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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**LAW
ON COURTS**

OF MONTENEGRO

as adopted on 26 February 2015

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Unofficial translation

Pursuant to Article 82, paragraph 1, item 2 of the Constitution of Montenegro and Amendment IV, paragraph 1 of the Constitution of Montenegro, the Parliament of Montenegro of the 25th Convocation, at the Sitting of the First Extraordinary Session in 2015, of 26 February 2015, adopted the:

LAW ON COURTS**I. GENERAL PROVISIONS****Subject matter of the Law****Article 1**

This Law shall regulate establishment, organisation and jurisdiction of the courts, organisation of the work in courts and judicial administration and other issues relevant to orderly and timely functioning of the courts.

Judicial power**Article 2**

The judicial power shall be exercised by courts established by this law.
The court shall be obliged to decide legally, objectively and timely on the legal thing that falls under its jurisdiction.

Accessibility of the courts and equality of parties**Article 3**

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

Publicity**Article 4**

The publicity of the work of the court shall be provided in accordance with the law.

Impartiality**Article 5**

Everyone is entitled to an impartial trial within a reasonable time, and everyone has the right to have his legal matter heard and determined by a randomly selected judge, regardless of the parties to the case and the nature of the case.

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Funds for the functioning of the courts

Article 6

The funds for the functioning of the courts shall be provided from the budget of Montenegro.

Courts shall use independently funds referred to in paragraph 1 of this Article.

Use of gender sensitive language

Article 7

All references in this Law to natural persons in the masculine gender shall be deemed to include the feminine gender.

II. ESTABLISHING, ORGANISATION AND JURISDICTION OF COURTS

1. Establishing the courts

Courts

Article 8

The courts shall be:

- 1) misdemeanour courts;
- 2) High Misdemeanour Court of Montenegro (hereinafter referred to as the "High Misdemeanour Court");
- 3) basic courts;
- 4) higher courts;
- 5) Commercial Court of Montenegro (hereinafter referred to as the "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").

2. Misdemeanour courts

Establishment

Article 9

Courts shall be established as:

- 1) Misdemeanour Court in Bijelo Polje, for the territory of the municipalities of : Bijelo Polje, Andrijevica, Berane, Gusinje, Žabljak, Kolašin, Mojkovac, Petnjica, Plav, Pljevlja and Rožaje, with divisions in:
 - Berane – for the territory of the municipalities of Berane, Andrijevica and Petnjica;
 - Žabljak - for the territory of the municipality of Žabljak;
 - Plav – for the territory of the municipalities of Plav and Gusinje;

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- Pljevlja - for the territory of the municipality of Pljevlja;
- Rožaje - for the territory of the municipality of Rožaje;
- Kolašin - for the territory of the municipality of Kolašin;
- Mojkovac - for the territory of the municipality of Mojkovac;

Misdemeanour Court in Budva, for the territory of the municipalities of: Budva, Bar, Kotor, Tivat, Herceg Novi and Ulcinj, with divisions in:

- Bar - for the territory of the municipality of Bar;
- Kotor - for the territory of the municipalities of Kotor and Tivat;
- Herceg Novi – for the territory of the municipality of Herceg Novi ;
- Ulcinj - for the territory of the municipality of Ulcinj;

3) Misdemeanour Court in Podgorica - for the territory of the Capital of Podgorica, Old Royal Capital Cetinje and municipalities: Danilovgrad, Nikšić, Plužine and Šavnik, with divisions in:

- Old Royal Capital Cetinje for the municipality of the Old Royal Capital Cetinje;
- Danilovgrad - for the territory of the municipality of Danilovgrad ;
- Nikšić - for the territory of the municipalities Nikšić, Plužine and Šavnik.

Jurisdiction

Article 10

Misdemeanour courts shall have jurisdiction to decide on the requests for misdemeanour proceedings and the requests for judicial determination.

3. High Misdemeanour Court

Establishment

Article 11

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

Jurisdiction

Article 12

The High Misdemeanour Court shall decide on appeals lodged against decisions of misdemeanour courts, shall decide on the conflict of jurisdiction between misdemeanour courts and shall perform other duties prescribed by law.

4. Basic courts

Establishment

Article 13

Basic courts are established as:

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- 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, Andrijevisa and Petnjica;
- 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 municipalities 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 and Gusinje;
- 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 municipality of Cetinje;

Jurisdiction

Article 14

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 and legal and other relations, 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;

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4) In other legal matters:

a) to resolve at first instance non-contentious cases, unless otherwise prescribed by this Law;

B) to resolve cases of enforcement and security in accordance with the law governing enforcement and security;

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

5) to perform duties concerning legal assistance.

