

Beyond the benchmarks:

Dilemmas of effective judicial reforms in Montenegro



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Executive summary

In April 2024, the International Commission of Jurists (ICJ) conducted a mission to assess the effectiveness of Montenegro's justice system in light of recent judicial reforms. This report presents the findings of that mission and outlines the necessary steps to strengthen the judicial system and ensure that Montenegro meets its international obligations regarding judicial independence and efficiency.

The main findings are as follows:

Independence and Self-Governance:

To strengthen the judiciary's independence and reduce executive influence, the ICJ recommends:

- Removing the Minister of Justice from the Judicial Council to enhance its autonomy and ensuring that the Minister does not participate in its activities.
- Ensuring that the majority of Judicial Council members are judges elected by their peers.
- Revising the definition of "eminent lawyer" to exclude politicians and government officials.
- Considering the appointment of a leading civil society lawyer to the Judicial Council.
- Amending the Constitution to have the Judicial Council elect its President from among its judges, and barring the Supreme Court President from this role.
- Establishing an appeals mechanism within the Judicial Council's Ethical Commission.

Qualification, Appointment, and Judicial Career:

To protect judicial tenure and improve the judicial career path, the ICJ recommends:

- Increasing the number of judges to ensure adequate judicial capacity and make the career more attractive.
- Enhancing the accessibility and appeal of the judicial profession while maintaining high training standards.
- Enforcing term limits for court presidents and ensuring timely appointment of successors.
- Protecting judges from involuntary transfers to lower courts.
- Implementing distinct retirement age rules for judges, separate from those of other public officials.

Remuneration:

To improve judicial independence and attract qualified professionals, the ICJ recommends:

- Raising judicial salaries, particularly for lower and first-instance courts.
- Adopting a separate law or provisions for judicial remuneration, distinct from those of other public officials.

Judicial Integrity, Accountability, and Disciplinary Action:

To uphold judicial integrity and public trust, the ICJ recommends:

- Revising the disciplinary system to prevent the suspension of Judicial Council members for minor infractions.
- Amending laws to ensure that Council members who initiate disciplinary proceedings do not participate in the decision-making process.
- Conducting thorough, unannounced judicial inspections and requiring transparent justifications for decisions.
- Publishing disciplinary decisions and establishing an appeals mechanism within the Ethical Commission.

- Implementing tailored evaluations for Supreme Court judges focusing on effectiveness, integrity, and ethical adherence.

Introduction

Montenegro is undergoing significant judicial reform, actively supported by international actors, such as the Council of Europe's European Commission for Democracy through Law (Venice Commission) or the European Union (EU) crucial for the on-going accession process. While significant progress has been made in establishing an appropriate legislative framework, the actual implementation of laws and procedures continues to pose challenges. With a view to addressing these concerns, the International Commission of Jurists (ICJ) undertook a mission to Montenegro to evaluate the effectiveness of the country's judicial reforms. Based on their findings, the ICJ has produced this report, calling attention to the measures necessary to strengthen Montenegro's judicial system in accordance with the rule of law and help the country meet its international obligations regarding the independence and efficiency of the judiciary.

Against a backdrop of continuous political corruption, economic inequalities, and a lack of progress on adherence to EU standards, the pro-EU party, Europe Now (PES), was elected in 2020,¹ following continuous governance by the Democratic Party of Socialists (DPS) since the country achieved independence.² The new government has expressed its intent to transform the judiciary, aiming to make it more independent and impartial.

The independence of the judiciary, as well as its accountability, is a universal rule of law principle.³ Under international law and standards, all States must guarantee the independence of the judiciary, including by ensuring that it is prescribed by law, and it must be and respected by all State authorities.⁴

The principle of the independence of the judiciary is a component of the right to a fair trial and the right to an effective remedy. Indeed, the full and non-discriminatory realization of human rights is possible only with "*the administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments*".⁵ The judicial system is, therefore, central to human rights protection in any national context.⁶ Not only must parties to any given dispute, but society as a whole, be

¹ Bertelsmann Stiftung. 2022. *BTI 2022 Country Report: Montenegro*. https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2022_MNE.pdf (Accessed 11 June 2024), p. 5.

² Freedom House. 2021. *Montenegro: Freedom in the World 2021*. <https://freedomhouse.org/country/montenegro/freedom-world/2021> <https://freedomhouse.org/country/montenegro/freedom-world/2021> (Accessed 11 June 2024).

³ ICJ Tunis Declaration on Reinforcing the Rule of Law and Human Rights (March 2019), para. 11; Human Rights Council. Human rights, democracy and the rule of law, Resolution 19/36 (19 April 2012) A/HRC/RES/19/36, para. 1.

⁴ International Covenant on Civil and Political Rights (ICCPR), Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, Article 14; UN Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, principle 1.

⁵ Vienna Declaration and Programme of Action, adopted by the World Conference of Human Rights in Vienna on 25 June 1993, para. 27.

⁶ See sources in ICJ. 2007. Practitioners Guide No. 1: International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors. Geneva, p. 3; ICJ. 2011. Legal Commentary to the Geneva Declaration on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis. Geneva, chapters 1 and 12.

able to trust the judiciary to adjudicate fairly and independently and to protect human rights.⁷

While this report was in preparation, the United Nations (UN) Special Rapporteur on the independence of judges and lawyers, Margaret Satterthwaite, released her own report following a visit to Montenegro from 19 to 26 September 2023, part of which addresses some of the same issues the ICJ covers in the present report.⁸ The Special Rapporteur had direct engagement with a broad spectrum of stakeholders in Montenegro, including government officials, judges, prosecutors, civil society representatives, and international organizations, through a series of meetings and consultations. She assessed Montenegro's legal and institutional framework, focusing on international obligations and the structure of the justice system, including courts and the prosecution service. While highlighting positive reforms, the Special Rapporteur identifies significant challenges, such as threats to judicial independence, weak legal frameworks, political interference, and inadequate conditions for judges and prosecutors. It also addresses issues related to prosecutorial autonomy, corruption, the free exercise of legal profession, access to legal aid, and court accessibility. The Special Rapporteur's findings, based on this wide-ranging fact-finding mission, include recommendations for urgent legislative reforms, improved working conditions, stronger anti-corruption measures, and enhanced access to justice, particularly for persons from marginalized communities.

1. ICJ mission to Montenegro

The International Commission of Jurists (ICJ), in cooperation with the Montenegrin NGO Civic Alliance,⁹ carried out a three-day mission to Montenegro from 8 to 10 April 2024.¹⁰ The aim of the mission was to assess the independent functioning of the judiciary, in accordance with international standards, in particular the self-governance structures, the selection and appointment of judges, the security of tenure of judges, disciplinary responsibilities of judges and other related issues.

The mission was composed of Justice Radmila Dragicevic-Dicic, former Justice of the Serbian Supreme Court and Vice-President of the ICJ; Temur Shakirov, Acting Director of the ICJ Europe and Central Asia Programme; and, Karolína Babická, Senior Legal Adviser of the ICJ Europe and Central Asia Programme. The mission was carried out in cooperation with Civic Alliance, namely Aleksandra Dubak, Milan Radovic, Amina Murić and Pavle Čupić. The Radboud Law Clinic on Human Rights prepared a baseline report that provided critical contextual information to the mission.¹¹

⁷ Consultative Council of European Judges (CCJE), Opinion No. 1 (2001), On Standards Concerning the Independence of the Judiciary and the Irremovability of Judges, para. 12.

⁸ Margaret Satterthwaite, Special Rapporteur on the independence of judges and lawyers, Report on the visit to Montenegro, UN Doc. A/HRC/56/62/Add.1, (2023).

⁹ Civic Alliance is a prominent non-governmental organization in Montenegro dedicated to promoting and protecting human rights, strengthening democracy, and ensuring the rule of law. Civic Alliance focuses on advocating for the rights of individual citizens, particularly in their interactions with State institutions. The organization actively monitors judicial bodies and public administration at both national and municipal levels, ensuring transparency and accountability. <https://gamn.org/en/about-us/> (Accessed 20 August 2024).

¹⁰ ICJ. 2024. *Montenegro: ICJ concludes a mission on the independence, organization and functioning of the judiciary* <https://www.icj.org/montenegro-icj-concludes-a-mission-on-the-independence-organization-and-functioning-of-the-judiciary/> (Accessed 21 April 2024).

¹¹ Law Clinic Radboud University. 2023. *Baseline research for a report on the judiciary, justice and human rights in Montenegro*. https://c90e5d68-5ec1-44e2-a446-9f953ba0b4af.usrfiles.com/uqgd/a62a24_b5f18a4f6e0f4cdb8338adc6c5391bbd.pdf (Accessed 2 July 2024).

The mission met with a range of key stakeholders engaged in the administration of justice in order to receive diverse perspectives so as to gain a nuanced understanding of the role and independence of the Montenegrin judiciary and to conduct an evaluation as to its effective functioning as an independent institution.

In particular, the mission met with a number of judges of the Supreme Court, the Basic Court of Podgorica, an advisor to the Higher Court, and members of the Judicial Council. The mission further met with officials from the Ministry of Justice, including the Director General of the Directorate for Criminal and Civil Legislation, the Director General of the Directorate for Judiciary, and the Director General of the Directorate for the Execution of Criminal Sanctions and Control. Furthermore, meetings were held with the Ombudsperson's office and the Supreme State Prosecutor's Office. Additionally, the mission engaged with representatives of Montenegro before the European Court of Human Rights (ECtHR), representatives of the EU Delegation, and several NGO representatives. A list of the particular individuals who met with the ICJ is provided in Annex I to this report.¹²

The ICJ expresses its gratitude to all those with whom it engaged and for their general openness and willingness to discuss challenges in the judicial system.

2. A brief historical background to the judicial reform in Montenegro

Montenegro was previously part of the Socialist Republic of Yugoslavia (1945-1992); the Federal Republic of Yugoslavia (1992-2003); and the Republic of Serbia and Montenegro (2003-2006). Following a popular referendum held in 2006, Montenegro gained independence from its union with the more powerful Serbian State. Shortly thereafter, Montenegro acceded to the United Nations, joined the Council of Europe in 2007 and applied for European Union (EU) membership in 2008.¹³

Accession negotiations with the EU began in June 2012. Montenegro aims to achieve EU membership by 2030.¹⁴ States seeking EU Membership must comply with benchmarks across the various areas of the EU "acquis", after which these areas are considered *to be* closed. For the accession negotiations with Montenegro, all 33 chapters of the EU acquis were opened and three provisionally closed.¹⁵ Chapters 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom, and Security), critical for EU accession and opened in December 2013, emphasize the need for strengthening judicial independence and enhancing justice, freedom, and security.¹⁶ In April 2024, Montenegro remained committed to addressing 83 interim benchmarks across various chapters, with 31 still pending.¹⁷ Progress in Chapter 23 is particularly crucial for advancing the overall

¹² See Annex I.

¹³ Kristof Bender. *Montenegro*. Princeton Encyclopedia of Self-Determination. <https://pesd.princeton.edu/node/726>. (Accessed 10 May 2024).

¹⁴ Sofija Popović. 2023. *Target 2030 in Montenegro: A realistic goal if political crisis subsides*. <https://europeanwesternbalkans.com/2023/09/26/target-2030-in-montenegro-a-realistic-goal-if-political-crisis-subsides/> (Accessed 10 May 2024).

¹⁵ In the EU accession process, candidate countries negotiate the opening of chapters within the EU acquis, each accompanied by specific benchmarks. These benchmarks serve as criteria to measure progress in various policy areas. As chapters are successfully negotiated and benchmarks met through reforms, they contribute to the provisional closure of chapters. The European Commission monitors this progress, and once all benchmarks are fulfilled across all chapters, the accession process can be completed, leading to EU membership.

¹⁶ European Commission. *Montenegro*. https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/montenegro_en (Accessed 13 May 2024).

¹⁷ Sofija Popović. 2024. [EWB Interview] Gorčević: Montenegro regained the leadership status in the enlargement. <https://europeanwesternbalkans.com/2024/04/10/ewb-interview-gorcevic-montenegro-regained-the-leadership-status-in-the-enlargement/> (Accessed 22 April 2024).

negotiations, as no further chapters will be provisionally closed until these benchmarks are met.¹⁸

Indeed, over the last decade, multiple efforts have been made by the Government of Montenegro to reform Montenegro's judicial system, including the reforms undertaken in 2015 and 2016, aimed at bolstering the independence of the judiciary.¹⁹ Since 2007, Montenegro has implemented several reforms to improve the independence of its judiciary. Key reforms in Montenegro's judicial system include the 2013 constitutional amendments designed to enhance the rule of law by reducing political influence in the judiciary. These amendments introduced more transparent and merit-based appointment processes for prosecutors and high-level judicial officials.²⁰ Additionally, they led to the establishment of a legal aid system and the adoption of the Law on Judicial Council and Judges by the Parliament. To align with these constitutional changes, the Montenegrin government also enacted amendments to the Law on Courts.

Strategic plans regularly adopted by the Montenegrin government have played a crucial role in the ongoing improvements to the judicial system. The 2014-2018 strategy focused on improving judicial independence, impartiality, and accountability by establishing the Judicial and Prosecutorial Councils, enhancing the organizational structure, and streamlining court procedures.²¹ This period also saw the introduction of appraisal and promotion processes for judges and prosecutors, along with initiatives to ensure ethical standards and transparency.²²

From 2019 to 2022, efforts by the government concentrated on further professionalizing the judiciary, increasing transparency in judicial appointments, improving public confidence, and ensuring financial independence.²³ Notable reform initiatives by the Ministry of Justice during this period included strengthening the enforcement of court sentences, random assignment of cases, and reducing case backlogs.²⁴

Despite these efforts, the European Commission has noted stagnation in key judicial reforms.²⁵ In recent years, reports from the European Commission and a number of Montenegrin and international organizations have consistently pointed to an enduring political instability in the country.²⁶ This crisis has been marked by a fractured and polarized political landscape, lack of political will needed for reforms concerning the administration of justice.²⁷

¹⁸ European Commission 'Commission Staff Working Document: Montenegro 2022 Report' (12 October 2022) SWD(2022) 335 (European Commission 2022), p. 3.

¹⁹ Mladen Vukčević and Miloš Bošković, "Judicial System in Montenegro (Historical Development, Basic Principles, and Organisation)", in *Law and Justice Review*, Volume 7(3), 2016, p. 19.

²⁰ Vladimir Simonovic. 2023. *Judicial Independence in Montenegro: Myth or Reality*. <https://cemi.org.me/storage/uploads/VGNw7NsjXnSVKevCXssD33vSvEzECOYAMVHBvs1q.pdf> (Accessed 12 June 2024), pp. 8-9.

²¹ Ministry of Justice of the Government of Montenegro. 2014. *Strategy for the Reform of the Judiciary (2014-2018)*. <https://wapi.gov.me/download-preview/1b002272-4faa-4c76-8a48-b3d15f75062a?version=1.0> (Accessed 7 May 2024), pp. 2-3.

²² *Ibid.*, pp. 15, 19.

²³ Ministry of Justice of the Government of Montenegro. 2019. *Strategy of the Reform of the Judiciary (2019-2022)* <https://wapi.gov.me/download-preview/deb3e3ae-7b6a-4963-9b3e-b5892118c8c8?version=1.0> (Accessed 7 May 2024), pp. 35, 36, 55.

²⁴ *Ibid.*, pp. 38, 45.

²⁵ European Commission 2022, *supra* note 18, p. 5.

²⁶ Milica Zindović, Nikola Mirković, and Daliborka Uljarević, "A decade of Montenegrin accession negotiations with the EU: How to get out of the roundabout?" in *Friedrich-Ebert Stiftung* 2022, p. 4.

²⁷ *Ibid.*

Following these previous initiatives, the Ministry of Justice of Montenegro has recently adopted the Judicial Reform Strategy 2024-2027.²⁸ The objective of the Strategy is to “further strengthen the rule of law by strengthening independence, accountability, professionalism, and efficiency of the judiciary as well as the improved access to justice and legal security in the process of exercising the protection of rights and freedoms of citizens and increasing trust in the judicial system”.²⁹ The strategy addresses priorities and benchmarks outlined in the EU accession negotiations, particularly Chapter 23. Key measures include improving the legal framework guaranteeing the independence and impartiality of the judiciary, reforming appointment systems, ensuring financial independence, adhering to ethical principles, and strengthening disciplinary mechanisms.³⁰ Additionally, the strategy focuses on developing judicial expertise, reducing case backlogs, enhancing judicial management and information systems, improving access to legal aid, and upgrading judicial infrastructure.³¹

In parallel, a revision of the Law on the Judicial Council and Judges is ongoing, with the Venice Commission playing an important role in reviewing the proposed amendments.³² The latest draft of these amendments, submitted by the Montenegrin government to the Venice Commission in April 2024, reflects serious efforts by the government to improve the legal framework.³³ This draft has incorporated many of the Venice Commission’s most critical recommendations, demonstrating a clear effort to partially implement these suggestions and align Montenegro’s judicial reforms with European standards. According to the latest European Commission Rule of Law Report on Montenegro, these amendments were passed by the Parliament in June 2024, purportedly bringing the framework in significant measure in line with EU standards.³⁴

The European Commission’s latest progress report described Montenegro’s judicial system as “moderately prepared,”³⁵ highlighting the need for improvements in independence, impartiality, accountability, and professionalism.³⁶ This explains to a large extent why many of the reforms and discussions concerning the justice system reform centre around EU accession and benchmarks progress.

