

LAW ON MISDEMEANOURS

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Pursuant to Article 82 paragraph 1 item 2 and Article 91 paragraph 1 of the Constitution of Montenegro, the Parliament of Montenegro of the 28th convocation, at the Fifth Session of the Second Regular (Fall) Session in 2010, on December 22, 2010, has passed the

LAW ON MISDEMEANOURS¹

PART I

SUBSTANTIVE AND LEGAL PROVISIONS

Chapter I

GENERAL PROVISIONS

Subject Matter of the Law

Article 1

This Law shall stipulate the conditions for prescribing misdemeanours and misdemeanour sanctions, misdemeanour liability, misdemeanour proceedings and the procedure for the enforcement of misdemeanour sanctions.

Defining a Misdemeanour

Article 2

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 1)

Misdemeanour shall be an act constituting a violation of public order, determined by law or other regulation, for which a sanction is prescribed.

¹ Official Gazette of Montenegro, No. 001/11 of 11 January 2011, 006/11 of 25 January 2011, 039/11 of 4 August 2011, 032/14 of 30 July 2014, 043/17 of 4 July 2017, 051/17 of 3 August 2017

Legality in Defining Misdemeanours and Prescribing Misdemeanour Sanctions

Article 3

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 1)

Misdemeanour sanction may not be imposed on anyone for an act which, prior to its commission, was not stipulated by law or other regulation as a misdemeanour and for which a sanction had not been prescribed.

Prescribing Misdemeanours and Misdemeanour Sanctions

Article 4

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 2)

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 051/17 as of 3 August 2017, Article 1)

- (1) Misdemeanours and misdemeanour sanctions may be prescribed by law, a decree of the Government of Montenegro (hereinafter referred to as: the Government) and a decision of a local self-government unit.
- (2) Misdemeanour sanctions may be prescribed only in accordance with this Law.

Types of Misdemeanour Sanctions

Article 5

Misdemeanour sanctions shall be: penalties, warning measures, protective measures and educational measures.

General Purpose of Misdemeanour Sanctions

Article 6

The general purpose of prescribing, imposing and enforcing misdemeanour sanctions shall be to ensure that citizens abide by the legal system, to express social condemnation towards the perpetrator of the committed misdemeanour and to influence both the perpetrator and others not to commit misdemeanours in the future.

Funds Collected from Fines

Article 7

Funds collected from fines imposed for misdemeanours shall constitute revenue of the state budget, except for funds collected from fines for misdemeanours involving violations of regulations supervised by a local government authority, which shall constitute revenue of the local self-government.

Applicability of Regulations with Respect to Time

Article 8

- (1) A perpetrator of a misdemeanour shall be subject to the regulation in effect at the time of commission of the misdemeanour.
- (2) Should, following the commission of the misdemeanour, the regulation be amended, the regulation more lenient for perpetrator shall be applied.

Territorial Applicability of Regulations

Article 9

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 1)

Perpetrator shall be punished for a misdemeanour prescribed by laws or other regulations of Montenegro if the misdemeanour is committed on the territory of Montenegro or if it is committed on a national vessel or aircraft while located outside of the territory of Montenegro.

Immunity

Article 10

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 3)

- (1) Misdemeanour proceedings may not be initiated or conducted against a person enjoying immunity in accordance with the rules of international law.
- (2) Should there be suspicion as to whether a person referred to in paragraph 1 of this Article enjoys immunity, the authority competent to initiate misdemeanour proceedings shall, prior to submitting a request for the initiation of such proceedings, obtain the opinion of the ministry competent for foreign affairs.

Use of Gender Sensitive Language

Article 10a

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 051/17 as of 3 August 2017, Article 2)

All terms used in this Law for natural persons in the masculine gender shall mean the same terms for the feminine gender.

Definitions

Article 11

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 051/17 as of 3 August 2017, Article 3)

Certain terms used in the present Law shall have the following meaning:

- 1) convicted person is a person who has been found guilty of a specific misdemeanour by a final court decision;
 - 2) punished person is a person to whom a sanction has been imposed by a final and enforceable misdemeanour order.
- (2) The terms legal person and responsible person in a legal person shall have the meaning defined in Article 4 paragraph 1 items 1 and 2 of the Law on Criminal Liability of Legal Persons.
- (3) The terms responsible person in a public authority, public administration body, local self-government and local government authorities, military person and perpetrator shall have the meaning defined in Article 142 paragraphs 3 and 10 of the Criminal Code.

Chapter II

MANNER OF COMMITTING MISDEMEANOURS

Manner of Commission

Article 12

- (1) A misdemeanour may be committed by commission or omission.
- (2) A misdemeanour shall be committed by omission when the perpetrator omitted to do what he was obliged to do.

Attempted Misdemeanour

Article 13

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 1)

A perpetrator shall be liable for an attempted misdemeanour only if this is prescribed by law or other regulation.

Appropriate Application of the Criminal Code

Article 14

The provisions of the Criminal Code pertaining to the manner, time and place of commission, self-defence, necessity, force and threat shall apply appropriately to the perpetrator of a misdemeanour.

Chapter III

MISDEMEANOUR LIABILITY

Subjects and Conditions of Liability

Article 15

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 4)

- (1) A natural person, a legal person, a responsible person in a legal person, a responsible person in a public authority, public administration body, local self-government and local

government authorities (hereinafter referred to as: responsible person), and an entrepreneur may be held liable for a misdemeanour only when prescribed by law or other regulation stipulating the misdemeanour.

- (2) Public authorities, public administration bodies, local self-government and local government authorities may not be held liable for misdemeanours.

Liability of Natural Persons

Article 16

A natural person shall be liable for a misdemeanour if, at the time of its commission, he or she was of sound mind and committed the misdemeanour intentionally or negligently.

Liability of Legal Persons

Article 17

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 039/11 as of 04 August 2011, Article 1)

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 5)

- (1) A legal person shall be liable for a misdemeanour if its commission was caused by an act or omission of due supervision by its management body or a responsible person or by an act of another person authorised to act on behalf of the legal person.
- (2) A legal person shall also be liable for a misdemeanour when it cannot be determined who the responsible person within the legal person is or when the court finds that there are legal or factual obstacles in determining the liability of the responsible person.
- (3) A legal person in bankruptcy shall be liable for a misdemeanour regardless of whether the misdemeanour was committed before the opening or during the bankruptcy proceedings, but it may only be subject to a protective measure of seizing items and assets, not to a penalty.
- (4) A legal person may be sanctioned more leniently or exempt from penalty for a misdemeanour if the misdemeanour was discovered and reported by its management body or another body of the legal person.

Liability of Responsible Persons

Article 18

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 1)

- (1) A responsible person shall be liable for a misdemeanour if he committed it through his own act or omission of due supervision and if he acted intentionally or negligently.
- (2) The law or other regulation stipulating the misdemeanour may determine which responsible person is liable for the misdemeanour.

- (3) The liability of a responsible person for a misdemeanour shall not cease due to termination of his employment or function, ongoing bankruptcy proceedings nor due to the impossibility of punishing the legal person because of its dissolution.
- (4) A responsible person shall not be liable for a misdemeanour if he acted pursuant to the order of the management body or another superior, provided that he undertook all actions which, under law, other regulation or general act, he was obliged to undertake to prevent the commission of the misdemeanour.

Liability of a Foreign Natural, Legal or Responsible Person

Article 19

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 6)

A foreign natural person, foreign legal person and responsible person shall be liable for misdemeanours under the same conditions as national natural persons, legal persons and responsible persons.

Appropriate Application of the Law on Criminal Liability of Legal Persons

Article 20

Provisions of the Law on Criminal Liability of Legal Persons stipulating the following offences shall apply appropriately to the liability of legal persons: the limits of criminal liability of legal persons, liability in case of bankruptcy, liability of legal successors, and continuing criminal offences, unless otherwise stipulated by this Law.

Appropriate Application of the Criminal Code

Article 21

Provisions of the Criminal Code stipulating the following offences shall apply appropriately to the perpetrator of misdemeanour: guilt, mental capacity, intent, negligence, error of fact, error of law, co-principal, instigation and aiding.

Chapter IV

MISDEMEANOUR SANCTIONS

I. PUNISHMENT

Types of Punishments

Article 22

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 051/17 as of 3 August 2017, Article 4)

The following may be prescribed for a misdemeanour:

- 1) imprisonment;
- 2) fine;
- 3) fine or a imprisonment;

- 4) community service.
- (2) Only a fine may be prescribed for a misdemeanour committed by a legal person or a responsible person.

Imprisonment

Article 23

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 7)

- (1) Imprisonment may be prescribed only by law.
- (2) Imprisonment may not be prescribed for a period shorter than ten days or longer than 60 days.
- (3) Imprisonment may be prescribed only for those misdemeanours whose commission could endanger human life and health or seriously disturb public peace and order, as well as for misdemeanours of domestic violence.
- (4) Imprisonment shall be imposed in full days.

Fine

Article 24

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 039/11 as of 04 August 2011, Article 2)

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 8)

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 051/17 as of 3 August 2017, Article 5)

- (1) A fine may be prescribed within a range or as a fixed amount.
- (2) In line with the law, a fine may be prescribed within the following ranges:
 - 1) for a natural person and a responsible person in the amount from EUR 30 to EUR 2,000;
 - 2) for an entrepreneur in the amount from EUR 150 to EUR 6,000;
 - 3) for a legal person in the amount from EUR 500 to EUR 20,000.
- (3) In line with the law, a fine may be prescribed for minor misdemeanours within the following ranges:
 - 1) for a natural person and a responsible person in the amount from EUR 20 to EUR 200;
 - 2) for an entrepreneur in the amount from EUR 50 to EUR 400;
 - 3) for a legal person in the amount from EUR 150 to EUR 2,000.
- (4) In line with the Government regulation or decision of a local self-government unit, a fine may be prescribed within the following ranges:

- 1) for a natural person and a responsible person in the amount from EUR 20 to EUR 1,000;
 - 2) an entrepreneur in the amount from EUR 50 to EUR 3,000;
 - 3) for a legal person in the amount from EUR 150 to EUR 10,000.
- (5) In line with the Government decree or decision of a local self-government unit, a fine may be prescribed for minor misdemeanours within the following ranges:
- 1) for a natural person and a responsible person in the amount from EUR 10 to EUR 100;
 - 2) for an entrepreneur in the amount from EUR 30 to EUR 250;
 - 3) for a legal person in the amount from EUR 100 to EUR 1,500.
- (6) Exceptionally, a fine for misdemeanours in the area of food safety, international restrictive measures, protection against domestic violence, health protection, environmental protection, consumer protection, market competition, cultural heritage, construction, public information, occupational safety, public revenues, customs, foreign trade, banking and foreign exchange operations, as well as services and securities trading, may be prescribed up to double the maximum amount provided for in paragraphs 2 and 4 of this Article.
- (7) For the most serious misdemeanours referred to in paragraph 6 of this Article, the amount of the fine may also be prescribed as a percentage from 1% to 10% of the infringed protected value, with an indication of the special minimum and maximum percentages of the fine.
- (8) For the most serious misdemeanours in the area of prevention, restriction or distortion of competition, the amount of the fine may be prescribed as a percentage from 1% to 10% of the total annual income of the market participant for the fiscal year preceding the year in which the misdemeanour was committed.
- (9) Exceptionally, for the most serious misdemeanours in the field of banking, a fine may be legally prescribed of up to ten times of the maximum prescribed in paragraph 2 of this Article.
- (10) For profit-driven misdemeanours resulting in illicit assets, the perpetrator may be punished more severely, up to double the amount of the prescribed fine for that misdemeanour.

Time Limit for Payment of a Fine

Article 25

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 051/17 as of 3 August 2017, Article 6)

- (1) The decision on misdemeanour shall specify the time limit for the payment of the fine, which may not be shorter than eight days nor longer than sixty days from the day the decision on misdemeanour becomes final and in justified cases (depending on the amount of the fine and the financial situation of the perpetrator), the court may determine that the imposed fine shall be paid in instalments, provided that the repayment period does not exceed six months.
- (2) Notwithstanding paragraph 1 of this Article, in cases prescribed by this Law, immediate payment of the fine may be imposed.

Community Service

Article 26

- (1) In lieu of imprisonment or a fine, community service may be imposed on the perpetrator, provided that he has given his consent.
- (2) Community service shall be considered to be any work which is beneficial for society, does not harm one's dignity and is not done for any gain.
- (3) Community service may not be less than eight hours nor exceed eighty hours, and it may not be performed for more than two hours per day or more than forty hours within one month.
- (4) In imposing this sentence, the court shall give due consideration to the type and severity of the criminal offence committed and the perpetrator's personality.
- (5) If a perpetrator omits to complete his community work, this sentence shall be replaced by imprisonment, whereby each four-hour period of community work initiated will be substituted by one day of imprisonment.

General Rules for Fixing Punishment

Article 27

- (1) When fixing the punishment, the court shall take into account all mitigating and aggravating circumstances, particularly the gravity of the misdemeanour and its consequences, the degree of responsibility, the motives and circumstances under which the misdemeanour was committed, perpetrator's history, his personal situation, his behaviour after the commission of the misdemeanour, as well as his financial situation and other circumstances concerning the perpetrator's personality.
- (2) If the misdemeanour was a repeated misdemeanour, the court shall, in particular, take into account whether the previous misdemeanour is of the same kind as the new one, whether both were committed out of the same motives and how much time has passed since the previous punishment.
- (3) When fixing the punishment, a previously imposed punishment may not be considered as an aggravating circumstance if more than two years have passed since the day the decision on that misdemeanour became final.

Mitigation of Punishment

Article 28

When fixing the punishment, if the court establishes that the misdemeanour is not of a serious nature and that there are mitigating circumstances indicating that the purpose of punishment can be achieved by a lighter measure, the prescribed punishment may be mitigated as follows:

- 1) by fixing a punishment below the minimum prescribed for that misdemeanour, but not below the minimum established by law for that kind of punishment;
- 2) by imposing a fine instead of the prescribed imprisonment.

Concurrence

Article 29

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 9)

- (1) Where a perpetrator by one or more acts committed several misdemeanours for which he is tried at the same time, the court shall first fix the punishment for each of the respective misdemeanours and then impose a cumulative punishment for all of the misdemeanours.
- (2) A cumulative punishment shall be imposed subject to the following rules:
- 1) if imprisonment is fixed for all concurrent misdemeanours, a single imprisonment punishment shall be imposed, not longer than 60 days;
 - 2) if a fine is fixed for all concurrent misdemeanours, a single fine shall be fixed representing the total of all the fixed fines, whereas the single fine may not be higher than the maximum fine stipulated in Article 24 paragraphs 2 to 6 and paragraph 9 of this Law;
 - 3) if, for some concurrent misdemeanours the court imposed imprisonment and fines for other criminal offences, the court shall impose a single prison term and a single fine, in line with items 1 and 2 of this paragraph;
 - 4) if community service is fixed for all concurrent misdemeanours, a single community service punishment shall be imposed, not longer than 80 hours.

Continuing Misdemeanour

Article 30

- (1) A continuing misdemeanour is composed of misdemeanours that are identical or of the same kind, were committed by the same perpetrator, and represent a whole because at least two of the following circumstances apply: the same kind of the misdemeanour, the victim is the same, the same situation or the same permanent relationship is used, the place or area of commission is the same or the perpetrator's wrongful intent is the same.
- (2) Misdemeanour against person may constitute a continuing misdemeanour only when committed against the same person.
- (3) Where a continuing misdemeanour comprises of minor and more serious forms of the same misdemeanour, the most serious form of the misdemeanour committed shall be considered to constitute a continuing misdemeanour.

Deduction of Time Spent during Deprivation of Liberty and Detention

Article 31

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 10)

- (1) The time during which the perpetrator was deprived of liberty or in detention shall be calculated towards the imposed imprisonment, community service or a fine.
- (2) Deprivation of liberty and detention lasting more than eight hours but less than twenty hours shall be calculated as one day of imprisonment, four hours of community service or a fine of EUR 25.

II. WARNING MEASURES

Types of Warning Measures

Article 32

Warning measures which may be imposed in line with this Law shall be admonition and suspended sentence.

Purpose of Warning Measures

Article 33

Purpose of an admonition and suspended sentence, within the general purpose of misdemeanour sanctions, shall be to avoid imposition on the perpetrator of a punishment for minor misdemeanour when that is considered not necessary for misdemeanour law protection and when it is reasonable to expect that a warning (admonition) or warning with threat of punishment (suspended sentence) will have sufficient deterring effect on the perpetrator.

Admonition

Article 34

- (1) When circumstances substantially reduce the perpetrator's culpability, so that it may be expected that he will refrain from committing misdemeanours in the future even without the imposition of the prescribed punishment or when the misdemeanour constitutes a particularly minor form of a misdemeanour, the court may, instead of a punishment, impose an admonition.
- (2) An admonition may also be imposed when the perpetrator, prior to the rendering the decision on the misdemeanour, meets the prescribed obligation or remedies or compensates the damage caused.

Suspended sentence

Article 35

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 039/11 as of 04 August 2011, Article 3)

- (1) By pronouncing a suspended sentence, the court pronounces a punishment to the perpetrator and orders at the same time that such punishment shall not be enforced provided that the convicted person does not reoffend within a term set by the court for not shorter than three months or longer than one year (probation term) or meets another requirement imposed by the court.
- (2) By way of exception, under a suspended sentence, the court may also impose on the perpetrator a protective measure prohibiting the performance of a profession, activity or duty, and at the same time determine that such measure shall not be enforced if, during the period set by the court — which may not be shorter than three months nor longer than one year (the probation period), the perpetrator does not commit another misdemeanour or meets another requirement imposed by the court.
- (3) The court shall impose a suspended sentence when it finds that the purpose of punishment can be achieved even without the enforcement of the punishment, particularly taking into account the perpetrator's position towards the misdemeanour or towards the victim, and whether he will compensate for the damage caused by the misdemeanour.

Obligations of a Person imposed a Suspended Sentence

Article 36

- (1) In addition to the imposed suspended sentence, the court may impose on the perpetrator of the misdemeanour one or more of the following obligations:
 - 1) to compensate for the damage caused;
 - 2) to return any benefit obtained through the misdemeanour;
 - 3) to meet other obligations prescribed by law that are appropriate to the misdemeanour committed.
- (2) The time limit for meeting the obligations referred to in paragraph 1 of this Article shall be determined by the court within the probation period.

Revocation of a Suspended Sentence

Article 37

- (1) Court shall revoke the suspended sentence if the convicted person, during the probation period, commits one or more misdemeanours of the same kind and severity or if he fails to meet the imposed condition.
- (2) If the convicted person does not commit another misdemeanour during the probation period, the court shall, after having reviewed all the circumstances of the misdemeanour committed and the perpetrator himself, particularly the gravity of the misdemeanour and motives out of which they were committed, decide whether to revoke the suspended sentence.
- 3) In case of revocation of suspended sentence, the court shall, when applying provisions of Article 29 of this Law, impose a sentence and/or protective measure for the previous and new misdemeanour, considering the punishment and/or protective measure from the revoked decision as already established.
- (4) Where the court does not revoke a suspended sentence, it can impose a suspended sentence or a punishment for the new misdemeanour. When suspended is imposed, the court shall fix a cumulative punishment for the previous and new misdemeanour, taking into account the punishment established before, in line with the provisions of this Law for fixing punishment for concurrent misdemeanours and schedule a new probation period.
- (5) The court shall revoke the suspended sentence and order the enforcement of the imposed punishment if the convicted person, during the probation period, fails to meet the obligations imposed, although he was able to fulfil them. If it is established that meeting such obligations is impossible, the court may replace them with other obligations or relieve the convicted person from the imposed obligations.
- 6) A suspended sentence may not be revoked after the expiry of one year from the end of the probation period, regardless of the reasons for revocation.

Suspended Sentence with Protective Supervision

Article 38

- (1) The court may order that the perpetrator who has been imposed a suspended sentence be placed under protective supervision for a specific period of time during the probation period if, on account of his personality, personal history, behaviour after the commission of the misdemeanour and particularly his attitude to the victim and the circumstances of commission of the misdemeanour, it may be reasonably expected that the protective supervision will better serve the purpose of the suspended sentence.
- (2) Protective supervision shall include the measures of assistance, care, supervision and protection, as laid down by law.