6) to perform tasks of international criminal legal assistance in criminal matters under a letter rogatory for service of documents.

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.

5. High courts

Establishment

Article 15

High courts are established as:

High court in Bijelo Polje – for the territories of basic courts of the municipalities of Bijelo Polje, Berane, Žabljak, Kolašin, Plav, Pljevlja and Rožaje; and

High Court in Podgorica – for the territories of basic courts in Podgorica, Bar, Danilovgrad, Kotor, Nikšić, Ulcinj, Herceg Novi and Cetinje.

Jurisdiction

Article 16

High courts shall have jurisdiction:

a) to hear and determine at first instance in 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 air traffic,

-unauthorised production, keeping and putting into circulation of narcotic drugs,

-calling for violent change of constitutional order,

-disclosure of confidential data,

-instigation of ethnic, racial and religious hatred, discord and intolerance,

-violation of territorial sovereignty,

-associating for anti-constitutional activity,

-preparing acts against the constitutional order and security of Montenegro,

-against humanity and other values guaranteed by international law;

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

3) to decide at second instance on appeals against decisions rendered by the basic courts;

4) to conduct a procedure of determining the circumstances regarding the request for extradition of accused and convicted persons and the procedure of recognition and enforcement of foreign judgements in criminal matters;

5) to resolve conflict of jurisdiction between basic courts from their territory;

6) to 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;

7) to perform duties of international criminal legal assistance in criminal matters under a letter rogatory for hearing a person, conducting special evidentiary actions, as well as other forms of international criminal legal assistance;

8) to perform other duties laid down by law.

Regardless of the rules on the territorial jurisdiction, the High Court in Podgorica shall hear and decide the criminal proceedings conducted for the following criminal offences:

1) organised crime regardless of the severity of prescribed punishment;

2) High-level corruption:

a) If a public official committed the following criminal offences:

- abuse of official position,
- fraud in the conduct of official duty,
- illegal influence,
- incitement to illegal influence,
- passive bribery,
- active bribery.

b) If the material gain exceeding the amount of forty thousand euros was obtained through the commission of the following criminal offences:

- abuse of position in business operations,
- abuse of powers in economy.

3) money laundering;

4) terrorism; and

5) war crimes.

For the purpose of conducting trials for the criminal offences referred to in paragraph 2 of this Article, a special division shall be established in the High Court in Podgorica.

6. Commercial Court

Establishment

Article 17

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

Jurisdiction

Article 18

The Commercial Court shall hear and determine at first instance:

1) disputes between companies, entrepreneurs and other legal persons performing economic activity (commercial entities), which arise from their commercial-legal relationships and in the disputes arising between commercial entities and other legal persons in the performance of the activity of commercial entities, as well as in the case where one party in those disputes is a natural person, if he she is in relation of substantive joint litigant to one of the parties;

2) disputes relating to registration of commercial entities as well as disputes arising from relationships governed by company law;

3) disputes relating to bankruptcy and liquidation of commercial entities, regardless of the capacity of the other party and irrespective of the time when the dispute was initiated, unless otherwise provided by law;

4) disputes relating to copyrights and related rights, industrial property rights and trademark protection, and other rights arising from intellectual property regardless of the capacity of the parties;

5) disputes relating to rights of artists, rights concerning the multiplication, duplication and putting into circulation of audio-visual works, as well as disputes relating to computer programmes 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.

The Commercial Court shall, at first instance:

1) conduct the proceedings of bankruptcy and liquidation;

2) decide on and conduct enforcement when the enforceable instrument has been issued by the Commercial Court or arbitration when so defined by a separate law, decide on enforcement between the parties referred to in paragraph 1, Item 1 of this Article, and decide on and conduct enforcement and security on board ships and aircrafts, regardless of the capacity of parties;

3) decide in non-contentious proceedings concerning ships and aircrafts;

4) decide on the recognition and enforcement of foreign judicial decisions rendered by commercial courts as well as of foreign arbitral awards.

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The Commercial Court shall provide international legal assistance for matters under its jurisdiction and shall perform other tasks prescribed by law.

7. Appellate Court

Establishment

Article 19

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

Jurisdiction

Article 20

Appellate Court:

- 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;
- 3) perform other duties laid down by law.

