

By virtue of Article 88 item 2 of the Constitution of the Republic of Montenegro, I hereby issue the

Decree promulgating the Law on Non-Contentious Proceedings

I hereby promulgate the Law on Non-Contentious Proceedings, passed by the Parliament of Montenegro, in the fourth sitting of the first ordinary session in 2006, on 18 April 2006.

No.: 01-630/2

Podgorica, 20 April 2006

President of the Republic of Montenegro,
Filip Vujanović, m.p.

Law on Non-Contentious Proceedings

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PART ONE GENERAL PROVISIONS

Article 1

This law determines the rules of non-contentious proceedings under which courts shall proceed and decide in personal, family, property, and other legal matters that are, under the law, to be decided in a non-contentious proceeding.

The provisions of this Law shall also apply to other legal matters from the jurisdiction of courts for which the law does not expressly specify that they shall be handled in non-contentious proceedings, if they do not relate to the protection of a violated or threatened right, nor due to the nature of the legal matter or the capacity of a party to the proceedings the provisions of the law which governs the civil procedure (hereinafter: the Civil Procedure Law) may be applied.

Article 2

The general provisions of this Law shall be adhered to in all matters that are not governed differently by special proceedings set forth herein, as well as in other non-contentious matters for which rules of proceedings are not set forth in any specific law.

The provisions of the Civil Procedure Law shall apply *mutatis mutandis* to the non-contentious proceedings, unless otherwise provided for by this or other law.

Article 3

The non-contentious proceedings shall be instituted by a petition of a natural or legal person, as well as by a petition of an authority specified in this or other law.

By way of an exception, the non-contentious proceedings shall be instituted by the court *ex officio* in the cases and under the conditions specified in this or other law.

If the proceedings have not been instituted by the authority authorised under the law to institute the proceedings, the court shall, without delay, notify the authorised authority that the proceedings have been instituted upon the petition of an authorised person, and shall set the time limit to notify its participation in the proceedings. The court shall halt the proceedings until the expiry of such time limit if this is necessary for the protection of parties or for the protection of the public interest.

Article 4

Participant in the non-contentious proceedings shall mean a person that has instituted the proceedings, the person whose rights or legal interests are decided in the proceedings, as well as the authority which participates in the proceedings pursuant to an authorisation by law to institute the proceedings, regardless of whether it has instituted the proceedings or entered the proceedings at a later date.

By way of an exception, the court may recognise the capacity of a participant in the proceedings, with legal effect in a specific matter, to those forms of association which do not have legal personality, and which are not specified in special regulations as possible participants in the non-contentious proceedings if they meet the conditions referred to in Art. 76 para. 3 of the Civil Procedure Law, and if the subject matter of the non-contentious case directly refers to them.

Petitioner for the purposes of this law shall mean the person or the authority upon whose petition the proceedings have been instituted. Respondent shall mean the person in relation to whom the right or the legal interest of the petitioner is exercised.

Article 5

In the non-contentious proceedings, the court shall, *ex officio*, take particular care and undertake measures to protect the rights and legal interests of minors who are without parental care, and of other persons who are incapable of taking care to protect their own rights and legal interests.

Where the rights and legal interests of minors and other persons enjoying special protection are decided in the proceedings, the court shall notify the guardianship authority on the institution of the proceedings, summon it to the hearings and serve it applications of the participants and

decisions against which legal remedy is allowed, regardless of whether the guardianship authority is participating in the proceedings.

When it deems it necessary, the court shall invite the guardianship authority to participate in the proceedings and set a time limit by which it may notify its participation. Until this time limit expires, the court shall halt the proceedings, but the guardianship authority may use its right to participate in the proceedings even after the lapse of such time limit.

Article 6

The guardianship authority participating in the proceedings, even when not authorised to institute the proceedings under a specific law, shall be authorised to institute all actions in the proceedings for the purposes of protecting the rights and legal interests of minors and other persons enjoying special protection, in particular, to present facts that the participants have not stated, to propose adduction of evidence and to file for legal remedy.

Article 7

By way of an exception, the court may allow the participant without legal capacity to institute other actions in the proceedings in addition to the actions for which he is authorised under the law, for the purposes of exercising his rights and legal interests, if the court believes that he is capable of understanding the meaning and legal consequences of such actions.

Article 8

In non-contentious matters relating to the personal and family status of participants (status-related matters), as well as in other non-contentious matters relating to the rights and legal interests which the participants may not dispose of, in the proceedings before the court they may not waive their claims, grant the claim of the respondent, nor reach a court settlement.

In the proceedings referred to in para. 1 above, the court may also establish facts that the participants have not disclosed, as well as the facts that are not at issue between the parties if they are important for rendering a decision.

The court shall allow the participants to express their opinion regarding the facts referred to in para. 2 above.

Article 9

The proceedings deciding on status-related matters shall be closed to the public, with the exception of declaring a missing person deceased and in proving deaths.

Article 10

The court shall decide on the claims of participants based on the oral hearing only in the cases provided for by this or other laws, or when it assesses that holding a hearing is necessary to clarify or establish decisive facts or when it deems that holding a hearing is meaningful for other reasons.

The failure of certain participants to appear in the hearing, if duly summoned, shall not prevent the judge from proceeding further, unless the law provides otherwise in specific cases.

Participants in the proceedings may be heard even in the absence of other participants.

Article 11

The petition to institute non-contentious proceedings may be withdrawn until the first instance decision is rendered. A petition filed by several persons shall be withdrawn by means of their joint statement, unless otherwise provided for by this or other law.

The petition may be withdrawn not later than until the proceedings are concluded with an enforceable ruling, if this does not violate the rights of other participants whom the decision concerns, or if other participants agree to it.

In case the petition is withdrawn after the first instance decision is rendered, the first instance court shall set aside the decision and discontinue the proceeding.

The petition shall be deemed withdrawn when the petitioner fails to appear at a hearing or to respond to the court summons for questioning, if duly summoned, and in the absence of any generally known circumstances that prevented him from appearing in court. Justified reasons for failure to appear may be accepted by the court even without hearing the opinion of other participants up to the moment the court notifies them of the withdrawal of petition.

In the cases referred to in paras 1 and 4 above, other participants that are authorised under the law to institute the proceedings may apply for the proceedings to continue. The application for the continuance of the proceedings may be filed within eight days of receiving the notice of petition withdrawal.

Article 12

In status-related matters, the court of competent territorial jurisdiction shall be the court in whose territory the person in whose interest the proceedings are conducted has permanent residence, and if he does not have a permanent residence, then the court in whose territory such person has temporary residence, unless otherwise provided for by this or other law.

Any court of competent subject-matter jurisdiction shall be the court of competent territorial jurisdiction in the proceedings to establish the time and place of birth.

In other non-contentious matters the court with territorial jurisdiction shall be the court in whose territory the petitioner has a permanent or temporary residence or seat, unless otherwise provided for by this or other law.

Where a non-contentious matter refers to real property, the court with exclusive jurisdiction shall be the court in whose territory the real property is located, and if the real property is located in the territory of several courts, each of these courts shall have jurisdiction.

Article 13

In the non-contentious proceedings the court may, ex officio, declare itself as lacking territorial jurisdiction not later than at the first hearing, and if the hearing is not held, until the first action is instituted by a participant upon the court summons.

If in the course of the proceedings the circumstances that are the basis of the court's territorial jurisdiction change, the court conducting the proceedings may refer the case to the court of competent territorial jurisdiction under the changed circumstances, if it is obvious that before such court the proceedings will be easier to conduct, or if it is in the interest of the persons enjoying special protection.

Where the case is referred to another court in the interest of the person enjoying special protection, prior to the case referral, the judge shall invite the guardianship authority, if it takes part in the proceeding, to provide its opinion on the appropriateness of the referral. If the guardianship authority does not provide its opinion within the set time limit, the court shall proceed according to the circumstances of the case, taking care of the interests of the person enjoying special protection.

Article 14

Should it determine the proceeding is to be conducted following the rules of civil procedure, the court shall discontinue the non-contentious proceeding by a special decision. Once the decision has become final, the proceeding shall be continued under the rules of a civil procedure before the court of competent jurisdiction.

Article 15

A single judge shall decide in the first instance non-contentious proceedings.

Certain actions in the proceedings may be undertaken by a judge's assistant if provided for by this or other law.

Article 16

Records shall be made of actions taken in non-contentious proceedings, signed by the officials taking part in the official actions and the participants to the proceeding present.

In case of statements of lesser importance by the participants to the proceedings and the information procured by the court, a note in the case file may be inserted.

Article 17

In the non-contentious proceedings, decisions are rendered in the form of rulings.

Any ruling shall be appealable by a special appeal, unless otherwise provided for by this or other law.

A ruling against which a special appeal is allowed and the ruling of a second instance court shall contain a statement of reasons.

Article 18

The appeal against the ruling rendered in the first instance may be filed within 15 days from the date of serving the ruling, unless otherwise provided for by this or other law.

Article 19

The appeal shall stay the execution of the ruling, unless otherwise provided for by this or other law, or unless otherwise decided by the court.

Due to reasons of importance, the court may decide that an appeal shall not stay the execution of the ruling.

Where the need exists to protect the rights of minors or other persons enjoying special protection, the court may, ex officio, for the purposes of protecting the rights of other participants upon their petition, order that cash security be deposited. Where special circumstances of the case require so, the security may be determined in another form.

Article 20

The first instance court may itself, on account of appeal, reverse or set aside its previous ruling if this does not violate the rights of other participants based on such ruling.

If the first instance court does not reverse or set aside its ruling, it shall forward the appeal together with the case file to the second instance court for deliberation regardless of whether the appeal was lodged within the time limit specified by the law.

The second instance court may, for reasons of importance, also decide on the lapsed appeal, if it does not violate the rights of other persons based on such ruling.

Article 21

Where the court decision depends on the preliminary issue as to whether a certain right or a legal relationship exists, and such issue has not been decided by court or another competent authority

(preliminary issue), the court may resolve the issue itself unless otherwise provided for by this or other law.

The court's decision under para. 1 above shall have legal effect only in the non-contentious proceedings in which such issue has been resolved.

Article 22

If the facts of importance for resolving the preliminary issue are disputed between the participants, the court will instruct them to file a civil action or launch a procedure before an administrative authority to resolve the disputed right or legal relationship.

The court shall refer to the civil action or procedure before an administrative authority the participant whose right is deemed to be less plausible, unless otherwise provided for by this or other law.

Article 23

If the participant who is referred to a civil action or a procedure before another competent authority, files a civil action or launches a procedure before another competent authority within a specified time limit, which may not exceed 15 days, the non-contentious proceedings shall be halted until the enforceable ruling is rendered in such proceedings.

If none of the participants files a civil action or launches a procedure before another competent authority until the expiry of the deadline referred to in para. 1 above, the court shall conclude the proceedings regardless of the claims in relation to which the participant was referred to a civil action or a procedure before another competent authority.

Article 24

Where the court ruling changes a personal or family status of the participant or his rights and duties, the legal consequences of the ruling shall ensue when it becomes enforceable.

The court may decide that the legal consequences of the ruling shall ensue prior to enforceability, if this is necessary to protect minors or other persons enjoying special protection.

The final ruling changing the personal or family status of participants shall be notified without delay to the authority responsible for maintaining civil registers for such person

Article 25

The enforceability of the ruling rendered in non-contentious proceedings shall not preclude the participants from enforcing their claim on which a ruling was rendered in a civil action or a procedure before another competent authority, when such right is recognized under this or other law.

Article 26

In the proceedings where status-related matters are decided, a review shall be allowed against the enforceable ruling of the second instance court unless otherwise provided for by this or other law.

In the proceedings where property law matters are decided a review shall be allowed under the conditions under which a review is allowed in property law matters under the Civil Procedure Law, unless otherwise provided for by this or other law.

Article 27

Upon the petition to repeat the proceedings, the court shall follow the preliminary procedure as in the case of a lapsed appeal if conditions referred to in Art 20 hereunder are met.

The petition to repeat the proceedings may not be filed against an enforceable ruling if under this or other law the participant is recognized the right to pursue the claim resolved by the ruling in a civil action or a procedure before another competent authority.

