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**Synthèse / Summary / Kurzfassung / резюме**

**MONTÉNÉGRO / MONTENEGRO / MONTENEGRO / ЧЕРНОГОРИЯ**

**The Constitutional Court of Montenegro  
Ustavni sud Crne Gore**

**Anglais / English / Englisch / английский**



MONTENEGRO

**CONSTITUTIONAL COURT**

ANSWERS TO THE QUESTIONNAIRE FOR THE XVI CONGRESS OF THE  
CONFERENCE OF EUROPEAN CONSTITUTIONAL COURTS  
(Vienna, 12. – 14. May 2014)

“Cooperation of Constitutional Courts in Europe – Current Situation and  
Perspectives”

(Summary)

Podgorica, November 2013

ANSWERS TO THE QUESTIONNAIRE FOR THE XVI CONGRESS OF THE EUROPEAN  
CONSTITUTIONAL COURTS  
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**“Cooperation of Constitutional Courts in Europe – Current Situation and Perspectives”  
(Summary)**

On 11 May 2007, Montenegro became the 47<sup>th</sup> member state of the Council of Europe. The Constitution of Montenegro from 2007 for the first time explicitly stipulated that: „The ratified and published international agreements and generally accepted rules of international law shall make an integral part of the internal legal order, shall have the supremacy over the national legislation and shall apply directly when they regulate relations differently than the national legislation.“

Also in the part stipulating constitutionality and legality, the Constitution stipulates that “the law has to be in conformity with the Constitution and confirmed international agreements, and other regulations shall be in conformity with the Constitution and the law”. The competence of the Constitutional Court in its abstract control was expanded to cover deciding about the compliance of laws with the Constitution and ratified and published international agreements.

This competence included the obligation of the Constitutional Court to assess the compliance of law with international treaties in the course of constitutionality review and to implement appropriate international standards in its decisions.

Legal consequences for the law that is not compliant with international agreements are the same as the consequences of incompliance of a law or other legislation with the Constitution of Montenegro. That law ceases to be valid on the day of the publication of the Constitutional Court’s decision on incompliance.

The Constitutional Court as one of the most responsible institutions of the system ensures consistent respect of human rights in compliance with international agreements and other international documents.

The European Convention for Human Rights, as a ratified international agreement together with the principles of democracy, rule of law and free elections, makes an integral part of internal legal order and thereby it has direct applicability and, as stipulated in the Constitution, in hierarchy of legislation it is positioned above other laws.

Rights and freedoms as provided by the European Convention on Human Rights and Fundamental Freedoms and its protocols are directly applicable if they regulate relations different than national legislation.

Considering that European Convention, and the jurisdiction of the European Court in relation to Montenegro have been retroactively applicable since 3 March 2004, and not as of its accession to the Council of Europe (i.e. since 11. May 2007), Constitutional Court got a new mandate - review of compatibility of legislation of Montenegro inclusive of that period as well.

The Constitutional Court of Montenegro regularly invokes the Convention rights and case law of the European Court for Human Rights in its decisions, especially in the proceedings following constitutional complaint. Apart from the European Convention, the Constitutional Court invokes other sources of international law (International Covenant on Civil and Political Rights, International Covenant on Economic Social and Cultural Rights, CoE Framework Convention for the Protection of National Minorities, the Hague Recommendation on the Education Rights of National Minorities from 1996 etc.).

One of the most important tasks for the Constitutional Court of Montenegro in the coming period is the implementation of European law and to be actively involved in harmonizing jurisprudence of regular courts. Once regular courts assume their share of responsibility in the application of EU law, the Constitutional Court will still keep its position of the last instance to decide about the relation between national and European law i.e. develop legal arguments to contribute to European constitutional jurisprudence and to the process and harmonization of Montenegrin legal order with that of the EU.

Justice and human rights are in the focus of the ongoing negotiations between Montenegro<sup>1</sup> and European Union within the respective remits of Chapter 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security), seeking to align national legislation with *acquis communautaire*. After successfully delivered reforms and commitments pertaining to Chapter 23, rule of law (independent judiciary and constitutional judiciary), Montenegro expects the negotiations to be opened by the end of 2013.

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<sup>1</sup> Government of Montenegro, at its special session - 8. October 2013, adopted its negotiation position for Chapter 23 (Judiciary and Fundamental Rights) and the negotiation position for Chapter 24 (Justice, Freedom and Security) and they were immediately forwarded to the Lithuanian presidency for further review. Thereby Montenegro met all commitments in preparation to open both chapters related to rule of law. It is now on the European Commission to draw up common negotiation position for Chapter 23 - Judiciary and Fundamental Rights and for Chapter 24 – Justice, Freedom and Security so as to have them adopted by EU member states and to convoke Intergovernmental conference that will open these two chapters by the end of the year.