Centar za građansko obrazovanje | Centre for Civic Education

State and development directions of the judiciary in Montenegro

Podgorica, 2026

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Publisher:
Centre for Civic Education (CCE)

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Introduction

An independent and efficient judiciary is one of the cornerstones of the rule of law. Building a judicial system that guarantees this must be a priority for decision-makers responsible for shaping its normative, material, and social framework. Accordingly, the aim of this document is to provide an overview of the current state of affairs and to offer recommendations for strengthening the courts and the prosecution service, in order to ensure proceedings that are, to the greatest extent possible, predictable and effective. This also includes ensuring the conditions necessary to guarantee legal certainty and the protection of individual rights, in the interest of achieving justice for all parties involved.

A prerequisite for establishing a reliable legal system is the application of standards developed by international courts and other relevant institutions. This primarily refers to the acquis of the European Union (EU), as well as the case law of the Court of Justice of the EU and the European Court of Human Rights. Additionally, the recommendations contained in the European Commission's reports on Montenegro represent important guidelines for judicial reform and form an integral part of the "structured judicial dialogue" between Montenegro and the EU. At the same time, reforms must not be implemented solely to meet the requirements of the EU accession process, but rather to raise democratic standards that enable the proper functioning of Montenegrin institutions within the European legal and political framework.

In the countries of the region, including Montenegro, this is particularly important due to the legacy of a one-party system and the processes shaped by the development of a market economy and democratisation. In the transitional period, which increasingly leaves little justification for delays in reforms, it is essential that courts act as key actors in judicial reform. They apply new legal solutions and adapt them to the social context, thereby preventing the concentration of power that leads to arbitrariness or abuse of authority.

There is a significant body of work on judicial reform yet analyses of "living" processes that reflect real reform challenges are often lacking. Unfortunately, such discussions more frequently take place within political debates, which cannot substitute for objective and professional assessments of the state of the judiciary and the prosecution service.

Accordingly, this document analyses the state of the judiciary with the aim of providing a comprehensive overview of the strengths and weaknesses in the work of judges, prosecutors, and other actors involved in reform processes in this field. Progress in Chapters 23 and 24 does not depend solely on judicial institutions, but also on the executive and legislative branches, which must ensure adequate conditions for the functioning of the judiciary. Without improved human, infrastructural, and technical capacities, better results cannot realistically be expected. It is also necessary to ensure a sustainable resolution of the financial and professional status of employees at all levels (judges, prosecutors, advisors, trainees, and judicial administration), alongside a responsible role of the media in reporting on the work of the judiciary, particularly in preserving the presumption of innocence.

We believe that this document will serve as an incentive for civil society organisations and the academic community to engage in an evidence-based debate that contributes to the advancement of the judicial system in Montenegro. All stakeholders should contribute to strengthening trust in the work of the courts and the prosecution service, while these institutions must justify that trust through independent and impartial action.

1. Methodology

The methodological framework encompasses various sources and appropriate methods, with the aim of formulating findings and recommendations on the state of the judicial system in Montenegro.

Initially, international standards in the areas of independence, accountability, and efficiency are presented as the basis for building a modern judicial system. The central chapter examines the work of courts and the prosecution service through the application of a SWOT analysis (Strengths, Weaknesses, Opportunities, Threats). In addition, the potential application of comprehensive vetting is considered, given its increased relevance in recent years. This is followed by a separate chapter analysing selected cases that have attracted public attention. Finally, based on the analysis conducted, recommendations are presented with the aim of supporting judicial reform processes.

A desk analysis of relevant laws and by-laws (such as codes of ethics) was conducted, alongside an analysis of reports on the work of the Judicial Council, the Prosecutorial Council, courts, and the prosecution service, which provide insight into their efficiency and key challenges. Strategic documents (including the Judicial Reform Strategy and others) were analysed in parallel.

Particular attention was given to EU documents, bearing in mind the obligations undertaken within the closing benchmarks for Chapters 23 and 24. Findings from the European Commission's reports were used to assess the level of implementation of recommendations in these chapters. In addition, reports, guidelines, and research from the Council of Europe, the OSCE, and other relevant international organisations were used.

Normative, systematic, sociological, and comparative methods were applied. The aim was to examine the work of judicial institutions in a thorough and objective manner, through an analysis of the views of decision-makers and other relevant stakeholders monitoring their work. In this regard, the normative framework and judicial practice were analysed alongside comparative experiences, as well as the human and technical capacities of relevant institutions, which is particularly challenging in the context of rapid technological development.

2. Binding Standards

The establishment of an independent, accountable, and efficient judiciary is not possible without meeting internationally established standards, which derive from the case law of relevant courts and the instruments of international organisations. This chapter addresses the acts of the EU, the Council of Europe, the United Nations, as well as the case law of the European Court of Human Rights.

Obligations arising from Montenegro's EU accession process have been given particular analytical focus, both in this and in the following chapter on the state of the judiciary in Montenegro. It is important to note that the negotiation methodology has been revised, with negotiation chapters grouped into six clusters. The first cluster (Fundamentals) is of key importance, as it covers the areas of the rule of law and democratic institutions (Chapters 23 and 24), which is why the findings related to these chapters will be addressed in greater detail[1].

The revised Rule of Law Checklist[2], adopted by the Venice Commission, is also of particular relevance for international standards. This checklist serves as an instrument for assessing the rule of law in practice across different legal systems and as a model for EU and Council of Europe institutions, as well as for the legislative, executive, and judicial branches and civil society organisations in monitoring and evaluating standards.

1 *Silent Marginalisation – Civil Society and the Government in the Negotiation Process*, Dina Bajramspahić, Centre for Civic Education (CCE), Podgorica, 2024, p. 9.

2 Revised Rule of Law Checklist, Venice Commission, Council of Europe, 2025

The revised Rule of Law Checklist confirms that the rule of law is not merely a normative framework, but a foundation of a stable and just society that requires tangible results—strong institutions, independent courts, and active citizen participation in the protection of democratic values. Its standards represent an important reference point for Montenegro in the process of strengthening institutional stability, constitutional functionality, and EU accession.

2.1. Independence

The right to an independent and impartial tribunal is guaranteed by numerous international instruments. Judicial independence may be institutional, functional, and financial, and is ensured through national legislation at the highest level, for the benefit of those seeking justice, other judges, and society as a whole[3].

The *International Covenant on Civil and Political Rights* (Article 14, paragraph 1) stipulates that everyone shall be entitled to a "fair and public hearing" by a "competent, independent and impartial tribunal established by law"[4].

In the context of Montenegro's EU accession negotiations, particular importance is attached to compliance with the *Charter of Fundamental Rights of the European Union*. Proclaimed in 2000 and becoming legally binding with the *Lisbon Treaty* in 2009 - through Article 6, which provides that the Union recognises the "rights, freedoms and principles set out in the Charter"[5] - its adoption marked the consolidation of the European integration idea in the field of human rights[6]. The Charter comprises seven chapters and 54 articles. Within the chapter on *Justice* (Article 47, paragraph 2), it guarantees the right to have a case "heard impartially, publicly and within a reasonable time by an independent and impartial tribunal established by law". In addition, everyone has the right to defence, representation, and advice, as well as to legal aid where they lack sufficient resources[7].

The *European Convention on Human Rights* (ECHR), in Article 6, provides that everyone is entitled to a "fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".

Based on the case law of the European Court of Human Rights (ECtHR), key standards for assessing independence can be identified: (1) the manner of appointment of judges; (2) the duration of judicial office; (3) the existence of safeguards against external pressure; and (4) the appearance of independence. This confirms the importance of institutional independence vis-à-vis the executive and legislative branches[8]. Impartiality primarily relates to the personal independence of a judge in relation to the parties, although in practice it is difficult to prove personal bias[9].

The Council of Europe has further elaborated these standards through its acts. The Recommendation of the Committee of Ministers[10] emphasises that judicial independence guarantees every individual the right to a fair trial and that it is not a privilege of judges, but a safeguard for the protection of human rights and fundamental freedoms, which fosters public trust in the judicial system. In line with this Recommendation, judicial independence is a fundamental principle of the rule of law. Judges must have the freedom to decide impartially, in accordance with the law and their own assessment of the facts.

Bodies of the CoE also underline the importance of a high level of independence of the prosecution service. Furthermore, the Consultative Council of European Prosecutors clearly emphasises that the independence of the prosecution service should be guaranteed at the highest possible level and be "similar to that of judges"[11].

2.2. Accountability

International legal instruments define the accountability of judges and prosecutors through guarantees of fundamental principles, namely the right to a fair trial before a tribunal established by law. The United Nations adopted the *Basic*

3 Magna Carta of Judges, Council of Europe, 2010, Fundamental Principles, para. 3.
4 International Covenant on Civil and Political Rights, United Nations General Assembly, 1966.
5 Treaty of Lisbon, 2007.
6 Introduction to European Integration Law, Budimir Košutić, Branko Rakić, Bojan Milisavljević, Belgrade, 2018, pp. 75–119.
7 Charter of Fundamental Rights of the European Union.
8 *Clarke v. United Kingdom*, European Court of Human Rights, no. 27975/02, 2008.
9 *Hauschildt v. Denmark*, European Court of Human Rights, no. 10486/83, 1989.
10 Recommendation CM/Rec(2010)12, 2010.
11 Consultative Council of European Prosecutors, Opinion No. 16 (2021).

