

Seminar organised by the Hellenic Council of State and ACA-Europe

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New elements in the organisation and functioning of the Public Administration and Administrative Justice

Questionnaire

I. New models of organisation and functioning in the Public Administration

The aim and scope of Part I of this questionnaire is:

(A) To examine collaboration with private individuals (who are not public servants) in the unilateral action taken by the Administration, and more specifically to study the delegation to private individuals of tasks traditionally performed by public servants during the procedure of issuing an administrative act. Participation, in general, of citizens/interested parties in administrative proceedings (e.g. preliminary hearings, participation and all forms of consultation), collaboration with private individuals in the Administration's contractual activity (works, supply and service contracts, concession contracts, public-private partnerships, etc.), privatisation of public-sector bodies and creation of legal entities governed by private law are not covered by this questionnaire.

(B) To study the integration of private-sector organisational models into the tools and operating methods of the Public Administration.

A. Delegation of administrative tasks to private individuals

1. General provisions

Does your legal system recognise the following forms of collaboration between private individuals and the Public Administration?

Tasks assigned to private individuals during the procedure of issuing [adopting] an administrative act

Recruitment of private individuals who are not civil servants within the Administration's structure, e.g. executive managers, senior managers

Yes, the legal system of Montenegro recognizes the mentioned forms of cooperation between private entities and public administration, through the



institution of entrustment of public powers and the engagement of persons outside the classic status of civil servants.

2. Regarding the involvement of private individuals in administrative proceedings

i. If the involvement of private individuals in administrative proceedings (as indicated above) is

provided for in your legislation, please mention specific provisions.

Constitutional provision

General provision of a legislative nature

Specific legislation

1) Tasks assigned to private persons during the procedure for issuing an administrative act

a) General framework – entrusting state administration tasks and public authorities

• The Law on State Administration, Article 1, expressly states that this law regulates "state administration affairs, organization of state administration, transfer and entrustment of state administration affairs."

• In further provisions (chapter on the transfer and entrustment of tasks - articles 37-40 according to the system of the current version) it is foreseen that certain tasks of the state administration and public powers can be entrusted to other legal entities, if these powers are directly related to their basic activity.

Thus, private/legal entities, as holders of public authority, are authorized to undertake actions in specific administrative matters and pass acts in administrative procedures (eg issuing decisions, conducting proceedings, maintaining public records).

b) Notaries as holders of public authority

• The Law on Notaries, Article 2 and Article 5 and 6, stipulates that a notary performs a public service and is authorized to draw up notarial acts, certify signatures, manuscripts and transcripts, receive documents and money on deposit and perform other tasks entrusted by a special law.

• Articles 5 and 6 of the Law on Notaries stipulate that notarial acts and acts made by a notary as a court trustee have the status of a public document, and in certain proceedings (e.g. probate proceedings - Article 3a and Article 3a in



connection with the law on non-litigation proceedings) the notary makes decisions in the proceedings, thus exercising public powers by entrustment.

c) Public Bailiff

- The Law on Public Bailiffs, Article 1, stipulates that this law regulates the organization of public bailiffs who perform tasks in the procedure of enforcement and security.

A public bailiff is a private person who performs a public service, and in the execution procedure undertakes execution actions, passes certain acts and decisions within the framework of the powers entrusted by law, thereby directly participating in the implementation of public law decisions.

d) Communal activities

- Law on communal activities, Article 14, stipulates that the performance of communal activities is ensured and closely regulated by the local self-government unit, and that these activities are entrusted to public companies, companies or other legal entities, in accordance with the law.

e) General procedural framework

- The Law on Administrative Procedure, in its general provisions, stipulates that the administrative procedure is conducted and the decision is made by an authorized official of a public law body, which includes the holder of public authority, when so determined by a special law (Article on authorized official and provisions on public law bodies).

(2) Hiring private individuals as executive/senior managers

The Montenegrin regulations do not exclude the possibility that management and managerial functions in the public administration are performed by persons who are not "career" civil servants, but can be hired on a special basis.

- Law on State Administration - provisions on the organization of bodies, heads of bodies and managers (Art. 9 et seq., depending on the system) provide for management positions in the bodies of administration; they are filled by persons who meet the requirements prescribed by law and acts on systematization.
- Regulations on civil servants and employees and regulations on work in the public sector enable the hiring of experts for management and managerial jobs

(e.g. for a fixed period, under contract, in projects), under the conditions prescribed by those laws and by-laws

ii. Does national case-law or legislation define criteria pursuant to which the delegation of administrative tasks to private individuals is authorised?

Yes. The Montenegrin legislation prescribes general conditions and criteria under which it is allowed to entrust state administration tasks and public powers to other (private) legal entities, as well as conditions for the performance of certain public services.

