



**JUDICIAL COUNCIL OF MONTENEGRO  
ANALYSIS OF OPERATION  
(2008-2012)**

Summary Report in English

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This Analysis was made possible with the support of the American people through the U.S. Agency for International Development, specifically through its Good Governance Activity in Montenegro. The author's views expressed in this Analysis do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

## INTRODUCTION

The Judicial Council of Montenegro (JC) is responsible for ensuring independence and accountability of the judiciary. Under the 2007 Constitution, the Judicial Council for the first time became directly responsible for the appointment and promotion, disciplinary sanctions and dismissal of judges.<sup>1</sup>

However, the 2007 Constitution did not provide for the composition of the JC independent of the political coalition in power, capable of ensuring the independence of the judiciary in Montenegro. The political method of electing the President of the Supreme Court and President of the JC was immediately criticized by the Venice Commission and assessed only as an interim solution.<sup>2</sup> Along with four representatives of judges, the JC members include the Minister of Justice, two members of the Parliament and two lawyers elected by the President of the Republic, in the context of the political situation in Montenegro, which does not ensure the perception of the Council as an expert body devoid of political influence.<sup>3</sup>

In November 2010, the European Commission stressed Montenegro's priority to "strengthen rule of law, in particular through de-politicised and merit-based appointments of members of the judicial and prosecutorial councils and of state prosecutors as well as through reinforcement of the independence, autonomy, efficiency and accountability of judges and prosecutors"<sup>4</sup> in order to achieve progress towards membership in the European Union.

In the Analytical Report accompanying the Opinion of the European Commission, which provides reasoning for the above priority in respect of the judiciary, it is noted that the election of the majority of members of the JC leaves room for political influence and calls into question the principle of separation of powers in

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<sup>1</sup> Art. 125 and 126 of the Constitution of Montenegro.

<sup>2</sup> Opinion of the Venice Commission on the Constitution of Montenegro, November 2007, item 90, translation published in the book "International Human Rights Standards and Constitutional Guarantees in Montenegro", Human Rights Action, Podgorica, 2008.

<sup>3</sup> One dominant political party, the Democratic Party of Socialists (DPS), has been in power in Montenegro for over 20 years. In 1990 it emerged from the League of Communists of Montenegro, the party in power since 1945 in the previous monopolistic one-party system. Cohabitation has never existed in Montenegro, the president and prime minister have always been DPS members. The current president of the state, who appointed two lawyers for members of the Judicial Council, is DPS vice president, while the Minister of Justice, member of the Judicial Council, comes from the same party. Wife of the President of the Republic was also a member of the Judicial Council, elected by the Conference of Judges.

<sup>4</sup> Commission Opinion on Montenegro's application for membership of the European Union, SEC (2010) 1334, Brussels, 9 October 2010.

relation to the judiciary.<sup>5</sup> The Report stressed the need for the establishment of the career advancement system for judges based solely on merit, in order to strengthen the independence, professionalism and transparency in the judiciary. This conclusion is based on the assessment that "the criteria for selection of new entrants to the judicial system leave room for discretion by the JC and thus undermine transparency in the selection process."<sup>6</sup> The Report also noted that there is no legal definition of the manner of weighing individual criteria, resulting in the lack of a unified selection procedure.<sup>7</sup>

In 2011 Progress Report on Montenegro, the European Commission assessed that the new criteria for selecting entrants to the judicial system reduce the room for discretion by the JC and thereby improve transparency in the selection process. However, it was noted that some of the criteria lack clarity, while the weighing of individual criteria is not fully satisfactory. It was concluded that the merit-based elements of the career system need to be further strengthened.<sup>8</sup> The Commission expressed its expectations for the constitutional amendments to significantly reduce the legal possibilities for disproportionate political influence over appointment of judges, thus reinforcing independence of the judiciary.

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By this report, which is the result of the analysis of the JC work during its first term (2008-2012), Human Rights Action (HRA) seeks to further contribute to judicial reform in Montenegro, emphasizing the necessary conditions for depoliticised and objective work of the JC.

In December 2008, HRA published the conclusions of the "Assessment of the Reform of Appointment of Judges in Montenegro 2007-2008",<sup>9</sup> criticizing the constitutional arrangement regarding the JC and highlighting the need to establish an objective and transparent system for appointment and regular assessment of judges, which would make their progress, as well as accountability for incompetent and irresponsible performance of the judicial function, certain and objective.<sup>10</sup> As such system, representing the foundation of judicial independence, does not yet exist, HRA continues to advocate for its

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<sup>5</sup> The European Commission, the Analytical Report accompanying the Opinion of the Commission on Montenegro's membership in the European Union, Brussels, 9 November 2010, p. 18.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> The European Commission, Montenegro 2011 Progress Report, Brussels, 12 October 2011, p. 10, SEC (2011) 1204.