Principles on the Independence of the Judiciary (BPJI)[12], which, inter alia, address issues of judicial accountability at the universal level. Article 6 provides that judges shall act fairly, with respect for the rights of all parties, while Article 8 stipulates that judges, like all citizens, enjoy freedom of expression, belief, and association, but are required to preserve the dignity of their office and the impartiality of the judiciary. It is also provided that allegations against judges concerning their professional capacity be examined expeditiously and fairly in an appropriate procedure.

Judicial accountability also plays an important role in the instruments of the Council of Europe, which are of a so-called soft law nature. The Consultative Council of European Judges, based in Strasbourg, adopted the *Magna Carta of Judges* (Fundamental Principles)[13], which, in addition to judicial independence, establishes the obligation of states to define conduct that may lead to disciplinary proceedings and sanctions. At the same time, judges cannot incur criminal liability for unintentional errors made in the exercise of their functions.

The similarity of the roles of judges and prosecutors implies similar standards with regard to their status, including disciplinary accountability[14].

In accordance with the *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors*[15], prosecutors are required to maintain professional confidentiality, inform victims and witnesses of their rights, examine the legality of evidence, and refuse to use unlawfully obtained evidence. In addition, they are required to: (1) uphold the honour and dignity of the profession; (2) act in accordance with the law and professional ethics; (3) apply the highest standards of professionalism; (4) remain informed about relevant legal developments; (5) act consistently, independently, and impartially; (6) protect the rights of the accused and the right to a fair trial; (7) serve and protect the public interest; and (8) respect and uphold human dignity and rights.

Accountability in the judiciary is further elaborated in documents of international professional organisations. At the General Assembly of the European Network of Councils for the Judiciary (ENCJ) in 2015, the *Hague Declaration*[16] was adopted, which, inter alia, highlights the results of research conducted among 6,000 judges from 20 countries and the development of indicators for measuring independence and accountability in the judiciary.

2.3. Efficiency

The efficiency of proceedings before competent judicial authorities is a key condition for the realisation of the right to a trial within a reasonable time. This right is most precisely defined through the case law of the European Court of Human Rights (ECtHR) and is encompassed within Article 6 of the European Convention on Human Rights (ECHR), together with other elements of a fair trial (independence, impartiality, publicity, etc.).

In the case law of the ECtHR, the basic criteria for assessing whether the right to a trial within a reasonable time has been violated are established: the nature and complexity of the case, the conduct of the applicant, and the conduct of the authorities[17]. It is also assessed whether procedural actions were undertaken in a timely manner and without unnecessary delays.

When assessing the complexity of a case, various factors are taken into account, such as the number of defendants, the type of criminal offence, the possible joinder of proceedings, and other circumstances of the specific case. The conduct of the parties may be relevant, but it cannot in itself constitute a violation of this right if the defendant uses legally permitted means of defence.

The right to a trial within a reasonable time is also affirmed in Article 47(2) of the *Charter of Fundamental Rights of the European Union*, which guarantees that every case be heard impartially, publicly, and within a reasonable time by an independent tribunal established by law. The need to improve the efficiency of the judiciary in Montenegro is also consistently emphasised in the European Commission's reports.

12 *Basic Principles on the Independence of the Judiciary*, United Nations, 1985.

13 *Magna Carta of Judges*, Council of Europe, 2010.

14 Venice Commission, *Report on European Standards as regards the Independence of the Judicial System: Part II – The Prosecution Service*, CDL-AD(2010)040, 2011.

15 *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors*, International Association of Prosecutors, 1999.

16 *Hague Declaration on Promoting Effective Justice Systems*, The Hague, 2015.

17 *Moreira de Azevedo v. Portugal*, European Court of Human Rights, no. 11296/84, 1990.

The efficiency of judicial proceedings contributes to strengthening public trust, encouraging citizens to seek the protection of their rights before institutions rather than through outside institutional frameworks. It is achieved through the timely conduct of judges and prosecutors, as well as through the rational and effective allocation of resources.

3. The Montenegrin Judiciary Today

The judiciary in Montenegro faces numerous challenges. As previously noted, its development is influenced by various factors, among which the lack of a longer democratic tradition and the need for further strengthening of institutions stand out. In addition, the prosecution of high-level and other officials within the judiciary and prosecution service has contributed to a decline in public trust in judicial institutions.

This chapter analyses the strengths, weaknesses, threats, and opportunities for the development of the judiciary in Montenegro, with the aim of formulating findings and recommendations relevant for judicial institutions, as well as for all actors involved in creating the conditions for its more efficient functioning and the application of law.

3.1. What Works Well?

The most recent European Commission Report on Montenegro[18] notes that the country's judicial system is between a moderate and good level of preparedness. This assessment reflects continuity in the findings under Chapters 23 and 24, where "moderate progress" has been noted for years. At the same time, certain recommendations are being repeated, such as the one concerning change to the composition of the Judicial Council, which requires amendments to the Constitution.

Although overall progress in key chapters is not at the expected level, certain developments can be identified as indicators of "moderate progress".

3.1.1. Legislative Framework

The European Commission notes that the legislative framework has been improved and that the new provisions have yielded "initial positive results"[19].

In June 2024, Montenegro received a positive IBAR (Interim Benchmark Assessment Report) for Chapters 23 and 24, thereby obtaining the closing benchmarks in the EU accession process for these chapters. In this context, key laws were amended, including the Law on Prevention of Corruption, the Law on the Judicial Council and Judges, the Law on Courts, the Law on the State Prosecution Service, and the Law on the Confiscation of Proceeds of Crime.

Among other things, the amendments narrowed the scope of jurisdiction of the Special State Prosecution Office (SSPO), by transferring certain corruption cases from its jurisdiction (in which the accused are not "high-level public officials") to other prosecution services. The composition of the Prosecutorial Council was also changed by increasing the number of prosecutors and reducing the number of members elected by Parliament, in line with European Commission recommendations, alongside changes to the eligibility criteria for their appointment.

However, IBAR should be viewed as a positive signal in the EU accession process, but not as the sole measure of the substantive transformation of the judiciary[20]. Its adoption was largely the result of meeting technical criteria within a specific geopolitical context, which is further confirmed by the fact that some of the adopted laws quickly entered the process of amendments and revisions.

The European Commission's Report also highlights the need to increase the salaries of judicial office-holders

18 European Commission, *Montenegro 2025 Report*, p. 4.

19 *Ibid.*

20 *A Quarter Century of Judicial Reform: Where Are We Now?*, Siniša Gazivoda, Centre for Democratic Transition (CDT), Podgorica, 2024, p. 21.

by 30%, which may contribute to greater interest in a judicial career. At the same time, it emphasises the need for further implementation and improvement of the legislative framework, particularly through constitutional amendments concerning the selection of members of the Judicial Council and the Prosecutorial Council, with a view to strengthening their independence. The Government has recently prepared proposals for constitutional amendments[21], albeit with delays compared to the timelines envisaged by the Judicial Reform Strategy.

Specifically, it is necessary to remove the constitutional provision under which the Minister of Justice is a member of the Judicial Council, as such membership of a political figure is not in line with international standards of judicial independence. It is also necessary to define the composition of the Prosecutorial Council at the constitutional level to prevent political influence through legislative amendments. In this context, an important change is the increase in the number of prosecutors within the Council and the reduction in the number of members elected by Parliament by a simple majority of those present, thereby strengthening the independence of the prosecution service.

Nevertheless, the issue of the required "simple majority" by which Parliament elects members of the Prosecutorial Council from among distinguished legal professionals remains an open issue.

3.1.2. Strategies, Protocols, and Guidelines

In addition to legislative acts, strategies, protocols, and guidelines that guide the work of judicial authorities are of particular importance for the implementation of judicial reform. A review of these documents shows that the Supreme Court and the Supreme State Prosecution Office have adopted important guidelines that provide a foundation for more efficient operation in the future.

Within the EU accession process, several strategic documents have been adopted, among which the *Judicial Reform Strategy (2024–2027)*, together with the Action Plan for 2024 and 2025, is particularly significant. The strategic objectives of the reform are: (1) strengthening the independence, impartiality, and accountability of the judiciary; (2) improving the professionalism and efficiency of the judiciary; and (3) increasing access to justice, transparency, and trust in the judiciary[22]. Each objective is accompanied by corresponding indicators of success with defined target values set - both at the midpoint of implementation and in the final year of the Strategy. More specifically, impact indicators are defined for strategic objectives, while performance indicators are established for operational objectives. In addition, result indicators are defined for specific activities within the Action Plan. An analysis of the achieved objectives is needed, and the civil society sector should be included in the process of drafting the new Action Plan for 2026 and 2027.

In the first year of the mandate of its newly elected President of the Supreme Court, the Supreme Court adopted the *Guidelines for Case Management in Cases of Serious and Organised Crime* and the *Guidelines for Sentencing in Cases of Serious and Organised Crime*, indicating an recognition of the need for more efficient management of complex cases and for strengthening public confidence. Furthermore, *Guidelines for Sentencing in Cases of Gender-Based Violence and Sexual Violence* were adopted, based on international obligations (the Istanbul and Lanzarote Conventions), thereby further aligning national judicial practice with international human rights standards. These documents were prepared by a working group comprising judges of the Court of Appeal, the High Court, and the Basic Court in Podgorica, as well as advisors of the Supreme Court of Montenegro, with expert support from Council of Europe consultants.

