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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**DRAFT LAW**

**ON AMENDMENTS**  
**TO THE LAW ON COURTS**

**OF**

**MONTENEGRO**

**Proposal, April 5<sup>th</sup>, 2011**

## **THE LAW ON AMENDMENTS TO THE LAW ON COURTS**

### **Article 1**

Article 18 of the Law on Courts (Official Gazette of the Republic of Montenegro, Nos. 5/2002 and 49/2004 Official Gazette of Montenegro, No. 22/2008) shall be amended to read as follows:  
“In the first instance, the High Court shall:

- 1) judge in criminal proceedings for criminal offences for which imprisonment exceeding 10 years is prescribed by the law as the principal punishment, regardless of the capacity, profession and position of the person against whom the proceedings is instituted and regardless whether the criminal offence has been committed in a peacetime or state of emergency or state of imminent war danger or wartime, and in the following criminal offences:
  - Manslaughter,
  - Rape,
  - Endangering the safety of the air traffic,
  - Unauthorized manufacturing, possessing and putting on the market intoxicating drugs,
  - Incitement to a violent abolition of the constitutional order,
  - Disclosure of classified information,
  - Provocation of national, racial and religious hatred, conflict or intolerance,
  - Violation of territorial sovereignty,
  - Associating for unconstitutional activities,
  - Preparing actions against constitutional order and security of Montenegro,
  - Money laundering;
- 2) judge in criminal proceedings for criminal offences of organized crime, regardless of the seriousness of the imposed sanction;
- 3) judge in criminal proceedings for criminal acts with elements of corruption, such as:
  - Violation of equality in the conduct of business activities;
  - Abuse of monopolistic position;
  - Causing bankruptcy;
  - Causing false bankruptcy;
  - Trading in influence;
  - False balance of accounts;
  - Abuse of appraisal;
  - Disclosure of business secret;
  - Disclosure and usage of stock-exchange secret;
  - Passive bribery;
  - Active bribery;

- Abuse of an official position; abuse of a position in business operations; frauds during service; and abuse of authorities practiced in economy, for which eight-year imprisonment or even a more serious sanction is prescribed;
- 4) judge in those criminal offences which are prescribed by special legislation to fall within the jurisdiction of the high court;
- 5) conduct proceedings for establishing preconditions when deciding upon requests for the extradition of the accused and convicted persons, as well as the procedure for recognition and execution of foreign courts' rulings in criminal matters;
- 6) perform also other duties prescribed by the law."

### **Article 2**

Item 1 of paragraph 1 under Article 20 shall be amended and read as follows:

"1) between business companies, contractors and other entrepreneurs resulting from their commercial and legal relations (as an outcome of performing for-profit activities by the parties), as well as cases in which one of the parties is a natural person if such party is a material co-litigant with the other party."

Item 1 under paragraph 2 shall be deleted.

The former items from 2 through 6 shall be items from 1 through 5.

### **Article 3**

In item 1 of paragraph 1 under Article 27, the words: "...aimed at uniform enforcement of the Constitution, laws and other regulations within the territory of Montenegro..." shall be deleted.

### **Article 4**

After Article 27, a new Article shall be added as follows:

#### **"Extended Session of the Supreme Court "**

##### **Article 27a**

Extended Session of the Supreme Court shall comprise the General Session of the Supreme Court and the Presidents of the Appellate Court, the Administrative Court of Montenegro and High Courts respectively.

Extended Session of the Supreme Court shall perform the duties prescribed by the law.

### **Article 5**

Paragraphs 2 and 3 under Article 32 shall be deleted.

### **Article 6**

After Article 32, a new Article shall be added as follows:

“Article 32a

Any person who meets general and specific requirements to be appointed as a judge to the Supreme Court and to whom professional impartiality, high professional and moral qualities are attributed may be appointed as the President of the Supreme Court.

The President of the Supreme Court shall be appointed for a five-year term of office.”

### **Article 7**

Article 33a shall be amended as follows:

“Undue performance of judicial duties  
Article 33a

A judge shall be deemed to perform the judicial duty unduly if the duty is not performed in a usual manner and particularly if for a longer time or in a greater number of cases and without a reasonable justification such judge:

- 1) does not act upon the cases in the order they have been received;
- 2) does not summon sittings or hearings for cases assigned to him/her to act upon them or if, in any other manner, delays the proceedings;
- 3) fails to ask for his/her challenge in cases where there is a reason for such challenge;
- 4) does not come or comes later to summoned hearings of arguments or hearings or panel of judges sessions;
- 5) does not process his/her rulings timely;
- 6) does not follow the schedule for deciding on pending cases or does not act upon a decision based on a check request;
- 7) prevents the performance of supervision as prescribed by the law;
- 8) does not attend mandatory training programme.”