The delegation of administrative tasks to private persons in Montenegro is conditional on:

- **the existence of an explicit legal basis for entrusting public powers;**
- **preparation of studies on justification and precise determination of entrusted tasks (Law on State Administration);**
- **by fulfilling special professional, ethical and organizational conditions prescribed by special laws for certain categories of holders of public authority (notaries, public bailiffs, utility companies, etc.);**
- **compliance with the general rules of administrative procedure on authorized officials, impartiality and legality of decision-making (Law on Administrative Procedure).**

iii. How are administrative tasks delegated to private individuals? Please provide specific examples.

Directly by law

In Montenegrin law, there are numerous examples where public powers and administrative tasks are entrusted to private persons directly by the law itself.

Typical examples are:

- **Notaries - The Law on Notaries stipulates that a notary performs a public service and is authorized to draw up notarial documents, certify signatures, manuscripts and transcripts, as well as to "conduct the procedure for discussing the inheritance and make decisions in that procedure", in accordance with the law on non-litigation procedure (Article 3a, in connection with Articles 5 and 6 of the Law on Notaries). This law directly entrusts a private person (notary) with conducting proceedings and making decisions of a public law nature.**

- **Public executors - The Law on Public Executors stipulates that public executors, as persons who perform public service, undertake enforcement and security actions in the enforcement procedure (e.g. inventory, assessment, sale of property, other executive acts), which is directly entrusted to them by the law.**

By an administrative act

In certain areas, laws provide that certain jobs and public powers are specifically entrusted to private persons by a subsequent act of a state authority or local self-government authority, based on legal authority.

- **The Law on State Administration stipulates that state administration tasks can be entrusted to other legal entities by an act of the Government or another competent authority, based on a justification report, which precisely determines the entrusted tasks, conditions and manner of performance.**

- **In practice, this model is used when entrusting certain professional, regulatory or inspection tasks to specialized agencies or other subjects with the capacity of holders of public authority (eg in the sectors of energy, communal services, regulated professions).**

By contract

In the field of communal activities, the legal framework foresees entrusting the performance of part of public tasks to private entities by contract, based on legal authorization.

- **Law on communal activities, Article 21, stipulates that the local self-government unit entrusts the performance of communal activities to a business company or other legal entity with a contract on entrusting the performance of communal activities. That contract, based on the law, determines the scope, conditions and manner of carrying out entrusted tasks, including public law elements (obligations to users, service standards, tariffs, etc.).**

- **Similarly, in other sectors of public services and infrastructure, works of public interest (eg public services, infrastructure management) are entrusted to private operators based on contracts concluded in accordance with the Law on Public Utilities, the Law on Public Procurement and special regulations.**

iv. Which administrative tasks can be entrusted to private individuals [content of the tasks]?



Please provide specific examples from legislation and case-law.

- Preparation of the administrative act ✓
- Issuance [adoption] of the administrative act ✓
- Implementation of the administrative act ✓

In the legal system of Montenegro, private persons (holders of public authority) can be entrusted with various segments of administrative tasks - from the professional preparation of acts, through the adoption of individual decisions, to the execution of those decisions - under the conditions prescribed by special laws.

1. Preparation of an administrative act

In practice, it is often the case that private entities perform professional tasks that are an integral part of the preparation of an administrative act, even though the formal decision is made by the governing body or another public law body.

Examples:

- In the procedures of public procurement, communal services, spatial planning and other regulatory areas, the preparation of technical documentation, reports, studies, expertise and expert findings is carried out by licensed planners, assessors, experts and consultants as private persons or companies, and the administrative body bases its decision on these findings (e.g. spatial and technical conditions, property value assessment, impact studies).**
- The Law on State Administration foresees the possibility of entrusting certain professional and development tasks to other legal entities, whereby these entities prepare drafts of acts, elaborations and proposals for decisions, which are then adopted by the competent authority.**

2. Issuing (adopting) an administrative act

There are also situations in which private persons, as holders of public authority, themselves pass acts that have the legal nature of administrative decisions or public documents with administrative legal effects.

Typical examples from legislation:

- Notaries - The Law on Notaries stipulates that a notary performs a public service and that notary acts have the force of a public document; the notary in probate proceedings, when the proceedings are entrusted to him, issues a**



decision on inheritance that produces legal effects as a decision of a public law authority.

• **Public executors - The Law on Public Executors authorizes public executors to pass certain acts in the enforcement procedure (eg minutes, orders, decisions on certain enforcement actions), thereby directly deciding on the rights and obligations of the parties in the framework of the execution of legally binding decisions.**

In those cases, a private person, based on the law, appears as a public law authority in a specific procedure and makes decisions that are binding on the parties.

3. Implementation (execution) of the administrative act

The implementation of already adopted administrative acts and other public law decisions is also often entrusted to private entities.

