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**Council for Trade-Related Aspects of  
Intellectual Property Rights**

Original: English

## CHECKLIST OF ISSUES ON ENFORCEMENT<sup>1</sup>

### RESPONSES FROM MONTENEGRO

#### Civil and Administrative Procedures and Remedies

(a) *Civil judicial procedures and remedies*

#### 1. Specify the courts which have jurisdiction over IPR infringement cases.

The courts which have jurisdiction over IPR infringement cases are Commercial Court in Podgorica and Basic courts.

**Law on Courts** ("Official Gazette of the Republic of Montenegro", No. 5/02, 49/04 and "Official Gazette of Montenegro", No. 22/08 and 39/11)

#### Jurisdiction

##### Article 20

(1) Commercial courts shall hear and determine at first instance:

"litigation between domestic and foreign companies, other legal persons and entrepreneurs (commercial entities) resulting from their commercial legal relations (as result of performing activities which are intended to procure certain gain to parties) as well as cases where parties are persons who are not commercial entities but are connected as material co-litigant with commercial entities" (Article 20, paragraph 1, item 1)

"copyright and industrial property between parties from item 1) of this paragraph" (Article 20, paragraph 1, item 4)

"disputes relating to rights of artists, rights concerning the multiplication, duplication and releasing for circulation of audiovisual works as well as disputes relating to computer programs and their use and transfer between the parties referred to in item 1 of this paragraph"; (Article 20, paragraph 1, item 5)

##### Article 16

Basic courts shall have jurisdiction:

(2) "In civil cases, as a court of first instance to judge:

- (a) disputes relating to property, matrimony, family, persons, copyright and other matters except in those disputes for which the law prescribes the jurisdiction of another court"

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<sup>1</sup> Document IP/C/5.

**2. Which persons have standing to assert IPRs? How may they be represented? Are there requirements for mandatory personal appearances before the court by the right holder?**

**Copyright and Related Rights Act** ("Official Gazette of Montenegro", No. 37/11)

Article 183

The right holder of a Copyright work or subject matter of related rights (hereinafter: *protected matter*) whose rights under this Act was infringed, may seek the protection of his rights and claim damages according to general regulations, unless otherwise provided by this Act. (paragraph 1)

**Right holder**

Article 73

Rights granted under this Act to the author, including the right to protection in courts and other competent authorities (legal standing), belong to another person to the extent in which they are assigned to him by law, by contract or by other legal act (right holder).

Societies for the collective administration of copyright and related rights, trade unions as well as professional associations registered for the protection of copyright, enjoy legal standing to enforce protection of their members' rights in courts and other competent authorities.

**Law on Legal Protection of Industrial Design** ("Official Gazette of Montenegro", No. 80/10)

Article 46

In case of infringement of industrial design rights, the design rights holder may request from the competent court to determine the industrial design rights infringement. (paragraph 2)

**Patent Law** ("Official Gazette of Montenegro", No. 66/08, 40/10 and 40/11)

Article 76

The patent holder, or a holder of an exclusive licence for such a patent shall be entitled to instigate a litigation against any person infringing his right by any unauthorized act referred to in Articles 41 and 42 of this Law.

Article 41

The patent holder shall have the exclusive right to prevent third parties not having the owner's consent from the acts of:

making, using, offering for sale, placing into circulation, exporting or importing and storing for these purposes the product made by means of the protected invention;

using the patented process;

offering the patented process for sale;

producing, offering for sale, placing into circulation, using, exporting or importing and storing for such purposes a product directly obtained by the patented process;

offering for sale or supplying products that constitute essential elements of an invention to parties unauthorized to use such invention, if the offerer or supplier knows or has demonstrable grounds to know that such products are intended for the use of an invention owned by someone else.

**Law on the Protection of Topographies of Integrated Circuits** ("Official Gazette of Montenegro", No. 75/10)

Article 14

The topography rights holder may file a complaint requesting the competent court to confirm that the topography rights have been infringed. (paragraph 1)

**Law on Trademarks** ("Official Gazette of Montenegro", No. 72/10, 44/12)

Article 55

The trademark rights holder may file an action requesting that the court establishes trademark infringement. (paragraph 2)

**Law on Civil Procedure** ("Official Gazette of Republic of Montenegro", No. 22/04 and 76/06)

**Agents**

Article 88

Parties may take actions in the procedure either in person or through an agent, but the court may call on the party who has an agent to personally give a statement before the court about the facts that need to be determined in this dispute. The party represented by the agent may at all times come before the court and give statement besides his/her agent.

There is no obligation for mandatory personal appearance before the court by the right holder.

**3. What authority do the judicial authorities have to order, at the request of an opposing party, a party to a proceeding to produce evidence which lies within its control?**

**Copyright and Related Rights Act** ("Official Gazette of Montenegro", No. 37/11)

**Preserving evidence**

Article 189

Upon request by the rights holder, the court shall order preservation of evidence provided the rights holder makes it probable to believe that:

- 1) he is the rights holder under this Act, and
- 2) his exclusive right has been infringed or that there is threat for such infringement to occur.

The court may order the preservation of evidence referred to in par. (1) of this Article without prior notification or examination of the other party, where a delay would cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed.

In the circumstances referred to in par. (2) of this Article the parties shall be given notice after the preservation of evidence at the latest.

The court may order any measure in order to achieve the preservation of evidence, and in particular:

- 1) a detailed description or taking of samples or the seizure of objects or other means by which infringement is effected;
- 2) the seizure of documents relating to the infringement;
- 3) the inspection of premises, books, databases, computer memory, and the like;

4) the appointment and examination of experts;

5) the examination of witnesses.

The procedure for the preservation of evidence shall be subject to the legislation governing the civil procedure, unless otherwise provided by this Act.

The court shall guarantee to preserve the confidentiality of data of the parties and to prevent the abuse of the court procedure with the aim of obtaining confidential information from the opposing party.

#### **Law on Trademarks** ("Official Gazette of Montenegro", No. 72/10 and 44/12)

##### **Securing of evidence**

###### Article 57

At the request of a person who makes it probable that its trademark or rights arising from the trademark application have been infringed, and that there is reasonable suspicion that evidence thereof will be destroyed or that later it will not be possible to obtain such evidence, the court may decide to secure evidence without prior notification or hearing of the person from whom the evidence is to be collected.

An inspection of premises, vehicles, books and documents, as well as the seizure of objects, examination of witnesses and expert witnesses shall be considered as securing of evidence within the meaning of paragraph 1 of the present Article.

The court decision imposing a provisional measure aimed at securing evidence shall be served on the person from whom the evidence is being collected at the time of the collection of evidence, while such decision shall be served on the absent person as soon as it becomes possible.

#### **Law on Legal Protection of Industrial Design** ("Official Gazette of Montenegro", No. 80/10)

##### **Securing of Evidence**

###### Article 48

At the request of the person who makes it likely that his/her industrial design rights or rights arising from the application have been infringed, or that there is a reasonable suspicion that evidence thereof will be destroyed or that it will not be possible to obtain such evidence later on, the court may order a measure to secure evidence without giving prior notice to or hearing the person from which evidence is to be collected.

For the purposes of paragraph 1 of the present Article, the securing of evidence shall mean the inspection of premises, vehicles, books, documents, as well as the seizure of infringing goods, questioning of witnesses and expert-witnesses.

The court order for an interim measure to secure evidence shall be served on the person from which evidence is to be collected, on the occasion of the collection of evidence, and to an absent person, as soon as that becomes possible.

#### **Patent Law** ("Official Gazette of Montenegro", No. 66/08, 40/10 and 40/11)

##### **Securing the Evidence**

###### Article 79

(1) Upon request of the plaintiff referred to in Article 76 of this Law who makes it credible that his right has been infringed on or will be infringed on, or that such infringement is imminent or that irreparable harm is likely to occur, as well as that there is a reasonable risk that the evidence of that will be destroyed or that it will not be possible to obtain it later on, the court may order a

measure to secure evidence without giving prior notice to or hearing the person from which evidence is to be collected.

(2) For the purposes of paragraph 1 of this Article, the securing of evidence shall mean the inspection of premises, books, documents, databases, etc., as well as the seizure of documents and infringing goods, and taking depositions of witnesses and expert witnesses.

(3) The court order for measures to secure evidence shall be served to the person from which evidence is to be collected, on the occasion of the collection of evidence, and to an absent person, as soon as that becomes possible.

(4) The order to secure of evidence may be requested even before the instigation of the litigation, provided the litigation is subsequently instigated within thirty days from the execution of the provisional measure.

**Law on Indications of Geographical Origin** ("Official Gazette of Montenegro",  
No. 48/08 and 40/11)

**Securing of Evidence**

Article 61

(1) At the request of the plaintiff who makes it credible that his/her right has been infringed, and that there is a reasonable doubt that the evidence of that will be destroyed or that it will not be possible to obtain it later on, the court may order a provisional measure to secure evidence without giving prior notice to or hearing the person from which evidence is to be collected.

(2) For the purposes of paragraph 1 of this Article, the securing of evidence shall mean the inspection of premises, books, documents, databases, etc., as well as the seizure of documents and infringing goods, interrogation of witnesses and expert witnesses.

(3) The court order for measures to secure evidence shall be served to the person from which evidence is to be collected, on the occasion of the collection of evidence, and to an absent person, as soon as that becomes possible.

(4) Provisional measure to secure evidence may be requested even before filing an action, provided that the action is filed not later than 30 days from the execution of the provisional measure.

**The Law on Protection of Undisclosed Information** ("Official Gazette of Republic of  
Montenegro" No. 16/07 and "Official Gazette of Montenegro" No. 73/08)

Article 12

(1) At the request of the owner of unpublished data referred to in Article 3 of this law, which makes it probable that there is a danger of their unlawful obtaining, disclosure or use, or that there is a danger of occurrence of irreparable harm or that there is a reasonable suspicion that evidence will be destroyed or it will be impossible for them to be obtained later, the court may require a provisional measure to preserve evidence without prior notification or hearing of the person from whom evidence is obtained.

(2) Securing of evidence, referred to in paragraph 1 of this Article, considers the inspection of premises, books, documents, databases, etc., as well as the seizure of documents, examination of witnesses and experts.

(3) To the person from whom the evidence is collected, a decision on determining provisional measures for securing of evidence shall be delivered at the moment of securing the evidences and to the absent person as soon as it becomes possible.

**4. What means exist to identify and protect confidential information brought forward as evidence?**

**Law on Civil Procedure** ("Official Gazette of Republic of Montenegro", No. 22/04, 76/06)

Article 309

The court may exclude public from the entire main hearing or a part of it if so required in order to preserve the state, official, business or personal secret or to protect interests of public order or morals. (paragraph 1)

**Copyright and Related Rights Act** ("Official Gazette of Montenegro", No. 37/11)

**Preserving evidence**

Article 189

The court shall guarantee to preserve the confidentiality of data of the parties and to prevent the abuse of the court procedure with the aim of obtaining confidential information from the opposing party. (paragraph 6)

**Patent Law** ("Official Gazette of Montenegro, No. 66/08, 40/10, 40/11)

**Claims**

Article 77

(4) Where a plaintiff has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the defendant, the court may order that this evidence be produced by defendant, subject in appropriate cases to conditions which ensure the protection of confidential information. (paragraph 4)

**The Law on Protection of Undisclosed Information** ("Official Gazette of Republic of Montenegro" No. 16/07 and "Official Gazette of Montenegro" No. 73/08)

Article 18

The courts and other competent authorities are required to maintain the confidentiality of unpublished data protected under this law. The obligation to maintain the confidentiality also includes an exclusion of the public in the process, limit of access to and use of data and issuing orders to all persons involved in the case to not disclose such information to others without prior permission of the court.