### **Article 8**

Article 33b shall be amended and read as follows:

“A judge shall be deemed as in violation of the judicial duty if such judge:

- 1) During performing the judicial duty or at any public place brings himself/herself in the situation or behaves in the manner that is inappropriate to the performance of the judicial duty;
- 2) Behaves inappropriately towards the participants in any court proceedings and the court staff;
- 3) Does not abstain from inappropriate relations with the attorneys and parties upon whose cases he/she acts or discloses information he/she has found out during acting upon such cases;
- 4) Uses his/her judicial position for gaining his/her private interests and the interests of his/her family or does not present the data of his/her property as required by the regulations governing the conflict of interests;

- 5) Receives gifts or does not present the data of his/her property as required by the regulations governing the conflict of interests.”

### Article 9

After 33b, five new Articles shall be added as follows:

#### “Undue performance of the judicial function by the president of the court Article 33v

A president of the court shall be deemed as in undue performance of duty if such president of the court, without reasonable grounds:

- 1) Contrary to the law, changes the annual schedule of the court businesses;
- 2) Does not act upon complaints and check requests;
- 3) Does not institute disciplinary proceedings against a judge when he/she knows or must have known the grounds for such proceedings;
- 4) Prevents the supervision to be carried out according to the law;
- 5) Does not ensure education for judges, advisers and other staff in a court as it should be according to the regulations;
- 6) Does not present or presents incomplete and inaccurate performance reports and other data required under the law.”

#### Negligent and unprofessional performance of the duty of the president of a court Article 33g

A president of a court shall be deemed as in negligent and unprofessional performance of the duty of the president of a court if:

- 1) during the supervision of the performance of the court management, wrongful acts and irregularities in the performance of the court management that are detrimental to the proper and regular performance of the court duties and functions are found;
- 2) he/she does not respect the principle of the random assignment of cases;
- 3) he/she withholds, contrary to the law, already assigned cases;
- 4) he/she violates the principle of impartiality of a judge;
- 5) he/she does not make a motion to remove a judge from duty in cases prescribed by the law when he/she knows or must have known the reasons for such removal.

#### Cessation of the duty of the president of the court Article 33d

A president of the court shall have his/her duty ceased upon the following:

- 1) the expiration of a term of office to which he/she was appointed;
- 2) the expiration of his/her judicial function;
- 3) his/her personal request;
- 4) reorganization of the court.

#### Unprofessional and negligent performance of the judicial duty Article 33đ

An unprofessional and negligent performance of the judicial duty shall be particularly the one during which a judge, without reasonable grounds:

- 1) Does not achieve, to a large extent and for a previous three-year period, the expected results as regards the quality and quantity of performance;
- 2) Exceeds substantially the legally prescribed deadline for making respective rulings in a larger number of cases;
- 3) Delays proceedings or does not act upon cases, inducing thereby the limitation of the criminal prosecution or the limitation of the criminal sanction execution;
- 4) Does not act upon a larger number of cases for a longer period;
- 5) Performs activities or undertakes actions that are incompatible with the performance of the judicial duty.”

### **Article 10**

Article 90 shall be amended as follows:

“Daily received cases shall be arranged according to the alphabetical order of the initial letters in the first and family names of parties concerned and shall be assigned according to the alphabetical order of the first and family names of judges.

Cases concerning ordinary and extraordinary legal remedies shall be assigned in the manner provided for under paragraph 1 above.

The cases that have been assigned to a judge that does not perform the judicial duty any more in a court concerned shall be assigned to a newly appointed judge and/or to any other judge who has been assigned the cases falling within the legal field concerned. If that is impossible, then such cases shall be assigned in the manner provided for under paragraph 1 above.

The cases to be acted upon by a judge who is prevented to perform the judicial duty for longer than three months or by a judge who has been withheld such cases, as well as by a challenged judge, shall be assigned to other judges of the same court in accordance with paragraph 1 above.”

### **Article 11**

Article 92 shall be deleted.

### **Article 12**

Article 95 shall be deleted.

### **Article 13**

Article 98 shall have one new paragraph after paragraph 1, as follows:

“A meeting of the judges shall take a legal attitude whenever it has been found that there is a variety of understandings by different panels of judges or judges of the court concerned of certain aspects of the law enforcement, or when a panel of judges or a judge departs from the formerly established legal attitude.”

#### **Article 14**

Paragraph 3 under Article 99 shall be amended and read as follows:

“A judge acting upon a case on the criminal offence of organized crime or corruption or terrorism or war crimes shall be entitled to the monthly remuneration amounting to the salary of a judge of the Supreme Court, as well as to a special allocation due to the somewhat difficult work conditions and specificities of the duties he/she performs.”

After paragraph 3, one new paragraph shall be added as follows:

“The amount of the special allocation referred to in paragraph 1 above shall be decided by the Judicial Council.”

#### **Article 15**

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