Examples:

• **Public bailiffs – execute court and other enforcement documents (judgments, rulings, tax rulings, notary documents) by undertaking specific enforcement actions: confiscation, sale, transfer of funds, eviction, etc. Thus, they implement the decisions of public authorities and ensure their actual implementation.**

• **Utilities - The law on utility services provides that legal entities entrusted with utility services (public company or other legal entity) implement the decisions of local self-government bodies on utility services, tariffs, connection, etc., undertake measures against users (exclusions, calculations, calculation of penalties) and thereby practically execute public law decisions in the field of utility infrastructure and services.**

v. What is the extent [range] of administrative tasks that can be entrusted to private individuals?

Please provide specific examples from legislation and case-law.

Advisory tasks √

Decision-making tasks √

Control and verification tasks:

Establishment of the facts √



Legal qualification of the facts √

In the Montenegrin legal order, private persons, as holders of public authority or contractual partners of public administration, can be entrusted with different types of tasks, but with the limitation that the basic functions of state power and key prerogatives of sovereignty remain within the competence of public authorities.

• Consulting and professional jobs:

Private individuals are widely involved in preparatory and advisory work of public administration - preparation of analyses, studies, projects, expert reports, property value assessments, expert opinions (eg in public procurement, communal infrastructure, spatial planning, concessions). Based on these findings, the authorities make administrative decisions.

• Control and verification (factual and professional):

Special laws stipulate that certain control and verification tasks are performed by private entities:

- public executors – checking and implementing executive documents and undertaking executive actions;**
- authorized experts and appraisers - assessment of real estate value, technical compliance, damage, etc.;**
- utility companies - control of the performance of user obligations, calculation and collection of utility services.**

These activities often have the character of "control and verification" of the factual situation or the fulfillment of legal conditions, on which the adoption or execution of an administrative act is based.

• Making decisions (deciding on individual matters):

Decision-making powers are entrusted only when expressly prescribed by law and under strict conditions:

- notaries – in entrusted probate proceedings, they issue decisions on inheritance that have the legal effect of administrative/judicial decisions;**
- public executors - make certain decisions and orders in the enforcement procedure, within the framework of legally defined powers;**



• **legal entities with public powers - in certain sectors (utility activities, regulated professions, public services) they pass acts of importance for the rights and obligations of users (e.g. decisions on connection, tariff conditions, permits).**

vi. Are there any cases where the involvement of private individuals in administrative proceedings is prohibited?

Yes. Although Montenegrin law recognizes the entrustment of certain tasks and public powers to private persons, certain functions of public authority remain exclusively within the competence of state bodies and public legal entities, so the participation of private persons in the exercise of administrative powers is not allowed in those areas.

First of all, the Constitution of Montenegro and systemic laws (Law on State Administration, Law on Internal Affairs and others) are based on the fact that:

• **tasks of security, police authorization, public order and peace, criminal prosecution, border protection and defense belong exclusively to state bodies (eg Ministry of Internal Affairs, police, prosecutor's office, army) and cannot be entrusted to private persons as holders of public authority;**

• **key fiscal and tax functions (establishment, collection and control of public revenues) remain in the competence of tax and other state authorities, although certain auxiliary tasks (eg IT support, printing, etc.) can be contracted with private entities;**

• **in areas where the law has not expressly provided for the possibility of entrusting public powers, private persons cannot independently conduct administrative procedures or pass administrative acts.**

The Law on State Administration, although it allows the entrustment of certain jobs to other legal entities, simultaneously requires that the entrustment be based on an explicit legal basis and that it deals with jobs that by their nature are suitable for such a regime (professional, technical, service jobs, public services), which indirectly excludes the delegation of those powers that form the core of public authority (e.g. police powers, deciding on basic rights and freedoms in repressive procedures).

If yes, which legal instrument provides for the corresponding prohibitions?

Constitution

Legislation

Other



Please indicate any relevant case-law.

The participation of private persons in the performance of certain administrative tasks is prohibited or effectively excluded based on the following instruments:

1. Constitution of Montenegro

- **The Constitution regulates the division of power and starts from the fact that legislative, executive and judicial powers are exercised by state bodies (Assembly, Government, courts), and state administration tasks by ministries and administrative bodies.**
- **Constitutional norms on sovereignty, security, defense and internal order imply that key functions (defense, police, security services, criminal prosecution, fiscal sovereignty) remain in the hands of the state and are not entrusted to private individuals. It is the fundamental constitutional framework that sets the limit for the "delegation" of public powers.**

Example for explanation: deciding on the declaration of a state of emergency, the use of the military, basic fiscal issues or the restriction of human rights is related to state bodies (Assembly, Government, President, courts) and cannot be transferred to private entities.

2. Law on State Administration

- **This law expressly stipulates that state administration tasks are carried out by ministries and other state administration bodies, and that certain tasks can be transferred or entrusted to other legal entities only by law or Government act, and that if public powers are "directly related to the basic activity for which the legal entity was established".**
- **At the same time, a negative limit can be seen from the same norm: jobs that are not suitable for such a regime (eg police, security, key fiscal powers) cannot be entrusted, because they are not jobs that, by nature, would be performed by a private person.**

A practical example: unlike communal activities or certain professional jobs, deciding on rights and obligations in the area of police powers (arrests, use of coercive means, powers in criminal proceedings) is not confidential to private entities - these powers belong exclusively to administrative bodies.