- (3) Protective supervision shall be ordered by the court in the decision by which it imposes the suspended sentence and pronounces the measures of protective supervision, their duration and manner for their enforcement.
- (4) Protective supervision shall be carried out by professionals of the administrative authority responsible for the enforcement of criminal sanctions.
- (5) Protective supervision may last for a specified period within the probation period, but it may also be terminated earlier by a court decision if the reasons for its imposition cease to exist.

Special Obligations under Protective Supervision

Article 39

Protective supervision may comprise one or more of the following obligations:

- 1) undergoing treatment in an appropriate medical institution;
- 2) refraining from the use of drugs and alcohol;
- 3) visiting particular professional and other counselling offices or institutions and following their instructions;
- 4) refraining from visiting certain places, hospitality facilities, sports events or performances if that may be a chance or incentive for repeat offending.

Revocation of a Suspended Sentence with Protective Supervision

Article 40

Provisions of Article 37 of this Law shall apply to the revocation of the suspended sentence with protective supervision.

III. PROTECTIVE MEASURES

Purpose and Prescribing Measures

Article 41

Purpose of protective measures is to eliminate circumstances or conditions that may influence the perpetrator to commit misdemeanours in the future.

Types of Protective Measures

Article 42

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 11)

- (1) The following protective measures may be prescribed by Law:

- 1) confiscation of items;
- 2) prohibition of performing a profession, activity or duty;
- 3) driving prohibition;
- 4) mandatory medical treatment of alcoholism;
- 5) mandatory medical treatment of drug addiction;
- 6) mandatory psychiatric treatment and placement in a medical institution;
- 7) mandatory psychiatric outpatient treatment;

- 8) publication of the decision;
- 9) expulsion of foreign nationals from the territory of Montenegro.
- (2) Laws prescribing misdemeanours may also determine other protective measures, as well as the conditions and time limits for their imposition.
- (3) Protective measures prescribed by this and other special laws may, unless otherwise provided by this Law, be imposed and enforced for a period not shorter than 30 days nor longer than two years.
- (4) The protective measure of confiscation of objects shall be applied permanently.
- (5) Notwithstanding paragraph 1 of this Article, the protective measure of confiscation of objects may also be prescribed by another regulation.

Imposing Protective Measures

Article 43

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 051/17 as of 3 August 2017, Article 7)

- (1) One or more protective measures, in addition to the imposed punishment or warning measure, may be imposed on the perpetrator of the misdemeanour.
- (2) Protective measure may also be imposed even when no misdemeanour sanction referred to in paragraph 1 of this Article has been imposed, only if such possibility is prescribed by law.
- (3) Should it be necessary to impose several protective measures of different types for multiple misdemeanours in one decision, the court shall impose all of the protective measures.
- (4) Competent authority referred to in Article 111 paragraph 2 of this Law may impose the protective measure of prohibition from driving a motor vehicle in the minimum prescribed duration as well as the protective measure of confiscation of objects, by a misdemeanour order.
- (5) Protective measures referred to in Article 42 paragraph 1 items 1, 4, 5 and 6 of this Law may be imposed even when they are not specifically prescribed for a misdemeanour.

Confiscation of Items

Article 44

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 12)

- (1) Items which were used or intended for use in the commission of a misdemeanour or which resulted from the commission of a misdemeanour may be confiscated provided that they are owned by the perpetrator.
- (2) The items referred to in paragraph 1 of this Article may be confiscated even if they are not owned by the perpetrator if so required for reasons of security of people or property or for moral reasons, but also where there is still a risk that they may be used for the commission of a misdemeanour, not affecting the rights of third persons to claim damages from the perpetrator.

- (3) If the law prescribing a misdemeanour does not stipulate the conditions for imposing the measure referred to in paragraph 1 of this Article, this measure may be imposed if the circumstances under which the misdemeanour was committed, the degree of responsibility, the personal situation and the propensities of the perpetrator justify its imposition.
- (4) Competent court rendering the decision or the authorized body issuing the misdemeanour order shall deliver the confiscated items to the administrative authority responsible for the management of state property, pursuant to the law governing the management of seized and confiscated assets.
- (5) Items that are confiscated or may be confiscated shall also be confiscated even when the misdemeanour proceedings have not terminated with a conviction, if required so by reasons of safety of persons or assets, moral reasons or in other cases prescribed by law or other regulation.
- (6) Law or other regulation prescribing a misdemeanour may provide for the mandatory imposition of the protective measure of confiscating items.
- (7) Mandatory destruction of confiscated items may be stipulated by law.

Prohibition of Performing a Profession, Activity or Duty

Article 45

- (1) Prohibition of performing a profession, activity or duty shall prevent the offender from performing a profession, activity or duty that he carries out on the basis of application, approval or a authorization issued by a competent authority.
- (2) Should the law prescribing the misdemeanour does not stipulate the conditions for imposing the measure referred to in paragraph 1 of this Article, this measure may be imposed on a perpetrator who has abused the profession, activity or duty to commit the misdemeanour, if it is reasonable to believe that the continued performance of such profession, activity or duty would endanger the life or health of people or would be detrimental to the business or financial operations of other legal entities or to the economy, if so required by moral reasons or if the offender has been punished for the same or a similar misdemeanour within the previous two years.
- (3) The court shall determine the duration of the measure referred to in paragraph 1 of this Article, which may not exceed six months, calculated from the date when the decision imposing the measure becomes final and time spent in prison or medical institution where a protective measure was enforced shall not be included in the term of this measure.
- (4) The court may impose the prohibition of performing a profession, activity or duty if the perpetrator has been imposed a punishment, a suspended sentence, issued an admonition or if his punishment has been remitted.
- (5) If a suspended sentence was imposed, the court may order that the sentence be revoked if the perpetrator violates the prohibition thereof of performing a profession, activity or duty.

Driving Prohibition

Article 46

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 13)

- (1) Protective measure prohibiting the driving of a motor vehicle of a specific type or category may be imposed on a perpetrator who has committed a misdemeanour endangering public traffic.
- (2) Should the law prescribing the misdemeanour does not specifically define the conditions for imposing the protective measure, it may be imposed on an perpetrator who has committed a serious violation of traffic safety regulations or whose previous violation of these regulations indicates that he poses a danger when driving a motor vehicle of a specific type or category.
- (3) In deciding whether to impose this measure, consideration shall also be given to whether the defendant is a professional motor vehicle driver.
- (4) The court shall set the term of the protective measure referred to in paragraph 1 of this Article, which may not exceed six months and shall be imposed once the decision becomes final and time spent in prison or institution where a protective or corrective measure was enforced shall not be included in the term of this measure.
- (5) Person holding a foreign driving licence shall be imposed a prohibition from driving a motor vehicle within the territory of Montenegro.
- (6) Should suspended sentence be imposed, the court may decide to revoke the sentence should the perpetrator violate the prohibition of driving a motor vehicle.

Publication of the Decision

Article 47

- (1) The court shall impose the protective measure of publishing the decision if it believes it would be useful for the public to be informed of the decision, particularly if its publication would help eliminate a danger to the life or health of people or protect the safety of the trade of goods and services or the economy.
- (2) Depending on the significance of the misdemeanour, the court shall decide whether the decision will be published in the press, radio or television, or through several of these media and whether the statement of reasons will be published in full or in partially, taking into account that the manner of publication should enables all those whose interests require it to be duly informed.
- (3) Publication of the decision may be carried out no later than 30 days from the date when the decision became final.
- (4) Law stipulating the misdemeanour may also stipulate mandatory protective measure of publication of the decision.
- (5) Costs of publishing the decision shall be borne by the convicted person.

Expulsion of Foreign Nationals from the Territory of Montenegro

Article 48

- (1) Foreigner who committed a misdemeanour making his further stay in the country undesirable may be expelled from the territory of Montenegro by the court for a term of up to one year.
- (2) In deciding whether to impose the measure referred to in paragraph 1 of this Article, the court shall give due consideration to the nature and seriousness of the misdemeanour committed, the motives out of which the misdemeanour was committed, the manner in which it was committed and any other circumstances that indicate why the foreign national should not be allowed to further stay in Montenegro.

- (3) The term of expulsion shall commence on the date of final judgment thereof, whereby the time spent in prison may not be included in the term for which the measure is imposed.
- (4) Measure referred to in paragraph 1 of this Article may not be imposed on the perpetrator who enjoys protection under ratified international treaties.

Appropriate Application of the Law

Article 49

- (1) In terms of the requirements, deadlines and manner of imposing protective measures referred to in Article 42 paragraph 1 items 4 to 7 of this Law, provisions of the Criminal Code stipulating security measures shall apply accordingly.
- (2) In terms of protective measures referred to in Article 42 of this Law, provisions of the Law on Enforcement of Criminal Sanctions shall apply to security measures accordingly.

Chapter V

CONFISCATION OF PECUNIARY GAIN, REHABILITATION, DATA FROM MISDEMEANOUR RECORDS AND LEGAL CONSEQUENCES OF A CONVICTION

Confiscation of Pecuniary Gain

Article 50

- (1) No person may retain pecuniary gain originating from the commission of a misdemeanour.
- (2) Pecuniary gain referred to in paragraph 1 of this Article shall be liable to confiscation under the conditions laid down by this Law and a court decision declaring the commission of a misdemeanour.

Requirements for Confiscation of Pecuniary Gain

Article 51

- (1) Money, property of value and any other pecuniary gain originating from the commission of a misdemeanour shall be confiscated from the perpetrator, and where such confiscation is not possible, the perpetrator shall pay the equivalent amount in money.
- (2) Pecuniary gain originating from the commission of a misdemeanour shall also be confiscated from a person to whom it has been transferred without remuneration or for remuneration that is manifestly disproportionate to the actual value.
- (3) Where pecuniary gain was obtained for another person, such gain shall also be liable to confiscation.
- (4) The amount or type of confiscated pecuniary gain shall be determined in the decision on the misdemeanour.

Protection of Injured Parties

Article 52

- (1) Where the injured party has been awarded his claim for damages in misdemeanour proceedings, the court shall order the confiscation of pecuniary gain in the amount which exceeds the adjudicated claim of the injured party.

- (2) The injured party which has been referred by the misdemeanour court to bringing his claim for damages in a civil action may request to be reimbursed from the amount of confiscated pecuniary gain, provided that he brings a civil claim within six months from the final decision directing him to bring a civil action and under the further condition that he claims reimbursement from the confiscated pecuniary gain within one month from the final decision awarding his claim.

Misdemeanour Records

Article 53

- (1) Misdemeanour records shall contain the following data: personal data on the perpetrator, data on the misdemeanour, data on sanctions, data on the legal consequences of a conviction, subsequent amendments to the data contained in the records, data on the serving the sentence of imprisonment and on the deletion of the legal consequences of a conviction.
- (2) Data from the misdemeanour records may be disclosed to the court, the state prosecutor's office, and authorized applicants when misdemeanour proceedings against the perpetrator on whom data are requested is involved, as well as to the guardianship authority or other competent authority when necessary for the performance of affairs within their competence.
- (3) Data from misdemeanour records may also be disclosed upon a substantiated request filed with a state authority, business organisation, other organization or entrepreneur, where legal consequences of a sanction or protective measures are still in effect and where there is well substantiated interest based on law.
- (4) When the decision on a misdemeanour sanction has been expunged, data on that decision may not be disclosed to anyone except the court, the competent prosecutor's office, and the authorized applicant in terms of a misdemeanour proceeding conducted against the person whose decision has been expunged.
- (5) Data from the misdemeanour records may be used, within its statutory competences, by the authority responsible for police affairs.
- (6) No one has the right to request from citizens to submit any evidence showing whether he has any prior sanctions for misdemeanours.
- (7) Upon their request, citizens may be supplied with data on their prior sanctions only where so required for the purpose of their exercise of their rights abroad.
- (8) Misdemeanour records shall be kept and the manner of its maintenance shall be prescribed by the ministry competent for judicial affairs.

Register of Fines and Misdemeanour Records

Article 54

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 14)

- (1) Register of Fines and Misdemeanour Records (hereinafter referred to as: the Register of Fines) is an electronic database used for entering data on all imposed misdemeanour fines, other sanctions, protective measures and costs of proceedings.
- (2) Court which rendered a decision or the authorized body that issued a misdemeanour order shall, without delay, enter data on fines, other sanctions, protective measures and costs of proceedings, in appropriate form into the Register of Fines.

- (3) Court which received the request for judicial decision referred to in Article 150 of this Law shall, without delay, enter this data into the Register of Fines, in the appropriate form and delete the fine, protective measure and costs of proceedings.
- (4) Fines and costs of proceedings imposed on the basis of a final and enforceable misdemeanour order or a final and enforceable court decision shall be immediately entered into the Register of Fines as a debt and shall remain in the database until the convicted or fined person pays the full amount of the fine and costs of proceedings or two-thirds of the fine pursuant to Article 234 paragraph 2 of this Law.
- (5) Ministry competent for judicial affairs shall manage the operation of the Register of Fines and ensure its proper functioning.
- (6) The content and manner of keeping the Register of Fines shall be prescribed by the Ministry competent for judicial affairs.

Rehabilitation

Article 55

- (1) Upon rehabilitation, a conviction shall be deleted from the misdemeanour records and all its legal consequences suspended, while the convicted person shall be considered to be a person without a record of prior convictions.
- (2) Rehabilitation shall take place where:
 - 1) a person who was found guilty but whose punishment was remitted or who was imposed an admonition does not commit another misdemeanour within one year of the date of final judgment;
 - 2) a person who received a suspended sentence does not commit another misdemeanour during his probation period or within one year of expiry of the probation period;
 - 3) a person punished by prison term, fine or community service, does not commit another misdemeanour within one year of the date the punishment had become fully served, became time barred or was pardoned.
- (3) Fine shall not be deleted from the misdemeanour records while it is recorded as an outstanding debt in the Register of Fines pursuant to Article 54 paragraph 4 of this Law.
- (4) Fines and costs of proceedings shall be deleted from the Register of Fines upon the expiry of four years from the date when the misdemeanour order became final, or the decision on misdemeanour became final and enforceable.
- (5) Protective measures shall not be deleted from the misdemeanour records until they have been enforced or until the statute of limitations has expired.
- (6) Rehabilitation shall not occur while protective measures are still in effect.

Legal Consequences of a Conviction

Article 56

- (1) Legal consequences of a conviction which comprise of loss or prohibition of certain rights shall be stipulated by Law.
- (2) Legal consequences of a conviction which comprise of the acquisition of penalty points shall be prescribed by a separate law.

Penalty points

Article 57

- (1) Penalty points, as a legal consequence of a conviction, may be prescribed by the law governing road traffic safety to a perpetrator who has been finally convicted of a serious misdemeanour against road traffic safety.
- (2) No more than three penalty points may be prescribed for a single misdemeanour.
- (3) If the convicted or punished person accumulates a certain number of penalty points which, in line with the law causes a legal consequence, the competent authority keeping the records of penalty points shall determine that the convicted or punished person has reached that number of points and shall issue a decision imposing the legal consequence of conviction stipulated by a separate law.
- (4) Legal consequences of a conviction which comprise of the accumulation of penalty points shall take effect on the date when the decision referred to in paragraph 3 of this Article becomes final and enforceable.

Deletion from the Records of Penalty Points

Article 58

Penalty points shall be deleted from the records of penalty points after the expiry of two years from the date when the decision on the basis of which the perpetrator accumulated the points became final and enforceable.

Chapter VI

STATUTE OF LIMITATIONS

Statute of Limitations for Initiating or Conducting Misdemeanour Proceedings

Article 59

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 039/11 as of 04 August 2011, Article 4)

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 051/17 as of 3 August 2017, Article 8)

- (1) Misdemeanour proceedings may not be initiated or conducted if one year has passed from the day the misdemeanour was committed.
- (2) Statute of limitations for misdemeanour prosecution shall not run during the period in which prosecution cannot be initiated or continued under the law.
- (3) The statute of limitations shall be interrupted by every procedural act undertaken for the purpose of prosecuting the perpetrator.
- (4) Upon each interruption, the statute of limitations shall begin to run anew.
- (5) Exceptionally, a longer limitation period for initiating and conducting misdemeanour proceedings may be prescribed by a separate law, but not longer than three years for misdemeanours in the area of health protection, environmental protection, protection of market competition, construction, customs, foreign trade and foreign exchange operations, public revenues, financing of political parties and the collection of funds during elections, road traffic safety with regard to vehicle technical inspections, trade in goods and services and securities trading,
- (6) Statute of limitations for prosecuting misdemeanours shall in any case occur when twice as much time has passed as stipulated by law for the statute of limitations applying to prosecution.

Statute of Limitations for Enforcing a Punishment or a Protective Measure

Article 60

- (1) Punishment or protective measure imposed may not be enforced if two years have passed from the date when the decision on the misdemeanour became final and enforceable.
- (2) Statute of limitations for the enforcement of a punishment or protective measure shall begin on the date when the decision imposing the punishment or protective measure becomes final and enforceable.
- (3) Statute of limitations for enforcement of a punishment or protective measure shall not run during the period in which enforcement cannot be carried out under the law.
- (4) Statute of limitations shall be interrupted by every act undertaken for the enforcement of a sentence or a protective measure.
- (5) Upon each interruption, the statute of limitations begins to run anew.
- (6) Statute of limitations for the enforcement of a sentence or protective measure shall in any case occur when twice as much time has elapsed as stipulated by law for the statute of limitations applying on enforcement.

Chapter VII

JUVENILES

I. SUBSTANTIVE PROVISIONS

Provisions on Juveniles

Article 61

- (1) provisions of this Chapter shall apply to juvenile perpetrators and other provisions of this Law shall apply unless otherwise stipulated in this Chapter.
- (2) Separate provisions applicable to juvenile perpetrators shall, under the conditions stipulated in this Chapter, also apply to adults when they are tried for misdemeanours committed as juveniles.

Excluding Misdemeanour Sanctions towards Children

Article 62

Misdemeanour proceedings may not be conducted against a person who had not reached the age of fourteen (a child) at the time the misdemeanour was committed.

Misdemeanour Sanctions towards Juveniles

Article 63

- (1) Juvenile who had reached the age of 14 but not 16 (junior juvenile) at the time the misdemeanour was committed may be imposed only educational measures.
- (2) Juvenile who had reached the age of 16 but not 18 (senior juvenile) at the time of the misdemeanour was committed may be imposed an educational measure or a fine.
- (3) Protective measures may be imposed on a juvenile under the conditions stipulated in Article 79 of this Law.
- (4) A suspended sentence and a admonition may not be imposed on a juvenile.

Purpose of Misdemeanour Sanctions

Article 64

Within the general purpose of misdemeanour sanctions, the purpose of juvenile misdemeanour sanctions shall be to strengthen the juvenile perpetrator's sense of responsibility, upbringing, re-education and proper development by providing of protection, care, assistance and supervision, as well as ensuring general education.

Types of Educational Measures

Article 65

- (1) Following educational measures may be imposed on a juvenile perpetrator:
 - (1) warning measures and guidance: reprimand and special obligations;
 - 2) measures of enhanced supervision: enhanced supervision carried out by parents, adopters or guardians; enhanced supervision of the guardianship authority; enhanced supervision with daily attendance at an appropriate institution for upbringing and education of juveniles;
 - 3) placement with an educational institution of a non-custodial type.
- (2) In order to determine the circumstances relevant for imposing measures referred to in paragraph 1 of this Article, the court shall hear the juvenile's parents, adopters or guardian and other persons able to provide necessary information.

Selecting the Educational Measure

Article 66

In the course of selecting an educational measure, the court shall pay particular regard to the juvenile's age and maturity, other personality traits, the gravity of the misdemeanour, the motives for committing it, the environment and circumstances in which the juvenile lived, his behaviour following the misdemeanour, and particularly whether he prevented or attempted to prevent harmful consequences, whether he compensated for the damage or made an attempt to compensate it, as well as other circumstances that might be relevant for imposing a measure that will best achieve the purpose of educational measures.

