

(According to the Article 12 of the Law on Judicial Council and Judges) **members of the Judicial Council from among the judges shall be:**

**Three members** from among the judges of the Supreme Court of Montenegro, the Appellate Court of Montenegro, the Administrative Court of Montenegro, High Misdemeanour Court of Montenegro, Commercial Court of Montenegro and High Courts, having at least ten years of work experience as judges;

**One member** from among the judges of the Basic Courts and Misdemeanour Courts, having at least five years of work experience as judges.

(According to the Article 13 of the Law**) the procedure of preparing the list of candidates for the appointment of members of the Judicial Council from among the judges and the procedure of appointment of members of the Judicial Council from among the judges at the Conference of Judges shall be conducted by the Commission for Appointment.**

(According to the Article 14) of the Law on Judicial Council and Judges the Proposal of candidates for the appointment of members of the Judicial Council shall be determined:

1) At a special session of judges of the Supreme Court, in which two candidates from that court shall be nominated;

2) At special sessions of judges of the Appellate Court, Administrative Court, High Misdemeanour Court, Commercial Court and High Courts, in which one candidate shall be nominated from these courts, respectively.

A list of eight candidates shall be prepared, in alphabetical order, by the Commission for Appointment, based on the information on nominated candidates.

In order to determine the proposal of candidates for the appointment of members of the Judicial Council, the Commission for Appointment shall obtain from each president and judge of Misdemeanour Courts and Basic Courts an initial proposal containing the nomination of two candidates, in a manner that ensures confidentiality of the initial proposal.

**A list of four candidates** who received the highest number of initial proposals referred to in paragraph 3 of this Article shall be compiled by the Commission for Appointment, in alphabetical order.

Lists of candidates for the appointment of members of the Judicial Council prepared in accordance with Article 14 of the Present Law shall be submitted to all courts for posting on the bulletin board of the court, no later than two months prior to the expiry of the term of office of members of the Judicial Council.

The Conference of Judges shall be convened by the President of the Supreme Court, no later than 30 days before the expiry of the term of office of the members of the Judicial Council.

**Three candidates from the list** referred to in Article 14, paragraph 2 of the present Law shall be appointed as members of the Judicial Council, where only one candidate may be appointed from one court, as well as one candidate from the list referred to in Article 14, paragraph 4, or paragraph 5 of the present Law, who received the highest number of votes.

If none of the candidates from the lists obtains the required majority of votes, the vote shall be repeated among the five candidates from the list referred to in Article 14, paragraph 2 of the present Law, i.e. among the two candidates from the list referred to in Article 14, paragraph 4 and paragraph 5 of the present Law, who received the highest number of votes.

If there are several candidates with the same number of votes, based on which they can enter a second round of voting, a list of those candidates shall be prepared and the vote shall be repeated, with the possibility to appoint only one candidate from one court.

According to Article 16 a person, who has at least fifteen years of work experience on legal affairs and enjoys personal and professional reputation and was not convicted of criminal offences that render judges unworthy for the exercise of judicial office in accordance with the present Law, may be appointed as a member of the Judicial Council from **among eminent lawyers**.

The competent working body of the Parliament of Montenegro shall issue a public call for the appointment of a member of the Judicial Council from among eminent lawyers in the Official Gazette of Montenegro and in at least one of the print media based in Montenegro.

The public call for the appointment of a member of the Judicial Council from among eminent lawyers shall be published by the competent working body of the Parliament of Montenegro on the website of the Parliament of Montenegro.

The deadline for applications by candidates shall be 15 days from the announcement of the public call.

The competent working body of the Parliament shall submit the proposal for the appointment of a member of the Judicial Council from among eminent lawyers to the Parliament.

The proposal for the appointment referred to in paragraph 6 of this Article shall contain as many candidates as members of the Judicial Council appointed.

**According to the Article 127 of the Constitution of Montenegro the mandate of the Judicial Council shall be four years.**

According to the Article 18 of the Law on Judicial Council and Judges a member of the Judicial Council from among the judges or eminent lawyers may be re-appointed as a member of the Judicial Council after the expiry of four years from the termination of the previous mandate in the Judicial Council.