3. Law on Internal Affairs (Law on Police)

- **The Law on Internal Affairs explicitly defines police duties and police powers (surveillance, identification, detention, search, use of coercive means, etc.)**



and stipulates that they are performed by police officers, as persons in the service of the state, under the conditions prescribed by law.

- It follows that police powers cannot be entrusted to private persons - neither as holders of public powers, nor through a contract. The law explicitly links the application of police powers to the status of a police officer and the legal regime of public service.

Example: ensuring public order and peace, traffic control, criminal procedural powers (apprehension, deprivation of liberty, search) can only be performed by a police officer, never by private security or another private entity.

4. Other sectoral laws and the principle of legality

- In other areas (tax system, customs, defense, judiciary, prosecution), special laws stipulate that certain types of procedures and powers are performed exclusively by state bodies (eg tax authority, customs service, Ministry of Defense, courts, state prosecution). This implicitly excludes the possibility of private persons carrying out those procedures or adopting acts instead of those authorities.

- The Law on Administrative Procedure assumes that administrative procedures are conducted by competent public law bodies and holders of public authority defined by law; where the law does not provide for entrustment, private entities cannot act as the authority of the procedure.

3. Qualifications and selection procedure for private individuals

i. What is the procedure provided for in the legislation for the certification of private individuals?

Please mention specific examples.

Participation in examinations √

Selection based on criteria √

Explanation:

The certification of private persons (notaries, public bailiffs, utility service providers, mediators, etc.) is based on a combination of: (i) taking special exams; (ii) selection based on prescribed criteria (education, experience, integrity); and (iii) the formal issuance of a license or appointment by a competent authority.

ii. How are selected the private individuals who will be entrusted with a specific administrative



task? Please give examples.

Random selection from a list/register ✓

Selection from a list/register based on criteria ✓

Reasoning:

• **Random selection from the list/register:**

Notaries and public bailiffs are kept in official registers; in the distribution of individual cases (e.g. probate proceedings, enforcement cases by official award), distribution systems are used according to schedule or random/alternate selection from the list, in order to ensure equality and avoid selection by the party or authority completely at will.

• **Selection from the list/register based on criteria:**

When appointing (not assigning a specific subject, but "entrusting a function") notaries, public executors, mediators or licensed utilities providers, the selection is made from a list of candidates who have passed the competition, exams and licensing, based on prescribed criteria (education, experience, integrity).

iii. Is there a legal provision and/or other instrument governing the actions of private individuals when performing administrative tasks? Please indicate specific provisions.

No

If yes, ✓

General normative act (e.g. Code of Administrative Procedure)

Specific normative acts

Codes of Conduct, good practices (soft law)

Yes. The actions of private persons performing administrative tasks as holders of public authority are regulated by a combination of:

• **general rules on public administration and supervision of holders of public authority;**

• **special laws that regulate in detail the status, rights, duties, supervision and responsibility of those persons;**

• **general rules of administrative procedure.**



1. General framework - Law on State Administration

The Law on State Administration foresees that certain tasks of state administration can be entrusted to other legal entities, but at the same time regulates the supervision of the work of holders of public authority and the obligation for them to act in accordance with the Constitution, laws and by-laws.

- Supervision consists of checking the legality and expediency of the work, the possibility to order the removal of irregularities, cancel or amend illegal acts and initiate liability procedures.

This makes it clear that private persons, when performing entrusted public tasks, are subject to the same principles of legality, responsibility and supervision as state administration bodies.

2. Special laws (lex specialis) – concrete examples

a) Notaries

- The Law on Notaries, Article 1, stipulates that this law regulates: "jobs of notaries, organization of notary services, conditions for performance and reasons for termination of notary activity, supervision of notary's work, disciplinary responsibility of notaries and other issues of importance for performing notary activity".

- The law regulates in detail:

- obligation to act conscientiously and impartially;
- prohibitions of conflicts of interest;
- liability insurance obligation (eg Article 31 – obligation to extend liability insurance);
- supervision of the work of notaries by the Ministry of Justice and the Chamber of Notaries;
- disciplinary responsibility (disciplinary violations, measures, procedure).

b) Public bailiffs

- The Law on Public Bailiffs regulates the organization, competence, rights and obligations of public executors, supervision of their work and liability for damage.