8. Administrative Court

Establishment

Article 21

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

Jurisdiction

Article 22

The Administrative Court shall decide in administrative disputes and shall also perform other duties laid down by law.

9. High Court

Establishment

Article 23

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

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Jurisdiction

Article 24

Supreme Court:

1) decide at third instance as provided by law;
 2) decide on extraordinary legal remedies against decisions of the courts in Montenegro;
 3) decide on legal remedies 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 to resolve the conflict of jurisdiction;

7) perform other duties laid down by law.

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

Supreme Court Bench

Article 25

Supreme Court Bench shall:

1) determine legal positions of principle;
 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 the Supreme Court Bench;

4) propose candidates for the President of the Supreme Court, issue the proposal for establishing the termination of office, disciplinary liability and dismissal of the President of the Supreme Court and issue opinions on candidates for judges of the Supreme Court;

5) perform other duties laid down by law.

Legal position of principle

Article 26

Legal opinion of principle is taken in relation to a contentious legal issue, which has arisen from the case law for the purpose of providing uniform application of the of laws by the courts.

Legal position of principle may be taken ex officio or upon the request by the court.

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

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Extended Session of the Supreme Court

Article 27

The extended session of the Supreme Court shall include the Supreme Court Bench and presidents of the Appellate Court, Administrative Court, Commercial Court and High Courts.

The extended session of the Supreme Court shall perform duties prescribed by law.

III. ORGANISATION OF WORK OF THE COURT

1. Organisational activities

Article 28

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 internal operation of courts.

Internal operation of courts referred to in paragraph 1 of this Article shall include judicial administration activities and administrative and technical activities as well as activities related to usage of the judicial information system.

Judicial Information System is unique information system for case management, where the data from court registers are entered, stored, and transmitted to.

Organisation and internal operation of courts shall be regulated by the Court Rules of Procedure adopted by ministry in charge of the judiciary (hereinafter referred to as the "Ministry"), with previously obtained opinion of the Judicial Council.

General criteria

Article 29

Required number of judges and state employees and civil servants shall be determined in accordance with the general criteria, prescribed by the Ministry, upon the proposal of the Judicial Council.

2. President of Court

Management

Article 30

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 whose office terminated due to expiry of term for which he was appointed shall continue to perform his duty with all rights and obligations appertaining to the president of court, until the new president of court is appointed, and no longer than 6 months.

The president of court shall be substituted by the judge of that court designated by annual allocation of tasks in court.

The president of court (hereinafter referred to as the "deputy president of court") shall designate a judge who substitutes the president of court when he is absent or indisposed, by annual allocation of tasks.

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3. Allocation of tasks in court

Adoption of annual allocation of tasks

Article 31

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 the court shall:

- take account of balanced allocation of tasks in the court and specialisation of judges;

- provide opportunity to each judge to express his opinion concerning the proposal.

The president of court shall determine a person authorised for public relations by the annual allocation of tasks.

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 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 immediately superior court about their disagreement with the annual allocation of tasks.

Amendment to the annual allocation of tasks

Article 32

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

- 1) the number of judges or positions of judges in the court decreases or increases;

- 2) 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.

The amendment to annual allocation of tasks in the court shall be made in line with Article 31 of this Law.

Delivery and publication of annual allocation of tasks

Article 33

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.

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4. Random allocation of cases

Allocation of cases

Article 34

The cases shall be allocated for work without delay according to the annual allocation of tasks and according to a method of random allocation of cases.

In line with paragraph 1 of this Article, cases shall be allocated for work to other judges if:

1) they were allocated for work to a judge who no longer exercises judicial office in that court;

and

2) they were withdrawn in line with Article 36 of this Law.

Method of random allocation of cases

Article 35

The cases shall be allocated to judges for work by a method of random allocation of cases, after the basic data on a case is uploaded to the judicial-information system, in the manner regulated precisely by the Court Rules of Procedure.

Withdrawal of allocated case

Article 36

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 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 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 of the case 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 in detention cases.

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

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Right to insight into court case

Article 37

The president of court shall have the right to insight into the cases of a judge when there are objective circumstances which indicate that the judge does not perform his duty lawfully, on the basis of:

- 1) an application of a party relating to judge's failure to act or his untimely action;
- 2) a request of the Protector of Human Rights and Freedoms of Montenegro;
- 3) reasons for initiating the procedure for determining disciplinary responsibility;
- 4) motion for disqualification of a judge;
- 5) request for expediting the proceedings (control request);
- 6) withdrawal of the case allocated for work.