1. The Structure of the courts system in Montenegro

²⁸ Ministry of Justice of the Government of Montenegro. 2024. *Judicial Reform Strategy (2024-2027)*. <https://rm.coe.int/hf7-judicial-reform-strategy-eng/1680b108b9> (Accessed 21 August 2024).

²⁹ *Ibid.*, p. 24.

³⁰ *Ibid.*, p. 25.

³¹ *Ibid.*, p. 31.

³² Simonovic, *supra* note 20, p. 22.

³³ Draft Law on Amendments to the Law on the Judicial Council and Judges (5 April 2024) CDL-REF(2024)009-e. [https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2024\)009-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2024)009-e). The previous submission of the law to the Venice Commission took place in March 2023: Law on the Judicial Council and Judges 2015, with Revised draft amendments 2023 (Montenegro) [https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2023\)016-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2023)016-e).

³⁴ European Commission. 2024. *Rule of Law Report: Country Chapter on the rule of law situation in Montenegro*. https://commission.europa.eu/document/download/6e3ff77c-4a53-4e92-a030-9ea4cca3045c_en?filename=60_1_58089_coun_chap_montenegro_mn.pdf (Accessed 23 August 2024), p. 3.

³⁵ In the European Commission’s progress reports, most chapters and areas are rated on a five-point scale to assess how prepared a country is for EU membership. The scale ranges from ‘early stage of preparation’ to ‘some level of preparation,’ ‘moderately prepared,’ ‘good level of preparation,’ and ‘well advanced’. Milena Mihajlović, Steven Blockmans, Strahinja Subotić, Michael Emerson. 2023. *Template 2.0 for Staged Accession to the EU*. <https://cdn.ceps.eu/wp-content/uploads/2023/08/Template-2.0-for-Staged-Accession-to-the-EU.pdf> (Accessed 21 August 2024), p. 19.

³⁶ European Commission ‘Commission Staff Working Document: Montenegro 2023 Report’ (8 November 2023) SWD(2023) 694 (European Commission 2023), p. 21.

The law establishing and defining the powers, functions, and procedures of Montenegro's court system is set out in the Law on Courts.³⁷ It regulates the establishment, organization, and jurisdiction of the courts, as well as the internal organization of court work, judicial administration, and other aspects necessary for the orderly and timely functioning of the judiciary.³⁸ According to this law, judicial power is exercised exclusively by the courts established under its provisions.³⁹

The Law on Courts establishes Montenegro's multitiered judicial system, which includes both courts of general jurisdiction and specialized courts.⁴⁰ **General jurisdiction** courts include several levels: misdemeanour courts, basic courts, high courts, the Court of Appeal, and the Supreme Court.⁴¹ **Specialized courts** consist of the Commercial Court, the Administrative Court, and the High Court of Podgorica, which handles high-level corruption cases.⁴² The Constitutional Court operates independently of this judicial hierarchy and is regulated by the Constitution and the Law on the Constitutional Court.⁴³ The Constitution also explicitly prohibits the establishment of courts martial and extraordinary courts, ensuring that justice is administered through established legal channels.⁴⁴ Within this framework, military justice primarily falls under the jurisdiction of basic courts and high courts, with the Appellate Courts and the Supreme Court also playing significant roles in the military justice system.

Misdemeanour courts, located in Bijelo Polje, Budva, and Podgorica, handle misdemeanour offences across Montenegro.⁴⁵ The High Misdemeanour Court oversees appeals from these courts.⁴⁶

Montenegro has 15 **basic courts** (Osnovni sud),⁴⁷ which have general jurisdiction over civil, criminal, labour law cases and other legal matters.⁴⁸ These courts are distributed across various municipalities in Montenegro, covering the entire country. Decisions from basic courts can be appealed to the high courts, which also have original jurisdiction in serious criminal cases.

High courts (Viši sud) are established in Bijelo Polje and Podgorica.⁴⁹ The High Court in Bijelo Polje covers the territories of the basic courts in Bijelo Polje, Berane, Žabljak, Kolašin, Plav, Pljevlja, and Rožaje. The High Court in Podgorica covers the territories of the basic courts in Podgorica, Bar, Danilovgrad, Kotor, Nikšić, Ulcinj, Herceg Novi, and Cetinje.⁵⁰ High courts serve as appeal instances for basic courts.⁵¹

³⁷ Law on Courts (Montenegro) [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2015\)049-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2015)049-e) (adopted on 26 February 2015).

³⁸ Law on Courts, art. 1.

³⁹ *Ibid.*, art. 2.

⁴⁰ *Ibid.*, art. 8.

⁴¹ *Ibid.*

⁴² European Commission 2023, *supra* note 36, p. 38.

⁴³ Constitution of Montenegro (consolidated version) 2013. www.constituteproject.org/constitution/Montenegro_2013, art. 149.

⁴⁴ *Ibid.*, 118(3).

⁴⁵ Law on Courts, arts. 9-10.

⁴⁶ *Ibid.*, arts. 11-12.

⁴⁷ *Ibid.*, art. 13.

⁴⁸ *Ibid.*, art. 14.

⁴⁹ *Ibid.*, art. 15.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*, art. 16 (a)(3).

These courts also handle certain first-instance cases, depending on the nature of the case and the level of jurisdiction.⁵² For example, they have jurisdiction over the most serious criminal offences, particularly those punishable by more than 10 years of imprisonment.⁵³ This includes crimes such as manslaughter, rape, unauthorized drug production, and significant offenses against State security, such as organizing anti-constitutional activities and threatening national sovereignty.

The High Court in Podgorica additionally considers cases related to organized crime, high-level corruption, money laundering, terrorism, and war crimes, with a special division dedicated to these matters.⁵⁴

The **Court of Appeal**, based in Podgorica,⁵⁵ has jurisdiction over appeals against first-instance rulings of high courts and commercial courts.⁵⁶ It also resolves jurisdictional conflicts and carries out other duties as stipulated by law.⁵⁷

The **Supreme Court of Montenegro** (Vrhovni sud) serves as the highest court of appeal in Montenegro.⁵⁸ It reviews decisions from the high courts and provides final interpretations of the law.⁵⁹

The Administrative Court (Upravni sud) handles disputes arising from administrative decisions made by public authorities,⁶⁰ which include State bodies, State administration bodies, local self-government units, local government bodies, institutions, and other entities exercising public powers.⁶¹

The **Commercial Court** of Montenegro handles disputes among commercial entities, entrepreneurs, and legal entities involved in economic activities, covering a wide range of issues such as company law, bankruptcy, intellectual property, competition, maritime, and air navigation disputes.⁶²

The Constitutional Court (Ustavni sud) is responsible for reviewing the constitutionality of laws, ensuring compliance with the Montenegrin Constitution, and protecting human rights and freedoms.⁶³

⁵² *Ibid.*, art. 16 (a)(1).

⁵³ *Ibid.*, art. 16 (a).

⁵⁴ Law on Courts, art. 16 (a).

⁵⁵ *Ibid.*, art 19.

⁵⁶ *Ibid.*, art. 20(1).

⁵⁷ *Ibid.*, art.20 (2)-(3).

⁵⁸ *Ibid.*, art. 23.

⁵⁹ *Ibid.*, art.24.

⁶⁰ *Ibid.*, art. 21-22.

⁶¹ Law on Administrative Procedure.

<https://www.refworld.org/legal/legislation/natlegbod/2014/en/122861><https://www.refworld.org/legal/legislation/natlegbod/2014/en/122861>, art. 1.

⁶² Law on Courts., arts. 17-18.

⁶³ Constitution of Montenegro, art. 149.

2. Guarantees of independence

2.1. International standards

The principle that the separation of powers and the administration of justice require guarantees of an independent judiciary is a core rule of law principle, which is reflected, among other sources, in international level in human rights treaties and, declarative instruments and jurisprudence. As affirmed by the UN General Assembly and the UN Human Rights Council, the independence, impartiality and integrity of the judiciary are essential prerequisites for upholding the rule of law and ensuring the fair administration of justice.⁶⁴

Among the key treaty sources, the International Covenant on Civil and Political Rights (ICCPR) Article 14 and the European Convention on Human Rights (ECHR) Article 6 establish essential guarantees for judicial independence and impartiality. Under Article 14 of the ICCPR, all persons have the right to a competent, independent and impartial tribunal established by law. Under Article 6 of the ECHR, every individual is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

In respect of the ICCPR, the UN Human Rights Committee, the supervisory body providing the authoritative interpretation of the treaty, has issued General Comment (No. 32), clarifying the nature and scope of State obligations under Article 14. The Committee has emphasized that the requirement of independence of the judiciary inherent in the right to a fair trial refers not only to actual freedom from unwarranted external interference, but also to “*the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions*”.⁶⁵

Similarly, in respect of the ECHR, the European Court of Human Rights has developed its own jurisprudence through a series of cases over the years.⁶⁶ The Court has ruled that judicial independence and impartiality are essential components of a fair trial, interpreting these requirements to include protection from undue influence,⁶⁷ the independence of courts from the executive,⁶⁸ the manner of appointment and term of office of judges, and the presence of safeguards against external pressures.⁶⁹

The general international standards regarding the independence of the judiciary are set out in the UN Basic Principles on the Independence of the Judiciary. Under the Basic Principles, the independence of the judiciary must be guaranteed by the State under law

⁶⁴ Human Rights Council. Human rights, democracy and the rule of law, Resolution 19/36 (19 April 2012) A/HRC/RES/19/36, para. 16(b); Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels, Resolution adopted by the General Assembly on 24 September 2012, A/RES/67/1.

⁶⁵ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 19.

⁶⁶ Press Unit. *Factsheet – Independence of the justice system*. 2023. https://prd-echr.coe.int/documents/d/echr/FS_Independence_justice_ENG; European Parliament. 2024. *Judicial independence in the case law of the European Court of Human Rights*. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/762305/EPRS_BRI\(2024\)762305_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/762305/EPRS_BRI(2024)762305_EN.pdf)

⁶⁷ *Agrokompleks v. Ukraine*, ECtHR, Application No. 23465/03, Judgment of 6 October 2011, para. 137.

⁶⁸ Press Unit. *Factsheet – Independence of the justice system*. 2023. https://prd-echr.coe.int/documents/d/echr/FS_Independence_justice_ENG_p.2.

⁶⁹ *Luka v. Romania*, ECtHR, Application No. 34197/02, Judgment of 21 July 2009, para. 37

and "it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary".⁷⁰

The Committee of Ministers of the Council of Europe has issued Recommendation CM/Rec(2010)12 on "Judges: Independence, Efficiency, and Responsibilities".⁷¹ This recommendation underscores the importance of judicial independence as a cornerstone of the rule of law and highlights the need for effective measures to ensure that judges can perform their duties without undue influence or pressure.

The Council of Europe's Consultative Council of European Judges has also developed standards and recommendations. One such recommendation stresses that the independence of judges is not a prerogative or privilege in their own interests, but is in the interests of the rule of law and those seeking and expecting justice.⁷²

Furthermore, the Venice Commission, has provided detailed opinions on judicial independence. Notably, in its 2010 Report on the Independence of the Judicial System, the Venice Commission underscored that an independent judiciary is vital for upholding the rule of law and ensuring that justice is administered impartially.⁷³

2.2. National legal framework and practice

The Montenegrin Constitution recognizes the rule of law as a fundamental State value⁷⁴ and provides for the separation of powers, according to which courts exercise judicial power.⁷⁵ The Constitution explicitly guarantees the autonomy and independence of the courts in Article 118.⁷⁶

Montenegro has developed statutory law concerning the administration of justice by the courts, including the Law on Courts.

According to the Constitution and the Law on Courts, several essential elements are necessary to guarantee independence for judges is established. Judges are to be **independent**,⁷⁷ **impartial**,⁷⁸ and **irremovable**.⁷⁹ Montenegro's Constitution provides for a fair and public trial by an independent court and affirms judicial autonomy and independence.⁸⁰ The Judicial Council, established under the Constitution, is the body tasked with overseeing judicial independence with a diverse composition to prevent undue

⁷⁰ UN Basic Principles, *supra* note 4, principle 1.

⁷¹ Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies (Council of Europe Recommendation on judges).

⁷² CCJE, Opinion No. 1, *supra* note 7, para. 10.

⁷³ Venice Commission, Report on the Independence of the Judicial System. Part I: The independence of judges, CDL-AD(2010)004, 2010.

⁷⁴ Constitution of Montenegro, art.1.

⁷⁵ *Ibid.*, art. 11.

⁷⁶ Art. 118. "Principles of the judiciary. The court is autonomous and independent. The court shall rule on the basis of the Constitution, laws and confirmed and published international agreements. Establishment of court marshal and extraordinary courts shall be prohibited," Constitution of Montenegro.

⁷⁷ Constitution of Montenegro, art.32, 118; Law on courts, art. 5.

⁷⁸ Constitution of Montenegro, art.32; Law on courts, art. 5.

⁷⁹ Constitution of Montenegro, art.121.

⁸⁰ Constitution of Montenegro, art.32, 118; Law on courts, art. 5.

influence.⁸¹ Judges have security of tenure⁸² and functional immunity.⁸³ The State Prosecution is also established as an independent State authority.⁸⁴

The ICJ mission was informed by various actors about attacks in the media, by politicians or other influential actors, which may pose risks to the personal security of judges; deter them from acting independently; and lead to the undermining of the overall trust in the judiciary by the general public.

Since the change of government in 2020, high-ranking political officials in Montenegro have increasingly made public statements that undermine judicial independence. Such statements have criticized the judiciary as a whole and targeted specific judges and their decisions.⁸⁵ The UN Special Rapporteur on the independence of judges and lawyers, following her mission to Montenegro, also highlighted the troubling situation of politicians using isolated cases to broadly demonize judges or portray the judiciary as corrupt and inefficient.⁸⁶ Politicians have sometimes taken credit for judicial actions, implying political control over the judiciary, or placed judges handling politically sensitive cases under scrutiny to influence their decisions.⁸⁷ Notable instances include Prime Minister Dritan Abazović accusing a judge of being responsible for the actions of criminals he released, and former Justice Minister Vladimir Leposavić suggesting political solutions to ongoing legal cases.⁸⁸

Over the years, there has been a delay and backlog in judicial appointments, that constitutes a serious obstacle to the effective functioning of at least the higher level Montenegrin judiciary. In recent years, the political climate in Montenegro has become highly polarized,⁸⁹ and the government has failed to cooperate in resolving various actions necessary for the administration of justice, including high-level judicial appointments.⁹⁰ This obstacle has been particularly consequential for the Constitutional Court, which requires a qualified majority for the election of its judges.⁹¹

⁸¹ Constitution of Montenegro, art. 126-127.

⁸² *Ibid.*, art.121.

⁸³ *Ibid.*, art.122.

⁸⁴ *Ibid.*, art.134.

⁸⁵ Simonovic, *supra* note 20, pp. 17-19.

⁸⁶ Report of the Special Rapporteur, *supra* note 8, para. 43.

⁸⁷ *Ibid.*

⁸⁸ Simonovic, *supra* note 20, pp. 17-19.

⁸⁹ Bertelsmann Stiftung 2024. *BTI 2024 Country Report: Montenegro*. https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2024_MNE.pdf (Accessed 6 June 2024), p. 15.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

3. Self-governance structures

3.1. International standards

The UN Basic Principles provide: “The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.”⁹² In order to safeguard against such restrictions, inducements, and interferences, it is necessary that the judiciary essentially governs itself. This governance is necessary to maintain the independence, impartiality, and accountability of the judiciary. It is typically structured around several key functions: appointments, transfers, promotions, conditions of tenure, and discipline, removal, and accountability.