Article 28

The costs of proceedings in status-related matters shall be freely awarded by the court, taking account of the circumstances of the case and the outcome of the proceedings.

When a guardianship authority is a participant to the proceedings, it shall be entitled to cost compensation under the provisions of the Civil Procedure Law, but not the right to an award.

The costs that should be borne by the guardianship authority as an advance payment shall be paid out from the courts budget.

The participants shall bear the costs arising from the participation of the guardianship authority, provided that the court may decide otherwise.

In non-contentious matters relating to property rights of participants, unless otherwise provided by law, participants shall bear the costs equally, but if there is a significant difference with regard to their share in the property right decided on, the court shall determine according to the proportion of such share, what share of costs each of the participants will bear.

In the non-contentious matters referred to in para. 4 above, the court may decide that the participant in whose interest the proceedings are conducted or the participant who gave rise to the institution of the proceedings exclusively due to his behaviour shall bear all the costs.

Article 28a

The terms used herein for natural persons in masculine gender shall imply the use of the same terms in feminine gender.

PART TWO SPECIAL PROCEEDINGS

I. PERSONAL STATUS

CHAPTER ONE Legal Capacity Removal and Restoration

Article 29

In the proceedings for the removal and restoration of legal capacity, the court examines whether a person of full age, taking into account the level of his capacity for normal judgment, is capable of taking care of his own rights and interests and decides on complete or partial removal of legal capacity, or on full or partial restoration of legal capacity when the reasons for removal or limitation of legal capacity cease to exist.

The proceedings under para. 1 above shall be urgent and must be completed within 30 days from receiving the petition to that effect.

Article 30

The proceedings for the removal and restoration of legal capacity shall be initiated upon the petition of the:

- 1) guardianship authority;
- 2) spouse, common-law spouse, child or parent of the person who fulfils the legal requirements for the removal or limitation of legal capacity;
- 3) grandparent, sibling or grandchild if they live with such person in the same family unit;
- 4) the same person whose legal capacity is to be removed or restored, if he is capable of understanding the meaning and legal consequences of this petition.

Article 31

The court within whose territory the person whose legal capacity is being removed or restored has permanent or temporary residence shall have the jurisdiction to conduct the proceedings.

Article 32

The petition must contain the facts on which it is based, as well as evidence that confirm or render such facts likely.

If the guardianship authority has not instituted the proceedings, the petition must also contain the information from which the authorisation to institute proceedings arises.

Article 33

If the person in relation to whom the proceedings for the removal or restoration of legal capacity have been instituted has real property, the court shall, without delay, notify the authority maintaining real property register to impose an encumbrance to that effect.

The authority responsible for maintaining civil registers where the person whose legal capacity is being removed or restored is registered shall also be notified of the proceedings being instigated in order to record the conducting of the proceedings.

Article 34

In such proceedings, the court shall decide on the basis of hearing.

The petitioner, the guardian of the person whose legal capacity is being removed or restored, his temporary representative and the guardianship authority shall be summoned for the hearing.

The person whose legal capacity is being removed or restored shall be summoned to the hearing unless this person, as deemed by the court, is incapable to comprehend the significance and legal consequences of his participation in the proceedings.

Article 35

The court shall directly question the person in relation to whom the proceedings are conducted, and if such person is admitted in a healthcare institution, he will be questioned as a rule, in such an institution, where the hearing will be held.

The court may abandon the questioning of the person in relation to whom the proceedings are conducted only if this may be harmful to his health or if the hearing is not possible at all, considering the mental or physical condition of such person.

Article 36

The court shall question the guardian or temporary representative, the petitioner and other persons who can provide the required information on the life and behaviour of the person in relation to whom the proceedings are conducted and on other important circumstances.

Article 37

The person in relation to whom the proceeding for removal of legal capacity is conducted must be examined by no less than two medical doctors of required expertise as expert witnesses, who will provide their findings and opinion on his mental state and the capacity to make judgments.

The expert examination shall be performed in the presence of a judge, except when it is performed in a healthcare institution.

Article 38

The court may determine by a ruling that the person in relation to whom the proceedings are conducted, shall be temporarily, but for no longer than three months, placed in an appropriate healthcare institution if, in the opinion of the medical doctor, this is necessary to determine his mental state, unless that may have an adverse impact on his health.

If the institution referred to in para. 1 above is located outside the territory of the court before which the proceedings are conducted, this court shall carry out the necessary actions through the court within whose territory the institution is located.

Article 39

The ruling on the placement into the health care institution may be appealed by the person in relation to whom the proceedings are conducted and his guardian or temporary representative within three days of service of the ruling transcript.

The person in relation to whom the proceedings are conducted may lodge an appeal regardless of his mental state.

The appeal shall not stay the execution of the ruling, unless the court decides otherwise for justified reasons.

The court shall, without delay, forward the appeal with the case file to the second instance court, which shall decide within three days of the receipt of the appeal.

Article 40

Where the court finds that the conditions are met for removal of legal capacity, it shall completely or partially remove legal capacity of the person in relation to whom the proceedings are conducted.

The person whose legal capacity has been removed may lodge an appeal against the pertinent ruling regardless of his mental state.

Article 41

The court may suspend rendering the ruling on partial removal of legal capacity due to abuse of alcohol or other intoxicating substances if it may reasonably be expected that the person in relation to whom the proceedings are conducted will refrain from the abuse of alcohol or other intoxicating substances.

The court may suspend rendering the ruling referred to in para. 1 above if such person is, on own initiative or at the court's proposal, admitted for treatment in a specified healthcare institution.

The rendering of the ruling referred to in paras. 1 and 2 above shall be suspended for a period of six to 12 months.

The ruling on suspension shall be revoked if the person terminates the treatment or is discharged from the healthcare institution for disorderly behaviour.

Article 42

When the reasons for which the person has had his legal capacity removed cease to exist, the court shall, ex officio, at the motion of the person concerned, as well as upon the motion of the guardianship authority and the persons referred to in Art 30 hereunder, render a ruling on the full or partial restoration of legal capacity.

Article 43

The enforceable ruling on removal or restoration of legal capacity shall be notified by the court to the authority responsible for maintaining civil register for the purposes of entering it into the register of births, to the authority maintaining real property register if the person concerned has real property, as well as to the guardianship authority.

CHAPTER TWO

Involuntary Committal to Psychiatric Institution

Article 44

In these proceedings the court decides on involuntary committal of a mentally ill person in the appropriate psychiatric institution when, due to the nature of the illness, it is necessary that such person's freedom of movement or communication with the outside world be restricted, and on his release when the reasons that caused the involuntary admission cease to exist.

The proceeding referred to under para. 1 above shall be completed no later than within 8 days.

Article 45

When committing a mentally ill person into a psychiatric institution, the right to his dignity, physical and mental integrity with respect for his personality, privacy, moral and other beliefs shall be ensured.

Article 46

When a psychiatric institution admits a mentally ill person for treatment without his consent or court ruling, it shall within 48 hours notify the court in whose territory the institution is located.

The psychiatric institution's notification shall contain the psychiatrist's decision on involuntary admission with the required accompanying documents under the law governing protection and the exercise of rights of mentally ill persons.

Article 47

The notification referred to in Art 46 hereunder shall not be filed if the mentally ill person was admitted to a psychiatric institution based on the ruling passed in the proceeding for removal of legal capacity or in the criminal or misdemeanor proceeding.

Article 48

The proceedings shall be conducted ex officio, as soon as the court receives the notification from the psychiatric institution or in another manner becomes aware that a person has been involuntarily admitted to a psychiatric institution.

The person whose involuntary committal to a psychiatric institution is being decided upon shall be assisted by an attorney during the proceedings.

The person under paragraph 2 above unable to provide for an attorney, shall be entitled to legal aid as a person of poor means, under the law governing legal aid.

In case the person under paragraph 2 above fails to hire an attorney or meet the eligibility criteria for being granted legal aid, the court shall ex officio appoint an attorney according to the sequence on the list of attorneys provided to the court by the Bar Association of Montenegro

Article 48a

The court is obliged to hold a hearing at the psychiatric institution where the person suffering from mental illness is involuntarily admitted within three days from the day of receiving the report or becoming cognizant of the admission.

The court shall hear the person upon whose involuntary admission is being decided if that person is capable of comprehending the relevance and legal consequences of taking part in the proceedings and unless it may cause harm to his health.

Article 48b

The court is obliged to examine all the circumstances relevant for rendering a decision on involuntary committal of a mentally ill person, particularly the opinion of a psychiatric expert witness independent of the psychiatric institution where the person was involuntarily admitted, regarding how justified the reasons for involuntary admission are and the capability of the mentally ill person to comprehend the relevance and the legal consequences of his participation to the proceedings.

The written findings and the opinion under paragraph 1 above shall be provided to the court by the expert witness within three days after having personally examined the mentally ill person. The costs of the expert witness under paragraph 1 above shall be borne by the court's budget.

Article 49

When the court decides that a mentally ill person is to be admitted in a psychiatric institution, it shall set the time for involuntary admission which may not exceed 30 days, counting from the day when the psychiatrist made the decision on involuntary admission.

The court shall notify the guardianship authority of its ruling.

The psychiatric institution is obliged to periodically report to the court on the health status of the admitted person.

Article 50

The person committed to a psychiatric institution may be subjected to the required treatment under the law governing the protection and exercise of rights of persons with mental illness

During the admission to a psychiatric institution, the mentally ill person should be enabled to maintain contacts with the outside world, i.e. to receive visits, make correspondence and use telephone.

Article 51

If the psychiatric institution assesses that the mentally ill person should further remain in treatment upon the expiry of the time limit specified in the court ruling, it shall lodge a motion with the court to that effect seven days prior to the expiry of the period of involuntary committal set by the court.

The duration of the extended admission may not be longer than three months, and any subsequent extension not longer than six months.

Article 52

The court may also decide that the mentally ill person be discharged from the psychiatric institution prior to the expiry of the time period specified for involuntary admission if it establishes that the health status of the admitted person has improved to such a degree that the reasons for his further committal have ceased to exist.

When passing the decision upon the proposal under para 1 above, the court shall conduct the proceedings as envisaged by Article 48b hereunder.

Article 53

The ruling for involuntary admission to and discharge from a psychiatric institution may be appealed against by the psychiatric institution to which the mentally ill person was admitted, the admitted person, the guardian or temporary representative, an attorney, if any, and the guardianship authority within three days from receiving the ruling.

The appeal shall not stay the execution of the ruling, unless the court decides otherwise for justified reasons.

The first instance court shall, without delay, refer the appeal with the case file to the second instance court which is obliged to render the ruling within eight days from receiving the appeal.

The time limit for deciding in the repeated procedure upon the second instance court's ruling setting aside the first instance ruling shall not exceed eight days.

CHAPTER THREE

Declare a Missing Person Deceased and Pertaining Evidence

Article 54

In these proceedings the court decides on declaring a missing person deceased and determines the death of a person for the fact of whose death there is no legally prescribed evidence.

Article 55

The court may declare deceased the person:

1) of whose life there has been no account in the last five years, and from whose birth sixty years have passed;

- 2) of whose life there has been no account in the last five years, and the circumstances of his disappearance make it likely that he is no longer alive;
- 3) who disappeared in a shipwreck, traffic accident, fire, flood, earthquake or another imminent mortal danger which is not linked with armed conflict, and of whose life there has been no account for six months from the date the danger ended;
- 4) who disappeared in war or in relation to armed conflicts, and of whose life there has been no account for one year from the date the hostilities ended.

The time limits referred to in items 1 and 2 of para. 1 above shall be computed from the date when according to the latest accounts the missing person was undoubtedly alive, and if such date cannot be exactly determined, such time limits shall begin to run upon the lapse of the month or the year in which the missing person was alive according to the latest account.

Article 56

The petition for declaring a missing person deceased may be filed by the family of the person went missing, any person with a direct legal interest, as well as the authority concerned.

The petition under para. 1 above shall contain: the facts relevant for instituting the proceedings, the evidence by which such fact is established or rendered likely, the petitioner's legal interest for filing the petition and other data to be contained in any court application.