Imposing Educational Measures

Article 67

- (1) Warning measures and guidance shall be imposed on a juvenile who does not require more permanent educational measures and when such measures are required to impact the personality of the juvenile and his behaviour or these measures are sufficient to achieve their purpose
- (2) Measures of enhanced supervision shall be imposed on a juvenile who requires more permanent educational and re-educational measures, without the need to completely remove him from the existing environment.
- (3) Placement with an educational institution of a non-custodial type shall be imposed on a juvenile who requires more permanent educational and re-educational measures as well as the removal from the existing environment, when the court assesses that the purpose of the educational measures cannot be achieved by applying the measures under paragraphs 1 and 2 of this Article.

Reprimand

Article 68

- (1) Reprimand shall be imposed when, taking into account the juvenile's attitude towards the committed misdemeanour and willingness to refrain from future misdemeanours, it may be concluded that the purpose of educational measures will be achieved by the reprimand alone.
- (2) In the course of imposing a reprimand, the court shall point out to the juvenile the harmfulness of his actions and present the possibility of a more severe sanction in case he re-offends.

Enhanced Supervision

Article 69

- (1) Measure of enhanced supervision may be imposed as enhanced supervision carried out by the parents, adopter or guardian or guardianship authority and as enhanced supervision with day attendance at an appropriate institution for the upbringing and education of juveniles.
- (2) Measure of enhanced supervision carried out by the parents, adopter or guardian shall be imposed in cases when parents, adopter or guardian failed to exercise the necessary care and supervision over the juvenile, but they are able to exercise such supervision and that may be reasonably expected of them.
- (3) When imposing the measures referred to in paragraph 1 and 2 of this Article, the court shall order the guardianship authority to monitor its enforcement and provide assistance to the juvenile's family and shall impose on persons referred to in paragraphs 1 and 2 specific duties to be undertaken for the juvenile's upbringing, treatment and elimination of harmful influences.
- (4) If the persons referred to in paragraph 2 of this Article are unable to enforce the enhanced supervision, the juvenile shall be placed under enhanced supervision by the guardianship authority and during the course of this measure the juvenile continues to live with his parents or other persons who support him or care for him, while enhanced supervision shall be exercised by a designated official of the guardianship authority or another professional designated by that authority.
- (5) The guardianship authority shall be responsible for the juvenile's schooling, employment, removal from an environment exerting harmful influence, necessary treatment and the organisation of living conditions.
- (6) Measures of enhanced supervision referred to in paragraphs 2 and 4 of this Article may last not less than one month and not more than six months, with the court deciding subsequently on their termination.

Enhanced Supervision with Day Attendance at an Appropriate Institution for Upbringing and Education of Juveniles

Article 70

- (1) The educational measure of enhanced supervision, with the obligation of day attendance at an institution for upbringing and education of juveniles, shall be imposed where, in addition to an appropriate enhanced-supervision measure, engagement of professionals in a specialised institution is required.
- (2) The measure referred to in paragraph 1 of this Article may not last less than one month and not more than six months, with the court deciding subsequently on its termination.
- (3) During the measure referred to in paragraph 1 of this Article, the juvenile shall remain with parent or parents or other carers, and spend specified time during the day at the institution for the upbringing and education of juveniles, organised in the manner which

does not interfere with schooling or regular work attendance. Appropriate educational content at the institution shall influence the future life and behaviour of the juvenile within the immediate and wider social environment.

- (4) Guardianship authority shall be responsible for the manner of enforcing the measure referred to in paragraph 1 of this Article.

Special Obligations

Article 71

- (1) Juvenile may be imposed one or more special obligations by the court should it find that their application will have a positive impact on the juvenile and his behaviour. Juvenile shall be imposed an obligation by the court to carry out the following:
- 1) apologize to the victim;
 - 2) eliminate or compensate for the damage caused by the misdemeanour within his own capabilities;
 - 3) regularly attend school or work;
 - 4) become involved in the work of humanitarian organisations or perform activities of humanitarian, cultural, social, ecological type or other public activities, without compensation;
 - 5) refrain from consuming alcohol or drugs or undergo appropriate treatment;
 - 6) refrain from visiting certain places and avoid the company of certain persons having harmful effect on him;
 - 7) become involved in individual or group treatment in a medical institution or youth counselling offices;
 - 8) become involved in sports and other activities with educational supervision in school or local community.
- (2) Obligations referred to in paragraph 1 items 3 to 8 of this Article may not last longer than three months and shall not interfere with his schooling or work.
- (3) When imposing the obligation referred to in paragraph 1 item 2 of this Article, the court shall determine the amount, forms and manner of reparation, in the course of which the work of juvenile may not last longer than 20 hours within a one-month period and shall be arranged so as not to interfere with the juvenile's regular schooling or work.
- (4) When imposing special obligations, the court shall warn the juvenile that failure to meet those obligations may result in its replacement by another obligation or an educational measure.
- (5) Enforcement of special obligations shall be carried out under the supervision of the competent guardianship authority, which shall inform the court of their enforcement.

Imposing Special Obligations

Article 72

- (1) In addition to the educational measure of enhanced supervision, the court may impose on a juvenile the maximum of two special obligations referred to in Article 71 paragraph 1 of this Law.
- (2) When imposing special obligations, the court shall particularly indicate to the juvenile and his parents, adoptive parent or guardian that, in the event of failure to fulfil these obligations, the imposed measure of enhanced supervision may be replaced by another educational measure.

- (3) Provisions of Article 69 paragraph 6 of this Law shall apply to the duration of the special obligations that may be imposed along with the measure of enhanced supervision accordingly.

Placement with an Educational Institution of a Non-Custodial Type

Article 73

- (1) Court shall impose the measure of placement with an educational institution of a non-custodial type when it is necessary to remove the juvenile from his existing environment and when it finds that intensified measures are required to influence the personality and behaviour of the juvenile with the involvement of professional staff.
- (2) In the course of enforcing the measure referred to in paragraph 1 of this Article, continuation of juvenile's education shall be ensured.
- (3) Juvenile may not remain less than eight days nor longer than three months in the institution referred to in paragraph 1 of this Article and the need for suspension or replacement of the measure by another educational measure shall be reviewed every month.
- (4) The stay of the juvenile in the institution referred to in paragraph 1 of this Article shall be filled with activities appropriate to his characteristics and aimed at developing a sense of responsibility.

Suspension of Enforcement and Alteration of the Decision on an Educational Measure

Article 74

Should the circumstances arise which did not exist or were not known at the time following the rendering of the decision imposing an educational measure has been rendered which would have affected the rendering of a different decision, the enforcement of the imposed measure may be suspended or the imposed measure may be replaced by another educational measure.

Reconsideration of Educational Measures

Article 75

- (1) Provided that more than six months have passed since the final decision imposing an educational measure or a special obligation and enforcement has not commenced, the court shall reconsider the need to enforce the imposed measure or obligation whereby it may decide that the previously imposed measure or obligation shall be enforced, not enforced or replaced by another educational measure or special obligation.
- (2) Court shall keep special records for each juvenile who has been imposed an educational measure.

Imposing an Educational Measure for Concurrent Misdemeanours

Article 76

- (1) Provided that a juvenile has committed several concurrent misdemeanours, the court shall, taking into account all committed misdemeanours, impose a single educational measure.
- (2) Court shall proceed in the manner referred to in paragraph 1 of this Article when, following the imposing of an educational measure, it is established that the juvenile committed another misdemeanour before or after the measure was imposed.

Providing Data on Imposed Educational Measures

Article 77

Data on imposed educational measures may be provided only to the court, public prosecutor, guardianship authority and institutions dealing with the protection of juveniles, and only if the perpetrator has not reached the age of 21.

Fine

Article 78

- (1) The court may impose a fine on a senior juvenile who earns income through his own work or property, if it establishes that, considering the nature and gravity of the committed misdemeanour, such punishment is justified.
- (2) Unpaid fine may be replaced only by a special obligation referred to in Article 71 paragraph 1 item 4 of this Law.

Imposing Protective Measures on Juveniles

Article 79

- (1) Protective measures, apart from the prohibition of performing a profession, activity or duty, may be imposed on juveniles if they have been imposed an educational measure or a fine.
- (2) Protective measures of mandatory medical treatment of drug addicts and mandatory medical treatment of alcoholics may not be imposed along with the educational measures of warning and guidance (reprimand and special obligations).
- (3) Protective measure of mandatory psychiatric treatment and placement in a medical institution and mandatory psychiatric outpatient treatment shall be imposed independently.

The Effect of Coming of Age

Article 80

- (1) Provided that the juvenile has come of age prior to the rendering the decision, the court shall not impose an educational measure.
- (2) Provided that the juvenile has come of age following the rendering of the decision imposing an educational measure, the court shall discontinue the enforcement of that measure.

II. PROCEEDINGS AGAINST JUVENILES

General Provision

Article 81

Unless otherwise prescribed by this Law, the provisions of the law governing criminal proceedings against juveniles shall apply accordingly in misdemeanour proceedings against juveniles.

Application of Provisions towards Children

Article 82

- (1) Provided that, during the proceedings, it is determined that at the time of committing the misdemeanour the juvenile had not reached the age of fourteen, the misdemeanour proceedings shall be discontinued.
- (2) In the case referred to in paragraph 1 of this Article, the court shall notify the parent, adoptive parent or guardian of the juvenile as well as the guardianship authority of the misdemeanour and, if necessary, it may also notify the school or organisation where the juvenile is placed.

Prohibition of Trial in Absence

Article 83

- (1) A juvenile may not be tried in absence.
- (2) In the course of hearing the juvenile and in the performance of any other procedural action participated by the juvenile, special care shall be taken to ensure that, having regard to the mental development and personal characteristics of the juvenile, misdemeanour proceedings do not have an adverse effect on the development of his personality.

Obligation to Testify

Article 84

No person may be exempted from the duty to testify on the circumstances necessary for assessing the mental development of the juvenile, for learning about his personality and for understanding his living conditions.

Joinder and Separation of Proceedings

Article 85

- (1) If a juvenile has participated in the commission of a misdemeanour together with adults, proceedings against the juvenile shall be separated and conducted in line with the provisions of this Chapter.
- (2) Proceedings against a juvenile may be conducted jointly with proceedings against adults and carried out under the general provisions of this Law only if such joinder is necessary for the comprehensive resolution of the matter.
- (3) Decision on separation or joinder of proceedings shall be made by the judge to whom the case has been allocated. Appeal against this decision shall not be allowed.

Rights of the Guardianship Authority, Parents and Guardians

Article 86

In proceedings against juveniles, the guardianship authority, parents and other legal representatives of the juvenile shall have the right to be informed on the course of proceedings, submit motions during the proceedings and indicate facts and evidence relevant for reaching a proper decision.

Summoning of Juveniles and Service of Decisions and Documents

Article 87

- (1) Juvenile shall be summoned through his parents or other legal representative, unless this is not possible due to the need for urgent action or for other justified reasons.

- (2) Decisions and other documents shall be served on the juvenile in accordance with Article 133 of this Law and documents shall not be served by posting on the court's bulletin board nor shall the provisions of Article 129 of this Law apply.

Prohibition of Publishing the Course of Proceedings

Article 88

- (1) Without the permission of the court, the course of misdemeanour proceedings against a juvenile or any decision rendered therein may not be made public.
- (2) Only a part of proceedings or a part of the decision for which permission has been granted may be published and it shall be prohibited to disclose the name of the juvenile or any other information that could lead to the identification of the juvenile.

Urgency of Proceedings

Article 89

- (1) Authorities participating in proceedings against a juvenile, as well as other authorities and institutions from which information, reports or opinions are requested, shall act without delay so that the proceedings may be completed as soon as possible.
- (2) Prior to imposing an educational measure or punishment on a juvenile, the opinion of the competent guardianship authority shall be obtained, unless the juvenile has come of age of majority in the meantime or has no permanent or temporary residence in Montenegro.

Territorial Jurisdiction

Article 90

As a rule, the court of the juvenile's permanent residence shall have territorial jurisdiction over proceedings against a juvenile and if the juvenile has no permanent residence or it is unknown, the court of the juvenile's temporary residence shall have jurisdiction. Proceedings may also be conducted before the court of the juvenile's temporary residence when the juvenile has permanent residence elsewhere or or before the court of the place where the misdemeanour was committed, if it is evident that the proceedings can be conducted more efficiently before that court.

Initiating Misdemeanour Proceedings Against a Juvenile

Article 91

Misdemeanour proceedings against a juvenile shall be initiated by a request for the initiation of misdemeanour proceedings.

Exclusion of Public

Article 92

In proceedings against a juvenile, the public shall always be excluded.

Applying the Principle of Opportunity

Article 93

- (1) Court may decide against initiating misdemeanour proceedings against a juvenile even when there is evidence that the juvenile has committed a misdemeanour, if it finds that it would not be functional to conduct the proceedings, having in mind the

nature of the misdemeanour, the circumstances of its commission, the juvenile's past and his personal attributes.

- (2) In the case referred to in paragraph 1 of this Article, the request for the initiation of misdemeanour proceedings shall be dismissed by a decision stating the reasons for dismissal and the juvenile's parent, adoptive parent or guardian as well as the guardianship authority shall be notified of the committed misdemeanour for the purpose of undertaking measures within their competence.

Decisions in Proceedings Against Juveniles

Article 94

- (1) When deciding whether to impose a punishment or an educational measure on a juvenile, the court shall not be bound by the proposal of the person submitting the request.
- (2) In the statement of reasons of the decision imposing a sanction upon a juvenile for a committed misdemeanour, only the sanction imposed shall be stated and the juvenile shall not be declared guilty of the misdemeanour they are charged with. The statement of reasons shall contain a description of the misdemeanour and the circumstances justifying the enforcement of the imposed sanction.

Decision on Costs and Claims for Damages

Article 95

- (1) The court may order the juvenile to pay the costs of misdemeanour proceedings and to satisfy claims for damages only if a punishment has been imposed on the juvenile.
- (2) If an educational measure has been imposed on the juvenile or the proceedings have been discontinued, costs of proceedings shall be borne by the budget and the injured party shall be referred to civil proceedings to assert the claim under property law.
- (3) If the juvenile has income or property, the court may order him to pay the costs of the proceedings and to satisfy the claim for damages even when an educational measure has been imposed.

Right to Appeal

Article 96

- (1) Appeal may be filed against a decision rendered in the first instance within eight days from the date of delivery of the written copy of the decision, unless otherwise provided by this Law.
- (2) Persons referred to in Article 200 of this Law may file an appeal.
- (3) An appeal filed in due time shall stay the execution of the judgment.

Enforcement of Educational Measures

Article 97

Provisions of the law governing the manner of enforcement of measures and special obligations imposed on juveniles in criminal proceedings shall apply to the enforcement of educational measures and special obligations accordingly.

PART II

MISDEMEANOUR PROCEEDINGS

Chapter VIII

BASIC RULES

Fair Conduct of Proceedings

Article 98

- (1) Rules of misdemeanour proceedings established by this Law shall ensure the fair conduct of misdemeanour proceedings, protection of human rights, proper establishment of facts and lawful decision-making regarding misdemeanour liability, so that no innocent person is convicted and that the perpetrator of a misdemeanour is imposed an appropriate punishment or other misdemeanour sanction.
- (2) Prior to rendering the final decision on the misdemeanour, the exercise of freedoms and rights of the defendant may be restricted only under the conditions stipulated by this Law.
- (3) Where certain issues of the misdemeanour proceedings have not been stipulated by this Law, provisions of the Criminal Procedure Code shall apply accordingly.

Right to Defence and Other Rights of the Defendant

Article 99

- (1) The defendant shall have the right to the following:
 - 1) to be informed promptly and in detail, in a language he understands, of the misdemeanour he is charged with;
 - 2) to be granted adequate time and opportunity to prepare his defence;
 - 3) to defend himself in person or with the professional assistance of a defence attorney of his own choosing, or, if unable to bear the costs of defence due to his financial situation, to have a defence attorney appointed by the court when the interests of justice so require. The defendant shall be cautioned that anything he states may be used against him as evidence;
 - (4) to be provided an opportunity to make a statement regarding all the facts and evidence incriminating them and to present all facts and evidence in his favour;
 - 5) to use his own language in proceedings or to be provided with interpretation in a language he understands.
- (2) For a defendant lacking legal capacity, procedural actions shall be undertaken by his legal representative.

Ne bis in idem

Article 100

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 15)

- (1) No person shall be tried again for a misdemeanour they have already been convicted or acquitted of by a final judgement.
- (2) The prohibition referred to in paragraph 1 of this Article shall not prevent the repetition of the misdemeanour proceedings in line with this Code.
- (3) A person who has been finally convicted in criminal proceedings of an act that constitutes a misdemeanour shall not be punished for the misdemeanour.

- (4) If criminal proceedings have been instituted against the perpetrator for a criminal offence that has the elements of a misdemeanour, misdemeanour proceedings shall not be initiated for that misdemeanour and if they have been initiated, they shall be discontinued.

Principle of Truth and Fairness

Article 101

(1) The court shall truthfully and completely establish all facts relevant to render a lawful and fair decision, as well as examine and establish with equal attention facts that incriminate the defendant and the ones in his/her favour.

Free Evaluation of Evidence and Legally Invalid Evidence

Article 102

- (1) The court shall assess the existence or non-existence of facts on which to base their decisions at their discretion, without being bound by specific formal rules.
- (2) The decision of the court shall not be founded on evidence that have been obtained by violating human rights and fundamental freedoms guaranteed by the Constitution or by ratified international treaties

Assistance to an Uninformed Party

Article 103

Defendant or another person participating in the proceedings, who due to ignorance may omit to perform an action in the proceedings or fail to exercise their rights because of that shall be informed by the court of the rights they are entitled to pursuant to this Law as well as of the consequences of the failure to act.

Efficiency of Proceedings

Article 104

(2) The court shall be obliged to conduct the proceedings without delays and to prevent all abuses of rights that are vested in participants in the proceedings.

Two-instance Misdemeanour Proceedings

Article 105

(1) Appeal may be filed against a decision rendered in the first instance unless otherwise provided by this Law.

Chapter IX

JURISDICTION AND RECUSAL

Subject Matter Jurisdiction

Article 106

Courts shall adjudicate within the limits of their subject matter jurisdiction prescribed by law.

Composition of the Court

Article 107

- (1) Misdemeanour proceedings in the first instance shall be conducted by a single judge.
- (2) The second instance courts shall adjudicate in a panel composed of three judges.

Recusal

Article 108

Judge participating in the proceedings shall be recused ex officio or upon request of the parties, the defence counsel or the injured party when there are grounds for recusal.

Deciding on Joining and Separating Proceedings

Article 108a

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 16)

President of the competent first instance court shall decide on a motion for joinder or separation of misdemeanour proceedings.

Appropriate Application of the Criminal Procedure Code

Article 109

Provisions of the Criminal Procedure Code shall apply accordingly to matters concerning territorial jurisdiction, joinder and separation of misdemeanour proceedings, transfer of territorial jurisdiction, determination and conflict of jurisdiction, recusal and other related issues, unless otherwise stipulated by this Law.

Chapter X

PARTICIPANTS OF MISDEMEANOUR PROCEEDINGS

Parties and Participants to the Proceedings

Article 110

- (1) Parties to the misdemeanour proceedings shall be:
 - 1) the authorised applicant;
 - 2) the defendant.
- 2) Participants in misdemeanour proceedings shall be:
 - 1) the defence attorney of the defendant;
 - 2) the legal representative or attorney of the defendant;
 - 3) the injured party;
 - 4) another person, where so provided by law.

Authorised Applicants

Article 111

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 039/11 as of 04 August 2011, Article 5)

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 17)

- (1) Misdemeanour proceedings can be initiated upon a request of an authorised body, injured or defendant (hereinafter referred to as: the authorised applicant).
- (2) The authorised bodies referred to in paragraph 1 of this Article shall be: state administration authorities, local government authorities, authorised inspectors and other entities exercising public powers whose competence includes the direct enforcement or supervision of the enforcement of laws and other regulations stipulating misdemeanours, as well as the state prosecutor.
- (3) The injured party may initiate misdemeanour proceedings if a misdemeanour order has not been issued or if a request for the initiation of misdemeanour proceedings has not been submitted within 30 days from the expiry of the period referred to in Article 153 paragraph 1 of this Law, except in cases of domestic violence, when such request may be submitted prior to the expiry of that period.
- (4) The defendant may initiate misdemeanour proceedings by submitting a request for judicial determination under the conditions stipulated by this Law.