The judiciary itself should be responsible for and play the primary role in its own governance. Judicial councils and similar bodies should be composed exclusively or predominantly of members of the judiciary to ensure that decisions regarding appointments, promotions, discipline, and removal are free from external influence.⁹³ The Council of Europe further recommends that judicial councils should be independent bodies established by law to safeguard judicial independence and promote efficient judicial systems.⁹⁴ At least half of the council members should be judges selected by their peers, and these councils must operate with transparency and avoid interfering with individual judges' independence.⁹⁵ When councils include both judges and non-judges, the Consultative Council of European Judges (CCJE) notes that this mixed composition can prevent perceptions of self-interest or cronyism and incorporate diverse societal perspectives, thereby enhancing the judiciary's legitimacy. However, even with a mixed composition, such councils must remain entirely independent from parliamentary and executive influence to uphold the fundamental values and principles of justice.⁹⁶

Under international law, the administration of courts must be transparent, respect the independent and impartial adjudication by the judiciary, and must never be used to unduly influence the content of judicial decision making.⁹⁷ As judicial systems vary, the systems for judicial governance may be framed and adapted to the specific local context, while respecting the independence of the judiciary and the independence and impartiality of individual judges.⁹⁸ While no single universal model for the structure and function of judicial bodies exists, such bodies, however constituted and whatever the scope of their authority, must meet specific standards.⁹⁹ Furthermore, it is important to avoid excessive concentration of power in one judicial body.¹⁰⁰ As the OSCE Kyiv Recommendations affirm, the different functions and competences must be kept distinct, including selection, promotion, training, discipline, professional evaluation and budget,¹⁰¹ with various authorities placed in charge of these functions rather than being subjected to the control of a single institution or authority.¹⁰²

⁹² UN Basic Principles, *supra* note 4, principle 2.

⁹³ Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers A/HRC/38/38 (2 May 2018), para. 66.

⁹⁴ Council of Europe Recommendation on judges, *supra* note 71, para. 26.

⁹⁵ *Ibid.*, paras. 27-29.

⁹⁶ CCJE, Opinion No. 10 (2007) on the Council for the Judiciary in the service of society, para. 19

⁹⁷ OSCE, Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia— Judicial Administration, Selection and Accountability—Kyiv, 23–25 June 2010, para. 1.

⁹⁸ CCJE, Opinion No. 19 (2016) on the Role of Court Presidents, para. 25.

⁹⁹ Venice Commission, *Opinion No. 403 / 2006 on Judicial Appointments*, CDL-AD(2007)028, 2007, para. 28.

¹⁰⁰ OSCE, Kyiv Recommendations on judicial independence, *supra* note 97, para. 2

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

The CCJE stressed regarding Judicial Councils that: “[b]eyond its management and administrative role vis-à-vis the judiciary, the Council for the Judiciary should also embody the autonomous government of the judicial power, enabling individual judges to exercise their functions outside any control of the executive and the legislature, and without improper pressure from within the judiciary.”¹⁰³

Under international standards, court presidents have a distinct, albeit limited, role in order to help maintain both the institutional independence of the judiciary and the individual independence of judges. The role of court presidents includes representing the court and fellow judges, ensuring the effective functioning of the court to better serve society, and performing jurisdictional functions.¹⁰⁴ In fulfilling these duties, court presidents are responsible for protecting the independence and impartiality of the court and its judges. The CCJE in its Opinion No 19, highlighted principles essential in the relations between court presidents and other judges, stressing that “internal judicial independence requires that individual judges be free from directives or pressure from the president of the court when adjudicating cases”.¹⁰⁵

3.2. Institutions of governance of the judiciary in Montenegro

3.2.1. The Judicial Council

Under Article 126 of the Montenegrin Constitution, the Judicial Council is established as an autonomous and independent authority responsible for securing “the autonomy and independence of the courts” and individual judges.¹⁰⁶ Its composition and functioning are regulated by Articles 127 and 128 of the Constitution and the Law on the Judicial Council and Judges.

Reducing political and other external interference in Montenegro's judiciary has been undertaken through a protracted process, beginning with the adoption of the present Constitution in 2007, which transferred the responsibility of appointing and dismissing judges to the Judicial Council. Subsequently in 2015, the Parliament adopted the Law on the Judicial Council and its first members were elected.

The Judicial Council of Montenegro, as established under Article 127 of the Montenegrin Constitution, consists of a president and nine members. These members include “the President of the Supreme Court, four judges elected by the Conference of Judges to ensure equal representation across different courts, four reputable lawyers elected by the Parliament following a public invitation, and the Minister of Justice”.¹⁰⁷

The grounds for the termination of a Judicial Council member's mandate include the cessation of the office on which their membership is based, resignation, or conviction resulting in an unconditional prison sentence.¹⁰⁸ When a Judicial Council member resigns, the Council acknowledges the resignation in writing, marking the official end of their mandate. If convicted of a crime, their mandate ends automatically when the conviction

¹⁰³ CCJE, Opinion No. 10 (2007) on the Council for the Judiciary in the service of society, para. 12.

¹⁰⁴ CCJE, Opinion No. 19 (2016) on the Role of Court Presidents, para. 6.

¹⁰⁵ *Ibid.*, para. 13. See the ECtHR judgments: *Baka v. Hungary*, Grand Chamber Application No. 20261/12, Judgment of 23 June 2016, para. 4 of the concurring opinion of Judge Sicilianos; *Parlov-Tkalčić v. Croatia*, Application No. 24810/06, Judgment of 22 December 2009, para. 86; *Agrokompleks v. Ukraine*, Application No. 23465/03, Judgment of 6 October 2011, para. 137; *Moiseyev v. Russia*, No. 62936/00, Judgment of 9 October 2008, para. 182.

¹⁰⁶ Constitution of Montenegro, art. 126.

¹⁰⁷ *Ibid.*, art. 127.

¹⁰⁸ Law on Judicial Council and Judges, art.19.

becomes final and enforceable. In both scenarios, the Council formally records the termination of the mandate and informs the appointing authority.¹⁰⁹ Members of the Judicial Council may also be dismissed if they engage in unconscientious or unprofessional behavior, such as acting contrary to statutory duties, or if they are convicted of a criminal offense that compromises their ability to serve.¹¹⁰ For judges, a disciplinary sanction can also lead to dismissal. The dismissal process adheres to the same procedures used for establishing disciplinary liability for judges, with the Judicial Council initiating the process and seeking approval from the appointing authority.¹¹¹

The Special Rapporteur on the Independence of Judges and Lawyers expressed concern about aspects of the composition and functioning of Montenegro's Judicial Council. The fact that only four of the ten members are judges elected by their peers undermines judicial control over appointments.¹¹² It is in contravention of international standards according to which there should be a majority of judges in such bodies.¹¹³ The vague criteria for appointing lay members, who are selected by Parliament, creates conditions conducive to undue political influence.¹¹⁴ Additionally, the election of the Council's President from non-judicial members may expose the Council to political pressure.¹¹⁵

The *ex officio* role of the Minister of Justice, though limited in some areas such as presiding over the Council¹¹⁶ or participating in disciplinary actions against judges,¹¹⁷ still risks political interference, particularly since the Constitution does not restrict the Minister's role in critical decisions such as judicial appointments and promotions.¹¹⁸

To address these issues, the Special Rapporteur has recommended the following:¹¹⁹

110. In order to strengthen the independence of the Judicial Council and minimize the risk of political interference:

- (a) Its composition should be reviewed to ensure that the majority of its members are judges elected by their peers. Consideration should be given to the addition of a lawyer representative of civil society;
- (b) The definition of "eminent lawyer" should be reviewed, with a view to excluding active politicians and representatives of the legislative or executive branches of power from participation;
- (c) The procedure for the selection and appointment of lay members should be reviewed so as to eliminate interference from political parties in their selection. An appropriate anti-deadlock mechanism should be devised to ensure the functioning of the Judicial Council in case of delays in the appointment of the new lay members by the parliament. Montenegro should consider entrusting the election of lay members to a non-political authority;
- (d) The participation of the Minister of Justice as an *ex officio* member of the Judicial Council in decisions concerning essential aspects of the judicial career, not only discipline, should be expressly prohibited by law;
- (e) Article 127 (3) of the Constitution should be reviewed to ensure that the President of the Judicial Council is elected by the Council itself from among its judge

¹⁰⁹ Law on Judicial Council and Judges, art. 19.

¹¹⁰ *Ibid.*, art.20.

¹¹¹ *Ibid.*

¹¹² Report of the Special Rapporteur, *supra* note 8, para. 53.

¹¹³ Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers A/HRC/38/38 (2 May 2018), para. 66.

¹¹⁴ Report of the Special Rapporteur, *supra* note 8, para. 54.

¹¹⁵ *Ibid.*, para. 56.

¹¹⁶ Constitution of Montenegro, art. 127(4).

¹¹⁷ *Ibid.*, art. 128(3).

¹¹⁸ Report of the Special Rapporteur, *supra* note 8, para. 55.

¹¹⁹ *Ibid.*, para. 110.

members. The President of the Supreme Court should be prohibited from appointment as President of the Council.

The Special Rapporteur's concerns echo those of both the Venice Commission and GRECO, indicating that the Council has not yet achieved full independence as a State authority. They emphasize that further reforms are necessary to ensure the judicial system's independence and to align fully with global and European standards. The Venice Commission further recommended restricting political incompatibility to high-level political party officials only, to prevent the assumption that political convictions might impede one's ability to conduct themselves professionally and impartially.¹²⁰

GRECO recommended taking additional measures to strengthen the Judicial Council's independence, both in reality and perception, against undue political influence.¹²¹ This includes abolishing the ex-officio participation of the Minister of Justice in the Council. The Venice Commission in alignment with the Special Rapporteur, agreed that while the Minister of Justice's presence does not inherently compromise judicial independence, the Minister should refrain from involvement in the appointment of judges and disciplinary proceedings, although participation in other matters is acceptable.¹²² This would help to maintain a better separation between the legislative and judiciary, thus further guaranteeing the independence of the latter.

As further described in the Rule of Law Report country chapter on Montenegro by the European Commission in July 2024: "[...] Montenegro has committed to withdraw the presence of the Minister of Justice from the Council. The Minister is no longer taking part in the meetings of the Judicial Council since 9 February 2024 and has issued on 24 May 2024 a formal Decision by which he recuses himself from participating in the work of the Judicial Council, to offer the necessary legal guarantees pending the outstanding legislative and constitutional changes to bring the Constitution in line with European Standards including Venice Commission and GRECO recommendations with regard to the composition of the Council. Finally, the Prime Minister informed the European Commission of the Government's support to this decision, which was recorded in the official minutes of the Government's session on 24 May 2024, and which counts with cross-party consensus."

The ICJ mission consistently heard from various stakeholders that they were aware of these deficiencies and that the Minister's membership was not in line with EU or international standards. The mission was told of an illustrative situation that had occurred two years previously, when the Prime Minister, acting as the Minister of Justice, voluntarily suspended his position on the Judicial Council to avoid any potential conflict of interest. This move was welcomed by the EU as a positive step toward reducing political interference in the judiciary's independence, but also illustrates the potential interference through this Judicial Council composition.

Another problem raised during the mission concerns the impartiality of members appointed to the Judicial Council, particularly as concerns their actual or perceived political affiliations or activities. To address this, Montenegro has reduced the "cooling-off" period between political activity and potential appointment to the Judicial Council from ten to five years.¹²³

Acknowledging the existing deficiencies within the Judicial Council, which plays a crucial role in the functioning of the judiciary, the Judicial Reform Strategy 2024-2027 sets an

¹²⁰ Venice Commission, 'Follow-up opinion on the opinion on the draft amendments to the Law on the Judicial Councils and Judges (Montenegro)' (13 March 2023) CDL-AD(2023)011, para.16.

¹²¹ GRECO, 'Fourth Evaluation Round, Corruption prevention in respect of members of parliament, judges and prosecutors: Second Compliance Report Montenegro' GrecoRC4(2019)27 (6 February 2020), para.20.

¹²² Venice Commission, Follow-up opinion CDL-AD(2023)011, *supra* note 120, para. 8.

¹²³ *Ibid.*, para. 13.

objective to make the Judicial Council fully operational and complete by 2027.¹²⁴ This strategy, formulated and adopted by the Montenegrin government, places the responsibility for implementation primarily on the Ministry of Justice, with substantial involvement from other key institutions such as the Judicial Council, the Ministry of Finance, and the Bar Association. The strategy is supported by both international and national financing sources, which indicates a measure of political will to see it implemented successfully. To ensure effective monitoring, the government has established a new Council that includes representatives from the executive, judiciary, and State prosecution service, tasked with overseeing the strategy's implementation.¹²⁵ The strategy foresees the Judicial Council being supported by appropriate human, financial, and infrastructure resources to ensure timely procedures related to appointment, evaluation, and disciplinary liability.¹²⁶ Consequently, the Strategy aims to fully amend the legislation by 2027, addressing the recommendations of the Venice Commission.¹²⁷

3.2.2. President of the Supreme Court

The President of the Supreme Court in Montenegro is mandated an important role within the judiciary. As outlined in the Law on Courts, the President is tasked with managing the Supreme Court's operations, representing the institution, and overseeing its effective functioning.¹²⁸ This involves various responsibilities, such as administering the court, assigning cases to judges, and organizing court sessions to uphold judicial efficiency.¹²⁹ Additionally, the President convenes and leads sessions of the Conference of Judges¹³⁰ and the Supreme Court Bench.¹³¹ As a member of the Judicial Council, the President also is responsible for discharging a number of duties mandated by law, including participating in disciplinary proceedings against judges.¹³²

For the election of the President of the Supreme Court by the Judicial Council, a qualified majority of two-thirds is required.¹³³ This higher threshold was recommended by the Venice Commission. It is intended to foster a broad political consensus on the appointment of high-level positions in the judiciary.

The position of the Supreme Court President has recently faced multiple challenges. The former Supreme Court President served beyond the two-term limit, and was later arrested on charges of suspected abuse of office and involvement in a criminal organization.¹³⁴ Since her resignation in December 2020, Montenegro has struggled to elect a new President of the Supreme Court due to internal disagreements. The process has been stalled as a consequence of some judges refusing to vote, leading to eight rounds of voting without success.¹³⁵ The lack of transparency and accountability in this process is a

¹²⁴ Judicial Reform Strategy (2024-2027), *supra* note 28, p. 25.

¹²⁵ Rule of Law Report, *supra* note 34, p. 7.

¹²⁶ Judicial Reform Strategy (2024-2027), *supra* note 28, p. 24, SO.1.

¹²⁷ *Ibid.*, p. 26, OG 1.1.

¹²⁸ Law on Courts, art. 28, 30.

¹²⁹ *Ibid.*, art. 33.

¹³⁰ Law on Judicial Council and Judges, art.10.

¹³¹ Law on Courts, art.38.

¹³² Constitution of Montenegro, art. 128.

¹³³ *Ibid.*, art. 124.

¹³⁴ Samir Kajosevic. 2022. *Montenegro Arrests Ex-Head of Supreme Court for Abuse of Office*. <https://balkaninsight.com/2022/04/18/montenegro-arrests-ex-head-of-supreme-court-for-abuse-of-office/> (Accessed 23 May 2024).

¹³⁵ Human rights Action. 2024. *Election of the President of the Supreme Court of Montenegro – An important Step for Montenegro's Accession to the EU*. <https://www.hraction.org/2024/03/14/election-of-the-president-of-the-supreme-court-of-montenegro-an-important-step-for-montenegros-accession-to-the-eu/?lang=en>. (Accessed 10 June 2024).

significant contributing factor to the ongoing deadlock, leaving the crucial position of the President of the Supreme Court vacant despite its important functions.

3.2.3. Presidents of other courts

Court presidents are responsible for organizing court work, which includes managing the court, organizing court divisions and sessions, overseeing trials and internal operations,¹³⁶ as well as implementing other measures for the timely and orderly performance of court duties.¹³⁷

Court presidents are also responsible for formulating the annual task distribution plan, ensuring balanced allocation of tasks and the specialization of judges.¹³⁸ In cases where there are substantial changes in the number of judges or the nature of cases, the president of a court has the authority to adjust the annual task distribution, with the aim of minimizing disruptions to the established allocation system.¹³⁹

The mandate of the court president is limited to two terms, according to the Law on the Judicial Council and Judges.¹⁴⁰ However, there have been at least two cases of Basic Court Presidents who were appointed by the Judicial Council for a third mandate in 2019 and 2020, and who are still in office.¹⁴¹ Such extra-procedural appointments are problematic as they erode the predictability and stability of judicial administration. GRECO has also criticized the reappointment of court presidents for a consecutive third time, as this does not prevent the over-concentration of power as originally recommended.¹⁴²

¹³⁶ Law on Courts, art. 28.

¹³⁷ *Ibid.*, art. 30.

¹³⁸ *ibid.*, art. 31.

¹³⁹ *ibid.*, art. 32.

¹⁴⁰ Law on Judicial Council and Judges, art. 42.

¹⁴¹ European Commission 2023, *supra* note 36, p. 25.

¹⁴² GRECO, Fourth Evaluation Round, *supra* note 121, para. 26.