Article 57

The jurisdiction for declaring a missing person deceased shall be with the court within whose territory the missing person had his last known permanent residence, and in the absence of this, the court within whose territory the missing person had his last known temporary residence.

By way of an exception to para. 1 above, in case a family of the missing person files a petition, the court within whose territory the family has permanent or temporary residence shall also have jurisdiction.

Article 58

Upon the receipt of the petition, the court shall check, in a suitable manner, whether the basic assumptions for instituting the proceedings are fulfilled.

Should the court assess that basic assumptions for instituting proceedings have not been met, it shall pass the ruling dismissing the petition.

If, on the basis of information provided in the petition or performed checks, the court assesses that such assumptions are fulfilled, it will appoint a guardian to the missing person and notify the guardianship authority thereof, or invite the guardianship authority to appoint within a specified time limit a guardian who will represent him in the proceedings.

The guardian shall collect evidence on the disappearance or life of the missing person and propose them to the court, and the court itself shall, *ex officio*, collect and adduce evidence to establish whether and when the missing person died, or whether he is still alive.

Article 59

If the court assesses that the basic assumptions for instituting the proceedings have been fulfilled, it shall publish a notice in the Official Gazette of the Republic of Montenegro and on the court's bulletin board to that effect.

The notice of instigated proceeding for declaring a missing person deceased shall state the main circumstances on which the petition is based, invite the missing person and any other person who knows anything about his life or death to notify the court without delay, and indicate that, when three months from the publication of the notice have elapsed, it will decide on the petition.

The notice on proceedings instigated to declare a missing person deceased should contain the designation of the day, month and year of suspected death and the invitation to persons knowing anything about it to inform the court within 30 days from the notice publication.

Should the petitioner, as ordered by the court, fail to deposit the amount needed for the notice publication within the time stipulated, the petition shall be regarded as withdrawn.

Article 60

When three months have elapsed from the publication of the notice in the Official Gazette of the Republic of Montenegro, if the missing person is not heard from and there are no indications suggesting that he might be alive, the court shall schedule a hearing and summon the petitioner and the guardian of the missing person and adduce the required evidence.

If the court establishes that some of the conditions referred to in Art 55 hereunder have been met, and that the outcome of the entire proceedings reliably indicates that the missing person is not alive, it shall issue a ruling declaring such person dead.

Article 61

The ruling declaring a missing person dead shall specify the day, month and year and, if possible, the hour deemed to be the time of death of the missing person.

The day when the missing person probably died or the day he probably did not survive shall be deemed the date of death. If such a date cannot be determined, death shall be deemed to have occurred on the first day after the time limits referred to in Art 55 hereunder lapsed.

Article 62

The first instance ruling may be appealed against by the petitioner and the guardian of the missing person.

The enforceable ruling on declaring a missing person deceased shall be submitted to the authority responsible for maintaining civil registers, to the court having probate jurisdiction, the notary, the guardianship authority, and the authority maintaining real property register, if the person declared dead had any real property.

Article 63

If the person declared deceased is alive or died on another day, not the one cited in the court ruling as the date of death, this and any other person who has legal interest, and any interested authority, may request from the court to set aside or reverse the ruling declaring the missing person deceased.

The court holding probate jurisdiction, the notary and the competent guardianship authority shall promptly be notified on the institution of proceedings to set aside or reverse the ruling declaring the missing person deceased. If the probate proceeding is pending, the court shall pass the ruling to terminate the proceeding, and if the probate proceeding has been completed with an enforceable ruling, and if real property was registered, the court shall order an entry to be made on the proceedings to set aside or reverse the ruling declaring the missing person deceased.

Article 64

If the court establishes the missing person to be alive or that he died on another day, not the one cited in the court ruling as the date of death, the court shall set aside or reverse its prior ruling.

Should the court on the basis of conducted proceeding decide there is no reason to set aside or reverse the prior ruling, it shall deliver the final ruling to the court holding probate jurisdiction for further actions or for the purpose of striking the encumbrance from the real property register.

Article 65

If the person declared dead personally contacts the court, after establishing his identity, the court shall, without any further proceedings, set aside its ruling.

Article 66

The final ruling to set aside or reverse the ruling declaring the missing person deceased shall be delivered to the authority responsible for civil registers, the probate court, and the guardianship authority.

Based on the ruling to set aside or reverse the ruling declaring the missing person deceased, the guardianship authority shall abolish guardianship, if there are no other legal impediments.

Article 67

If the death of a person cannot be proven by any documents specified in the civil registry legislation, any person with a direct legal interest, as well as the interested authority, may file a petition with the court to establish evidence of death and pass a ruling determining the death of such a person.

Article 68

The provisions of this chapter on the declaration of a missing person deceased shall apply mutatis mutandis to the proceedings for proving death of a person, provided that the petition with the court may be filed immediately upon the death of the person whose death is being established and that the notice period may not be shorter than 15 nor longer than 30 days.

Article 69

A proceeding for declaring a foreign national deceased may not be conducted before the courts in the Republic of Montenegro.

The determination of death of a foreign national for whom the petition claims to have died within the territory of the Republic of Montenegro shall be allowed.

Article 70

The petitioner, the guardian of the person declared deceased or whose death is being established and the interested party may lodge an appeal against the ruling declaring a missing person deceased or confirming the death of a person, against the ruling setting aside or reversing such rulings and against the ruling to reject the petition.

II. FAMILY RELATIONS

CHAPTER THREE A Establishing Time and Place of Birth

Article 70a

In the proceeding of establishing the time and place of birth the court establishes the time and place of birth of the person whose birth has not been recorded in the civil register of births, as

well as of the child not born in a healthcare institution, whose time and place of birth may not be established as referred to in the law governing civil registers.

The proceeding under paragraph 1 above may be instigated by a person whose time and place of birth are being proven, by the person who holds an immediate legal interest, a guardianship authority, and for a child not born in a healthcare institution, also other persons reporting birth under the law governing civil registers.

The petition to determine the time and place of birth for the person not entered in civil register shall contain the data of the person whose time and place of birth is being established, if known, the proofs that establish or make such facts likely, as well as other facts that may be relevant for establishing the time and place of birth.

In case the petition under paragraph 3 above is not filed by the person whose time and place of birth is being established or the guardianship authority, the petition shall also contain the facts indicating the immediate legal interest (of the petitioner), except when the time and place of birth of a child not born within a healthcare institution is being established.

Within 30 days of receiving the petition under paragraph 3 above, the court shall verify whether the person has been registered in the civil register of births by obtaining an excerpt from the records of the authority responsible for maintaining civil register of births.

If no excerpt from the records is provided to the court within the time period set under paragraph 5 above, the persons whose time and place of birth is being established is not registered in the civil register of births.

In case of any suspicion the person whose time and place of birth are being proven held temporary residence in a foreign country, the court shall halt the proceedings until procuring required information from the competent authority of the given foreign state under the mutual legal assistance rules.

Article 70b

Upon receiving the excerpt or the expiry of the time limit for providing the excerpt under Article 70a para 5 hereunder, the court shall schedule a hearing and summon the petitioners and the person whose time and place of birth is being established and adduce the required evidence.

In the proceeding for establishing the time and place of birth for the person, the court shall hear at least two witnesses of full age whose identity shall be established by means of personal identification documents with a photograph.

The court may order the person whose time and place of birth is being established be examined by a medical doctor of required expertise to give the opinion of the age of the given person.

Article 70c

The ruling establishing the time and place of birth shall contain: the name and surname of the person whose time and place of birth is being established, their sex, day, month, year and hour of birth, place of birth, and the data of his parents, if known.

Article 70d

If the court is unable to establish the time of birth, he shall be deemed to be born on January 01 at 00:01 of the year which may be regarded as the probable year of his birth based on the evidence adduced.

If the court is unable to establish the place of birth, the town or the municipality which, based on the evidence adduced, may be deemed as likely place of birth, shall be deemed the place of birth, and in case the place of birth proves impossible to be established in such a manner, it shall be deemed that the person was born at the place where he was found or where he had temporary residence at the time of the petition to establish time and place of birth.

Article 70e

An appeal may be lodged against the ruling referred to in Article 70c hereunder within 15 days from its serving.

Article 70f

The petitioners in the proceedings for establishing place and time of birth shall be exempted from court fees, and expert witnesses costs shall be borne by the court's budget.

Article 70g

The final ruling on the time and place of birth shall be submitted by the court to the authority responsible for maintaining the register of births within eight days from its enforceability for the purpose of making an entry of birth.

Article 70h

Should it be subsequently established that the person whose time and place of birth is being established has already been registered in the civil register of births, the court rendering the ruling under Article 70c hereunder shall, ex officio, institute and conduct the proceedings to repeal the given ruling.

The final ruling repealing the ruling under paragraph 1 above shall be submitted by the court to the authority responsible for maintaining the civil register of births within eight days from its enforceability.

Article 70i

The proceeding for establishing the time and place of birth ending in an enforceable ruling shall not be repeated even in the cases when conditions exist for repeating the proceedings under the Civil Procedure Law, but the petitioner may pursue his claims in a civil action.

CHAPTER FOUR

Extension and Termination of Extended Parental Right

Article 71

The court decides on the extension and termination of extended parental right beyond the child's age of majority, when the reasons for it exist as specified by the law.

The proceedings for the extension and termination of extended parental right shall be completed within 15 days from the petition.

In the proceedings, the child shall be represented by a special guardian appointed by the court or a guardianship authority.

Article 72

The proceeding for the extension and termination of extended parental right shall be instituted upon the petition of the parent or adoptive parent or the guardianship authority.

Apart from the persons referred to in paragraph 1 above, the proceeding for termination of extended parental right shall also be instituted upon the petition of the child

Article 73

The court shall determine ex officio the mental and physical status of the child that is of relevance for his capacity to take care of his own person, rights and interests.

The decision on the petition for the extension and termination of extended parental right shall be rendered on the basis of oral hearing to which shall be summoned: the guardianship authority, child, child's guardian and parents, adoptive parent, regardless of whether they have instituted the proceedings. The questioning of parents shall be mandatory in such proceedings, and the guardianship authority shall provide an opinion on the appropriateness of the extension of parental rights.

The mental state and the capacity of the child shall be determined in the manner specified in Art 37 hereunder.

Article 74

The provisions on the removal and restoration of the legal capacity hereunder shall be applied *mutatis mutandis* in the proceedings for the extension and termination of extended parental rights, unless otherwise provided for by this or other law.

CHAPTER FIVE

Limitation, deprivation and Restoration of Parental Rights

Article 75

The court shall decide on limitation, deprivation and restoration of parental rights when there are reasons for that provided for by the law.

Article 76

The proceeding for limitation, deprivation and restoration of parental rights shall be instituted upon the petition of the other parent or the guardianship authority, and the proceeding for restoration of parental rights shall also be instituted upon the petition of the parent whose right has been removed.

The proceeding for removal and restoration of parental rights shall be completed within 15 days from receiving the petition.

Article 77

If the proceeding was not instituted by the guardianship authority, the court shall notify it without delay of the proceeding being instituted and shall invite it to take part in the proceeding.

The court or the guardianship authority may appoint a special guardian to represent the child in the proceeding even when another parent is living and exercises parental rights if they deem it necessary to protect the child's interests.

Article 78

In this proceeding, the court shall *ex officio* establish the facts relevant for making the decision, and the guardianship authority is obliged to assist the court in obtaining the evidence needed, as well as present their opinion on the appropriateness of granting the petition to limit, deprive or restore parental rights.

The decision upon the petition to limit, deprive or restore parental rights shall be rendered based on the hearing to which the guardianship authority, child's parents and his guardian, if appointed, shall be summoned. The child may be summoned if more than ten years old and if the court deems it relevant. Parents may be heard, and the child shall be heard only if necessary to establish the decisive facts and when it is not harmful for the child's mental health.

The appeal does not stay the execution unless the court decides otherwise in the given case.

CHAPTER SIX

Permission to Conclude Marriage

Article 79

In these proceedings the court decides on the permission for marriage between certain persons between whom, due to legally prescribed conditions, a valid marriage may be concluded only on the basis of court permission.