<sup>9</sup> Available at: [http://www.hrraction.org/wp-content/uploads/hra\\_reform\\_proposal\\_eng.pdf](http://www.hrraction.org/wp-content/uploads/hra_reform_proposal_eng.pdf).

<sup>10</sup> The above Analysis of almost four years ago offers 109 recommendations for amendments to the legal framework of appointment, promotion of accountability of judges. Of these, 32 recommendations were adopted (29%), 25 were partially adopted (23%), and 52 recommendations were not adopted (48%).

establishment believing that this report and recommendations will finally contribute to achieving that aim.

Despite the reform implemented thus far, the appointment of judges in Montenegro still does not inspire trust, bearing in mind the composition of the JC on the one side, and its decisions from the past four years, which do not present reasons for appointing certain candidates, on the other. The JC unfortunately failed to reduce shortcomings of the existing legal framework by adopting by-laws defining standards for weighing of particular criteria - which could have objectified the assessment of candidates, or at least by providing substantial explanations for its decisions.

What the JC could not have improved is its composition, which continued to raise doubts that the political influence on the appointment of judges prevailed over the objective assessment of a candidate's ability to perform judicial function in Montenegro.

## CONCLUSIONS

Regarding the long-delayed amendments to the Constitution of Montenegro aimed at eliminating political influence from the judiciary, legal solutions contained in May 2012 amendments represent certain progress, but still do not exclude political influence. There are no guarantees that half of the members of the Judicial Council (JC), along with judges, shall not be politically engaged, enabling thereby political influence in future. Unfortunately, the only available option left is to introduce amendments to the Law on the JC, which have not yet been proposed, to try to ensure the recognition of the Council as a professional, independent and impartial body.

In addition to the fact that the JC has recently shown positive changes in terms of transparency and has responded positively to requests to provide information, a significant portion of the Council's work still remains non-transparent. Sessions of the Judicial Council have been closed to the public, despite the principle of transparency of the Council's work stipulated by law. Decisions on the appointment of judges have been poorly reasoned, and do not include the Council's method of weighing of criteria or explanation why the Council appointed a certain candidate. It is particularly worrying that in the case of seven decisions on the first appointment and promotion of judges, no reasoning has been provided for the appointment of 11 candidates whose total point score of assessment was smaller than of those who were not appointed. At the same time, pursuant to the most recent amendments to the Law on the Judicial

Council, the candidates are denied access to their opponents' documentation, all of which does not contribute to building public confidence in the objectivity of work of the Council.

The criteria and sub-criteria for appointment and promotion of judges have been improved compared to previous years, but remain incomplete, since standards for their weighing have not yet been set. Incomprehensible and incomplete regulations that the JC failed to improve do not provide the minimum conditions for objective and equal assessment of candidates for judges appointed for the first time, as well as for judges who have been promoted.

There is still no document specifying the method of assessment of quality of judges' performance, or the system for regular assessment of their performance that would ensure certainty in terms of deciding on progress and accountability of judges. The system of assessment of quality of judges' performance is vague, there are no precise criteria for assessment of required elements of performance of judges and therefore assessment depends on subjective judgment of the JC members, which does not ensure equal assessment. Furthermore, the system for calculating the percentage of judges' success in relation to the number of confirmed and reversed decisions is illogical, as it implies that in each case an appeal against the decision of the judge is filed, which does not have to be the case (if only one appeal is filed in relation to all decisions adopted by a judge, and the decision on that appeal is reversed, that judge will have a 100% reversal rate). It is unfair not to credit successful performance of a judge visible through decisions to which the parties have not filed an appeal or through procedures, which, for example, ended in settlement.

By the end of its first term in 2012, the JC did not adopt internal documents defining "indicators for the assessment of the criteria for appointment of judges", nor did it provide for "the qualitative and quantitative assessment of performance of judges in accordance with international standards", although the deadline for the completion of these tasks in the JC Action Plan was set until October 2010. The Council thus helped maintain the current situation that allows for arbitrary and non-objective assessment of judges.