The Supreme Court of Montenegro also adopted the *Guidelines for Sentencing for the Criminal Offence of Unauthorised Production, Possession, and Distribution of Narcotic Drugs*, with the aim of ensuring more consistent judicial practice in such cases[23].

The cooperation between the Supreme Court and the Supreme State Prosecution Office in the preparation of the *Guidelines for the Application of Plea Agreements* is commendable. These guidelines consist of two parts: (1) guidelines for prosecutors when concluding plea agreements, and (2) guidelines for judges when deciding on plea agreements. Prosecutors are required to clearly establish the reasons for concluding plea agreements instead of

21 Government of Montenegro, *Government adopts a new proposal for constitutional amendments in the area of the judiciary*, available at: https://www.cdm.me/politika/vlada-utvrdila-novi-predlog-za-promjenu-ustava-crne-gore-u-oblasti-pravosuda/

22 Ministry of Justice, *Judicial Reform Strategy 2024–2027*, p. 25.

23 Supreme Court of Montenegro, *Guidelines for Case Management in Cases of Serious and Organised Crime*, available at: https://sudovi.me/vrhs/sadrzaj/EmG1

conducting regular proceedings, taking into account financial implications, while the role of the court is to provide a reasoned decision and determine whether the agreement is in line with the interests of justice[24].

The Supreme Court and the Supreme State Prosecution Office have also adopted the *Guidelines for the Exercise of the Right to Compensation for Victims in Criminal Proceedings*[25], thereby emphasising the system's obligation towards victims, not only the responsibility of perpetrators, which may contribute to strengthening public trust in the judicial system.

The Supreme State Prosecution Office has also adopted the *Strategy for the Investigation of War Crimes*, with the support of the United Nations Development Programme (UNDP), with the aim of ensuring a proactive and systemic approach in such cases. The Strategy has four operational objectives: (1) improving the efficiency of investigations; (2) protection and support for victims and witnesses; (3) enhancing mechanisms for determining the fate of missing persons; and (4) increasing transparency in handling war crimes cases[26]. This Strategy is also of particular importance for meeting the closing benchmarks under Chapter 23, in the area concerning the state's handling of war crimes. Montenegro must establish a sustainable track record in investigations, prosecutions, and judgments in war crimes cases, while also ensuring full cooperation with the International Residual Mechanism for Criminal Tribunals, as well as providing access to justice and reparations for victims.

3.1.3. Codes of Ethics for Judges and State Prosecutors

The accountability of judges and prosecutors is crucial for preserving the integrity of the judiciary. The European Commission has, for years, recommended strengthening the framework for disciplinary and ethical accountability. The new codes of ethics, adopted over the past year, represent a step forward, but require further refinement.

The adoption of the *Code of Ethics of State Prosecutors* in November 2025 is significant for strengthening the reputation of the profession and advancing progress under Chapter 23, particularly in the areas of independence and accountability. Although the ethical accountability of prosecutors may not always be fully regulated, it should be continuously analysed and aligned with good practices reflected in international documents and comparative judicial systems.

The new Code introduces the obligation for prosecutors to directly consult the Commission for the Code of Ethics when planning engagements outside the prosecution service, thereby strengthening oversight and reducing the risk of conflicts of interest[27]. It is also positive that rules governing communication with citizens and the media have been clarified, including the obligation to maintain a professional relationship with journalists and media outlets, i.e. to act with due care and respect "towards all journalists and media outlets". The application of this provision may be particularly relevant in cases of selective conduct by certain prosecutors (especially within the Special State Prosecution Office) towards the media. Additionally, rules on the use of social media are introduced for the first time, recognising them as a form of public communication that requires a high level of caution[28].

However, certain solutions raise concerns. It is unclear why the obligation for prosecutors to encourage employees to engage in professional development has been removed, particularly given that advisers and other staff within the prosecution service attend significantly fewer training sessions than prosecutors, despite their substantial contribution to the work of the institution and their potential future roles as prosecutors. Furthermore, provisions concerning relations with injured parties (victims) have been omitted, even though special attention to victims is essential for preventing secondary victimisation. In addition, the overlap between certain violations of the Code of Ethics and disciplinary offences may lead to inconsistent application and the avoidance of stricter sanctions. This applies, for example, to inappropriate conduct towards participants in proceedings, the acceptance of gifts, or the

24 Supreme Court of Montenegro, *Guidelines for Sentencing in Cases of Serious and Organised Crime*, available at: https://sudovi.me/vrhs/sadrzaj/Jgb5

25 Supreme State Prosecution Office of Montenegro, *Guidelines for Fair Compensation to Victims in Criminal Proceedings*, available at: https://tuzilastvo.me/tuzilastva/vrhovno-drzavno-tuzilastvo-i-vrhovni-sud-donijeli-smjernice-za-pravicnu-naknadu-stete-zrtvama/

26 Supreme State Prosecution Office of Montenegro, *Strategy for the Investigation of War Crimes 2024–2027*, available at: https://tuzilastvo.me/wp-content/uploads/2025/03/Strategija_za_istrazivanje_ratnih_zlocina_2024-2027.pdf

27 *Code of Ethics of State Prosecutors*, Official Gazette of Montenegro, No. 129/2025, 2025.

28 Centre for Civic Education (CCE), *Ethical Rules in the Prosecution Strengthened, but Reform Must Continue*, available at: https://cgo-cce.org/2025/11/17/eticka-pravila-u-tuzilastvu-osnazena-ali-reforma-tuzilastva-mora-ici-dalje/

misuse of prosecutorial office for private gain. Such an approach is inadequate and requires a clearer distinction between these categories. Overall, the new Code of Ethics of State Prosecutors represents progress but also requires addressing the identified areas for improvement. It is equally important to ensure the effective functioning of the Commission for the Code of Ethics, as without the consistent application of the new provisions, efforts to build a professional prosecution service will have limited impact.

The new Code of Ethics for judges[29] does not introduce new rules but rather consolidates existing ones into seven principles - independence, impartiality, integrity, expertise, professionalism and accountability, freedom of association, and respect for the Code and procedures for determining violations. These principles are further elaborated through the *Guidelines for the Application of the Code of Judicial Ethics*.

It is positive that the Guidelines emphasise the "right and duty of judges" to engage in continuous professional development, which is also important for the professional advancement of all court staff (advisers, court administration, trainees), some of whom may become judges in the future. Another improvement is the allowance for activities outside the judiciary where they contribute to enhancing the reputation of judges (e.g. lectures, conferences, etc.), with due awareness of the limitations arising from the public nature of the function.

However, as with prosecutors, the overlap between ethical violations and disciplinary offences remains an issue[30], making it necessary to further clarify these areas. For example, the obligation of professional and considerate conduct in interactions with parties, other participants in proceedings, and court staff overlaps with disciplinary grounds for sanctioning inappropriate behaviour towards participants in proceedings and court employees. A clearer distinction is necessary in order to ensure legal certainty and the consistent application of sanctions.

3.2. Where Does the System Fall Short?

This chapter focuses on the key weaknesses of the judicial system, namely on those segments and stages of proceedings that slow down reform processes and the dynamics of EU accession negotiations, thereby representing significant challenges. In Montenegro, as a country in prolonged transition, judicial reform has been initiated but remains incomplete. It is a continuous and demanding process that requires ongoing improvement, learning from both domestic and comparative experiences, and adapting rule of law standards to the specific social and legal context. Substantive progress cannot be based on the formal fulfilment of norms, but on their effective implementation in practice.

3.2.1. Strengthening Independence

Judicial independence implies genuine institutional autonomy of courts and prosecution service vis-à-vis the executive and legislative branches. It is equally important that the Judicial Council and the Prosecutorial Council are structured in accordance with international standards and equipped with adequate human and technical resources, as independence begins with the manner of appointment and the working conditions of office-holders.

The Constitution of Montenegro guarantees the independence and impartiality of the courts, as well as the separation of powers. The Judicial Council, as an independent body composed of 11 members, appoints and dismisses judges. Four members of the Judicial Council are elected from among judges, while four are elected from among distinguished legal professionals (requiring a qualified majority in Parliament - 54 MPs, i.e. two-thirds of the total number in the first round, and three-fifths of the total number, i.e. 49 MPs, in the second round). The President of the Supreme Court and the Minister of Justice are ex officio members of the Judicial Council. However, the membership of the Minister of Justice in this body remains subject to criticism. GRECO recommended its removal already in 2017[31] to reduce political influence, which was also recognised in Chapter 23 through the Action Plan[32]. Although constitutional amendments were prepared in early 2026, the timeline for their adoption remains uncertain.

An additional challenge concerns the method of election of members of the Prosecutorial Council. Unlike the Judicial Council, where a qualified majority is required, members of the Prosecutorial Council are elected by a simple

29 *Code of Ethics for Judges*, Official Gazette of Montenegro, No. 135/2025.

30 Human Rights Action (HRA), *New Code of Ethics for Judges: A More Concise Text with Old Dilemmas*, available at: https://www.hraction.org/2026/01/06/b15-t9-novi-eticki-kodeks-sudija-sazetiji-tekst-uz-stare-dileme/

31 See more: https://www.antikorupcija.me/media/documents/Izvje%C5%A1taj.pdf

32 Government of Montenegro, *Action Plan for Meeting the Closing Benchmarks in Chapter 23 – Judiciary and Fundamental Rights*.

majority of MPs present, provided that a quorum is met. This means that the minimum number of votes required for the election of members of these two bodies differs significantly - 49 votes for the Judicial Council compared to 21 for the Prosecutorial Council[33]. The election of a member of the Prosecutorial Council at the end of 2025 with only 30 votes of MPs demonstrates that the current system may undermine the principle of legitimacy. While such an election is legally valid, it lacks legitimacy, given the unjustified inconsistency considering the similar competences of these two bodies.

