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**Permanent Mission of Montenegro to the United Nations Office,
WTO and other International Organizations in Geneva**

No: 1697/HRC

The Permanent Mission of Montenegro to the United Nations, WTO and other international organizations in Geneva presents its compliments to the UN Special Rapporteur on the independence of judges and lawyers at the Office of the High Commissioner for Human Rights and has the honor to deliver answers to your Questionnaire on the Human Rights Council resolution 19/31 - Integrity of judicial system.

The Permanent Mission of Montenegro to the United Nations Office, WTO and other international organizations in Geneva avails itself of this opportunity to renew to the UN Special Rapporteur on the independence of judges and lawyers at the Office of the High Commissioner for Human Rights assurances of its highest considerations.

Geneva, 31th May 2013



Office of the High Commissioner for Human Rights
UN Special Rapporteur on the independence of judges and lawyers
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**MONTENEGRO
SUPREME COURT**

**Su. V No. 229/13
Podgorica, 29.05.2013.**

QUESTIONNAIRE ON MILITARY JUSTICE

I Montenegro belongs to those countries which do not have military justice.

All criminal cases are brought before civil courts and all judges are appointed by the Judicial Council which is autonomous and independent body.

Therefore, if the accused person is military or civilian he/she will be accused by the state prosecutor. The accused person will be brought before a civilian court and he/she will have a civilian lawyer.

According to the Criminal Procedure Code a person shall be considered innocent of a crime until his/her guilt has been established by the final judgment.

At the first hearing, the suspects shall be informed about the criminal offence they are charged with as well as the grounds for suspicion against them.

Suspects shall be provided with an opportunity to make a statement regarding all the facts and evidence incriminating them and to present all facts and evidence in their favour.

During the first hearing, the suspects and the accused parties shall be informed that they are not obliged to give any statements whatsoever nor answer the questions they are asked and that all statements they make may be used as evidence.

Persons deprived of liberty by a competent public authority shall be immediately informed in their language or in a language they understand about the grounds for their apprehension and, at the same time, informed that they are not obliged to make a statement, that they have a right to a defence attorney of their own choice and to request that a person of their choosing be informed on their deprivation of liberty as well as a diplomatic consular representative of a state whose nationals they are or a representative of appropriate international organization if they are stateless persons or refugees.

It shall be forbidden to threaten or exert violence over a suspect, accused person or another person participating in the procedure, as well as to extort confession or another statement from such persons.

No judgment shall be based on any confession or other statement obtained by extortion, torture or inhuman or degrading treatment.

Accused persons shall have the right to defend themselves in person or with the professional assistance of a defence attorney of their own choice from the ranks of attorneys-at-law.

Accused persons shall have the right to have a defence attorney present during their hearing.

Prior to the first hearing the accused persons shall be instructed of their right to retain a defence attorney, to agree with the defence attorney on the manner of defence and told that a defence attorney may be present during their hearing. They shall be cautioned that everything they state may be used as evidence against them. If the accused persons do not retain a defence attorney by themselves, they shall be appointed an ex officio defence attorney by the court, when stipulated so by the present Code.

Accused persons shall be ensured enough time and possibilities to prepare their defence.

The suspects shall have the right to a defence attorney in accordance with the present Code.

II Court system in Montenegro:

Supreme Court of Montenegro
Administrative Court of Montenegro
Appellate Court of Montenegro
two Commercial Courts (in Podgorica and Bijelo Polje)
two High Courts (in Podgorica and Bijelo Polje)
15 basic courts

Within High Courts in Podgorica and Bijelo Polje there are established Special Departments for organised crime, corruption, war crimes and terrorism. Indictments for these criminal offences are brought by the Special Prosecution which is a part of the Supreme State Prosecution.

According to the Law on courts, 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.

The Appellate Court shall decide on appeals against first-instance decisions of high courts.

The Supreme Court shall decide in third instance as provided by law; decide on extraordinary legal remedies against decisions of the courts in Montenegro; decide against decisions of its panel of judges, as provided by law;

III Criminal Code of Montenegro, *inter alia*, prescribes criminal offences against humanity and other values guaranteed by the international law, as also criminal offences against the army of Montenegro.

IV The victim of any criminal act can file a claim for damages before a civilian court, according to the national law.

SECRETARY GENERAL
Sanja Kalezić