As regards accountability of judges, it has been observed that imprecise legal framework provides for unequal treatment of judges and selective application of regulations, creating space for autocratic power over judges. Presidents of courts and the President of the Supreme Court are allowed to arbitrarily assess the justification of reasons for violating the law and subjectively decide which judge shall be held accountable, while the JC and its members have no authority to initiate disciplinary proceedings against any judge or court president. The President of the Supreme Court can never be subject to disciplinary proceedings. Practice shows that such system allowed certain judges to avoid accountability for actions other judges have been sanctioned for.

The possibility of unequal treatment of judges is further ensured by non-transparent work of the JC. Choosing not to publish decisions on establishment of disciplinary responsibility, the Council prevents judges and general public from gaining insight into the judges' behaviour subject to sanctions, and from comparing it with the behaviour they have direct access to in specific procedures.

The practice shows that certain judges submitted requests for termination of office after a question of their responsibility had been raised, doing so according to suggestions or under the pressure from the highest ranks in the judiciary. Termination of office suspended any procedure of determining accountability of judges, leaving many cases of negligent and incompetent performance unresolved, possibly containing elements of criminal responsibility of some judges.

Violation of the Code of Judicial Ethics has not been determined in any of the cases. However, two decisions in which the Commission for the Code of Ethics found that the Code has not been violated are incomprehensible, do not provide an explanation as to what were the relevant facts to make such decisions and how these facts were obtained.

The practice of temporarily seconding judges to work in courts of higher instance than their own court, to the end of increasing efficiency, proved non-transparent and allowing for unequal treatment of judges. This practice is disputable also regarding respect for the right to a fair trial by a court established by law.

The quality of the Judicial Council decisions indicates that its members have not considered it necessary to specially elaborate their decisions to public. Such attitude is detrimental to acquiring public confidence in the objectivity of the JC and independence of the judiciary, which should be provided by the very JC.

Amendments to regulations have not yet influenced the JC to change its practice and adopt decisions accompanied by valid reasoning, enabling one to make clear conclusions as to why a certain decision was adopted. Therefore, it is necessary to amend the Constitution and other regulations as soon as possible in a manner that will establish guarantees for objective and predictable work of the JC. The JC itself should ensure urgent adoption of measures (indicators) for weighing of criteria and sub-criteria for appointing judges and assessing their work, and invest additional effort to make its work more transparent.

## RECOMMENDATIONS

### 2. Constitutional framework and Constitution amending procedure

Since the Constitution reform will certainly not provide for full guarantees against political interference in the judiciary, it is necessary to amend the Law on the JC together with the adoption of amendments to the Constitution, in order to provide such legal guarantees.

1. Prescribe the method of selecting members of the Judicial Council out of ranks of judges to ensure they are not politically engaged. To this end, lawyers elected by the Parliament should be selected from the list of candidates proposed by civil associations (NGOs), based on the criteria and procedure prescribed by law (modelled on the procedures for selection of NGO representatives in the Radio Television of Montenegro - RTCG Council, Council for Cooperation between the Government and NGOs, Council for Protection against Discrimination, Council for Civil Control of the Police).<sup>11</sup> The other two lawyers, elected by the President of Montenegro, should be selected from the list of candidates proposed by civil associations dealing with the rule of law, the Bar Association and law schools.

2. Prescribe conditions for election of the Judicial Council members outside of ranks of judges, so as to ensure that they are:

a) persons truly independent from political power, who are not in any way politically engaged (e.g. were not members of any political party or actively engaged in a party, directly elected in elections and did not hold government office at least 10 years prior to the election);

b) persons who do not have any conflict of interest that could affect their work and decision making in the Judicial Council (this provision should be defined following the example of the provision on preventing conflict of interest from Art. 26 of the Law on Public Broadcasting Services in Montenegro ("Official Gazette of Montenegro", 79/08 of 23 December 2008)<sup>12</sup>;

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<sup>11</sup> Law on Public Broadcasting Services in Montenegro (Official Gazette of Montenegro, No. 79/2008, Art. 28,29,30,37), The Decision on Establishment of the Council for Cooperation between the Government of Montenegro and Non-Governmental Organisations (Official Gazette of Montenegro, No.28, 14 May 2008, Art.7-12)

<sup>12</sup> Conflict of Interest (Article 26)

The Council Members shall not be:

- 1) Members of Parliament and city council members;
- 2) Persons elected, appointed and nominated by the Parliament, the President, and the Government of the Republic of Montenegro;
- 3) Employees of RTCG;
- 4) Officials of political parties (chairmen of parties, members of presidency, their deputies, members of executive and main boards, as well as other party officials);

c) persons with appropriate legal knowledge and experience (bearing in mind that one of them will be the president of the Council).