Relevant international standards emphasise a high degree of autonomy of the prosecution service, comparable to that of the judiciary[34]. Therefore, it is necessary to regulate the composition and method of election of the Prosecutorial Council at the constitutional level, in line with the recommendations of the Venice Commission, and to introduce the same qualified majority requirement as for the Judicial Council. This would strengthen legitimacy, encourage political dialogue, and increase the competitiveness of candidates.

The European Commission's Report also notes that a "serious institutional and political crisis" occurred at the end of 2024, when the Parliament of Montenegro unilaterally declared the termination of the mandate of a judge of the Constitutional Court, contrary to the principle of separation of powers enshrined in the Constitution[35].

Additionally, there are pressures from representatives of the executive and legislative branches on the independence of the judiciary, as well as media reporting which can, at times, undermine the authority of courts and prosecution offices.

As a normative response to these weaknesses, the Ministry of Justice, through the Judicial Reform Strategy, has defined the following operational objectives in the area of independence, impartiality, and accountability of the judiciary: (1) improving the normative framework that guarantees independence and impartiality; (2) effective implementation of the system for the selection, performance evaluation, and promotion of judges and state prosecutors; (3) strengthening the capacities of the Judicial and Prosecutorial Councils; (4) improving the financial independence of the judiciary; (5) strengthening the impartiality and integrity of judicial office-holders through the consistent application of the principle of random case allocation, rules on recusal, and adherence to codes of ethics; (6) strengthening the system of disciplinary accountability of judicial office-holders; and (7) strengthening the system of disciplinary accountability of judicial professions[36]. The implementation of these objectives should be closely monitored to ensure that their outcome represents genuine reform, rather than the formal fulfilment of obligations on the path towards EU accession.

3.2.2. Length of Proceedings

The length of proceedings is one of the issues consistently highlighted by the European Commission, particularly criticising the pace of work in cases of high-level corruption and organised crime, which also attract the greatest public attention. Efficient and timely handling of cases, coupled with appropriate sanctions, is crucial for deterring criminal offences and strengthening trust in the judiciary.

The scale of the problem is confirmed by the OSCE trial monitoring report on corruption and organised crime cases, based on criteria such as the seriousness of the offence, the social status of the accused, and the public and media relevance of the proceedings. In the period from 2021 to 2024, observers monitored trials in 32 corruption cases, of which only one has been finally concluded[37]. Such data point to excessively long proceedings and contribute to the perception of insufficient institutional capacity to address complex cases.

In addition to the commonly cited reasons for adjournments (absence of defendants, lawyers' strikes, etc.), an additional problem lies in insufficient cooperation among competent authorities in ensuring the presence of defendants and witnesses. Strengthening coordination between the judiciary and the police is necessary in order to reduce the number of adjournments and ensure the continuity of hearings.

33 Centre for Civic Education (CCE), *Judicial and Prosecutorial Councils: Same Powers, Different Rules of Selection*, available at: https://cgo-cce.org/2025/12/20/sudski-i-tuzilacki-savjet-ista-moc-razlicita-pravila-izbora/

34 Consultative Council of European Prosecutors, Opinion No. 16 (2021).

35 European Commission, *Montenegro 2025 Report*, p. 3.

36 Ministry of Justice, *Judicial Reform Strategy 2024–2027*, p. 26.

37 OSCE, *Trial Monitoring Report in the Western Balkans*, 2024, pp. 12 and 103.

The European Commission particularly emphasises the need to increase efficiency in the High Court in Podgorica, the Administrative Court, and the Special State Prosecution Office (SSPO)[38], as well as the importance of the full implementation of the Plan for the Rationalisation of the Court Network and the Strategy for the Digitalisation of the Judiciary. In cases of serious and organised crime, the need to reduce adjournments is highlighted, while in the area of corruption there is an emphasis on strengthening proactive investigations, prosecutions, and convictions. Legislative amendments are also required, particularly to the Criminal Procedure Code and the Law on the Bar, to remove procedural obstacles. Equally important, the European Commission stresses the need to improve the monitoring of and follow-up to the findings and reports of the State Audit Institution (SAI), which are largely ignored by prosecution authorities.

Statistical data indicate that in 2024, a total of 94,124 new cases were received, while 85,629 were resolved[39], resulting in a continued backlog of cases, although progress is visible compared to 2023, when 96,507 cases were received and 79,606 were resolved[40].

In mid-2025, the President of the Supreme Court of Montenegro adopted the *Unified Programme for the Resolution of Backlog Cases for the Period 2025–2027*, which envisages reducing the number of backlog cases in 2025 from 7,471 to 2,242 by the final quarter, as well as ensuring that by the end of 2027 there are no cases older than three years before Montenegrin courts[41]. The Programme also proposes additional measures within the competence of the Supreme Court of Montenegro that are likely to have a positive effect on case resolution; however, the lack of clearly defined deadlines reduces its operational value[42].

The Action Plan for the implementation of the Judicial Reform Strategy further envisages measures to increase efficiency, including digitalisation and infrastructure improvements, as well as the rationalisation of the court network. However, these measures are often general in nature and require more precise elaboration and consistent implementation[43].

Finally, it is necessary to introduce a system for assessing case complexity in line with the standards of the European Commission for the Efficiency of Justice (CEPEJ)[44]. Such a system would enable a more realistic assessment of the time required to handle cases and their complexity, including judges' self-assessment of the time needed for case processing, improved workload distribution, fairer evaluation of judges, and more efficient planning of human resources, particularly in complex cases. This would be particularly important for determining the required number of judges and judicial advisers in the High Court in Podgorica, especially within the Special Department[45].

3.2.3. Detention as a Measure or Punishment

The use of detention is one of the most sensitive decisions in criminal proceedings. The Criminal Procedure Code defines it as an exceptional measure, to be applied only when the same purpose cannot be achieved by less restrictive means, such as bail or supervisory measures[46].

In practice, in Montenegro, detention is often perceived as a sanction rather than as a measure of last resort aimed at ensuring the presence of the accused in legally prescribed circumstances. This approach is further reinforced by public pressure, including from politicians and the media, who often criticise judges when they apply less restrictive measures (such as house arrest or restrictions on leaving one's residence). As a result, judges more frequently order detention to avoid public condemnation, which is not in line with international standards.

38 European Commission, *Montenegro 2025 Report*, pp. 5–6.

39 Judicial Council, *Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for 2024*, p. 83.

40 Judicial Council, *Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for 2023*, p. 75.

41 Supreme Court of Montenegro, *Unified Programme for the Resolution of Backlog Cases for the Period 2025–2027*, June 2025.

42 *A Quarter Century of Judicial Reform: Where Are We Now?*, Siniša Gazivoda, Centre for Democratic Transition (CDT), Podgorica, 2024, p. 18.

43 *A Quarter Century of Judicial Reform: Where Are We Now?*, Siniša Gazivoda, Centre for Democratic Transition (CDT), Podgorica, 2024, p. 17.

44 CEPEJ, *Measuring Case Complexity in Judicial Systems*, p. 4.

45 OSCE, *Trial Monitoring Report in the Western Balkans*, 2024, p. 109.

46 *Criminal Procedure Code*, Official Gazette of Montenegro, Nos. 057/09, 049/10, 047/14, 002/15, 035/15, 058/15, 028/18, 116/20, 145/21, 054/24.

According to the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)[47] and Recommendation Rec(2006)13 of the Committee of Ministers of the Council of Europe[48], pre-trial detention should be a measure of last resort, with mandatory consideration of alternatives whenever possible. Although the Montenegrin legal framework is largely aligned with these standards, it lacks an explicit requirement that detention be imposed only when alternatives are not feasible, which should be more precisely regulated.

In addition, decisions on detention are often insufficiently reasoned, relying on general formulations without concrete arguments. The case law of the European Court of Human Rights establishes standards requiring clear, detailed, and convincing reasoning, including the demonstration of the necessity of deprivation of liberty in each individual case, with the burden of proof resting on those ordering detention[49]. It has also been established that detention is a measure of last resort and that less restrictive measures should be applied, which "minimally restrict individual liberty", while at the same time serving the legitimate interests of the state in conducting criminal proceedings[50]. Even the fact that the accused has previously been convicted of the same offence is not, in itself, sufficient grounds for ordering detention[51].

It is necessary to consistently apply international standards, to use detention as an exception rather than a rule, and to abandon proposals to extend its maximum duration, as advocated by some representatives of the ruling majority. At the same time, the use of alternative measures should be strengthened, alongside improvements to the capacities of the prison system, particularly in the area of rehabilitation, to support the successful reintegration of detained and convicted persons into society.

The seriousness of the problem is also confirmed by the Preliminary Observations[52] of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of 2025, which warn, inter alia, of prison overcrowding and a significant increase in the number of detainees, who account for more than half - 56% - of the total prison population, with their number having doubled since the Committee's previous visit in 2022. The Committee assesses that detention is used too frequently, while alternative measures remain underutilised. This trend places significant pressure on the prison system, further exacerbated by the length of detention in Montenegro. In practice, detention is becoming the rule rather than the exception. It should also be recalled that the implementation of the Committee's recommendations is one of the closing benchmarks for Chapter 23 in Montenegro's EU accession process. Therefore, it is essential to consistently implement these recommendations, to use detention strictly as a last resort, and to abandon proposals to extend the maximum duration of detention from three to five years.

