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Reform Proposal for the Appointment of Judges in Montenegro

NGO »Human Rights Action« Working Group

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Reform Proposal for the Appointment of Judges in Montenegro

Criteria, Procedure, Competencies and Legal Remedies

NGO »Human Rights Action« Working Group

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I Introduction

The project, the results of which are before you, originated from our belief that professional, independent and efficient judiciary is essential for the protection of human rights, as well as for the implementation of the rule of law in general.

Realising that Montenegrin judiciary at present does not enjoy the necessary trust and authority,¹ we have undertaken a research of the present method of selection, performance assessment and determination of liability of judges. The problems we have identified have been presented in the analysis and the corresponding solutions were proposed predominantly in accordance with the recommendations of international bodies and comparative practice we found appropriate for implementation in Montenegro.

We hope that the results of our research would be of use to those responsible for the reform of the judiciary, also to the point of enhancing its urgent implementation.²

1 In the public opinion research, CEDEM, 2006, only 26-29% citizens consider judges „very“ or „mostly“ neutral and incorruptible; Research of CEMI, December 2006. „More than half of citizens think that Judiciary is not independent“; In a TV show „Otvoreno“ on Montenegrin channel RTCG on 30 April, 2007, more than 80% spectators declared that they don't have trust in judges. Lack of trust in judiciary is to a some extent a consequence of erroneous interpretation of competencies, and hence is the malperformance of the state prosecutor being attributed to judges (for example, the *Freedom House* report was reported to have stated that the reason for the lack of trust in judges lies in the fact that cases of corruption and organised criminal are not being processed, *Vijesti*, 16 June 2007.) We believe that a thorough analysis and appropriate reform of organisation of the office of the state prosecutor is also necessary, which we relinquish to some other project.

² Noting that the Strategy for the Reform of the Judiciary for 2007-2012 adopted by the Government of the Republic of Montenegro on 21 June 2007 contains only principal guidelines on the issues considered within the project (see the Strategy, „Strengthening of the independence and impartiality of the judiciary“, page 8, available in local language at <http://www.gom.cg.yu/files/1184254169.doc>), and that the action plan for their development will be provided in the next four months (according to *Pobjeda*, „Politika“, 22.06.2007.)

Strengthening of guarantees for independence, competence and efficiency of judges in Montenegro presupposes an urgent consensus on the constitutional arrangement of the judicial power. Before deciding on concrete constitutional provisions, it is important to bear in mind all goals that need to be achieved by the reform of the judiciary, in order to secure an appropriate and durable constitutional frame for the reform.

The conclusion of our research is that the Montenegrin legal system lacks regulation that would limit arbitrariness on the course of judicial appointments, assessment of performance and determination of liability of judges for unprofessional performance. Our proposal is therefore based on introduction of objective criteria and legal remedies for review of their accurate implementation.

Taking into consideration the experience of Montenegro concerning the election of judges in the Parliament, which provided for judicial appointments in relation to political and less professional competence, we propose that a reformed, competent and independent Judicial Council should decide upon election and career of judges in a transparent and appropriately controlled procedure based on objective criteria. In addition to the protection of the independence of courts and judges, as provided by the Draft constitution, the Judicial Council should safeguard expertise, efficiency and accountability of the judiciary as well, and we have hence suggested that its competencies in this regard be specified and extended.

Our research has also shown that the initiation of the procedures determining disciplinary liability of judges proved difficult as the Judicial Council in its last four year mandate did not undertake a single disciplinary procedure.³ We have therefore proposed further regulation of disciplinary branches as well as strengthening the liability of presidents of courts for the courts' performance before the Judicial Council. On the other side, we proposed introduction of a possibility of dismissal of members of the Council due to their unprofessional performance.

³ Although according to our knowledge three procedures for dismissal have been undertaken and two have been initiated, we believe that the situation should have been reverse in that disciplinary procedures should have been used in due time as an incentive for responsible performance of judges, and that was avoided in the past period.