The Defendant

Article 112

- (1) The defendant shall be a person against whom misdemeanour proceedings are conducted.
- (2) The defendant referred to in paragraph 1 of this Article may be:
 - 1) a natural person;
 - 2) an entrepreneur.
 - 3) a legal person;
 - 4) a responsible person.

The Defendant Being a Legal Person

Article 113

- (1) A defendant who is a legal person in misdemeanour proceedings shall be represented by its representative, who is authorised to perform all actions that the defendant may perform.
- (2) The representative of the defendant who is a legal person shall be a person authorised to represent that legal person on the basis of law, an act of a competent state authority, statute or another general act of the legal person.
- (3) A legal person may also designate another person from among its members or an employee of that legal person to act as its representative.
- (4) The representative of the defendant who is a legal person referred to in paragraphs 1 and 3 of this Article shall have a written authorisation (power of attorney) issued by the body that appointed him as representative.
- (5) The representative of a defendant who is a legal person may be only one person.
- (6) A legal person and the responsible person within that legal person who both have the status of the defendant in the same matter may each have their own defence attorney or a joint defence attorney.

Representative of the Defendant Being a Foreign Legal Person

Article 114

Representative of the defendant who is foreign legal person shall be the person managing a part of the foreign legal person, branch or representative office conducting business on the territory of Montenegro.

Persons Who May Not Act as Representatives of a Legal Person

Article 115

- (1) Representative of a defendant who is a legal person may not be the responsible person in that legal person against whom proceedings are being conducted for the same misdemeanour, unless when that person is the sole member of the legal person.
- (2) In case referred to in paragraph 1 of this Article, the court shall summon the legal person to appoint another representative within eight days.
- (3) In the first summons, the court shall invite the defendant who is a legal person to designate its representative in writing and to provide proof that the designated person is authorised to represent the legal person in accordance with this Law. The legal person shall submit to the court the written authorisation of its representative before the commencement of the proceedings or the representative of the legal person shall submit the power of attorney to the court when undertaking the first procedural action.
- (4) If the defendant who is a legal person fails to act in accordance with paragraph 3 of this Article or if the court finds that, in case referred to in paragraph 1 of this Article, there is conflict of interest between the legal person and the responsible person, the court shall render a decision appointing another employee of that legal person as representative. If there is no such employee, the court shall render a decision appointing ex officio a defence attorney for the legal person, who shall have all authorisations to represent it.
- (5) If the conditions for conducting proceedings in the absence of the defendant who is a legal person are met, the provision of paragraph 4 of this Article shall not apply.
- (6) No special appeal shall be allowed against a decision rendered on the basis of paragraph 4 of this Article.

Defence Attorney

Article 116

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 18)

- (1) The defence attorney of the defendant may be an attorney-at-law, who may be substituted in the proceedings by an associate attorney or attorney in training who passed the bar exam.
- (2) Prior to undertaking any procedural action, the defence attorney shall submit to the court a written power of attorney signed by the defendant and the defendant may also grant a power of attorney orally for the record before the court conducting the proceedings.
- (3) Rights and duties of the defence attorney shall cease when the defendant revokes the power of attorney and notifies the court thereof and in any case upon the final conclusion of misdemeanour proceedings.

- (4) Unless the defendant expressly objects, his legal representative, spouse or common-law spouse, relative in the direct line, adoptive parent, adopted child, brother, sister or foster parent may engage a defence attorney for him.
- (5) One attorney may act as joint defence attorney for two or more defendants in the same or separate proceedings only if this is not contrary to the interests of their defences.
- (6) A defence attorney may not be the defendant, the injured party, the spouse or common-law-spouse of the injured party, prosecutor or judge or their relative by blood in the direct line of any degree, in the collateral line up to the fourth degree or by marriage up to the second degree.
- (7) A defence attorney may not be a person summoned as a witness, unless exempted by law from the duty to testify and having declared that he will not testify nor a person who acted in the same matter as a judge or as another authorised applicant.
- (8) The defence attorney may perform, on behalf of the defendant, all procedural actions that the defendant himself may perform.

Injured Party and Other Participants in Proceedings

Article 117

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 039/11 as of 04 August 2011, Article 6)

- (1) The injured party, within the meaning of this Law, shall be a person whose personal or property right has been infringed or endangered by a misdemeanour.
- (2) The injured party shall have the right, personally or through his legal representative or attorney, to:
 - 1) submit a request for the initiation of misdemeanour proceedings in cases prescribed by this Law;
 - 2) submit evidence, present motions and assert a property claim for compensation of damage or restitution of items;
 - 3) lodge an appeal against the decision rendered upon his request for the initiation of misdemeanour proceedings.
- (3) Notwithstanding paragraph 2 item 3 of this Article, an injured party who is a victim of domestic violence may lodge an appeal even when he has not submitted a request for the initiation of misdemeanour proceedings.
- (4) The injured party may be heard as a witness in the proceedings.
- (5) Should the injured party who has submitted a request for the initiation of misdemeanour proceedings die within the time limit for submission of the request or during the proceedings initiated upon his request, his spouse, common-law spouse, children, parents, brothers and sisters, adoptive parent or adopted child may, within one month of his death, submit a request or declare that the proceedings are continued.
- (6) A participant in proceedings shall also be a person who has not been injured by the misdemeanour but from whom an item has been temporarily seized or in respect of whom confiscation of an item used in the commission of the misdemeanour has been proposed.

Chapter XI

SUBMISSIONS AND RECORDS

Filing Submissions

Article 118

- (1) Request for the initiation of misdemeanour proceedings, legal remedies and other submissions shall be filed in writing or made orally for the record before the court.
- (2) The court shall keep a record of every action taken during proceedings.

Appropriate Implementation

Article 119

Provisions of the Criminal Procedure Code concerning submissions and records shall apply accordingly in misdemeanour proceedings, unless otherwise provided by this Law.

Chapter XII

DEADLINES

Extent of the Deadline

Article 120

(1) Deadlines set forth by this Law may not be extended unless explicitly allowed by this Law. Should a deadline be set by this Law for the protection of the right to defence and other procedural rights of a defendant, this deadline may be shortened upon a written or oral request by the defendant for the record before the court.

Appropriate Implementation

Article 121

Provisions of the Criminal Procedure Code concerning deadlines shall apply accordingly in misdemeanour proceedings,

Chapter XIII

RETURN TO THE STATUS QUO ANTE

Filing an application

Article 122

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 19)

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 051/17 as of 3 August 2017, Article 9)

An application for the return to status quo ante may be filed by:

- 1) the defendant who, for justified reasons, failed to file an appeal within the prescribed deadline;
- 2) the defendant who, due to failure to attend the hearing, has no right of appeal in the case referred to in Article 183 of this Law.

Return to Status Quo Ante of a Defendant Who Failed to File an Appeal within the Prescribed Deadline

Article 123

- (1) The defendant who fails to meet the deadline for filing an appeal against a judgement, the court shall render a decision allowing the return to status quo ante aimed at filing the appeal if the defendant together with filing the application to return to status quo ante he also submits the appeal, within eight days from the cessation of reasons for failing to meet the deadline. After the expiry of one month from the day the time limit was missed, return to status quo ante may no longer be requested.
- (2) The application for return to status quo ante shall be filed with the court that rendered the first instance decision.
- (3) The application for return to status quo ante shall not, as a rule, stay the execution of the decision; however, the court competent to decide on the application may order that execution be suspended until a decision on the application has been rendered.

Deciding on Return to Status Quo Ante

Article 124

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 051/17 as of 3 August 2017, Article 10)

- 1) The court that rendered the first instance decision shall decide on the return to status quo ante.
- (2) When the court grants the return to status quo ante due to failure to file the appeal within the prescribed deadline, it shall forward the appeal together with the case file to the immediately higher instance court for ruling.
- (3) A ruling granting the return to status quo ante may not be subject to an appeal.
- (4) When the defendant has filed an appeal against the decision refusing the return to status quo ante, the court shall forward that appeal, together with the appeal against the first instance decision and the complete case file, to the immediately higher instance court for ruling.
- (5) If the immediately higher instance court grants the return to status quo ante due to failure to file the appeal within the prescribed deadline, it shall also rule on the appeal filed against the first instance decision within the same decision.

Return to Status Quo Ante Due to Failure to Appear at the Hearing

Article 125

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 20)

- (1) The defendant against whom the court rendered the decision determining that the misdemeanour order has become final and enforceable due to failure to appear at the hearing, pursuant to Article 183 paragraph 2 of this Law, may file an application for return to status quo ante within eight days from the date of receipt of the court decision

or from the day the reason for missing the time limit ceased to exist, but not after the expiry of one month.

(2) The court shall accept the application for return to status quo ante if the defendant proves that:

- 1) the misdemeanour order was not served on him pursuant to Article 131 of this Law;
- 2) failure to appear at the hearing occurred for justified reasons.

Consequences of Filing an Application

Article 126

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 21)

(1) If the court accepts the application for return to status quo ante, it shall:

- 1) quash the misdemeanours order or the decision on the misdemeanour;
- 2) determine the date and time for a new hearing and notify the convicted or fined person and the applicant thereof.

(2) If the convicted or fined person fails to appear on the date and at the time set for the new hearing, the court shall uphold the original misdemeanour order or decision.

(3) The court shall render a decision discontinuing the misdemeanour proceedings or confirm the decision on discontinuance, or set aside the misdemeanour order if the misdemeanour proceedings were initiated by a request for judicial determination, in cases where the defendant or convicted person appears on the date and at the time set for the new hearing but the representative of the applicant fails to appear, unless a different decision may be made on the basis of the submitted or proposed evidence.

Chapter XIV

CLAIM FOR DAMAGES AND COSTS OF MISDEMEANOUR PROCEEDINGS

Appropriate Application

Article 127

Provisions of the Criminal Procedure Code concerning claim for damages and costs shall apply accordingly in misdemeanour proceedings,

Chapter XV

RENDERING AND PRONOUNCING DECISIONS

Types of Decisions and Decision-making Authorities

Article 128

Decisions in misdemeanour proceedings shall be rendered in the form of a ruling and order.

Pronouncement of Decisions

Article 129

- (1) The decision shall, as a rule, be pronounced immediately after it has been rendered, unless otherwise provided by this Law.
- (2) The decision shall be pronounced orally to the interested persons present who have the right to appeal against that decision and by delivery of an authenticated copy if such persons are absent.
- (3) Where a decision is pronounced orally, this shall be entered into the records and a person entitled to file an appeal shall confirm this through his signature.
- (4) The decision that has been pronounced shall be prepared in writing within fifteen days from the date of its oral pronouncement and a written copy of the decision shall be issued immediately if the enforcement of the decision is ordered prior to its finality.
- (5) Should the parties waive the right to appeal, the authenticated copy of the orally announced decision need not contain a statement of reasons.
- (6) Copies of decisions subject to an appellate review shall be served along with an instruction on the right to appeal. The appeal filed to the benefit of the defendant shall be deemed timely if it is filed within the deadline specified in the instruction on the right to appeal and when the deadline specified in the instruction exceeds the statutory deadline.

Decisions of the Second Instance Misdemeanour Court

Article 130

- (1) The second instance court shall render its decisions in accordance with Article 107 paragraph 2 of this Law.
- (2) The decisions of the panel shall be rendered after oral deliberation and voting, by a majority of the votes of the panel members.
- (3) The Chair of the Panel shall chair the deliberations and voting and shall make sure that all the issues are thoroughly and fully considered and shall cast their vote last.
- (4) If the votes on specific issues are divided into more different opinions so that none of them reaches the necessary majority, the issues shall be separated and the voting repeated until a majority is reached. If in such a manner a majority is not reached, the decision shall be rendered by adding the votes most unfavourable to the defendant to the votes less unfavourable to him/her, until a required majority is reached.
- (5) The members of the panel may not abstain from voting on issues presented by the chair of the panel but the member of the panel who voted for the acquittal of the defendant or for the annulment of the decision and was outvoted shall not be obliged to vote on the sanction. If he fails to vote, he shall be deemed as having assented to the vote most favourable to the defendant.
- (6) Deliberation and voting shall be conducted at a closed session.
- (7) Only the members of the panel and court clerk may be present in the room where conferring and voting are taking place.

Chapter XVI

SERVICE OF DOCUMENTS AND REVIEWING CASE FILES

Service of Documents

Article 131

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 039/11 as of 04 August 2011, Article 7)

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 22)

- (1) Serving of documents shall be effected by mail, fax or e-mail or by the competent authority through an official or a person registered to perform service of documents by physical or electronic delivery. A person to whom a document is to be served may be summoned to receive it only exceptionally, when required by the nature or importance of the document to be served.
- (2) When a misdemeanour order has been issued for a misdemeanour involving improper parking of a motor vehicle and cannot be served on the spot, a copy of the misdemeanour order shall be affixed or left in a secure and visible place on the motor vehicle.
- (3) In the case referred to in paragraph 2 of this Article, the authorised body that issued the misdemeanour order shall, after establishing the identity of the vehicle owner, serve the defendant with a written notice indicating where the misdemeanour order is located and that it must be collected within eight days, with the instruction that the misdemeanour order shall become final and enforceable upon the expiry of eight days from the date of receipt of the notice, unless the vehicle owner files a request for judicial determination within that period.
- (4) When a decision imposing a sentence of imprisonment is to be served on the defendant who does not have a defence attorney and the decision cannot be served by other means, the court may appoint a defence attorney ex officio to examine the case file and, if necessary, lodge an appeal.
- (5) Service of documents to legal persons shall be effected by delivery to a person authorised to receive documents or to another person employed by the legal person, who shall affix his signature to the certificate of service or return.
- (6) The method of service shall be determined by the authority whose document is being served.

Time and Place of Service

Article 132

- (1) Service shall be carried out every day from 07:00 until 20:00 in the dwelling or workplace of the person who is being served or in the premises of the competent authority when the person happens to be there.
- (2) When the service cannot be carried out at the time and the address referred to in paragraph 1 of this Article, it may be carried out at anytime and anywhere.

Mandatory Personal Service

Article 133

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 039/11 as of 04 August 2011, Article 8)

- (1) The perpetrator shall be personally served with the misdemeanour order, the request for initiation of misdemeanour proceedings, summons for the hearing and the decision from which the deadline for lodging an appeal begins to run.
- (2) If the person referred to in paragraph 1 of this Article is not found at his residence, business premises or place of work and it has not been established that the person is absent, the server shall return the document to the post office or to the authority sending it if it is not sent by post and a written notice shall be left in the recipient's letterbox, on the door of the residence or business premises or at another appropriate place or with an adult member of the household found at the residence, indicating where the document is located and stating that it must be collected within eight days.
- (3) The server shall sign the notice referred to in paragraph 2 of this Article and indicate on the document returned to the post office or the authority where the notice was left.
- (4) Service shall be deemed effected on the day the person to whom the document is addressed collects it. If the person fails to collect the document within eight days from the date when the notice was left, service shall be deemed effected upon the expiry of the eighth day from that date.
- (5) Court decision shall be personally served to an injured party who is a victim of domestic violence.

Indirect Service

Article 134

- (1) Documents which, pursuant to this Law, do not have to be served personally shall also be served personally but when the recipient is not found at his residence, such documents may be delivered to an adult member of his household.
- If service is carried out at the workplace of the person being served and the person is not there, document may be served to another person who happens to be at the workplace, if they agree to receive it. Service to the lawyer may be carried out by delivering documents to a person employed in their law firm.
- (3) Service pursuant to paragraphs 1 and 2 of this Article may not be carried out to a person who, in the same proceedings, participates with an opposing interest.

Return of Documents to the Issuing Authority

Article 135

Should it be established that the addressee to the document is absent and the persons referred to in paragraph 134 of this Article are unable to hand over the document in due time, the document shall be returned with an indication as to the whereabouts of the absent addressee.

Presumed Service

Article 136

- (1) When service cannot be effected in the manner referred to in in Article 134 of this Law and it has not been established that the person being served is absent, the server shall return the document to the servicing authority or to the post office, if the service is effected by post. The server shall affix a written notice in the addressee's letterbox or

on the door of his residence, business premises or workplace, stating where the document is located and service shall be deemed thereby to have been effected. The server shall indicate on both the notice and the document being served the reason for such service, the date on which the notice was affixed to the door and shall sign it.

- (2) The authority ordering service shall be notified when service has been effected in the manner referred to in paragraph 1 of this Article.

Electronic Service

Article 137

- (1) Service of documents by electronic means shall be carried out in accordance with a special law.
- (2) Service shall be deemed effected on the day the person being served confirms receipt with his electronic signature or upon the expiry of eight days from the date when the notice that the document was sent electronically was recorded.

Refusal of Acceptance

Article 138

- (1) If the person to whom the document is addressed or a person obliged to receive it on his behalf, without lawful reason refuses to accept it, the server shall place the document in the letterbox or in the residence or premises where that person is employed or shall affix it to the door of the residence or premises.
- (2) When service has been effected in the manner referred to in paragraph 1 of this Article, the server shall record on the certificate of service the date, time and reason for refusal, as well as the place where the document was left and service shall be deemed thereby to have been effected.
- (3) If a person refuses to accept the misdemeanour order on the spot, the authorised official shall record on the misdemeanour order the date, time and reason for refusal and service shall be deemed thereby to have been effected.

Change of Temporary or Permanent Residence or Registered Office

Article 139

- (1) When, during misdemeanour proceedings, the defendant changes his address, he shall immediately notify the court conducting the proceedings thereof.
- (2) If the defendant fails to notify the court of the change of address and the server cannot ascertain his new address, the court shall order that all further service for him be effected by posting the documents on the notice board of the court conducting the proceedings.
- (3) Service shall be deemed effected upon the expiry of eight days from the date when the document was posted on the notice board of the court conducting the proceedings.

Special Cases of Service

Article 140

- (1) Services of summons on military personnel, guards in the administrative authority competent for the enforcement of criminal sanctions and institutions accommodating persons deprived of liberty, and on employees of road, river, overseas, and air transportation shall be effected through their command or the immediate superior

officer, the same procedure being applicable thereto in the service of other official documents as needed.

- (2) Writs shall be served on persons deprived of liberty in the court or through the administrative authority competent for the enforcement of criminal sanctions or institution they were accommodated in.
- (3) Service on persons enjoying immunity in Montenegro shall be made through the Ministry of Foreign Affairs of Montenegro, unless otherwise provided for by international treaties.
- (4) Except for letters rogatory of domestic courts for international legal assistance in criminal matters, documents shall be served on the nationals of Montenegro abroad through a diplomatic or consular mission of Montenegro, provided that the foreign state in question does not object to such a manner of service and that the addressee voluntarily consents to be served the document. Where the document is served in a diplomatic or consular mission, the authorized person thereof shall sign the certificate of service in the capacity of the server, and where the service is made by mail they shall confirm this on the certificate of service.
- (5) Summons and decisions issued up to the completion of the hearing for persons involved in the proceedings, save the defendant, may be handed over to a participant to the proceedings who accepts to service them on the addressees, if the court holds that their service is therewith secured.
- (6) Summonses, except for the first summons, and certain notifications may be communicated to the participants in the proceedings by telephone and an official record shall be made thereof.

Appropriate Application of Provisions of the Law on Civil Procedure

Article 141

In cases not provided for by this Law, service shall be carried out pursuant to the provisions of the Law on Civil Procedure accordingly.

Reviewing and Transcribing Case Files

Article 142

- (1) The applicant for the initiation of misdemeanour proceedings, the perpetrator, the perpetrator's defence attorney, the representative of the defendant legal person, the injured party and his legal representative or proxy shall have the right to review and transcribe the case files.
- (2) Review and transcription of case files may also be permitted to other persons who have a legal interest therein.
- (3) When misdemeanour proceedings are pending, permission for review and transcription of the case files shall be granted by the judge conducting the proceedings and following the conclusion of proceedings, such permission shall be granted by the president of the court or an official designated by him.
- (4) Review and transcription of case files may be refused only if this would interfere with the proper conduct of misdemeanour proceedings or where the public has been excluded from proceedings.
- (5) Provisions of the Criminal Procedure Code shall apply accordingly to the review and transcription of case files in misdemeanour proceedings, unless otherwise provided by this Law.