Alongside strengthening the use of supervisory measures and bail, it is necessary to improve the capacities of prison institutions in the area of rehabilitation. Education, cultural and sports activities, as well as treatment for addiction, are of great importance for all prisoners, including detainees. The current level of such activities is not satisfactory and requires improvement to facilitate their successful reintegration into society.

3.2.4. Information Leakage

The public disclosure of information from ongoing proceedings can seriously undermine the evidentiary process and the overall interests of the proceedings. Therefore, officials are obliged to act responsibly and with caution when sharing information with the media and other actors. It should also be emphasised that the leakage of information undermines the authority of the judiciary and the prosecution service, as well as mutual trust among state institutions,

47 United Nations General Assembly, Resolution 45/110, *United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)*, 14 December 1990.

48 Committee of Ministers of the Council of Europe, Recommendation Rec(2006)13 to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, adopted on 27 September 2006. According to this Recommendation, detention may be applied only if the following conditions are met: (1) there is reasonable suspicion that a criminal offence has been committed; (2) there are substantial grounds for believing that release of the suspect may lead to absconding, the commission of a serious offence, interference with the course of justice, or a threat to public order; (3) alternative measures cannot effectively mitigate these risks; and (4) detention is an unavoidable step within criminal proceedings.

49 *Ilijkov v. Bulgaria*, European Court of Human Rights, no. 33977/96, 2001.

50 *Fox, Campbell and Hartley v. the United Kingdom*, European Court of Human Rights, nos. 12244/86, 12245/86 and 12383/86, 1991.

51 *Jablonski v. Poland*, European Court of Human Rights, no. 33492/96, 2000.

52 Council of Europe, *CPT publishes preliminary observations on its recent visit to Montenegro*, available at: https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-cpt-publishes-preliminary-observations-on-its-recent-visit-to-montenegro

which may hinder their cooperation - for example, between the police and the prosecution or the courts - and, consequently, their effectiveness.

A particular problem emerged following the publication of content from the Sky application, which was selectively disseminated to certain media outlets. This represents an unprecedented practice in an international context, whereby communications - often legally irrelevant - were publicly disclosed. Such practices lead to divergent, and sometimes incorrect, conclusions in the public sphere, damage the reputation of individuals - even in cases where the published communications did not provide grounds for initiating criminal proceedings - and may undermine the presumption of innocence, as they create a public perception that anything short of a conviction would constitute a major failure. Empirical research indicates that a significant portion of citizens perceive this as a violation of privacy and fairness of proceedings (46.4%), while only about one-fifth believe that such practices contribute to a better understanding of cases[53].

Furthermore, the publication of private communications that are not relevant to proceedings constitutes a violation of the right to privacy, particularly the right to correspondence. Claims by certain judicial institutions that such information originates from lawyers are unconvincing, as this would not be in the interest of their clients.

An illustrative example of poor practice includes arrests carried out in the presence of previously informed media, involving the Police Directorate or the prosecution, and even prior announcements by political actors[54]. Such cases point to unprofessional communication between institutions and create the impression of political control over the work of bodies that should operate independently.

Such practices should be avoided, as they may also result in violations of constitutional and Convention rights relating to deprivation of liberty and the imposition of detention. Although this may temporarily increase the confidence of a segment of the public, in the long term it undermines the legality and credibility of institutions, while fostering inappropriate, sensationalist actions characteristic of populist political structures that seek to compensate for their lack of substantive results. At the same time, public announcements of arrests by political actors underscore their impermissible links with investigative and judicial authorities, thereby placing additional pressure on the independence of these institutions.

3.2.5. Transparency

Transparency in the work of courts and prosecution service is a key component of the rule of law and of strengthening public trust in the judiciary. The public nature of their work enables democratic oversight, contributes to the accountability of judicial office-holders, and plays a preventive role in combating corruption. In the context of EU accession negotiations, judicial transparency is particularly important for Chapter 23.

It is therefore necessary to assess the state of transparency through the normative and institutional framework, the practice of access to information laws, the availability of data, and the findings of relevant organisations.

The normative framework recognises transparency as an obligation of judicial institutions. The Constitution guarantees the publicity of hearings, while the Law on Courts and the Law on the State Prosecution Service prescribe the publication of basic information on their work, annual reports, statistical data, and other information of public interest.

The Law on Free Access[55] to Information further enables citizens, the media, and civil society to access the work of the judiciary, subject to clearly defined exceptions. One indicator of transparency is the handling of requests for access to information. According to the 2024 Report of the Supreme Court of Montenegro, a total of 35 requests were submitted to courts, representing a significant increase compared to the previous year, when 12 such requests were recorded[56]; however, this cannot reasonably be considered a burden that would prevent efficient responses. Access to information was granted in four cases, partially granted in one case, 19 requests were rejected, while in 11 cases applicants were notified.

53 Centre for Civic Education (CCE) and DAMAR Institute, *CG Pulse, December 2025*, available at: https://cgo-cce.org/2025/12/24/podrska-eu-pod-pritiskom-ekonomske-nesigurnosti-revizionizma-i-selektivne-pravde/

54 *While the SSPO Claims No One Was Arrested, Bečić Praises the Arrest of Perović*, available at: https://www.antenam.net/clanak/321711-dok-sdt-tvrdi-da-niko-nije-uhapsen-becic-pohvalio-hapsenje-perovic

55 *Law on Free Access to Information*, Official Gazette of Montenegro, Nos. 044/12, 030/17, 066/25.

56 Supreme Court of Montenegro, *Annual Report for 2024*, p. 18.

The Judicial Council and the Prosecutorial Council play an important role through the publication of decisions and information on appointments, promotions, and disciplinary accountability. The European Commission notes progress, but points to the need for more detailed reasoning in decisions concerning the appointment and dismissal of judges and prosecutors, as well as in disciplinary proceedings[57].

Annual reports of courts and the Judicial Council represent a key mechanism of institutional transparency. They contain data on the number of cases, court efficiency, judicial workload, the duration of proceedings, and administrative capacities. In recent reporting periods, some progress has been observed in terms of the scope and structure of published information. However, practice shows inconsistency - while some courts and prosecution offices regularly publish up-to-date data, others provide incomplete or outdated information, significantly reducing the actual reach of proactive transparency.

The Judicial Reform Strategy highlights the limitations of existing IT systems, the insufficient availability of electronic services, and shortcomings in statistical data[58]. Additional issues include the absence of a unified database of court decisions and inconsistent anonymisation practices.

Transparency of the prosecution service is particularly limited when it comes to reasoning decisions on the dismissal of criminal complaints and communication in cases of significant public interest. Therefore, it is necessary to improve timely and clear communication with the public, while respecting the presumption of innocence and the protection of investigations.

Concern among the public was also raised by the anonymisation of minutes from the sessions of the Prosecutorial Council at the end of 2025. Specifically, the published minutes included formulations such as the termination of the mandate of prosecutor "XY" or the determination of remuneration for prosecutor "XX". Such records unjustifiably limited information about the voting process and dissenting opinions. Civil society organisations pointed out that this practice reflects a formalistic and purely technical recording of sessions[59], thereby reducing the level of transparency of the judicial system and limiting the possibility of effective oversight. Such an approach implies that only those physically present at sessions can fully understand what occurred, which is not appropriate in the context of digital transformation. If live streaming of sessions cannot be ensured, minutes should provide a detailed account of discussions, including all views expressed by Council members. It should, however, be noted that the response of the Prosecutorial Council to these criticisms was appropriate. The Council promptly issued a statement acknowledging the shortcomings and announcing that "the minutes will be corrected and republished on the website of the Prosecutorial Council"[60].

The OSCE recommends that the Training Centre for the Judiciary and State Prosecution organise specialised training on communication with the public for all prosecutors and judges dealing with organised crime and corruption cases, as well as for heads of institutions and public relations officers[61].

In conclusion, improving transparency requires the standardisation of data publication, better accessibility of judicial and prosecutorial decisions, and stronger proactive communication, alongside continuous training of judicial office-holders.

3.3. Opportunities for Improvement

Ensuring optimal working conditions for judges and prosecutors is not solely an internal matter for judicial institutions, but also an obligation of the executive and legislative branches and a key element in the EU accession process. In this regard, the Government and Parliament should ensure systemic and sustainable support for the judiciary in order to achieve tangible results in meeting the closing benchmarks for Chapters 23 and 24.

57 European Commission, *Montenegro 2025 Report*, p. 28.

58 Ministry of Justice, *Judicial Reform Strategy 2024–2027*, p. 22.

59 Centre for Democratic Transition (CDT), *Concern over the Dramatic Decline in the Transparency of the Prosecutorial Council*, available at: https://www.vijesti.me/vijesti/drustvo/796404/cdt-zabrinutost-zbog-dramaticnog-pada-transparentnosti-rada-tuzilackog-savjeta

60 Supreme State Prosecution Office of Montenegro, *Transparency of the Prosecutorial Council Improved Compared to Previous Period*, available at: https://tuzilastvo.me/tuzilastva/transparentnost-rada-tuzilackog-savjeta-poboljsana-u-odnosu-na-ranije/

61 OSCE, *Trial Monitoring Report in the Western Balkans*, 2024, p. 104.

This chapter analyses opportunities for improving the judiciary, focusing on the necessary increase in salaries, improvement of infrastructural capacities, and the organisation of training.