- **Article 31 stipulates that the public bailif is liable with all of his assets for the damage caused by illegal and improper work during the enforcement procedure, while the state is not responsible for such damage.**

- **The law provides:**

- **supervision of the work of public baillifs (by the Chamber and the Ministry);**
- **disciplinary measures in case of irregularities;**
- **the obligation to act in accordance with the law and rules of the profession.**

c) Utility service providers

- **The Law on Communal Activities prescribes the obligations of the providers of communal services (legal entities entrusted with communal activities): to ensure permanent and uninterrupted provision of communal services, according to prescribed quality standards and under equal conditions for users.**

- **The utility service provider is responsible for the damage it causes to the users if it does not ensure that the utility service is provided under the prescribed conditions (Article 13).**

- **The local self-government unit supervises the execution of the contract and compliance with public law obligations of the service provider.**

3. General procedural framework - Law on Administrative Procedure

The Law on General Administrative Procedure also applies to procedures conducted by holders of public authority, unless otherwise regulated by a separate law.

This means that private persons exercising public powers must:

- **act in accordance with the principles of legality, protection of parties' rights, impartiality and efficiency;**
- **comply with the rules on language, delivery, explanation of decisions, legal remedies, etc.**

v. **What are the legal consequences in the event of an error, offence or failure on the part of the private individual?**

In the event of a mistake, violation of the law or unprofessional work of a private person entrusted with public authority, Montenegrin law provides for the following types of consequences:



- **Disciplinary responsibility and loss of authority:**
 - **Notaries** - The Law on Notaries provides for the disciplinary liability of notaries (reprimand, fine, temporary ban on activities, dismissal), as well as reasons for termination of notary activity (serious breach of duty, failure to meet conditions, loss of dignity).
 - **Public bailiffs** - The Law on Public bailiffs prescribes disciplinary measures, including a temporary ban on activities and dismissal, as well as conducting disciplinary proceedings in case of violation of the law or professional duties.
- **Personal civil liability of a private person:**
 - The public bailiff, according to Article 31 of the Law on Public Bailiffs, is "responsible with his entire property for the damage caused by illegal and improper work during the execution procedure", while the state is not responsible for such damage.
 - The notary is responsible for damage caused to the parties as a result of illegal or unprofessional actions; that is why liability insurance is prescribed (Article 31 of the Law on Notaries).
- **Criminal liability:**
 - Both notaries and public bailiffs, as persons performing public service, can be held liable for criminal acts against official duty (abuse of official position, unscrupulous work in the service, falsification of official documents, etc.), when the conditions of the Criminal Code are met.
- **Annulment or annulment of the act / rebuttal in the procedure:**
 - Acts of notaries and public bailiffs may be subject to judicial review or special legal remedies (objection, appeal, lawsuit), whereby the court may cancel or annul the illegal act, thereby correcting the consequences of wrongful conduct.
 - In administrative matters, if the holder of public authority passes an illegal administrative act, it can be disputed in an administrative dispute before the Administrative Court, as well as an act of a state administration body.
- **Loss of license or status of holder of public authority:**
 - Serious violations of duty or repeated violations can lead to the revocation of the license / dismissal, whereby a private person loses the status of a notary, public bailiff or other holder of public authority.

- **Civil liability of utility service providers:**

- **The Law on Utilities provides that the provider of utility services is responsible for the damage it causes to users if it does not perform the service under prescribed conditions (eg interruption, poor quality, non-compliance with contractual and public law obligations).**

4. Administrative checks [controls]

i. Does the Administration carry out checks on private individuals when they perform administrative tasks?

Yes

ii. If yes, at what stage are the checks carried out?

A priori ✓

A posteriori ✓

At any time ✓

iii. How are checks activated?

Following a complaint/administrative appeal ✓

✓ **Ex officio**

- **After the appeal / complaint of the parties:**

Parties and other interested persons can submit complaints, petitions or initiatives to competent authorities (ministry, chamber, municipality) regarding the work of notaries, public bailiffs or utility service providers. Based on these complaints, the authority initiates supervision, disciplinary proceedings or other measures.

- **On official initiative:**

The Law on State Administration, the Law on Notaries and the Law on Public Bailiffs, the Law on Inspection Supervision, provide that the competent authorities and chambers carry out supervision ex officio, through regular and extraordinary controls, without prior complaints from the parties - e.g. thematic controls, inspection supervision, inspection of files and books, control of compliance with regulations and tariffs.



iv. How extensive are the checks?

Checks based on sampling ✓

Supervision of private persons entrusted with public powers (notaries, public bailiffs, utility service providers) is often carried out in practice on the basis of case samples and supervisory reviews (control of selected files, records, financial reports), but the competent authorities have the possibility, when they deem it necessary, to carry out a full inspection of the work of a certain person or of certain procedures."

v. What is the nature of the checks?

Of legality ✓

Of the substance, of appropriateness ✓

Explanation:

Control is primarily aimed at checking the legality of work (observance of laws, by-laws, tariffs, procedural rules), but to a certain extent it also includes assessment of expediency and professional standards - especially in the case of communal services, where the local self-government body evaluates the quality and reliability of service provision, and in the case of notaries and public bailiffs, where the orderliness and efficiency of actions are monitored."

vi. What is the type of checks?