- (6) Appeal shall be permitted against a decision refusing the review or transcription of the case files, but such appeal shall not stay the enforcement of the decision.

Chapter XVII

INITIATION OF MISDEMEANOUR PROCEEDINGS

Submission of the Request

Article 143

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 24)

Misdemeanour proceedings may be initiated on the basis of:

- 1) a request for judicial determination of an issued misdemeanour order, which shall be filed in its original form;
- 2) request for initiating misdemeanour proceedings.

Misdemeanour Order

Article 144

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 25)

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 051/17 as of 3 August 2017, Article 12)

- (1) The authorised body shall issue a misdemeanour order if a misdemeanour within its competence has been established:
 - 1) by direct observation by an authorised official during inspection, supervision or review, as well as by reviewing the official records of the competent authority;
 - 2) on the basis of data obtained from monitoring or measuring devices;
 - 3) by inspecting documentation, premises or goods or in another manner prescribed by law;
 - 4) on the basis of an admission of the misdemeanour by the perpetrator before the authorised body, either on the spot or in other judicial or administrative proceedings.
- (2) A misdemeanour order shall be issued mandatorily under the conditions referred to in paragraph 1 of this Article where the fine is prescribed in a fixed amount. A misdemeanour order may also be issued under the conditions referred to in paragraph 1 of this Article where the fine is prescribed within a range or where the fine is calculated by means of a mathematical formula.
- (3) Where the fine is prescribed within a range, the authorised body shall impose, by misdemeanour order, the minimum prescribed fine.
- (4) In addition to the fine, a misdemeanour order may impose only the protective measure of prohibition from driving a motor vehicle for the minimum prescribed period and the protective measure of confiscation of objects, as well as penalty points.
- (5) Where the perpetrator has committed several concurrent misdemeanours, the authorised body may issue a misdemeanour order imposing a single fine equal to the

sum of all individual minimum fines determined, and where one or more of the misdemeanours carries a prescribed protective measure, it may impose the protective measure of confiscation of objects or prohibition from driving a motor vehicle for the minimum prescribed period.

- (6) Misdemeanour order shall be issued to the defendant immediately after the misdemeanour has been established in accordance with paragraph 1 of this Article, and if that is not possible, the misdemeanour order shall be served on the defendant within sixty days from the day the misdemeanour was established.
- (7) If the authorised body, instead of issuing a misdemeanour order under paragraph 2 of this Article, files a request for initiation of misdemeanour proceedings for a misdemeanour for which a fixed fine is prescribed, the court shall dismiss such request by decision.
- (8) A misdemeanour order may not be issued to a juvenile.

Content of the Misdemeanour Order

Article 145

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 26)

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 051/17 as of 3 August 2017, Article 13)

- (1) Misdemeanour order shall be issued in written form and shall contain the following:
 - 1) the title: misdemeanour order;
 - 2) the name of the authorised body issuing it;
 - 3) the full name and position of the authorised official who issued it;
 - 4) the identification number of the misdemeanour order assigned by the authorised body;
 - 5) the date of issuance and the date of service;
 - 6) the full name of the natural person or responsible person in a legal entity, the address of his temporary or permanent residence, personal identification number, place of employment, for a foreign national the passport or identity card number, and for the responsible person in a legal entity, the function performed;
 - 7) the name and registered office of the legal entity or the full name or business name of the entrepreneur and address, as well as their tax identification number (TIN);
 - 8) a factual description of the act constituting the elements of the misdemeanour, as well as the time and place of its commission;
 - 9) the law or other regulation prescribing the misdemeanour to be applied;
 - 10) the imposed sanction;
 - 11) the amount of compensation for damage and the flat-rate fee for the issuance of the misdemeanour order, where such amount may be determined by a tariff and the costs of proceedings incurred in establishing the misdemeanour through technical means or by conducting analyses and expert examinations, where such costs are fixed;

- 12) instructions on the manner of payment of the fine, compensation and costs, with the corresponding account number and a warning on the consequences of non-payment, including a reference to Article 234 paragraph 2 of this Law;
 - 13) the signature and seal of the authorised official of the authorised body.
- (2) When the misdemeanour has been committed in traffic, the misdemeanour order shall also contain the following:
- 1) the registration number of the vehicle and the vehicle licence number;
 - 2) the driver's licence number, if known;
 - 3) the number of penalty points prescribed by law for the misdemeanour committed.
- (3) Misdemeanour order shall contain a notice that the defendant has the right to file a request for judicial determination within eight days from the date of service, specifying the competent court to which the request shall be submitted.
- (4) Misdemeanour order shall include space for the defendant's signature confirming acceptance of responsibility for the misdemeanour pursuant to Article 147 of this Law, and for the defendant's signature when requesting judicial determination in accordance with Article 150 of this Law.
- (5) The authorised body issuing the misdemeanour order shall prescribe the form of the misdemeanour order, which must contain the data referred to in paragraphs 1 to 4 of this Article, subject to the prior opinion of the ministry competent for judicial affairs.
- (6) A misdemeanour order shall be prepared in one original and two copies. The original shall be delivered to the defendant to whom the misdemeanour order is issued, while the two copies shall be retained by the authorised body that issued the misdemeanour order.

Corrections of the Misdemeanour Order

Article 146

The authorised body that issued the misdemeanour order may correct clerical or other obvious errors ex officio or upon the proposal of an interested party in the proceedings.

Acceptance of Responsibility

Article 147

- (1) The defendant may accept responsibility for the misdemeanour by paying the fine and fulfilling other obligations determined in the misdemeanour order within the specified period or by notifying the authorised body that he accepts the sanction imposed in the misdemeanour order.
- (2) Where the defendant accepts responsibility in accordance with paragraph 1 of this Article, the misdemeanour order shall become final and enforceable.

Acceptance of Liability by Omission

Article 148

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 27)

Where the misdemeanour order has been served pursuant to the provisions of this Law, and the defendant fails to file a request for judicial determination of the issued

misdemeanour order, it shall be deemed that he has accepted liability by omission and the misdemeanour order shall become final and enforceable.

Persons without Residence in Montenegro

Article 149

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 039/11 as of 04 August 2011, Article 9)

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 28)

- (1) A defendant who has no residence or temporary residence in Montenegro, or who is leaving the country for residence abroad and who is issued a misdemeanour order during the working hours of a bank or post office, shall be ordered to pay the imposed fine immediately through a bank or post office.
- (2) When the misdemeanour order is issued outside the working hours of a bank or post office or when the misdemeanour is committed outside of a populated area, the defendant may be offered to pay the fine and postage rate on the spot, against issuance of a receipt and the authorised official shall pay the collected amount into the post office on the next working day.
- (3) If the defendant fails to pay the fine, it shall be deemed that he has filed a request for judicial determination and shall be brought immediately before the competent court.
- (4) When it is not possible to bring the defendant immediately before the court, measures may be taken to ensure his appearance pursuant to Articles 166 and 169 of this Law.

Filing a Request for Judicial Determination

Article 150

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 29)

- (1) Defendant who has been issued a misdemeanour order and does not accept misdemeanour liability may submit to the competent court, within eight days from the date of service of the order, either in person, through another person or by post, the misdemeanour order, which must be personally signed.
- (2) Misdemeanour order referred to in paragraph 1 of this Article shall constitute a request for judicial determination within the meaning of Article 143 paragraph 1 of this Law and must be accompanied by all available evidence.
- (3) When the defendant files a request for judicial determination, the court shall immediately delete the sanctions imposed by the misdemeanour order from the Register of Fines.

Withdrawal of the Defendant's Request for Judicial Determination

Article 151

- (1) Defendant who has submitted a request for judicial determination may withdraw that request.
- (2) In the case referred to in paragraph 1 of this Article, the court shall render a decision establishing that the misdemeanour order has become final and enforceable and shall enter the sanction and costs of proceedings from the misdemeanour order into the Register of Fines.
- (3) The decision referred to in paragraph 2 of this Article may order the defendant to pay the costs of proceedings incurred by submitting the request for judicial determination.

Examining the Request for Judicial Determination

Article 152

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 30)

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 051/17 as of 3 August 2017, Article 14)

- (1) The court shall render a decision dismissing the request for judicial determination if:
 - 1) the request was not submitted within the deadline set forth by the law;
 - 2) the request was submitted by a defendant who has accepted liability; or
 - 3) the request was signed by an unauthorised person.
- (2) When a defendant submits an unsigned request for judicial determination, the court shall invite the applicant to appear before the court within eight days from the date of receipt and sign the request, warning him that otherwise it shall be dismissed as incomplete and the misdemeanour order shall become final and enforceable.
- (3) If the misdemeanour order based on which the request for judicial determination is submitted does not specify the factual description of the act constituting the elements of the misdemeanour, the time and place of commission or other circumstances necessary for an accurate identification of the misdemeanour, the court shall request the authority that issued the misdemeanour order to correct it within eight days from receipt of the request.
Should the authorised body fail to eliminate the shortcomings within the prescribed period, the court shall quash the misdemeanour order.
- (4) On the day when the decision dismissing the request for judicial determination for the reasons referred to in paragraphs 1 and 2 of this Article becomes final, the misdemeanour order being challenged through the request for judicial determination shall become final and enforceable, and the court shall re-enter into the Register of Fines the sanction previously deleted pursuant to Article 150 paragraph 3 of this Law.

Quashing the Misdemeanour Order

Article 152a

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 31)

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 051/17 as of 3 August 2017, Article 15)

- (1) When a misdemeanour order has been issued by an unauthorised body and a request for judicial determination has been submitted, the court shall uphold the request and quash the misdemeanour order.
- (2) If the misdemeanour order based on which the request for judicial determination is submitted does not contain the information referred to in Article 145 paragraphs 1 and 2 of this Law, without which the proceedings cannot be conducted, the court shall request the authorised body that issued the misdemeanour order to supplement it within eight days.
- (3) Should the authorised body fail to eliminate the shortcomings within the deadline referred to in paragraph 2 of this Article, the court shall quash the misdemeanour order.
- (4) If statute of limitations for initiating misdemeanour proceedings has occurred and a misdemeanour order has nevertheless been issued, the court shall quash the misdemeanour order.

Request for Initiating Misdemeanour Proceedings

Article 153

- (1) Should it not be possible to issue a misdemeanour order pursuant to Article 144 of this Law, the applicant shall file a request for initiation of misdemeanour proceedings with the competent court immediately upon learning of the misdemeanour and the perpetrator and not later than within sixty days.
- (2) The request for initiation of misdemeanour proceedings shall be submitted to the court in a sufficient number of copies for the court and the defendants.

Content of the Request for Initiating Misdemeanour Proceedings

Article 154

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 32)

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 051/17 as of 3 August 2017, Article 16)

Request for initiating misdemeanour proceedings shall contain the following:

- 1) title or the name of the applicant and his address;
- 2) the name of the court to which the request is submitted;
- 3) name of the defendant who is a natural person, the address of his permanent or temporary residence, personal identification number, place of employment, for a foreign national the passport or identity card number, and for a responsible person his function or occupation, and where possible, a telephone number;
- 4) name and registered office of the defendant who is a legal entity, as well as its tax identification number;
- 5) factual description of the act constituting the elements of the misdemeanour, time and place of its commission and other circumstances necessary for its precise determination;
- 6) law prescribing the misdemeanour to be applied;

- 7) proposal of evidence to be presented, including the list of names and addresses of witnesses, documents to be read and objects serving as evidence,
 - 8) signature and seal of the applicant.
- (2) Provided that the request for initiating misdemeanour proceedings is submitted by a natural person as the injured party, the request does not have to include the law stipulating the misdemeanour to be applied nor the personal identification number of the defendant.

Examination of the Conditions for Conducting Misdemeanour Proceedings

Article 155

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 33)

- (1) When the court receives a request for initiation of misdemeanour proceedings, it shall examine whether it has jurisdiction and whether the conditions for conducting the proceedings are met and shall decide on the further course of proceedings.
- (2) Should the court find that it is not competent, it shall render a decision declaring itself not competent and, upon finality of that decision, forward the case to the competent court or other competent authority.
- (3) Should the request for initiation of misdemeanour proceedings not contain the information referred to in Article 154 of this Law, without which the proceedings cannot be conducted, the court shall request the applicant to supplement the request within eight days.
- (4) Should the applicant fail to eliminate the shortcomings within the time limit referred to in paragraph 3 of this Article, it shall be deemed that the applicant has withdrawn the request and the court shall dismiss it.

Dismissing the Request

Article 156

- (1) The court shall, upon establishing that the conditions for initiating misdemeanour proceedings are not met, render a decision dismissing the request for initiation of misdemeanour proceedings, in the following cases:
 - 1) the request was not submitted within the time limit referred to in Article 153 paragraph 1 of this Law;
 - 2) the request was not submitted by an authorised body or authorised person;
 - 3) the act described in the request does not constitute a misdemeanour;
 - 4) statute of limitations for initiating misdemeanour proceedings has occurred;
 - 5) circumstances excluding the misdemeanour liability of the defendant exist; or
 - 6) other statutory reasons exist which prevent the initiation of proceedings.
- (2) The decision referred to in paragraph 1 of this Article shall be delivered to the applicant and the injured party shall be informed that he may pursue his claim for damages in civil proceedings.
- (3) A complaint against the decision referred to in paragraph 1 of this Article may be lodged by the applicants within eight days from receiving the decision.

Withdrawal of the Request for Initiating Misdemeanour Proceedings

Article 157

The applicant for initiation of misdemeanour proceedings may withdraw the request at any time before the first instance decision is rendered.

Preparation for the Hearing

Article 158

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 051/17 as of 3 August 2017, Article 17)

- (1) When the court does not dismiss the request for initiating misdemeanour proceedings or the request for judicial determination (hereinafter: the request), it shall issue an order setting the time and place for the hearing and specifying the persons to be summoned.
- (2) The order shall indicate the person against whom the misdemeanour proceedings are conducted and the legal qualification of the misdemeanour. Where the request is filed against several persons or for several misdemeanours, the order shall specify all persons and the legal qualification for each misdemeanour. The order shall not be served on the applicant or the defendant.
- (3) Where the request is filed against a single person for several misdemeanours, some of which require a hearing and others do not, the court shall issue an order for the holding of a hearing.
- (4) No appeal shall be allowed against the order.

Summoning to the Main Hearing

Article 159

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 34)

- (1) The following persons shall be summoned to the hearing: the defendant and his defence attorney, the applicant, the injured party and their legal representatives and proxies and the proposed witnesses and experts, except those whose testimony the judge considers unnecessary.
- (2) Provided that the defendant is a legal entity, its representative shall be summoned to the hearing.
- (3) With regard to the contents of the summons for the defendant, provisions of Articles 163 paragraph 2 of this Law shall be applied.
- (4) The summons shall warn the defendant of the consequences of failure to appear at the hearing referred to in Article 183 of this Law.
- (5) Where the presence of the defendant is not essential for establishing the facts, the summons shall state that, in the event of his absence, a decision shall be rendered without his examination.
- (6) A summons shall be served on the defendant in such a manner that between the moment it was served and the day of the main hearing there is sufficient time to prepare

a defence, but not less than eight days. Upon the request of the defendant or applicant, and with the consent of the defendant, this period may be shortened.

Appropriate Application of the Criminal Procedure Code

Article 160

Summoning of persons referred to in Article 159 paragraphs 1 and 2 of this Law shall be carried out by applying the provisions of the Criminal Procedure Code accordingly, unless otherwise provided by this Law.

Ensuring the Presence of Witnesses at the Hearing and Obtaining Evidence

Article 161

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 35)

- (1) The defendant, or the applicant, may propose, during the hearing, the summoning of new witnesses or obtaining of other evidence for the hearing, which he shall be obliged to provide and if he is unable to obtain such evidence himself, he may request the court to obtain it ex officio.
- (2) Party intending to submit a document as evidence shall bring it to the hearing. If the document is not accessible to the party wishing to submit it as evidence, that party may request the court to obtain it. Such request shall be submitted to the court before the commencement of the hearing. The court may also, on its own initiative, decide to obtain new evidence for the hearing.
- (3) Applicant shall bear the burden of proof that the defendant committed the misdemeanour.
- (4) In the case of bringing the person referred to in Articles 166 and 167 of this Law, the presence at the hearing of the applicant shall be mandatory, and he shall be obliged to present the evidence at his disposal, as well as to ensure the attendance of the proposed witnesses.
- (5) In the case referred to in paragraph 4 of this Article, the court shall dismiss the request for initiation of misdemeanour proceedings if, at the hearing, the applicant and the proposed witnesses are not present or the applicant has failed to provide the evidence, unless he was unable to do so due to justified reasons.
- (6) Where the conditions referred to in paragraph 4 of this Article are met, the court shall commence the proceedings without delay; if this is not possible for justified reasons, the court shall immediately set a new date for the hearing.
- (7) The hearing shall not be postponed due to the failure of either party to provide witnesses or documents, except where the court determines that such failure was justified.

Chapter XVIII

MEASURES FOR ENSURING THE PRESENCE OF THE DEFENDANT AND FOR UNHAMPERED CONDUCTING OF THE MISDEMEANOUR PROCEDURE

Types of Measures and General Rules of Their Enforcement

Article 162

Measures for ensuring the presence of the defendant and the unhampered conducting of misdemeanour proceeding shall be as follows: summons, apprehension, measures of supervision, bail and detention.

- (2) When deciding which of the measures referred to in paragraph 1 of this Article to apply, the court shall observe the conditions stipulated for the application of individual measures, taking care not to apply a more severe measure if the same purpose can be achieved by a more lenient one.
- (3) The court shall, ex officio, revoke the measures referred to in paragraph 1 of this Article or replace them with more lenient measures if the statutory conditions for their application have ceased to exist or if circumstances have arisen in which the same purpose may be achieved by a more lenient measure.

Summoning the Defendant

Article 163

- (1) The presence of the defendant in misdemeanour proceedings shall be ensured through the summons. The court shall summon the defendant.
- (2) The defendant shall be summoned by means of serving a sealed written summons containing:
 - 1) the name of the court issuing the summons and the case number;
 - 2) full name of the defendant;
 - 3) statutory title of the misdemeanour the defendant is charged with;
 - 4) place where the defendant is required to appear;
 - 5) date and time when the defendant is required to appear;
 - 6) a statement that the person is being summoned in the capacity of a defendant and a warning of the consequences of failure to appear;
 - 7) the official seal and the signature of the judge.
- (3) When the defendant is summoned for the first time, a copy of the application for the initiation of misdemeanour proceedings shall be delivered together with the summons and he shall be instructed of the right to engage a defence attorney, that the attorney may be present during his questioning and that the defendant may submit a written defence to the court.
- (4) The defendant may be summoned by telephone or by other means of electronic communication.
- (5) Summons shall indicate that the defendant must appear at the hearing with any evidence in support of their defence or promptly inform the court of any evidence they are unable to present.
- (6) Upon receiving the first summons, the defendant shall be instructed that, until the final conclusion of the proceedings or until the completion of the enforcement of the decision on the misdemeanour, he is obliged to immediately inform the court of any change of address or intention to change his temporary residence and shall be warned of the consequences stipulated by this Law.
- (7) Provided that the defendant is unable to appear in response to the summons due to illness or another unavoidable impediment, they may be heard at the place they are located or their hearing may be postponed.
- (8) Provisions of paragraphs 1 to 4 of this Article shall apply to the defendant that is a legal person and to its representative accordingly.

Apprehension

Article 164

If a duly summoned defendant fails to appear without justification or if proper service of the summons could not be effected and it is evident from the circumstances that the defendant is evading receipt of the summons, the court may issue a warrant for his apprehension. Should the court assess that there are conditions to conduct the proceedings and render a decision without hearing the defendant, no apprehension warrant shall be issued.