Article 80

The proceedings shall be instituted by a petition of the person who does not meet the legal condition for concluding a valid marriage, and when neither person meets the prescribed condition, the proceedings shall be instituted by their joint petition.

The court in whose territory the petitioner has permanent or temporary residence shall be the court of competent territorial jurisdiction to proceed upon the petition, and the court in whose territory one of the petitioners has permanent or temporary residence shall be the court of competent territorial jurisdiction to proceed upon the joint petition.

Article 81

The petition shall contain personal information on the persons who wish to conclude marriage, the facts upon which the petition is based, and proof of such facts. If the petitioner is a minor, the petition must contain the information about his parents.

Article 82

Where a petition has been filed by a minor, the court shall investigate in an appropriate manner all the circumstances of relevance for determining whether there exists free will and wish of the minor to conclude marriage, as well as if the minor has achieved physical and mental maturity necessary for exercising marital rights and duties.

The court shall obtain the opinion of a healthcare institution, establish appropriate cooperation with the guardianship authority, question the petitioner, his parents or guardian, the person whom

the minor wishes to marry, and may adduce other evidence and obtain other information, as needed. If it deems it important for establishing decisive facts, the court will adduce all or some evidence in the hearing. A parent whose parental rights have been terminated shall not be questioned, and the court shall at its own discretion decide whether to question the parent who does not exercise his parental rights for no justified reason. The court shall, as a rule, hear the minor without the presence of other participants.

The court shall examine personal qualities, financial standing, and other relevant circumstances relating to the person whom the minor wishes to marry.

Upon the joint petition of persons of full age related by affinity, or adoptive parent and adopted child, the court shall examine in an appropriate manner the justifiability of the petition, taking due consideration of the achievement of the purposes of marriage and of the protection of family. Where the joint petition has been filed by the adoptive parent and adopted child, the court shall obtain a prior opinion of the guardianship authority.

Article 83

The court ruling permitting conclusion of marriage shall be delivered to the petitioner, the person the petitioner wishes to conclude marriage with, the parents or guardians of the petitioner and the competent guardianship authority.

The ruling rejecting the petition to permit concluding marriage shall be delivered to the petitioner.

Article 84

The ruling allowing the conclusion of marriage may be appealed by all participants to the proceeding under Art 83 para.1 hereunder.

The ruling dismissing the petition to permit a minor to conclude marriage may be appealed only by the minor.

The persons who have been allowed to conclude marriage may not do so before the ruling granting such permission has become enforceable.

Article 85

The joint petition for the permission to conclude marriage may be withdrawn by the petitioner until the ruling becomes enforceable.

The petition shall also be deemed withdrawn when one of the petitioners abandons the petition.

Article 86

The application to review the final ruling of the second instance court shall not be allowed.

CHAPTER SEVEN

Declare a Child Legitimate

Article 87

In the proceeding for declaring a child legitimate, the court shall establish that the child born out of wedlock is legitimate.

Article 88

The court within whose territory the child has permanent or temporary residence shall have the jurisdiction for declaring the child legitimate.

Article 89

The petition to declare the child legitimate may be filed by the parent, the child or the guardianship authority.

The petition referred to in para. 1 above may not be filed before establishing the child's paternity in the manner provided for in the law.

Article 90

In order to establish whether the child's parents intended to conclude marriage and were prevented from doing so due to the death of one or both of them, or that upon the child's conception the marital impediment arose due to which the marriage could not have been concluded, the court shall hear the petitioner and other persons that may give the required statements and obtain evidence of death or impediment due to which marriage cannot be concluded.

Article 91

The ruling passed in the proceeding for declaring a child legitimate may be appealed by the petitioner as referred to in Art 89 para. 1 hereunder.

Article 92

The enforceable ruling declaring a child legitimate shall be delivered to the authority responsible for maintaining the register of births.

III. PROPERTY RELATIONS

CHAPTER EIGHT PROBATE PROCEEDINGS

1. General Provisions

Article 93

In the probate proceedings it shall be determined who the heirs of the decedent are, which property makes up his estate and which rights from the estate belong to heirs, legatees and other persons.

Article 94

The probate proceedings shall be conducted before the court or the notaries as entrusted by the court.

The court shall entrust the notary with conducting the probate proceedings and provide the notary with the death certificate, or the petition to instigate the probate proceeding.

When the notary conducts the probate proceeding as entrusted by the court it shall be authorised, alike the court, to take actions and make decisions, unless provided otherwise by this Law.

The notary shall not conduct probate proceedings in case when a temporary administrator is to be appointed or when a request has been made to separate the decedent's estate from the heir's property or when needed to impose an injunction to secure the estate.

In the cases under paragraph 4 above, the probate proceeding shall be conducted by the court that entrusted the case to the notary.

When the request for separation of decedent's estate has been made in the petition instigating the probate proceeding, the court shall not entrust a notary to conduct such probate proceeding.

Article 95

For the probate proceedings, the court on whose territory the testator had a permanent or temporary residence at the time of death shall have territorial jurisdiction (probate court).

If the testator at the time of death did not have either a permanent or temporary residence in the territory of Montenegro, the court in whose territory the prevailing part of his estate is located in Montenegro shall be the court of competent jurisdiction.

The court in whose territory the testator died, as well as the court in whose territory the property of the testator is located may impose an injunction to secure the estate.

Article 96

The heirs and legatees, as well as other persons drawing any right from the estate shall be deemed as participants within the meaning of this law.

+ **case law**

Article 97

The proceedings shall be instituted ex officio as soon as the court becomes aware that a person has died or has been declared dead.

Article 98

In the probate proceedings before the court, all statements and motions by participants, with the exception of renouncing inheritance, may be recorded by judges' assistants.

In the probate proceedings before the notary, all statements and motions by participants, with the exception of renouncing inheritance, may be recorded by deputy notary and notary assistants.

2. Preliminary actions

Article 99

When a person has died or has been declared dead, the competent authority responsible for civil registers is obliged to send the death certificate to the probate court within 15 days of making the entry.

If the competent authority responsible for civil registers is unable to obtain the information to draw up the death certificate, it shall send the death certificate with only such information as is available to it and state the reasons due to which it could not complete the death certificate and provide information which could be of use for the court in locating the heirs and the decedent's property.

If a person died outside the territory of the local self-government in which he had a permanent or temporary residence, the competent authority responsible for civil registers shall send to the

probate court only the excerpt from the register of deaths and the information available to it, which may serve to draw up the death certificate.

Article 100

The death certificate shall be drawn up on the basis of information obtained from the relatives of the decedent, from the persons with whom the decedent lived, as well as from other persons who can provide information to be entered in the death certificate.

The death certificate shall be completed even in the cases when the decedent has no property left.

Article 101

If the probate court, or notary has been sent an incomplete death certificate or only the excerpt from the register of deaths, the court, or notary shall, according to the circumstances, complete the death certificate itself in the court, or notary, or will entrust the completion of the death certificate to the authority responsible for civil registers.

The court, or notary may, if appropriate, complete the death certificate itself, when the death of a person or declaration of death of such person is proven by an excerpt from the register of deaths or another public document.

Article 102

The following information shall be entered in the death certificate:

- 1) personal name of the decedent and, if possible, personal civil registry number, personal name of one of his parents, occupation, date of birth and citizenship of the decedent, and, for married persons, their surname prior to conclusion of marriage;
- 2) day, month and year, place and, if possible, hour of death;
- 3) the place of permanent or temporary residence of the decedent.

The death certificate should also, if possible, contain the following:

- 1) the personal name, date of birth, occupation, permanent or temporary residence of the decedent's spouse and his children born in or out of wedlock or adopted;
- 2) personal name, date of birth and permanent or temporary address of other relatives who could be entitled to the inheritance by operation of the law as well as the persons entitled to inherit on the basis of the will;

3) the place of the property left behind the decedent; any property whose holding, safekeeping or reporting is subject to special regulations; any cash, securities, valuables, savings passbooks, or other important instruments; state any debts left by the decedent; whether he left a written will, or a contract of maintenance for life, or a contract of transfer and distribution of property during his lifetime and where they are located, and, if the decedent has made an oral will, then the personal name, occupation and residence of the person before whom the oral will was made; if a birth of a child of the decedent is expected and whether his children or spouse have a guardian; the date and place of death of the spouse or a child of the decedent or another person that could be entitled to inheritance who died before the testator.

Article 103

The inventory and the valuation of the decedent's property shall be made upon the ruling of the probate court when the heirs or their current residence are unknown, when the heirs are the persons who due to minority, mental illness or other circumstances are partly or completely incapable of taking care of their own rights and interests, when the estate should be handed over to the local self-government or another entity, or in other justified cases.

The court shall order the inventory and valuation to be made also in the case when so request the heirs, legatees or creditors of the decedent.

The inventory and valuation shall be made even if there is no decision of the court in the course of drawing up the death certificate if so requested by any of the heirs, legatees or creditors.

Article 104

The inventory shall include the entire property, movable and immovable, in possession of the testator at the time of death.

The inventory shall also include the property belonging to the testator, but located with another person with the indication with whom such property is located and on what grounds, as well as the property held by the testator that is claimed not to be his own property.

The inventory of the estate shall contain entries on the debts owing to or owed by the testator and, particularly, unpaid taxes and other dues to the state.

Article 105

Personal property shall be inventoried by type, kind, number, measure, weight or individually.

Real property shall be inventoried individually with the indication of the location, types of land and land register data, if known.

Article 106

While making an inventory of the property, the value of individual real or movable items comprising the estate shall be indicated.

Article 107

When the probate proceeding is conducted by the court, the inventory and valuation of property shall be done by a court clerk or a notary designated by the court. The inventory and valuation of property may also be done by the competent authority.

The inventory and the valuation shall be made in the presence of two citizens of full age, and with the participation of an expert witness, as needed.

Any interested party may be present at the inventory and valuation.

Article 108

If the participants raise objections with regard to the inventory or the valuation, the court, or notary may, if it deems it necessary, order repeated inventory and valuation be carried out.

If the property inventory has not been made, the court, or notary may, on the basis of information from interested parties, determine the property that shall be included in the estate.

Article 109

The competent authority or notary that has made an inventory and valuation of estate shall deliver the inventory and valuation information to the probate court.

Article 110

Where the estate is found to contain objects the holding, safekeeping and reporting of which is subject to special regulations, once the inventory is completed, they will be handled in accordance with such regulations.

Article 111

If it is established that none of the present heirs is capable of administering the property and there is no legal representative, or the heirs are unknown or absent, or when other circumstances command particular caution, the competent authority or notary shall, in urgent cases, hand over the property or part thereof to a reliable person for safe custody, and immediately notify thereof the court in whose territory such property is located, which court may modify or revoke such measure.

Cash, valuables, securities, savings passbooks, and other important instruments shall be handed over for safe custody to the court or the notary in whose territory the property is located, and notify the probate court on all the measures undertaken to secure the estate.

Article 112

Where it is necessary under this law to appoint a temporary administrator of the estate, the appointment will be made by the probate court.

Prior to the appointment of the temporary administrator, the court shall, if possible, obtain the opinion with regard to the person of the administrator from the persons entitled to inheritance.

In the cases referred to under paras 1 and 2 above, when the probate proceeding is conducted by the notary, the notary is obliged to return the case file to the court that entrusted the probate proceeding to the notary.

3. Proceedings with a Will

Article 113

Should any person own a document that may be presumed to be the written will of the decedent, he is obliged, without delay, to deliver it to the nearest basic court.

The person aware that the decedent drafted a written will and who knows where such will is located, is obliged, without delay, to notify the nearest basic court thereof.

The court is obliged to request the person in possession of the will to submit it to the court or to establish from the will register the facts of the will compilation and safekeeping.

Article 114

When the court establishes that the person who left a will has died or has been declared dead, it shall open his will without breaking the seal, read it and make a written record thereof.

This procedure shall be followed regardless of whether the will is valid under the law and regardless of whether there are several wills.

The opening and reading of the will shall be carried out in the presence of two citizens of full age, who may be heirs.