On actions (not on person)

vii. Are the conclusions of private individuals binding on the Administration?

No

The conclusions of private persons are not binding for the administration.

Reasoning:

- **When private persons act only as advisers, experts, assessors or consultants, their findings and opinions are not legally binding for the authority; the authority values them as evidence or expert opinion and can accept or reject them, with an explanation.**
- **When private persons act as holders of public authority (e.g. notary public in probate proceedings, public bailiff in execution), they themselves then make decisions that are binding for the parties, but these are not "conclusions" that the administration would be obliged to follow, but their own public legal acts within the scope of delegated authority.**



5. Judicial review

i. Can the actions of private individuals be subject to judicial review? Please indicate specific provisions or the relevant case-law.

Answer: YES ✓

In Montenegrin law, the actions of private persons entrusted with public powers are subject to judicial control, in several ways:

1. Administrative dispute - decisions of public authority holders (general case)

- **The Law on Administrative Disputes (Articles 1 and 4) prescribes that an administrative dispute is conducted for the purpose of judicial protection against an "administrative act" issued by a state authority, local self-government authority, institution or other legal entity in the exercise of public authority.**
- **This means that when a private legal entity acts as a holder of public powers (eg in the field of communal activities, regulatory powers, etc.) and passes an administrative act, that act can be contested by a lawsuit in an administrative dispute before the Administrative Court of Montenegro.**

2. Notaries - judicial control in non-litigation and litigation proceedings

- **The notary, in entrusted probate proceedings, issues a decision on inheritance. The rules of the Law on non-litigation proceedings and special regulations are applied to those decisions, which includes the possibility of judicial control (appeal or review before the court), and the court can in certain cases take over or return the proceedings.**
- **In addition, notarial acts as public documents can be challenged in civil proceedings (eg, a lawsuit to establish nullity, refutation of a legal transaction, etc.), whereby the court examines the regularity and legality of the notary's actions within the limits of relevant regulations.**

3. Public bailiffs - judicial control in enforcement proceedings

- **In the enforcement procedure, the decisions and actions of the public bailiff may be subject to legal remedies (objection, appeal) and judicial control, in accordance with the Law on Enforcement and Security and the Law on Public Bailiffs.**
- **The court, deciding on an objection or appeal, can confirm, amend or cancel the decision of the public bailiff and order a different course of action, which ensures judicial control of their actions.**



4. General mechanisms of judicial protection

- If a private person, as a holder of public authority, causes damage through his actions, the competent court decides on civil liability in civil proceedings (eg liability of a notary or public bailiff for damage).
- In cases of criminal acts, the responsibility of notaries, public bailiffs or other holders of public authority is assessed in criminal proceedings before the competent court.

Judicial control includes:

- annulment or amendment of illegal acts (administrative dispute, executive and non-litigation proceedings);
- deciding on civil liability for damage;
- deciding on criminal responsibility (criminal procedure).

ii. What types of disputes arise when challenging the actions of private individuals?

- ✓ Administrative disputes
- ✓ Civil (litigation) disputes
- ✓ Criminal proceedings

iii. Please mention typical cases from national case-law concerning the delegation of administrative tasks to private individuals.

1. The Administrative Court of Montenegro acts on lawsuits against administrative acts passed by legal entities as holders of public authority (eg in the field of public services, communal activities). The court examines the legality of acts of those entities in the same way as acts of state administration bodies, based on the Law on Administrative Disputes, which expressly includes "another legal entity in the exercise of public authority" as a defendant in an administrative dispute. In practice, disputes arise between users and utility companies (legal entities entrusted with utility services) in connection with connection, quality of service, tariffs or calculations. These disputes are resolved:

- as administrative disputes, when it comes to administrative acts in the exercise of public powers;
- or as civil (contractual) disputes, when the emphasis is on breach of contractual obligations or compensation for damages due to non-provision of services.



B. Integration of private-sector methods and organisational models into the functioning of the

Administration

1. Recruitment of senior managers outside the hierarchy of the civil service

i. What are the objectives of recruiting private individuals as senior managers within the Administration?

Answer:

Mainly, the goals are to increase efficiency and effectiveness in the organization and functioning of public administration, to professionalize and strengthen the expertise of management staff, as well as to introduce managerial knowledge and practices from the private sector for better implementation of public policies and administration reform.

ii. In which sectors of the Public Administration is it permissible to recruit senior managers who do not belong to the hierarchy of the civil service, and in which sectors is it prohibited?

The employment of senior managers who do not belong to the traditional hierarchy of the public service is made possible primarily in public companies, state agencies, funds and other legal entities of the public sector, where directors are selected on the basis of a public competition or a decision of the competent authority and do not have to be civil servants beforehand.