4. Selection and appointment of judges

4.1. International standards

Under international law and standards on the independence of the judiciary, judges must be appointed based on specific criteria and in a transparent manner to ensure impartiality.¹⁴³ UN Basic Principle 10 provides that “[p]ersons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.”¹⁴⁴

States have an obligation to ensure fair and independent judicial appointment procedures, as a guarantor of judicial independence, which is necessary for a fair trial, pursuant to by Article 14 of the ICCPR and Article 6 of the ECHR. As the UN Human Rights Committee has affirmed, “[t]he requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges [...]”.¹⁴⁵ Unless judges are appointed and promoted based on their legal skills, integrity, and ability, the judiciary risks not complying with its core function: imparting justice independently and impartially.¹⁴⁶

The European Court of Human Rights has held that: “... [i]n determining whether a body can be considered to be ‘independent’ — notably of the executive and of the parties to the case — the Court has had regard to the manner of appointment of its members and the duration of their term of office, the existence of guarantees against outside pressures and the question of whether the body presents an appearance of independence.”¹⁴⁷ The authority in charge of the selection and career of judges should be independent of the government and administration.¹⁴⁸

Appointments should be made based on objective criteria that focus on the candidate's legal expertise, integrity, and capacity to adjudicate fairly.¹⁴⁹ Furthermore, appointments must adhere to principles of non-discrimination, ensuring that no candidate is excluded based on protected status grounds.¹⁵⁰ Gender parity should also be a consideration in appointments to promote equality and reflect the diverse composition of society.

The Council of Europe Committee of Ministers Recommendation provides as follows:¹⁵¹

Chapter VI - Status of the judge

Selection and career

44. Decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities. Such decisions should be based on merit, having regard to the qualifications, skills and

¹⁴³ ICJ Practitioners Guide No. 1, *supra* note 6.

¹⁴⁴ UN Basic Principles, *supra* note 4, principle 10.

¹⁴⁵ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 19.

¹⁴⁶ ICJ Practitioners Guide No. 1, *supra* note 6, p. 41.

¹⁴⁷ Campbell and Fell v. The United Kingdom, ECtHR (Application No. 7819/77; 7878/77), Judgment, 28 June 1984, para. 78.

¹⁴⁸ CCJE, Opinion No. 1, *supra* note 7, para. 36.

¹⁴⁹ Council of Europe Recommendation on judges, *supra* note 71, para. 44.

¹⁵⁰ *Ibid.*, para. 45.

¹⁵¹ *Ibid.*, paras. 44-47.

capacity required to adjudicate cases by applying the law while respecting human dignity.

45. There should be no discrimination against judges or candidates for judicial office on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, disability, birth, sexual orientation or other status. A requirement that a judge or a candidate for judicial office must be a national of the State concerned should not be considered discriminatory.

46. The authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers. With a view to guaranteeing its independence, at least half of the members of the authority should be judges chosen by their peers.

47. However, where the constitutional or other legal provisions prescribe that the head of State, the government or the legislative power take decisions concerning the selection and career of judges, an independent and competent authority drawn in substantial part from the judiciary (without prejudice to the rules applicable to councils for the judiciary contained in Chapter IV) should be authorised to make recommendations or express opinions which the relevant appointing authority follows in practice.

48. The membership of the independent authorities referred to in paragraphs 46 and 47 should ensure the widest possible representation. Their procedures should be transparent with reasons for decisions being made available to applicants on request. An unsuccessful candidate should have the right to challenge the decision, or at least the procedure under which the decision was made.

4.2. Selection of judges in Montenegro

4.2.1. The procedure of selection of judges

The Judicial Council is responsible for the selection, promotion, transfer and dismissal of judges,¹⁵² and the procedures are regulated by the Law on the Judicial Council and Judges.¹⁵³ The general eligibility criteria are outlined in the Law on Courts.¹⁵⁴

Since 2015, the process for appointing judges in Montenegro has started with a national public call for applications.¹⁵⁵ Candidates must fulfil specific eligibility criteria, including holding a law degree, passing both the State and bar exams, and having the required legal work experience.¹⁵⁶ The required experience varies by court level. For example, a judge for the Misdemeanour Court must have at least four years of legal experience, with two years post-bar exam, while a Supreme Court judge requires at least fifteen years of experience as a judge or public prosecutor, or twenty years in other relevant legal roles.

The criteria for selecting judges appointed for the first time are based on their performance in two key areas: the written test, or their score on the bar exam, in accordance with the relevant regulations.¹⁵⁷ Additionally, the performance of candidates during the interview is taken into consideration when assessing their suitability for the judicial position.¹⁵⁸

¹⁵² Constitution of Montenegro, art.125.

¹⁵³ Law on the Judicial Council and Judges, arts. 45-71.

¹⁵⁴ Law on Courts, arts. 82-83.

¹⁵⁵ Simonovic, *supra* note 20, p. 13.

¹⁵⁶ Law on the Judicial Council and Judges, arts. 37-38.

¹⁵⁷ *Ibid.*, art. 47(1).

¹⁵⁸ *Ibid.*, art. 47(2).

The selection process for judges in Montenegro involves five key steps outlined in the law. First, candidates for judges of basic courts undergo a written test conducted by a commission appointed by the Judicial Council, which is composed of three members: two judges from the Judicial Council and one "eminent lawyer".¹⁵⁹ This test evaluates their ability to draft decisions in criminal and civil matters.¹⁶⁰ Following the written test, candidates who score above a set threshold proceed to an interview conducted by the Judicial Council.¹⁶¹ During the interview, candidates are assessed on their motivation to work in a court, communication skills, decision-making ability, and understanding of the role of a judge in society.¹⁶²

Following the interview, members of the Judicial Council evaluate the candidates based on their interview performance, submitted documentation, and any additional opinions provided. Each member fills in a standardized assessment form, which is then submitted to the commission. The commission calculates the average score for each candidate based on these evaluations and compiles a list of candidates ranked by their scores. This ranked list is then submitted to the Judicial Council for final decision-making.¹⁶³ In cases where candidates have the same score, preference is given to those who scored higher on the written test or the bar exam.¹⁶⁴ If further preference cannot be determined, the Judicial Council selects candidates by secret ballot.¹⁶⁵ Finally, the Judicial Council decides on the selection of candidates for judicial positions based on announced vacancies and the ranking list.¹⁶⁶

Additionally, the Judicial Council determines the assignment of selected candidates to receive initial training at the Basic Court in Podgorica.¹⁶⁷ The training period of 18 months is divided into two parts: six months of theoretical training and 12 months of practical training.¹⁶⁸ According to Article 53 of the Law on Judicial Council and Judges, candidates must start their employment at the Basic Court during this training period. Once the training is successfully completed, as outlined in Article 54, the Judicial Council formally appoints the candidates as judges of the Basic Court.

The process for becoming a judge in Montenegro is therefore lengthy, which includes the bar exam, two years as court counsellors, and further exams before a potential 18-month training period.¹⁶⁹ The ICJ mission repeatedly heard that only the training part of this process is under active discussion for review, with debates focusing on whether to shorten the training duration from 18 to six months. This question is reflected in the latest draft of the Law on the Judicial Council, which proposes shortening the training to six months.¹⁷⁰ However, there is less emphasis on addressing the overall cumbersome and prolonged path to judicial appointment. While there are objectives to improve training for members of the judiciary, the Judicial Reform Strategy 2024-2027 does not address this specific issue.

The problem of the lack of judges to fill existing vacancies (*see section IV.3*) appears to be impelled in part by the lack of interest among legal professionals in joining the

¹⁵⁹ Law on the Judicial Council and Judges, art. 48.

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*, art. 49.

¹⁶² *Ibid.*

¹⁶³ OHCHR. Montenegro: submission to the report on national Judicial Council - Questionnaire of the Special Rapporteur on the independence of judges and lawyers, pp. 6-7.

¹⁶⁴ Law on the Judicial Council and Judges, art. 50.

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid.*, art. 51.

¹⁶⁷ *Ibid.*

¹⁶⁸ Law on Centre for Training in Judiciary and State Prosecution Service, art. 42.

¹⁶⁹ Law on the Judicial Council and Judges, art. 38.

¹⁷⁰ Draft Law, *supra* note 33, art. 54.

profession. An example was provided regarding a number of vacancies published by the Basic Court of Podgorica for judges at the end of 2023, where for the advertisement of 41 vacancies at the court, only nine applications were received.

Various reasons were shared with the mission, including the lengthy process to become a judge, poor working conditions, the unpredictability of the final placement of the judge to a specific court in the country, low remuneration during the training period, and the overall negative perception of the judiciary, which has been declining over the recent years.

At the same time, the ICJ mission was told¹⁷¹ that in the Constitutional Court, there were currently 23 vacant positions including those of legal advisors, assistants and other supporting staff. There appears to exist a general problem of an inability to attract both new judges and other staff to courts.

4.2.2. Appointments of judges to the Constitutional Court and to the Supreme Court

For the election of each of the seven judges of the Montenegrin Constitutional Court, a two-thirds majority of the Parliament is required.¹⁷² This involves a proposal by the President for two judges and a competent working body of the Parliament for the other five.¹⁷³ The terms of these judges are 12-years without the possibility of renewal. This accords with the general principle that judicial tenure should be for a single fixed term, without the possibility of renewal, given the possibility for real or perceived influence, pressure and outright corruption that is a consequence of dependency on political actors for reappointment. The judges of the Constitutional Court elect among themselves their President for a non-renewable three-year term.¹⁷⁴ However, if a two-thirds majority is not reached in the first round, a second vote follows after one month where only a three-fifths majority is required to elect a judge to the Constitutional Court.¹⁷⁵ This serves as an “anti-deadlock” mechanism to avoid a blockade of new appointments due to political contestation.

The persistent inability to elect new Constitutional Court judges resulted in a shutdown of the Constitutional Court’s operations between September 2022 and February 2023, as it no longer met the quorum of four to make judgments with only three out of seven judges in place.¹⁷⁶ In February 2023, under pressure from the European Commission, which threatened to suspend accession negotiations, three new judges were elected.¹⁷⁷ Both the Venice Commission and the European Commission have stressed the need to have all seven judges in place, emphasizing that filling the remaining vacant position is essential for a well-functioning court.¹⁷⁸ The UN Special Rapporteur has also underscored this need, urging Members of Parliament to prioritize the interests of the country over political considerations.¹⁷⁹ In November 2023, more than three years after the process of

¹⁷¹ In April 2024

¹⁷² Constitution of Montenegro, art. 153.

¹⁷³ *Ibid.*

¹⁷⁴ *Ibid.*, arts. 82(13), 91, 95(5) and 153.

¹⁷⁵ *Ibid.*, art.91.

¹⁷⁶ Milica Zindović, Nikola Mirković, and Daliborka Uljarević, “A Decade of Montenegrin Accession Negotiations with the EU: How to Get Out of the Roundabout?” in *Friedrich-Ebert Stiftung*, 2022, p. 7.

¹⁷⁷ Samir Kajosevic. 2023. *Montenegro Starts Unblocking Constitutional Court, Electing New Judges*. <https://balkaninsight.com/2023/02/27/montenegro-starts-unblocking-constitutional-court-electing-new-judges/> (Accessed 3 June 2024).

¹⁷⁸ European Commission 2023, *supra* note 36, p. 22; Venice Commission, Follow-up opinion CDL-AD(2023)011, *supra* note 120, p. 4.

¹⁷⁹ OHCHR. 2023. UN Special Rapporteur on the independence of judges and lawyers Ms. Margaret Satterthwaite: Preliminary observations on the official visit to Montenegro (19-26 September 2023). <https://www.ohchr.org/sites/default/files/documents/issues/ijudiciary/statements/20230926-EOM-SRIJL-EN.pdf> (Accessed 19 July 2024), p. 3.

appointing judges to the Constitutional Court began, the last vacant position was also filled.¹⁸⁰

The Constitutional Court's inability to function resulted in a large case backlog. In the interim, the Venice Commission exceptionally provided its own opinion on the constitutionality of amendments to the Law on the President before the Constitutional Court could do so, concluding that the amendments were unconstitutional. Although the Government proceeded with the amendments, the Constitutional Court recently declared them unconstitutional retroactively.¹⁸¹

As mentioned in Section III.2.2, Montenegro has also faced challenges in electing a new President for the Supreme Court following the resignation of the previous President. With eight unsuccessful rounds of voting, the position of the President of the Supreme Court remained vacant at the time of writing.

4.3. The number of judges

In recent years, Montenegro has faced a significant shortage of judges, primarily due to a wave of mass retirements triggered by the 2020 Law on Pensions, which lowered the retirement age. This law also offered a special incentive, allowing judges who retired one or two years early to receive their full wage for that year. Coupled with a lack of interest from new candidates entering the profession, this has resulted in a high number of vacancies in judicial positions, creating a significant backlog.

In 2022, Montenegro had 263 full-time judges, amounting to 42.4 per 100,000 inhabitants, compared to the European average of 22.2 judges, as reported by the CEPEJ.¹⁸² The high number of judges does not appear to have a single cause. Factors include the lack of support and administrative staff, that creates a serious administrative burden on the judges, and the lack of adequate equipment and technologies that could make the work of a judge easier and more efficient. The Ministry of Justice also told the ICJ mission that there were far more cases in Montenegro than in other countries, and that courts are frequently resorted to by individuals in Montenegro. The ICJ was unable to verify this information.

According to data provided in the Judicial Reform Strategy 2024-2027, over 18 percent of judicial positions were unfilled in 2023. The reform aims to address this issue through its operational objectives, aiming to fill 100 percent of judicial positions by 2027.¹⁸³

The ICJ Mission heard that the Supreme Court also faced a significant decrease in the number of judges, operating with only six instead of nineteen mandated, including the court president. The acting president, who was also a member of the Judicial Council, played a crucial role in appointing new judges and representing the Supreme Court at the Judicial Council. In March 2022, the Judicial Council elected 11 judges to the Supreme Court.¹⁸⁴ The court successfully integrated new judges, resulting in a current total of 17 judges, with Vesna Vučković serving as the acting president.

¹⁸⁰ Report of the Special Rapporteur, *supra* note 8, para. 34.

¹⁸¹ Venice Commission, Information on the follow-up to the Urgent Opinion on the Law on amendments to the Law on the President of Montenegro (Montenegro), CDL-PI(2023)023, 2023.

¹⁸² European Commission 2023, *supra* note 36, p. 29.

¹⁸³ Judicial Reform Strategy (2024-2027), *supra* note 28, p. 27, OG 1.2.

¹⁸⁴ European Commission 2022, *supra* note 18, p. 22.

5. Security of tenure and the judicial career

5.1. International standards

Security of tenure of judges is a prerequisite of judicial independence and is guaranteed under international law and standards on the independence of the judiciary. The UN Basic Principles stipulate that “[j]udges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists”.¹⁸⁵ The UN Human Rights Committee has affirmed that: “[t]he requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exists, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature.”¹⁸⁶

Under international standards judges should be appointed for a single fixed but reasonably lengthy term which may or may not extend until their retirement. The Venice Commission recommends that ordinary judges be appointed permanently until retirement to ensure judicial independence and stability.¹⁸⁷ A permanent appointment should only be terminated in cases of serious breaches of disciplinary or criminal provisions established by law, or when the judge is no longer able to perform judicial functions.¹⁸⁸ In situations where constitutional safeguards for judicial independence, such as life tenure, are in place, practical measures like involuntary transfers should not be used by authorities as a tool for retribution against judges whose rulings may oppose the interests of those in power.¹⁸⁹ Such practices undermine the judiciary's independence and erode public trust in the legal system.

International standards do allow for a fixed term of appointment, however, where judges are appointed for a limited period of time, not generally subject to renewal.¹⁹⁰ Reappointment is only possible where it is done by an independent appointment body, and where decisions are made on merit and on the basis of objective criteria without political considerations.¹⁹¹

5.2. Judicial career under Montenegrin law

5.2.1. Terms of office

According to the Constitution of Montenegro, judicial duty is permanent.¹⁹² A judge's service ends at their own request, upon reaching retirement age, or if they are sentenced to unconditional imprisonment. A judge may be dismissed if convicted of an offense that

¹⁸⁵ UN Basic Principles, *supra* note 4, principle 12.

¹⁸⁶ UN Human Rights Committee, General Comment 32, para. 19.

¹⁸⁷ Report on the Independence of the Judicial System, *supra* note 73, para. 38.

¹⁸⁸ Council of Europe Recommendation on judges, *supra* note 71, para. 50; Judicial Integrity Group, 'Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct' (January 2010), Article 13.2.

¹⁸⁹ ICJ. 2016. Practitioners Guide No. 13: Judicial Accountability International standards on accountability mechanisms for judicial corruption and judicial involvement in human rights violations, p. 112.