**5. Describe the remedies that may be ordered by the judicial authorities and criteria, legislative or jurisprudential, for their use:**

- **injunctions;**
- **damages, including recovery of profits, and expenses, including attorney's fees;**
- **destruction or other disposal of infringing goods and materials/implements for their production;**
- **any other remedies.**

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**Copyright and Related Rights Act** (Official Gazette of Montenegro No. 37/11)**Claims**

## Article 192

When the exclusive rights granted by this Act are infringed, the right holder may file a claim requesting that the following action be taken at the expense of the infringer:

- 1) to establish the infringement of rights;
- 2) to prohibit the current and future infringements;
- 3) to recall the objects of infringement from channels of commerce, taking into account the interests of *bona fide* third parties;
- 4) to remedy the situation caused by the infringement;
- 5) to remove definitively the objects of infringement from the channels of commerce;
- 6) to destroy the objects of infringement;
- 7) to destroy the instruments of infringement that are principally used for infringement;
- 8) to surrender to the rights holder the objects of infringement against the reimbursement of the costs of their production to the infringer;
- 9) to publish the judgment on the infringement of rights.

The court may order that instead of the claims referred to in Par. (1), subparagraphs 3- 8 of this Article the infringer pays pecuniary damages to the right holder.

In considering the claims referred to in par. (1), subparagraphs 3-8 and in par. (2) of this Article, the court shall take account of all circumstances of the case, in particular the proportionality between the seriousness of the infringement and the requested claim, the interest of the right holder for an effective protection of rights, the readiness of the right holder to receive pecuniary damages instead of non-pecuniary measures, etc.

The provisions of par. (1), subparagraphs 4 and 6 of this Article shall not apply to executed architectural objects, unless the destruction of the object is justified by the circumstances of the case.

**Compensation for material damage**

## Article 193

Infringements of rights under this Act shall be subject to the general rules governing damages, unless otherwise provided by this Act.

The infringer shall pay to the rights holder damages in the amount to be defined under general rules on compensation for material damage, or in the amount which is equal to agreed or customary remuneration for the legal use of such kind (*license analogy*).

If infringement of an economic right was intentional or caused by gross negligence, the plaintiff may claim, instead pecuniary damages, a compensation in the amount of up to three times of the customary remuneration he would have received for the relevant form of use of protected matter had that use been lawful, irrespective of whether he suffered damage or not.

In considering the claim referred to in par. (3) of this Article and in setting its amount, the court shall take into account all circumstances of the case, and in particular the degree of culpability of the infringer, the amount of agreed or customary remuneration, and the achievement of a general preventive purpose sought by the award of damages in par. (3) of this Article.

Where the actual damage exceeds the maximum amount of damages under par. (3) of this Article, the right holder may claim the difference to full damages.

## **Compensation for non-material damage**

### Article 194

Irrespective of any compensation for material damage, and even in the absence of such damage, the court may award an author or a performer an equitable monetary satisfaction for the mental suffering endured as a consequence of the infringement of his moral rights, if the court finds that it is justified by the circumstances of the case, particularly with respect to the potency of the suffering and its duration.

**Law on Trademarks** ("Official Gazette of Montenegro", No. 72/10, 44/12)

### **Trademark Infringement Claim**

#### Article 55

Any unauthorized use of a protected mark by any economic operator within the meaning of Articles 10 and 11 of the present Law shall constitute an infringement of a trademark.

The trademark rights holder may file an action requesting that the court establishes trademark infringement.

In the event referred to in paragraph 2 of the present Article, the claim may be filed and the plaintiff may request the following:

- 1) Termination of the infringement;
- 2) Destruction or alteration of the infringing objects;
- 3) Destruction or alteration of the tools and equipment used to manufacture the infringing objects;
- 4) Reimbursement of pecuniary damage and justifiable legal expenses;
- 5) Publication of the court decision at the expense of the defendant;
- 6) Supplying information about third parties participating in the infringement of trademark rights.

Any infringer shall be liable for the damage in accordance with general rules on compensation of damages.

In deciding on complaints referred to in paragraph 3 items 2 and 3 of the present Article, the competent court shall take into consideration all circumstances of the case, in particular the proportionality between the severity of infringement and the damage caused.

Proceedings on action referred to in paragraph 2 of the present Article shall be urgent.

An action for trademark rights infringement may be filed within a period of three years from the day on which the plaintiff became aware of the infringement and the infringer's identity, but not later than five years from the day of the first infringement.

**Law on legal protection of industrial design** ("Official Gazette of Montenegro", No. 80/10)

### **Lawsuit in Case of Industrial Design Rights Infringement**

#### Article 46

Industrial design rights infringement shall be considered to be any unauthorized use of a registered industrial design by any party to trade, within the meaning of Article 15 of the present Law.



In case of infringement of industrial design rights, the design rights holder may request from the competent court to determine the industrial design rights infringement.

In the lawsuit referred to paragraph 2 of the present Article, the plaintiff shall be entitled to request:

- 1) Cessation of the industrial design rights infringement;
- 2) That the items used in infringement of the right be destroyed or modified;
- 3) That the tools and equipment used for production of the articles used in infringement of the right be destroyed or modified;
- 4) Compensation for material injury and reimbursement of costs and expenses associated with court proceedings;
- 5) Publication of the verdict at the expense of the defendant;
- 6) That the information on any third persons participating in infringement of rights be revealed.

A person infringing industrial design rights shall be held liable for the injury pursuant to the general rules on compensation of damages.

When determining on the lawsuit referred to in paragraph 3 items 2 and 3 of the present Article, the court shall examine all the circumstances of the case, in particular the proportionality between the severity of the infringement and damage caused.

The proceedings on the referred to in paragraph 2 of the present Article shall be administered in an expedited manner.

The lawsuit for infringement of the industrial design rights may be filed within three years following the day the plaintiff has become aware of the infringement and the infringer, but not later than within five years following the day when infringement was committed for the first time.

**Patent Law** ("Official Gazette of Montenegro, No. 66/08, 40/10, 40/11)

### **Claims**

#### Article 77

(1) An action instigating a litigation may include the following claims:

- 1) establishment of the fact that a patent infringement exists;
- 2) prohibition of acts constituting patent infringement;
- 3) compensation for damages caused by infringement;
- 4) publication of the court decision at the expense of the defendant;
- 5) seizure and/or destruction, without compensation of any sort, of products made or obtained by means of patent infringement;
- 6) seizure and/or destruction, without compensation of any sort, of material or articles (equipment, tools) predominantly used in the creation of infringing products.

(2) If an infringement of rights was committed intentionally or out of gross negligence, the plaintiff may claim an amount up to triple the amount of the direct damages and lost profits.

(3) In considering the claims referred to in paragraph 1, items 5 and 6 of this Article, the court shall take into account the need to maintain proportionality between the gravity of the infringement and the measures ordered, as well as the interests of any third parties.

(4) Where a plaintiff has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the defendant, the court may order that this evidence be produced by defendant, subject in appropriate cases to conditions which ensure the protection of confidential information.

(5) Appropriate provisions of the law that regulates contracts and torts shall apply to those issues concerning damages for infringement of rights that are not provided for by this Law.

**Law on Protection of Topographies of Integrated Circuits** ("Official Gazette of Montenegro", No. 75/10)

**Infringement of Rights**

Article 14

The topography rights holder may file a complaint requesting the competent authority to confirm that the topography rights have been infringed.

In the complaint filed with the competent authority, the plaintiff shall be entitled to demand the following:

- 1) confirmation that trade mark rights have been infringed
- 2) termination of the infringement of trade mark rights
- 3) compensation for material damage and reasonable reimbursement of costs incurred as a result of the proceedings
- 4) a ban on further reproduction of the topography
- 5) a ban on the export and marketing of integrated circuits manufactured on the basis of the protected topography
- 6) publication of the judgment at the defendant's expense.

The section of the patent law relating to civil law protection shall apply to the topography rights infringement procedure.

**Law on Indications of Geographical Origin** ("Official Gazette of Montenegro", No. 48/08, 40/11)

**Protection in the Event of Infringement of Registered Indication of Geographical Origin**

Article 56

(1) In the event of infringement of a registered indication of geographical origin, an action may be filed and the plaintiff may request the following:

- 1) Determination of the infringement of an appellation of origin or a geographical indication;
- 2) Prohibition of acts that infringe an appellation of origin or a geographical indication;
- 3) Reimbursement of damages and justifiable legal costs and expenses;
- 4) Publication of the court decision at the expense of the defendant;
- 5) Confiscation and destruction, without any compensation, of any products created or obtained by infringing an appellation of origin or a geographical indication;

6) Confiscation and destruction, without any compensation, of the materials and objects (equipment, tools) predominantly used to manufacture objects that infringe an appellation of origin or a geographical indication;

(2) If the infringement of an appellation of origin or a geographical indication was intentionally or by gross negligence, the plaintiff may request from the defendant the compensation amounting up to three times of the amounts of direct damage and lost profits combined.

(3) In considering the claims referred to in paragraph 1, items 5 and 6 of this Article, the court shall take into account the need to maintain proportionality between the gravity of the infringement and the measures ordered, as well as the interests of third parties.

(4) Appropriate provisions of the Law of Obligations<sup>2</sup> shall apply to those issues concerning damages for infringement of rights that are not provided for by this Law.

**Law on Civil Procedure** ("Official Gazette of Republic of Montenegro", No. 22/04, 76/06)

### **Costs of Procedure Litigation Costs**

#### Article 149

Litigation costs shall include expenses incurred during the procedure or in connection therewith. Litigation costs shall also include the remuneration for work of attorneys and other persons whose right to remuneration is envisaged by Law.

#### Article 152

The party that has lost the litigation in its entirety shall bear costs of adverse party and his/her intervener. If the party was partially successful in the litigation the court may, depending on the success achieved, order each party to bear their own costs or order one party to bear a proportionate part of costs of the other party and the intervener. The court may order that one party bears all the costs incurred by the adverse party and his/her intervener if the adverse party failed to succeed in proportionately small part of his/her claim and no separate costs were incurred in connection to that part. On the basis of the outcome of the presentation of evidence, the court shall decide if the costs referred to in Article 151 paragraph 3 of this Law shall be borne by one or both parties or whether these costs shall be borne from court funds.

**6. In what circumstances, if any, do judicial authorities have the authority to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the goods or services found to be infringing and of their channels of distribution?**

**Copyright and Related Rights Act** ("Official Gazette of Montenegro" No. 37/11)

### **Right of information**

#### Article 190

In the proceedings concerning the infringement of rights the court may, upon a justified and proportionate request of the party, order that information on the origin and distribution networks of the goods or services which infringe a right under this Act be provided by the alleged infringer.

The court may order that information referred to in Par. 1 be provided also by a person who for commercial purposes:

- 1) possesses the goods that are subject to infringement;
- 2) uses the services that are subject to infringement;
- 3) provides services used in the activities giving rise to infringement;

4) is indicated by the person referred to in subparagraphs 1, 2 or 3 of this paragraph as being involved in the production, manufacture or distribution of the goods or the provision of the services.