3.3.1. Material Status

Judicial independence is a cornerstone of the rule of law and the most important guarantee of citizens' right to a fair trial. The decisions of judges and prosecutors directly affect people's lives and require a high level of professional and personal responsibility; therefore, their salaries must ensure dignity and security for office-holders.

Salaries of judges and prosecutors in Montenegro remain low and do not correspond to the complexity and scope of their work. For example, the salary of most judges in the Basic Court in Podgorica amounts to approximately EUR 1,250[62], which is insufficient given the caseload, pressures, and level of responsibility.

A temporary 30% increase in salaries related to judicial office, introduced through amendments to the Law on the Judicial Council and Judges and the Law on the State Prosecution Service, expired on 1 January 2026. This deadline was set on the assumption that a new law would be adopted within that timeframe. However, the extension of this measure depends on the will of Members of Parliament, which has already resulted in an interruption of payments in January 2026.

A separate law that would permanently regulate the status and salaries of judges and prosecutors has been announced for years, yet its adoption continues to be delayed, indicating a lack of political will. Such an approach is contrary to the positions of the Venice Commission[63] and the European Commission[64], both of which require a dedicated law regulating the status and salaries of judges and prosecutors, given the specific nature of their functions and the need to safeguard judicial independence. It is unacceptable for their salaries to be regulated under the Law on Salaries of Public Sector Employees.

The President of the Judges' Association has appealed to the competent authorities to complete this strategically important process, while the Association postponed previously announced measures to suspend work in order to preserve the independent and efficient functioning of the judiciary. However, continued delays increase the risk that such measures will be reconsidered.

A similar situation applies to judicial and prosecutorial advisers, whose salaries amounted to approximately EUR 800 until the end of 2025, excluding those receiving special allowances. Although a temporary increase was introduced at the end of 2025 through the variable component of salary, as provided for in an agreement between the Ministry of Justice and trade unions[65] (an 11% increase for advisers), the only sustainable solution remains the adoption of the Law on Judicial Administration, whose adoption continues to be postponed.

Interns in courts and the prosecution service are further disadvantaged, with salaries of approximately EUR 630, while the statutory minimum for their level of education, in accordance with the Labour Law, is EUR 800[66]. This practice has already resulted in court proceedings and a first-instance judgment in favour of interns; if confirmed by a final judgment, it may lead to additional costs for the state budget, including default interest and litigation costs. This reflects a worrying level of institutional irresponsibility towards young legal professionals at the very beginning of their careers.

The state's approach to the judiciary is also reflected in budget allocations: while the budget of the Parliament of Montenegro increased by 64% between 2021 and 2025, the overall judiciary budget increased by only 36% over the same period. In addition, political pressure on judges and prosecutors further undermines trust in the system.

62 *Judges and Prosecutors to Receive 30% Lower Salaries as of 1 February*, available at: https://www.cdm.me/ekonomija/sudije-i-tuzioci-ce-1-februara-primiti-za-30-odsto-manje-plate/ (accessed 20 February 2026).

63 Venice Commission, *Opinion on the Draft Amendments to the Law on the Judicial Council and Judges (2024)*, available at: https://www.venice.coe.int/webforms/documents/?opinion=1183&year=all

64 European Commission, *Montenegro 2025 Report*, p. 29.

65 Trade Union of Montenegro, *Salaries of Judicial Administration Employees Increased by EUR 102, and by EUR 125 as of January*, available at: https://sindikatcg.me/zaposlenima-u-administraciji-pravosudja-naredne-plate-vece-za-102-eura-a-od-januara-za-125/

66 *They Received EUR 630 Instead of EUR 800: A Judgment Issued in Their Favour*, available at: https://www.pobjeda.me/clanak/vukcevic-primali-630-umjesto-800-eura-stigla-presuda-u-njihovu-korist

3.3.2.Infrastructure Capacities

Numerous indicators show that infrastructure conditions for the work of judges and prosecutors are inadequate, and without addressing this issue, it is not possible to achieve the expected progress in the functioning of judicial institutions. Infrastructural capacities include both physical conditions and the technical equipment of courts and prosecution service (laptops, printers, software, etc.).

The construction of the long-announced Palace of Justice has still not begun, although it has been planned for more than a decade, and timelines remain uncertain. The Palace of Justice would enable a greater number of courtrooms, capacity to conduct trials involving more than ten defendants, and a higher number of hearings, while also enhancing security, given that current court buildings are often located in close proximity to residential areas and are insufficiently protected. The case widely known in the media as the "Tunnel", in which evidence disappeared from the basement of the building housing the Supreme Court, Court of Appeal, and High Court, illustrates the inadequate level of security within judicial institutions.

Similarly, the relocation of the Special State Prosecution Office (SSPO) to the "old Government building" has been announced for several years, yet the plan has not been implemented. Current conditions confirm a serious lack of adequate working space for the SSPO.

Accessibility of courts for vulnerable groups, particularly persons with disabilities, is also inadequate. Most courts lack vertical or inclined lifting platforms, tactile paths, relief maps of facilities, Braille signage, and accessible toilets[67]. These shortcomings reflect insufficient recognition of the importance of protecting the most vulnerable groups, while the judiciary is often assessed precisely on the basis of how secure these groups feel.

In addition, insufficient technical equipment of courts and prosecution offices slows down digital transformation. Challenges include the procurement of laptops, printers, and software licences that significantly enhance efficiency[68]. The SSPO possesses certain licences, but these are insufficient given the scope and complexity of its work, making it necessary to further strengthen the capacities of the Department for Analytics and Investigation.

3.3.3. Training

Judges and prosecutors, although part of traditional professions, must continuously enhance their knowledge in order to respond to emerging challenges, as developments often outpace legislation.

The need for training is particularly pronounced in the context of digital transformation, where new methods of committing and concealing criminal offences are emerging (e.g. the use of artificial intelligence to conceal identity or to hack government systems). In addition, complex areas such as financial investigations, money laundering, and the confiscation of proceeds of crime require continuous professional development.

As with infrastructure capacities, it is important to include the protection of vulnerable groups. A specialised training programme for judges and prosecutors is needed, focusing on understanding victim trauma and secondary victimisation in cases of gender-based violence, using a victim-centred approach. Training should be highly practical in nature, based on case studies and simulations.

A particular issue is that judicial and prosecutorial advisers rarely participate in training, unlike judges and prosecutors. Training for advisers is essential, as they represent future holders of judicial office and should acquire practical knowledge at an early stage. The same applies to judicial administrative staff (analysts, clerks, etc.), who require additional training to perform their duties effectively.

3.4. Risks and Pressures on the Judiciary

One of the key preconditions for the fair performance of judicial and prosecutorial functions is the institutional independence of the judiciary from the executive and legislative branches. To ensure this, certain amendments to

67 Association of Youth with Disabilities of Montenegro, *Access to Justice for Persons with Disabilities with a Special Focus on Procedural Accommodations*, Podgorica, 2020, p. 19.

68 Centre for Civic Education (CCE), *Low Salaries and Poor Conditions Undermine Judicial Independence*, available at: https://cgo-cce.org/2026/01/19/niske-zarade-i-losi-uslovi-potkopavaju-nezavisnost-pravosudja/

the Constitution, relevant legislation, and codes of ethics are necessary.

This section focuses on practice, particularly on pressures exerted on judicial institutions by certain political actors who, directly or indirectly, attempt to influence their work. It also examines media reporting, which may, at times - whether intentionally or due to insufficient understanding of the subject matter—constitute an additional source of pressure. Finally, it addresses the issue of comprehensive vetting in the judiciary, which has not been implemented but is regularly invoked by certain actors as a form of pressure on judges and prosecutors, without a thorough analysis of its consequences or consideration of alternative models.

3.4.1. Executive and Legislative Branches

Examples of interference by the executive and legislative branches in the work of the judiciary, as well as inappropriate pressure on judges and prosecutors, are characteristic of both previous and current governing structures. However, for the purposes of this analysis, the focus will be on more recent examples.

It is important to note that such conduct by political actors, primarily those in power, undermines public trust in the independence of the judiciary. Judges and prosecutors are not in a position to comment on ongoing cases, while the public is largely exposed to statements by political actors, who often disregard the importance of restraint. Pressure through public commentary is one of the factors contributing to declining trust in courts and prosecution offices, as confirmed by research conducted by civil society organisations[69] and the OSCE Mission to Montenegro[70].

Judges are more frequently targeted than prosecutors. These criticisms are often premature and unfounded, creating a hostile environment towards the judicial system and contributing to the disregard of court decisions, as illustrated by the repeated unlawful appointment of the Director of RTCG despite final court judgments.

One of the most recent examples of pressure relates to a statement by the Director of the Police Directorate, who accused the High Court of responsibility for the escape of a suspect one day before the enforcement of a supervisory measure[71]. This demonstrates an inadequate interpretation of the Criminal Procedure Code, as the Police Directorate is responsible for the enforcement of supervisory measures. It also sends a concerning message that individuals subject to supervision may freely leave their residence without effective response by the police.

A similar example is the statement of the National Security Council, appointed by the Government, issued in July 2025, which stated that "there is a correlation between the increase in criminal offences and the failure to issue judgments within three years", and called for the "urgent preparation of a vetting model"[72]. This implied that the judiciary bears responsibility for the overall security situation in the country, reflecting a one-sided and overly simplistic approach, particularly given that security issues require coordination among all competent authorities. The Judges' Association characterised this position as political pressure and an attempt to influence judicial decision-making, emphasising that any review of judges must be free from political influence in order to safeguard judicial independence and the rule of law.

