**Montenegro**

**Questionnaire on the role, composition and function of bar associations**

1. **Please provide information on the way legal profession is organised and regulated in your country. What are the legal bases for its establishment (e.g. constitutional provisions; ordinary law or other)? Please also indicate the main legal provisions protecting the right of lawyers to freely join or create local, national or international association, and mention the existing associations.**

The Constitution of Montenegro, as the supreme law, defines the manner of provision of legal aid in our country in the manner that:

Everyone has the right to legal aid that is provided by the **bar**, as an independent and autonomous profession, and by other services.It may, also, be provided free of charge, in accordance with the relevant law.(Article 21)

The definition and range of legal assistance, requirements to be met so as to practice law, right of lawyers to join in order to perform their duties and other, are covered by the Law on Lawyers Profession.

According to this Law, **legal assistance** includes:rendering legal advices and opinions;drawing up claims, complaints, petitions, requests, and other submissions;drafting contracts, wills, statements, general and specific instruments and other documents;representing and defending natural and legal persons before courts and other state authorities, business organizations and other legal persons;representing natural and legal persons in their legal transactions; rendering also other legal assistance on and in behalf of natural and legal persons, based on which such persons acquire certain rights (Article 3).

All issues of relevance to the practice of law, the methods and the forms for the work of attorneys; the rights and obligations of attorneys and trainee lawyers; the competences of the Bar Association of the Republic of Montenegro as the official association of lawyers in our country (Article 1) are covered by this Law.

As far as practice of law is concerned, the Law (Article 2) states that it is an autonomous and independent service of rendering legal assistance to natural and legal persons and that the attorneys who were recorded in the Bar Association Register may practice law, individually or in a joint law firm or a in a partnership law firm. Two or more lawyers may have a Joint Lawyer’s Office that may be founded by a contract governing the mutual business and property relations. Afterwards it is registered in the List of Joint Lawyer’s Office.Beside this form, two or more lawyers may establish **Law Firm Partnership** that represents a legal entity and it is also established by contract which is subject to revision of the Bar Association (Article 29).

In addition to the requirements provided for by the relevant laws, a contract for establishing a partnership must include the following provisions: that the sole activity of such partnership shall be the practice of law; that the members of such partnership shall be the attorneys enrolled in the Bar Association’s register of attorneys; that the legal assistance on behalf of such partnership may be delivered by its attorneys, members of the partnership and the attorneys engaged by the partnership; that the attorneys that work in such partnership need not to be the partnership members; that the attorneys that are the members of such partnership may not engage in the practice of law outside the partnership.

A partnership that fulfils the requirements for establishment prescribed by the law, are registered in the Central Registry of the Commercial Court of Podgorica.

The attorneys are obliged to join the Bar Association (Article 40 of the Law on Lawyers Profession).

**2. Does a professional association of lawyers play a role in the regulation of the profession? If so, please provide information on:**

**(a) the exact denomination of the body**

**(b) the legal bases for its establishment (e.g. constitutional provisions, ordinary law or other);**

**(c) whether the association has been established as an” independent” and self –governing association;**

**(d) the composition and appointment process of the executive body of the association.**

(a)(b)(c) The Bar Association is an autonomous, independent, professional organization of attorneys performing the affairs of general interest for attorneys entered in the register of attorneys and performing the activities entrusted to it by this Law. The attorneys are obliged to join the Bar Association (Article 40 of the Law on Lawyers Profession).

Ithas a legal personality and it is based in Podgorica - the Montenegrin Bar Association – Podgorica with a logo representing the Goddess of Justice – Justitia, in front of whom there is a shield with the lion passant (shield is the same as in the National Coat of Arms of the Republic of Montenegro) and the year of 1909 (date when the Law on Attorneys at Law of the Princedom of Montenegro).

The organization of the Bar Association, method of election and the powers of its bodies, rights, duties and disciplinary liability of the attorneys and trainee lawyers and other issues relevant for the practice of law, as stated in Article 44 of this Law,is regulated by **Statute of Bar Association.** Statute regulates the tasks, internal organization of the Bar Association and the work, the selection and scope of its organs, the manner of exercising public authority and other issues of relevance to the work of the Bar Association (Article 1). Composition of Bar Association is as follows: Assembly, Board, President and one vice president, Audit Committee, Disciplinary Prosecutor, Disciplinary Court, Higher Disciplinary Court **(**Article 9).

The (Management) Board is the executive body of the Assembly of the Bar Association, which exercises the rights and duties under this Statute (Article 20).