An act shall be deemed to be performed for commercial purposes if it is performed for direct or indirect economic advantage.

The information referred to in par. (1) may comprise the following:

1) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers, and "

2) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price agreed for the goods or services in question.

The persons referred to in paras. (1) and (2) of this Article may refuse to provide information in accordance with other regulations.

**Law on Trademarks** ("Official Gazette of Montenegro", No. 72/10, 44/12)

### **Obligation to Provide Information**

#### Article 59

If no reasons exist for withholding witness account pursuant to the provisions of the law governing civil law proceedings, the court may order the defendant and/or the witness to provide information about any third parties who have participated in the infringement of trademark rights and their the distribution channels.

Should the person referred to in paragraph 1 of the present Article fail to fulfil the obligation of providing information, such person shall be held liable for any damage arising thereof.

**Law on Legal Protection of Industrial Design** ("The Official Gazette of Montenegro", No. 80/10).

### **Duty to Provide Information**

#### Article 50

The court may order the infringer of the protected industrial design or the witness to furnish information about third parties who have taken part in infringement of the right and about their distribution channels, provided there are no reasons to withhold witness statements pursuant to provisions of the law governing civil proceedings.

The person who fails to perform its duty referred to in paragraph 1 of the present Article shall be liable for the damage thus incurred.

**Patent Law** ("Official Gazette of Montenegro, No. 66/08, 40/10, 40/11)

### **Obligation to Provide Information**

#### Article 82

(1) A court may order a person responsible for an infringement of the patent to provide information about any third parties who have participated in the infringement of the patent and about their distribution channels.

(2) Person referred to in paragraph 1 of this Article who does not provide information shall be held liable for any damages arising therefrom.

**Law on Indications of Geographical Origin** ("Official Gazette of Montenegro",  
No. 48/08, 40/11)

**Obligation to Provide Information**

Article 62

(1) A court may order a person responsible for an infringement of the registered appellation of origin or geographical indication to provide information about any third parties who have participated in the infringement of the appellation of origin or geographical indication and about their distribution channels.

(2) Person referred to in paragraph 1 of this Article who does not fulfill the obligation of providing information shall be held liable for any damages arising therefrom.

**7. Describe provisions relating to the indemnification of defendants wrongfully enjoined. To what extent are public authorities and/or officials liable in such a situation and what "remedial measures are applicable to them?"**

**Law on Enforcement and Securing of Claims** ("Official Gazette of Montenegro",  
No. 36/11)

Article 286

The defendant shall be entitled to receive from the applicant compensation for any injury caused to him/her by the temporary measure which has been found ungrounded or which has not been justified by the applicant.

**Law on Trademarks** ("Official Gazette of Montenegro", No. 72/10, 44/12)

**Collateral Security**

Article 58

At the request of a person against whom proceedings for infringement of a registered trademark or proceedings for imposing a provisional measure have been initiated, the court may determine an appropriate amount of money, to be borne by the applicant, as a security in the event that request is found to be groundless.

**Law on Legal Protection of Industrial Design** ("Official Gazette of Montenegro",  
No. 80/10)

**Collateral Security**

Article 49

At the request of a person against whom the proceedings for infringement of the industrial design right or proceedings for imposing a provisional measure have been initiated, the court may determine an appropriate amount of money, to be borne by the applicant, as a security in the event that request is found to be groundless.

**8. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost.**

On compensation of costs of procedure, the court decides by judgment and ruling which terminates the proceedings before that court, in accordance with the provisions of the Law on Civil Procedure. There are several types of costs of the proceedings, such as, among other things, the cost of representation, expert evaluation, bringing the witnesses, travel expenses, any costs for food and lodging, to compensation for loss of incomes, costs of court fees and others.

The fee is paid according the value of matter of dispute, and shall be determined in accordance with the provisions of the Law on Court Fees.

In terms of the costs of representation, rewards and compensation of expenses for attorneys are determined by Advocates tariff. The compensation is determined depending on the type of procedure in which attorney acts and types of services that provides.

Information on the actual duration of proceedings and their cost are not available, because there is no official record in Montenegro on these issues.

**Copyright and Related Rights Act** (Official Gazette of Montenegro No. 37/11)

**Expeditious procedures**

Article 195

The proceedings for an infringement of copyright and related rights shall be urgent.

**Law on Trademarks** ("Official Gazette of Montenegro", No. 72/10, 44/12)

**Trademark Infringement Claim**

Article 55

The trademark rights holder may file an action requesting that the court establishes trademark infringement. (paragraph 2)

Proceedings on action referred to in paragraph 2 of the present Article shall be urgent. (paragraph 6)

**Law on Legal Protection of Industrial Design** ("Official Gazette of Montenegro", No. 80/10)

**Lawsuit in Case of Industrial Design Rights Infringement**

Article 46

In case of infringement of industrial design rights, the design rights holder may request from the competent court to determine the industrial design rights infringement. (paragraph 2)

The proceedings on the referred to in paragraph 2 of the present Article shall be administered in an expedited manner. (paragraph 6)

**Law on Civil Procedure** ("Official Gazette of Republic of Montenegro", No. 22/04, 76/06)

**Article 11**

The court shall conduct the procedure without any unnecessary delay, within reasonable period of time, with the lowest possible costs and shall also prevent any abuse of rights pertaining to the parties in the procedure.

**Article 149**

Litigation costs shall include expenses incurred during the procedure or in connection therewith.

Litigation costs shall also include the remuneration for work of attorneys and other persons whose right to remuneration is envisaged by Law.

**Article 150**

Each party shall individually and in advance bear the costs incurred by his/her actions.

#### **Article 151**

When the party proposes presentation of evidence he/she shall, pursuant to the court order and in advance, deposit the amount required for covering the costs to be incurred by the presentation of evidence.

The court shall reject presentation of evidence if the amount required for bearing the costs is not deposited within the deadline set by the court.

Exceptionally from the provision of paragraph 2 of this Article, if the court orders presentation of evidence *ex officio* in order to establish facts referring to the application of Article 4, paragraph 3 of this Law and the parties fail to deposit the amount that has been set, the costs of the presentation of evidence shall be paid out from the court funds.

#### **Article 152**

The party that has lost the litigation in its entirety shall bear costs of adverse party and his/her intervener.

If the party was partially successful in the litigation the court may, depending on the success achieved, order each party to bear their own costs or order one party to bear a proportionate part of costs of the other party and the intervener.

The court may order that one party bears all the costs incurred by the adverse party and his/her intervener if the adverse party failed to succeed in proportionately small part of his/her claim and no separate costs were incurred in connection to that part.

On the basis of the outcome of the presentation of evidence, the court shall decide if the costs referred to in Article 151 paragraph 3 of this Law shall be borne by one or both parties or whether these costs shall be borne from court funds.

#### **Article 153**

When deciding on the costs that are to be reimbursed to the party, the court shall take into account only the costs necessary for conducting the litigation.

When deciding which costs have been necessary and the amount thereof, the court shall thoroughly evaluate all circumstances.

Rewards and remunerations for the work of attorneys shall be measured up according to the valid tariff.

#### **Article 154**

Regardless of the outcome of the litigation, the party shall reimburse costs to the adverse party which have been incurred by his/her fault or incident that happened to him/her.

The court may decide that legal representative or agent of the party reimburse costs to the adverse party which have been incurred by his/her guilt.

Requests for reimbursement of costs referred to in paragraphs 1 and 2 of this Article shall be determined in a ruling rendered by the court, separately from the decision on the main subject matter.

#### **Article 155**

If the defendant has not presented the cause for the complaint, and in response to the complaint or at the preliminary hearing or at the main hearing if the preliminary hearing has not been held, and before starting deliberation on the main subject matter, he/she acknowledges the statement of claims the plaintiff shall reimburse litigation costs to the defendant.

**Article 156**

The plaintiff who withdraws the complaint shall reimburse litigation costs to the adverse party, except if the withdrawal occurred immediately after the defendant has met the claim.

The party who waives legal remedy shall reimburse costs to the adverse party incurred with regard to the legal remedy.

**Article 161**

At the specific request of the party, the court shall decide on the reimbursement of costs.

The party shall precisely define in his/her request the costs whose reimbursement is required, enclosing the evidence for the costs incurred unless they are already contained in the case files.

The request for reimbursement of costs shall be filed by the party not later than upon the completion of the deliberation which precedes rendering of the decision on costs and if the decision is to be rendered without a prior deliberation the party shall include the request for reimbursement of costs in the motion to be decided by the court.

The court shall decide on the request for reimbursement of costs either in judgment or in the ruling which concludes the procedure before that court. In the course of the procedure, the court shall decide on reimbursement of costs by the separate ruling only when the right to the reimbursement of costs does not depend on the decision on the main subject matter.

In the case referred to Article 156 of this Law, if the withdrawal of the complaint or waiver of legal remedy have not taken place at the hearing, the request for reimbursement of costs may be filed within 15 days upon the receipt of the notification on the waiver.

*(b) Administrative procedures and remedies***9. Reply to the above questions in relation to any administrative procedures on the merits and remedies that may result from these procedures.**

Inspection control proceedings, as a special form of administrative proceedings, implements inspection authorities in accordance with the provisions of the Law on Enforcement of the Legislation that Regulates Protection of Intellectual Property Rights ("Official Gazette of Republic of Montenegro", No. 45/05 and "Official Gazette of Montenegro", No. 37/11, 40/11).

**Competent authorities responsible for the enforcement of legislation in the field of intellectual property** defined in above-mentioned law are: state administrative authority in charge of economy, state administrative authority in charge of medicines and medical devices, state administrative authority in charge of urban planning, state administrative authority in charge of tourism, state administrative authority in charge of culture and media and an independent regulatory authority in charge of broadcasting.

Inspection control proceedings in the field of intellectual property protection are carried out through: market inspection, inspection for medicines and medical devices, building inspection, tourist inspection and the authorized official of the independent regulatory authority in charge of broadcasting.

In accordance with the Law on Designations of origin, geographical indications and indications of Traditional Specialities Guaranteed For Agricultural and Food Products ("Official Gazette of Montenegro", No. 18/11), acts Agricultural Inspection, while Phytosanitary inspection is authorized to act under the Law on Protection of Plant Varieties ("Official Gazette of Montenegro", No. 48/07 and 48/08).

Market Inspector supervises the production and trade of goods infringing industrial property rights (trademark, design, patent, indications of geographical origin, and topographies of integrated circuits) and supervision of trade of goods on which there are copyright and related rights.



In accordance with the Regulation on Amendments of the Regulation on Organization and Operation of the State Administration ("Official Gazette of Montenegro", No. 5/12 and 25/12) inspections that carry out supervision over implementation of legislation in the field of intellectual property rights - market inspection, inspection for medicines and medical devices, building inspection, tourist inspection, phytosanitary inspection and agricultural inspection were organized under the Directorate for Inspection Affairs dated on 01.06.2012.

The procedure of the competent authority for the protection of intellectual property rights shall be initiated *ex officio* or upon the **initiative - request of the holder of intellectual property rights**.

The application of the right holder can be:

- Individual, if it refers to a specific type and quantity of goods
- General, when it refers to all quantities of certain goods for a certain period of time.