¹⁹⁰ CCJE, Opinion No. 1, *supra* note 7, para. 52.

¹⁹¹ *Ibid.*

¹⁹² Constitution of Montenegro, art. 121(1).

makes them unfit for the position, if they perform their duties unprofessionally or negligently, or if they permanently lose the ability to perform their duties.¹⁹³

5.2.2. Terms of office of court presidents

According to Montenegrin law, specifically the Law on the Judicial Council and Judges, the tenure of court presidents is clearly defined and restricted. Their office terminates upon the expiry of their appointed term, the termination of their judicial office, at their own request, or in the event of the dissolution or merger of courts.¹⁹⁴

The law stipulates that court presidents are limited to serving two consecutive terms.¹⁹⁵ This applies equally to the President of the Supreme Court, who can be elected no more than twice.¹⁹⁶ However, this legal framework has not always been adhered to in practice.

In 2019, the Judicial Council decided to elect several court presidents of the basic courts in Podgorica, Bar, Rozaje and Kotor, who had already served the maximum of two mandates as the head of their respective courts, for an additional mandate.¹⁹⁷ Some of the elected court presidents were elected for their fifth or eighth term in office.¹⁹⁸

A notable case highlighting these concerns involved the former President of the Supreme Court. Despite the clear legal restriction, the President served a third term. This decision drew significant criticism from GRECO, highlighting concerns about the potential over-concentration of power.¹⁹⁹ In response to this pressure, the President of the Supreme Court eventually stepped down at the end of 2020.²⁰⁰

5.2.3. Transfer to another court

Judges in Montenegro are typically assigned to the court where they were appointed but can be temporarily deployed to another court for up to one year with their consent.²⁰¹ The deployment is intended to address issues such as judicial backlogs, recusal of judges, or other justified reasons. This temporary deployment is decided by the Judicial Council, which acts upon the request of the president of the court needing assistance.²⁰² The process involves consultation with the president of the judge's current court, the judge, and the president of the court to which the judge will be deployed. The court receiving the judge is responsible for covering any related expenses.

The Law on the Judicial Council and Judges also allows for the transfer of a judge to another court without their consent "in the case of reorganization of the courts which reduces or abolishes the number of positions for judges".²⁰³ However, the Venice Commission has emphasized the need for protections against involuntary transfers to lower courts to

¹⁹³ *Ibid.*, art. 121.

¹⁹⁴ Law on the Judicial Council and Judges, art. 106.

¹⁹⁵ *Ibid.*, art. 42.

¹⁹⁶ Constitution of Montenegro, art. 124(5).

¹⁹⁷ Simonovic, *supra* note 20, p. 14.

¹⁹⁸ Human Rights Action. Sudski Savjet opet izabrao Vučkovića na 8 mandat uprkos zakonskom ograničenju. 2020. <https://www.hraction.org/2020/11/24/sudski-savjet-opet-izabrao-vuckovica-na-8-mandat-uprkos-zakonskom-ogranicenju/> (Accessed 3 June 2024).

¹⁹⁹ GRECO, Fourth Evaluation Round, *supra* note 121, para. 26.

²⁰⁰ Samir Kajosevic. 2022. *Montenegro Arrests Ex-Head of Supreme Court for Abuse of Office*. <https://balkaninsight.com/2022/04/18/montenegro-arrests-ex-head-of-supreme-court-for-abuse-of-office/> (Accessed 23 May 2024).

²⁰¹ Law on the Judicial Council and Judges, art. 82.

²⁰² *Ibid.*, art. 83.

²⁰³ *Ibid.*, art. 85.

prevent improper use of this power, including for political or other improper reasons.²⁰⁴ The latest amendments to the law address these concerns by permitting transfers without consent only within the same jurisdiction and instance during court reorganizations, while ensuring the judge retains their existing salary.²⁰⁵

5.2.4. Retirement age of judges

The Constitution regulates the termination of the judicial service when judges meet the age requirements for retirement.²⁰⁶ However, there is a legal gap regarding the specific retirement age for judges, leaving the general Law on Pension Insurance, which applies to all public officials, to also govern judges' retirement.²⁰⁷

In 2020, the Montenegrin Parliament amended the Law on Pension and Disability Insurance, lowering the mandatory retirement age from 67 to 66 for men and from 67 to 64 for women.²⁰⁸ That same year, the Judicial and Prosecutor Council interpreted this law to apply to judges, resulting in a significant number of judges retiring simultaneously. The mission was also informed about an additional incentive that was introduced allowing judges to receive a financial bonus if they retire one to two years before the mandatory retirement age. This further decreased the number of judges in the country.

The mission was told that in the last three years, 106 judges, representing one-third of the judiciary, exited the judicial system. Among them, 52 judges took early retirement one year before meeting the pension requirement by taking advantage of the special provision. Consequently, a high number of judicial positions became vacant (and still are), resulting in the current challenges and gaps. Subsequently, the Judicial Council terminated the mandate of a number of judges for having met the (lowered) retirement age, including the mandate of a Supreme Court judge in 2021. However, in January 2023, the Administrative Court overturned the termination of one Supreme Court judge's term, calling it discriminatory, and reinstated the judge. Despite this, the Council repeated similar actions, leading to further legal uncertainty and threatening judicial independence.²⁰⁹ The Constitutional Court later ruled these provisions unconstitutional and instructed the Government to submit an amended draft law to Parliament.²¹⁰

The ICJ mission heard various points of view regarding the retirement question. Some argued that the judges who retired were the most experienced, and their departure weakened the judicial system. Others viewed the developments positively, seeing it as an opportunity to refresh the judiciary with new judges who bring more modern approaches. What appears uncontested is that the change in the age of retirement was done in a manner that was unexpected by the system which appeared unprepared and continues to struggle with its consequences.

In response to criticism from the Venice Commission,²¹¹ the latest draft of the Law on the Judicial Council and Judges specifies that judges, court presidents, and the president of the Supreme Court must retire at the age of 67.²¹² This amendment is a positive development as it addresses the disparity introduced in 2020 between the retirement ages

²⁰⁴ Venice Commission, Opinion No. 1110/2022 on the draft amendments to the Law on the Judicial Council and Judges (Montenegro), CDL-AD(2022)050 (19 December 2022), para. 45.

²⁰⁵ Draft Law, *supra* note 33, art. 85.

²⁰⁶ Constitution of Montenegro, art. 121.

²⁰⁷ Venice Commission, Opinion No. 1110/2022, *supra* note 204, para. 12.

²⁰⁸ U.S. Department of State. 2021. *Montenegro 2020 Human rights Report*. <https://www.state.gov/wp-content/uploads/2021/03/MONTENEGRO-2020-HUMAN-RIGHTS-REPORT.pdf> p. 56.

²⁰⁹ Simonovic, *supra* note 20, p. 15.

²¹⁰ Report of the Special Rapporteur, *supra* note 8, para. 42.

²¹¹ Venice Commission, Follow-up opinion CDL-AD(2023)011, *supra* note 120, para. 10.

²¹² Draft Law, *supra* note 33, art. 105.

for men and women. Such disparity is discriminatory and violates international human rights law, including principles of non-discrimination, equality, and equal protection under the law as enshrined in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the ICCPR. The CCJE also emphasized that non-discrimination and gender inequality are fundamental values in Europe, particularly within the judiciary and any form of discrimination within the judiciary can compromise judicial independence.²¹³

5.2.5. Remuneration of judges

The Law on the Judicial Council and Judges establishes that judges in Montenegro are entitled to a salary and other work-related benefits in accordance with the law.²¹⁴ The draft law of 2023 expands on this by stating that judges are subject to the same remuneration scheme as the entire public administration.²¹⁵ The Law on Salaries of Employees in the Public Sector establishes salary coefficients based on a judge's years of experience and the rank of the court they serve.²¹⁶ Judges also have access to additional benefits, including life insurance, rental subsidies for those without housing in their work location, and unemployment benefits.²¹⁷

Overall, the salaries of judges and prosecutors are at least 1.9 times and at most 4.6 times higher than the average national salary.²¹⁸ This places Montenegro in the lower middle part of a comparative ranking of all European countries by the European Commission for the Efficiency of Justice (CEPEJ).²¹⁹ For certain "corruption-prone" positions within the Supreme State Prosecutor's Office, such as State prosecutors dealing with organized crime, war crimes, corruption, or money laundering, there is an additional special allowance of 45 percent of the basic salary.²²⁰ However, the ICJ mission heard that salaries for starting judicial positions remain relatively low, contributing to the lack of attractiveness of the profession. This issue was also identified by the UN Special Rapporteur during her mission to Montenegro in 2023.²²¹

A proposal by the Association of Judges of Montenegro to regulate the salaries and pensions of judges has been rejected by the Montenegrin government, which argued that differential treatment of judges compared to other public servants is undesirable. However, the Venice Commission stated that such differential treatment would be justified²²² and recommended that a specific remuneration scheme for judges be established in the law, as "the level of remuneration for judges should be guaranteed by law in conformity with the dignity of their office and the scope of their duties and commensurate with the dignity of a judge's profession and his/her burden of responsibility".²²³ A failure to establish such a scheme could undermine judicial independence and create incentives for corruption, as

²¹³ CCJE, Opinion of the CCJE Bureau following a request by the Association of Judges of Montenegro concerning the situation with regard to the retirement of judges CCJE-BU(2022)4 (20 December 2022), p. 2.

²¹⁴ Law on the Judicial Council and Judges, art. 5.

²¹⁵ Law on the Judicial Council and Judges with Revised draft amendments 2023, *supra* note 33, art. 5.

²¹⁶ The Law on Salaries of Employees in the Public Sector. https://www.paragraf.me/propisi-crngore/zakon_o_zaradama_zaposlenih_u_javnom_sektoru.html, art. 22.

²¹⁷ Report of the Special Rapporteur, *supra* note 8, para. 48.

²¹⁸ European Commission for the Efficiency of Justice (CEPEJ), 'Evaluation of the judicial systems (2020-2022): Montenegro'. <https://rm.coe.int/montenegro-2020-en/1680a85c8d> (30 September 2022), p. 90.

²¹⁹ CEPEJ, 'European judicial systems: CEPEJ Evaluation Report – 2022 Evaluation cycle (2020 data). Part 1: Tables, graphs and analyses' (30 September 2022), pp. 80-83.

²²⁰ CEPEJ, 'Evaluation of the judicial systems (2020-2022): Montenegro' (30 September 2022) <https://rm.coe.int/montenegro-2020-en/1680a85c8d>, p. 91.

²²¹ Report of the Special Rapporteur, *supra* note 8, para. 48.

²²² Venice Commission, Opinion No. 1110/2022, *supra* note 204, pp. 5-6.

²²³ *Ibid.*, paras. 12,15.

insufficient or insecure remuneration may lead judges to seek additional income through improper means.

In response, the latest draft of the Law on the Judicial Council and Judges includes a provision on "Financial Independence", stating that judges' salaries and pensions should reflect their office's dignity and ensure their independence.²²⁴ Additionally, amended draft Article 5 guarantees the rights of judges to salary, compensation, and other benefits according to judicial income law.²²⁵ Montenegrin authorities have expressed their intent to prepare this new legislation after adopting the current draft law, aiming for completion in the first quarter of 2025.²²⁶ To fully meet international standards and the Venice Commission's recommendations, the timely introduction of legislation that accords with international standards and provides for adequate remuneration is essential.²²⁷

While Montenegro's legal framework is partly compliant with international human rights standards, issues such as unauthorized extensions of terms and delays in appointing key judicial figures have undermined judicial stability. The judiciary also faces a shortage of judges due to unexpected changes in retirement age and inadequate remuneration, further destabilizing and undermining the attractiveness of judicial careers. Despite relatively higher salaries for judges compared to the national average, the remuneration for entry-level judicial positions remains insufficient, contributing to the profession's lack of appeal. This insufficiency in pay is particularly concerning as it can create conditions that foster corruption, compromising the integrity and independence of the judiciary. Addressing these issues is crucial for strengthening judicial independence and maintaining public confidence in the legal system.

²²⁴ Draft Law, *supra* note 33, art. 2a.

²²⁵ *Ibid.*, art. 5.

²²⁶ Venice Commission, 'Urgent Follow-up Opinion on the revised draft amendments to the Law on the Judicial Council and Judges' (6 May 2024) CDL-PI(2024)007-e, para. 19.

²²⁷ *Ibid.*, para. 20.

6. Judicial integrity and Accountability

6.1. International standards

The Basic Principles on the Independence of the Judiciary establish that “judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary”.²²⁸ Regarding standards related to disciplinary proceedings, charges and complaints against a judge must be processed expeditiously and fairly, with an appropriate procedure, and the guarantee of the right to a fair hearing and confidentiality.²²⁹ Disciplinary proceedings must be “determined in accordance with established standards of judicial conduct.”²³⁰ Additionally, international standards stress that disciplinary offenses should be clearly defined, typically within a written code of professional conduct or other legal instruments, developed by judges and adopted at the national level.²³¹

The international standards addressing judicial integrity is the Bangalore Principles of Judicial conduct, recommended by the UN ECOSOC in its resolution 2006/23, supplemented by the Measures for the effective implementation of the Bangalore Principles, developed by the UNODC Judicial Integrity group.²³² These provide detailed guidance for insuring the six core values of judicial conduct: independence, impartiality, integrity, propriety, competence and diligence.

Sanctions against judges must be proportionate and permissible under the jurisdiction’s disciplinary system.²³³ They must only be initiated for serious misconduct, specifically defined in the law.²³⁴ Justice officials should be held accountable for gross professional misconduct that damages the reputation of the judiciary.²³⁵ Judges should be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.²³⁶ Disciplinary proceedings must be transparent, impartial, fair, and objective, ensuring that they do not undermine the credibility of the justice system or create fear of arbitrary removal or sanctions among judges.²³⁷ The UN Special Rapporteur on the independence of judges and lawyers has emphasized that bodies responsible for addressing judicial corruption and other misconduct should consist entirely, or at least predominantly, of judges, with the possibility of including representatives from the legal profession or academia. Representatives of the political branches of government (executive and legislative) must be entirely excluded.²³⁸ A specific body or person should have responsibility for receiving complaints, evaluating them, and referring the matter to an independent disciplinary authority.²³⁹ The right to an appeal must be provided and the final decision must be published.²⁴⁰

²²⁸ UN Basic Principles, *supra* note 4, principle 8.

²²⁹ *Ibid.*, principle 17.

²³⁰ *Ibid.*, principle 19.

²³¹ ICJ Practitioners Guide No. 13, *supra* note 189, p. 25.

²³² Judicial Integrity Group, ‘Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct’ (January 2010).

²³³ UN Basic Principles, *supra* note 4, principles 17–20; Council of Europe Recommendation on judges, *supra* note 71, para. 69; Implementation Measures, *supra* note 188, para. 15.8.

²³⁴ Implementation Measures, *supra* note 188, para. 15.1.

²³⁵ Gabriela Knaul, Special Rapporteur on the Independence of Judges and Lawyers, Report on Judicial Accountability, UN Doc. A/HRC/26/32, (2014), para. 87.

²³⁶ UN Basic Principles, *supra* note 4, principles 17–19; ICJ Practitioners Guide No. 13, *supra* note 189, p. 45.

²³⁷ Report on Judicial Accountability, *supra* note 235, para. 88.

²³⁸ *Ibid.*, paras. 93, 126; Leandro Despouy, Special Rapporteur on the Independence of Judges and Lawyers, Report on Guarantees of Judicial Independence, UN Doc. A/HRC/11/41, (2009), paras 60, 98.

²³⁹ Implementation Measures, *supra* note 188, para. 15.3.

²⁴⁰ *Ibid.*, para. 15.7.

The Council of Europe's Recommendation on judges provides that disciplinary proceedings should be conducted by an independent authority or a court with all the guarantees of a fair trial and provide the judge with the right to challenge the decision and sanction.²⁴¹ A similar principle is endorsed by the Consultative Council of European Judges and by the Venice Commission.²⁴²

Judges should generally be immune from criminal proceedings concerning the content of their judgments, including their interpretation of the law, assessment of facts, or weighing of evidence, as this immunity is essential to safeguarding judicial independence.²⁴³ However, international standards dictate that judges must remain accountable for ordinary crimes not related to their judicial decisions.²⁴⁴ To protect against potential abuse, it is recommended that permission from an independent authority, such as a judicial council, be required before a judge can be arrested or charged with a crime.²⁴⁵

Exceptions to this immunity are necessary for serious offenses such as judicial corruption, gross human rights violations, war crimes, crimes against humanity, and other crimes under international law.²⁴⁶ Article 11(1) of the UN Convention against Corruption underscores the importance of judicial independence in combating corruption, stating that each State Party must, in accordance with its legal system's fundamental principles, take measures to strengthen judicial integrity and prevent opportunities for corruption.²⁴⁷

6.2. The procedure for disciplinary responsibility

6.2.1. Disciplinary Panels and Judicial Council

The legal framework under the Law on the Judicial Council and Judges for establishing disciplinary liability stipulates that the procedure for determining liability for minor and severe disciplinary offences is conducted by the 'Disciplinary Panel'.²⁴⁸ This panel, appointed by the Judicial Council on the president's proposal for a two-year term, comprises "three members of the Judicial Council, two members from among the judges and one member from among the "eminent lawyers," who shall be the chairman of the

²⁴¹ Council of Europe Recommendation on judges, *supra* note 71, para. 69.