The heirs, legatees and other interested parties may attend the probate of the will, and ask for a copy of the will.

The court with which the will is placed or to which it is submitted shall open and read the will although another court or a foreign body may have probate jurisdiction.

Article 115

The written record of the probate of the will should state:

1) the number of wills found, what dates they carry and where they were found;

- 2) who submitted them to the court or the person who drew up the death certificate;
- 3) which witnesses were present at the opening and the probate of the will;
- 4) whether the submitted will was opened or closed and with which seal it was sealed;
- 5) the contents of the will.

If in the course of opening the will it was noticed that the seal was damaged or that something was deleted, crossed out or modified in the will, or if anything suspicious was found, this must also be entered in the written record.

The written record shall be signed by the judge, recording secretary and witnesses.

The court shall affix a certificate of probate to the probate will indicating the date probate was granted, as well as the number and dates of other wills found.

Article 116

If the decedent made an oral will, and there is a pertaining document that the witnesses signed in their own hand, the court shall probate the contents of such document in accordance with the provisions applicable to the probate of the written will.

In the absence of such a document, the witnesses before whom such oral will was declared, shall be separately questioned about the contents of the will, and, in particular, about the circumstance on which validity thereof depends, and the written record of the questioning of such witnesses shall be probated in accordance with the provisions applicable to the probate of the written will.

If a party requests that the witnesses to the oral will be questioned under oath, or if the court finds that such questioning is required, it shall schedule a hearing to question such witnesses, to which it will summon the petitioners and other interested parties only if it would not unduly delay the proceedings.

Article 117

If the written will is missing or has been destroyed independently of the testator's will, and there is no disagreement between the interested parties as to the previous existence of such will, or the form in which it was drawn up, or as to how it went missing or was destroyed, and as to the contents of the will, the probate court shall question all interested parties and adduce the required evidence according to their applications, and then probate the written record in accordance with the provisions applicable to the probate of the written will.

If the estate were to become state property, were it not for the will, the agreement of the interested parties on the previous existence of the will, its form and contents shall be valid only with the consent of the competent public state prosecutor, holding competence based on the location of the property.

If among interested parties, there are persons who are incapable of taking care of their affairs, the agreement referred to in paras. 1 and 2 above shall be valid only with the consent of the guardianship authority.

Article 118

The written record on the probate of the will with the original written will, or the oral will document, or written record of the questioning of witnesses to the oral will shall be sent to the probate court, and the court which has granted probate of the will shall retain a copy thereof.

The original written will, the oral will document, or written record of the questioning of witnesses to the oral will, as well as the written record of the contents of the missing or destroyed will shall be retained in the probate court separately from the other documents, and a certified copy thereof shall be enclosed with the documents.

4. Probate Court Procedure upon the Receipt of Death Certificate

Article 119

Upon the receipt of a death certificate, the court shall examine whether it holds jurisdiction to conduct the probate proceedings, and if it establishes it does not, it shall refer the case to the court of competent jurisdiction.

Should the court establish that a foreign court has jurisdiction to conduct probate proceedings, it shall declare its lack of jurisdiction by a ruling and discontinue the proceedings.

Article 119a

The probate proceeding shall be entrusted by the court to a notary with the registered seat within the territory of the court.

In the case when several notaries have registered seats within the territory of the court, the cases shall be assigned to them equally following the alphabetical order of notaries' personal names.

Article 120

If the testator appointed the executor of the will, the court, or notary shall notify him and invite him to declare within a specified period of time whether he accepts such duty.

Article 121

If a birth of a child who would be entitled to inherit is expected, the probate court shall notify the guardianship authority thereof.

Unless the guardianship authority determines otherwise, the rights of the unborn child shall be looked after by one of his parents.

Article 122

If according to the data from the death certificate, the decedent has not left any estate, the probate court, or notary shall discontinue the probate proceedings.

The court, or notary shall proceed in the same manner in the case the decedent only left personal property and equal rights, and none of the persons entitled to inherit has requested the proceedings to be conducted.

If the court, or notary has discontinued the proceedings due to the fact that the decedent estate comprises only personal property and equal rights, the persons entitled to inherit shall retain the right to exercise the rights they are entitled to as heirs.

When the court, or notary decides not to hold probate proceedings it shall notify the guardianship authority thereof if among the heirs there are persons incapable of catering for their affairs, and who are without parents.

Article 123

Where under the law the separation of the decedent's estate from the heirs' property may be requested, the court shall, upon the petition of authorized persons, order such separation, applying mutatis mutandis the provisions of the present Law on temporary injunctions for securing the estate.

In case of request for the separation of the decedent's estate in the probate proceedings conducted by the notary, the notary is obliged to return the case file to the entrusting court.

Article 124

The probate court may impose injunctions to secure the estate throughout the proceedings.

During the probate proceedings, the probate court may modify and abolish estate injunctions imposed by the same probate court or by some other court upon the motion by participants.

If the measures to secure the estate have been instituted by a ruling, and due to suspension caused by appeals there is a danger that the execution of such measures may be foiled, the court shall decide that the appeal shall not stay the execution.

In case of petition for imposing injunction on the decedent's estate in the probate proceedings conducted by the notary, the notary is obliged to return the case file to the entrusting court.

5. Probate proceedings

Article 125

To probate the estate the court, or notary shall schedule a hearing.

In the summons to the hearing the court, or notary shall notify the interested parties on the institution of the proceedings and the existence of the will, if any, and invite them to immediately submit to the court, or notary the written will, the record of a will or the oral will document, if it is placed with them or to identify the witnesses to the oral will.

In the summons the court, or notary shall caution the interested parties that they may until the conclusion of the proceedings provide the court, or notary with the declaration on acceptance or renunciation of the inheritance orally during the hearing, or the notarised records of the heir declaration, and if they do not appear for the hearing and do not make a declaration, that they will be presumed to accept the inheritance, and that the court, or notary shall decide on their rights according to the information available to it. The court, or notary shall specifically caution them that a declaration of partial renunciation of inheritance and a declaration of conditional renunciation of inheritance shall produce no legal effect.

Upon the institution of the probate proceedings, if the decedent left a will, the court shall notify and summon to the hearing all persons who may have the claim on the inheritance under the law.

If the decedent appointed the executor of the will, the court shall also notify him of the institution of the proceedings.

Article 126

If it is unknown whether the decedent has any heirs, the court shall publish a notice inviting persons who have a claim on the inheritance to report to the court, or notary within six months from the publication of the notice.

The notice shall be posted on the bulletin board of the court, published in the Official Gazette of the Republic of Montenegro, and as need be, issued in other manner.

The court shall proceed in the same manner if a temporary guardian has been appointed for the heir due to the fact that the current residence of the heir is unknown and the heir does not have an attorney, or because the heir or his legal representative, who does not have an attorney, is abroad, so the serving of process could not be done.

Upon the expiry of the time limit referred to in para. 1 above, the court shall conduct the probate hearing on the basis of statement of the appointed guardian and information available to the court.

Article 127

In the probate proceedings the court, or notary shall deliberate on all the issues relating to the decedent's estate, in particular the right to inheritance, the size of the inherited portion and the right to legacy.

The court, or notary shall decide on these rights, as a rule, after taking the required statements from the interested parties.

The court, or notary shall decide on the rights of persons who have not come to the hearing, dully summoned, according to the information available to it, taking into consideration their written statements that arrive until the rendering of the decision.

In the course of the probate proceedings, the interested parties may give statements without the presence of other interested parties and it is not necessary that such parties are always given the opportunity to express their opinion of the statements of other interested parties.

If the court, or notary suspects that the person who, under the law has a claim on the inheritance, may not be the only or the closest relative of the decedent, it will question the persons deemed by it to have an equal or stronger right to inheritance and shall invite such persons by means of a published notice in accordance with the provisions of Art 126 hereunder.

+ case law

Article 128

If the heir has accepted the inheritance or renounced the inheritance, the declaration thereof must be signed by him personally or his attorney.

The signature on the declaration of acceptance of inheritance or renunciation of inheritance that was submitted to the court, or notary in writing, as well as the signature on the power of attorney must be authenticated by the court or notarised.

The declaration shall be accompanied by a statement as to whether the heir accepts or renounces the share to which he is entitled under the law or will, or the declaration refers only to the reserved portion.

The declaration on the renunciation of inheritance may be made by the heir before the probate court, before any other court of competent subject matter jurisdiction and a notary. This

declaration with the same legal effect may be made by the heir before a consular representative or diplomatic representative discharging consular affairs or a foreign notary.

When making the declaration on the renunciation of inheritance, the heirs will be cautioned by the court, or notary that they may renounce inheritance only in their own name.

Article 129

The court, or notary will discontinue the probate proceedings and refer the parties to file a civil action or institute a procedure before another competent authority if there is dispute between the parties about the facts on which any of their rights is dependant.

The court, or notary shall proceed as referred to in para. 1 above if the disputed facts are:

- 1) those on which depends the right to inheritance, and particularly the validity or the content of the will or the relationship between the heir and the testator on the basis of which inheritance is determined under the law;
- 2) those on which depend the grounds of the claim of the surviving spouse and descendents of the testator to separate from the estate the household items which are used to meet everyday needs;
- 3) those upon which the size of the inherited portion depends, particularly inclusion the inherited portion;
- 4) those on which depends the admissibility of the exclusion of forced heirs or the admissibility of reasons for unworthiness;
- 5) whether a person has renounced the inheritance.

If in the above cases there is no dispute about the facts, but the parties are in dispute over the application of the law, the probate court, or notary shall deliberate on the legal issues in the probate proceedings.

Article 130

If there is a dispute between the parties as to the right to a legacy or another right to the estate, the court, or notary shall also refer the parties to file a civil action or launch a procedure before another competent authority, but will not halt the probate proceedings.

Article 131

If the heirs dispute either the facts or the application of the law, the court, or notary shall halt the probate proceedings and refer the parties to file a civil action or launch a procedure before another competent authority in the following cases:

1) if there is a dispute between the heirs as to whether certain property is to be included in the estate;

2) if there is a dispute between parties with regard to the claims of the testator's descendants who lived in the same household with him to exclude from the estate the share that corresponds to their contribution to the increase of value of the testator's estate.

Article 132

The court, or notary shall refer to a civil action or procedure before another competent authority the participant whose right is deemed by the court to be less likely.

If the court, or notary suspends the proceeding, it shall set the time frame within which the civil case is to be instituted or the procedure before competent authorities launched.

If the participant acts as decided by the court, or notary within the time stipulated, the probate proceedings suspension will last for as long as the civil case or the procedure before another competent authority has been completed with a final decision.

If the participant fails to act as decided by the court, or notary within the time stipulated, the probate proceedings shall continue and if the participant, until the completion of the proceeding, fails to submit evidence that he has instigated a civil case or the procedure before another competent authority, the probate proceedings will be completed regardless of the claims for which the participant was referred to a civil action or a procedure before another competent authority.

Once the probate court, or notary has conducted probate proceedings as referred to in para. 4 above, and when it has conducted probate proceedings and should have referred the participants to instigate civil cases, the enforceability of the probate court ruling shall not prevent bringing a civil action or a procedure before another competent authority for the given claim.

6. Probate ruling

Article 133

When the court, or notary establishes which persons have the right to an inheritance, such persons shall be declared heirs in the probate ruling.

The probate ruling shall contain:

1) the personal name of the decedent, name of one parent, occupation, date of birth and nationality of the decedent, and for married decedents the surname they had before marriage;

2) designation of real property with the information from land register and designations of personal property with reference to the inventory;

3) personal name, occupation and permanent residence of the heir, relationship between the heir and the testator, whether he is an heir at law or testamentary heir, and, if there are several heirs, then also their portion of the estate;

4) whether and to what extent the heir's right is suspended because the time is not yet due, or is limited to a specified period of time, or suspended due to the fact that a condition has not yet been fulfilled, or is dependent on the condition subsequent or instructions that are to be deemed conditions subsequent, or is restricted usufruct and in whose favour;

5) the personal name, occupation and permanent residence of the person who has received a legacy, usufruct or another right from the estate with accurate designation of such right.