The request of the right holder must contain a description of the goods with the data based on which goods infringing intellectual property rights can be identified, and proof that the applicant is a holder of intellectual property rights on the goods to which the request relates.

Also, the Article 12 of the Law on Enforcement of the Legislation that Regulates Protection of Intellectual Property Rights stipulates acting of responsible inspector under the request of the right holder. Namely, responsible inspector is obliged to act upon the request and about supervision performed and any action taken, to inform the applicant in the written form within eight days from the date of request.

If the applicant requests urgent action and the request contains sufficient information concerning the delivery of the goods suspected to infringe IP rights, responsible inspector shall notify the applicant about the supervision performed and any action taken within three days as of the filing date.

In the inspection control proceedings there is no requirement for mandatory personal appearance of the right holder. Right holder in the inspection control proceedings can be represented by the legal representative or authorized representative.

In inspection control proceedings inspector *ex officio* establishes the facts and presents evidence.

In order to determine the complete facts under provisions of the Law on Inspection Control, the inspector has the authority to review business records, buildings and facilities, equipment and devices, instruments of labor, goods in trade, the trade, business records, contracts and other public documents, takes samples that are needed to establish the facts, order appropriate measures and actions in order to ensure the exercise of supervision, temporarily revoke documents, objects and other things that are necessary for establishing facts, prohibit the performance of certain actions, to provide enforcement of imposed measures etc.

The opposing party is required at the request or order of the inspector to deliver or prepare accurate and complete data, documents or other materials that are needed to perform the inspection within a period that will be specified.

Also, during inspection control proceedings opposing party may propose and submit evidences in order to determine complete and correct facts.

In performing inspection control proceedings the inspector is obliged to keep official secrets, which obligation is under the Law on Civil Servants and State Employees ("Official Gazette of Montenegro", No. 39/11) and The Code of Ethics of Civil Servants and State Employees.

In performing inspection control proceedings the inspector does not require legal remedies. Legal remedies are available to the party in a proceeding. An appeal may be lodged against decision of the inspector within the prescribed period. The appeal does not delay the execution.

**Law on Enforcement of the Legislation that Regulates Protection of Intellectual Property Rights** ("Official Gazette of Republic of Montenegro", No. 25/05 and "Official Gazette of Montenegro", No. 37/11, 40/11)

**Initiation of the Proceedings**

Article 7

- (1) Proceedings by the responsible authority for the protection of intellectual property rights shall be initiated *ex officio* or upon the initiative-application (hereinafter referred to as: the application) of the right holder.
- (2) The law that regulates inspectorial supervision shall be applicable to all matters that are not specifically regulated by this Law.

**Proceedings upon an Application**

Article 12

- (1) There shall be an obligation of the responsible inspector to act upon an application and to notify the applicant in writing about the supervision performed and any action taken within eight days as of the filing date.
- (2) Where the applicant requests urgent action and where sufficiently specific information concerning allegedly infringing goods is provided, responsible inspector shall notify the applicant about the supervision performed and any action taken within three days as of the filing date.

**Security**

Article 13

Where the measure referred to in Article 14 of this Law was taken in the proceeding initiated upon the application, the applicant shall, upon the request of the responsible inspector, provide a bank guarantee or an evidence of a deposit to a specially designated account, in an amount equal to any costs that may incur if the proceedings are discontinued owing to omission by the right holder or if it is determined, in the course of proceedings, that there was no infringement.

**Measures Taken by the Inspector**

Article 14

- (1) Where, in the course of inspectorial supervision proceedings, it was established that intellectual property rights were infringed by production or circulation of goods, medicines and medical devices, market inspector, inspector for medicines and inspector for medical devices shall be authorized to:
  - 1) temporarily prohibit production or activity;
  - 2) temporarily seize goods, medicines and medical devices.
- (2) Where the measures referred to in paragraph 1 of this Article were taken, responsible inspector shall immediately, but not later than within two days, notify in writing the right holder and/or the applicant, in order to enable them to initiate a proceedings before the competent court for the protection of intellectual property rights.
- (3) The right holder shall, not later than 15 days as of the day the notification referred to in paragraph 2 of this Article was served, submit to the responsible inspector a proof that the proceedings before the competent court have been initiated, or that an interim measure has been ordered.

- (4) Notification referred to in paragraph 2 of this Article shall include the name and address of the person from whom the goods were seized, and of the owner, importer and manufacturer of the goods, if available, as well as of quantity, type of goods, etc.

### **Compensation of Damages**

#### Article 17

- (1) The responsible authority and/or responsible inspector shall not be liable to compensate for any damages resulting from temporary seizure of goods upon the application of the right holder.
- (2) Where it was determined in the course of proceedings upon the application of the right holder that the goods were seized without justification, an applicant shall be liable to compensate to the person from whom the goods were temporary seized for any damages caused by such seizure.

### **Destruction of Goods**

#### Article 18

- (1) Responsible inspector shall be authorized to destroy the goods, upon the court order or *ex officio*.
- (2) Responsible inspector may destroy temporary seized goods *ex officio* if the owner of goods or the person from whom the goods were temporary seized is not accessible by the responsible inspector within 30 days as of the day of seizure of goods.

### **Provisional Measures**

#### *(a) Judicial measures*

#### **10. Describe the types of provisional measures that judicial authorities may order, and the legal basis for such authority.**

##### **Copyright and Related Rights Act** (Official Gazette of Montenegro, No. 37/11)

#### **Provisional measures**

##### Article 191

The court may order any provisional measure to ensure the purpose of security, and in particular:

- 1) preventing activities that may result in infringements,
- 2) prohibiting the continuation of an activity which constitutes or may constitute an infringement;
- 3) seizing, excluding from the channels of commerce and take into custody the objects of infringement and the instruments principally used for the infringement. (paragraph 3)

##### **Patent Law** (Official Gazette of Montenegro, No. 66/08, 40/10, 40/11)

#### **Provisional Measures**

##### Article 78

- (1) Upon the request of the plaintiff referred to in Article 76 of this Law, who makes it credible that his right is or will be infringed, the court may, pending a final decision, order the provisional measure of:

- 1) seizure and/or withdrawal from the market of products made or obtained by patent infringement;
- 2) seizure and/or withdrawal from the market of implements (equipment, tools) predominantly used in the production of infringing products;
- 3) prohibition of the further performance of infringing acts.

**Law on Trademarks** ("Official Gazette of Montenegro", No. 72/10, 44/12)

**Provisional measures**

Article 56

At the request of a person that makes it probable that his/her registered trademark or the right arising from the registered trademark has been infringed or is about to be infringed, the court may order a provisional measure for seizure or removal from trade of infringing products, the equipment for manufacturing such products, and/or an injunction prohibiting the continuation of activities already commenced which could result in an infringement.

**Law on Legal Protection of Industrial Design** ("Official Gazette of Montenegro", No. 80/10)

**Provisional Measures**

Article 47

At the request of the person who makes it likely that his/her industrial design rights or the rights arising from the application have been infringed, or that such infringement is imminent, the court may order a provisional measure of seizure or withdrawal from circulation of the articles used in infringement and means for production of such articles, or the measure prohibiting continuation of any activities by way of which the infringement may be committed.

**Law on Indications of Geographical Origin** ("Official Gazette of Montenegro", No. 48/08, 40/11)

**Provisional Measure of Seizure or Removal from the Circulation**

Article 60

(1) Upon the request of the plaintiff who makes it probable that his appellation of origin or a geographical indication is or shall be infringed, the court may, ending a final decision, issue a provisional measure of:

- 1) Confiscation and/or withdrawal from the market of products made or obtained by infringement of an appellation of origin or a geographical indication;
- 2) Confiscation and/or withdrawal from the market of implements (equipment, tools) predominantly used in the production of products infringing appellation of origin or a geographical indication;
- 3) Prohibition of the further performance of acts infringing appellation of origin or a geographical indication.

**The Law on Protection of Undisclosed Information** ("Official Gazette of Republic of Montenegro" No. 16/07 and "Official Gazette of Montenegro" No. 73/08)

Article 13

In order to prevent violation of rights of the owner of undisclosed information referred to in Article 3 of this Law, the court may order a provisional measure of prohibition of placing into the

channels of commerce or withdrawing from the channels of commerce of any goods incorporating such information or any goods manufactured based on such information.

**11. In what circumstances may such measures be ordered *inaudita altera parte*?**

**Copyright and Related Rights Act** (Official Gazette of Montenegro No. 37/11)

**Provisional measures**

Article 191

Upon request by the right holder, the court shall order provisional measures to secure non-monetary claims under this Act, provided the rights holder makes it probable to believe that:

- 1) he is the right holder under this Act, and
- 2) his exclusive right has been infringed or that such infringement is imminent. (paragraph 1)

The court may order provisional measures referred to in Par. (1) of this Article without prior notification or examination of the other party, where the delay would cause irreparable harm to the right holder in which case the parties must be informed once the measures have been implemented at the latest. (paragraph 2)

**Patent Law** (Official Gazette of Montenegro, No. 66/08, 40/10, 40/11)

**Provisional Measures**

Article 78

(3) Where irreparable harm is likely to occur, or where it is imminent that that the evidence will be destroyed, the court may order a provisional measure without giving prior notice to or hearing the defendant, however the defendant must be notified of the execution of the provisional measure without delay, but not later than five days from the execution of the provisional measure. (paragraph 3)

Article 79

(1) Upon request of the plaintiff referred to in Article 76 of this Law who makes it credible that his right has been infringed on or will be infringed on, or that such infringement is imminent or that irreparable harm is likely to occur, as well as that there is a reasonable risk that the evidence of that will be destroyed or that it will not be possible to obtain it later on, the court may order a measure to secure evidence without giving prior notice to or hearing the person from which evidence is to be collected. (paragraph 1)

**Law on Trademarks** ("Official Gazette of Montenegro",  
No. 72/10, 44/12)

Article 57

At the request of a person who makes it probable that its trademark or rights arising from the trademark application have been infringed, and that there is reasonable suspicion that evidence thereof will be destroyed or that later it will not be possible to obtain such evidence, the court may decide to secure evidence without prior notification or hearing of the person from whom the evidence is to be collected. (paragraph 1)

**Law on Legal Protection of Industrial Design** ("Official Gazette of Montenegro",  
No. 80/10)

Article 48

At the request of the person who makes it likely that his/her industrial design rights or rights arising from the application have been infringed, or that there is a reasonable suspicion that evidence thereof will be destroyed or that it will not be possible to obtain such evidence later on, the court may order a measure to secure evidence without giving prior notice to or hearing the person from which evidence is to be collected. (paragraph 1)

**Law on Indications of Geographical Origin** ("Official Gazette of Montenegro",  
No. 48/08, 40/11)

Article 60

(3) Where there is risk of irreparable harm being caused or where there is demonstrable risk of evidence being destroyed, the court may order a provisional measure without the defendant being heard, whereas the defendant must be notified of the execution of the provisional measure without delay, but not later than five days from the execution of the provisional measure. (paragraph 3)

Article 61

(1) At the request of the plaintiff who makes it credible that his/her right has been infringed, and that there is a reasonable doubt that the evidence of that will be destroyed or that it will not be possible to obtain it later on, the court may order a provisional measure to secure evidence without giving prior notice to or hearing the person from which evidence is to be collected. (paragraph 1)

**12. Describe the main procedures for the initiation, ordering and maintenance in force of provisional measures, in particular relevant time-limits and safeguards to protect the legitimate interests of the defendant.**

**Copyright and Related Rights Act** (Official Gazette of Montenegro No. 37/11)

**Provisional measures**

Article 191

Upon request by the right holder, the court shall order provisional measures to secure non-monetary claims under this Act, provided the rights holder makes it probable to believe that:

- 1) he is the right holder under this Act, and
- 2) his exclusive right has been infringed or that such infringement is imminent.