What follows is a brief review of activities undertaken within the project and our concluding summary of reform proposals. The original version in the local language contains a full scope of analysis and proposals (including detailed criteria for the appointment, evaluation of performance, disciplinary responsibility and dismissal of judges and presidents of courts) with reference to all sources of information, laws, comparative studies and instruments, and especially regulations of the states from the region that once shared the same legal system and similar experiences.

We thank the Open Society Institute Foundation – Representative Office in Montenegro, for their confidence and financial support of the project. We also thank You for Your interest for the results of our work.

In Podgorica, 20 July 2007

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Project Activities

At the round table “New Constitution – character, principles and solutions in the area of democracy and human rights” organised on 2 November, 2006 by the Centre for Development of Non-Governmental Organisations and

the Open Society Institute Foundation – Representative Office Montenegro, the HRA representative stated suggestions for the improvement of the expert draft of the Constitution, also regarding the reposition of election of judges from the jurisdiction of the Parliament to the jurisdiction of an expert body, such as Judicial Council. These suggestions were published in the accompanying publication and delivered also to the Constitutional Board of the Montenegrin Parliament.⁴

It later appeared that parliamentary political parties almost unanimously declared their negative attitude toward the solution that judicial election should be repositioned from the Parliament and entrusted to expert body, for fear that the body, such as Judicial Council, would not objectively elect professional and independent judges without any control.

Taking into consideration such political attitude, on 1 February, 2007 the working group started to conceive a proposal of constitutional and statutory provisions that would provide a solution harmonised with international standards and recommendations, that would also provide for an appropriate control of Judicial Council operations. Aiming to influence the Parliament members authorised for preparation of the Draft Constitution of Montenegro, the working group delivered to the Constitutional Board members the proposal of constitutional provisions on judiciary on 9 February, 2007, along with the information on the project idea to develop a proposal of the corresponding legal solutions providing for detailed procedure and criteria for the judicial election⁵.

⁴ *Novi ustav – karakter, principi i rješenja u oblasti demokratije i ljudskih prava*, http://213.149.103.11/download/novi_ustav_inicijativa06.pdf

⁵ See Enclosure 4.1 (original version) Letter to the members of Constitutional Board and Working Draft of the constitutional regulations on judiciary, 9 February 2007. We proposed that the Judicial Council, composed of judges and independent experts should decide on the election, disciplinary responsibility and dismissal of judges instead of the Parliament, and suggested the following mechanisms of control of its operation:

- election of certain number of Council by the members of Parliament from the list of at least two candidates for each position, proposed by the Faculty of Law, Bar Association and NGO's;
- provision of objective and precise criteria for the Council operations,
- transparent operation of the Council, and
- introduction of legal remedies against its decisions.

In the first phase of the project, working group has taken into account the European Partnership with Montenegro (Decision of the European Council on the principles, priorities and conditions contained by the European Partnership, of 17 January 2007), assembled relevant international standards and recommendations, several studies of international practice, comparative constitutional solutions mostly of the ex-Yugoslav republics and used them during the proposal preparation of constitutional provisions⁶.

Although a thorough analysis of previous Judicial Council decision-making has been planned, the working group was not allowed access to documentation of this body. Following the request for access being denied by the director of the Administrative Office within the Supreme Court (the body in charge of administrative support for the Judicial Council) and by the final decision of the president of Supreme Court (and *ex officio* president of the Judicial Council) as well, with an explanation that the new Judicial Council had not yet been constituted and that there had been no one to permit access to documentation, HRA initiated an administrative dispute that had not been decided to date.