**The mandate of a Judicial Council member shall terminate prior to the expiration of the term for which he / she was appointed if:**

1) The office on the basis of which he / she was appointed to the Judicial Council terminates;

2) He / she resigns;

3) He / she is convicted to an unconditional prison sentence.

In the case referred to in paragraph 1, item 1 of this Article, the mandate of a member of the Judicial Council shall terminate on the date of termination of the office on the basis of which he / she was appointed to the Judicial Council.

In the case referred to in paragraph 1, item 2 of this Article, the mandate of a member of the Judicial Council shall terminate when the Judicial Council acknowledges written resignation.

In the case referred to in paragraph 1, item 3 of this Article, the mandate of a member of the Judicial Council shall terminate on the date when the conviction becomes final and enforceable.

The Judicial Council shall acknowledge the termination of the mandate of a member of the Judicial Council and shall inform the authority that appointed him / her thereof.

**Funds for the work of the Judicial Council** are provided in the section of the Budget of Montenegro for judiciary, as a separate programme. Annual budget for the Judicial Council for the year 2016 was 761,955.83 euro.

The Judicial Council proposes the annual budget for the work of the Judicial Council.

The Judicial Council submits an annual budget proposal to the Government of Montenegro.

**Judicial Council consists of its members and Judicial Council Secretariat**.

The Secretariat has the following organizational units: 1. Department of normative activities, status issues of judges and their education, 2. Department of Information - Communication Technologies and Multimedia 3. The Department for Internal Audit 4. Department of General Affairs, 4.1 - a. Bureau of Finances.

For the execution of tasks within the scope of the Secretariat of the Judicial Council, there are **41 civil servants and employees’ positions**.

* **As for the qualifications of the employees: Higher education (VII – 1level qualifications education) and High school education.**

***3. Please provide detailed information on the legislation and practice existing in your country in relation to:***

***a) The selection and appointment of candidates for judicial offices and the criteria used for their selection and appointment (e.g. qualifications, integrity, ability and efficiency);***

***b) Condition of service and security of tenure of judges;***

***c) Promotion of judges;***

***d) Transfer of judges***

***e) Disciplinary proceedings against judges.***

**Law on Judicial Council states that judges and Presidents of the Courts are elected on the bases of public announcement.**

**(a)(**According to the Article 37) of the Law on Judicial Council and Judges, **general** **conditions** for appointment of judges are as follows: A person may be appointed as a judge and court president if he / she meets the general conditions for employment in a state authority and if he / she:

1) Completed law faculty – level VII1 of education qualifications;

2) Passed the bar exam.

(According to the Article 38) **special conditions for appointment of judges** are as follows: A person may be appointed as a judge of a Misdemeanour Court if he / she has worked for four years on legal matters, of which at least two years after passing the bar exam.

A person may be appointed as a judge of a Basic Court if he / she, after passing the bar exam, worked for at least two years as an adviser in court or public prosecution office, as an attorney, notary or Professor of Law, or at least four years on other legal matters.

A person may be appointed as a judge of the Commercial Court if he / she, after passing the bar exam, worked for at least three years as an adviser in court or public prosecution office, or at least three years as an attorney, notary or Professor of Law, or at least four years on other legal matters.

A person may be appointed as a judge of the Administrative Court if he / she worked for at least eight years as a judge, public prosecutor, attorney, notary, Professor of Law, or on other legal matters.

A person may be appointed as a judge of the High Misdemeanour Court if he / she works as a judge or a misdemeanour judge, or as a public prosecutor, for at least four years.

3) A person may be appointed as a judge of the High Court if he / she works as a judge or public prosecutor for at least eight years.

A person may be appointed as a judge of the Appellate Court if he / she works as a judge or public prosecutor for at least ten years.

A person may be appointed as a judge of the Supreme Court if he / she works as a judge or public prosecutor for at least fifteen years.

Notwithstanding paragraph 8 of this Article, a person may be appointed as one of the judges of the Supreme Court if he / she has at least 20 years of work experience as a judge, public prosecutor, attorney, notary, Professor of Law or on other legal matters.