If in the probate proceedings all heirs propose in agreement the distribution and manner of distribution, the court, or notary shall enter such agreement into the probate ruling.

Article 134

The probate ruling shall be notified to all heirs and legatees, as well as other persons who have raised a claim, during the proceedings, on the decedent estate.

The enforceable probate ruling shall be notified to the competent authority.

Article 134a

A complaint may be lodged against the decision rendered by the notary within eight days from the decision being served to the participants.

The complaint under para 1 above shall be decided upon by the entrusting court.

Article 134b

The complaint under Art 134a hereunder shall be lodged with the notary who rendered the decision, in an adequate number of copies for the court and the participants.

The notary is obliged to refer the complaint under para 1 above to the participants, and following that, to deliver the complaint together with the case file to the entrusting court, without delay.

Article 134c

Lapsed or inadmissible complaints shall be dismissed by the court.

A complaint shall be deemed lapsed if lodged after the expiry of the statutory limit for lodging complaints.

A complaint shall be deemed inadmissible if lodged by a person not entitled to lodge complaints.

Article 134d

When deciding upon the complaint challenging the probate decision rendered by the notary, the court may, fully or partly, uphold, reverse or set aside such a decision.

In case the decision under para 1 above is fully or partly set aside, the court shall decide on the part of the decision set aside after having conducted the necessary actions.

In case the court sets aside notary's decision to halt the proceedings, the court itself shall conduct and close further proceedings.

Article 134e

An appeal may be lodged against the court ruling under Art 134d hereunder fully or partially upholding or reversing the notary's decision within 15 day from the day it was served.

The second instance court shall decide as per the appeal under para 1 above.

No appeal shall be allowed against the court ruling fully or partly setting aside the notary's probate decision or setting aside the notary's decision to halt the proceeding."

Article 134f

The notary shall affix enforceability certification to the notary probate decision that has become enforceable.

Article 135

When submitting the proof that the obligations imposed by the will on the heir in favour of the persons who are incapable of taking care of their own affairs or to achieve a generally useful purpose have been discharged and secured, the court, or notary shall order that the necessary entries be made in the real property register, and that the personal property held in safe custody by the court, a notary or third person be handed over to authorized persons.

Article 136

When the right of the heir or legatee is suspended because of undue time, or is limited to a specified period of time, or suspended due to the fact that a condition has not yet been fulfilled, or is dependent on the condition subsequent or instructions that are to be deemed conditions

subsequent, the court shall, upon the motion of the interested party, impose temporary injunctions to secure the respective part of the inheritance, unless otherwise specified in the will.

Article 137

If the heirs do not dispute the legacy, the court, or notary may issue a separate ruling on the legacy, upon the petition of the legatee, even before the probate ruling has been rendered.

In such a case, the provisions on notifying the enforceable probate ruling to the competent authority, on entries into real property registers and on handing over of personal property held in safe custody by the court, a notary or a third party shall apply *mutatis mutandis*.

Article 138

When the court, or notary has established that there are no heirs or when it is unknown whether there are any heirs, and within the time frame provided for by this law no one who is entitled to the inheritance appears, a ruling shall be passed to transfer the estate to the local self-government unit within whose territory the testator had permanent residence, and in the absence of permanent residence, to the local self-government unit within whose territory the testator had temporary residence.

If the testator possessed real property outside of the place of permanent or temporary residence, such real property shall be transferred to the local self-government unit within whose territory it is located.

If the testator did not have permanent or temporary residence within the territory of the Republic of Montenegro, the personal property shall be transferred to the local self-government unit within whose territory these are located.

Article 139

Enforceable probate ruling shall be binding for the participants to the probate proceedings unless the right to pursue these claims in a civil action has been recognized.

7. Probate Claims after Enforceability of Probate Ruling

Article 140

If after the probate ruling has become enforceable, the property is discovered that was unknown at the time of rendering the ruling, the court, or notary shall not repeat probate proceedings, but shall render a new ruling distributing such new property on the basis of previously issued probate ruling.

By way of an exception to para. 1 above, the court, or notary shall conduct the probate proceeding again for the property unknown for at the time of the probate ruling in case an heir

who renounced his inheritance now declares that he accepts the inheritance of the newly discovered property.

If the probate proceedings have not been conducted, the court, or notary shall conduct probate proceedings only if the discovered property comprises real property.

If the discovered property comprises personal property, the court, or notary shall conduct probate proceedings only upon the petition of interested parties.

Article 141

If after the probate ruling or legacy ruling has become enforceable, a will is discovered, the court shall officially probate such will and forward it to the probate court, and retain a copy thereof.

The probate court shall not repeat the probate proceedings, but shall notify the interested parties on the probate of the will and instruct them that they can pursue their claims in a civil action.

Article 142

If after the probate ruling has become enforceable, a person who did not participate in the probate proceedings raises a claim over the estate as an heir, the probate court shall not repeat the probate proceedings, but shall instruct such person that he may pursue his claim in a civil action.

Article 143

When the probate proceedings are concluded with an enforceable probate ruling or legacy ruling, and conditions for repeating the proceedings are fulfilled under the rules of civil procedure, the probate proceedings shall not be repeated, but the parties may pursue their claims in a civil action.

8. Procedure in Case of a Foreign Authority Having Jurisdiction for Probate Proceedings

Article 144

When a foreign authority has jurisdiction for probate proceedings, the court within whose territory the testator died shall, upon the receipt of the death certificate, post a notice inviting all persons in the country having claims on the estate as heirs, legatees or creditors, to report their claims within the notice time limit, which cannot be shorter than 30 days and longer than six months, which starts running from the day of publication in the Official Gazette of the Republic of Montenegro. Otherwise, the personal property shall be transferred to the competent authority of the foreign state or the person authorized by such authority to receive such property.

The notice shall be posted on the bulletin board of the court and in the Official Gazette of Montenegro, and as need be, a copy of the notice shall be delivered to the closest diplomatic or consular office of the given country in this country.

No notice shall be issued if the estate value, before debts, is lower than the value of a low value dispute.

In case a notice is issued, the estate shall not be handed over before the expiry of three months from the day of death of the foreign national.

Article 145

If any of the heirs or legatees reports their claims, the court shall hold the estate or a portion thereof required to cover that claim for as long as the foreign authority has passed an enforceable decision regarding the claim.

As regards the reported claim, the court shall enforce the decision from the retained estate or a portion thereof, and the remainder shall be transferred to the foreign authority.

Should any creditor report their claim, the court shall retain the estate or a portion thereof needed to cover for the claim for as long as it has been settled or otherwise secured.

Article 146

In case a foreign authority holds jurisdiction for probate proceedings involving personal property of a foreign national, if all heirs located within the Republic of Montenegro propose the proceedings be conducted by a court in the Republic of Montenegro, the court shall invite all heirs and legatees abroad to raise objections to the jurisdiction of the court in the Republic of Montenegro within six months from the date of such call.

The known heirs with unknown whereabouts shall be invited by means of a notice.

The notice shall be posted in the Official Gazette of the Republic of Montenegro and on the court's bulletin board, and as need be, shall be issued in other manner.

A copy of the notice shall be delivered to the nearest diplomatic or consular office of the foreign state concerned in the Republic of Montenegro.

Should no foreign heir or legatee raise objections to the court of competent jurisdiction in the Republic of Montenegro within the time frame referred to in para. 1 above, the court in the Republic of Montenegro shall conduct the probate proceedings upon the expiry of such time limit.

9. Conducting Probate Hearings

Article 148

The entrusting court shall revoke from the notary entrusted with the probate proceeding the case file and conduct the proceedings itself or entrust another notary in case:

- 1) the notary has ceased performing notary functions;
- 2) the notary has changed the registered seat to the territory of another court, under the law governing notary functions;
- 3) of the inability of the notary, due to illness or some other reason, to perform notary functions;
- 4) of notary's manifest negligence of statutory obligations; or
- 5) the existence of other reasons as deemed by the court.

No appeal shall be allowed against the court decision under para 1 above.

Article 149

In the proceedings conducted before the notary, any party may be represented under the provisions applicable to representation in non-contentious proceedings.

Article 150

The notary is obliged to conduct the entrusted probate proceedings within 60 days from receiving the case.

In case the notary, for justified reasons, fails to carry out all the actions within the time limit referred to in para. 1 above, he shall report to the court thereof stating the reasons for which the proceeding was not closed.

Article 151 – deleted

Article 152 – deleted

Article 153

In the probate proceedings conducted by notaries, the service of process shall be conducted under the Civil Procedure Law.

Article 154

In conducting the probate proceedings, the notary shall be authorized to obtain the information and documents needed from other competent authorities. Pertinent applications shall be exempted from fees.

Article 155

The notary may refuse to conduct the probate proceeding and request recusal for the reasons set forth by the Civil Procedure Law for recusal of judges.

The participant to the probate proceeding may ask for the recusal of the notary on the same grounds envisaged for recusal of judges under the Civil Procedure Law.

The chief judge of the entrusting court shall decide on the request for recusal of the notary.

In case the request for recusal is approved, the chief judge may render a decision to entrust another notary with conducting the probate proceeding or for the court itself to close the probate proceeding.

In case the request for recusal is denied, the notary shall close the pending probate proceeding.

No appeal shall be allowed against the decision approving the request for notary recusal, and no separate appeal shall be allowed against the decision rejecting the request.

Article 155a

The supervision over the actions notaries take in cases entrusted by courts shall be conducted by the chief judge of the entrusting court.

When a notary rejects to conduct a probate proceeding or when a court decides to revoke the case file in the given case, the chief judge shall order the notary to deliver the case file.

Should the notary fail to deliver the case file in the case referred to in paragraph 2 above, the chief judge shall ex officio order the delivery of the case file.

Article 155b

The notary is obliged to return to the court the case file referred to in Article 155a hereunder in its original form, and to retain in its archives the copy thereof,

The case files of the probate proceedings ending in enforceable decisions shall be kept at the court archives.

Article 155c

The notary is obliged to report to the entrusting court every six months on the probate cases.

Article 157

The notary fee and compensation for costs accrued shall be calculated according to the Fee Tariffs for notaries acting in probate proceedings entrusted by court .

CHAPTER NINE

Determining Compensation for Expropriated Real Property

Article 158

In these proceedings the court determines a compensation for the expropriated real property when the expropriation beneficiary and the previous owner have not concluded a valid agreement on the compensation for expropriated real property before the administration authority responsible for property-related matters.

Article 159

If the agreement on the compensation for expropriated real property is not concluded within two months of the date the expropriation ruling become enforceable, the administration authority responsible for property law matters shall submit the enforceable expropriation decision with the supporting documents to the court within whose territory the expropriated property is located for determining the compensation.

Should the authority responsible for property-related matters fail to proceed as referred to in para. 1 above, the previous owner and the expropriation beneficiary may approach the court directly to determine the compensation.

Article 160

The procedure for determining the compensation for expropriated real property shall be instituted and conducted ex officio.

The proceeding under para. 1 above shall be concluded not later than within three months from the proceedings being instituted before the court.

Article 161

The court shall schedule a hearing to give the opportunity to the expropriation beneficiary and the previous owner to give their opinions of the form and extent or amount of compensation, and on the evidence acquired ex officio.

In the hearing, the court shall also adduce other evidence that the participants propose, if it finds them relevant for determining the compensation, and as needed, order an expert witness report.

Article 162

Upon establishing all relevant facts, the court shall issue a ruling determining the form and extent or amount of compensation, the interest rate and the deadline for payment.

If the expropriation beneficiary and the previous owner agree on the form and the extent or amount of compensation, the court shall base its ruling on their agreement, if it finds that it is not contrary to the mandatory legislation.

Article 163

If the expropriation beneficiary and the previous owner agree that the compensation for expropriated building or flat shall be set in the form of another building or flat, the agreement shall also set a time limit for the performance of mutual obligations. If they fail to set such a time limit, the court shall in the expropriation ruling set a time limit for the performance of mutual obligations under the agreement covenants.

The provision of para. 1 above shall be applied mutatis mutandis to the person whose means of livelihood depend on the income derived from such land, where under the agreement with the expropriation beneficiary or upon personal request, the compensation for the expropriated agricultural land was set in the form of title over other real property.