In the second phase of the project, working group analysed national and comparative statutory solutions, discussed law enforcement in practice

⁶ „Independent and impartial court – international standards“, Judicial Training Centre of the RoM, ed. Tea Gorjanc Prelevic, LL.M., Podgorica 2001 (the edition contains translations into local language of the UN *Basic Principles of the Independence of the Judiciary*, Council of Europe *Recommendation of the Committee of Ministers No. R (94)12 concerning on independence, efficiency and role of judges*, *European Charter for the Statute for Judges*); *European Council Decision on principles, priorities and conditions contained in the European partnership with Montenegro* of 17 January 2007 (translation published by the Centre for Civic Education, Podgorica, April 2007); *Judicial Reform in Countries of South East Europe*, General Directorate for Foreign Policy of the European Union, a study prepared upon request from the Committee for Political Affairs of the European Parliament, on 13 September, 2006; CEPEJ – European commission for efficiency of jurisdiction „European judicial systems – issue 2006“; *Appointments of the judges: certain European experiences* of John Bell (Cambridge), 2003; *Global Best Practices: Judicial Councils, Lessons Learned from Europe and Latin America*, IFES, April 2004.; Final report of the Conference „High Council of Judiciary – comparative analysis of models in Europe and region“, in the organisation of Serbian High Council of Judiciary and OSCE, Belgrade, August 2006; „Constitutional position of Judiciary“, Association of Judges of Serbia, Belgrade, 2005; „Constitutional prerequisites for a democratic Serbia“, Belgrade Centre for Human Rights, Belgrade, 1997; Constitution of the Republic of Croatia, Constitution of the Republic of Slovenia, Constitution of the Republic of Serbia, Amendments on the Constitution of the Republic of Macedonia of 9 December, 2005, etc.

and followed the preparation of the Draft Constitution. The working group coordinator participated in the Round table on Draft Constitution of the Republic of Montenegro in organisation of the Constitutional Assembly of Montenegro and the Venice Commission of the Council of Europe on 26 April, 2007. Detailed comments on provisions of the Draft Constitution also containing comments on the provisions relating to judiciary were delivered to the Constitutional Board on 3 May, 2007, as well as to the Venice Commission of the Council of Europe.⁷

In May and June 2007, the review of documents containing proposals of candidates for judicial appointments to the Parliament by the Judicial Council was accomplished in the Parliament, since it became obvious that this documentation will not be received from the Administrative Office with the Supreme Court.

We have prepared the final version of the report and proposals before you also on the basis of inputs of the round table organised in Podgorica on 12 July, 2007, with participating former members of the Judicial Council, current nominees for membership, presidents of courts, NGO representatives as well as representatives of several political parties. The publication will be distributed to members of Parliament, Government of the Republic of Montenegro, Faculty of Law, Bar Association, colleagues from NGO's and international organisations involved in the reform of the Montenegrin judiciary.

⁷http://www.hracion.org/Documents/NGO_REMARKS_ON_THE_DRAFT_CONSTITUTION.pdf

Conclusions – Reform Proposal

1. Proposal of Reform of the Appointment of Judges in Principle

- 1.1. Constitution should provide for reposition of the authority to appoint judges from the competence of the Parliament to an independent and expert Judicial Council. Controlling mechanism of the Council's operation should be vested in the Constitution, by regulating composition of its membership (especially in terms of independent experts), manner of election of its members (Parliament selects members outside the rank of judiciary from the offered list of candidates) and legal remedies against its decisions. Precise criteria for the Council's operation together with guarantees of transparency of its performance should be regulated by law.
- 1.2. New, constitutional position of the Judicial Council and enhancement of its duties and responsibilities especially in the procedure of election, determination of disciplinary responsibility and dismissal of judges, requires elaboration of the organisation and operation of the Council by a special law on Judicial Council, according to example of many states where such body exists. Law should define duties and responsibilities of the Council, manner of election and position of its members, procedure of decision-making and legal remedies against the Council decisions, as well as the relations of the Council towards other state bodies and the general public.
- 1.3. Rights and responsibilities of judges need to be prescribed in detail, either by amending the existing Courts Act or by adopting a special law on Judges. The objective criteria for election and advancement of judges and presidents of courts need to be prescribed and further elaborated by law (for the proposal of such criteria, see 1.2.1). The Judicial Council may elaborate the legal criteria in greater detail within its own normative competencies.
- 1.4. Objective evaluation of judges should be provided by regulating the procedure and objective criteria for evaluation of quality and

efficiency of judges' performance (for the proposed criteria, see 8.2), in addition to the improvement of the 1998 Regulation on the so-called "orientation norm", which may be done by the Council within its normative competencies.