Warrant for Apprehension

Article 165

- (1) Warrant for apprehension shall be issued in writing and shall contain: the full name of the defendant to be apprehended together with any other available identifying information, misdemeanour the defendant is charged with along with reference to the statutory provisions defining the misdemeanour, reason for issuing the warrant and the official seal and signature of the judge.
- (2) Warrant for apprehension shall be enforced by the authority competent for police affairs.
- (3) Person responsible for enforcing the warrant shall serve the warrant to the defendant and ask the defendant to accompany them. Should the defendant refuse to comply, they shall be apprehended by force.
- (4) As a rule, no apprehension warrant shall be issued against members of the armed forces or the police but their superior officer or the relevant institution shall be requested to ensure their appearance. If necessary, having regard to the circumstances of the case, such persons shall be apprehended in line with the general rules on apprehension referred to in paragraphs 1, 2 and 3 of this Article.

Deprivation of Liberty

Article 166

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 36)

- (1) Authorised police officer or other official, when empowered by a special law, may deprive a person of liberty where there is reasonable suspicion that the person has committed a misdemeanour, if:
 - 1) the identity of that person is unknown;
 - 2) the person has no permanent or temporary residence in Montenegro and there are circumstances indicating that they might flee or go abroad to avoid liability for the misdemeanour;
 - 3) there are circumstances indicating that the person will repeat the misdemeanour or complete an attempted misdemeanour;
 - 4) there is a risk that the person will destroy, conceal, alter or falsify evidence relevant to misdemeanour proceedings.
- (2) In case referred to in paragraph 1 of this Article, the authorised police officer or other official shall prepare an official record stating the time and place of the deprivation of

liberty and shall immediately, without delay, bring that person before the court, together with the request for the initiation of misdemeanour proceedings.

- (3) Notwithstanding, if due to objective reasons a person deprived of liberty cannot be brought before the court in line with paragraph 2 of this Article, the authorised official referred to in paragraph 1 shall bring the person deprived of liberty before the court as soon as the reasons preventing it have ceased and no later than within twelve hours.
- (4) If an authorised police officer or other official deprives a person of liberty after 22:00, that person shall be brought before the competent court at the beginning of the court's working hours, including non-working days.
- (5) Persons deprived of liberty shall be immediately informed in their language or in a language they understand about the grounds for their apprehension and, at the same time, informed that they are not obliged to make a statement, that they have a right to a defence attorney of his own choice and to request that a person of their choosing be informed on their deprivation of liberty as well as a diplomatic or consular representative of a state whose nationals they are, or a representative of appropriate international organization if he is a stateless persons.

Detention

Article 167

During misdemeanour proceedings, the defendant may be detained by a court order if reasons referred to in Article 166 paragraph 1 of this Law exist but no longer than 12 hours.

Detention Order

Article 168

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 37)

- (1) Judge conducting the misdemeanour proceedings shall issue an order for the detention of the defendant, specifying the date and time when the detention was ordered, the legal basis for the detention and the reasons for ordering detention.
- (2) Order for detention shall be communicated to the defendant, who shall acknowledge receipt by signature.
- (3) Detained defendant shall be allowed, without delay, to inform a person of their choice of the detention, as well as the diplomatic or consular representative of the state of which they are a national, or the representative of the appropriate international organisation if the person is a refugee or stateless or their defence attorney was not present during their questioning.
- (4) Court may issue an order for the detention of the defendant even prior to their questioning.

Seizure and Retention of a Travel Document

Article 169

- (1) For the purpose of ensuring the presence of the defendant before the court, an authorised police officer or other authorised person may, in the case referred to in

- Article 166 paragraph 1 point 2 of this Law, seize the defendant's travel document or other personal identification document until the defendant is brought before the court.
- (2) The court may extend the duration of the measure referred to in paragraph 1 of this Article until the enforcement of a misdemeanour sanction.

Retention of a Travel Document

Article 170

- (1) The court may retain the travel document of the defendant until the execution of the decision if it finds that a convicted person whose residence is in another state might frustrate the execution of the decision by leaving the territory of Montenegro.
- (2) A certificate shall be issued confirming the retention of the travel document.

Chapter XIX

SUPERVISION MEASURES

Types of Measures

Article 171

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 38)

- (1) If there are circumstances indicating that the defendant might flee, hide, go to an unknown place or abroad or disrupt conducting of the misdemeanour procedure as well as to prevent the defendant from committing new misdemeanours or for reasons of traffic safety or in cases concerning a misdemeanour prescribed by the Law on Protection from Domestic Violence, the court may, ex officio or upon the motion of a prosecutor or injured party, render a reasoned ruling imposing one or more supervision measures.
- (2) Supervision measures shall be:
- 1) prohibition to leave one's dwelling;
 - 2) prohibition to leave place of residence;
 - 3) prohibition to visit particular places or areas;
 - 4) duty to occasionally report to a certain public authority;
 - 5) prohibition of access to or meeting with certain persons;
 - 6) provisional seizure of a travel document;
 - 7) provisional seizure of a driving licence.
- (3) Where there is reasonable suspicion that a misdemeanour prescribed by law has been committed, the authority competent for police affairs may issue an order temporarily imposing one or more supervision measures referred to in paragraph 2 items 5, 6 and 7 of this Article or another measure prescribed by law, against the perpetrator of the misdemeanour, for a period not exceeding seven days, unless otherwise provided by a special law.
- (4) If, in the case referred to in paragraph 3 of this Article, the authority competent for police affairs fails to submit to the court, within seven days from the day the supervision measure was imposed, a request for the initiation of misdemeanour proceedings together with a motion for the extension of the measure, or if, after such an application has been submitted, the court does not decide on the measure within a further period of three days, the application of the supervision measure shall cease.

- (5) No appeal shall be allowed against a decision rejecting a motion for imposing or extending a supervision measure nor against a decision terminating a supervision measure. The defendant shall have the right to appeal against a decision imposing or extending a supervision measure. The appeal shall not stay the enforcement of the ruling. The second instance court shall decide on the appeal within forty-eight hours of its receipt.
- (6) If, prior to or during the proceedings, a supervision measure has been imposed on the defendant which, by its nature and purpose, corresponds to a protective measure imposed under a decision on the misdemeanour, the duration of the supervision measure shall be calculated into the duration of the imposed protective measure.

Appropriate Application of the Criminal Procedure Code

Article 172

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 39)

With regard to the type, implementation and limitations of supervision measures, as well as the decisions imposing and enforcing such measures, the provisions of the Criminal Procedure Code shall apply accordingly, unless otherwise prescribed by this Law.

Reasons for Setting Bail

Article 173

- (1) When misdemeanour proceedings are initiated against a defendant who does not have permanent residence in Montenegro or who is temporarily residing in another state, as well as in other cases where there is a risk that the defendant might flee to avoid responsibility for the misdemeanour, it may be required that the defendant personally, or another person on their behalf, post bail to ensure that they will not flee before the termination of the misdemeanour proceedings and that the defendant undertakes not to go into hiding or leave their place of residence without permission.
- (2) Bail may not be set before the defendant has been heard nor without their consent.

Content and Amount of Bail

Article 174

- (1) Bail shall always be expressed as an amount of money that is set on the basis of the seriousness of the misdemeanour, personal and family circumstances of the defendant and the financial situation of the person posting bail.
- (2) Bail shall consist of depositions of cash, securities, valuables or other movables of more considerable value that can be easily cashed and kept, or of placing a mortgage for the amount of bail on real estate of the person posting bail.
- (3) The amount of bail shall be set in the amount of the highest fine prescribed for the misdemeanour for which proceedings are being conducted.
- (4) If proceedings are conducted against the same defendant for several misdemeanours, bail shall be set up to the amount of the fine that may be imposed for concurrent misdemeanours.
- (5) In cases referred to in paragraphs 3 and 4 of this Article, the amount of bail may be increased by the value of the property claim asserted by the injured party.

Bail in Cases of Leaving the Country

Article 175

If the misdemeanour has been committed by a person who does not have permanent residence in Montenegro and wishes to leave its territory before the judgement becomes final, the court may, upon the defendant's request, set bail regardless of the conditions referred to in Article 173 paragraph 1 of this Law.

Handling of Data

Article 176

- (1) Bail shall, as a rule, be retained until the final judgement is rendered.
- (2) If a final decision has been made to discontinue the misdemeanour proceedings, posted bail shall be returned.
- (3) If, following the final judgement, the convicted person fails to pay compensation for damages or the costs of misdemeanour proceedings, the set amount shall be collected from the posted bail, and if the amount posted is insufficient, it shall first be used to compensate for the damage.
- (4) If the convicted person fails to pay the fine or the determined amount of seized pecuniary gain, following the payment of damages and procedural costs, the fine or the determined amount of pecuniary gain shall be collected from the bail.
- (5) If imprisonment has been imposed, the bail shall be lifted when the convicted person begins to serve the sentence.
- (6) If the convicted person fails to commence serving the prison sentence or to comply with the protective measure, the remaining bail shall be retained in full and paid into the budget of Montenegro.
- (7) If the defendant flees or leaves the territory of Montenegro, the court shall render a decision ordering that the value posted as bail be paid into the budget of Montenegro.

Chapter XX

PLEA BARGAINING AGREEMENT

Concluding the Agreement

Article 177

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 039/11 as of 04 August 2011, Article 10)

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 051/17 as of 3 August 2017, Article 18)

- (1) When the misdemeanour proceeding is being conducted for one misdemeanour or several concurrent misdemeanours the authorised applicant may propose to the defendant and his defence attorney the conclusion of a plea-bargaining agreement, i.e. to the defendant person and his defence attorney may propose the conclusion of such an agreement to the authorised applicant.
- (2) When the proposal referred to in paragraph 1 of this Article has been made, the parties and the defence attorney may negotiate the conditions of plea bargaining for the misdemeanour or misdemeanours the defendants are charged with.

- (3) A plea agreement must be made in writing and may be submitted until the conclusion of the first hearing for holding of the trial or for examination in proceedings conducted without a trial at the latest.
- (4) The plea agreement shall be submitted to the court.
- (5) Plea agreement may not be concluded in proceedings for the determination of misdemeanours in the field of protection against domestic violence.

Appropriate Application of the Criminal Procedure Code

Article 178

With regard to the subject matter of the plea agreement, the decision on the agreement and the judgement rendered on the basis of a plea agreement, provisions of the Criminal Procedure Code shall apply accordingly.

Chapter XXI

HEARING

General Public

Article 179

- (1) The hearing shall be open to the public.
- (2) Only adults may attend the hearing.
- (3) Persons attending the hearing shall not carry arms or dangerous tools, except the guards of the defendant who may be armed.

Exclusion of Public

Article 180

Court may, until the conclusion of the hearing, exclude the public ex officio or upon the motion of a party, but always after hearing their statements, if that is necessary for keeping information secret, protecting public order, preserving morality, protecting the interests of a minor or protecting the personal or family life of the defendant or the injured party.

Commencement of the Hearing

Article 181

Judge shall open the hearing and announce the case of the hearing, determine whether all summoned persons have appeared, and if not, shall check whether the summons were duly served and whether those absent have justified their absence.

Rendering Decisions in the Absence of the Defendant

Article 182

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 40)

- (1) If, at a hearing scheduled on the basis of a request for initiating misdemeanour proceedings, the defendant who has been duly summoned fails to appear and does not justify their absence, the court shall, in the presence of the applicant and on the

basis of the evidence submitted or proposed, render a decision in the defendant's absence.

- (2) If, in the case referred to in paragraph 1 of this Article, the facts of the case cannot be sufficiently established to render a decision or if the applicant has amended or clarified the request at the hearing, a new hearing shall be scheduled and the presence of the defendant shall be secured by issuing an apprehension warrant.
- (3) In the case referred to in paragraph 1 of this Article, a sentence of imprisonment may not be imposed on the defendant.

Failure of the Defendant to Appear

Article 183

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 41)

- (1) If, at a hearing scheduled on the basis of a request for judicial determination, the duly summoned defendant fails to appear and does not justify their absence, it shall be deemed that they have accepted responsibility for the misdemeanour by omission.
- (2) In the case referred to in paragraph 1 of this Article, the court shall render a decision determining that the misdemeanour order has become final and enforceable on the day the decision is rendered, due to the defendant's failure to appear.
- (3) Appeal shall be not be allowed against the decision referred to in paragraph 2 of this Article but the defendant may file an application to return to status quo ante.

Failure of the Applicant to Appear

Article 184

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 42)

If the duly summoned applicant for the initiation of misdemeanour proceedings or the representative of the authority that issued the misdemeanour order, fails to appear at the hearing at which the defendant is present, the court shall render the decision discontinuing misdemeanour proceedings, unless, on the basis of the submitted or proposed evidence, it is able to decide otherwise.

Failure of the Applicant and Defendant to Appear

Article 185

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 43)

If the misdemeanour proceedings have been initiated on the basis of a request for the initiation of misdemeanour proceedings and both the duly summoned representative of the applicant and the defendant fail to appear, the hearing shall be postponed.

Course of a Hearing

Article 186

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 44)

- (1) The hearing shall commence with the announcement of the main contents of the request. The hearing, once begun, shall proceed in an uninterrupted sequence, if possible.
- (2) The court shall ask the defendant whether they accept responsibility for the misdemeanour they are charged with. Should the defendant accept responsibility, the court shall decide only on the type and amount of the sanction and the costs of proceedings. In such a case, the decision shall include the statement of reasons only in terms of the sanction and the instruction on legal remedy shall indicate that the defendant may challenge only the part of the decision relating to the sanction.
- (3) Provided that the defendant does not accept responsibility, the court shall invite them to present their defence.
- (4) Provided that the defendants are a legal entity and the responsible person within that legal entity, the representative of the legal entity shall be examined first, followed by the responsible person.
- (5) After the defendant's examination, the court shall proceed with the presentation of evidence through the hearing of witnesses and experts and by presenting other evidence.
- (6) The order in which evidence is presented shall be determined by the judge.
- (7) Records shall be kept of the hearing and it shall contain an essential summary of the entire contents and course of the hearing.

Rights of Parties at the Hearing

Article 187

The applicant, the defendant and their defence attorney, the representative and proxy of the legal entity, and the injured party shall have the right, during the hearing, in addition to the evidence submitted in line with Article 161 of this Act, to propose other evidence and make additional submissions, and, with the approval of the judge conducting the proceedings, to pose questions to the persons being examined.

Request for Amending the Request for Initiating Misdemeanour Proceedings

Article 188

- (1) Should the evidence presented at the hearing indicate that the factual circumstances set out in the request for initiating misdemeanour proceedings have changed, the applicant may orally amend the request during the hearing.
- (2) In the case referred to in paragraph 1 of this Article, at the request of the defendant or their defence attorney, the court shall, where necessary, allow sufficient time for the preparation of the defence in respect of the amended request.

Closing Arguments

Article 189

- (3) After the presentation of evidence is completed, the judge shall call on parties, the injured party and defence attorney to present their closing arguments.

- (2) If, after having heard closing arguments from the parties, defence attorney, injured party and proxy of the injured party, the judge finds that no additional evidence need to be presented, he shall declare that the main hearing is closed.

Chapter XXII

COURT DECISIONS

Rendering Decisions

Article 190

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 039/11 as of 04 August 2011, Article 11)

At the conclusion of the main hearing, the court shall, as a rule, render its decision immediately.

Subjective and Objective Identity

Article 191

- (1) The decision may relate only to the person against whom the request for initiating misdemeanour proceedings has been submitted or to the person who has filed the request for judicial determination, and only to the misdemeanour referred to in the submitted or amended request during the hearing.
- (2) The court shall not be bound by the proposal or by the legal qualification of the misdemeanour made by the applicant.

Evidence Which Serves as Grounds for the Decision

Article 192

- (1) The court shall ground its decision only on facts and evidence which were directly presented at the hearing or which are contained in the records or other documents and which were read and presented appropriately at the hearing in line with this Law.
- (2) The court shall conscientiously evaluate every item of evidence individually and its correspondence to the rest of evidence and, based on such evaluation, it shall reach a conclusion on whether a certain fact has been proved.

Types of Decisions

Article 193

- (1) Misdemeanour proceedings shall be concluded by a decision acquitting the defendant, a decision declaring the defendant guilty or a decision discontinuing the misdemeanour proceedings.
- (2) If the misdemeanour proceedings concern several misdemeanours, the decision shall specify for which misdemeanour the defendant is found guilty, for which they are acquitted and for which the proceedings are discontinued.

Decision Acquitting the Defendant

Article 194

The court shall render a decision acquitting the defendant if:

- 1) the act the defendant is charged with does not constitute a misdemeanour;
- 2) it has not been proven that the defendant committed the misdemeanour for which a request for initiating misdemeanour proceedings was filed or a misdemeanour order was issued;
- 3) there are circumstances excluding the misdemeanour liability of the defendant.

Decision Declaring the Defendant Guilty

Article 195

- (1) Decision declaring the defendant guilty of a misdemeanour shall be issued when, in the course of the misdemeanour proceedings, the existence of the misdemeanour and the defendant's liability for that misdemeanour have been established.
- (2) The pronouncement of the decision declaring the defendant guilty shall specify:
 - 1) the misdemeanour for which the defendant is found guilty, along with a citation of the facts and circumstances that constitute the elements of the misdemeanour and those on which the application of a particular provision of this Law depends,
 - 2) legal qualification of the misdemeanour and statutory provisions applied;
 - 3) the punishment to which the defendant is sentenced;
 - 4) decision on a suspended sentence,
 - 5) decision on protective measures and confiscation of pecuniary gain,
 - 6) decision on deducting time spent during deprivation of liberty and detention;
 - 7) decision on costs of misdemeanour proceedings and on the claim for damages.
- (3) If the defendant has been fined, the pronouncement of the decision shall indicate the deadline for payment or way to substitute the fine.

If a protective measure of confiscation of items has been imposed, the operative part of the decision shall specify how the confiscated items should be dealt with.

Discontinuation of Misdemeanour Proceedings

Article 196

Decision discontinuing the proceedings against the defendant shall be rendered when it is established that:

- 1) the court lacks subject matter jurisdiction to conduct misdemeanour proceedings;
- 2) proceedings were conducted without a request from an authorised applicant or the request was not filed within the deadline referred to in Article 153 paragraph 1 of this Law;
- 3) the defendant has died during the misdemeanour proceedings;
- 4) the defendant enjoys immunity;

- 5) the applicant has withdrawn the request from the commencement until the conclusion of the hearing;
- 6) the defendant has already been finally convicted or acquitted for the same misdemeanour, or the request against him has been finally dismissed, the proceedings have been finally terminated, or the defendant has been finally found guilty in criminal proceedings for an act that also contains the elements of a misdemeanour;
- 7) statute of limitations for conducting misdemeanour proceedings has expired;
- 8) other circumstances exist which exclude the conduct of misdemeanour proceedings.

Content of the Decision

Article 197

- (1) A written copy of the decision of the court shall fully correspond to the decision as rendered. The decision shall contain an introduction, pronouncement and a statement of reasons, unless otherwise provided by this Law.
- (2) The introduction of the decision shall contain: the coat of arms of Montenegro, the name of the court, first and last name of the judge and court clerk, the first and last name of the defendant or the name and seat of the legal person which is a defendant, misdemeanour they are charged with, whether they were present at the hearing, the date of the hearing, whether the hearing was open to the public, the first name and surname of the applicant, defence attorney, proxy and legal representative present at the main hearing and the date when the rendered decision was pronounced.
- 3) The pronouncement of the decision shall contain: personal details of the defendant and the decision declaring the defendant guilty of the misdemeanour he has been charged with or acquitting the defendant of the request submitted against him for that misdemeanour or the decision discontinuing the proceedings against him as well as the decision on the costs of proceedings.
- (4) If the defendant is found guilty, the pronouncement of the decision shall also include the data referred to in Article 195 of this Law and if the defendant is acquitted, the pronouncement shall include the description of the misdemeanour he was charged with, together with the decision on the costs of misdemeanour proceedings and on the claim for damages, if such claim has been submitted.
- (5) In the statement of reasons the court shall briefly present reasoning for every item of the decision by presenting uncontested facts and for what reasons they are considered to be proven or not proven, with special emphasis on the credibility of contradictory evidence, the reasons for which the motions of the parties were rejected, the reasons for its decision not to examine directly a witness or expert witness but to read the written testimony or expert witness findings, the reasons for its decision on legal issues, especially in ascertaining whether the misdemeanour was committed and whether the defendant was responsible and in applying specific provisions of the Law to the defendant and to their act, and the reasons for referring the injured party to the civil proceedings.
- (6) If the defendant has been sentenced, the statement of reasons shall indicate the circumstances the court considered in fixing the punishment. The court shall specifically state the reasons on which it relied when deciding that the penalty should be mitigated, that the defendant should be exempted from punishment, conditionally sentenced, that a protective measure should be imposed, that pecuniary gain should be seized or that a suspended sentence should be revoked.