The court may order provisional measures referred to in Par. (1) of this Article without prior notification or examination of the other party, where the delay would cause irreparable harm to the right holder in which case the parties must be informed once the measures have been implemented at the latest.

The court may order any provisional measure to ensure the purpose of security, and in particular:

- 1) preventing activities that may result in infringements,
- 2) prohibiting the continuation of an activity which constitutes or may constitute an infringement;
- 3) seizing, excluding from the channels of commerce and take into custody the objects of infringement and the instruments principally used for the infringement.

The procedure for implementation of provisional measures shall be subject to the law regulating enforcement procedure, unless otherwise provided by this Act.

### **Expeditious procedures**

#### Article 195

The proceedings for an infringement of copyright and related rights shall be urgent.

**Patent Law** (Official Gazette of Montenegro, No. 66/08, 40/10, 40/11)

### **Provisional Measures**

#### Article 78

(1) Upon the request of the plaintiff referred to in Article 76 of this Law, who makes it credible that his right is or will be infringed, the court may, pending a final decision, order the provisional measure of:

- 1) seizure and/or withdrawal from the market of products made or obtained by patent infringement;
- 2) seizure and/or withdrawal from the market of implements (equipment, tools) predominantly used in the production of infringing products;
- 3) prohibition of the further performance of infringing acts.

(2) A request for the grant of a provisional measure may be filed even before the instigation of the litigation, provided the litigation is subsequently instigated within thirty days from the execution of the provisional measure.

(3) Where irreparable harm is likely to occur, or where it is imminent that the evidence will be destroyed, the court may order a provisional measure without giving prior notice to or hearing the defendant, however the defendant must be notified of the execution of the provisional measure without delay, but not later than five days from the execution of the provisional measure.

(4) The court may instruct the applicant to furnish additional evidence of the patent infringement committed or of the demonstrable risk of patent infringement, and order him to provide a security in order to prevent any abuse.

(5) An appeal against the court decision on the provisional measure referred to in paragraph 1 of this Article shall not stay the execution of the decision.

(6) Appropriate provisions of the Law on Enforcement Procedures shall apply to those issues concerning the provisional measures that are not provided for by this Law.

**Law on Trademarks** ("Official Gazette of Montenegro", No. 72/10, 44/12)

### **Provisional measures**

#### Article 56

At the request of a person that makes it probable that his/her registered trademark or the right arising from the registered trademark has been infringed or is about to be infringed, the court may order a provisional measure for seizure or removal from trade of infringing products, the equipment for manufacturing such products, and/or an injunction prohibiting the continuation of activities already commenced which could result in an infringement.

The provisional measures referred to in paragraph 1 of the present Article and the securing of evidence referred to in Article 57 of the present Law may be requested even before initiating trademark infringement claim or infringement of the right arising from the application, provided

the claim is initiated within a term of fifteen days from the date of rendering the decision imposing provisional measure and/or the decision ordering the securing of evidence.

An appeal against the court decision pronouncing the provisional measure referred to in paragraph 1 of the present Article shall not delay the enforcement of the decision.

**Law on Legal Protection of Industrial Design** ("Official Gazette of Montenegro", No. 80/10)

### **Provisional Measures**

#### Article 47

At the request of the person who makes it likely that his/her industrial design rights or the rights arising from the application have been infringed, or that such infringement is imminent, the court may order a provisional measure of seizure or withdrawal from circulation of the articles used in infringement and means for production of such articles, or the measure prohibiting continuation of any activities by way of which the infringement may be committed.

Provisional measures referred to in paragraph 1 of the present Article and the securing of evidence referred to in Article 48 of the present Law, may be requested prior to the filing of a lawsuit against the infringement of a protected industrial design or of the rights arising from the application, provided the lawsuit has been filed within a time period of fifteen days from the date of execution of the request for pronouncing a provisional measure and/or the request for securing of evidence.

An appeal against the court decision pronouncing the provisional measure referred to in paragraph 1 of the present Article shall not delay the enforcement of the decision.

**Law on Indications of Geographical Origin** ("Official Gazette of Montenegro", No. 48/08, 40/11)

### **Provisional Measure of Seizure or Removal from the Circulation**

#### Article 60

(1) Upon the request of the plaintiff who makes it probable that his appellation of origin or a geographical indication is or shall be infringed, the court may, ending a final decision, issue a provisional measure of:

- 1) Confiscation and/or withdrawal from the market of products made or obtained by infringement of an appellation of origin or a geographical indication;
- 2) Confiscation and/or withdrawal from the market of implements (equipment, tools) predominantly used in the production of products infringing appellation of origin or a geographical indication;
- 3) Prohibition of the further performance of acts infringing appellation of origin or a geographical indication.

(2) A request for the grant of a provisional measure may be filed even before filing an action, provided that the action is filed not later than 30 days from the execution of the provisional measure.

(3) Where there is risk of irreparable harm being caused or where there is demonstrable risk of evidence being destroyed, the court may order a provisional measure without the defendant being heard, whereas the defendant must be notified of the execution of the provisional measure without delay, but not later than five days from the execution of the provisional measure.

(4) The court may instruct the applicant to furnish additional evidence of the infringement of appellation of origin or a geographical indication or of the imminent risk of the infringement thereof, and order him to provide a security in order to prevent any abuse.



(5) An appeal against the court decision on the provisional measure referred to in paragraph 1 of this Article shall not stay the execution of the decision.

(6) Appropriate provisions of the Law on Enforcement Procedure shall apply to those issues concerning the institution of provisional measures that are not provided for by this Law

**The Law on protection of undisclosed information** ("Official Gazette of Montenegro"  
No. 16/07)

Article 14

(1) Provisional measure may be required even before filing an action.

(2) In case referred to in paragraph 1 of this Article, the court in decision which determines provisional measure shall set a deadline for the filing an action, which may not be less than 30 days from the date of execution of provisional measures.

(3) An appeal against the court decision on the provisional measure shall not stay the execution of the decision.

(4) Provisional measures referred to in paragraph 1 of this Article shall be repealed if a proceeding before the court for the solution of the main things is instituted within the deadline referred to in paragraph 2 of this Article.

Article 15

The court may instruct the prosecutor, owner of unpublished data, to furnish additional security that sufficiently protect the defendant and prevent the abuse of rights.

Article 16

In the case of abrogation of provisional measure or termination of action due to an act or omission of the owner or when it is subsequently determined that there was no infringement or threat of infringement of the owner or risk of infringement of the owner, the court may, at the request of the defendant, to order the defendant to reimburse the damage caused by the application of imposed measures.

**13. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost.**

**Law on Civil Procedure** ("Official Gazette of Republic of Montenegro",  
No. 22/04, 76/06)

Article 11

The court shall conduct the procedure without any unnecessary delay, within reasonable period of time, with the lowest possible costs and shall also prevent any abuse of rights pertaining to the parties in the procedure.

**Costs Incurred in the Procedure on Securing of Evidence**

Article 165

The party who has filed the motion for securing of evidence shall reimburse costs incurred in the procedure for the securing of evidence. He/she shall also reimburse costs to the adverse party or the temporarily appointed representative.

The party may subsequently recover those costs as the part of litigation costs depending on the success in the litigation.

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Information on the actual duration of proceedings and their cost are not available, because there is no official record in Montenegro on these issues.

(b) *Administrative measures*

**14. Reply to the above questions in relation to any administrative provisional measures.**

The Law on Enforcement of the Legislation that Regulates Protection of Intellectual Property Rights in Article 14 prescribes the measures that inspector can take when in inspection control proceedings assess that in the production and trade of goods, medicines and medical devices, are infringed intellectual property rights. The inspector is authorized to:

- Temporarily prohibit production or activity;
- Temporarily seize goods, medicines and medical devices.

In case of undertaking the measures, the competent inspector shall immediately, and no later than two days, notify the right holder or the applicant in a written form, in order to initiate proceedings before the competent court for the protection of intellectual property rights.

Notification shall contain the data on the name and address or headquarter of the person from whom the goods were temporary seized, and the name and address of the owner, importer and manufacturer of the goods, if available, as well as of quantity, type of goods, etc.

Under the Article 16 of the Law on Enforcement of the Legislation that Regulates Protection of Intellectual Property Rights, it is prescribed: If the right holder i.e. the applicant within a deadline of 15 days as of the day the notification was served, does not submit to the responsible inspector a proof that the proceeding before the competent court has been initiated or that a provisional measure has been ordered, temporary seized goods shall be released to the person from whom they were seized.

In the case where the proceedings were initiated before the competent court and the court did not order a provisional measure to prohibit the production and trade of goods, temporary seized goods will be returned to the person from whom they were seized. When an evidence that the competent court has ordered a provisional measure is submitted to a responsible inspector, the seized goods shall be treated in accordance with the court decision on provisional measures.

As for the cost of the procedure, when the procedure is initiated *ex officio* in accordance with the provisions of the Law on Inspection Control:

- expenses of an inspection control proceeding, that ended favorably for the controlled entity, bears inspection authority, unless the law prescribes otherwise,
- expenses of an inspection control proceeding that ended unfavorably for controlled entity covers the controlled entity,
- expenses of an inspection control proceeding that occurred due to illegal activities of the controlled entity covers the controlled entity, regardless of how the procedure ended.

As for the costs of proceedings when the procedure is initiated at the request of the right holder, the costs of the proceedings shall be borne by the applicant, in accordance with the Article 11 of the Law on Enforcement of the Legislation that Regulates Protection of Intellectual Property Rights.

Under the Article 17 of the Law on Enforcement of the Legislation that Regulates Protection of Intellectual Property Rights, it is prescribed compensation of damages:

- The responsible authority and/or responsible inspector shall not be liable to compensate for any damages resulting from temporary seizure of goods upon the application of the right holder.
- If in the course of proceedings was determined that the goods upon the application of the right holder were seized without justification, an applicant is obliged that to the owner of

the goods i.e. the person from whom the goods were temporary seized compensate for temporary seizure.

**Law on Enforcement of the Legislation that Regulates Protection of Intellectual Property Rights** ("Official Gazette of Republic of Montenegro", No. 25/05 and "Official Gazette of Montenegro", No. 37/11, 40/11) prescribes administrative protection of intellectual property rights.

Subject matter of the Law where the article 1 prescribes that:

#### Article 1

(1) This Law shall designate authorities responsible to enforce the legislation that regulates protection of intellectual property rights, regulate procedures applicable to actions of responsible authorities where goods suspected of infringing intellectual property rights are produced, bought, sold or placed into circulation, broadcasted or used in any other way, and establish penalties for commercial offences and misdemeanors.

(2) Provisions of this Law shall apply *mutatis mutandis* to services and service providers.

#### Measures Taken by the Inspector

##### Article 14

(1) Where, in the course of inspectorial supervision proceedings, it was established that intellectual property rights were infringed by production or circulation of goods, medicines and medical devices, market inspector, inspector for medicines and inspector for medical devices shall be authorized to:

- 1) temporarily prohibit production or activity;
- 2) temporarily seize goods, medicines and medical devices.