### **3. Transparency of the Judicial Council operations**

1. As a rule, make the Judicial Council sessions open to the public.

2. Amend the Law on the Judicial Council to prescribe the exclusion of the public from sessions at which the Council decides on dismissal and disciplinary responsibility of judges only at the request of a judge whose responsibility is being established.

3. Specify by law all information to be published on the Council's website, and particularly ensure timely upload of:

- a) decisions on the appointment, disciplinary responsibility, dismissal and suspension of judges, with a rationale;
- b) applications of candidates for the judicial post;
- c) all regulations relevant to the work of the Judicial Council;
- d) notices of session dates, with the proposed agenda.

4. Amend and align the Rules of Procedure of the Judicial Council with the statutory principle of the public, by abolishing the Council's right to arbitrarily decide on when to keep the minutes of the session secret (Art. 25, para 6 of the Rules).

5. Immediately publish the Judicial Council decisions together with a rationale; it is unnecessary to publish dispositions of certain decisions separately.

6. Change the form and contents of the annual report on the work of the Judicial Council so that the report includes the Council's assessment of the work of courts, and not only statistics on the work of courts. Also, the annual report on the

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5) Persons, who as stake holders, shareholders, members of managing bodies, members of supervisory bodies, employees, etc. have the interest in legal entities that produce radio and television programmes, so that the membership of such person in the Council could result in the conflict of interest;

6) Persons that are sentenced by final and binding decision, for criminal offence against official duty, criminal offence of corruption, fraud, theft or any other criminal offence which makes them unworthy of performing public duty regardless of the sentence imposed or if those persons are sentenced, by final and binding decision, for other criminal offence to prison term longer than 6 (six) months in jail, during the period when the sentence consequences are still lasting;

7) Persons who are spouses of the persons mentioned in this Article or are related to them in the straight line.



Judicial Council operations should not contain promotional information about the Supreme Court President's visits to other states, but information on the purpose and results of such activities and funds expended from the budget for these purposes.

7. Ensure that the Judicial Council respects court rulings binding on the Council.

8. Amend the Law on the Judicial Council to ensure access to one's personal records, as well as records of other candidates for election; specify the procedure of accessing the records and the right to appeal in case of denial of this right.

#### **4. Criteria for appointment of judges and court president and their assessment**

1. Rules of Procedure of the Judicial Council should be amended to lay down the precise standards (parameters) for assessing each criteria and sub-criteria, so as to ensure a uniform and objective assessment of candidates, as has been started in relation to the criterion "Average grade and duration of studies".

2. It is essential that the Judicial Council urgently adopts internal documents defining qualitative and quantitative assessment of judges, bearing in mind that according to the Action Plan of the Judicial Council this should have been carried out in 2010.

3. Instead of a numerical score of 1-5, evaluate the criterion of "Worthiness to perform the judicial function" descriptively, in the range "satisfactory - unsatisfactory", primarily to highlight the potential problems in terms of worthiness for the position of a judge.

4. Define "Communication skills" as a separate criterion, except in respect of candidates for presidents of courts, where this property is to be assessed descriptively, rather than numerically.

5. "Work experience" should not be assessed numerically, as currently prescribed - it is enough to verify that a candidate meets special minimum requirements for the position of a judge in terms of years of experience in the field of law, while the place of service should be noted and assessed in light of the fulfilment of other criteria. Stipulate that judicial advisors will have an advantage in case of equal fulfilment of other criteria.

6. Regarding the criterion "Achieved results", specify what is implied under the sub-criterion "Career advancement", how to obtain information with regard to that, and objectify "Opinion of the employer" by providing for a special

questionnaire that would provide concrete answers about the type of work activities the candidate has carried out and in which area has he advanced. Evaluate achieved results descriptively with a rationale, rather than numerically, as prescribed.

7. Prescribe appropriate scoring system for the criteria "Published scientific papers and other activities" and "Professional development" for the purpose of their uniform assessment. Particularly consider assessment of the criteria for appointment to higher functions in the judiciary in relation to candidates from universities, bar association, etc., to ensure their uniform assessment.

8. Under the sub-criterion "Academic qualification" prescribe a precise scoring system for degrees Master of Laws, Doctor of the Science of Law, as well as for completion of other relevant forms of education. When defining the scoring system, bear in mind that access requirements for judicial function for scholars should be eased by prescribing that they are not required to attend initial training for judges. In that sense, HRA strongly recommends that the academic qualification be valued significantly higher in order to stimulate judges to acquire specialized knowledge and professional development.