1.5. Procedure of appointment and dismissal of judges, as well as disciplinary proceedings against judges should be carefully regulated by the law to provide appropriate guarantees of due-process, along with corresponding legal remedies against the decisions of the Judicial Council.

2. Composition of the Judicial Council and Procedure of Election of Its Members

2.1. Judges should constitute the majority of members of the Judicial Council. Judges members of the Council should be appointed by the extended assembly of the Supreme Court on the basis of votes of all judges for the candidates determined on the level of the courts.

2.2. Presidents of courts should not be members of the Judicial Council, as they are already endowed with special competencies and immediately respond to the Judicial Council regarding the state of courts. If insisted on the president of the Supreme Court as an *ex-officio* member of the Judicial Council, then the possibility of membership of presidents of other courts should especially be excluded.

2.3. The *ex-officio* member of the Judicial Council should not be its president.

2.4. Competencies of the Council as well as its character of an independent body determine that its members outside the rank of judiciary should be renowned and independent legal experts, who are neither members of the legislature and executive, nor carry functions in the political parties.

2.5. Minister of justice should continue not being a member of the Council, but be allowed to participate in the Council's sessions, upon invitation or at his/her initiative for the purpose of information, explanation and consultation with the Council.

- 2.6. In the case of insisting on the Council's *ex officio* members from the rank of executive and/or legislative authorities, the membership of the Council should be expanded enough to provide for the presence of NGO candidates to the end of promoting transparency of the Council and public trust in the judiciary.
- 2.7. Members of the Council outside the rank of judges should be elected by the qualified majority of the Parliament from a list of at least two candidates for each position, nominated by the Faculty of Law of the University of Montenegro, Bar Association and non-governmental organisations with at least two years of experience in the field of the protection of the rule of law and democracy, promotion of human rights and suppression of corruption. The Law should precisely regulate the procedure of selection of the Council members, including the possibility of a public hearing of candidates by the members of Parliament within a competent Parliamentary Board.

3. Mandate, Immunity and Dismissal of the Judicial Council Members

- 3.1. Mandate of the Council members should last for four years, permit re-election, but not consecutive election of the same member. The exception should be provided in the case of the first election of Council members according to the new Constitution, where the members elected in the meantime should also be allowed to be nominated for the next mandate.
- 3.2. Mandate of the member elected after the cessation of the previous Council member mandate, should not cease by means of mandate expiration of other Council members, as all members of the Council have individual mandates and not a collective one.
- 3.3. Possibility for promotion of judges during their mandate as Council members should be excluded.
- 3.4. Law should determine additional reasons for dismissal of Council members such as the permanent working incapacity, fulfilment of conditions for retirement, conviction for a criminal act making the member unsuitable for such function, as well as disorderly, partial and flawed performance.

- 3.5. At least three Council members or proponent for the Council members that are not from the rank of judges, start the dismissal procedure of the Council member. Decision on dismissal is brought by the body that has chosen the member, in the case of Parliament, by means of the same qualified majority.
- 3.6. Regarding the immunity of Council members that are not judges, they should enjoy protection from criminal and civil liability due to opinion expressed during performance of duties in the Council.
- 3.7. Having in mind the extended competencies of the Council, its members should be engaged in the Council with half working time or even full working time, and correspondingly compensated for such responsible work.