In classic state administration bodies (ministries, administrative bodies), managers are either political officials (ministers) or senior civil servants elected in accordance with the regulations on civil servants, while in the sectors of internal affairs, security and defense, management functions are strictly related to the status of an official, and the engagement of external managers in those areas is practically excluded.

iii. What criteria does the Administration use to select external senior managers?

When selecting external senior managers, the administration uses a combination of criteria: level of education, relevant and managerial experience, professional competence and integrity, often additionally specified by special laws and tender acts for specific bodies and agencies.

iv. What is the nature of the duties of external senior managers?

The nature of the duties of external senior managers is a combination of decision-making (management and normative decisions within the authority's

jurisdiction) and consultancy (formulating policies, proposing measures and strategic management of resources).

v. Does error on the part of a senior manager give rise to:

Civil liability of the State

✓

Personal liability of the manager (civil, criminal, disciplinary)

✓

Explanation:

• When a senior manager as head of a body or a public company, within the scope of his official activities, causes damage to third parties through the illegal operation of the body, the responsibility towards third parties is usually borne by the state or public law subject, in accordance with the general rules on liability for damage and the principle of responsibility of public law bodies for the work of their bodies.

• At the same time, that manager may bear personal responsibility:

• disciplinary (violation of official duty, dismissal from office, salary reduction, etc.);

• civil (recourse – compensation for damage to the state or body, if it caused damage intentionally or through gross negligence);

• criminal (e.g. abuse of official position, negligent work in the service, if the requirements of the Criminal Code are met)

2. Organisational models

i. Does your country use New Public Management, Public Value Management, Digital Era Governance, or New Public Governance policies in the organisation of its Public Administration, for example, to digitise procedures, achieve objectives, ensure accountability, evaluate efficiency, promote the rational use and distribution of resources, control expenditure and ensure compliance with budget restrictions, codify legislation, promote career progression, train staff, etc.? Please provide specific examples.

Although Montenegro does not formally use the aforementioned models under those names, the strategic and normative framework of public administration reform (RJU Strategy 2022–2026, Digital Transformation Strategy, Law on Electronic Governance and regulations on the management of public enterprises) contain elements of all the aforementioned concepts: performance management and efficiency (New Public Management), focus on public value and users (Public Value Management), digitization of processes

and services (Digital Era Governance) and networked cooperation of the state, private sector and civil society (New Public Governance).

ii. Is there a specific provision for the organisation of the Administration based on the above-mentioned models (Constitution, legal provision, etc.)?

There is no special constitutional or legal provision that nominally adopts one of these models as the basic model of public administration organization. The Constitution of Montenegro and systemic laws (Law on State Administration, Law on Civil Servants and Employees, Law on Electronic Administration) regulate the classic organization of public administration, but do not use the terminology "New Public Management", "Public Value Management", "Digital Era Governance" or "New Public Governance".

The elements of the mentioned models were implemented through strategic documents (e.g. Public Administration Reform Strategy 2022-2026, Digital Transformation Strategy) and individual laws (especially the Law on Electronic Administration and regulations on the management of public enterprises), but without explicit normative declaration of a single model as a constitutional or legal concept of the organization of administration.

iii. In which public services and agencies is this type of organisation used?

The Administration stricto sensu ✓

Public enterprises ✓

Other public entities ✓

iv. Are the policies for achieving the objectives designed:

At national level ✓

By subject-matter ✓

By taking into account specific public entities ✓

v. Have specific objectives been set out for the action of the Administration? Please provide examples.

Yes

The public administration reform strategy 2022–2026, with accompanying action plans, contains specific goals and performance indicators (eg, increasing the number of e-services, shortening the duration of procedures, improving transparency, strengthening human resources management). Those goals are elaborated by priority areas and by types of bodies (state bodies, local self-government bodies, public companies, etc.)



If yes, is their accomplishment:

- ✓ **Achieving the set goals is mandatory**

Reasoning:

The goals defined by the Public Administration Reform Strategy 2022-2026 and related action plans oblige state administration bodies, local self-government bodies and other public entities to take the foreseen measures. Their achievement is monitored through reporting and evaluations, but there are no automatic individual sanctions for managers related exclusively to non-achievement of quantitative goals.

Personal consequences for senior managers: NO

- **Legal consequences for the organization in question: NO**
- **Financial consequences for the organization in question: NO**

Reasoning:

The goals from the Public Administration Reform Strategy and related documents have a binding character for public administration bodies, but there are no automated mechanisms that only directly and formally sanction non-achievement of goals through the personal responsibility of managers or through legal/financial consequences for the organization. Consequences can be indirectly manifested through negative performance evaluations, reduction of trust, changes in management personnel or changes in funding based on political and management decisions, but this is not standardized as an automatic legal sanction related exclusively to non-fulfillment of goals.

Are incentives of any kind provided for civil servants (e.g. remuneration) or public entities to ensure that these objectives are achieved?