In the cases referred to in paragraph 1 of this Article, the president of court may request the judge to submit him 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.

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

Work of the Supreme Court Bench

Article 38

The Supreme Court Bench shall be convened and chaired by the President of the Supreme Court, on his 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 judge of the Supreme Court who substitutes the President of the Supreme Court shall convene and chair the Supreme Court Bench that establishes a proposal of candidates for the President of the Supreme Court, and decides on a submission of the proposal for termination of office, determination of disciplinary responsibility and dismissal of the President of the Supreme Court.

The Supreme Court Bench shall decide if more than half of the judges of the Supreme Court is present, and decisions shall be made by a majority of votes of total number of judges of the Supreme Court.

Exempt from Article 3 of this Article, the proposal of candidates for the President of the Supreme Court shall be determined by a two-third majority of total number of the judges of the Supreme Court, by secret ballot.

If none of the applicants referred to paragraph 4 of this Article does not acquire the requested majority in the first voting, the voting shall be repeated between the two candidates who have the largest number of votes.

If none of the candidates does not acquire two-third majority in the repeated voting, the Supreme Court General Bench shall state that proposal of candidates for the President of the Supreme Court is not determined and the Judicial Council shall be informed about it.

The manner of work of the Supreme Court General Bench shall be regulated by the Rules of Procedure.

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Session of judges

Article 39

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 a judicial division or 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 of Procedure.

Scope of work of the session of judges

Article 40

Session of judges shall:

- 1) consider the issue of application of law if there is a difference in understanding among some panels or judges of the court;
- 2) propose taking or amending the legal position of principle;
- 3) consider performance reports of the court;
- 4) consider issues relevant to case law, professional training, organisation of work of the court;
- 5) perform other tasks prescribed by this law.

In the courts where court 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 41

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 and enforcement divisions;
- 2) in a high court – civil division and criminal division;
- 3) in the Commercial Court – division for commercial disputes, bankruptcy division and division for enforcement and security;
- 4) in the Appellate Court – criminal division and commercial division;
- 5) in the Administrative Court – administrative division;
- 6) in the Supreme Court – civil, criminal, administrative and case-law divisions.

A division for case law may be established in the court, as well as other divisions depending on the needs of specialisation for certain type of tasks.

The court divisions shall be established by the annual allocation of tasks in the court, determining the number, type and composition of court divisions.

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Composition and scope of work of court divisions

Article 42

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 one or more judges for following and studying the case law by the annual allocation of tasks, unless a judicial division is determined for exercising those duties.

Sessions of court division shall be shall convened and chaired by the president of division, designated by the annual allocation of tasks.

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

The court division 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

6. Days of Courts and case law records

Days of Courts

Article 43

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 44

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 of Procedure.

7. Administration of the court

Judicial administration activities

Article 45

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 registered 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.

Performance report

Article 46

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The president of court shall submit the performance report of the court to the Judicial Council and the Ministry no 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 courts shall submit special reports needed for reporting to the European Union and international organisations as well as for monitoring the appliance of regulations.

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

Court files

Article 47

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

Designation of the court files must be uniform for all the courts of a certain type and level in Montenegro.

The method of designating of the court files shall be regulated by the Court Rules of Procedure.

Restoring court files

Article 48

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, in line with the provisions governing the annulment of documents in a non-contentious proceeding.

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 referred to in Article 4 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 president 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.

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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.

Supervision over the court administration

Article 49

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

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

Inspection supervision

Article 50

The Ministry, through the judicial inspector, shall perform inspection supervision of courts in relation to the organisation of work of courts in accordance with this Law and of the application of the Court Rules of Procedure in the area of judicial administration, especially in relation to:

- 1) random allocation of cases;
- 2) the work of registry office and archive office;
- 3) keeping official records as prescribed;
- 4) other tasks related to proper work and operation of judicial administration.

Judicial inspector

Article 51

A person who meets the requirements for a judge of the Administrative Court may be appointed as a judicial inspector.

Exercising inspection supervision

Article 52

Inspection supervision shall be carried out in accordance with the annual plan of supervision, issued by the minister in charge of judiciary affairs (hereinafter referred to as the "Minister of Justice") by the end of the calendar year for the following year (regular inspection supervision).

Annual supervision plan shall include the courts in which, according to the results of the supervision conducted during a calendar year, supervision (control inspection supervision) has to be repeated in the next calendar year.

Annual supervision plan shall be submitted to courts in which supervision shall be conducted, no later than 31 January of the current year.