4. Competencies of the Judicial Council

- 4.1. Besides ensuring *independence* of the judiciary, as predicted by the Draft Constitution, the Judicial Council should also ensure *competency, efficiency and accountability* of the judiciary. Council would execute this function mostly within its competence to appoint and promote judges, decide on disciplinary responsibility and dismissal of judges, but also through supervision of education of judges, assessment of quality and efficiency of performance of judges and especially, of presidents of courts.
- 4.2. The Judicial Council Act should prescribe in detail all competencies of the Council at one place, such as:
 - deciding on status related issues of judges and presidents of courts: election, promotion, liability, as well as complaints of judges regarding violation of their rights and jeopardising the independency;
 - determining the number of judges and lay-judges, on the basis of new orientation criteria and upon the proposal of presidents of courts;
 - approving the act on internal organisation and systematisation brought by the president of the court;

- considering annual reports and assessing performance of courts and judges;
- reviewing petitions and complaints of citizens regarding the work of courts (consideration of the reports of the presidents of courts regarding their review of petitions);
- taking care of the initial and continuing professional education of judges;
- determining the court budget proposal in the procedure that involves consultation with the Government, i.e. the competent ministry; in case of disagreement, the president of the Judicial Council explains court budget to the Parliament;
- normative competencies: adopting new *orientation criteria for determination of the number of judges*, in cooperation with the Ministry of Justice, in order to improve the existing so-called judicial norm from the 1998 “Regulation on orientation standards for determination of the necessary number of judges and court staff”; adopting the *criteria and procedure for evaluation of the quality and efficiency of performance of judges* (including the form of questionnaires for opinions on decorum, capability and competence of candidates for judicial posts); adopting the *Code of Judicial Ethics, Regulation on Interior Operation* of the Council, initiation of amendments of laws or by-laws of significance for execution of the judicial function and giving opinion on draft bills and other regulations related to judiciary (for more details, see 4.2).

4.3. The Council could also be authorised to supervise necessary improvement of existing working conditions of judges, such as: regular supply of judges with texts of laws, including ratified international agreements, expert literature and choice of case-law of domestic and international courts; internet access; provision of technical equipment for recording and transcription of court hearings; delivery of annual reports on operations of the courts to all judges in the Republic, etc. (4.2.1).

4.4. *Personal data-base* of judges is very important for the operation of the Council in the procedures of election, advancement and dismissal of judges, and should be kept by the Administrative Office, while its contents and use should be regulated by law.

- 4.5. Organisational and functional independence of the Administrative Office (located within the Supreme Court) as the service in the function of the Judicial Council, should be elaborated by law in the sense of determination of tasks performed for the Council; the Council should appoint the director of Administrative Office on the basis of an open competition; Office should prepare for the Council the annual report on operations and expenses (4.2.2).
- 4.6. With regard to the Centre for education of members of judiciary (4.2.3):
- Taking into account that the Council should ensure the quality of professional education of judges, the Judicial Council Act should also regulate relations between the Centre and the Council;
 - The Act on Professional Education of Members of Judiciary should determine aims of initial education as was done by the 2007 Annual educational program;
 - Initial education of judges should be provided by the law as *obligatory*, with possible exceptions (for attorneys at law, prosecutors);
 - Organisational scheme with the Supreme Court should be reduced only to the point that the budget of the Centre goes along with judicial budget;
 - The Council should appoint the executive director of the Centre, on the basis of an open competition.

5. Disciplinary Violations and Reasons for Dismissal of Judges

- 5.1. In order to provide for the execution of disciplinary proceedings against judges in spite of “culture of ungrudging“, which in Montenegro often leads to the fact that deserving individuals do not advance, while irresponsible ones do not answer for their inappropriate and unlawful actions, an increase of accountability is proposed for the presidents of courts before the Judicial Council regarding the state of the courts, as well as for efficient operation of judges.