²⁴² Singhvi Declaration, para. 26(b), that continues: "The power of removal may, however, be vested in the Legislature by impeachment or joint address, preferably upon a recommendation of such a Court or Board . . ."; Universal Charter of Judges, Approved by the delegates attending the meeting of the Central Council of the International Association of Judges in Taipei (Taiwan) on 17 November 1999, Article 11; European Charter on the Statute of Judges, Council of Europe, DAJ/DOC (98) 23, para. 5.1; CCJE, Magna Carta of Judges, Strasbourg, 17 November 2010, CCJE (2010)3, para. 6; Bangalore Principles Implementing Guidelines, para. 15.4; CCJE, Opinion No. 3 of the Consultative Council of European Judges to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, CCJE (2002) Op. No. 3, 19 November 2002, paras 77 ii-iv; Venice Commission, Report on Independence of the Judiciary, *op. cit.*, para. 43.

²⁴³ Report on Judicial Accountability, *supra* note 235, paras 52, 84, 87.

²⁴⁴ Council of Europe Recommendation on judges, *supra* note 71, para. 20.

²⁴⁵ CCEJ, Opinion No. 3, on the Principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality (2002), paras. 54, 75(i).

²⁴⁶ ICJ Practitioners Guide No. 13, *supra* note 189, p. 29.

²⁴⁷ "Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary."

²⁴⁸ Law on Judicial Council and Judges, art. 114.

disciplinary panel".²⁴⁹ For the most severe disciplinary offences, the procedure is conducted directly by the Judicial Council.²⁵⁰

6.2.2. Initiation of Disciplinary Actions

The procedure for establishing disciplinary liability of judges begins with a motion filed by authorized individuals or bodies, such as members of the Judicial Council, court presidents, the president of the immediately higher court, or the president of the Supreme Court and the Commission for Monitoring the Implementation of the Code of Ethics for Judges.²⁵¹ The motion to establish the disciplinary liability of the president of the Supreme Court may be filed by the General Session of the Supreme Court.²⁵²

The Venice Commission, however, has recommended that only members of the Judicial Council should have the authority to initiate disciplinary proceedings against judges, excluding court presidents, the president of the Supreme Court, and the Commission for the Code of Ethics.²⁵³ The Commission suggested that others should inform the Judicial Council rather than file motions.²⁵⁴ While the latest draft amendments have removed the Commission for the Code of Ethics from this list, all other participants remain.²⁵⁵

In Montenegro, members of the Judicial Council are both the subjects capable of initiating the disciplinary proceedings, and the members who decide on the case.²⁵⁶ The Venice Commission has reiterated the principle that the 'accuser' should not be the same as the 'judge' and although this situation could be avoided by applying the provisions related to recusal, an explicit provision for such incompatibility should be added.²⁵⁷ The latest draft law on the Judicial Council and Judges provides that members of the Disciplinary Council, the disciplinary prosecutor, or Judicial Council members involved in initiating disciplinary actions, as well as those with potential impartiality concerns or judges facing disciplinary procedures, cannot participate in determining a judge's disciplinary liability.²⁵⁸ The formal process for recusal is essential to ensuring impartiality and fairness in the proceedings.²⁵⁹

6.2.3. Confidentiality and Transparency

A decision establishing the disciplinary liability of a judge and imposing sanctions must be drafted and submitted to both the judge and the disciplinary prosecutor within 15 days of the decision. Both the judge and the disciplinary prosecutor have the right to appeal the decision to the Supreme Court. The Supreme Court, acting through a panel of three judges, must decide on the appeal within 30 days of receiving it.²⁶⁰

While transparency and access of the public to matters of public interest are essential for the accountability of the judiciary, in matters of judicial disciplinary procedure confidentiality is essential. International standards require that the initial stage of disciplinary proceedings be kept confidential unless the judge requests otherwise.²⁶¹

²⁴⁹ Law on Judicial Council and Judges, art. 114.

²⁵⁰ *Ibid.*

²⁵¹ *Ibid.*, art. 110(1).

²⁵² *Ibid.*, art. 110(2).

²⁵³ Venice Commission, Follow-up opinion CDL-AD(2023)011, *supra* note 120, para. 31.

²⁵⁴ *Ibid.*

²⁵⁵ Draft Law, *supra* note 33, art. 110(1).

²⁵⁶ Law on Judicial Council and Judges, arts. 110, 114.

²⁵⁷ Venice Commission, Opinion No. 1110/2022, *supra* note 204, para. 70.

²⁵⁸ Draft Law, *supra* note 33, art. 120.

²⁵⁹ Oleksandr Volvov v. Ukraine, ECtHR, Application No. 21722/11, Judgment of 9 January 2013, para. 120.

²⁶⁰ Constitution of Montenegro, art. 118.

²⁶¹ UN Basic Principles, *supra* note 4, principle 17.

Although the current Montenegrin law does not specify the confidentiality of these proceedings, the latest draft law states that the debate in the disciplinary liability procedure can be public if requested by the judge.²⁶²

The Judicial Council publishes anonymized decisions on disciplinary responsibility, but recent decisions and related proposals or dismissals are reportedly not available on their website.²⁶³ The European Commission has acknowledged improvements in the Judicial Council's transparency but emphasized the need for further enhancement, including publishing disciplinary decisions to ensure greater transparency,²⁶⁴ for instance by publishing disciplinary decisions on the Judicial Council's website.

6.2.4. Disciplinary Liability and Sanctions

Montenegrin law provides a clear and detailed²⁶⁵ list of types of misconduct that may trigger judges' disciplinary liability, categorized into different levels of severity: minor, severe, and the most severe disciplinary offences.²⁶⁶

Minor disciplinary offences occur when a judge fails to take up cases in the order they are received without a justified reason, arrives late or fails to attend scheduled trials or hearings without cause, skips mandatory training sessions, neglects mentoring duties, or fails to uphold respect for the court and the parties involved in proceedings.

Severe disciplinary offences include situations where a judge unjustifiably delays or fails to schedule trials or hearings, leading to procedural delays or the expiration of statutory deadlines for criminal prosecution or enforcement. Other severe offenses involve exceeding statutory deadlines for decision-making, failing to recuse oneself when required, obstructing the backlog reduction program, preventing lawful supervision, behaving inappropriately in public or in the exercise of judicial duties, disclosing confidential information, using the judicial office for personal gain, accepting gifts, failing to report income and assets as required, and making public statements about unresolved cases.

The most severe disciplinary offences involve a judge being convicted of a criminal offense that renders them unfit for judicial office or performing judicial duties incompetently or unconscientiously. This includes failing to achieve at least 50 percent of the expected workload without a valid reason, engaging in other public or professional activities that conflict with judicial duties, receiving consistently poor performance appraisals, or repeatedly committing severe disciplinary offenses.

The Montenegrin government is currently amending legislation, including the Law on the Judicial Council and Judges, which covers disciplinary proceedings. The revised draft amendments aim to provide more clarity to existing provisions and add new offences that can generate disciplinary proceedings.²⁶⁷ A list of sanctions is also available, providing different sanctions in accordance with the severity of the misconduct: a warning, a fine, a ban on promotion, and dismissal.²⁶⁸ The amended law on the Judicial Council and Judges establishes the sanction of a ban on advancement in addition to a fine for serious

²⁶² Draft Law, *supra* note 33, art. 32a.

²⁶³ Zlatko Vujovic. 2023. *Enhancing judicial and prosecutorial accountability*. <https://cemi.org.me/storage/uploads/iFkaVRw9pIMoU1C3FzhDPVj4ZBo8UBeT1mX0kOKK.pdf>. p. 20.

²⁶⁴ European Commission 2023, *supra* note 36, p. 24.

²⁶⁵ Venice Commission, Opinion No. 1110/2022, *supra* note 204, para. 60.

²⁶⁶ Law on Judicial Council and Judges, art.108.

²⁶⁷ Law on the Judicial Council and Judges with Revised draft amendments 2023, *supra* note 33, art.109; Venice Commission, 'Explanatory report on the draft law on amendments to the Law on the Judicial Council and Judges' (10 November 2022) CDL-REF(2022)050 (see p. 13 for a full list of the amendments made to the disciplinary offences).

²⁶⁸ Law on Judicial Council and Judges, art. 109.

disciplinary violations, depending on the severity of the violation committed.²⁶⁹ Judges cannot be held accountable for the misinterpretation of the law, wrong assessment of the facts, or weighing the evidence in a case, thus complying with the Council of Europe's recommendations.²⁷⁰

The legal framework for disciplinary issues and ethics for judges in Montenegro requires further improvement and more effective enforcement of the judicial inspection system.²⁷¹ The current system has been scrutinized by international bodies, including the Venice Commission and the European Commission, highlighting several critical areas of concern. The UN Special Rapporteur has asserted that Montenegro's existing systems are not adequately equipped to address corruption within the judiciary.²⁷²

The Venice Commission has highlighted issues regarding the proportionality between the seriousness of offenses and the severity of sanctions, particularly for the most severe disciplinary offenses.²⁷³ In some cases, unsatisfactory performance may lead to a judge's dismissal,²⁷⁴ which is problematic as purported poor performance should not automatically result in dismissal unless it clearly indicates a judge's incapability.²⁷⁵ Additionally, the law stipulates that Judicial Council members can be dismissed for any disciplinary sanction,²⁷⁶ including relatively minor matters, which also represents a disproportionate response.²⁷⁷

Moreover, the decisions made by Judicial Councils are generally deemed to lack sufficient justification.²⁷⁸ The European Commission has also drawn attention to the absence of an appeals mechanism within the Ethical Commission of the Judicial Council, which is tasked with promoting and enforcing the Code of Ethics.²⁷⁹ However, the latest draft of the Law on the Judicial Council and Judges addresses this issue by stipulating that objections to decisions can be lodged with the Judicial Council.²⁸⁰

6.2.5. Code of Ethics for Judges

The Code of Ethics for Judges in Montenegro sets out the standards of conduct expected from members of the judiciary. The Code of Ethics is generally aligned with international standards, most notably the Bangalore Principles of Judicial Conduct, which provide a global benchmark for judicial ethics.²⁸¹ The Bangalore Principles outline six core values that judges must adhere to: independence, impartiality, integrity, propriety, equality, and competence and diligence. These principles guide judges in upholding the highest standards of judicial conduct, ensuring that they remain independent from external pressures and impartial in their decision-making.

Under Montenegrin law, the Conference of Judges, comprising all judges and court presidents, adopts the Code of Ethics for Judges.²⁸² The Code outlines the guidelines and

²⁶⁹ Law on the Judicial Council and Judges with Revised draft amendments 2023, *supra* note 33, art. 109.

²⁷⁰ Council of Europe Recommendation on judges, *supra* note 71, para. 66.

²⁷¹ European Commission 2022, *supra* note 18, p. 23.

²⁷² Report of the Special Rapporteur, *supra* note 8, para. 84.

²⁷³ Venice Commission, Opinion No. 1110/2022, *supra* note 204, para. 64.

²⁷⁴ Law on the Judicial Council and Judges, arts. 108(4)(2), 109(5).

²⁷⁵ Venice Commission, Follow-up opinion CDL-AD(2023)011, *supra* note 120, para. 28.

²⁷⁶ Law on the Judicial Council and Judges, art. 20(4).

²⁷⁷ Venice Commission, Follow-up opinion CDL-AD(2023)011, *supra* note 120, para. 29.

²⁷⁸ European Commission 2022, *supra* note 18, p. 23.

²⁷⁹ *Ibid*; European Commission 2023, *supra* note 36, p. 26.

²⁸⁰ Draft Law, *supra* note 33, art. 107c(5).

²⁸¹ ECOSOC, Bangalore Principles of Judicial Conduct ECOSOC 2006/23, Annex.

²⁸² Law on Judicial Council and Judges, art. 9.

standards of behaviour necessary to uphold the judiciary's prestige and honour, requiring judges to adhere to the law, maintain impartiality, and preserve their reputation.²⁸³

The Venice Commission emphasized that ethical principles should be distinct from disciplinary provisions, and a breach of ethics should not automatically result in disciplinary, civil, or criminal proceedings.²⁸⁴ Reflecting this consideration, the draft Law on the Judicial Council and Judges removed the Commission for the Code of Ethics from those who may file a disciplinary liability motion.²⁸⁵ However, further clarification is still required.²⁸⁶

There has been limited progress regarding the promotion and enforcement of the Code of Ethics. Between 2016 and 2022, the Ethical Commission of the Judicial Council received 107 assessment initiatives on possible violations of the Code of Ethics, finding an actual breach in only nine situations.²⁸⁷ For a period of seven months, the same Commission was unable to perform its duties because it lacked a full composition of members.²⁸⁸ In 2021, there were 14 initiatives for identifying violations of the Code of Ethics by judges, of which nine were resolved (until August 2021, when the composition of the Council was missing) while four requests were submitted for giving opinions, out of which three have been resolved.²⁸⁹ On the nine resolved cases regarding possible violations of the Code of Ethics for Judges, the conclusion was that no breach of the Code occurred.

The ICJ mission was told that there is a trend of rejecting initiatives for reviewing the ethical conduct of judges without sufficient justification.²⁹⁰ The decisions often rely only on the statements of the judges under review, with no additional evidence being considered.²⁹¹ Another point raised by the mission and previously by the European Commission is that the decisions of the Ethical Commissions of the Judicial and Prosecutorial Councils should have the possibility of an effective legal remedy.²⁹² This issue is being addressed in the latest draft of the law.²⁹³

The European Commission considered that the Ethical Commissions are “*still not sufficiently effective and consistent.*”²⁹⁴

6.2.6. Corruption

Despite Montenegro's implementation of a comprehensive anti-corruption strategy and legislative framework, corruption continues to pose a significant challenge to judicial independence.²⁹⁵ This problem is reflected in the statistics of the public trust in the

²⁸³ Vujovic, *supra* note 263, p. 8.

²⁸⁴ Venice Commission, Opinion No. 1110/2022, *supra* note 204, para. 56.

²⁸⁵ Draft Law, *supra* note 33, art. 110(1).

²⁸⁶ Venice Commission, 'Urgent Follow-up Opinion on the revised draft amendments to the Law on the Judicial Council and Judges' (6 May 2024) CDL-PI(2024)007-e, paras. 35-36.

²⁸⁷ *Ibid.*, p. 15.

²⁸⁸ European Commission 2022, *supra* note 18, p. 23.

²⁸⁹ Judicial Council Montenegro, 'Annual Report on the work of the Judicial Council and overall situation in the judiciary for 2021', p. 21.

²⁹⁰ Center for Monitoring and Research. 2023. *Policy study: Enhancing Judicial and Prosecutorial Accountability*. <https://cemi.org.me/storage/uploads/iFkaVRw9pIMoU1C3FzhDPVj4ZBo8UBeT1mX0kOKK.pdf> (Accessed 11 July 2024), p. 15.

²⁹¹ *Ibid.*

²⁹² European Commission 2022, *supra* note 18, p. 23.

²⁹³ Under the latest proposal, "(a)n objection may be lodged with the Judicial Council against the decision of the Commission for the Code of Ethics for Judges." Draft Law, *supra* note 33, art. 107c(5).

²⁹⁴ European Commission 2022, *supra* note 18, p. 23.