Extraordinary inspection supervision shall be determined by the decision of the Minister of Justice on the proposal of the President of the High Court, president of the immediately superior court or present of the Judicial Council.

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The decision on the extraordinary inspection supervision shall be submitted to the court in which the supervision is to be conducted, at latest a day before the beginning of the supervision.

The Ministry shall carry out inspections on the occasion of the complaints and petitions of citizens related to the activities of judicial administration.

Implementation of supervision

Article 53

Inspection supervision shall be conducted by direct examination of documents, data and manner of work in the court, or by examining the submitted documents and data of the court.

President of the court shall facilitate smooth implementation of inspection supervision in the court or provide the required documents and information.

Minutes

Article 54

Minutes on conducted inspection supervision shall be taken containing data on established facts, irregularities and measures to be taken in order to eliminate the established irregularities and deadlines for taking these measures.

Minutes of inspection supervision shall be submitted to the president of the court.

If any irregularities are established by inspection supervision, the president of the court in which the supervision has been carried out may provide written comments to the minutes, at the latest within eight days of receipt.

Minutes on the conducted inspection supervision and comments of the president of the court referred to in paragraph 3 of this Article shall be submitted to the president of the immediately superior court, President of the Supreme Court and Judicial Council.

President of the court shall remove the irregularities found in the work of judicial administration within the time limits specified in the minutes on the conducted inspection supervision.

President of the court shall inform in writing about the measures taken under paragraph 5 of this Article the Ministry, president of the immediately superior court, President of the Supreme Court and Judicial Council.

8. Internal organisation and job descriptions

Officers

Article 55

The required number of advisors, other civil servants and state employees in courts shall be established by the Act on Internal Organisation and Job Descriptions, in line with general criteria referred to in Article 29 of this Law.

Act on Internal Organisation and Job Descriptions shall be issued by the president of the court, upon approval by the Government of Montenegro, and prior opinion of the Judicial Council, Ministry and competent authorities, in accordance with the law regulating the rights and responsibilities of civil servants and state employees.

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Secretary

Article 56

The Supreme Court shall have a secretary to assist the President of the Supreme Court in the performance of judicial administration.

The court with at least ten judges shall have a secretary of the court to assist the president of the court in the performance of judicial administration.

The Secretary shall meet the requirements specified for advisors in the court.

Advisors

Article 57

A person who meets general requirements for admission to employment in state bodies, graduated from the law faculty VII1 level of education qualification, passed bar exam, and meets specific requirements established by 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 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.

Head of Court Registry Office

Article 58

A person who meets general requirements for admission to employment in state bodies, graduated from the law faculty VI level of education qualification, and meets specific requirements established by the Act on Internal Organisation and Job Descriptions, shall be eligible for the position of a head of court registry office.

Expert assistance

Article 59

If necessary, the president of court may, for the purpose of obtaining the expert assistance in the work of court, engage a judge whose terms of office expired due to fulfilment of conditions for retirement pension.

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, at maximum 80% of the average gross salary in Montenegro in the previous year.

Trainee

Article 60

A person who graduated from the law faculty, VII1 level of education qualification, and meets general requirements for admission to employment in state bodies shall be eligible for the position of a trainee in court.

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A separate law shall be applied to special requirements and procedure for entering into employment, duration of traineeships and training during the traineeships.

Other laws application

Article 61

Entering into employment and termination of employment of advisors and other administrative staff, their salaries and other rights, obligations and responsibilities, requirements for entering into employment and requirements for taking professional examination, shall be governed by legislation relating to civil servants and state employees, unless otherwise provided by this Law.

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

Relations between courts

Article 62

Lower courts shall have a duty to provide the courts of higher instance, upon their request, with data and information, and to enable them a direct insight into the work of the court, for the purpose of monitoring and studying the case law and conducting control over the work of the court.

At the session of court division of immediately superior court, the issues of common interest shall be discussed for courts of lower rank from the area of that court.

Respect of dignity of parties

Article 63

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 64

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.

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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 of Procedure.

Relations of the court with the public

Article 65

The information about the work of the court shall be disclosed by the president of court, person referred to in Article 31, paragraph 3 of this Law, or person authorised by the president of court.

The information shall be disclosed in line with this Law, Court Rules of Procedure and the law governing the free access to information.

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

For the purpose of informing the public, a separate public relations department may be established in courts.

Judicial robe

Article 66

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 of Procedure.