Another example is the statement by the Speaker of Parliament that the Supreme State Prosecutor "has not met the expectations" of the parliamentary majority and should therefore resign, accompanied by accusations that the prosecution is dealing with "trivial matters"[73]. Similar remarks were made by certain members of both the parliamentary majority and the opposition, indicating an intention to exert control rather than to support the

69 Centre for Civic Education (CCE), *Support for the EU Under Pressure from Economic Insecurity, Revisionism and Selective Justice*, available at: https://cgo-cce.org/2025/12/24/podrska-eu-pod-pritiskom-ekonomske-nesigurnosti-revizionizma-i-selektivne-pravde/

70 OSCE Mission to Montenegro, *Perception of the State Prosecution in Montenegro – 2025*, available at: https://montenegro.osce.org/me/mission-montenegro/662695

71 *Šćepanović: Police Would Act Unlawfully if They Arrested Persons for Violating House Arrest Measures*, available at: https://www.vijesti.me/tv/emisije/794525/blog-scepanovic-policija-bi-nezakonito-postupala-ako-bi-hapsila-i-zadrzavala-osobe-ukoliko-krse-mjere-kucnog-pritvora

72 *National Security Council: Urgently Prepare a Model for Introducing Vetting of Judicial Office Holders*, available at: https://www.vijesti.me/vijesti/politika/768022/vijece-za-nacionalnu-bezbjednost-hitno-pripremiti-model-za-uvodjenje-vetinga-nosilaca-pravosudnih-funkcija

73 *Mandić: I Made a Serious Mistake; Marković Politically Selected – He Should Resign; VDT: I Will Not Resign, My Honour Matters More – Initiate Dismissal Procedure*, available at: https://www.cdm.me/politika/mandic-tesko-sam-pogrijesio-markovic-politicki-izabran-da-podnese-ostavku-vdt-necu-je-podnijeti-obraz-mi-bitniji-pokrenite-proceduru-za-smjenu/

development of an independent judiciary. The report of the Prosecutorial Council was not adopted, which, although it does not produce direct legal consequences, may further undermine public trust.

Examples of political pressure also include reactions by the legal team of former President Đukanović following the dismissal of a claim for compensation for non-pecuniary damage based on alleged violations of honour, reputation, and dignity, on the grounds that the claim was premature. The legal team accused the judge of alleged negligence or fabricating reasons, while the Basic Court emphasised that criticism of judicial decisions should be expressed through appeals rather than public accusations, in order to preserve trust in institutions and uphold the principle of judicial independence from political and public pressure[74]. The Judges' Association expressed a similar position in its public statement[75].

Finally, the most severe form of pressure was a direct attack by former Deputy Prime Minister Abazović on a judge who refused to order detention in a specific case, claiming that the judge's intention was to demonstrate that "the mafia is stronger than the state"[76]. Such statements reflect a superficial interpretation of judicial proceedings and seriously undermine judicial independence, with the apparent aim of influencing the outcome of the case and damaging the judge's reputation for political gain[77]. This is unacceptable and contrary to international standards on safeguarding judicial independence.

3.4.2. Vetting Models and Expectations

The concept of vetting requires particular attention given the complexity of this process. Experiences from other countries show that hasty and populist measures in the judiciary have often failed to produce the expected results and, in many cases, have undermined judicial independence.

In Montenegro, vetting is often invoked as a form of warning or threat directed at judges and prosecutors, which is not a sustainable systemic approach. This is particularly concerning given that the strongest proponents of vetting as a mechanism for reshaping judicial personnel are the same political actors who are simultaneously implementing mass recruitments and controversial disciplinary proceedings within the Ministry of the Interior. The European Commission has already highlighted the need to ensure procedural safeguards against undue political influence, particularly following disputed amendments to the Law on Internal Affairs that enable expedited hiring and dismissals[78]. Civil society organisations and the expert community have characterised this as another attempt to place the police under political control and to institutionalise arbitrary political influence, as evidenced by the fact that government representatives did not wait for the opinion of the European Commission before initiating the legislative process[79]. Such practices further undermine professional integrity and inter-institutional cooperation, especially in sensitive cases. A similar approach in the judiciary would pose a serious risk to its independence.

Comprehensive vetting in the judiciary represents an extraordinary and temporary anti-corruption measure, involving in-depth scrutiny of judges, prosecutors, and members of judicial and prosecutorial councils. Its purpose is to examine financial integrity, ethics, qualifications, potential conflicts of interest, and adherence to principles of justice, with the aim of restoring public trust in the judiciary[80].

74 *Court on Claims by Đukanović's Legal Team: It Is Unacceptable to Use Offensive Qualifications Due to Dissatisfaction with a Decision*, available at: https://www.vijesti.me/vijesti/drustvo/791556/sud-o-tvrdnjama-djukanovicevog-pravnog-tima-nedopustivo-zbog-nezadovoljstva-odlukom-davati-uvredljive-kvalifikacije

75 *Judges' Association: Personal Attacks Are Unacceptable and Create Pressure on the Judiciary*, available at: https://www.vijesti.me/vijesti/drustvo/791595/udruzenje-sudija-nedopustiv-licni-napad-stvara-pritisak-na-sudsku-vlast

76 *Abazović: Basović Released Criminals and "Arrested the State"*, available at: https://www.cdm.me/hronika/abazovic-basovic-pustio-kriminalce-a-uhapsio-drzavu/

77 *Judges' Association: Abazović's Conduct Is Scandalous and Grossly Violates Constitutional Principles of Separation of Powers*, available at: https://www.cdm.me/hronika/udruzenje-sudija-skandaloznim-postupkom-abazovic-grubo-prekrsio-ustavna-nacela-o-podjeli-vlasti/

78 European Commission, *Montenegro 2025 Report*, p. 51.

79 Human Rights Action (HRA), *Parliamentary Committee Supported Amendments to the Law on Internal Affairs Despite Announcements that the EC Opinion Would Be Awaited*, available at: https://www.vijesti.me/vijesti/politika/789474/hra-odbor-podrzao-izmjene-zakona-o-unutrasnjim-poslovima-uprkos-najavama-da-ce-se-sacekati-misljenje-ek;
Radulović: Democrats Will Increase Pressure on Critics and Will Not Stop Until Institutions Prevent It, available at: https://www.portalanalitika.me/clanak/radulovic-demokrate-ce-povecavati-pritisak-na-kriticare-i-nece-stati-dok-ih-institucije-ne-zaustave

80 CEELI Institute, *Advancing the Rule of Law: Judicial Vetting Guidelines*, 2024, p. 21.

However, it constitutes an exception to the principle of security of tenure, which is essential for safeguarding judicial independence, in line with the case law of the European Court of Human Rights.
The implementation of vetting would further weaken already declining interest in judicial careers, due to public pressure and poor working conditions. It is already concerning that some recruitment processes attract an insufficient number of candidates. Additional pressure through threats of dismissal could further reduce interest in judicial and prosecutorial positions.

In recent years, nearly 50% of judges and prosecutors have either retired or left office, and new appointments have been made, representing a form of "natural vetting", as publicly noted by the President of the Supreme Court. Further radical changes could jeopardise the quality of adjudication, given the limitations of the existing human resources base.

Comprehensive vetting would also slow down case resolution due to system-wide reorganisation, thereby undermining the principle of legal certainty. Moreover, it could open the door to repeated vetting processes with each change of government, potentially leading to politically motivated dismissals and the appointment of "preferred" candidates. The adoption of a law on comprehensive vetting could establish a pattern of unpredictability in decision-making, whereby each new administration might initiate similar processes under the same rationale, seeking to "reconfigure" the judiciary by selecting new, politically acceptable judges and prosecutors[81].

A particular risk lies in the potential for abuse, as confirmed by the case law of the European Court of Human Rights in relation to Albania, where irregularities and disproportionate measures in the application of vetting have been identified. For example, in *Sevdari v. Albania*[82], the Court found that the dismissal of prosecutor Sevdari was disproportionate, as it was based on her failure to prove that her husband had paid taxes over two decades, without evidence of her bad faith. Conversely, in *Besnik Cani v. Albania*[83], The Court raised concerns regarding the appointment of a candidate to a high judicial position, noting that the individual had previously been dismissed for unlawful conduct and lack of professionalism.

In line with the positions of the European Association of Judges and the case law of the European Court of Human Rights, vetting should be considered a measure of last resort, while priority should be given to existing legal frameworks and institutional reforms[84].

Therefore, it is important to apply alternative measures, such as strengthening disciplinary accountability, amending existing legal solutions, introducing new sanctions, and implementing "pre-vetting" through stricter controls in the selection and promotion of judges and prosecutors, including more rigorous vetting by the Judicial and Prosecutorial Councils. It would not be advisable for the Government of Montenegro to propose the immediate introduction of comprehensive vetting, given the risks of abuse; rather, this mechanism should be considered only as a last option, after exhausting all other instruments of accountability.

3.4.3. Media Reporting

The public's right to information often conflicts with the confidentiality of criminal investigations. Therefore, safeguarding the authority and impartiality of the judiciary constitutes a legitimate limitation on freedom of expression, and in each individual case it is necessary to determine which interest prevails. Oversight of the application of journalistic ethics is becoming even more important in an era characterised by an overabundance of information from both traditional and digital media, alongside a growing number of actors.