Article 22 of the Statute prescribes thatthe Board has nine members and consists of the president of the Bar Association, vice president of the Bar Association and seven members elected from the list of candidates from the Board. The work of the Board is managed by the President of the Bar Association. President of the Bar Association and vice president of the Bar Association are elected in accordance with this Statute and they are ex officio members of the Board. The Board works in sessions.

1. **Please provide information on the relationship between the associations of lawyers and Executive, Legislative and Judiciary powers. In particular, please provide information on the role of the Ministry of Justice and\or the judiciary in relation to the establishment and functioning of this association.**

As mentioned before, the Constitution of Montenegro states that the Bar Association of Montenegro is an independent body.

When talking about the role of Ministry of Justice in regard to the association, bearing in mind that it is an independent body, it is mainly to elaborate the laws concerning lawyers’ profession. Article 3 of Decree on Organisation and Method of Operation of State Administration states that the Ministry of Justice performs administrative affairs related to: advocacy, notaries, mediators and expert witnesses; court proceedings and misdemeanor proceeding and legal aid; bar examination; notary examination; civil service exam…

Furthermore, any attorney enrolled in the register of attorneys of a foreign country shall be entitled to act before the judicial authorities of the Republic, under the reciprocity principle. The ministry relevant for the judiciary shall issue the certification of the existence of such reciprocity principle, upon a previous opinion taken by the Bar Association (Article 8, Law on on Lawyers Profession). In addition, the Bar Association shall fix the Attorney’s Fee, ''with a prior consent of the Government of Montenegro.

The Bar Association establishes the fee for a defence ex officio by a separate instrument, upon the prior consent by the Government of the Republic of Montenegro

(Article 15).

**4. Please provide information on the role that professional associations of lawyers play with regard to:**

**(a) the admission process to the legal profession and licensing of lawyers;**

**(b) the conduct of disciplinary proceedings against lawyers;**

**(c) the protection of individual lawyers from any form of intimidation, hindrance, harassment or improper interference in the exercise of their functions;**

**(d) the development and implementation of legislation concerning the free exercise of the legal profession and the administration of justice.**

(a) The attorneys who were recorded in the Bar Association Register may practice law, individually or in a joint law firm or a in a partnership law firm under the conditions stipulated in this law (Article 2, Law on Lawyer Profession).

According to the Law (Article 4) an attorney acquires the right to practice law by being enrolled in the register of attorneys and upon taking an oath.

Article 5 of the same Law states conditions for the practice of law i.e. the right to be enrolled in the register of attorneys shall be given to a person provided: that such a person is a Montenegrin citizen; that has graduated from a four-year programme in the Faculty of Law on the qualification level VII1; that has passed the Judicial Examination and the Bar Examination; that is not employed; that does not perform any other registered activity; that is worthy to practice law, in harmony with the Attorneys' Code of Ethics; that was not convicted of a criminal offence that makes him/her unworthy to practice law. Every person who is a citizen of an EU Member State and meets the requirements referred to in paragraph 1, items 2 to 7 of this Article shall have the right to be enrolled in the register of attorneys."

The procedure of registration of a lawyer is prescribed by the Law on Lawyers Profession and Statute of the Bar Association.

The Law also states that the Bar Association: passes the By-Laws, the Code of Ethics and other general documents, establishes the Attorney’s Tariff, organizes the taking of the Bar Examination, regulates the contents and the method of keeping of the register of attorneys, the register of joint law firms, the register of partnership law firms and the register of trainee lawyers, represents the practice of law of the Republic and establish international cooperation in the area of practice of law, represents the interests of the attorneys before the state authorities and organizations, represents the attorneys before domestic and foreign professional associations and organizations, legal entities and individuals, organizes training and professional development of the attorneys and trainee lawyers, gives opinions, at the request of authorities, of bills and other regulations, issues regular and periodical publications, keeps the register of attorneys, the register of joint law firms, the register of partnership law firms and the register of trainee lawyers, and it shall issue Attorney Identification Cards in a manner prescribed by the By-Laws, regulates the manner of realization of attorneys’ public relations, performs other affairs in accordance with the law and the By-Laws (Article 42).