(2) Where the measures referred to in paragraph 1 of this Article were taken, responsible inspector shall immediately, but not later than within two days, notify in writing the right holder and/or the applicant, in order to enable them to initiate a proceedings before the competent court for the protection of intellectual property rights.

(3) The right holder shall, not later than 15 days as of the day the notification referred to in paragraph 2 of this Article was served, submit to the responsible inspector a proof that the proceedings before the competent court have been initiated, or that an interim measure has been ordered.

(4) Notification referred to in paragraph 2 of this Article shall include the name and address of the person from whom the goods were seized, and of the owner, importer and manufacturer of the goods, if available, as well as of quantity, type of goods, etc.

#### Release of Goods

##### Article 16

(1) Where the right holder, within a period referred to in Article 14, paragraph 3 of this Law did not notify the competent inspector the proof that the proceedings before the competent court have been initiated, or that an interim measure has been ordered, temporary seized goods shall be released to the person from whom they were seized.

(2) Where the proceedings before the competent court have been initiated, but the court has not ordered any interim measures to temporarily prohibit production or circulation of goods, temporary seized goods shall be released to the person from whom they were seized.

(3) Where the responsible inspector was provided with the proof that the competent court has ordered an interim measure, the responsible inspector shall dispose with temporary seized goods in accordance with such order.

### **Compensation of Damages**

#### Article 17

(1) The responsible authority and/or responsible inspector shall not be liable to compensate for any damages resulting from temporary seizure of goods upon the application of the right holder.

(2) Where it was determined in the course of proceedings upon the application of the right holder that the goods were seized without justification, an applicant shall be liable to compensate to the person from whom the goods were temporary seized for any damages caused by such seizure.

### **Law on Protection of Plant Varieties** ("Official Gazette of the Republic of Montenegro" No. 48/07 and "Official Gazette of Montenegro" No. 48/08; 40/11)

#### Article 52

Inspection and surveillance over the enforcement of this Law shall be done by the competent authority through a phytosanitary inspector, in compliance with the Law.

#### Article 53

A phytosanitary inspector performs inspection and surveillance particularly in regard to:

- 1) Examination of distinctness, stability or uniformity of varieties in the experimental field or laboratory of the examiner;
- 2) Examiner's compliance with the conditions for examination of varieties in the experimental field or laboratory;
- 3) Production and marketing of propagating material of varieties protected under the provisions of this Law;
- 4) Imports and exports of propagating material of varieties protected;
- 5) Exercising the licence rights;
- 6) Use of the protected variety denomination;
- 7) Sampling of propagating material, free of charge, for the purpose of establishing the compliance with the conditions as laid down by this Law.

### **Administrative measures and actions**

#### Article 54

In addition to administrative measures and actions laid down by the law governing the inspection and surveillance, phytosanitary inspector, after determining that the law or regulation is violated, undertake the following administrative measures and actions:

- 1) Prohibit placing on the market, import or export of propagating material of varieties, if it is established that the propagating material fails to meet the conditions as laid down by this Law;
- 2) Prohibit the examiner the examination of varieties in the experimental field or in the laboratory in case of failing to remove the deficiencies as regards conditions laid down by this Law.

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## Special Requirements Related to Border Measures

**15. Indicate for which goods it is possible to apply for the suspension by the customs authorities of the release into free circulation, in particular whether these procedures are available also in respect of goods which involve infringements of intellectual property rights other than counterfeit trademark or pirated copyright goods as defined in the TRIPS Agreement (footnote to Article 51). Specify, together with relevant criteria, any imports excluded from the application of such procedures (such as goods from another member of a customs union, goods in transit or *de minimis* imports). Do the procedures apply to imports of goods put on the market in another country by or with the consent of the right holder and to goods destined for exportation?**

Specific requirements related to border measures are regulated by the provisions of the Customs Law (Official Gazette of the Republic of Montenegro No. 7/02, 38/02, 72/02, 21/03, 29/05, 66/06 21/08) and Regulation on procedure of customs authority with the goods under suspicion of infringing of the intellectual property rights (Official Gazette of Montenegro No. 33/11) (hereinafter: *Regulation*).

The customs authorities can take measures in all customs processes and procedures in cases: when the goods are declared for release for free circulation, export or re-export, found during the control of goods entering or exiting the customs territory of Montenegro, placed under a suspensive customs procedure, or placed in free zone or free warehouse. (*Article 1 paragraph 1 of Regulation*)

Goods infringing an intellectual property right (*in the meaning of the Article 2 paragraph 1 and 2 of Regulation*) are:

- counterfeit goods, (which includes – goods, including packaging; any trademark symbol (including a logo, label, sticker, brochure, instructions for use or guarantee document bearing such a symbol, even if presented separately from goods) and packaging materials bearing the trademarks of counterfeit goods, even if presented separately from goods),
- 'pirated goods', goods which infringe a patent, a supplementary protection certificate, a plant variety right, designations of origin or geographical indications, semi-conductors topography right, in accordance with the distinct law that regulates these rights, and
- mold or matrix which is specifically designed or adapted for the manufacture of goods infringing an intellectual property right, if the use of such molds or matrices infringes the right-holder's rights under the law

The measures for protection of intellectual property right shall not apply to:

- original goods, bearing a trade-mark with the consent of the right-holder of that trademark, also including goods which have been manufactured under conditions other than those agreed with the right-holder, that is placed under one of the customs procedures or action without the consent of the right-holder, also including goods which have been manufactured under conditions other than those agreed with the right-holder, and
- goods of a non-commercial nature which are contained in a traveller's personal baggage, if introduced in quantity and value, which is in accordance with customs regulations exempt from customs duty and there are no material indications to suggest the goods are part of commercial traffic. (*Article 3 paragraph 1 item 1 and 2 of Regulation*)

**16. Provide a description of the main elements of the procedures relating to the suspension of the release of goods by customs authorities, in particular the competent authorities (Article 51), the requirements for an application (Article 52) and various requirements related to the duration of suspension (Article 55). How have Articles 53 (security or equivalent assurance), 56 (indemnification of the importer and of the owner of the goods) and 57 (right of inspection and information) been implemented?**

The right-holder, shall submit to the Customs Administration *application for action for protection of intellectual property right*, to the address of its headquarters, on the form, which is attached to Regulations and is filled in accordance with the Instructions for completing the form and submitting the request for taking measures to protect intellectual property rights, which is also the integral part of this Regulation. (*Article 4 paragraph 1 and 2 of Regulation*)

Content of the application and the information or evidence to be submitted with the application are regulated by the provisions of Article 4 and 5 of the Regulation. The application must contain information which enable the customs authority to easily recognise the goods to which the application is related, especially: correct and detailed technical description of the goods, all information in possession of the right holder, in reference to the type or method of infringement of an intellectual property right, name and the address of contact person for administrative and technical issues (*Article 4 paragraph 3*). The right holder shall also provide other data on original goods or goods under suspicion of infringing an intellectual property rights. (*Article 4 paragraph 4 of Regulation*)

The right-holder is obligated, with application, to lodge the proof that his rights were registered, and that the same applies in Montenegro (*Article 5 of Regulation*) and statement of the right-holder. (*Article 6 of Regulation*)

Customs Administration, within 30 working days following the lodging of the application, is bringing the decision on undertaking actions and submits it to the applicant in written form. This deadline is 3 working days when the circumstances order for urgent undertaking of actions and when the application contains sufficient data related to the shipments, suspicious of containing goods infringing the intellectual property rights. (*Article 7 paragraph 1 and 2 of Regulation*)

Measures to protect intellectual property rights are granted for a period which cannot last longer than one year of the day of decision. This deadline referred can be extended for one year, following the written request of the applicant, if it has been lodged prior the expiry of existing deadline, and if all the expenses, charged to the right holder, have been settled. (*Article 7 paragraph 3 and 4 of Regulation*)

With a declaration right-holder accepts responsibility for any damage that may result from his actions if the process is interrupted due to his actions or omissions or in the event that the goods in question are subsequently found not to infringe an intellectual property right. Within the declaration the right holder is obligated to bear expenses related to the storing and keeping the goods withheld under the customs control. (*Article 6 of Regulation*)

If the goods are temporarily detained under suspicion of infringement of right of industrial design, trademark, supplementary protection certificate or plant variety protection right, the declarant, owner, importer, holder or consignee of the goods, can, on provision of security, submit the request for the release of goods, the request for termination of detention of goods. The application can be lodged if the customs authority has been timely informed on initiation of the procedure at competent court, in accordance with Article 11 and 12 of Regulation, if by the deadline from Article 11, paragraph 1 and 2 of this Regulation, the competent court has not appointed an provisional measure, and if the conditions for placing goods under a customs approved treatment or use are fulfilled. This security must be provided in the amount sufficient for protection of intellectual property rights and it shall not exclude use of other legal remedies available to the right-holder. The applicant is obligated prior the collection of goods to cover the expenses occurred in reference to the storing and keeping of goods. (*Article 13 of Regulation*)

About the termination of customs allowed treatment or use of goods and about its temporary detention, the customs authority, without delay, inform the right-holder and the declarant or holder of the goods. (*Article 8 - procedure following the application and Article 14 - ex officio procedure*)

To the right holder and persons involved in some of customs allowed procedure or use of goods, customs authority shall allow the inspection of temporary detained goods. (*Article 8 paragraph 5 of Regulation*)

The right-holder is obligated, within 10 working days following the receipt of notification to notify the customs authority on initiation of procedure at competent court due to infringement of

intellectual property right. This deadline, following the justified request of the right-holder, can be extended for additional 10 working days. *(Article 11 paragraph 1 and 2 of Regulation)*

If the right-holder within 10+10 working days (i.e. 3 working days in case of perishable goods) not notify the Customs Administration on initiation of procedure at competent court or fails to submit a simplified procedure for the destruction of goods, the competent customs authority shall proceed with the customs allowed procedure. *(Article 12 paragraph 1 of Regulation)*

If the customs authority is notified within the deadline that the procedure at competent court has been initiated or that the court has decided on temporary action base on which the releasing goods is suspended, the customs authority shall delay the release of goods. *(Article 12 paragraph 2 of Regulation)*

**17. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost. How long is the validity of decisions by the competent authorities for the suspension of the release of goods into free circulation?**

When the customs authority is notified within the deadline that the procedure at competent court has been initiated or that the court has decided on temporary action base on which the releasing goods is suspended, the release of goods shall delay until finalization of court proceedings. *(Article 12 paragraph 2 of Regulation)* Therefore, the customs authority retains the goods until finalization of court proceedings.