9. Provide that work experience be assessed descriptively, in terms of type of acquired experience relevant to the judicial position the application has been submitted for. As regards the length of the judicial experience, it is sufficient to meet the special condition for appointment of a judge from Art. 32 of the Law on Courts, because the length of experience does not always have to be an advantage (the same at the first appointment as a judge). Otherwise, specify parameters to ensure that the same length of experience always earns the same score.

10. Objective assessment of "Achieved results" of judges candidates for judges of higher courts requires urgent prescription of parameters for the scoring, i.e. the assessment of judges' performance in terms of all the sub-criteria: the method of resolving cases, quality of work expressed by the number of confirmed, modified and overruled decisions, and others. The Law on Courts should specify the procedure for regular assessment of judges in accordance with the Methodology for drafting annual reports on the work of individual judges. Prescribe the parameters to assess the assignment of cases in the order they were received and compliance with statutory deadlines, as well as the method for obtaining this type of information regarding the work of judges.

11. Forms should include a section for keeping a record of sources of information based on which the assessment has been carried out, since it remains controversial how the Judicial Council obtains information upon which it assesses the criteria and sub-criteria, especially "the relationship with colleagues and clients and reputation and out of office conduct".

## **5. Practice of the Judicial Council in the appointment of judges**

1. It is necessary to stop the practice of template and incomprehensible decision rationales. Instead, define rationales which provide clear answer as to why a certain candidate is appointed a judge, and the other candidate is not, or why a certain judge is promoted, while the other is not.

2. Publish applications of candidates for the judicial post on the Judicial Council website, so that the public can point to the possible inadequacy of applicants. Allow candidates to learn about possible objections to their candidacy, as well as to respond to them.

3. Obtain the opinion of the higher court judges on promotion based on a questionnaire that would include the categories of good knowledge of procedural and substantive legal regulations, practice of the European Court of Human Rights, practice of Montenegrin courts etc.

4. Prescribe the right of judges of the court whose president is being elected to submit their opinion on candidates for the president to the Judicial Council.

5. Amend Art. 38 of the Law on the Judicial Council in a manner that will grant all candidates for the judicial post the right to access records of other candidates (above recommendation no. 7) and prescribe: method and place to get an insight into electoral documents, deadline for the Secretariat to provide an insight into electoral documents upon request, the right to copy documents, the right to access documents through attorney, the right to file a complaint to the Judicial Council in the event of denial of this right and deadline in which the Judicial Council is to decide on the complaint.

6. Prescribe the competence of the Commission for Appointment of Judges to reject untimely or incomplete applications, given that the Council decides on the complaint against the decision to reject an application.

7. Obtain opinions on various aspects of work and behaviour of candidates based on a questionnaire, whose content should be determined by the Judicial Council, to avoid obtaining stereotyped phrases instead of substantive evaluation. Courts should hold data on achieved work results of expert associates, on which the opinion of their performance should be based.

8. The Judicial Council should prescribe guidelines for conducting interviews with candidates. Stipulate that the interview is not required in the promotion of judges.

9. In the "Annulment of the decision on the appointment" (Art. 49, para 2 of the Law on the Judicial Council), for the purpose of appropriateness, HRA once again proposes the introduction of an obligation to postpone the start date of performing judicial function in order to verify the information from paragraph 1 of the same article, considering the implications of Article 71 entailed by the annulment of the decision on appointment.

10. HRA reiterates its objection that the judicial protection against decisions of the Judicial Council must not be provided in administrative proceedings, but with the Constitutional Court.

## **6. Assignment of judges to the court of higher instance to provide assistance**

1. Abolish the authority of the Judicial Council to temporarily assign judges to work in the court of higher instance.

## **7. Disciplinary responsibility of judges and court presidents**

1. Amend the Law on the Judicial Council to grant the Judicial Council members as well the authority to submit a proposal for establishing disciplinary responsibility of judges and court presidents, especially the proposal for establishment of disciplinary responsibility of the President of the Supreme Court.

2. The Law on Courts should be amended so as to omit the possibility of determining the "reasonable grounds" in case of a judge's unconscientious performance of judicial function, or incompetent and negligent performance of judicial function, as it allows for arbitrary and inconsistent interpretation and actions of courts presidents.