5.2. The Courts Act should be supplemented in a way to:

- strictly regulate rights and duties of judges;
- precisely determine what should be understood as *incompetent* and *irresponsible* execution of judicial function, which is the constitutional basis for dismissal of a judge (5.2.6.1.);
- supplement examples of breaches of judicial discipline and specify instances of a *disorderly* performance of the judicial function (5.2.1.), and *offence to the reputation of the judicial function* (5.2.2.);
- regulate severe disciplinary breach, and provide that it may also cause dismissal of the judge (5.2.3.);
- regulate special provisions concerning disciplinary responsibility and dismissal of the president of court (5.2.4.);
- regulate accountability of the president of court for not initiating disciplinary proceedings;
- regulate jurisdiction of the Judicial Council to initiate disciplinary proceedings against the president of court who did not fulfil his duties without justification;
- regulate facultative removal of the judge from office, as well as removal in the case of a severe disciplinary breach (5.2.5).

5.3. In accordance with the comparative practice, in addition to the two existing disciplinary sanctions provide for three additional sanctions: *deprivation of the case from the judge*, *reposition to another judicial duty within the court* and *suspension from duties*.

5.4. It should be regulated that, before imposing the sanctions for disciplinary breaches, the Council should take into consideration: severity of violation and occurred consequences, level of responsibility, circumstances of the disciplinary breach, earlier operations and behaviour of the judge, and other circumstances influencing the sentencing, including implementation of the principle of proportionality.

6. Procedure and Decision-Making of the Judicial Council and Legal Remedies Against Its Decisions

- 6.1. Contrary to previous limited jurisdiction, Judicial Council should receive full jurisdiction in the procedure of election and dismissal of judges, determination of other conditions for cessation of judicial function, as well as deciding on disciplinary breaches.
- 6.2. Procedures and manner of decision-making of the Judicial Council should be determined by the Judicial Council Act (6.2.).
- 6.3. Provide for the right of each of the members of the Council to initiate disciplinary proceedings with the Disciplinary Committee against the presidents of courts for irresponsible performance.
- 6.4. In disciplinary proceedings, as well as in the proceedings for dismissal from the judicial function, to the end of enhancing guarantees of due-process, the Council should apply accordingly the provisions of the Code of Criminal Procedure regarding hearing of the judge, deriving evidences, arguments before disciplinary council and voting, including taking minutes. Decisions of the Council should be executed in a written form, appropriately reasoned and with instruction on the right to a remedy.
- 6.5. In the procedure of judicial appointment, a well reasoned written decision on appointment should be delivered to all applicants with instruction on the right to a remedy.
- 6.6. Procedure of decision-making of the Judicial Council should be determined by the Act in principle, and in further detail by the Council's Regulation on Interior Operation.
- 6.7. As the judges will make at least half of the Judicial Council, the number of the Council's decisions by means of the simple majority should be limited, in order to achieve recognisable influence on decision-making of other Judicial Council members as well. Qualified majority of votes should be required for decisions on appointment of judges and presidents of courts and their dismissal.

- 6.8. Legal remedies (objection, complaint to the Administrative Court and to the Constitutional Court) should enable legal protection of participants in the procedure before Judicial Council, and also provide an important aspect of review of the Judicial Council's operation.
- 6.9. Objection to the Judicial Council should be prescribed by law against a decision on dismissal of the untimely or incomplete application for a judicial post in the procedure of appointment, and in disciplinary proceedings: against first instance decision of a Disciplinary Council Committee and against a decision on suspension from judicial function or the function of the president of court.
- 6.10. *Complaint to the Administrative court* should be prescribed by the Constitution or law against: second instance decision of the Judicial Council on disciplinary responsibility and against the Council's decision on judicial appointment (6.2.3).
- 6.12. *Complaint to the Constitutional court* should be prescribed by the Constitution against the decision on dismissal from judicial function (6.2.3).
- 6.13. A procedure of the Council's annulment of its decision on judicial appointment should be predicted for the case when the Council establishes that the decision has been made on the basis of incorrect information.

