

Questionnaire Leipzig, 2. February 2026.

Part 1: Jurisdiction in fields of law typically producing disputes of a highly technical nature

Does your court have jurisdiction to answer:

- Factual issues and legal issues
- Just legal issues
- Legal issues and partially factual issues X

In case your answer was "Questions of law and partly questions of fact", please explain:

The Supreme Court of Montenegro, in the network of regular courts, represents the highest court in the country, which, among other responsibilities, ensures the uniform application of the law by the courts. The basic principle of the judiciary, regulated by Article 118 paragraph 2 of the Constitution of Montenegro, is that the court judges on the basis of the Constitution, laws and confirmed and published international treaties. The Supreme Court decides in the third instance when it is determined by law, decides on extraordinary legal remedies against the decisions of second-instance courts and the decisions of the Administrative Court of Montenegro, decides on the transfer and determination of local jurisdiction, resolves conflicts of jurisdiction between courts of different types, and performs other tasks prescribed by law. As a rule, the Supreme Court of Montenegro does not decide on factual issues, but on legal issues, except in exceptional cases when the law expressly provides for it. In proceedings in the third instance and when deciding on extraordinary legal remedies, the Supreme Court verifies the legality and regularity of the application of law in lower courts, but does not determine the factual situation. However, the law may prescribe the possibility for the Supreme Court, in certain situations, to consider factual issues, but this is an exception, not a rule.

2. Does your court have jurisdiction in the following areas of law:

- Environmental law X
- Health Law X
- Urban and construction law and/or spatial planning law X
- Telecommunications Law X
- The right to public procurement X

List other areas of law that present a technical challenge for your court

- Area of tax law

Note: The Supreme Court of Montenegro is not competent for first-instance or second-instance decision-making in cases from the above-mentioned areas, but it is competent to resolve legal issues in the third instance and for deciding on extraordinary legal remedies against the decisions of lower courts in those areas, when it is determined by law.

3. Give an estimate or - if possible - a number about how many disputes of a highly technical nature your court resolves annually:

- As a percentage of all disputes

- In absolute numbers

Please explain: We have no data

4. In what area of law, in what types of cases do you currently see technical challenges for the judges of that court

All areas of law, listed under question number 2, especially environmental protection law, urban planning and construction law and the law regulating public procurement, represent areas in which technical challenges appear or may appear for the judges of this court who act on the basis of an extraordinary legal remedy on the decisions of the regular and two courts of special jurisdiction - the Commercial Court of Montenegro and the Administrative Court of Montenegro. A special challenge for judges of lower levels, including judges of this court, is the area of environmental protection, which is an area of great importance for the procedure of closing the chapter of the same name, on the path of Montenegro's accession to the European Union. Resolving disputes from this area of law requires detailed knowledge of environmental standards, international conventions and complex technical evidence (eg pollution analyses, environmental impact assessments). These are cases that require an understanding of scientific expertise and technical reports, which can be a challenge for judges without appropriate technical support or education.

Question number 5 - the answer is NO

Answer under 6. – not applicable

7. How does your court deal with the technical issues that need to be understood in order to resolve the case?

- Judges must understand the technical issues/must acquire the necessary knowledge themselves X

- Judges can rely on external experts X

Explain your answer:

In many cases, our judges are able to deal with technical issues that arise in various areas by correctly interpreting legal regulations, applying existing judicial practices of domestic courts and generally accepted standards in proceedings in certain areas of law, as well as by constant education in order to acquire new knowledge in certain areas of law. The Supreme Court, especially through the General Session, takes principled legal positions on disputed legal issues in order to ensure uniform application of the law. This is especially important when there are differing opinions or dilemmas among judges in lower instances regarding the interpretation of technical or legally complex issues. In order to resolve legally complex issues in which public law bodies and courts do not have sufficient professional knowledge, those bodies, ex officio or at the suggestion of a party, and lower level courts, at the suggestion of a party, may determine the presentation of evidence by expert testimony or request an expert opinion from relevant institutions or experts. The court evaluates the evidence according to its free opinion, whereby the expert's findings and professional opinion represent evidence that is evaluated in accordance with the general rules of evidence. The court also has access to the judicial information system, which enables monitoring of cases, but technical support in terms of professional consulting or education for judges in technical areas is often limited.

8. If judges can rely on external experts, are the experts:

- Chosen by Court X
- Recommended by one of parties X
- Recommended by public authority X
- Second

Explain your answer:

In administrative proceedings before public law bodies, it is the body that ex officio hires experts from certain fields, who are often members of special commissions of the body (First and second instance social and medical commissions in proceedings for exercising rights in the field of social and health care, Commissions for determining fair compensation in expropriation proceedings, etc.) ex officio, but at the proposal of the parties, who are also free to propose the identity of the expert. In a situation where the parties do not agree on the identity of the expert, i.e. if it is an area in which there are no court experts, the court is the one that determines the person or institution to which it will entrust the preparation of findings and opinions in the field of expertise.

9. To answer technical questions: Can the court rely on technical expertise as prescribed in:

- regulations X
- Other Government documents or documents of public bodies X
- Documents published by the EU Commission X
- Documents published by experts or groups of experts
- secon

Explain your answer:

The Supreme Court of Montenegro can rely on technical expertise when deciding on complex technical issues, but this must be in accordance with domestic laws and rules of evidence. According to the legislation of Montenegro, the court has the possibility to order an expert opinion or request an expert opinion from the relevant institutions or experts when it is necessary to clarify the technical aspects of the case. When it comes to the use of technical expertise, the Supreme Court cannot arbitrarily use any document, but must act in accordance with the regulations governing court proceedings. Technical expertise must be obtained in the manner prescribed by the Law on Civil Procedure or the corresponding laws that regulate a certain type of case (eg the Law on Administrative Disputes, the Law on Public Procurement, etc.). The court may take into account documents of public law bodies (eg reports, assessments, decisions) and documents of the Government or other state bodies, provided that they are legally relevant and obtained in a lawful manner. The court may also take into account documents published by the Commission of the European Union, especially in cases related to the harmonization of law with EU law or when it is provided for by international agreements and the law of Montenegro. However, such documents cannot be decisive if they do not comply with domestic legislation and rules of evidence.