Article 164

The costs of proceedings shall be borne by the expropriation beneficiary, except the costs caused by the unjustified actions of the previous owner.

Article 165

The provisions of the present Law on the procedure for determining compensation for expropriated real property shall apply mutatis mutandis in other cases when the previous owner is recognized the right to compensation for the real property on which he lost title or other property-related right or the title or other property-related right was limited.

CHAPTER TEN

Management and Use of a Common Asset

Article 166

In these proceedings the court regulates the manner of managing and using a common asset by co-owners, co-users and other co-possessors of the same asset (commoners).

Article 167

Any commoner who believes that his right of managing and using the common asset has been violated may institute the proceedings.

The petition must include all commoners; contain the necessary information on the common asset which is the subject matter of the proceedings, and the reasons for which the proceedings are instituted.

The petition shall be filed with the court in whose territory the common asset is located, and if the asset is located in the territory of several courts, the petition may be filed with each of these courts.

Article 168

Upon the receipt of the petition, the court shall schedule a hearing to which it shall summon all commoners, instruct them on the alternatives and assist them in reaching an agreement on the manner of managing or using the common asset.

The agreement between/among the commoners shall be entered into the written record as a court settlement if the commoners agree to it when the court has explained them the nature and legal effect of the court settlement.

Article 169

If all the commoners do not come to an agreement, the court shall adduce the required evidence, and on the basis of the entire proceedings render a ruling regulating the manner of using or managing the common asset according to the relevant provisions of substantive law, taking care of their particular and common interests.

Where the petition requests the regulation of the use of the shared flat or business premises, the court shall particularly regulate which rooms the commoners shall use separately and which jointly, how the common rooms shall be used, and how the costs of using rooms shall be borne.

Article 170

When there is a dispute between/among the commoners as to the right to an asset which is the subject matter of the proceedings, or the scope of the right, the court shall refer the petitioner to

file a civil suit or institute a procedure before a competent authority within 15 days, to resolve the disputed right or the legal relationship.

If the petitioner institutes the proceedings he has been referred to, the court shall halt the proceedings until the completion of the other procedure, and if such procedure is not instituted within the specified time limit, the petition shall be deemed withdrawn.

The court may temporarily, until the decision of the competent authority is made, regulate the relations between/among the commoners with regard to the management or use of the common asset when the circumstances of the case require so, in particular in order to prevent considerable damage, arbitrariness or manifest injustice towards individual commoners.

The provisions of para. 3 above shall also apply when the commoners are co-possessors of an asset who do not have evidence on the legal grounds of acquiring possession.

Article 171

The enforceability of the ruling rendered in these proceedings shall not preclude the participants from enforcing their claims with regard to the asset whose management or use was decided by this ruling in a civil action or a procedure before another competent authority.

The ruling shall not be subject to review.

Article 172

The provisions of this chapter of the Law shall also apply to the owners of separate parts of a building with regard to management and use of the common parts of the building that serve the building as a whole or only some separate parts of the building, in which case the commoners shall be understood to mean only the owners of those parts of the building, if the regulation of their mutual relations does not affect the rights of owners of other parts of the building.

The relations between owners of separate parts of the building shall be regulated in accordance with the law governing housing matters and maintenance of residential buildings.

CHAPTER ELEVEN

Division of Common Assets or Property

Article 173

In these proceedings the court decides on the division of common assets or property.

Article 174

Any commoner may institute the proceedings for the division of assets or property, and the petition must include all the commoners.

The petition must contain the information on the subject matter of the division and shares of the commoners, on the commoners and other persons who have a property right on the asset. In the case of real property, land register information must be stated and the relevant written proof on the rights of ownership, easement and other property rights enclosed.

The petition shall be filed with the court in whose territory the asset or property is located, and if common assets or property are located in the territories of several courts, each of these courts shall have jurisdiction.

Article 175

If the court in the course of proceeding upon the petition establishes that there is a dispute between the commoners as to the right to the assets that are the subject matter of division or the right to the property, share in common assets or property, or that there is a dispute as to which assets or rights constitute common property, the proceedings shall be discontinued and the party whose right is deemed less likely instructed to file a civil action within 15 days.

If the petitioner fails to file action within the time period specified in para. 1 above, he shall be deemed to have withdrawn the petition.

Article 176

Upon receipt of the petition, the court shall schedule a hearing and summon all commoners and persons who have a property right on the subject matter of the division.

The persons holding easement rights or other property rights over assets subject to division may approach the court to decide on those rights.

Each participant may propose to have other persons whose interests may be violated by the division summoned to the hearing. If the commoners do not dispute their rights, this shall be entered in the written record and taken into consideration in rendering the ruling on the division.

Article 177

If in the course of the proceedings, the participants reach settlement on the conditions and manner of division, the court shall make a written record of such settlement taking care that the settlement regulates all matters at issue between the commoners, and other persons' property rights on the subject matter of division, and rights of other persons towards commoners with regard to the division performed.

Article 178

If the participants do not reach an agreement on the manner of division, the court shall question them, adduce the required evidence, and if needed, obtain an expert witness report, and then, on the basis of the outcome of the entire procedure, in accordance with the relevant provisions of substantive law, render a ruling on the division and manner of division of the common asset or property, striving to fulfil justified requests and interests of the commoners.

If it proves impossible to divide the common asset or property physically or if that would greatly diminish their value, the court may determine that the assets or property shall go to only one title-holder, provided that it shall set the amount this person is to pay to the other title-holder over the same asset, as well as the time and place for payment or decide for the asset or property to be sold and the amount received to be split.

The sale shall be done under the law governing enforcement and security

Article 179

When deciding to whom a certain asset should belong, the court shall particularly take into consideration the specific needs of a particular participant due to which the asset in question should go to him in particular.

Article 180

The division ruling shall contain the asset, conditions and manner of division, information on physical parts of the asset and rights that went to each commoner, and their rights and obligations determined by the division.

In the form of a division ruling, the court shall decide on the manner of exercising easement and other property rights on the parts of the asset that have been physically divided between commoners.

CHAPTER TWELVE

Boundary Lines

Article 181

In these proceedings the court determines the boundary between adjacent real properties when the boundary markers have been destroyed, damaged or moved, and the neighbours cannot determine the boundary by mutual agreement.

Article 182

The petition for the regulation of boundary between adjacent parcels of land may be filed by any of the owners or users of such parcels, and also a competent authority, when so provided by law.

The petition must contain information on the owners or users of adjacent parcels and on the parcels of land between which the boundary is to be regulated, with the designations of such parcels from real property registers, the reasons for which the proceedings are instituted, as well as the value of the disputed boundary area.

Article 183

Upon the receipt of the petition, the court may schedule a hearing at the courthouse and invite the participants to try to reach an agreement about the regulation of the boundaries.

If the participants reach an agreement about the regulation of the boundaries, the agreement shall be entered into the records and shall be regarded as court settlement.

If the participants do not reach an agreement, the court shall schedule an on-site hearing to which it shall summon, in addition to participants, an expert surveyor, and, as needed, the witnesses to which the participants referred in the petition or at the hearing before the court.

In the summons to the hearing, the participants shall be instructed to submit all documents and outlines, and other evidence of relevance for the regulation of boundaries, and if possible to bring witnesses. The summons shall caution the participants on the consequences of failure to appear at the hearing.

+ case law

Article 184

If the petitioner fails to appear at the hearing, when duly summoned, the hearing shall be held if so proposed by any of the other participants.

If nobody proposes that the hearing be held, the petitioner shall be deemed to have withdrawn the petition.

Article 185

If there is a dispute between participants on the area of the boundary the value of which does not exceed the value of a low value dispute in the civil procedure, in the boundary regulation proceedings the court shall rule on the basis of a stronger right, and if that is not possible, on the basis of the last peaceful possession. If the dispute cannot be resolved in this manner either, the court shall divide the boundary area according to equity, taking care of the circumstances and the situation of the case at hand, in particular the location of land, the length of the boundary, the size of its area, purpose, natural conditions, terrain, e weather conditions, etc.

The court shall proceed in such a manner regardless of the value of the boundary area, when the participants so agree.

Article 186

If there is a dispute between the participants over the boundary area whose value exceeds the value of a low value dispute in civil procedure, and do not reach an agreement within the meaning of Art 185 para. 2 hereunder, the court shall refer the petitioner to a civil action and discontinue the non-contentious proceedings.

Article 187

In the hearing for the regulation of boundaries, the court shall determine the boundary line between the participants' land parcels and mark it with boundary markers.

The actions instituted at the hearing for the regulation of boundaries shall be entered into a written record which shall contain in particular: description and outlines of the current status, the contents of the statements of participants, expert and other witnesses, as well as the description and the outline of the status established by the regulation of the boundary.

+ case law

Article 188

In the ruling on the regulation of boundary the court shall describe the boundary line between the participants' land parcels, referring to the outline of the newly established status, which shall constitute the integral part of the ruling.

+ case law

Article 189

The enforceable ruling of the second instance court passed in this proceeding shall not be subject to review.

CHAPTER THIRTEEN DOCUMENTS

1. Will Made in Court

Article 190

The will made in court shall be drawn up in the courthouse, or outside the courthouse when the participant is incapable of coming to the court or when there are other justified reasons for it.

Article 191

Any court holding subject-matter jurisdiction shall be the court of competent territorial jurisdiction for drawing up wills.

Article 192

Prior to the actual drawing up of the document, the judge shall identify the participants.

When the judge does not know a participant personally and by name, the participant shall be identified on the basis of a public document with a photograph or the statements of two witnesses of full age identified by their personal documents.

Article 193

When a participant is illiterate, mute, or blind, or does not know the language which is in official use in the court, the document shall be drawn up in the presence of two witnesses of full age who are personally known to the judge or who have been identified by him on the basis of a public document with a photograph.

Article 194

If the participant does not know the language in which the document is being drawn up, the judge shall draw up the document with the participation of a sworn court interpreter.

If a participant is deaf-mute or blind, the judge shall draw up the document with the participation of the interpreter who can communicate with the participant.

Article 195

The following persons may not appear as witnesses at the drawing up of the will before the court: testator's descendants, adopted children and their descendants, his antecedents and adoptive parents, his relatives up to the fourth degree of kinship, spouses of all these people and the testator's spouse.

The provision of para. 1 above shall apply mutatis mutandis to sworn court interpreters.

Article 196

The witnesses at the drawing up of the will at the court may be persons who are literate and who know the official language and the language of the participant, and, if the participant is mute, who can communicate with him.

Article 197

When drawing up a will before the court, the judge shall examine if the participants have legal capacity and the capacity to transact legal business.

Article 198

Having determined that the conditions referred to in Art 197 hereunder are met, the judge shall examine whether there is free and serious will to draw up the will before the court.

Article 199

Should the court establish that the requirements set in Art 197 and 198 hereunder have not been met, it shall pass a ruling rejecting to draw up the will before the court.

Article 200

A written record shall be composed on the drawing up of the will before the court which shall also contain the manner in which the participants, witnesses and interpreters present at the drawing up of the will were identified.

The written record shall also be signed by the persons referred to in para. 1 above.

The written record shall be accompanied with the copy of the drawn up will.

Article 201

While listening to the narration of the testator, the court shall accurately enter his statement on written record, if possible in the testator's own words, taking care that the will of the testator be clearly stated.

All the circumstances that can be of relevance for the validity of the will shall be entered on record.

Where necessary, the judge shall explain to the testator the regulations restricting the testator in testamentary disposition.

Article 202

When the testator has read the written record of the will made in court himself, and declared that his last will is accurately entered on record in all aspects, the judge shall certify it on the document of the will.

Article 203

If the testator is unable to read the document drawn up by the judge, the judge shall read out the will to him in the presence of two witnesses, and then the testator shall, upon declaring that it is indeed his will, affix his signature or place his fingerprint in the presence of two witnesses.

The witnesses shall affix their signature on the document of the will.

The judge shall certify on the document of the will that all these actions have been performed.