- (7) If the defendant is acquitted, the statement of reasons shall particularly indicate the reasons referred to in Article 194 of this Law for such a decision.
- (8) In the statement of reasons of the decision discontinuing the proceedings against the defendant or, according to which the request is dismissed, the reasons for discontinuation or dismissal shall be stated, as well as the law under which such action was taken.

Corrections to the Decision

Article 198

- (1) Errors in writing names and numbers and other obvious errors in writing and arithmetic, disagreements between the written copy of the decision and the original decision shall be corrected through a special ruling by the judge, on the motion of the parties or ex officio.
- (2) If there is a discrepancy between the written copy of the decision and the original of the decision in terms of data referred to in Article 195, paragraph 1, items 1 to 5 and Item 7 of this Law, the ruling on the correction shall be delivered to the persons to whom the decision was previously delivered.
- (3) In the case referred to in paragraph 2 of this Article, the deadline for lodging an appeal against the decision shall run from the day when the ruling on the correction of the decision is delivered and no separate appeal shall be allowed against that ruling.

Chapter XXIII

APPEAL

Right to Appeal

Article 199

- (1) Appeal may be filed against a decision rendered in the first instance within eight days from the date of delivery of the written copy of the decision, unless otherwise provided by this Law.
- (2) Timely filed appeal shall stay enforcement of the ruling, unless otherwise provided by this Law.

Appellants

Article 200

- (1) An appeal may be lodged by the parties, the defence attorney of the defendant, the legal representative of the defendant and the injured party.
- (2) An appeal may also be lodged in favour of the defendant by his or her spouse or common-law partner, a relative by blood in the direct line, an adoptive parent or adoptee, a brother, sister or a guardian. In this case, the period allowed for the appeal shall run from the day when the defendant or his defence attorney was delivered a copy of the decision.
- (3) The injured party may challenge the decision only in respect of the ruling on the costs of misdemeanour proceedings, or, if an acquittal has been rendered, the injured party may lodge an appeal on any of the grounds referred to in Article 203 of this Law.
- (4) An appeal may also be lodged by a person against whom a protective measure of confiscation of objects has been imposed or from whom pecuniary gain through the misdemeanour has been confiscated.

Waiver and Abandonment of an Appeal

Article 201

- (1) The defendant and the applicant may waive the right to appeal after the decision has been announced, and may abandon an appeal already lodged until the second instance decision has been rendered.
- (2) A waiver and abandonment of an appeal may not be revoked.

Contents of an Appeal and Handling of an Incomplete Appeal

Article 202

- (1) Appeal shall contain the following:
 - 1) indication of the decision against which the appeal is lodged;
 - 2) the ground for challenging the decision referred to in Article 203 of this Law,
 - 3) the reasons for the appeal,
 - 4) the motion to vacate or revise the challenged decision in whole or in part,
 - 5) the signature of the appellant.
- (2) If an appeal has been lodged by a defendant who does not have a defence attorney or by an injured party who does not have an authorised representative from among the ranks of attorneys and the appeal has not been drafted in line with paragraph 1 of this Article, the first instance court shall summon the appellant to supplement the appeal within a specified period, either by a written submission or by making a statement for the record before that court. If the appellant fails to comply with such a summons, the court shall dismiss the appeal if it does not contain the signature of the appellant, and if the appeal does not contain the indication of the decision the appeal has been filed against, it shall be dismissed only if it cannot be established to which decision it relates.
- (3) If the appeal is lodged by the applicant, defence attorney or the injured party who has an attorney as a proxy and the appeal does not contain the information referred to in paragraph 1 of this Article, the court shall dismiss the appeal.
- (4) New facts and new evidence may be presented in the appeal, but appellant shall cite the reasons for failing to present them earlier. The defendant who has admitted the grounds for the request in their entirety, pursuant to Article 186 paragraph 2 of this Law, may present in the appeal only the new facts and evidence that are relevant to the decision on the punishment. When pointing to new facts, the appellant shall present evidence supporting these facts, and when proposing new evidence, they shall state the facts to be proven by this evidence.

Grounds for Challenging the Decision

Article 203

Court decision may be challenged due to the following:

- 1) substantive violations of the provisions of misdemeanour procedure,
- 2) incorrect application of the substantive law prescribing the misdemeanour;
- 3) the state of the facts being erroneously or incompletely established,
- 4) the decision on sanctions, forfeiture of pecuniary gain, costs of misdemeanour proceedings and claim for damages.

Substantive violations of the Provisions of Misdemeanour Procedure

Article 204

- (1) The following shall constitute a substantive violation of the provisions of misdemeanour procedure:
- 1) the court was improperly constituted or the decision was rendered by a judge who did not conduct the hearing or who should have been disqualified from conducting the misdemeanour proceedings or who had been disqualified therefrom by a final decision;
 - 2) the hearing was held in the absence of a person whose presence at the hearing was mandatory under law;
 - 3) the defendant was deprived of the right guaranteed under Article 99 of this Law;
 - 4) if the main hearing has been closed for public contrary to the law;
 - 5) request was filed by an authorised applicant or the request was not filed within the deadline referred to in Article 153 paragraph 1 of this Law;
 - 6) the request has been exceeded as referred to in Article 191 of this Law,
 - 7) the decision was rendered by the court which could not have rendered the decision due to the lack of subject matter jurisdiction,
 - 8) provision referred to in Article 209 paragraph 4 of this Law was violated by the decision;
 - 9) if the decision is grounded on evidence on which according to the law it cannot be grounded, unless it is obvious, with regard to other evidence, that the same decision could have been rendered without that evidence,
 - 10) pronouncement of the decision is incomprehensible, contradictory in itself or inconsistent with the reasoning of the decision or the decision states no reasons or fails to provide reasons concerning the decisive facts or if these reasons are completely unclear or largely contradictory or if there are considerable contradictions about decisive facts between what is stated in the decision rationale on the contents of documents or minutes of testimony given in the proceedings and those documents themselves.
- (2) There is also a substantive violation of the provisions of the misdemeanour procedure if the court, in the preparation of the hearing or in the course of the hearing or while rendering the decision fails to apply or incorrectly applies any of the provisions of the law, provided that this affected the lawful and proper rendering of the decision.

Violations of the Substantive Law

Article 205

Violation of the substantive law prescribing the misdemeanour exists where such law has been violated in relation to whether:

- 1) the act for which misdemeanour proceedings are conducted against the defendant constitutes a misdemeanour;
- 2) there are circumstances excluding liability for the misdemeanour;
- 3) there are circumstances excluding the conduct of misdemeanour proceedings, in particular whether the statute of limitation for initiating or conducting such proceedings has expired or the matter has already been finally decided;
- 4) the law prescribing the misdemeanour has been incorrectly applied;

- 5) the court has exceeded the powers conferred upon it by law through its decision on the sanction or other measure,
- 6) the provisions governing the calculation of detention or other forms of deprivation of liberty in connection with the misdemeanour have been violated.

Erroneously or Incompletely Established Facts

Article 206

- (1) The decision may be challenged on the grounds of erroneous or incomplete establishment of facts when the court has established a relevant fact erroneously or has failed to establish such a fact at all.
- (2) It shall be taken that the state of facts has been incompletely established when new facts or new evidence so indicate.

Challenging a Decision with Regard to Decision on Misdemeanours, Seizure of Pecuniary Gain, Costs of the Misdemeanour Proceedings and the Claim for Damages

Article 207

- (1) The decision of the court may be challenged with regard to a decision on punishment, suspended sentence or judicial admonition when the court, in rendering this decision, does not exceed its statutory power referred to in Article 205 paragraph 1 item 5 of this Law, but has improperly fixed the punishment in view of the circumstances that had a bearing on greater or lesser punishment, or when the court has applied or failed to apply provisions relating to the mitigation of punishment, release from punishment, suspended sentence, or to an admonition, although legal conditions for it existed.
- (2) A decision on a protective measure or seizure of pecuniary gain may be challenged even though there is no violation of law referred to in Article 205 paragraph 1 item 5 of this Law, if the court rendered this decision incorrectly or did not order a protective measure or the forfeiture of property gain although legal conditions for it existed. A decision on the costs of misdemeanour proceedings may be challenged on the same grounds.
- (3) A decision on the claim for damages may be challenged if it has been rendered in violation of the provisions of this Law.

Lodging an Appeal

Article 208

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 039/11 as of 04 August 2011, Article 12)

An appeal shall be lodged with the court of first instance in a sufficient number of copies.

- (2) The first instance court shall render a ruling dismissing the untimely or inadmissible.
- (3) An appeal shall be deemed untimely if it has been lodged after the time limit prescribed by law.
- (4) An appeal shall be inadmissible if it has been lodged by an unauthorized person, by a person who has waived the right to appeal or has once withdrawn an appeal or if an appeal is not permitted by law.

- (5) The first instance court may, on the basis of the appeal, revise a new decision or vary the previous decision on the basis of the evidence already presented.

Limits of Examination of the First Instance Decision

Article 209

- (1) A second instance court shall review the part of the decision contested by the appeal, but it shall always review by virtue of an office the following points:
- 1) whether the appeal is timely and admissible;
 - 2) whether a serious violation of the provisions of the criminal procedure set forth in Article 204 of this Law has occurred;
 - 3) whether the substantive law stipulating the misdemeanour has been violated to the detriment of the defendant as referred to in Article 205 of this Law.
- (2) If the appeal lodged in favour of the defendant does not contain reasons for the appeal and elaboration of those reasons, the examination will be focused on violations referred to in paragraph 1 items 2 and 3 of this Article, as well as the examination of the punishment, protective measure and asset confiscation.
- (3) Appeal lodged on the basis of reasons referred to in Article 206 paragraph 2 of this Law can be lodged by the appellant only if he establishes, in the appeal, that at the time of the hearing he did not know of the evidence on which their appeal is based or that they did propose that certain evidence be presented immediately upon learning of it at the hearing but their proposal was rejected by the judge.
- (4) If an appeal has been lodged only in favour of the defendant, the decision may not be modified to the detriment of the defendant with regard to a legal qualification of the misdemeanour offence and misdemeanour sanction.
- (5) An appeal lodged in favour of the defendant due to the state of the facts being erroneously or incompletely established or due to the violation of the substantive law shall be deemed to contain an appeal against the decision concerning the misdemeanour sanction and asset confiscation referred to in Article 207 of this Law.
- (6) If the second instance court, upon anybody's appeal, finds that the grounds on which the decision was rendered in favour of the defendant, are also of benefit to any of the co-defendants who did not file an appeal or did not file an appeal along the same lines, it shall proceed by virtue of an office as if such an appeal has been filed.

Decisions of the Second Instance Court on Appeal

Article 210

- (1) At the Session of the Panel, the second instance court may:
- 1) dismiss the appeal as belated or inadmissible;
 - 2) reject the appeal as unfounded and confirm the first instance decision;
 - 3) vacate the first instance decision and remand the case to the first instance court for retrial;
 - 4) modify the first instance decision.
- (2) The second instance court shall decide a single decision on all the appeals that have been filed against the same decision.

Rejection of an Appeal

Article 211

When it establishes that the grounds for an appeal and the violations of law referred to in Article 209 paragraph 1 of this Law do not exist, the second instance court shall by a decision reject the appeal as unfounded and confirm the first instance decision.

Vacating the First Instance Decision and Remanding the Case for Retrial

Article 212

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 039/11 as of 04 August 2011, Article 13)

- (1) A second instance court shall, taking into account an appeal or ex officio, vacate the first instance decision by a ruling and remand the case for retrial if it establishes a substantial violation of provisions of misdemeanour proceedings, that has or could have impacted the legal resolution of the misdemeanour matter or if it considers that, for reasons of the state of the facts being erroneously or incompletely established, the proceedings should be supplemented or a new one conducted.
- (2) A second instance court may also partially revoke the first instance decision if the certain parts of the decision can be severed out without causing a detriment to a rightful decision.
- (3) When a first instance decision was abolished once, the second instance court will render a decision on its own, at a court session or after the hearing.

Revision of the First Instance Decision

Article 213

- (1) The second instance court shall, when honouring an appeal or ex officio, revise the first instance decision when:
 - 1) it finds that the first instance decision was based on serious violations of misdemeanour procedure referred to in Article 204 paragraph 1 items 5, 6 and 8 of this Law,
 - 2) if it has determined different facts from those determined by the first instance decision;
 - 3) if the court of first instance erroneously evaluated documents and other written evidence whereby the decision of the first instance court is exclusively grounded on such evidence;
 - 4) if the court of first instance based on facts it determined drew wrong conclusion about existence of other facts and such facts form grounds of the decision;
 - 5) finds that the facts in the first instance decision have been correctly evaluated and that considering the determined facts, a different decision should be rendered through the appropriate implementation of the law or if it finds that there are violations of the law that could be eliminated without vacating the first instance decision;
 - 6) it finds that in the course of fixing the punishment or imposing a protective measure all of the circumstances affecting the proper fixing of the punishment or legal imposing of protective measures have not been taken into consideration;
 - 7) circumstances taken into consideration have been erroneously evaluated.

- (2) If a second instance court establishes that legal conditions for imposing an admonition are met, it shall revise the first instance decision by a ruling and impose an admonition.

Statement of Reasons in a Second Instance Decision

Article 214

- (1) In the statement of reasons in its decision, the second instance court shall assess the allegations in the appeal and cite the violations of law which it took into account.
When the first instance decision is reversed because of substantial violations of provisions of misdemeanour procedure the reasoning shall indicate which provisions have been violated and what the violations consist of.
- (3) When the first instance decision is vacated for the reasons of the state of the facts being erroneously or incompletely established, the failures in establishing the state of the facts shall be stated as well as why new evidence and facts are important for rendering a correct and lawful decision.

Returning the Files to the First Instance Court

Article 215

The second instance court shall return all files to the first instance court, together with sufficient number of certified copies of its decision required for delivery to the parties and other persons concerned.

Retrial before the First Instance Court

Article 216

- (1) The first instance court to which the case was remanded for trial shall proceed on the basis of the previous request. If the first instance decision was partially vacated, the first instance court shall proceed on the basis of the part of the request to which the vacated part of the decision relates.
- (2) At the retrial the parties may present new facts and new evidence.
- (3) The first instance court shall undertake all procedural actions and consider all disputed issues which were specified by the decision of the second instance court.
- (4) When rendering a new decision, the first instance court shall be bound by the prohibition referred to in Article 209 paragraph 4 of this Law.

Chapter XXIV

EXTRAORDINARY LEGAL REMEDIES

Reopening of Misdemeanour Proceedings

Article 217

- (1) Misdemeanour proceedings concluded by a final court decision may, upon the request of the convicted or fined person or their defence attorney, be reopened only in the cases and under the conditions prescribed by this Law.
- (2) After the death of the convicted person, a request for the reopening of proceedings may be submitted by their spouse or common-law partner, children, parents or legal representative.
- (3) The request for the reopening of misdemeanour proceedings shall be decided by the court which rendered the first instance decision.

Reopening of the Proceedings in Favour of the Defendant

Article 218

- (1) Misdemeanour proceedings completed by a final decision may be reopened in favour of the defendant if:
- 1) the decision is based on a false document or false testimony of a witness, expert witness or interpreter;
 - 2) the court's decision resulted from a criminal offence committed by the judge or another authorised person who took part in the proceedings;
 - 3) new facts are presented or new evidence is submitted which, either by themselves or in connection with the previously established evidence, could have led to a different decision had they been known in the earlier proceedings;
 - 4) it is established that a person has already been finally sanctioned for the same act in misdemeanour proceedings, or was, prior to the misdemeanour decision, found guilty in criminal proceedings for an offence encompassing the elements of the misdemeanour.
 - 5) in the case of a conviction for a continuing misdemeanour or any other misdemeanour which under law includes several acts of the same kind or several acts of a different kind, new facts or new evidence are presented indicating that the convicted person did not commit an act covered by the adjudicated misdemeanour, provided that these facts are likely to lead to the application of a less severe law or are likely to affect substantially the fixing of punishment;
 - 6) the European Court of Human Rights or another court established by a ratified international treaty finds that human rights and freedoms have been violated in the course of the misdemeanour proceedings and that the decision is based on such violations, provided that the reopening of the proceedings can remedy such violation,
- (2) In the cases referred to in paragraph 1, items 1 and 2 of this Article, it must be proven by a final decision that the abovementioned persons were found guilty of the cited criminal offences. If the proceedings against these persons cannot be conducted due to their death or circumstances barring prosecution, the facts under paragraph 1, items 1 and 2 of this Article, may be established by presenting other evidence as well.

Contents of the Request

Article 219

- (1) The request shall state the legal grounds on which the reopening of the misdemeanour proceedings is sought and what evidence substantiate the facts on which the request is founded. If the request fails to contain this information, the court shall call on the applicant to supplement his request within a specified term.
- (2) A request for the reopening of misdemeanour proceedings may be submitted within 30 days from the day when the applicant became aware of the reasons referred to in Article 218 of this Law or from the date of a decision of the European Court of Human Rights establishing a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- (3) The request referred to in paragraph 2 of this Article may not be submitted after the expiry of one year from the date when the decision on the misdemeanour became final, except in the case referred to in Article 218 paragraph 1 item 6 of this Act.

Deciding on the Request

Article 220

- (1) The court shall dismiss a request for the reopening of misdemeanour proceedings by a ruling if it finds that the request is untimely, incomplete or filed by an unauthorised person, that the statutory conditions for reopening are not met, that the facts and evidence on which the request is based were presented in a previous request for reopening which was dismissed by a final court decision, that the facts and evidence are apparently unsuitable to justify reopening or that the applicant has failed to comply with Article 219 paragraph 1 of this Law.
- (2) If the court does not dismiss the request, a copy of the request shall be delivered to the applicant for the initiation of the misdemeanour proceedings, who shall submit a response to the request within eight days. Upon receipt of the reply or when the term for the reply expires, the court shall order that facts are examined and evidence be obtained that were called upon in the request and the reply thereto.
- (3) After conducting the examination of facts and obtaining the evidence referred to in paragraph 2 of this Article, the court shall immediately decide on the request for the reopening of the proceedings by issuing a ruling.

Decisions on the Request for Reopening Proceedings

Article 221

- (1) If the court does not order an examination of facts and the collection of evidence referred to in Article 220 paragraph 2 of this Law, it shall either uphold the request for the reopening of misdemeanour proceedings and allow the reopening or reject the request.
- (2) If the court establishes that the reasons for which it allowed the reopening of the proceedings also exist for other co-defendant who did not submit the request, it shall proceed ex officio as if such a request exists.
- (3) In the ruling allowing the reopening of misdemeanour proceedings, the court shall decide that a new hearing be scheduled immediately and may also decide to suspend or postpone the enforcement of the decision on the misdemeanour against which the reopening has been allowed.
- (4) An appeal against the ruling on allowing the reopening of misdemeanour proceedings shall not be allowed.

Rules of Reopened Proceedings

Article 222

- (1) The new proceedings conducted on the basis of a ruling granting the reopening of misdemeanour proceedings shall be conducted in accordance with the same provisions of the law that have been applied in the previously completed procedure with final force and effect. In the new proceedings, the court shall not be bound by the previously rendered decision.
- (2) The decision on the misdemeanour rendered in new proceedings shall determine whether the previous decision is partially or entirely revoked or whether it remains in force. When fixing the punishment pronounced in the new decision, the court shall make allowance for time served under the earlier sentence and if the reopening was permitted only for some of the offences for which the defendant was convicted, the court shall pronounce a new cumulative punishment pursuant to the provisions of this Law.

Appropriate Implementation

Article 223

Provisions of the Criminal Procedure Code referring to the defendant and reopening of proceedings when the hearing has been conducted in the absence of the defendant shall apply also in misdemeanour proceedings accordingly.