The right holder is obligated, without delay, and within eight working days following the receipt of decision of the competent court at the latest, to notify the customs administration of finalization of court procedure at competent court. *(Article 16 of Regulation)*

Statement, submitted to the Customs Administration in accordance with Article 6 of Regulation, the right-holder accepts liability for damages which may arise from his actions or omissions, and to bear expenses related to the storing and keeping the goods. *(Article 6 of Regulation)*

**18. Are competent authorities required to act upon their own initiative and, if so, in what circumstances? Are there any special provisions applicable to *ex officio* action?**

When the customs authority suspects that the goods are infringing the intellectual property rights, it can terminate customs allowed procedure or use of goods, and temporarily detain the goods *ex officio*. The customs authority shall inform the applicant or holder of the goods, if they are known, on termination of customs allowed procedure or use of goods, and its temporary detention. *(Article 14 paragraph 1 and paragraph 3 of Regulation)*

Customs Administration in written form, shall inform the right holder of temporary detention of goods, possible infringement of intellectual property rights, as well as possibility of submission of request within three working days from the receipt of that notification. *(Article 14 paragraph 2 of Regulation)*

Customs authority can, in accordance with the regulations and without disclosing information, apart from data on real or assumed quantity and type of goods, prior notifying the holder of goods on possible infringement of its right, to request from the right holder to provide it with the information necessary for confirming suspicion of infringement of intellectual property right. *(Article 14 paragraph 4 of Regulation)*

If the right holder, within the deadline of 3 working does not submit the application for action for protection of intellectual property right, the customs authority shall release the goods and continue to conduct requested customs allowed procedure or use of goods, in accordance with the customs regulations. *(Article 14 paragraph 5 of Regulation)*

If the right holder within this deadline submits the application for action for protection of intellectual property right, the Customs Administration shall without delay adopt a decision on accepting the application in accordance with this Regulation. *(Article 14 paragraph 6 of Regulation)*

Deadlines for further action (10 working days, i.e. 3 working days) are counted from the next day of the receipt of application. (*Article 14 paragraph 7 of Regulation*)

**19. Describe the remedies that the competent authorities have the authority to order and any criteria regulating their use.**

The customs authority shall, in accordance with Article 18 of Regulation, when the competent court adopts a decision that the goods infringing the intellectual property rights shall be destroyed or removed from regular trade flows, order the destruction of such goods under customs control or its removal from regular trade flows in some other manner (including giving away free of charge, in humanitarian purposes, recycling etc.), under condition that:

- risks of future infringement of intellectual property rights are reduced to the highest extent possible;
- no harm is done to the right holder;
- right holder is allowed to suggest the procedure of removal of goods. (*Article 18 paragraph 1 of Regulation*)

Removal from regular trade flow shall not mean mere removal of stamps which were placed onto the counterfeit goods without authorization. (*Article 18 paragraph 2*)

Goods which, in accordance with this Regulation, are found to infringe an intellectual property right shall not be entered into the customs territory of Montenegro, released for free circulation, removed from the customs territory of Montenegro, exported from the customs territory of Montenegro, re-exported from the customs territory of Montenegro, placed under the suspensive procedure, or placed in free zone or free warehouse. (*Article 15 of Regulation*)

### Criminal Procedures

**20. Specify the courts which have jurisdiction over criminal acts of infringement of IPRs.**

- Basic Courts in Montenegro, as first instance courts,
- High Court for appeals and
- Supreme Court in Montenegro for extraordinary remedies.

**21. In respect of which infringements of which intellectual property rights are criminal procedures and penalties available?**

**Criminal Code** ("Official Gazette of the Republic of Montenegro" No. 70/03, 13/04, 47/06 and the "Official Gazette of Montenegro" No. 40/08, 25/10 and 32/11) prescribes in Chapter Twenty One Criminal offences against intellectual property as follows:

#### **Violation of Moral Rights of Authors and Performers**

##### Article 233

(1) Anyone who in his own name or in the name of another person publicizes, in whole or in part, releases into circulation copies of someone else's copyrighted work or performance or otherwise publicly discloses someone else's copyrighted work or performance shall be punished by a fine or a prison term up to three years.

(2) Anyone who without a permit of the author changes or re-makes someone else's copyrighted work or recorded performance shall be punished by a fine or a prison term up to one year.

(3) Anyone who releases into circulation copies of someone else's copyrighted work or performance in a manner which is insulting for the author or performer's honour and reputation shall be punished by a fine or a prison term up to six months.



(4) Objects of the criminal offence and objects that were used for or intended for the commission of a criminal offence under paragraphs 1 to 3 above shall be confiscated and objects of the criminal offence shall be destroyed.

(5) Prosecution for an offence under paragraph 3 above shall be instituted by a private charge.

#### **Unauthorized Use of Copyrighted Works or Objects of Related Rights**

##### Article 234

(1) Anyone who publicizes, records, duplicates or otherwise publicly discloses or makes available, in whole or in part, a copyrighted work, performance, phonogram, videogram, show or database shall be punished by a prison term up to three years.

(2) The punishment under para. 1 above shall also imposed on anyone who releases into circulation, or with the intention of releasing into circulation, possesses copies of copyrighted works, performances, phonograms, videograms, shows or databases that have been duplicated or released into circulation without authorization.

(3) Where the offence under paras. 1 and 2 above was committed with the intention of acquiring pecuniary gain for himself or another person, the perpetrator shall be punished by a prison term from three months to five years.

(4) Instruments for the commission of criminal offences and the instruments that were used for or intended for the commission of the criminal offences under paras. 1 and 2 above shall be confiscated, and the objects resulting from the criminal offences shall be destroyed.

#### **Voluntary Noncompliance with Protection Measures Intended for Prevention of Violations of Copyright and Related Rights and Rights Related Information**

##### Article 235

(1) Anyone who produces, imports, releases into circulation, sells, leases, advertises in the interest of sale or leases or keeps for commercial purposes any devices or means whose basic or main purpose is removal, circumvention or thwarting of technological measures intended for the prevention of violations of copyright and related rights or who uses such devices or means in the interest of violating copyright or related rights shall be punished by fine or a prison term up to three years.

(2) Instruments for the commission of criminal offences and the instruments that were used for or intended for the commission of the criminal offence under para. 1 above shall be confiscated, and objects resulting from the criminal offence shall be destroyed.

#### **Unauthorized Removal or Modification of Electronic Information on Copyright and Related Rights**

##### Article 236

(1) Anyone who without authorization removes or alters electronic information on copyright and related rights, or releases into circulation, imports, broadcasts or otherwise publicly discloses or makes available a copyrighted work or object of related legal protection, from which electronic information on the rights was removed or modified without authorization shall be punished by a fine or a prison term up to three years.

(2) Instruments of the criminal offence and the instruments that were used for or intended for the commission of the criminal offences under para. 1 above shall be confiscated, and objects resulting from the criminal offence shall be destroyed.

### **Unauthorized Patent Use**

#### Article 237

(1) Anyone who without authorization produces, imports, exports, offers in view of releasing into circulation, releases into circulation, stores or uses in commercial transactions a product or procedure protected by patent shall be punished by a fine or a prison term up to three years.

(2) Where the offences under para. 1 above resulted in pecuniary gain or damage exceeding thirty thousand euros, the perpetrator shall be punished by a prison term from one to eight years.

(3) Whoever without authorization publicizes or otherwise makes available the essence of someone else's reported invention before the invention was made public in the manner laid down by law shall be punished by a fine or a prison term up to two years.

(4) Whoever without authorization files a patent application or does not indicate the inventor in the application or indicates him falsely shall be punished by a prison term from six months to five years.

(5) Instruments for the commission of criminal offences and instruments that were used for or intended for the commission of the criminal offences referred to in paras. 1 to 3 above shall be confiscated, and objects resulting from the criminal offence shall be destroyed.

### **Misuse of Design**

#### Article 238

(1) Anyone who without authorization uses, in whole or in part, someone else's registered or protected product design on their traded product shall be punished by a fine or a prison term up to three years.

(2) Anyone who without authorization publicizes or otherwise makes available to the public the subject of someone else's design application before it was published in the manner laid down by law shall be punished by a fine or a prison term up to one year.

(3) Instruments for the commission of criminal offences and the instruments that were used for or intended for the commission of the criminal offences under para. 1 above shall be confiscated, and the objects resulting from the criminal offence shall be destroyed.

### **Abuse of Trade Name**

#### Article 271

Anyone who, with the intention to deceive buyers or service users, uses someone else's trade name, geographic indication of origin, trademark, protected designation, or special commodity mark, or copies individual features of these marks into his trade name, trademark or protected designation, or into his special commodity mark shall be punished by a fine or a prison term up to three years.

**22. Which public authorities are responsible for initiating criminal proceedings? Are they required to do this on their own initiative and/or in response to complaints?**

**The Criminal Procedure Code** (Official Gazette of Montenegro, No. 57/09 and 49/10)

### **Obligation to File Charge for Criminal Offence**

#### Article 254

(1) Persons acting in an official capacity and responsible persons in state authorities, local governance authorities, public companies and institutions shall file charge for criminal offences,

subject to prosecution by virtue of office, of which they have been informed or which they have learned while performing their office.

(2) The duty from paragraph 1 of this Article shall also be incumbent upon all natural and legal persons who are granted certain public powers pursuant to law, or are professionally involved in the protection and security provision to persons and property or in the health care of persons, as well as in jobs of minors care and education, if they learn about a criminal offence while performing or in connection with their profession.

(3) Persons filing a criminal charge from paragraph 1 of this Article shall indicate evidence to the best of their knowledge and take measures to preserve traces of the criminal offence, the items upon which or by means of which the criminal offence has been committed, items resulting from the commission of criminal offence as well as other evidence.

### **Filing Criminal Charge**

#### Article 256

(1) Criminal charge shall be filed with the competent State Prosecutor whether in writing or orally.

(2) If the charge is filed orally, the informant shall be cautioned as to the consequences of false information. Oral charge shall be entered in a record, and where the information is filed over the phone or other means of electronic communication, an official annotation shall be made thereabout.

(3) The charge filed with a court, the police authority or a State Prosecutor lacking jurisdiction, they shall receive the information and immediately forward it to the State Prosecutor having the jurisdiction.

**Law on State Prosecutor's Office** (Published in the "Official Gazette of the Republic of Montenegro", No. 69/2003 and "Official Gazette of Montenegro" No. 40/2008 and 39/2011)

### **General Jurisdiction**

#### Article 17

The State Prosecutor's Office shall perform the tasks of prosecution of perpetrators of criminal offences and other punishable offences prosecuted *ex officio*, file legal remedies falling within its jurisdiction and perform other affairs as prescribed by law.

All criminal acts, enumerated in answer to the question no. 21 (Articles 233, 234, 235, 236, 237, 238, 271 of Criminal Code of Montenegro), are prosecuted *ex officio*, except for the offences under the Article 233 paragraph 3 in which case the prosecution is undertaken by private charge.

### **23. Do private persons have standing to initiate criminal proceedings and, if so, who?**

**The Criminal Procedure Code** (Official Gazette of Montenegro, No. 57/09 and 49/10)

### **Reporting Criminal Offences by Citizens**

#### Article 255

(1) Everyone shall report a criminal offence which is prosecuted by virtue of office and is obliged to report a criminal offence the commission of which has caused detriment to a minor.

**Criminal Code** ("Official Gazette of the Republic of Montenegro" No. 70/03, 13/04, 47/06 and the "Official Gazette of Montenegro" No. 40/08, 25/10 and 32/11)

**Violation of Moral Rights of Authors and Performers**

Article 233

(3) Anyone who releases into circulation copies of someone else's copyrighted work or performance in a manner which is insulting for the author or performer's honour and reputation shall be punished by a fine or a prison term up to six months.

(5) Prosecution for an offence under paragraph 3 above shall be instituted by a private action.