²⁹⁵ UNCAC Coalition. 2023. New civil society report on Montenegro: comprehensive legislation not matched with practical enforcement of anti-corruption measures. <https://uncaccoalition.org/uncacparallereportmontenegro/> (Accessed 21 May 2024).

judiciary, with 57.6 percent of respondents expressing a lack of confidence in it.²⁹⁶ Inadequate investigations and a lack of successful convictions for offences, such as the failure to declare assets, coupled with a prevailing sense of impunity among high-ranking officials, further erode public faith in the system.²⁹⁷

The UN Special Rapporteur identified several risk factors for corruption in Montenegro, including the small population size, which increases the likelihood of nepotism and clientelism among judges and prosecutors. Additionally, inadequate judicial and prosecutorial salaries make justice system actors more vulnerable to financial inducements. The politicization of judicial appointments and the close ties between political parties and the judiciary, even at the highest levels, were also recognized as significant sources of potential improper influence.²⁹⁸

According to Transparency International's 2023 Corruption Perception Index, Montenegro ranked 63rd out of 180 countries.²⁹⁹ Despite some advancements, the European Commission has consistently underscored the need for Montenegro to enhance its performance in terms of conducting investigations, issuing indictments, and securing final judgments in the fight against corruption.³⁰⁰

The UN Special Rapporteur highlighted significant shortcomings in Montenegro's ability to address corruption within the judiciary. Although judges and prosecutors are required by the Law on Prevention of Corruption to declare their assets, the Agency for the Prevention of Corruption's verification process is limited, focusing mainly on whether declarations are submitted, with failures resulting only in administrative and misdemeanour proceedings.³⁰¹ Furthermore, the Judicial and Prosecutorial Councils show inconsistency in disciplining judges and prosecutors for failing to submit these reports.³⁰² Additionally, she pointed out the lack of clear distinctions between specific disciplinary offenses and ethical violations in the legal framework, which creates ambiguity and may lead to inconsistent and unfair disciplinary actions.³⁰³

Another issue highlighted during the ICJ mission is the provision of housing credits to judges, which creates dependencies and potential biases. For years, the executive power in Montenegro, led by the former DPS, exerted political influence over the judiciary by secretly granting favorable loans and apartments to judges. Despite a 2014 law prohibiting such practices, the government continued to award judges housing at significantly reduced costs and provide financial assistance for housing needs. The Judicial Council, responsible for addressing judges' housing needs, did not challenge these practices.³⁰⁴ In 2021, the National Council for the Fight against High-Level Corruption exposed cases of senior judicial officials receiving these benefits contrary to the law, with related documents

²⁹⁶ CEDEM, 'Results of the Survey on Political Public Opinion in Montenegro' (CEDEM 2023) <https://www.cedem.me/en/news/results-of-the-survey-on-political-public-opinion-in-montenegro-2/>

²⁹⁷ Group of States against Corruption (GRECO), 'Fourth Evaluation Round, Corruption prevention in respect of members of parliament, judges and prosecutors: Evaluation Report Montenegro' (19 June 2015) <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c983a>

²⁹⁸ Report of the Special Rapporteur, *supra* note 8, para. 79.

²⁹⁹ Transparency International. 2024. *Country data: Montenegro*. www.transparency.org/en/countries/montenegro (Accessed 31 May 2024).

³⁰⁰ European Commission, 'Key Findings of the 2022 Report on Montenegro' (*European Commission*, 12 October 2022) https://ec.europa.eu/commission/presscorner/detail/pt/country_22_6103 accessed 8 October 2023.

³⁰¹ Report of the Special Rapporteur, *supra* note 8, para. 84.

³⁰² European Commission 2023, *supra* note 36, pp. 27-28.

³⁰³ Report of the Special Rapporteur, *supra* note 8, para. 85.

³⁰⁴ Simonovic, *supra* note 20, p. 16.

classified as "internal".³⁰⁵ This practice compromises judicial independence, and as highlighted by the Venice Commission, bonuses and non-financial benefits involving discretionary distribution should be phased out.³⁰⁶

6.2.7. Frequency and Effectiveness of Disciplinary Proceedings

In 2021, four disciplinary proceedings against judges were conducted, and in three of them, the motion for establishing disciplinary responsibility was rejected, while in the other, the judge was sanctioned with a disciplinary penalty of 40% of their salary for a period of four months.³⁰⁷ However, the number of cases increased during 2022, when 35 initiatives for determining the disciplinary liability of judges were submitted, due to the fact that they failed to disclose their assets and income in accordance with the law provisions regulating the prevention of conflict of interest.³⁰⁸ In the last seven years, out of all the disciplinary responsibility proposals for judges, only four have been accepted and followed by sanctions imposed on the judges.³⁰⁹

The 35 proceedings related to the failure to submit assets and income ended with all the judges being acquitted before the Disciplinary Board of the Judicial Council, despite this action constituting a severe disciplinary offense under the Law on the Judicial Council and Judges. Critically, the Agency for the Prevention of Corruption determined that there had been a violation of the Law on the Prevention of Corruption through this conduct.³¹⁰ The conflict between these raises questions about the legitimacy and credibility of the process. The Judicial Council has also taken different approaches in similar cases brought before the Prosecutorial Council: its Disciplinary Committee has penalized prosecutors who did not disclose their assets.³¹¹ Overall, the decisions of the Judicial Council do not appear to be sufficiently motivated or consistent.³¹²

The mission was told that there are relatively few disciplinary proceedings overall, due to a sense of solidarity among judges, which may pose accountability issues. This concern is underscored by the fact that over the last seven years, only four disciplinary proposals have resulted in sanctions.³¹³ The European Commission noted that the system for detecting breaches of integrity rules needs to be more effective, objective, consistent, and credible.³¹⁴

The Judicial Reform Strategy 2024-2027³¹⁵ contemplates amending legislation by 2027, to enhance accountability mechanisms for judges and public prosecutors.³¹⁶ This includes amending judicial laws and secondary legislation to establish a robust disciplinary framework.³¹⁷ The new framework will be supported by efficient disciplinary bodies to

³⁰⁵ Government of Montenegro. 2021. *Čalović Marković, Abazović: Judges, prosecutors and MPs received apartments and favourable loans under a veil of secrecy*. <https://www.gov.me/en/article/calovic-markovic-abazovic-judges-prosecutors-and-mps-received-apartments-and-favourable-loans-under-a-veil-of-secrecy> (Accessed 11 July 2024).

³⁰⁶ Report on the Independence of the Judicial System, *supra* note 73, para. 51.

³⁰⁷ Judicial Council Montenegro, 'Annual Report on the work of the Judicial Council and overall situation in the judiciary for 2021'. https://sudovi.me/static//sdsv/doc/ANNUAL_REPORT_2021_JUDICIAL_COUNCIL.pdf, p. 21.

³⁰⁸ Center for Monitoring and Research, *supra* note 290, p. 19.

³⁰⁹ *Ibid.*

³¹⁰ *Ibid.*, p. 20.

³¹¹ *Ibid.*

³¹² *Ibid.*

³¹³ *Ibid.*, p. 19.

³¹⁴ European Commission 2022, *supra* note 18, p. 23.

³¹⁵ Judicial Reform Strategy (2024-2027), *supra* note 28, p. 30.

³¹⁶ *Ibid.*, p. 26, OG 1.1.

³¹⁷ *Ibid.*, p. 29, OG 1.6.

prevent statutes of limitation from taking effect too quickly and to target a wider range of offenses compared to previous practices.³¹⁸

Regarding the criminal liability of judges, Article 122 of Montenegro's Constitution establishes functional immunity for judges and lay judges. This means they cannot be held responsible for opinions or votes expressed during court decisions, unless these actions constitute a criminal offence. If a judge is accused of a criminal offence related to their judicial duties, they cannot be detained without the approval of the Judicial Council.³¹⁹ When a court finds grounds to impose detention on a judge for a criminal offense committed in their judicial capacity, it must immediately seek approval from the Judicial Council. The Council is required to make a decision within twenty-four hours of receiving the request. However, if the offence involves organized crime, high-level corruption, or money laundering, and falls under the jurisdiction of the Special Division of the High Court in Podgorica, the Judicial Council must decide within six hours.³²⁰

Montenegro's current legal provisions establish the Disciplinary Panel and Judicial Council to oversee disciplinary actions. However, several challenges remain, including the potential for conflicts of interest, the need for explicit provisions to separate the roles of accusers and judges in disciplinary cases, and the balance between transparency and confidentiality.

While the law mandates transparency, the initial stages of disciplinary proceedings should maintain confidentiality to protect judicial integrity. The list of misconduct types and sanctions is detailed, but concerns remain about the proportionality and consistency of sanctions, and the list must be carefully reviewed. Additionally, the Ethical Commission's effectiveness and the frequency of disciplinary actions raise questions about overall accountability within the judiciary.

³¹⁸ "The new normative framework must be followed by an efficient work of disciplinary bodies that prevents the statute of limitation coming into effect and targets the wider circle of offences in relation to the previous practice." *Ibid.*

³¹⁹ Constitution of Montenegro, art. 122.

³²⁰ Law on Judicial Council and Judges, art. 103.

7. Additional issues affecting the independence of the judiciary

Institutional and procedural issues in the organization and functioning of the judiciary should not be seen in isolation, as they have a direct impact on the actual administration of justice, its fairness, efficiency and ability to provide access to justice. Many of the issues discussed above result in adverse consequences that impede the ability of the judiciary in Montenegro to ensure the fair administration of justice consistent with human rights law and standards. These challenges also affect the protection of human rights of those seeking justice through domestic remedies. This chapter addresses additional issues brought to the attention of the ICJ mission, which impede the independence of the judiciary of Montenegro.

7.1. Resources allocation

The State is responsible for providing adequate resources to ensure that the judiciary can effectively perform its functions.³²¹ International standards emphasize the importance of involving the judiciary in the budget preparation process.³²² According to the CCJE's Opinion No. 2, court funding, though part of the State budget presented by the Ministry of Finance, should not be subject to political fluctuations.³²³ The judiciary must be shielded from pressure by the executive or legislative branches during budget setting. Judicial independence must be upheld in all funding decisions, and the judiciary should actively contribute to the budget drafting process.³²⁴ Ultimately, budget allocation decisions should respect judicial independence, with the judiciary having a formal opportunity to present its views to Parliament, potentially through a judicial council.³²⁵

Additionally, to ensure its independence and impartiality, the body responsible for judicial accountability should manage its own budget and have sufficient human and financial resources to fulfill its functions effectively.³²⁶

Funding for the judiciary in Montenegro is provided from the national budget,³²⁷ ensuring that each court receives financial resources through a specific section of the budget.³²⁸ The executive is responsible for preparing a budget proposal for the judiciary, which is then reviewed and adopted by Parliament.³²⁹ The Judicial Council has a limited role in this process, serving only as a proposer for the budget.³³⁰ The final decision on the budget rests entirely with the Government and Parliament, leaving the Judicial Council with minimal influence over the budgetary outcome.

According to the 2022 CEPEJ report, Montenegro stands out for its significant financial investment in its judiciary as part of the ongoing reform efforts. It devotes 0.8 percent of its GDP to the judicial system, making it the European country with the highest judicial system spending in terms of GDP percentage. This is well above the European average of

³²¹ UN Basic Principles, *supra* note 4, principle 7.

³²² Report on the Independence of the Judicial System, *supra* note 73, para. 54.

³²³ CCJE, Opinion No. 2 on the funding and management of courts, CCJE(2001)OP2, 2001, para. 5.

³²⁴ *Ibid.*, para. 10.

³²⁵ Report on the Independence of the Judicial System, *supra* note 73, para. 55.

³²⁶ Report on Judicial Accountability, *supra* note 235, para. 93.

³²⁷ Law on Courts art. 6.

³²⁸ *Ibid.*, art. 74.

³²⁹ Simonovic, *supra* note 20, p. 16.

³³⁰ *Ibid.*, p. 17.

0.45 percent.³³¹ While the Judicial Reform Strategy 2024-2027 aims to increase this to one percent of GDP, improvements will depend on addressing issues related to fund allocation.³³²

Paradoxically, the mission has heard on many occasions, that the court system is underfunded, and that judges do not receive sufficient practical support, which may include basic needs such as sufficient work space, technical equipment, IT systems, as well as administrative court assistants, and legal and counselors to support their work.

The current working conditions and infrastructure remain inadequate.³³³ The ICJ mission heard of potential deficiencies in identifying priorities in resource allocation. Investments often focus on visible changes, such as renovating court exteriors, rather than addressing core issues of the daily operation of courts. The Mission was told that the persistent poor conditions within the judicial system are due to a lack of understanding of the basic needs of lower-level courts by those at the higher levels of the judicial hierarchy and its governing bodies, who are often driven by extraneous political, including those of a political character, of meeting benchmarks to demonstrate progress. Instead, some interlocutors asserted to the mission that funding should be directed towards substantial improvements of basic needs of judges that directly impact judicial efficiency and effectiveness, such as technological improvements, increasing court personnel including support staff, and enhancing the operational aspects of court facilities.

Despite significant financial investments and a high percentage of GDP devoted to the judiciary, the system faces practical deficiencies, particularly at the lower court levels. The Judicial Reform Strategy 2024-2027 contemplates addressing deficiencies in resource allocation and financial management in the judicial system by prioritizing investments that significantly enhance judicial efficiency and effectiveness. The plan focuses on technological upgrades, increasing support personnel, and improving the operational aspects of court facilities, rather than superficial changes such as renovating building exteriors.³³⁴

7.2. Backlog of cases

Various factors and conditions in the judicial system, some of which are identified above, have led to a significant backlog of unresolved cases in Montenegro, across all courts. The mission was told that judges usually have between 300 and 900 cases per judge (in the most burdened courts) to resolve with little support from additional staff.

After restoring its quorum in February 2023, the Constitutional Court has been left with a docket of over 3,000 constitutional complaints and more than 250 initiatives for reviewing the constitutionality of laws and other legal acts.³³⁵ In the first quarter of 2023, Montenegrin courts had a total of 79,027 pending cases, with 6,946 of these pending for more than three years.³³⁶ Despite a reduction in the backlog of enforcement cases, there were still 1,560 pending enforcement cases in the first quarter of 2023. Moreover, the Administrative Court faces a high volume of cases related to the length of proceedings, with concerns raised about potential abuse of the law. While numerous requests have been made, only one case of abuse was identified, resulting in a decision reversal.

³³¹ European Commission for the Efficiency of Justice (CEPEJ), 'European judicial systems: CEPEJ Evaluation Report – 2022 Evaluation cycle (2020 data). Part 1: Tables, graphs and analyses' (30 September 2022), <https://rm.coe.int/cepej-report-2020-22-e-web/1680a86279> p. 20.

³³² Judicial Reform Strategy (2024-2027), *supra* note 28, p. 28, OG 1.4.

³³³ European Commission 2023, *supra* note 36, p. 30.

³³⁴ Judicial Reform Strategy (2024-2027), *supra* note 28, pp. 40-41, OG 3.4.

³³⁵ European Commission 2023, *supra* note 36, p. 22.

³³⁶ *Ibid.*, p. 30.

Several factors appear to have led to this high backlog, including the overall lack of support judges have in their work and the need to handle administrative work related to their cases. Shortage of personnel and staff, technical issues, lack of digitalization, and limited courtroom availability, contributed to the situation backlog. Some have asserted is a culture of using the courts more frequently in Montenegro for conflict resolution than in other countries, which may point to the general accessibility of courts. The Judicial Reform Strategy 2024-2027 aims to address these challenges, focusing on improving human resources, financial resources, ICT infrastructure, and case management.³³⁷

7.3. Lengthy proceedings and non-implementation of ECtHR judgements

Previously, cases were resolved within six months, but now the process takes two to three years. The mission heard that that the next hearing always gets set to the last day of the deadline, contributing to the prolongation of proceedings. A major issue identified is the backlog caused by the “ping-pong” effect, where the Administrative Court repeatedly returns decisions to first-instance courts, prolonging proceedings. The law on administrative procedure has been amended to allow the Administrative Court to return a decision to the lower court only once. Additionally, the court is empowered to make decisions without returning the case to the lower court, except when the nature of the case requires it, thereby reducing the occurrence of the previous “ping-pong” effect.

One of the main reoccurring issues in judgments and communicated cases by the ECtHR concerns the length of judicial proceedings in Montenegro. This includes prolonged proceedings before the Constitutional Court, with 28 new applications at the beginning of 2024, all concerning delays in court proceedings. Currently, there are seven cases under the supervision of the Council of Europe Committee of Ministers, with no cases under close supervision.³³⁸ Among cases pending at the ECtHR, key issues include prolonged proceedings before the Constitutional Court and Administrative Court, lack of enforcement, and lengthy criminal proceedings. Violations of ECHR Article 3 involving allegations of police torture and ill-treatment also highlight systemic issues. Additionally, inconsistent case-law, as reflected in *Bagoje v. Montenegro*,³³⁹ remains a concern.

³³⁷ Judicial Reform Strategy (2024-2027), *supra* note 28, pp. 35-36, OG 2.6.