Request for the Protection of Legality

Article 224

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 46)

- (1) The Supreme State Prosecutor's Office may submit a request for the protection of legality against final decisions and against the judicial proceedings which preceded such final decisions, if the law or another regulation has been violated.
- (2) The Supreme State Prosecutor may submit the request referred to in paragraph 1 of this Article if the European Court of Human Rights or another court established by a ratified international treaty has found that human rights and freedoms have been violated in the course of misdemeanour proceedings and that the decision was based on such violations, and the competent court did not allow reopening of the criminal proceedings, or if the violation done by the decision can be removed through the quashing of the decision or its reversal without retrial.
- (3) The Supreme State Prosecutor may also submit the request referred to in paragraph 1 of this Article if a decision is based on the law or other enactment which has been declared invalid by the Constitutional Court of Montenegro, in which case the request for the protection of legality may be submitted if the competent court did not allow reopening of the misdemeanour proceedings or if the violation done by the decision can be removed through the quashing of the decision or its reversal without retrial.
- (4) The Supreme State Prosecutor's Office may submit a request for the protection of legality if it finds that a law has been violated but this violation did not affect the regularity of the decision and it does not concern a legal issue important for the uniform application of the law or for the protection of human rights and freedoms.
- (5) Request for the protection of legality may be submitted within 60 days from the day the defendant received the final decision.

Deciding on the Request for the Protection of Legality

Article 224a

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 47)

- (1) The Supreme Court shall decide on the request for the protection of legality (hereinafter referred to as: the Supreme Court), within a panel composed of three judges.
- (2) The Supreme Court shall always notify the Supreme State Prosecutor's Office on the panel sessions.

Deciding upon Requests

Article 224b

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 47)

- (1) When deciding on a request for the protection of legality, the Supreme Court shall confine itself to reviewing those violations of the law or other regulation that the State Prosecutor set forth in their request.
- (2) The Supreme Court shall reject the request for the protection of legality as unfounded if it finds that there is no violation of the law or other regulation set forth in the request.
- (3) Provided that the Supreme Court finds that the request for the protection of legality is founded, it shall amend the final ruling or quash, entirely or partially, the first instance and second instance rulings and remand the case to the first instance court for reconsideration, or it may limit itself to establishing that a violation of the law or other regulation has occurred.

Deciding Ex Officio and in Favour of a Co-principal

Article 224c

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 47)

- (2) If the Supreme Court establishes that the grounds on which it rendered a decision in favour of the punished person also exist for any co-principal regarding whom a request for the protection of legality was not submitted, it shall render a decision ex officio and in favour of the co-principal as if such a request was submitted in relation to him as well.

Scope of Reviewing the Request

Article 224d

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 47)

- (1) If a request for the protection of legality was submitted to the detriment of the punished person and the Supreme Court establishes that it was grounded, it shall only establish that the violation of law or another regulation existed, without revising the final decision.
- (2) If an appeal has been filed only in favour of the punished the decision may not be modified to his detriment with regard to a legal qualification of the misdemeanour offence and misdemeanour sanction.

Appropriate Application of the Criminal Procedure Code

Article 224e

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 47)

Provisions of the Criminal Procedure Code referring to the filing of a request for the protection of legality and the decision on such a request shall apply to a request for the protection of legality in misdemeanour proceedings accordingly, unless otherwise set forth by this law.

Chapter XXV

SPECIAL PROCEEDINGS

Proceedings without Hearing

Article 225

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 48)

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 051/17 as of 3 August 2017, Article 21)

(1) Proceedings without hearing shall be conducted:

1) for misdemeanours for which a request to initiate misdemeanour proceedings has been filed and for which the only prescribed punishment is a fine of up to:

- EUR 1,000 for a natural person;
- EUR 10,000 for a legal entity;
- EUR 1,500 for a responsible person within a legal entity;
- EUR 3,000 for an entrepreneur.

2) misdemeanours committed by a juvenile;

3) cases initiated upon the request of a defendant for judicial review of a mandatory misdemeanour order;

4) cases initiated upon the request of a defendant for judicial review of a misdemeanour order for a misdemeanour for which the only prescribed punishment is a fine of up to:

- EUR 500 for a natural person;
- EUR 5,000 for a legal entity;
- EUR 750 for a responsible person within a legal entity;
- EUR 1,500 for an entrepreneur.

(2) Upon the proposal of the applicant, proceedings without hearing may also be conducted for misdemeanours for which a higher fine than those referred to in paragraph 1 item 1 of this Article is prescribed but, in such cases, the court may not impose a fine exceeding the amounts specified in paragraph 1 item 1 of this Article.

(3) If proceedings are simultaneously conducted against a legal entity and a responsible person within that legal entity, proceedings without a hearing shall be conducted only if the conditions for such proceedings referred to in paragraph 1 item 1 of this Article exist for both the legal entity and the responsible person. If proceedings without a hearing are to be conducted against the responsible person within the legal entity pursuant to paragraph 1 item 3 of this Article, the proceedings shall be conducted against both the legal entity and the responsible person within the legal entity.

- (4) If proceedings are simultaneously conducted against multiple defendants, a proceeding without a hearing shall be conducted if the conditions for such a procedure referred to in paragraph 1 item 1 of this Article exist in relation to all defendants and all misdemeanours. If proceedings without a hearing are to be conducted against any of the defendants under paragraph 1 item 3 of this Article, the proceedings shall be conducted against all defendants.
- (5) If proceedings are simultaneously conducted against an adult and a juvenile perpetrator, proceedings without hearing shall always be conducted.
- (6) If proceedings are conducted against a defendant who committed one misdemeanour as a juvenile and another as an adult, proceedings without hearing, shall be conducted.

Conducting Proceedings without Hearing

Article 226

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 49)

- (1) Unless otherwise provided by the provisions of this Chapter, the provisions of this Law relating to misdemeanour proceedings shall apply to proceedings without a hearing, except for the provisions concerning the scheduling of a hearing, the manner of keeping records of the hearing, and the provisions of Article 182 of this Law.
- (2) The court shall, in accordance with the provisions of this Law, summon the defendant, witnesses, experts and other participants in the proceedings for examination and shall prepare a record of each procedural action and once, based on those and other pieces of evidence contained in the case file, the court determines that the facts have been sufficiently established, it shall render a decision on the misdemeanour.
- (3) If the defendant, who has been duly summoned, fails to appear at the hearing scheduled on the basis of the request to initiate misdemeanour proceedings and does not justify his or her absence, the court shall render a decision in the absence of the defendant on the basis of the proposed or submitted evidence.

Proceedings for the Confiscation of Pecuniary Gain, Termination of Legal Consequences of a Sentence and Rehabilitation

Article 227

With regard to the confiscation of pecuniary gain obtained through the commission of a misdemeanour, the termination of legal consequences of a sentence, rehabilitation as well as the exercise of other rights of a person wrongfully convicted or punished or unlawfully or unjustifiably deprived of liberty, provisions of the Criminal Procedure Code shall apply accordingly, unless otherwise provided by this Law.

Chapter XXVI

ENFORCEMENT OF SANCTIONS

Enforcement of Decisions

Article 228

- (1) Court decisions shall be enforced once they become final and enforceable, unless otherwise provided by this Law, while a misdemeanour order shall be enforced once it becomes final and enforceable.
- (2) Orders shall be enforced immediately.

Enforcement of Decision prior to Their Finality

Article 229

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 039/11 as of 04 August 2011, Article 14)

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 051/17 as of 3 August 2017, Article 22)

- (1) A decision on a misdemeanour may be enforced prior to becoming final, if:
 - 1) the defendant cannot prove his or her identity, has no permanent or temporary residence in Montenegro or is leaving the country to reside abroad, and there are reasonable grounds to suspect that he or she may thwart the enforcement of the imposed sanction;
 - 2) the defendant has been punished for a more serious misdemeanour in the field of public order and peace, domestic violence or threat to the life and health of people, and there are reasonable grounds to suspect that he or she will continue to commit or repeat the misdemeanour or if the interests of public safety so require.
- (2) In the case referred to in paragraph 1 of this Article, the decision on the misdemeanour shall specify that the sanction is to be enforced prior to the finality of the decision.
- (3) If the defendant lodges an appeal against a decision ordering enforcement prior to finality, the court shall submit the appeal, together with the case file, to the second instance court within 24 hours of receiving the appeal, and the second instance court shall rule on the appeal and deliver its decision to the first instance court within 48 hours of receiving the case.

Doubts regarding Permissibility of the Execution of a Judicial Decision

Article 230

If doubt arises as to the interpretation of a court decision or as to the admissibility of its enforcement (for example, where the decision has been declared final although the statutory conditions were not met), or concerning the calculation of the sentence or where the final decision has not determined whether deprivation of liberty or detention is to be credited towards the sentence, or such crediting has not been properly carried out, the matter shall be decided by a special ruling of the first instance court, preferably by the judge who rendered the first instance decision. An appeal against such ruling shall not stay its enforcement unless the court decides otherwise.

Competence for Enforcement

Article 231

- (1) The first instance court or other competent authority which rendered the decision on the misdemeanour, shall, if it is not competent for enforcement itself, forward an authenticated copy of the final, or final and enforceable, decision to the court or other

authority competent for enforcement, no later than three days from the date when the decision became enforceable.

- (2) Once the conditions for enforcement are met, the competent court or other authority shall take all necessary measures to ensure enforcement without delay.

Enforcement of Community Service

Article 231a

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 50)

A sentence of community service shall be enforced in accordance with the law governing the enforcement of sentences of community service.

Enforcement of Imprisonment Sentences

Article 232

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 51)

- (1) The first instance court which has competence over the place of temporary or permanent residence of the convicted person shall be competent to enforce a sentence of imprisonment or a protective measure.
- (2) If the court which rendered the first instance decision referred to in paragraph 1 of this Article is not competent to commit the convicted person to serve the sentence, it shall forward an authenticated copy of the decision on punishment, endorsed with a clause of finality and enforceability, to the competent court referred to in paragraph 1 of this Article.
- (3) Enforcement of imprisonment prior to finality of the decision shall be carried out by the first instance court which imposed the sentence.
- (4) A sentence of imprisonment shall not be enforced against a pregnant woman after the third month of pregnancy, nor against a mother until her child reaches one year of age and if the child is stillborn or dies shortly after birth, enforcement shall not take place until six months after delivery.
- (5) The enforcement and postponement of imprisonment shall be carried out in accordance with the Law on the Enforcement of Criminal Sanctions and this Law.

Finality of a Fine

Article 233

A decision imposing a fine, procedural costs or confiscation of pecuniary gain shall be enforced after it becomes final and the time limit set for payment has expired, unless otherwise provided by this Act.

Collection of a Fine

Article 234

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 52)

(Decision of the Constitutional Court of Montenegro repealing the provisions of Article 234 paragraph 1 item 1 and Article 235 paragraph 1 items 1 and 2 and paragraph 3 of the Law on Misdemeanours (Official Gazette of Montenegro No. 1/11, 6/11, 39/11 and 32/14) and cease to be valid on the date of publication of this Decision)

- (1) Payment of a fine may be enforced by:
 - 1) Deleted. (Decision of the Constitutional Court of Montenegro, No. U-I 28/15 and 39/16, dated 29 May 2017, with a singled-out opinion, Official Gazette of Montenegro, No. 43/17)
 - 2) compulsory collection;
 - 3) substitution of the fine with imprisonment or community service.
- (2) A fine shall be deemed fully paid if the convicted or fined person pays two-thirds of the amount within the period specified in the final and enforceable misdemeanour order or the final court decision.
- (3) For the purpose of maintaining a unified record of payment of fines, local self-government units shall open an account with the Central Bank of Montenegro into which fines and procedural costs, constituting revenue of the local self-government budget, shall be paid.

Passive Enforcement through the Register of Fines

Article 235

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 53)

(Decision of the Constitutional Court of Montenegro repealing the provisions of Article 234 paragraph 1 item 1 and Article 235 paragraph 1 items 1 and 2 and paragraph 3 of the Law on Misdemeanours (Official Gazette of Montenegro No. 1/11, 6/11, 39/11 and 32/14) and cease to be valid on the date of publication of this Decision)

- (1) A person convicted or fined for a misdemeanour in the field of public passenger transport or transport of goods shall not be issued a licence or extract from a licence until all fines and procedural costs recorded in the Register of Fines have been paid.
- (2) The prohibition shall remain in force until the fine is paid or the convicted person begins serving imprisonment or community service, but not after the limitation period for enforcement has expired.

Procedure of Compulsory Collection

Article 236

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 039/11 as of 04 August 2011, Article 15)

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 54)

*(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro
051/17 as of 3 August 2017, Article 23)*

- (1) The authority that issued the misdemeanour order shall be responsible for enforcing and monitoring the enforcement of fines and other measures imposed by that order.
- (2) Courts shall enforce and monitor the enforcement of fines, procedural costs and other measures imposed by their decisions.
- (3) If the convicted or fined person, under a final and enforceable decision on a misdemeanour, fails to pay the fine, costs or confiscated pecuniary gain fully or partially within the prescribed period, or if the court or other competent authority establishes that the person is avoiding payment, compulsory collection shall be carried out as follows:
 - 1) from legal entities and entrepreneurs, by transferring funds from their bank accounts to the account of the state budget or the budget of the local self-government, through the Central Bank of Montenegro;
 - 2) from natural persons and responsible persons in legal entities, by deducting of part of their salary or pension (not exceeding one third), through the body, legal entity or employer of the convicted or punished person, or the Pension and Disability Insurance Fund of Montenegro, or by transfer of funds from the bank accounts the natural person and responsible person in a legal entity have opened with business banks, excluding income exempt from enforcement under the Law on Enforcement and Security.
- (4) Compulsory collection from legal entities, entrepreneurs, responsible persons and natural persons shall be ordered by the competent court or authority that rendered the misdemeanour decision, by issuing an enforcement order, which shall be sent, together with the decision, to the entities referred to in paragraph 3.
- (5) The entities referred to in paragraph 3 items 1 and 2 of this Article, which are, in accordance with this Law, obliged to act upon the order and decision on the misdemeanour issued by the competent court or authority, shall promptly notify the competent court or authority of the executed payment or of the reasons for failing to act upon the enforcement order.
- (6) If there are no funds in the account of a legal entity or an entrepreneur, the enforcement of the misdemeanour decision shall be carried out through compulsory collection against the property of the legal entity or entrepreneur, by applying appropriately the Law on Enforcement and Security, through the authority competent for the protection of property and legal interests of Montenegro, which shall also carry out compulsory collection of the costs of misdemeanour proceedings when the court is unable to collect such costs.
- (7) If the fine is not paid within the prescribed period and cannot be collected through passive enforcement via the Register of Fines or through compulsory collection in line with paragraphs 3 and 4 of this Article, the competent court shall, except in the case of a legal entity or a minor, replace the imposed fine with community service or imprisonment, whereby for every commenced EUR 25, four hours of community service or one day of imprisonment shall be determined. Community service may not exceed 80 hours and imprisonment may not exceed 60 days and the remaining amount of the fine shall be collected through compulsory collection in line with paragraph 6 of this Article.

- (8) Enforcement proceedings for the collection of an unpaid fine shall not be initiated against the defendant referred to in Article 149 of this Law. In this case, the court that rendered the misdemeanour decision shall, prior to its finality, immediately replace the unpaid fine with imprisonment, in the manner prescribed by this Law.
- (9) If the convicted person, after the court's decision referred to in paragraph 7 of this Article, pays the fine in full, the ruling shall be annulled and further enforcement proceedings shall be discontinued and if the fine is paid only in part, the ruling shall be amended so that the unpaid portion of the fine is replaced by imprisonment or community service.
- (10) If, during the enforcement proceedings, the convicted or fined person dies, the enforcement proceedings shall be discontinued.

Costs of Compulsory Collection

Article 237

- (1) The costs of compulsory collection of fines shall be borne by the convicted or fined person.
- (2) The ruling on the amount of such costs shall be issued by the first instance court or other competent authority which carried out enforcement.

Stay of Enforcement

Article 238

An extraordinary legal remedy shall not stay the enforcement but the first instance court which rendered the decision may, at the request of the convicted or fined person, postpone enforcement until the extraordinary legal remedy is decided upon, if it finds that enforcement would cause the person substantial financial hardship or that there are other justified reasons. An appeal shall not be allowed against the ruling upholding the request for stay of enforcement.

Appropriate Application of the Law on Enforcement of Criminal Sanctions

Article 239

Provisions of the Law on Enforcement of Criminal Sanctions shall apply accordingly to matters of enforcement of sanctions not regulated under this Law.

Chapter XXVII

TRANSITIONAL AND FINAL PROVISIONS

Initiated Procedures

Article 240

(Correction to the Law on Misdemeanours, Official Gazette of Montenegro 006/11 as of 25 November 2011)

- (1) Proceedings initiated on the basis of a request to initiate misdemeanour proceedings submitted prior to the date of entry into force of this Law shall be concluded in accordance with the provisions of the Law on Misdemeanours ("Official Gazette of the Republic of Montenegro", No. 25/94 and 48/99).

- (2) If a decision has been rendered before the day this Law enters into force against which, according to the provisions of the Law on Misdemeanours ("Official Gazette of RoM", No. 25/94 and 48/99) a legal remedy was allowed, and if such a decision is not yet delivered or the term for submitting the legal remedy is still running, or the legal remedy has been submitted but the decision has not been rendered yet, the provisions of that Law shall apply regarding the right to legal remedy and the proceedings on legal remedy.

Enforcement of Decisions

Article 241

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 039/11 as of 04 August 2011, Article 16)

Decisions on misdemeanours rendered or pronounced prior to the commencement of the application of this Law shall be enforced pursuant to the provisions of the Law on Misdemeanours ("Official Gazette of the Republic of Montenegro", No. 25/94 and 48/99), by the competent authorities under that Law, except for the conversion of a fine into imprisonment, which shall be carried out in line with Article 236 paragraph 7 of this Law.

Competences of Misdemeanour Authorities

Article 242

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 032/14 as of 30 July 2014, Article 55)

- (1) As of the date of entry into force of this Law, first instance proceedings and enforcement proceedings falling within the jurisdiction of first instance courts shall, in accordance with this Law, be conducted by the locally competent regional misdemeanour authorities referred to in Article 71 of the Law on Misdemeanours ("Official Gazette of the Republic of Montenegro", Nos. 25/94 and 48/99), while second instance proceedings shall be conducted by the Misdemeanour Council of Montenegro, until the organisation and jurisdiction of courts competent to conduct misdemeanour proceedings are regulated by law.
- (2) Pending the regulation of the organisation and jurisdiction of the courts for conducting misdemeanour proceedings, the Rulebook on Internal Operations of Misdemeanour Authorities ("Official Gazette of the Republic of Montenegro", No. 15/95) shall apply.
- (3) Until the organisation and jurisdiction of courts for conducting misdemeanour proceedings are regulated, the general act on internal organisation and job description within the Misdemeanour Council of Montenegro and the regional misdemeanour authorities shall be adopted by the President, with the consent of the competent working body of the Government of Montenegro.

Adoption of Secondary Legislation

Article 243

Secondary legislation envisaged by this Law shall be passed within 30 days following the date of entry into force of this Law.

Cessation of Validity of a Previous Act

Article 244

(Law on Amendments to the Law on Misdemeanours, Official Gazette of Montenegro 039/11 as of 04 August 2011, Article 17)

On the date of entry into force of this Law, the Law on Misdemeanours ("Official Gazette of the Republic of Montenegro", No. 25/94 and 48/99) shall be repealed, except for the provisions of Articles 71, 72, and 81 to 93, which shall be repealed upon the commencement of application of the law regulating the organisation and jurisdiction of courts for conducting misdemeanour proceedings, as well as the provisions of Articles 280 to 290 of the Customs Law ("Official Gazette of the Republic of Montenegro", No. 7/02, 38/02, 72/02, 105/02, 21/03, 29/05, and 66/06 and "Official Gazette of Montenegro", No. 21/08).

Entry into Force of this Law

Article 245

The present Law shall enter into force on the eighth day of its publication in the Official Gazette of Montenegro.