**Law on Judicial Council and Judges determines criteria for elections of judges to be appointed for the first time**, namely: 1. Acquired knowledge with established subcriteriums; 2. Ability to perform judicial function on the basis of established subcriteria; 3. Worthiness to perform judiciary function being valued based on established subcriteria.

For judges to be elected for the first time, the law prescribes the written examination of candidates by the Commission. Written examination shall be anonymous, and potential questions can be found on the Judicial Council website.

After the written examination conducted, interviews shall be organized with the candidates who passed the written test. Members of the Judicial Council evaluate candidates based on the interview, applicants’ documentation and opinions, and shall fill out standardized candidate assessment forms, which they submit to the Commission. The Commission establishes the average number of points, based on the evaluation of each member of the Judicial Council.

Based on an average score, the Commission makes a list of candidates for election to be submitted to the Judicial Council for decision-making. The Decision on the Selection the Judicial Council issues a secret ballot and the same has to hold a written statement of reasons.

Each candidate shall have the right to inspect his documentation, as well as a written test, the opinion and the final grade of other candidates who have applied for the selection of the judge within 30 days from the date after the decision.

The decision of the Judicial Council on the election of a judge is final and an administrative dispute can be initiated against it.

**(b) The Article 121 of the Constitution of Montenegro states that judicial duty shall be permanent.**

The duty of a judge shall cease at his/her own request, when he/she fulfills the requirements for age pension and if the judge has been sentenced to an unconditional imprisonment sentence.

The judge shall be released from duty if he/she has been convicted of an act that makes him/her unworthy of the judicial duty, if he/she performs the judicial duty unprofessional or negligent manner or loses permanently the ability to perform the judicial duty.

The judge shall not be transferred or sent to another court against his/her will, except by the decision of the Judicial Council in case of reorganization of courts.

**As for the judges to be appointed for the first time:**

Article 53 of the Law on Judicial Council and Judges states rights and duties of candidates for judges and prescribes that during the initial training, a candidate for judge shall commence employment in the Basic Court in Podgorica until the decision on the appointment.

According to the Article 54 of the Law on Judicial Council and Judges, Candidates for judge shall be required to complete the initial training consisting of theoretical and practical part and lasting 18 months.

A candidate for judge who has received a satisfactory grade at the initial training shall be appointed as the Basic Court judge by the Judicial Council.

A candidate for judge shall exercise the right to choose the Basic Court in which he / she will be assigned according to the order on the ranking list referred to in Article 50 of the present Law.

**(C) promotion of judges**

**The Law on Judicial Council and Judges** (in Article 72) states that the judges shall be entitled to be promoted through the appointment to a higher court, and the public prosecutor shall be entitled to be promoted through the appointment to a court, if their work is rated as excellent or good in accordance with the law and if they meet the specific requirements laid down for the appointment to that court.

A judge or public prosecutor may be promoted to the Supreme Court if he / she received the excellent grade and if he / she meets the special requirement for appointment to the Supreme Court referred to in Article 38, paragraph 8 of the present Law.

(According to the Article 73) in the process of promotion, vacant positions for judges shall be announced in the High Court, High Misdemeanor Court, Appellate Court and the Supreme Court, in accordance with the Plan of Vacancies.

(Article 74) of the Law states that the criteria for the appointment of the judge who is promoted shall be:

1) Work appraisal of the judge or public prosecutor;

2) Evaluation of the interview with the candidate.

**(d)Deployment and transfer of judges**

**(According to the Article 82)** of the Law on Judicial Council and Judges **the Judicial Council** may deploy a judge, with his / her consent, for a time period of up to one year, to another court of the same or lower instance, if the regular performance of duties in the court to which the judge is deployed becomes questionable due to recusal or inability of a judge of that court to perform judicial office or due to the existence of a large number of unresolved cases that may not be resolved with the existing number of judges or for other justified reason.

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The procedure for temporary deployment to another court (according to the Article 83) shall be as follows: **Judicial Council shall make a decision on temporary deployment of a judge** (referred to in Article 82 of the present Law) **at the request of the president of the court to which the judge is deployed.**

Before making a decision on temporary deployment of a judge the Judicial Council shall consult with the president of the court who submitted the request, the judge who is temporarily deployed and the president of the court in which the judge performs a judicial office.

