



Roundtable Report “Promoting Legal Cooperation between Italy and Montenegro: International Commercial Law Disputes and Access to Judicial Information”

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10 June 2016

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Overview

This Roundtable, as part of the IDLO Montenegro Commercial Law Judicial Training Support Project implemented in partnership with the European Bank for Reconstruction and Development (EBRD,) was held in Rome on 10 June 2016 with the intention to provide a platform for Italian and Montenegrin justice sector officials to foster partnerships and to share best-practice in the public access to judicial information in commercial law cases in order to further strengthen Montenegro's legal sector pre-EU accession.

Both topics of focus of the Roundtable are of high priority on today's development agenda. It is recognized that economic development and open access to legal information, including primary and secondary legal sources, are crucial elements towards the effective achievement of Sustainable Development Goals (SDGs).

Since the emerging economy of Montenegro is heavily reliant on tourism and external trade, it requires clear, effective and enforceable legal frameworks for such sectors as contract and land law, corporate law, construction, alternative dispute resolution and others. Commercial law, being one of key stimuli to business, is one of the areas most dependent on innovation and easy access to information. Italy, as Montenegro's key business and trade partner, has reiterated its commitment to cooperate in the legal sphere to strengthen commercial law frameworks in Montenegro, attracting Italian investment and widening economic ties.

IDLO has been working in Montenegro since 2013, and has established strong partnerships with the Montenegro Centre for Training in Judiciary and State Prosecution Service (JTC) and Montenegro Agency for Protection of Competition. Since November 2015, IDLO has been implementing the third phase of the Montenegro Commercial Law Judicial Training Support Project in partnership with EBRD through financial support from the Government of Italy. This project focuses on enhancing the capacity of Montenegrin judiciary to deal more efficiently with commercial law cases through institutional strengthening of recently reformed JTC and establishing a corps of judge-trainers skilled to deliver training on commercial law topics.

The discussion took the specific perspective of economic ties into focus, and enabled judges, legal experts and diplomats to share and evaluate the progress of their countries' respective best practices and legal tools. Economic focus is of particular importance in this context. All the participants shared their aspirations to further strengthen legal and commercial cooperation between the two countries, identifying two priority areas: rule of law and protection of foreign investments.

"Italy is in fact the fourth buyer and the second vendor in Montenegro and makes large investments every year especially in the energy sector. It, however, aims to become the first vendor and the first buyer in Montenegro. This of course cannot be achieved without strengthening the rule of law in Montenegro and judicial cooperation, to which Italy is committed, being Montenegro's preferred partner within the EU."

Mr. Diego Randazzo,
Ministry of Foreign Affairs of the Republic
of Italy

Summary of Major Issues Discussed

Innovative Approaches to Effective Resolution of Commercial Disputes

Justice sector in the Balkans, and in Montenegro in particular, is challenged with addressing a rapidly changing legal environment, affected externally by globalization of business processes and growing international trade, and internally by changing regulatory frameworks, updated to align with the EU expansion process. Development of technology and alternative dispute resolution mechanisms can create many opportunities to enhance justice administration by promoting effective resolution of commercial disputes. It is a challenge for the judiciary to build its capacity to adequately incorporate these emerging frameworks.

To guarantee rule of law and access to justice for all citizens, each country shall develop a judicial system which better fits these purposes. While safeguarding judicial independence is a key national priority, creating multi-level and specialized judicial systems within the European Union (EU) and the Council of Europe (CoE) member states, raises a number of jurisdiction issues, when the same case can be brought to a general court, to a Constitutional Court, European Court of Justice (for EU member states) and the European Court for Human Rights (for CoE member states.) This context requires careful triangulation between those courts and between legal, social, political and economic interests of all stakeholders. The principles of accountability, transparency and legal certainty acquire even greater importance.

The discussion focused around the following issues:

› *International best practice on establishment of specialized courts*

While the creation of specialized courts and tribunals is prohibited by the Constitution of the Republic of Italy, independent systems of Administrative and Commercial Courts were established in Montenegro to focus on respective disputes, whose decisions can be appealed against at the Supreme Court of Montenegro. Likewise, the judges present at the Roundtable discussed the advantages and disadvantages of such systems and alternative ways of judicial specialization, i.e. through the establishment of specialized panels within general courts or streamlining of the judicial decisions through simplified procedures such as decision on credit issue just based on the documentation without the need to file a case.

› *Judicial transparency, efficiency and predictability*

All roundtable participants agreed that commitment to transparency on the part of the Judiciary in resolving commercial disputes, as well as their enhanced awareness of alternative dispute resolution methods and of the mechanisms for timely enforcement of judicial decisions, are pivotal for creating more efficient judicial systems and fostering public trust.