7. Transparency of Operation of the Judicial Council

Risk of the irresponsibility of the Judicial Council is being decreased by introduction of the mechanism for supervision of its operations. In addition to the above mentioned, it would also be necessary to provide for:

- 7.1. The publication of annual report and periodical reports on the operation of the Council;
- 7.2. Internet page of the Council, which would be regularly updated and have the following published data:

- applications of the candidates for judicial posts and promotion (election for higher function in the judicial hierarchy), in order to enable the public to point out to eventual incorrect presentation of data in the application;
 - Council's decisions on judicial appointments;
 - final decisions on disciplinary responsibility and dismissal of judges,
 - Council's Regulation on Interior Operation and other by-laws delivered by the Council,
 - Initiatives of the Council, annual evaluations of efficiency of the judicial system and other notifications.
- 7.4. Obligation of the Council to provide appropriate reasoning for its decisions (this obligation is being encouraged with introduction of the right to legal remedies against the Council's decisions);
- 7.5. Presidents of courts, Minister of Justice and Centre for education are obliged to provide regular reports to the Council;
- 6.6. Possibility of the Council to consult experts, consider the opinion of judges, Minister of justice, NGO's, and allow for participation in its open sessions of individuals who are not members of the Council;
- 7.7. Competent criticism from the part of the Parliamentarians and NGO's of the Judicial Council's performance may not, of course, be regulated, but we consider it crucial for ensuring the success of the Council's reform and strengthening of its role in the improvement of the state of judiciary.

8. Reform Proposal of the Evaluation of Judges, and Evaluation of Efficiency and Quality of the Court System

- 8.1. It is necessary to adopt new orientation criteria for determination of the judicial norm, based, as proposed, on temporal standards. Such a norm, together with the criteria for evaluation of judges (1.2.1.2, 1.2.1.3, 1.2.1.4.) would represent an appropriate basis for evaluation

of judicial performance. The existing norm should be increased, taking into account the norms prescribed in the neighbouring states, as well as the new court procedures that make relative the principle of determination of material truth and provide for the concentration of procedural actions.

- 8.2. Based on the comparative analysis executed for the purpose of reform in Bosnia and Herzegovina, and having in mind the pilot reform project currently implemented in B&H, we propose the reform of a judicial norm in Montenegro, according to determination of complexity of certain group of cases, in other words, according to the amount of time necessary for their solving (8.2.1.).
- 8.3. Total evaluation of a judge should be performed only for the purpose of promotion, while the presidents of courts should determine every year in the annual operative report whether the judge fulfils all regular duties concerning results and efficiency, which represents one of the basis for initiation of a disciplinary responsibility (8.2.3.1.).
- 8.4. Judicial Council should regulate the corresponding evaluation procedure, including the participation of the judge being evaluated and right of judge to object against evaluation.
- 8.5. Evaluation from the annual report of the president of court on whether the judge fulfils his responsibilities should be a constituent part of personal evidence of judges with the Administration Office. Against such evaluation, the judge should also have the right to object to the president of court and the Judicial Council.
- 8.6. Judicial Council should provide an annual assessment of efficiency evaluation of the entire judicial system based on the operative reports on the performance of courts and judges, which are delivered to the Council for consideration.
- 8.7. What may be done without amending laws:
 - Improve reporting on efficiency and quality of performance of judges: in the existing annual reports, additional data should be provided for each judge;

- Provide public access to statistical reports for courts, for example to the 2006 Annual report on court operations;
- Provide and install as soon as possible a software for case management within the courts, as planned already in 1998, that would enable automatic provision of objective data on the case management, value of disputes, duration of the first and second instance proceedings and revision proceedings, manner of decision-making (by a judgment, a decision or settlement), which is of exceptional importance for the evaluation of performance of judges and the court in general; such system would also provide a proof of random distribution of cases.