- **Incentives for civil servants: YES, limited**
- **Incentives for public entities (organizations): YES, mostly indirectly**

Brief explanation:

- **There are performance evaluation, promotion and reward mechanisms for civil servants (eg the possibility of advancement, recognition, special awards for excellence), the aim of which is to motivate civil servants for better results and quality of services.**

• For organizations, the incentives are above all politically administrative (positive evaluations, greater support, priority in projects), and not classic automatic financial rewards linked directly to the achievement of goals.

vi. Are there any indicators for evaluating the action of the Administration in relation to the following factors:

- ✓ Compliance with the normative framework
- ✓ Efficiency
- ✓ Economy
- ✓ Achieving strategic goals

Brief explanation:

• **Compliance with the normative framework:**

The application of regulatory impact analysis (RIA) and law enforcement monitoring mechanisms are used as indicators of how well the administration is working in accordance with the applicable normative framework.

• **Efficiency and economy:**

The Public Administration Reform Strategy 2022-2026 and the Excellence Award Methodology foresee indicators such as the duration of procedures, the number of processed cases, the level of digitization of services, resource management, and the like.

• **Achieving strategic goals:**

In the RJU Strategy, the goals are monitored through measurable indicators (e.g. number of e-services, system interoperability, user satisfaction, reduction of administrative burdens), and implementation is reported through action plans.

I. Alternative methods for resolving administrative disputes

1. General provisions

i. Does your legislation provide for alternative dispute resolution (ADR) in cases involving public law/administrative law?

Arbitration ✓

Mediation □

Other □



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Partially. There is a developed framework for alternative dispute resolution (mediation and other ADR mechanisms) in civil and commercial disputes, including disputes in which one of the parties is Montenegro or a local self-government unit, but classic administrative disputes against administrative acts are still resolved exclusively in court.

ii. Are there categories of administrative disputes that are excluded from ADR by law or according to case-law?

Answer: Yes.

The Law on Alternative Dispute Resolution stipulates that it does not apply to "disputes for which the exclusive jurisdiction of a court or other authority is prescribed." In practice, this includes classic administrative disputes (lawsuits against administrative acts of public law bodies), because the Law on Administrative Disputes provides for the exclusive jurisdiction of the Administrative Court, so these disputes are resolved exclusively through the courts, without ADR.

Also, according to the practice and explanations of the Center for Alternative Dispute Resolution, mediation is "possible in all disputes except those for which the exclusive jurisdiction of a court or other body is prescribed", which confirms that classic administrative disputes (control of administrative acts) are considered exempt from ADR.

2. Settlement and Mediation

* Please elaborate on your answers, citing any relevant legislation and/or case-law.

i. In administrative disputes, is it permissible for the Administration and private individuals/legal entities to sign a settlement agreement or other similar document (without prior mediation)?

Answer: YES, but primarily in the stage of administrative proceedings (administrative settlement / administrative contract), and NOT in a classic administrative dispute before the court.

ia. If yes,

Is this option expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

Answer: It is not provided for in the administrative dispute, so the answer to all the following questions is NO

ii. Does your country provide for a mediation procedure between the Administration and private individuals/legal entities for administrative disputes?



* The term 'mediation' is used here to refer to a procedure conducted by an independent and impartial third party, and not to administrative appeal procedures addressed to the Administration or to a body that is hierarchically dependent on the Administration

Answer: NO (for administrative disputes in the narrower sense); mediation is regulated for civil law relations, including disputes with the state, but there is no special mediation regime for administrative disputes against administrative acts.

Brief explanation:

- **The Law on Alternative Dispute Resolution expressly refers to civil law relations (mediation, early neutral assessment, other forms of ADR), and enables mediation in disputes in which the state or municipality is a party.**
- **The Law on Administrative Disputes, which regulates the control of administrative acts of public law bodies, does not provide for mediation or any special mediation mechanism between administrative bodies and parties in those disputes.**

3. Arbitration

* Please elaborate on your answers, citing any relevant legislation and/or case-law.

i. In administrative disputes, is arbitration between the Administration and private individuals/legal entities permitted in your country?

Answer: YES, but to a limited extent and as a rule for economic and investment disputes, and NOT for typical administrative disputes."

Short explanation:

- **The Arbitration Law regulates commercial/commercial arbitration and expressly allows the parties who conclude an arbitration agreement to refer their dispute to arbitration, where one of the parties may be the state or a public law entity, if it is a property-law, dispositive dispute (eg construction contracts, concessions, commercial contracts).**
- **Montenegro has repeatedly participated in international investment arbitrations (eg before ICSID) in disputes with foreign investors, which confirms that arbitration with the state as a party to the dispute is an accepted mechanism in that sphere.**



- **However, administrative disputes in the narrower sense (suit against an administrative act of a public law body under the Law on Administrative Disputes) are not subject to arbitration; the Administrative Court has exclusive jurisdiction over them and they remain outside the arbitration regime**

There was no need for answers to the other questions.