3. The Law on Courts should expressly prescribe that the violation of the Judicial Code of Ethics represents the basis for determining disciplinary responsibility of a judge, i.e. unconscientious or negligent performance of judicial function, or the contempt of judicial function.<sup>13</sup>

4. Amend the Law on Courts so as to prescribe the existence of a violation of judicial discipline, in addition to mentioned cases, when a judge:

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<sup>13</sup>„Assessment of the Reform of Appointment of Judges in Montenegro 2007-2008“, op.cit. item 5.1.2. p. 107.

- fails to fulfill mentoring duties and obligations for professional development of trainee judges;
- in case of unexcused absence from work;
- fails to wear official attire in accordance with regulations;
- behaves rudely or impolitely towards the parties and other participants in the proceedings and fails to prevent such behaviour of others under his/her authority in the proceedings led by him/her;
- fails to refrain from any action which is improper or leads to such impression, as well as from any action which causes distrust, incites suspicion, weakens confidence or in any other way damages the reputation of the court and its impartiality;
- fails to resist threats, blackmails and other assaults on his/her persona and integrity;
- is not able to resist political influence, public opinion, bias (particularly in relation to prohibited grounds of discrimination), temptations, vices, passions, private and family interests and other internal and external influences;
- visits places of improper reputation. (repeated recommendations from 2008)<sup>14</sup>

5. "Disciplinary Commission" (Art. 51 of the Law on the Judicial Council) does not prescribe the procedure and criteria based on which the Judicial Council elects members of the Disciplinary Commission who are not the Judicial Council members.

6. Publish decisions of the Disciplinary Commission to ensure uniformity of practices of court presidents as only they have an authority to initiate disciplinary proceedings, and to insure that the public and all judges are familiar with the practice of this Commission.

## **8. Dismissal of judges**

1. Rationale for decisions on dismissal must be more comprehensive, include the position of a judge whose dismissal is being considered, as well as a reasoned assessment of that position.

2. Amend the Rules of Procedure of the Judicial Council to specify the legal principle of emergency in cases of temporary suspension from judicial office by laying down deadlines for action.

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<sup>14</sup> „Assessment of the Reform of Appointment of Judges in Montenegro 2007-2008“, op.cit. items 5.1.3 – 5.4.2. p. 107-111;

3. Amend Art. 69, para 2 of the Law on the Judicial Council by specifying the reasons the Council shall consider when deciding on temporary suspension of a judge. The Law should prescribe that the Council's decision on suspension must be substantiated, and that the judge on maternity leave can not be suspended, nor can disciplinary proceedings or dismissal procedure be initiated against her.<sup>15</sup>

4. Rationale for decisions on temporary suspension must include clear reasons as to why a judge has been suspended.

5. Amend the Law on the Judicial Council to stipulate that a judge can not cease to hold office at his/her own request following initiation of dismissal procedure, before the completion of the procedure.

6. In "Appropriate application of disciplinary proceedings", Art. 70 of the Law on the Judicial Council, delete words "judicial protection" and add paragraph 2 that reads: "The decision on dismissal of a judge includes an instruction on the right to protection in administrative proceedings." This in case the proposal for the protection against decisions of the Judicial Council before the Constitutional Court is not accepted.

7. Rationale for opinions of the Code of Ethics Commission should be considerably improved, so as to represent a useful contribution to the interpretation of the Code.

## **9. Assessment of the quality of performance of judges**

1. HRA reiterates its 2007 and 2009 recommendation to introduce regular assessment of judges by prescribing in separate Rules of Procedure the standards for assessing the criterion "Ability to perform judicial function" and sub-criterion "Achieved results of the last three years", which are assessed, according to Art. 32a, item 2, line b) of the Law on Courts, on the basis of:

- 1) the number and types of cases solved, and method of solving;
- 2) the number of confirmed, modified and overruled decisions, as well as decisions upon which a hearing was open, or hearing upon a legal remedy;
- 3) the percentage of solved cases in relation to orientation standards;
- 4) resolving cases in the order received;
- 5) timely procedure and decisions-making;
- 6) the number of time barred cases;
- 7) the number of founded control requests.

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<sup>15</sup> „Assessment of the Reform of Appointment of Judges in Montenegro 2007-2008“, op.cit. item 5.5.2. p. 112;

2. The Methodology for drafting annual reports on the work of judges and courts should provide for the collection of data based on which the above elements of the sub-criterion "Achieved results" would be assessed.

Human Rights Action is institutionally supported by Open Society Foundations through Human Rights and Governance Grants Program.