Relations between the court and parties

Article 67

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

V. SECURITY SERVICES

Organisation of security services

Article 68

Services of securing persons, property and objects of courts shall include prevention of illegal actions directed towards persons, objects and property of court, maintenance of order, prevention of bringing in stabbing weapons and firearms, explosive devices and other dangerous items or substances into the courtroom, as well as prevention of destroying or disposing the assets.

Services referred to in paragraph 1 of this Article shall be provided by court employees in charge of providing security, or by legal entities authorised for providing protection and security services.

The Supreme Court may establish a service for providing court security for all courts.

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Conditions for providing security services

Article 69

A person shall be eligible for providing security services in courts if he meets general requirements prescribed for admission to employment in state bodies, and also the following conditions:

- 1) possesses III or IV level of education qualification and meets conditions for possessing and carrying weapons, in accordance with the law regulating weapons;
- 2) completed training program for execution of protection tasks;
- 3) in the year that precedes to the year of entering into employment, he was not punished for breaching public order with elements of violence for which a prison sentence has been prescribed, the offence prescribed by the law regulating weapons or offence prescribed by law regulating protection of persons and property.
- 4) there are no other circumstances indicating to misuse and/or illegal performance of protection tasks (frequent or excessive use of alcohol, psychoactive substances, conflict or incident behaviour).

Previous check of fulfilment of the requirements referred to in paragraph 1 of this Article shall be conducted by the body in charge of police affairs, and if needed, in cooperation with the National Security Agency, with previous consent of the person who is being assessed.

Security and authorisation services

Article 70

Security services shall be performed by using means of coercion, namely: physical force, baton, restraint devices, chemical substances and firearms (pistol).

In performing security duties, a person performing security duties shall be authorised to:

- 1) establish the identity of persons entering and leaving the court;
- 2) search persons entering and leaving the court and their belongings,
- 3) give warnings or issue orders;
- 4) prohibit the entrance to persons carrying stabbing weapons or firearms, or those who are reasonably suspected to carry hazardous substances, except for officers who come to court for executing work orders and who need weapons or other dangerous things for performing the ordered tasks;
- 5) detain a person caught in committing a crime until handling him over to the body in charge of police affairs;
- 6) eject from the court persons obstructing the work of the court;
- 7) perform other tasks, and execute orders by the president of the court relating to securing persons, property and building of the court;

Security and authorisation services referred to in paragraphs 1 and 2 of this Article shall be performed in accordance with the law regulating the protection of persons and property,

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Procurement of weapons

Article 71

If security services are performed by security officer referred to in paragraph 69 of this Article, permission for the acquisition of weapons for that person shall be obtained by the court, in accordance with provisions of the law regulating weapons, relating to granting a permission for the acquisition of weapons to a legal entity.

Provisions of the regulations governing the maintenance, preservation and registration of weapons shall be applied for maintenance, preservation and registration of weapons acquired in accordance with paragraph 1 of this Article.

Official identification card and uniform

Article 72

Security officer referred to in paragraph 69 of this Article shall have official identification card issued by the court as well as official uniform.

Method of issuing and form of the official identification card as well as appearance of the uniform referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

Shared security

Article 73

For services of securing persons, property and objects referred to in Article 68, paragraph 1 of this Law, for courts placed in the same building, as well as for courts and public prosecution offices placed in the same building, a shared performance of these services may be organised.

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

Financial resources for the work of courts

Article 74

The funds for the work of courts shall be provided from a special section of the Budget of Montenegro, as a separate programme for each court.

The Judicial Council shall submit the proposal for the section of the budget referred to in paragraph 1 of this Article to the Government of Montenegro.

Financial principal in the court

Article 75

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

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Court deposit

Article 76

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 of Procedure.

VII. TRANSITIONAL AND FINAL PROVISIONS

Article 77

General criteria referred to in Article 29 of this Law shall be adopted within 15 days from the day of entry into force of this Law.

Article 78

The Judicial Council shall, in accordance with the law, adopt a decision on a number of judges in courts, within 15 days from the day of adopting the general criteria referred to in Article 77 of this Law.

Article 79

Acts on Internal Organisation and Job Descriptions of misdemeanour courts and High Misdemeanour Court shall be adopted within 30 days from the day of election of presidents of misdemeanour courts and president of the High Misdemeanour Court.

Article 80

Acts on Internal Organisation and Job Descriptions of the Commercial Court of Montenegro, Higher Court in Bijelo Polje and Higher Court in Podgorica shall be adopted within 30 days from the day of adoption of a decision on the number of judges referred to in Article 78 of this Law.