**(According to the Article 84)**, **the Judicial Council may deploy a judge,** with his / her consent, for a period of up to three years, to the Ministry, legal person authorized for the training of judges and the Secretariat of the Judicial Council to participate in the affairs of those authorities relating to the improvement of the work of the courts, especially the introduction of international standards in the work of courts.

The deployment shall be made on the proposal of the head of authority to which the judge is deployed, following the previously obtained opinion of the president of the court in which the judge performs a judicial office and the consent of the judge.

During the work in the authority to which the judge was deployed, the judge shall not perform a judicial office.

**(Article 85 of the same Law states) that in case of reorganization of the courts which reduces or abolishes the number of positions for judges, the Judicial Council may transfer a judge to work in another court without his / her consent.**

**(According to Article 86)**Judicial Council shall publish an internal announcement for filling up vacant positions for judges on its website.

The judges who wish to be permanently assigned to another court of the same or lower instance shall have the right to apply to the internal announcement.

**The Judicial Council** shall make a list of candidates for the assignment (referred to in paragraph 2 of this Article) according to the results of work in the last three years, i.e. according to the work appraisal grade awarded to the judges in accordance with the present Law.

On the basis of the list of candidates**, the Judicial Council shall make a decision on the assignment of a judge to another court of the same level, taking into account the needs of the court in which the judge performs a judicial office and of the court to which the judge is assigned.**

(e)**Disciplinary proceedings against judges**

**A judge and a court president as a judge shall have disciplinary liability for minor, severe and the most severe disciplinary offences.**

(According to the Article 110 of the Law on Judicial Council and Judges**) if there is reasonable suspicion that a judge committed a disciplinary offence,** the motion for establishing disciplinary liability of the judge may be filed by the court president, the president of the immediately higher court and the President of the Supreme Court or the Commission for Monitoring the Implementation of the Code of Ethics for Judges.

The motion for establishing disciplinary liability of the President of the Supreme Court may be filed by a General Session of the Supreme Court.

(In the case referred to in paragraph 1 and 2 of this Article), the court president, the president of the immediately higher court and the President of the Supreme Court may address the Commission for Monitoring the Implementation of the Code of Ethics for Judges with a request for an opinion whether certain behaviour of a judge is in accordance with the Code of Ethics for Judges.

The motion for establishing disciplinary liability of a judge shall be filed without delay, immediately after becoming aware of the disciplinary offence.

(Article 112 of the) Law states that the investigation on the submitted motion for establishing disciplinary liability shall be conducted by the **disciplinary prosecutor**, who shall also represent the indictment in the procedure of establishing disciplinary liability of the judge. Disciplinary prosecutor shall have a deputy. Disciplinary prosecutor and his /her deputies shall be appointed by the Judicial Council from among the judges with at least 15 years of work experience as a judge, upon the proposal of the General Session of the Supreme Court.

(Article 114 of the same) Law prescribes that the procedure of establishing disciplinary liability for minor and severe disciplinary offences shall be conducted by the disciplinary panel, under the bill of indictment of the disciplinary prosecutor.

The disciplinary panel shall consist of three members of the Judicial Council, two members from among the judges and one member from among the eminent lawyers, who shall be the chairman of the disciplinary panel.

**The members of the disciplinary panel and their deputies shall be appointed by the Judicial Council, on a proposal from the President of the Judicial Council.**

**The procedure of establishing disciplinary liability for the most severe disciplinary offences shall be conducted by the Judicial Council, under the bill of indictment of the disciplinary prosecutor.**

***What is the role played by the national organ or mechanism with regard to theissues referred to above?***

- The answer to this question is contained in divisions a), b), c), d) and e).

***4. If the national organ or mechanism does not have a role to play in relation to any of these issues, please provide detailed information on legislation and procedure for:***

1. Judicial selection and appointment;
2. Transfer and promotion of judges;
3. Disciplinary proceedings against judges

* Judicial Council does have a role in relation to these issues and is explained in the answers to the previous questions.