10. If your answer is yes in relation to any of the criteria of question 9, to what extent does this technical expertise have a binding effect?

The answer given to the previous question - the Supreme Court of Montenegro can rely on technical expertise and documents obtained in accordance with the law, including documents of public law bodies, the Government, as well as documents of the EU Commission, but only if they are relevant to the case and obtained in accordance with domestic laws and rules of evidence.

11 How does the court react if the technical questions relevant to the case cannot be answered, even with professional help?

In the Montenegrin legal system, as in most continental European legal systems, there is no special legal provision that explicitly and in detail regulates the procedure in cases where technical issues cannot be clarified even with the help of experts or

available documents. However, there are general principles and rules of evidence that apply in such situations.

Key legal provisions and principles:

- Free evaluation of evidence:

The court is obliged to evaluate the evidence according to its free conviction, based on conscientious and careful analysis of each piece of evidence separately and all pieces of evidence together, and based on the results of the entire procedure. This is a basic rule that applies even when technical issues cannot be clarified.

- Burden of proof:

In civil proceedings, the party who claims a certain fact must also prove it. If technical issues cannot be clarified, the court may reject the claim or request if the lack of evidence makes it impossible to establish the key facts, and the party has not used all the opportunities provided by law for proof.

- Filling gaps in the law:

In cases where the law does not regulate a certain issue, the court can refer to general principles of law, but it cannot arbitrarily invent rules that are not in accordance with positive law.

12. Do these criteria described in part 2 of the questionnaire also apply to procedures for which temporary relief is granted?

- we do not have a legal institute of evidence available during a limited period of time when temporary relief should be granted.

13. Which constitutional or other general principle determines the court's obligation to assess the case on a factual basis

- Prohibition of denial of justice X

- Human rights X

- Aarhus Convention X

- The rest

Explain:

The Montenegrin courts, including the Supreme Court of Montenegro, are obliged to issue a judgment based on the established factual situation, first of all, by the general legal principle of denial of justice, which is largely contained in the general principles of law and equity, but also in specific constitutional and international norms.

The key relevant principles are:

- The right to a fair trial (Article 32 of the Constitution of Montenegro and Article 6, paragraph 1 of the European Convention on Human Rights):

Everyone has the right to a fair and public trial within a reasonable time before an independent and impartial tribunal. This principle obliges the court to make a decision based on the established factual situation and correctly applied law, it must not deny justice or leave the party without an answer.

- The principle of human rights:

The right to access the court and legal protection is one of the fundamental human rights and obliges the court to make a decision, and not to leave the party without a solution to the disputed situation.

- Aarhus Convention (Aarhus Convention):

The Aarhus Convention regulates access to information, public participation in decision-making and access to justice in matters of environmental protection. It also obliges states to ensure effective access to justice in environmental matters, but it does not oblige courts to make judgments based on the factual situation in all areas of law, but specifically in the so-called ecological subjects.

- Prohibition of denial of justice:

This general legal principle obliges the courts not to deny justice to a party, i.e. that they must make a decision based on the available evidence and the law. The court must not leave the case unsettled due to lack of technical evidence, but must render a verdict based on the established factual situation, either to reject the lawsuit if the party has not proven its claims, or to rule in favor of the party that has proven its claims.

14. In your judicial practice, does the legislator and/or competent public authority have a margin of appreciation when dealing with technical issues?

In the judicial system of Montenegro, the legislator and competent public law bodies have a certain margin of appreciation when dealing with technical issues, but this freedom of assessment is not unlimited and must be in accordance with the law and principles of law.

The legislator can determine the criteria and standards for decision-making in technical areas, and can prescribe the procedures and methods of proof to be followed by courts and public law bodies. The legislator can also delegate certain technical assessments to professional bodies or institutions, giving them a margin of assessment within the legal framework.

Competent public law bodies (eg ministries, agencies, commissions) have a margin of appreciation when making decisions that require technical knowledge or expert judgment. This margin of appreciation enables the authority, taking into account technical and professional circumstances, to make a decision that is in accordance with the law and the objectives of the public interest. However, judicial control (eg administrative dispute) can verify the legality and justification of those decisions, and possibly annul the decision if it was made in violation of the law or general legal principles.

15. Is there any legal procedure established to eliminate deficiencies in the assessment of the factual basis of the case?

Of course, in the event that the court finds that in the proceedings before the administrative body the factual situation remained undetermined or improperly determined, it has two options - in the dispute for the evaluation of the legality of the act of the public law body that resolved the administrative matter, to annul such act and return it to the administrative body for retrial, with clear instructions regarding the facts that the body is obliged to establish in the retrial, in order for the administrative matter to be resolved in a legal manner, or to resolve the matter in a dispute of full jurisdiction. when the nature of the matter allows it, in which situation the court at the hearing, on the basis of the available and offered evidence, evaluates and determines the factual situation. The Supreme Court, as a court of last resort, does not have the possibility to, in the procedure for an extraordinary legal remedy, appreciate the facts established in the judicial proceedings, except when the correct application of material law depends on the establishment of some relevant fact, when by applying the aforementioned institute it has the possibility to adopt an extraordinary legal remedy and cancel the judgment of the Administrative Court and return the case to that court for a new procedure.

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