Among the best practices exchanged during roundtable was the example of an agreement between the Italian Anti-Corruption Agency and the Ministry of Justice of Montenegro, also known as “Anti-Corruption Protocol”, which sets concrete legal instruments on combatting corruption. Being the leader within the EU on integrity measures implementation, Italy is well positioned to share the know-how in this field with Montenegro.

Innovative Approaches to Managing Legal Information

The second session of the Roundtable focused on how open access to legal information can contribute to the promotion of a predictable business climate while strengthening institutional transparency, accountability and public legal awareness and trust in the Courts.

Open access to legal information, including primary and secondary legal sources such as laws, statutes, regulations,

case law, treaties, etc. is a crucial element in the progress towards the achievement of the Sustainable Development Goals (SDGs). It is also one of the pillars of EU cooperation. Various national and international instruments for e-justice and access to legal information are in place, such as the European Strategy for E-justice 2014-2018, which defines general principles of European e-justice. However, these instruments are not always easy to implement.

The participants from various Italian judicial institutions and the representatives of Montenegrin judiciary shared their approaches and practices on implementation of e-justice tools. The conversation circled around the fast-paced developments in this field, and how Montenegro can implement and sustain a modern e-justice system.

Further dialogue focused on the following substantive topics:

› *Innovative e-justice tools for the judiciary and the users of civil and commercial courts*

The Supreme Court of Cassation of Italy demonstrated existing tools to access information on the cases and activities of the Court. The two existing sophisticated databases and the systems are necessary to guarantee the principle of legal certainty. All decisions adopted in the past 5 years are published at the “*Sentenze Web*” portal that can be freely accessed by all judges in Italy. To help judges from lower courts, the Supreme Court has a dedicated database “*Italgire*” which has been recognized as one of the best practices in EU for legal information technology (IT).

In Montenegro, various e-justice initiatives have been implemented in the past years, however, better coordination of e-justice initiatives is required in order to guarantee further development and consistency with European best practices. Each court in Montenegro has a dedicated page on the www.sudovi.me portal, where the names of the judges, hearing schedules and judicial decisions are published. It is possible to search the decisions by date, department and case type. The system of certified email (analogue of the Italian *posta elettronica certificata*) does not exist, however, random allocation of court cases through Judicial Information System (PRIS) is already in place.

› *Innovative e-justice tools in Constitutional Courts*

The Constitutional Court of Italy demonstrated the website of the Court and the resources available in English and Italian, which included abstracts of the texts of the judgments, information on the court and the procedure and other contents. Problems were openly discussed, for example limitations in the search functionality. However, most of the decisions are translated into English and available on their website, which is a good practice and makes it easier for external parties to look for relevant jurisprudence. Italy is part of Venice Commission, which publishes a bulletin with most important decisions of Constitutional Courts of the member-states of the Council of Europe and other countries. In Montenegro, currently major decisions of the Constitutional Court are published online and are available for free public access. However, the Constitutional Court does not have an e-case management system in place.

› *Coordination and information sharing between various rule of law institutions*

To further develop the system of e-justice in Montenegro, the Ministry of Justice is currently coordinating the activities of a Working Group on the development of a new Strategic Plan for E-Justice in Montenegro and of the Action Plan for its implementation. The Plan envisages establishment of a comprehensive information management and sharing system for various rule of law institutions in the country, using European and Italian best practices.

Main Findings and Conclusions

The discussions held in the course of the roundtable are strategically aligned with the areas of cooperation which Montenegro seeks to establish with the international community in the wider terms of financing of judiciary, building its capacity, technological modernization and partnerships, as identified in the Montenegro Voluntary National Review performed within the framework of the UN High Level Political Forum¹.

IDLO provided a platform for Montenegrin and Italian counterparts to share their good practices in the field of commercial disputes resolution and e-justice, which both are integral components of the SDGs and EU integration. It facilitated the discussion on common issues and differences which can foster the development of the judiciaries of both countries. Significant synergies were identified, including commitment to judicial transparency and to the adherence of EU best practices in the field of judicial cooperation and e-justice.

IDLO's programmatic expertise in the fields of commercial law, economic development and e-justice across the Eastern Europe and Central Asia (EECA) region, as well as its thought leadership role and strategic partnerships established with Montenegrin and Italian institutions, have provided a privileged position for the Organization to act as a channel and facilitator of cooperation and knowledge transfer between Italy and Montenegro. Potential areas for further programming include fostering Montenegrin-Italian legal cooperation in commercial law issues; strengthening judicial integrity and financing of the judiciary, as well as providing support for the implementation of the new Strategic Plan for E-Justice in Montenegro.