If the testator does not know the language which is in official use at court, or is deaf or mute, the judge shall, through the sworn interpreter, read out the will, and the testator shall, through the interpreter, declare that this is indeed his will.

The witnesses shall affix their signature on the document of the will.

The judge shall certify on the document of the will that all these actions have been performed.

Article 204

If the written record of the drawing up of the will contains several pages, they shall be bound by legal tape, and both ends of the legal tape sealed with the court seal.

The testator shall separately sign by his own hand or place his fingerprint on each sheet.

At the end of the written record the number of pages comprising the will shall be indicated.

Article 205

If the will was drawn up before the court within whose territory the testator does not have permanent residence, the court is obliged to promptly notify thereof the court within whose territory the testator has permanent residence.

Article 206

When the testator revokes his will, the provisions of the present Law on the drawing up of the will shall apply *mutatis mutandis* to the revocation of the will.

When the testator has revoked his will, the revocation shall be recorded on the will document placed in custody with the court.

2. Custody of the Document of the Will

Article 207

The court is obliged to accept into custody the document of the will drawn up before the court, the last will made out in testator's own hand, the written will before witnesses and the record of oral will.

The testator shall be issued a receipt for the document in custody with the court.

Article 208

If a will, except the one drawn before the court, is placed in safe custody with the court within whose territory the testator has no permanent residence, the court shall notify thereof the court of the testator's permanent residence.

Article 209

The will placed with the court for safe custody shall be returned to the person who has submitted it upon his request.

The will shall also be returned to his attorney who has an authenticated power of attorney for such task.

A written record shall be made of the return of the will stating the manner of identification of the person to whom the will is being returned.

If the will is returned to an attorney, the power of attorney shall be enclosed with the written record and retained by the court.

3. Document Cancellation

Article 210

In the proceedings for the cancellation of a domestic document on which a substantive right is directly based, and whose possession is necessary for exercising such right, it may be declared invalid in the court proceedings if it is lost, stolen, burned or missing or destroyed in any other manner, unless cancellation of such document is forbidden by law.

Under the conditions referred to in para. 1 above, a document on which a non-substantive right is based may also be cancelled if there is no information on the basis of which a competent authority may issue a duplicate of such document.

Article 211

The petition to cancel a document issued by an administration authority or a legal person shall be decided by the court of competent jurisdiction in whose territory the registered seat of the document issuer is located.

The cancellation of the document, where the document indicates the place of performance of obligation, shall be exclusively decided by the court in whose territory the place of performance is located.

The petition to cancel a document for which competent jurisdiction cannot be determined on the basis of paras. 1 and 2 above, shall be decided by the court in whose territory the seat, or the permanent or temporary residence of the petitioner is located.

Article 212

The petition for document cancellation may be filed by any person who is authorised on the basis of such document to exercise a right or who has legal interest in having the document cancelled.

The petition for the cancellation of document referred to in Art 210, paras. 1 and 2 hereunder shall contain in particular: material elements of the document (type of document, company name, or name and seat, or name and permanent residence of the document issuer, amount of liability, place and date of document issuance, place of performance of obligation, whether it was made out to a specific person, or on order of, or to the bearer), the facts from which it arises that the petitioner is authorized to file a petition, and that the document is likely missing or destroyed.

A copy of the document, if any, shall be enclosed with the petition.

A single petition may be used to request the cancellation of several documents, provided that the same court has territorial jurisdiction.

Article 213

If upon preliminary investigation the court finds that the conditions for the institution of document cancellation proceedings are not fulfilled, it shall dismiss the petition by a ruling.

The examination shall be carried out on the basis of allegations stated in the petition and the facts known to the court.

Article 214

If the petition is not dismissed, the court shall direct the document issuer and creditor to give their statements within a specified time period as to whether the document whose cancellation is requested was issued and which, if any, impediments exist with regard to the conduct of the proceeding.

Article 215

Upon the receipt of the statements of the persons referred to in Art 214 hereunder, the court shall publish notice to the effect that the document cancellation proceedings have been instituted.

The notice shall contain, in particular: material elements necessary for the identification thereof, the time limit for filing reports or objections to the petition (notice period), the invitation to present the document to the court or notify the court of the person holding the document and his residence, caution that the document will be cancelled by court unless it is reported together with the document in question or the challenge of the petition for cancellation of document is submitted to the court within the time limit, the caution that the debtor cannot validly discharge his obligation under this document, nor renew or replace the document, nor issue new coupons or talons, and that the holder may not transfer the rights from this document.

Article 216

The notice shall be served to all interested persons, displayed on the court's bulletin board, and published once in the Official Gazette of the Republic of Montenegro at the petitioner's cost, or in another suitable manner.

The notice period shall run from the date the notice is published in the Official Gazette of the Republic of Montenegro.

Article 217

The court shall maintain a register of documents subject to the cancellation proceedings, which can be accessed and copied by any person.

The manner of maintaining the register shall be specifically regulated in the Court Rules of Procedure.

Article 218

The borrower may not discharge any liability from the document whose cancellation is requested, nor modify, renew or transfer the document to another person, or issue new coupons or talons from the moment the notice was served on him, or he otherwise learned about the institution of proceedings for document cancellation.

The prohibition referred to in para. 1 above shall last until the ruling on cancellation or discontinuation of proceedings becomes enforceable.

The debtor may be released of his liability on the basis of such document only if he pays the amount of debt into the court deposit account.

Article 219

If a coupon that got detached from the main document is missing or destroyed, the person in whose name the coupon was issued may, upon the expiry of three years of the due date of the coupon request the debtor to pay against it, unless prior to expiry of such time limit he reports to

the court that the coupon is missing or destroyed, and unless the missing coupon is submitted to the court and a request filed for its payment.

The debtor shall not be obligated to pay the claim against such coupon prior to the expiry of the time limit provided in para. 1 above.

Article 220

The debtor under the document whose cancellation is requested shall be authorised to retain the document if it is submitted to him for the purposes of discharging his liability or if it came into his possession in another manner. He shall immediately hand over the retained document to the court before which the cancellation proceedings are pending, indicating the name and address of the person who handed over the document to him.

Article 221

The court shall discontinue the cancellation proceedings if the petitioner withdraws the petition, or if the petitioner does not place in court deposit the required amount in cash needed for the publication of the notice, or if a third party submits the document to the court or proves before the court the existence of the document whose cancellation is requested.

The court shall examine late third party reports if the cancellation ruling has not been rendered until the receipt thereof.

The court shall inform the petitioner of any third party report prior to the issuing of the ruling.

Article 222

If the court finds that the conditions for resuming the procedure are fulfilled, having made the required inquiries, and after the expiry of the notice period, the court shall schedule a hearing to which it will summon the petitioner, the document issuer, the debtor under the document, and all persons who have reported to court or who have submitted the objection to the petition for the cancellation of document.

Article 223

After the hearing and on the basis of the outcome of the proceedings, the court shall render a ruling on the cancellation of document, or dismissal of the petition.

The ruling on the cancellation of document shall contain the information on the document issuer and petitioner, as well as relevant elements of the document with the indication of the amount of liability if it involves a pecuniary liability.

In case the document cancellation proceedings under Art. 210 hereunder is instigated, the notice under Art. 215 para 2 shall contain in particular: name of the document issuer, type of document

and its essential contents, time limit for objections against the petition, the caution that the document will be officially canceled if within the notice period no objection is raised against the document cancellation petition, and the court establishes that it was issued.

The ruling shall be notified to all participants and entered in the register referred to in Art 217 hereunder.

Article 224

The ruling by which the petition to institute proceedings for the cancellation of document is dismissed, or proceedings discontinued may be appealed only by the petitioner.

The ruling on the cancellation of document may be appealed by the document issuer and debtor under such document, as well as the person authorised under such document, if different from the petitioner.

Article 225

The enforceable ruling by which the document is cancelled shall replace the cancelled document until the new one is issued.

On the basis of the enforceable ruling on document cancellation, the petitioner may exercise all his rights against the debtor arising from such document or belonging to him thereunder, and may also request that he be issued a new document at his expense and hand over the ruling on cancellation.

CHAPTER FOURTEEN

Court Deposit

Article 226

Cash, securities and other encashable instruments, precious metals, valuables and other objects made of precious metals may be placed in court deposit when so provided by law or another regulation.

The court shall accept other objects on deposit when so specified by law that the debtor may deposit in court the object owed for the creditor.

Article 227

The objects referred to in Art 226, para. 1 hereunder may be handed over to any court with competent territorial jurisdiction.

The objects referred to in Art 226, para. 2 hereunder shall be handed over to the court in the place of performance of obligation, unless the reasons of economy or the nature of the transaction require that they be deposited in court in the place where the object is located, and they may be handed over to another court when so provided by law.

Article 228

In the petition, the petitioner shall particularly state the reasons for depositing objects, describe the objects and indicate their value, state the person in whose favour they are handed over, conditions under which the objects will be handed over, and enclose relevant evidence as needed.

Article 229

The court shall reject the petition by a ruling if it assesses that the conditions for the acceptance of the object in deposit are not fulfilled, or if the petitioner within 15 days does not pay an advance towards the costs of storage.

Article 230

If the court does not reject the petition, it shall issue a ruling on the acceptance of object or money in court deposit and specify the manner of storage.

Article 231

If the deposit is placed in favour of a particular person, the court shall invite such person to receive the deposited object within 15 days if the conditions for handing it over are fulfilled.

Article 232

If the person in whose favour the object is handed over states that he does not accept the same, the court shall notify the petitioner thereof and request that he give his stand within a specified time limit.

If the person in whose favour the object was accepted in court deposit does not take it within 15 days, the court shall, by virtue of a ruling, invite the petitioner (depositor) to take over the object.

The objects accepted in deposit shall be released on the basis of the ruling of the court that determined their acceptance.

Article 233

Where objects placed in deposit are such that the depositor does not know to which person they shall be handed over or that he does not know which of the several objects should be handed

over to which of the several persons, the court shall schedule a hearing and summon the petitioner and all interested parties to agree to which persons deposited objects belong.

If the persons duly summoned do not appear at the hearing, or do not reach mutual agreement, the court shall instruct them in the ruling to enforce their rights on objects received in deposit in a civil action. The ruling shall specify the time limit for instituting the civil action, of which the depositor shall be notified.

If the civil action is instituted, the court shall discontinue these proceedings by a ruling.

If the civil action is not instituted, the court shall invite the petitioner to collect the deposited objects.

Article 234

The acceptance and safekeeping of money, valuables, securities, savings and deposit passbooks, documents, foreign currency, and issuance of money, valuables, and temporary issuance of money and other valuables, the procedure with lapsed deposit and the bearing of the costs incurred by the court shall be regulated in more details in the Court Rules of Procedure.

PART FOUR TRANSITIONAL AND FINAL PROVISIONS

Article 235

If prior to the effective date of the present Law a first instance ruling was rendered completing the first instance proceedings, further proceedings shall be conducted in accordance with the current legislation and legal rules of the non-contentious proceedings.

If after the effective date of the present Law the first instance ruling referred to in para. 1 above is set aside, further proceedings shall be conducted in accordance with this Law.

Article 235a

If prior to the effective date of the present Law a first instance ruling was rendered in the procedure of involuntary committal to a psychiatric hospital and in the probate proceeding, which marks the closure of the case in the first instance, further proceedings shall be conducted under the non-contentious proceedings rules that were in effect before this Law entering into force.

If prior to the effective date of the present Law the first instance ruling referred to in para 1 above is set aside, further proceedings shall be conducted in accordance with this Law.

Article 235b

Within the territory of basic courts where until the day of the present Law entering into force notaries have not been appointed, the probate proceedings shall be conducted by competent courts until the appointment of notaries for the territory of these courts.

Article 235c

Court shall entrust a notary with conducting probate proceedings in the cases in which no actions have been taken prior to the present Law entering into force.

Article 236

On the effective date of the present Law, the Law on Non-Contentious Proceedings (Official Gazette of the Socialist Republic of Montenegro 34/86) shall cease to be in effect.

Article 237

This Law shall come into effect on the eighth day upon its publication in the Official Gazette of the Republic of Montenegro.