The Bar Association also decides on: requests for entry, removal and annulment of entry in the register of attorneys, the register of joint law firms, the register of partnership law firms and the register of trainee lawyers, requests for temporary inactivity in law practice, requests to continue practicing law after temporary inactivity, requests to move the law firm to another address, temporary ban to practice law, rate of the membership contribution and registration costs (registration fee), initiation and conducting of disciplinary proceedings against an attorney or a trainee lawyer, liability of attorneys within the disciplinary proceedings and imposing of disciplinary measures, other issues prescribed by this Law and the Statute.

(b) The Law on Lawyers Profession states that the attorneys shall be disciplinarily liable for violations of their duties before the disciplinary bodies laid down under the Statute of Bar Association.(Article 53) . Disciplinary proceedings shall be conducted in the manner regulated under the Statute. (Article 54) Minor and more serious violations of duty of attorneys shall be laid down under the Statute. For a violation of duty, an attorney may be subject to the following disciplinary measures: reprimand, fine, temporary removal from the register of attorneys, removal from the register of attorneys (Article 55, the Law)

When talking about disciplinary proceedings we have to point out that the provisions of the Criminal Procedure Code are applied accordingly to disciplinary proceedings, to all that is not regulated by the Law on Lawyer Profession and this Statute. Disciplinary authorities are obliged to act urgently, and especially in cases of disciplinary proceedings on the basis of which a decision on the temporary ban on law practice has been reached. Disciplinary proceedings are initiated by the Disciplinary Prosecutor of the Bar Association. The disciplinary prosecutor acts upon the application of the natural or legal person, the body of the Bar Association or on its own initiative. Disciplinary application or proposal is submitted to the Disciplinary prosecutor of the Bar Association in two copies with appropriate evidence. On filing a complaint The Disciplinary Prosecutor, if he assesses that the report shows the characteristics of the violation of the duty of the lawyer and the basis for the suspicion that the violation of duty has been committed, he informs the person registered with the submission of a copy of the application and the attached evidence with a summons to declare within 8 days from the receipt of the application. Indictment, with all the evidence, Disciplinary Prosecutor submits to the Disciplinary Court of the Bar Association. The president of the Disciplinary Court determines that the Council will decide on the indictment filed. Disciplinary proceedings are public if required by a lawyer against whom the proceedings are being conducted, otherwise the public is excluded.

(c) Article 51 of the Law on Lawyers Profession states that the Bar Association may organize providing of free legal aid to the citizens in its territory or a part of that territory, on its own or pursuant to an agreement concluded with a state authority or a local self-government body which shall ensure material and other conditions for the provision of assistance.

(d) In relation to protection of individual lawyers According to Article 42 of The Law on Lawyer Profession the Bar Association: represents the interests of the attorneys before the state authorities and organizations, represents the attorneys before domestic and foreign professional associations and organizations, legal entities and individuals, regulates the manner of realization of attorneys’ public relations, represent the practice of law of the Republic and establish international cooperation in the area of practice of law.

(e) The system of provision of legal aid to any natural or legal persons is continuously been improved. With the latest amendments to the Law on Legal Profession, from 2017, any attorney from any Member State of the European Union shall have the right to be enrolled into the register of foreign attorneys, if meets the requirements prescribed by the Law, and may perform its duty before the judicial bodies of Montenegro. These provisions shall enter into force on the day Montenegro joins European Union. In addition, the latest amendments to the Law envisages that the Bar Association fixes the Attorney’s Fee, ''with a prior consent of the Government of Montenegro.

1. **Is membership in the professional association of lawyers mandatory to practice law in your country? In case membership is a prerequisite to practice law, please provide detailed information on the measures the State has taken to ensure access to justice in cases where there is a shortage of layers in the whole country or part of its territory.**

The Bar Association of Montenegro is a mandatory, independent and professional organization of lawyers who are based in Montenegro.The lawyers in Montenegro are not being appointed for only one court, city or region.There is no shortage in lawyers on its territory. In relation to that, Law on Lawyer Profession (Article 52) states that the Bar Association is obliged to deliver to the courts and other authorities the list of attorneys filed in the register of the Bar Association, containing necessary data, in accordance with the rules of the Bar Association, for the purpose of *ex officio* appointment of defence attorneys in pre-investigation procedures and criminal proceedings. The Bar Association is also obliged to deliver to the courts and other authorities the list of attorneys filed in the register of the Bar Association, containing necessary data, in accordance with the rules of the Bar Association, so as to provide professional and efficient legal assistance to the parties as appointed attorneys, temporary representatives, interim guardians or attorneys empowered to receive writs, in civil proceedings, non-litigious civil procedures, enforcement procedures, administrative procedures and other proceedings.