Article 81

Public announcement for the election of judges of misdemeanour courts and High Misdemeanour Court shall be issued within 15 days from the day of adoption of a decision referred to in Article 78 of this Law.

Article 82

A person shall be eligible for the position of a judge of misdemeanour court, and/or the position of a judge and president of the High Misdemeanour Court, who are to be elected until 1 January 2016, if, in addition to general requirements prescribed for admission to employment in state bodies, meets the following requirements:

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1) misdemeanour court - a graduate of the law faculty, VII1 level of education qualification, passed bar exam and four years of work experience in legal services, of which at least two years after passing the bar exam;

2) High Misdemeanour Court - a graduate of the law faculty, VII1 level of education qualification, passed bar exam and seven years of work experience in legal services, of which at least four years after passing the bar exam;

Article 83

The election of president and judges referred to in Article 82 of this Law shall be conducted according to the provisions prescribed by the procedure of the Law on Judicial Council (Official Gazette of Montenegro 13/08, 39/11, 31/12, 46/13 and 51/13), relating to the election of judges of basic courts.

Exempt from paragraph 1 of this Article, for candidates who have already performed a duty of the president and judge of regional misdemeanour body and/or a judge and president of the Council for Misdemeanours, the election shall be conducted by the application of criteria referred to Article 32 of the Law on Judicial Council (Official Gazette of Montenegro 13/08,39/11, 31/12, 46/13 and 51/13), and evaluation of practical paper which consists of drafting a decision within jurisdiction of misdemeanour court.

Scoring of candidates referred to in paragraph 2 of this Article shall be done in the following manner: candidates referred to paragraph 2 of this Article may score a total of 100 points, based on: acquired knowledge - up to 20 points, capability to exercise judicial office - 30 points, dignity for exercising judicial office - 20 points and practical paper - 30 points.

Exempt from paragraph 2 of this Article, judges and presidents of misdemeanour courts and/or judges and president of the Council for Misdemeanours, who performed a duty of a basic court judge during their career, shall not draft a practical paper.

Scoring of candidates referred to in paragraph 4 of this Article shall be done in accordance with paragraph 3 of this Article, provided that their work experience shall be scored instead of practical paper.

Article 84

In line with articles 82 and 83 of this Law, the function of misdemeanour judges and presidents of the regional misdemeanour bodies, appointed in line with the Law on Misdemeanours (Official Gazette of Montenegro 1/11, 39/11 and 32/14), shall cease on the day of election of the president of the court and one half of judges of the total judge positions in the misdemeanour court or its division, established by the decision on a number of judges referred to in Article 78 of this Law .

In line with articles 82 and 83 of this Law, the function of misdemeanour judges and President of the Council for Misdemeanours, appointed in line with the Law on Misdemeanours (Official Gazette of Montenegro 1/11, 39/11 and 32/14), shall cease on the day of election of the president of the court and one half of judges of the total judge positions in the High Misdemeanour Court, established by the decision on a number of judges referred to in Article 78 of this Law .

A judge and president of the regional misdemeanour bodies, respectively a judge and president of the Council for Misdemeanours, whose office terminated in terms of paragraphs 1

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and 2 of this Article, shall be entitled to a wage prescribed by Article 23 of the Law on Salaries of Civil Servants and State Employees (Official Gazette of Montenegro 14/12) within one year upon the termination of office.

Article 85

Before the law governing the wages in public sector starts to apply, judges and presidents of misdemeanour courts shall be entitled to a wage in the amount of 80% of the wage of judges of the basic courts respectively presidents of the basic courts, established by the Law on Salaries and Other Emoluments of Holders of Judicial and Constitutional Court Offices (Official Gazette of Montenegro 36/07).

Before the law governing the wages in public sector starts to apply, judges and president of the High Misdemeanour Court shall be entitled to a wage in the amount of 100% of the wage of judges of the basic courts respectively president of the basic courts, established by the Law on Salaries and Other Emoluments of Holders of Judicial and Constitutional Court Offices (Official Gazette of Montenegro 36/07).

Article 86

Misdemeanour courts and High Misdemeanour Court shall take over pending caseload of the regional misdemeanour bodies and the Council for Misdemeanours respectively, within 15 days from the day of election of presidents of courts and judges of the misdemeanour courts and president of the court and judges of the High Misdemeanour Court in line with Article 84, paragraph 1 and 2 of this Law.