³³⁸ Notably, *Jovašević and Others v. Montenegro*, addressing restitution and compensation, decided in February 2022 has been already submitted to the Committee of Ministers for the third time. Another example is the *Bigović v. Montenegro* case in which the ECtHR found violations of Article 3 regarding detention conditions and Article 5, paragraphs 1 and 3, regarding the duration of detention. Despite this ruling, the applicant remains in custody, and the criminal proceedings have been ongoing for 18 years. The case is now under standard supervision by the Committee of Ministers of the Council of Europe, which is closely monitoring the actions of the Montenegrin authorities. Additionally, there are cases before the Committee of Ministers addressing former employees' rights in bankruptcy proceedings, who filed complaints regarding their length. In another judgment, the ECtHR ruled on the non-enforcement of final domestic judgments concerning the removal of construction in the case of *Vlahović v. Montenegro*. The ECtHR not only ordered the payment of just satisfaction but also imposed positive obligations on the state to enforce the final judgments in two administrative decisions favouring the applicant. See: *Jovašević and Others v. Montenegro*, ECtHR, Application No. 41809/14, Judgment of 10 February 2022. *Bigović v. Montenegro*, ECtHR, Application No. 48343/16, Judgment of 19 June 2019. *Vlahović v. Montenegro*, ECtHR, Application No. 62444/10, Judgment of 22 February 2024. Online Vijesti. 2022. ECtHR: Move Bigović to a cell with appropriate conditions, the Government to pay him 1.800 euros. <https://en.vijesti.me/news/black-chronicle/584993/esljp-bigovica-to-be-moved-to-a-cell-with-appropriate-conditions%2C-the-government-to-pay-him-1800-euros> (Accessed 7 June 2024).

³³⁹ *Bagoje v. Montenegro*, ECtHR, Application No. 2890/21, Judgment of 15 February 2024. The case of *Bagoje v. Montenegro* concerns the applicant's complaint under Article 6 of the ECHR regarding inconsistent practices by Montenegrin courts. The applicant, a former Croatian soldier, sought compensation for ill-treatment during his detention in Montenegro in 1991. After being awarded compensation in one case, his subsequent claim for additional damages was rejected by the courts as *res iudicata*. The applicant argued that the domestic courts had inconsistently applied the law, as other claimants in similar situations had successfully received additional compensation. The European Court of

Overall, the courts in Montenegro appear unable to administer cases efficiently, owing to insufficient human resources, critical housing conditions of the High Court and numerous loopholes in procedural rules. These shortcomings result in frequent adjournments, long trials (up to five years) and the allocation of cases to non-specialised judges, which need to be addressed as a matter of priority.³⁴⁰

7.4. Allocation of cases

The allocation of cases on a random basis is provided for by the Law on Courts and implemented automatically through the judicial information system (JIS).³⁴¹ However, limitations remain in very small courts, and the system has not been introduced in the misdemeanour courts. In 2021, a significantly smaller number of cases (114) were allocated among the courts, including 86 cases at the level of basic courts and 28 cases between the two high courts. Although clear criteria for case reallocation are still needed, this reduction represents an improvement, ensuring the right to a lawful judge.³⁴² Furthermore, the Judicial Reform Strategy 2024-2027 aims to implement a case allocation system in all courts by 2027.³⁴³

In line with the operational objective of the Judicial Reform Strategy 2024-2027, which aims to optimize the judicial network by implementing the plan to reduce it by 50 percent by 2027,³⁴⁴ and following recommendations from the European Commission, further optimization of the judicial system is advisable. This could include the potential abolition of small courts and a revision of the judicial map, allowing for increased specialization of judges, and improving the situation regarding potential corruption and nepotism.

Human Rights ultimately found a violation of Article 6 due to the lack of a mechanism to resolve these inconsistencies, highlighting the need for uniform application of the law by the Montenegrin judiciary.

³⁴⁰ European Commission 2022, *supra* note 18, p. 50.

³⁴¹ Law on Courts arts. 34-35.

³⁴² European Commission 2022, *supra* note 18, p. 23.

³⁴³ Judicial Reform Strategy (2024-2027), *supra* note 28, p. 29, OG 1.5.

³⁴⁴ *Ibid.*, pp. 34-35, OG 2.4.

8. Conclusions and Recommendations

Montenegro has made significant efforts to reform its legislative framework governing its judicial system in order to ensure the fair administration of justice in accordance with international law and standards, including both global and European regional standards. There have also been some modest improvements in practice. Progress in this respect has been facilitated by the EU accession process, which has provided both incentives and specific guidelines for effective reforms in the Montenegrin judicial, executive, and legislative powers.

Despite some modest progress, structural deficiencies, outlined in this report, continue to impede the judiciary's ability to function independently and administer justice fairly and effectively, in line with international law and standards. Some institutional issues remain unresolved. The presence of the Minister of Justice as an *ex officio* member of the Judicial Council is one of the primary concerns, as it unduly ties the judiciary to the executive, compromising its independence and leaving it prone to real or perceived undue political influence.

Moreover, the composition of the Judicial Council does not fully meet international standards, as fewer than half of its members are judges elected by their peers. This also undermines the perception and reality of judicial self-governance, essential for maintaining a credible and independent judiciary.

Financial independence is crucial for judicial autonomy. While Montenegro allocates a higher percentage of its GDP to the judiciary compared to many European countries, it remains doubtful that these funds are always used optimally to improve the fair administration of justice. There are significant deficiencies in resource allocation, with funds often directed towards superficial improvements rather than essential upgrades in personnel and operational infrastructure. This exacerbates the challenges faced by the judiciary, including case backlogs and inefficiency.

The relatively low remuneration of judges, particularly at lower courts and first-instance levels, is a significant concern. Inadequate salaries not only affect the efficiency and morale of the judiciary, but also reduce the attractiveness of the profession. To attract and retain the most highly qualified professionals, it is essential to implement a remuneration system that reflects the responsibilities and dignity of the judicial profession.

The current procedures for the selection and appointment of judges involve extensive training and a lengthy qualification process, consisting of two years as legal counsel in a court and another eighteen months of traineeship in court. Ongoing reform, aims to reduce this traineeship to six months. While maintaining high standards is crucial, the process must also be coherent and accessible to attract new qualified professionals. The lack of incentives discourages potential candidates.

The selection procedure of judges, where vacancies are published nationally without indicating where the judge would be assigned, if successful, is problematic and has been widely criticized within and outside the justice sector. Ensuring an effective and transparent selection process is imperative to bolster the judiciary's credibility and effectiveness.

In some instances, court presidents have exceeded their term limits. Additionally, the absence of specific retirement age rules for judges distinct from other public officials poses a risk to judicial independence. A sudden change of the retirement age places unjustifiable pressure on the judiciary which continues to struggle with recovery from the loss of qualified judges. Establishing clear, predictable retirement and remuneration rules for judges is essential to uphold the integrity of the judiciary.

The ability of the judiciary to handle cases expeditiously while at a high standard has been compromised by the resulting significant case backlogs coupled with lengthy proceedings, which hinder access to justice. This inefficiency is exacerbated by insufficient human resources, inadequate technical infrastructure, and poor working conditions. The random allocation of cases, while provided for by law, faces practical limitations, particularly in smaller courts.

Despite implementing a comprehensive anti-corruption strategy, there continue to be significant allegations of corruption, undermining judicial independence and public trust. In this connection, the judiciary is perceived as susceptible to undue interference or influence from powerful actors, contributing to a decline in public confidence.

Frequent attacks from the executive and other powerful actors, further undermine public trust in the judiciary. The development of a communication strategy by the Supreme Court to engage with the public and handle external attacks proactively is a positive step.

The integrity of the judicial system depends on sound mechanisms for maintaining ethical standards and discipline among judges. The current Ethical Commission appears to be generally ineffective, while disciplinary committee decisions are not sufficiently motivated. The mechanisms for maintaining judicial discipline and ethics require reform. The existing system allows for the possibility of Judicial Council members initiating and deciding on disciplinary proceedings, which contravenes the principle of impartiality. Establishing a robust, transparent disciplinary framework and ensuring the Ethical Commission operates independently and effectively are critical steps towards enhancing judicial accountability.

Recommendations

Bearing in mind the conclusions of the report on the organization, administration and functioning of the judiciary in Montenegro, based on international law and standards on the independence of the judiciary, the ICJ recommends that the executive and the Parliament, acting in full consultation with the judiciary, take substantial measures, as a matter of high priority, to strengthen the independence, effectiveness and accountability of the judiciary, with a view to ensuring that it can fairly administer justice on a consistent basis.

Independence and self-governance

The reform in the justice sector in Montenegro should aim to achieve institutional and personal independence of the judiciary through the integrity and accountability of its members. The independence of the judiciary must be an integral element in all judicial reforms, including questions of self-governance of the judiciary. Thus, the current reform should seek to minimize the undue influence of the executive over the judiciary at a structurally. In particular,:

- **Measures should be taken to exclude the Minister of Justice as an *ex officio* member of the Judicial Council as a matter of priority in order to strengthen the independence of the Council. In the meantime, and at the very least, the Minister of Justice should not be involved in the work of the Judicial Council, including appointments, or disciplinary proceedings;**
- **Measures should be taken to ensure that the majority of the members of the Judicial Council are judges elected by their peers;**

- **The definition of “eminent lawyer” should be reviewed, with a view to excluding active politicians and representatives of the legislative or executive branches of government from participation;**
- **At least one lawyer who is also a leading member of civil society should be considered as Judicial Council member;**
- **The Constitution should be reviewed, and amendments considered, to ensure that the President of the Judicial Council is elected by the Council itself from among its judge members. The President of the Supreme Court should be prohibited from appointment as President of the Judicial Council;**
- **Establish an appeals mechanism within the Ethical Commission of the Judicial Council.**

Qualification, appointment and the judicial career

To ensure the security of tenure of judges as an essential prerequisite for protecting them from undue influence and ensuring the integrity of the judiciary, Montenegro should aim to:

- **Increase the number of sitting judges to ensure that the judiciary in Montenegro has enough judges to ensure access to justice for all. This should include steps to make the judicial career attractive;**
- **Make the judicial career more accessible and appealing to new judges while maintaining a high standard of quality in their training;**
- **Ensure the Judicial Council strictly adheres to the legal term limits for court presidents, so that no court president serves more than the two terms allowed by law. Montenegro should put a strategy in place to appoint a successor to the court’s president on time, so that interim solutions are not needed;**
- **Protect judges from being transferred to lower courts without their consent;**
- **Adopt a specific law that establishes uniform retirement age rules with specific retirement age rules for judges, separate from those for other public officials.**

Remuneration

Financial independence is a pre-condition for ensuring the institutional and personal independence of judges. Adequate remuneration for the work of judges should make the judicial profession a prestigious service capable of attracting the best professionals and bringing credibility to the judicial system as a whole. The low level of judicial salaries in Montenegro negatively affects efficiency, creates conditions for corruption, and makes the judicial career less appealing to young professionals.

To uphold the independence and integrity of the judiciary, it is essential to implement distinct rules for the remuneration of judges, separate from those applicable to other public officials. Therefore, the current reform should include measures that:

- **Raise judicial salaries of all levels. The remuneration should be adequate, especially for lower courts and first instance levels (basic courts);**
- **Adopt a separate law or provisions on the remuneration of judges, distinct from public officials.**

Judicial integrity and accountability and disciplinary action

Ensuring accountability and proper disciplinary action within the judiciary is crucial for maintaining judicial independence and public trust. Effective disciplinary mechanisms uphold judicial integrity and prevent misconduct, thereby enhancing the credibility of the judicial system. The ICJ recommends that measures be taken to:

- **Revise the disciplinary sanctions system, so that the Judicial Council membership cannot be suspended based on a disciplinary sanction for a relatively minor infraction;**
- **Amend the law to include an explicit provision that members of the Judicial Council who initiate disciplinary proceedings cannot participate in the decision-making process of those cases;**
- **Conduct more thorough unannounced judicial inspections to enhance oversight and accountability;**
- **Require the Judicial Council to provide detailed and transparent justifications for their decisions to enhance accountability and allow for better understanding and assessment of each case, to publish disciplinary decisions on the Judicial Council's website;**
- **Establish an appeals mechanism within the Ethical Commission of the Judicial Council to allow judges to challenge decisions made against them and to ensure that the disciplinary committee's decisions are well-motivated;**
- **Implement a tailored evaluation approach for Supreme Court judges, focusing on effectiveness, integrity, and adherence to judicial ethics, rather than exempting them from evaluation.**

Annex I.

List of meetings of the ICJ Mission to Montenegro

April 2024

- **NGOs**
 - Branka Lakočević - *Monte Lingva*
 - Aleksandra Dubak, Milan Radović, Pavle Ćupić, Amina Murić - *Civic Alliance*
 - Dejan Bašanović - Association of Paraplegics
- **Ombudsperson**
 - Mirjana Radović - Deputy Ombudsman, advisory to the ombudsman
- **Supreme Court of Montenegro**
 - Vesna Jočić - Deputy President of the Supreme Court, Judge
- **Judicial Council**
 - Radoje Korać - President of the Judicial Council
- **Supreme State Prosecutor's Office**
 - Jelena Đaletić - Deputy Supreme State Prosecutor
 - Danka Ivanovic Djerić - State Prosecutor
- **Basic Court in Podgorica**
 - Zeljka Jovovic - President of the Basic Court in Podgorica
- **The Ministry of Justice**
 - Jelena Grdinić - Director General of the Directorate for Criminal and Civil Legislation
 - Momir Jauković - Director General of the Directorate for Judiciary
 - Stevan Brajušković - Director General of the Directorate for the Execution of Criminal Sanctions and Control
- **The representative of Montenegro before the European Court of Human Rights**
 - Katarina Peković - Representative of Montenegro before the European Court of Human Rights
 - Jelena Rašović - Advisor to the Representative of Montenegro before the European Court of Human Rights
- **Others**
 - Tadija Ćetković - Police Administration
 - Vlado Piper - Judge, Advisor at the Higher Court
 - Dalibor Kavarić - Lawyer
 - Branislav Radulovic - President of the Lawyers Association
 - Representatives of EU delegation

Commission Members

June 2024 (for an updated list, please visit www.icj.org/commission)

President:

Prof. Robert Goldman, United States

Vice-Presidents:

Justice Carlos Ayala, Venezuela

Justice Radmila Dragicevic-Dicic, Serbia

Executive Committee:

Sir Nicolas Bratza, United Kingdom

Dame Silvia Cartwright, New Zealand

Ms Nahla Haidar El Addal, Lebanon

Mr Shawan Jabarin, Palestine

Justice Qinisile Mabuza Swaziland

Ms Mikiko Otani, Japan

Prof. Marco Sassòli Switzerland

Mr Wilder Tayler Uruguay

Other Commission Members:

Ms Hadeel Abdel Aziz, Jordan

Prof Kyong-Wahn Ahn, Republic of Korea

Ms Chinara Aidarbekova, Kyrgyzstan

Justice Carlos Ayala, Venezuela

Professor Adolfo Azcuna, Philippines

Dr Elizabeth Biok, Australia

Ms Catalina Botero, Colombia

Sir Nicolas Bratza, UK

Mr Reed Brody, United States

Professor José Luis Caballero Ochoa, Mexico

Justice Azhar Cachalia, South Africa

Dame Silvia Cartwright, New Zealand

Justice Moses Chingengo, Zimbabwe

Justice Martine Comte, France

Mr Marzen Darwish, Syria

Justice Radmila Dicic, Serbia

Mr Gamal Eid, Egypt

Ms Leilani Farha, Canada

Professor Robert Goldman, USA

Ms Nahla Haidar El Addal, Lebanon

Mr Michelo Hansungule, Zambia

Ms Gulnora Ishankhanova, Uzbekistan

Mr Shawan Jabarin, Palestine

Ms Hina Jilani, Pakistan

Ms Asne Julsrud, Norway

Justice Kalthoum Kennou, Tunisia

Ms Jamesina King, Sierra Leone

Prof César Landa, Peru

Justice Qinisile Mabuza, Swaziland

Professor Juan Mendez, Argentina

Justice Charles Mkandawire, Malawi

Justice Tamara Morschakova, Russia

Justice Egbert Myjer, Netherlands

Justice Aruna Narain, Mauritius

Prof. Fionnuala Ni Aolain, Ireland

Justice John O'Meally, Australia

Ms Mikiko Otani, Japan

Dr Fatsah Ouguergouz, Algeria

Ms Claudia Paz y Paz, Guatemala

Dr Jarna Petman, Finland

Professor Mónica Pinto, Argentina

Professor Victor Rodriguez Rescia, Costa Rica

Mr Alejandro Salinas Rivera, Chile

Professor Marco Sassòli, Switzerland

Ms Patricia Schulz, Switzerland

Mr Michael Sfard, Israel

Justice Ajit Prakash Shah, India

Justice Kalyan Shrestha, Nepal

Ms Ambiga Sreenevasan, Malaysia

Justice Marwan Tashani, Libya

Mr Wilder Tayler, Uruguay

Justice Lillian Tibatemwa-Ekirikubinza, Uganda

Justice Stefan Trechsel, Switzerland

Dr Rodrigo Uprimny Yepes, Colombia



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