¹ Voluntary National Reviews at the UN High Level Political Forum 2016 Montenegro: <https://sustainabledevelopment.un.org/content/documents/10182montenegro%20national%20review.pdf> (accessed on July 19)

ANNEXES

Annex 1: Roundtable Agenda



“PROMOTING LEGAL COOPERATION BETWEEN ITALY AND MONTENEGRO: INTERNATIONAL COMMERCIAL LAW DISPUTES AND ACCESS TO JUDICIAL INFORMATION”

A Roundtable organized by the International Development Law Organization (IDLO) in cooperation with the European Bank for Reconstruction and Development, with support from the Government of Italy

June 10, 2016
IDLO Headquarters, Viale Vaticano 106,
Rome, Italy

Available translation: Italian/Montenegrin; English/Montenegrin; Italian/English

9:00 - 9:30 **WELCOMING COFFEE**

9:30 - 10:00 **OPENING SESSION**

Welcoming remarks

- Mr. Erwin Van Der Borght, IDLO Director of Programs
- Ms. Margarita Milikh, IDLO Regional Program Manager, Eastern Europe and Central Asia

Keynote speaker

- Ms. Maja Milošević, Executive Director, Centre for Training in Judiciary and State Prosecution Service (JTC)

10:00 - 11:00 **SESSION 1:**
Innovative Approaches to Effective Resolution of Commercial Disputes

Justice sector in the Balkans, and in Montenegro in particular, is faced with addressing a rapidly changing legal environment, affected externally by globalization of business processes and growing international trade, and internally by regulations changing to align with EU expansion process. As development of technology and alternative dispute resolution mechanisms can create many opportunities to enhance justice administration

by promoting effective resolution of commercial disputes, Judiciaries shall strengthen capacities to face the legal challenges that may arise from those frameworks.

This session will focus on the use of innovative approaches to effective international dispute resolution of commercial cases, and ways to promote Italian-Montenegrin legal cooperation.

Moderator: Margarita Milikh, IDLO

11:00 – 11:30 COFFEE BREAK

**11:30 – 12:30 SESSION 2:
Managing Legal Information: Italian and International Best Practice**

Open access to legal information, including primary and secondary legal sources such as laws, statutes, regulations, case law, treaties, etc. is a crucial element in the progress towards the achievement of the Sustainable Development Goals (SDGs).

This session will focus on how open access to legal information can contribute to promote a predictable business climate while strengthening institutional transparency, accountability and public legal awareness and trust in the Courts. Experiences and best practices from Italy, Montenegro and other countries will be shared to strengthen regional cooperation.

Moderator: Margarita Milikh, IDLO

12: 30 – 13:00 Q & A AND CLOSING REMARKS

Annex 2: Roundtable List of Participants



“PROMOTING LEGAL COOPERATION BETWEEN ITALY AND MONTENEGRO: INTERNATIONAL COMMERCIAL LAW DISPUTES AND ACCESS TO JUDICIAL INFORMATION”

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June 10, 2016
IDLO Headquarters, Viale Vaticano 106,
Rome, Italy

MONTENEGRO DELEGATION

- **Commercial Court of Podgorica**

1. Ms. Marijana Pavicević, Judge
2. Ms. Dijana Raičković, Judge
3. Ms. Borjanka Zogović, Judge
4. Ms. Nataša Sekulić, Judge
5. Mr. Dragan Vučević, Judge
6. Mr. Ivan Kovačević, Judge
7. Mr. Faruk Mušović, Judge
8. Ms. Marina Đurović, Judge

- **Administrative Court of Podgorica**

9. Ms. Svetlana Budisavljević, Judge
10. Mr. Fadil Kardović, Judge

- **Centre for Training in Judiciary and State Prosecution Service:**

11. Ms. Maja Milosević, Executive Director
12. Ms. Marina Pejović, Head of Initial Training Department

ITALIAN INSTITUTIONS

- **Ministry of Foreign Affairs and International Cooperation of the Republic of Italy**

13. Mr. Diego Randazzo, Secretary, Unit of Balkans Region, Directorate General for the European Union

- **Supreme Court of Cassation of the Republic of Italy**

14. Ms. Ileana Fedele, Magistrate, Case Law management officer

▪ **Constitutional Court of the Republic of Italy**

15. Ms. Floretta Rolleri, Judicial Information Officer

16. Mr. Giovanni Catarinno, Counsellor, Head of Press Office