**The Criminal Procedure Code** (Official Gazette of Montenegro, No. 57/09 and 49/10)

**Deadline for Filing a Private Action**

Article 51

(1) As regards criminal offences prosecuted upon a private action, the complaint shall be filed within three months as of the day when the private prosecutor, i.e. person referred to in Article 54 of the present Code, learned about the criminal offence and the perpetrator.

(2) If a private action has been filed for the criminal offence of defamation, the accused person may, until the completion of the main hearing and after the expiration of the deadline referred to in paragraph 1 of this Article, file a complaint against the private prosecutor who committed defamation in return on the same occasion (counter-charge). In this case, the court shall render a single judgment.

**Filing a Private Action**

Article 52

(1) A private action shall be filed with the competent court.

(2) When the injured party has filed a criminal charge and in the course of the procedure it is ascertained that a criminal offence subject to private prosecution is involved, the charge shall be considered as timely private action if it was submitted within the deadline prescribed for a private action.

**Injured Party as a Prosecutor (Subsidiary Prosecutor)**

Article 59

(1) When a State Prosecutor establishes that there is no basis for prosecution for a criminal offence that is prosecuted by virtue of office or that there is no basis to prosecute someone of reported accomplices, s/he shall inform the injured parties thereon within eight days, instruct them that they may take over the prosecution themselves and deliver them a decision on the rejection of the criminal charge, with the exception of cases referred to in Article 272, paragraph 5 and Article 273 of the present Code.

(2) State Prosecutors shall proceed in the manner referred to in paragraph 1 of this Article when they issue an order on the cessation of investigation, whereas the court shall do so when they render a decision on the cessation of procedure due to the State Prosecutor's withdrawal of accusation.

(3) The injured party shall have the right to undertake, i.e., continue prosecution, within 15 days as of the receipt of notification referred to in paragraph 1 of this Article.

(4) If the State Prosecutor has withdrawn the indictment, the injured party may, when assuming the prosecution, abide by the existing indictment or file a new one.

**24. Specify, by category of IPR and type of infringement where necessary, the penalties and other remedies that may be imposed:**

- **imprisonment;**
- **monetary fines;**
- **seizure, forfeiture and destruction of infringing goods and materials and implements for their production;**
- **other.**

Answered under 21

**25. Describe provisions governing the length and any cost of proceedings. Provide any available data on the actual duration of proceedings and their cost, if any.**

On compensation of costs of procedure, the court decides in accordance with the provisions of the Criminal Procedure Code.

In terms of the costs of representation, rewards and compensation of expenses for attorneys are determined by Advocates tariff. The compensation is determined depending on the type of procedure in which attorney acts and types of services that provides.

**Criminal Procedure Code** (Official Gazette of Montenegro, No. 57/09 and 49/10)

#### **Right to a Prompt Trial**

##### Article 15

(1) The accused persons shall have the right to be brought before the court in the shortest possible time and to a prompt trial.

(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.

(3) The duration of detention and other forms of restrictions of freedom shall be reduced to the shortest necessary time.

#### **Types of costs**

##### Article 226

(1) Costs of criminal proceedings are expenses incurred for the criminal proceedings, from its institution to its completion, and the costs of the evidence gathering process preceding an investigation.

(2) Costs of criminal proceedings shall include the following:

- 1) costs of witnesses, expert witnesses, interpreters and specialists, and the costs of a crime scene investigation, reconstruction, exhumation, and costs of stenograph and typewriting and technical recording, and copies of records;
- 2) transport costs of the defendant;
- 3) expenses incurred when bringing a suspect, defendant, witness, and expert witness;
- 4) travel expenses of persons acting in an official capacity;

5) costs of medical treatment of a defendant while in detention as well as the costs of childbirth, except for the expenses which are charged from the health insurance funds;

6) costs of technical examination of a vehicle, blood analysis, DNA analysis, urine analysis, or other medical analysis, as well as the costs of the transportation of a corpse to the place of autopsy,

7) fees and necessary expenses of a defence attorney, necessary expenses of a private prosecutor and subsidiary prosecutor and their legal representatives, as well as fees and necessary expenses of their proxies;

8) necessary expenses of the injured party and the legal representative thereof, as well as fees and necessary expenses of his/her proxy;

9) an approximate sum for the expenses not included in the previous items.

(3) An approximate sum shall be determined according to the duration and complexity of the proceedings and the financial situation of the person required to pay the sum.

(4) The costs referred to in paragraph 2, items 1 through 6 of this Article, as well as necessary expenses of the appointed defence attorney and appointed proxy of the subsidiary prosecutor from Article 64 paragraph 3, Article 69 paragraph 6 and Article 70 of the present Code, in the proceedings for criminal offences which are prosecuted by virtue of office shall be paid from the funds of the authority conducting the criminal proceedings upon submitting a request for reimbursement of costs. These costs shall be later paid by the persons required to compensate them pursuant to the provisions of the present Code. The authority conducting the criminal proceedings shall enter all the costs paid in advance in a list which shall be enclosed in the file.

(5) Where no criminal proceedings are eventually instituted, the costs arising from the evidentiary actions shall be borne by the authority under the order of which such actions were performed.

(6) The costs of translation/interpretation, incurred pursuant to the provisions of the present Code referring to the right of the parties to a case, witnesses and other participants in the proceedings to use their mother tongue, shall not be charged from the persons who, according to the provisions of the present Code, are due to compensate the costs of the criminal proceedings.

### **Decision on Costs**

#### Article 227

(1) The judgment and the ruling by which criminal proceedings are discontinued or the indictment is dismissed, shall contain a decision on the person to bear the costs of proceedings and to which amount.

(2) If the data on the amount of costs is lacking, the State Prosecutor or Chair of the Panel shall issue a separate ruling on the amount of those costs when such data are obtained. The data on the amount of costs that are lacking and a request for their compensation may be submitted not later than 15 days from the day of receipt of the final judgment or ruling referred to in paragraph 1 of this Article.

(3) When a decision on the costs of the criminal proceedings referred to in paragraph 2 of this Article is made in a separate ruling, the Panel from Article 24 paragraph 7 of the present Code shall decide on the appeal against such ruling.

(4) When criminal proceedings are not initiated or it is discontinued in the investigation phase, the issue of expenses shall be resolved by a State Prosecutor. If the State Prosecutor does not accept the request for the remuneration of expenses or does not render a decision thereon within two months as of the day the request was submitted, the suspect, the accused person and the defence attorney may request the investigative judge to decide on the expenses.

### **Hidden Costs**

#### Article 228

(1) The defendant, injured party, subsidiary prosecutor, private prosecutor, defence attorney, legal representative, proxy, witness, expert witness, interpreter, and specialist from Article 282 paragraph 8 of the present Code, regardless of the outcome of the criminal proceedings, shall bear expenses for bringing them before the court, postponing the evidence gathering process' action or main hearing , and other costs of the proceedings incurred by their own fault, as well as a proportional amount of the approximate sum.

(2) A separate ruling shall be issued on the costs referred to in paragraph 1 of this Article, unless the issue of the costs borne by a private prosecutor and defendant is to be resolved within the decision on the merits of the case.

(3) The Panel from Article 24 paragraph 7 of the present Code shall decide on an appeal against the separate ruling referred to in paragraph 2 of this Article.

### **Costs of the Proceedings When a Defendant is Found Guilty**

#### Article 229

(1) When court finds a defendant guilty, it shall pronounce in the judgment that the defendant shall cover the costs of the criminal proceedings which have been paid in advance from the funds referred to in Article 226 paragraph 4 of the present Code, as well as the costs of a private prosecutor, subsidiary prosecutor and their legal representatives, and fees and necessary expenses of their proxies.

(2) A person charged with several criminal offences shall not be sentenced to bear the costs with respect to the offences for which he was acquitted if such costs may be separated from the overall costs.

(3) In a judgment finding several defendants guilty, the court shall determine a proportion of the costs to be borne by each defendant, and, if this is not possible, the court shall order that all the defendants be jointly liable for the costs. The payment of the approximate sum shall be determined separately for each defendant.

(4) In a decision on costs, court may acquit the defendant from bearing the overall or partial costs of the criminal proceedings referred to in Article 226 paragraph 2 items 1 through 6 and item 9 of the present Code where the payment of these costs could destitute the defendant or his/her dependant. If such circumstances become evident after the decision on costs has been rendered, the Chair of the Panel may, in a separate ruling, release the defendant of the duty to reimburse the costs of the criminal proceedings.

### **Costs of the Proceedings in Discontinuation of Proceedings, Judgment of Acquittal or of Rejecting the Charges**

#### Article 230

(1) When criminal proceedings are discontinued or a judgment of acquittal or rejecting the charges is rendered, the court shall pronounce in its decision on the discontinuation of proceedings or in the judgment that the costs of criminal proceedings referred to in Article 226 paragraph 2, items 1 through 6 of the present Code, as well as the necessary expenses of the defendant and the necessary expenses of the accused party and the necessary expenses and fee of the defence attorney, shall be paid from a separate budget allotment for the work of courts, save in the cases referred to in paras. 2 and 3 of this Article.

(2) A person found guilty of false reporting offence shall reimburse the costs of the criminal proceedings that s/he prompted by the false reporting.

(3) A private prosecutor shall reimburse the costs of the criminal proceedings referred to in Article 226 paragraph 2 items 1 through 6 and item 8 of the present Code, the necessary expenses of the

defendant and the necessary expenses and fees of his defence attorney if the proceedings are terminated by a judgment of acquittal or a judgment of rejecting the charges or a ruling discontinuing the proceedings, unless the proceedings are discontinued or if the judgment rejecting the charges is rendered because of the death of the defendant or statutory limitations in place due to prolongation of the case that may not be attributed to the private prosecutor. If the proceedings are discontinued because the Prosecutor withdraws the charges, the defendant and private prosecutor may settle their mutual claims. If there is more than one private prosecutor, all of them shall be jointly liable for costs.

(4) When a court rejects charges on the grounds that the court is not competent in a case, the decision on costs shall be made by the competent court.

(5) The amount of necessary expenses of the accused person and necessary expenses and fee of the defence attorney shall be decided by the President of the Panel by way of a special ruling. An appeal against that ruling shall be decided by the Panel referred to in Article 24, paragraph 7 of the present Code.

(6) The request for reimbursement of expenses referred to in paragraph 5 of this Article shall be submitted within fifteen days as of the day of receipt of a final decision referred to in paragraph 1 of this Article.

### **Fees and Necessary Expenses of Defence Attorney**

#### Article 231

(1) Fees and necessary expenses of a defence attorney and proxy to a private prosecutor or injured party shall be borne by the person whom they have represented regardless of who, according to the court decision, shall bear the costs of the criminal proceedings unless, pursuant to the provisions of the present Code, the fees and necessary expenses of the defence attorney shall be paid from the separate budget allotment for the work of courts. If court has appointed a defence attorney to the accused person, and the payment of fees and necessary expenses would impose a risk for the sustenance of the accused person or the sustenance of persons s/he is obliged to support, the fees and necessary expenses of the defence attorney shall be paid from the separate budget allotment for the work of courts. This shall also apply when a proxy to the subsidiary prosecutor has been appointed by court.

(2) A proxy who is not a member of the Bar or attorney in training shall not be entitled to a fee but only to the reimbursement of necessary expenses.

Information on the actual duration of proceedings and their cost are not available, because there is no official record in Montenegro on these issues.

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