If for a misdemeanour court or its division a number of judges have not been elected in accordance with Article 84 paragraph 1 of this Law, the regional bodies with territorial and subject matter jurisdiction shall continue working on pending caseload of the regional misdemeanour bodies, until the necessary number of judges have been elected in misdemeanour courts and its divisions.

If a necessary number of judges have not been elected in the High Misdemeanour Court in accordance with Article 84 paragraph 2 of this Law, the Council for Misdemeanours shall continue working on pending caseload of the Council for Misdemeanours as well as on the cases falling within the jurisdiction of the Council for Misdemeanours until the necessary number of judges has been elected in the High Misdemeanour Court.

Article 87

Civil servants and state employees employed in the regional misdemeanour bodies or Council for Misdemeanours shall be taken over by misdemeanour courts and High Misdemeanour Court respectively, which, in line with prescribed jurisdiction, shall take over conduction of misdemeanour proceeding, and they shall have the status of employees in that court until their reassignment in accordance with the Act on Internal Organisation and Job Descriptions,

A civil servant or state employee who cannot be reassigned in accordance paragraph 1 of this Article, because of no available job positions that he is meeting the requirements for, shall be made available, and on those grounds he shall exercise rights and obligation in accordance with regulations on civil servants or state employees.

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Article 88

On the day of election of presidents and judges of misdemeanour courts, in accordance with articles 82, 83 and 84 of this Law, equipment and premises of the regional misdemeanour bodies shall be taken over by misdemeanour courts, in accordance with territorial and subject matter jurisdiction prescribed by Article 9 of this Law, as well as in accordance with the identified needs of these courts.

On the day of election of the president and judges of the High Misdemeanour Court, in accordance with articles 82, 83 and 84 of this Law, equipment and premises of the Council for Misdemeanours shall be taken over by the High Misdemeanour Court.

Article 89

The Judicial Council shall reach a decision on transfer of judges of the Commercial Court in Bijelo Polje to vacant judge positions in other court within 30 days from the day of adopting a decision on the number of judges referred to in Article 78 of this Law.

Article 90

Civil servants and state employees employed in the Commercial Court in Bijelo Polje shall be taken over by the Commercial Court of Montenegro and they shall have the status of an employee in that court until their reassignment in accordance with the Act on Internal Organisation and Job Descriptions.

A civil servant or state employee who cannot be reassigned in accordance paragraph 1 of this Article, because of no available job positions that he is meeting the requirements for, shall be made available, and on those grounds he shall exercise rights and obligation in accordance with regulations on civil servants or state employees.

Article 91

The cases which, until the day of entry into force of this Law, are a part of workload of the Commercial Court in Bijelo Polje shall be taken over by the Commercial Court of Montenegro, within 30 days from the day of entering into force of this Law.

Article 92

Premises and equipment of the Commercial Court in Bijelo Polje shall be taken over by the Basic Court in Bijelo Polje and High Court in Bijelo Polje, in accordance with the identified needs of these courts.

Article 93

The cases received by basic courts until the day of entry into force of this Law shall be completed by the courts having jurisdiction according to the previous legislation, until the procedure is completed by a final and enforceable court decision.

Article 94

Cases received by the Special Division of the High Court in Bijelo Polje until the day of entry into force of this Law shall be completed by that division until the adoption of first instance decision.

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If after the entry into force of this Law, the first instance decision referred to in paragraph 1 of this Article is overturned, such cases shall be handed over to the Special Division of the High Court in Podgorica.

Article 95

Services of securing persons, property and objects of courts in accordance with articles 68-73 of this Law shall be carried out from 1 July 2015.

Article 96

Secondary legislation in accordance with this Law shall be adopted within six months period from the day of entering into force of this law.

Article 97

Provision of Article 99 para. 3 and 4 of the Law on Courts (Official Gazette of Montenegro 5/02 and 49/04 and Official Gazette of Montenegro [22/08](#), [39/11](#) and [46/13](#)), shall be applied until the beginning of application of the law regulating wages in public sector.

Article 98

The Law on Courts (Official Gazette of Montenegro 5/02 and 49/04 and Official Gazette of Montenegro [22/08](#), [39/11](#) and [46/13](#)), shall be repealed on the day of entry into force of this Law, with the exception of provisions of articles 31 and 32, which shall be repealed on 1 January 2016.

Article 99

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

Number: 23-1/14-18/17

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Podgorica, 26 February 2015

**PARLIAMENT OF MONTENEGRO
OF THE 25TH CONVOCATION**

President:

Ranko Krivokapić