International and national legal instruments clearly prescribe the obligation to respect the presumption of innocence and the right to privacy when reporting on criminal proceedings. However, the media in Montenegro sometimes rely on unofficial sources, which should be avoided in such sensitive matters. Even official sources are not always a guarantee of ethical reporting, making it essential for media outlets to critically assess such information before publishing them. Timely and accurate reporting must be accompanied by respect for the presumption of innocence, privacy rights, and an assessment of potential negative social consequences.

81 *Stega: Full Vetting in Montenegro Undermines Judicial Independence in Favour of Party-Controlled Judiciary and Prosecution*, available at: https://www.pobjeda.me/clanak/stega-potpuni-veting-u-crnoj-gori-protiv-nezavisnosti-pravosuda-za-partijsko-sudstvo-i-tuzilastvo

82 *Sevdari v. Albania*, European Court of Human Rights, no. 40662/19, 2019.

83 *Cani v. Albania*, European Court of Human Rights, no. 37474/20, 2022.

84 Consultative Council of European Judges (CCJE), Opinion No. 24 (2021), p. 10.

Certain international organisations have also pointed out that media contribute to the dissemination of inappropriate commentary on criminal proceedings, through the frequent transmission of problematic statements made by political actors[85].

In Montenegro, a practice has also developed of publishing private communications from cases handled by the Special State Prosecution Office (SSPO), even when such communications do not contain elements of a criminal offence. Public opinion is divided, but a critical stance prevails: 46.4% of citizens perceive this as a violation of privacy and fairness of proceedings, around one-fifth believe it contributes to understanding cases, while one-third remain undecided. Analysts interpret this as public concern over the "media-driven administration of justice" and the potential compromise of proceedings[86].

A common reporting error occurs when individuals are prematurely labelled as perpetrators of criminal offences, even though proceedings have only just begun. This undermines the presumption of innocence, particularly in headlines and sub-headlines, which have the greatest impact on audiences. It is not uncommon for the body of an article to be accurate while the headline is problematic, a practice that must be addressed and prevented. Responsibility also arises when relaying third-party statements that undermine the presumption of innocence, except in cases of live broadcasts, where editorial control is limited and, consequently, responsibility is significantly reduced[87].

Particular care is required when reporting on minors, due to their vulnerability. Analyses by journalistic associations show that more than 57% of headlines in such cases fail to respect the presumption of innocence[88]. Instead of sensationalism, the media should protect the identity and dignity of minors in order to avoid long-term harm to their prospects for reintegration.

All the above highlights the need for editorial boards and journalists' associations to develop training programmes on responsible reporting in criminal proceedings.

4. Challenges in Practice

Selective action represents a serious concern in the work of the State Prosecution Service (SSPO). It is evident that a significant number of proceedings have been initiated against public officials from the period prior to 2020, including cases of relatively minor value, while the number of proceedings against those who assumed office after 2020 remains considerably lower, despite the existence of numerous publicly available and well-substantiated indications suggesting grounds for their prosecution. This suggests the existence of "more equal than others" before the law, which may have negative implications for the delivery of justice in Montenegro.

An illustrative example is the case of the erection of a monument to Pavle Đurišić, a war criminal and collaborator with occupying forces, who was awarded the Iron Cross by Hitler's regime. The monument was erected, subsequently relocated and concealed, in violation of the Law on Memorials, thereby constituting elements of several criminal offences under the Criminal Code (damage to memorials and unlawful erection of memorials, as well as incitement of racial, national and religious hatred). Questions also arise as to whether the National Security Agency (NSA) shared information in a timely manner regarding the organisers' plans, how a monument of such size - given that it could not have been produced in Montenegro - was transported into the country, and whether customs authorities acted in accordance with the law. Furthermore, the Police Directorate's response was slow and involved negotiations with organisers, allowing representatives of a religious organisation to relocate the monument into a church, into which, pursuant to the provisions of the Fundamental Agreement between the Government and the Serbian Orthodox Church, police officers may not enter without the consent of religious

85 OSCE, *Trial Monitoring Report in the Western Balkans*, 2024, p. 102.

86 Centre for Civic Education (CCE), *Support for the EU Under Pressure from Economic Insecurity, Revisionism and Selective Justice*, available at: https://cgo-cce.org/2025/12/24/podrska-eu-pod-pritiskom-ekonomske-nesigurnosti-revizionizma-i-selektivne-pravde/

87 Media Trade Union of Montenegro, *Presumption of Innocence – Journalists Require Additional Training*, available at: https://sindikatmedija.me/tematski-clanci/pretpostavka-nevinosti-novinarima-potrebna-dodatna-edukacija/

88 Association of Professional Journalists of Montenegro, *Ethical Challenges in Respecting the Presumption of Innocence in Media Reporting on Criminal Proceedings, with a Focus on Cases Involving Minors*, Podgorica, 2021, p. 20.

authorities. At the same time, the Basic State Prosecution in Berane failed to issue clear orders to clarify the circumstances of the event.

Additional concern is raised by the attack on journalists attempting to document the removal of the monument, accompanied by passive conduct on the part of the police. Although the NSA indicated that it possessed relevant information, it is evident that an adequate institutional response was lacking, whether due to a lack of will or a lack of trust among institutions. Such omissions may also raise suspicion of corruption-related offences, including abuse of office or negligent performance of duties. However, the prosecution failed to undertake the necessary steps to establish accountability, further undermining public trust and reinforcing perceptions of impunity. This case demonstrates that the NSA, Police Directorate, Customs Administration and prosecution authorities did not act in a timely manner, thereby enabling the erection of a monument that promotes division and hatred. Such conduct may embolden extremist groups and further destabilise society.

Another example of selectivity is the handling by the SSPO of criminal complaints filed by the Centre for Civic Education (CCE) against former Minister Vesna Bratić and other responsible officials within the former Ministry of Education, Science, Culture and Sports (MESCS). Although the complaints were submitted in 2022, the SSPO failed to act for more than three years. It was only in early 2026 that Bratić was brought in for questioning in relation to one case, without a clear explanation of the legal grounds, thereby reinforcing concerns regarding inconsistent practice. In other cases, detention has been immediately followed by detailed prosecutorial statements informing the public about the actions undertaken and the suspicions involved. It remains unclear whether the detention in this case was based on the complaints submitted by CCE, other complaints, or action ex officio, as the prosecution has not clarified this either. There is also concern that the case may result in an indictment proposal that will not be confirmed, thereby limiting the possibility of re-prosecution for the same criminal offence.

The first criminal complaint filed by CCE concerned a double negative opinion issued by the State Audit Institution (SAI), which identified serious irregularities in the Ministry's financial operations in 2021, including millions of euros spent without adequate documentation or legal basis. Key findings included: public procurement procedures not conducted in accordance with the law; irregular transfers exceeding EUR 6 million; failure to comply with legal requirements in planning revenues and expenditures of public institutions exceeding EUR 19 million; discrepancies in employment records for more than 50% of audited staff affecting salary calculations; unlawful supplementary employment contracts; payments for dual education programmes amounting to nearly EUR 250,000 without proper documentation; service expenditures of EUR 1.45 million without supporting evidence; and consultancy contracts exceeding EUR 3.5 million lacking legal basis and proof of results. In any democratic system, reports by institutions such as the SAI should be treated as both authoritative and instructive, as also emphasised in the European Commission's 2025 Montenegro Report. The SSPO's task was further facilitated by the fact that state auditors possess documentation, testimonies and expertise necessary for further examination of the findings[89].

The second complaint related to the mass unlawful dismissal of directors of educational institutions in 2021, without individual performance assessments and solely based on their appointment by the previous government. This resulted in over 150 lawsuits and significant financial damage to the state budget. By 1 October 2025, a total of EUR 453,041.66 had been paid following final court decisions, with further increases expected as proceedings continue, based on established case law in favour of the dismissed directors[90]. The Protector of Property and Legal Interests of Montenegro initiated a recourse claim against Bratić and others, seeking compensation for damages. However, the Basic Court rejected the claim, a decision upheld by the High Court in early 2026[91]. It remains to be seen whether a constitutional complaint will follow, but such rulings may reinforce perceptions of impunity within the judicial system.

According to the OSCE trial monitoring methodology, the importance of proceedings is assessed based on: (1) the status of the accused and their position in society, (2) the gravity of the offence, and (3) the level of public attention[92]. By these criteria, the aforementioned cases should rank among the most significant. However, the absence of effective action by the SSPO, despite repeated reminders and urgings, suggests potential preferential treatment and raises concerns regarding prioritisation criteria and the protection of the public interest. This may indicate systemic

89 Centre for Civic Education (CCE), *Three Years of Silence by the SSPO in the Bratić Case*, available at: https://cgo-cce.org/2025/09/19/tri-godine-tisine-sdt-a-o-slucaju-bratic/

90 Centre for Civic Education (CCE), *Three Years of Inaction by the SSPO Regarding the Second Criminal Complaint Against Bratić*, available at: https://cgo-cce.org/2025/12/23/tri-godine-neaktivnosti-sdt-a-i-po-drugoj-krivicnoj-prijavi-protiv-bratic/

91 Available at: https://www.vijesti.me/vijesti/drustvo/797447/i-bratic-cista-i-direktorima-pare

92 OSCE, *Trial Monitoring Report in the Western Balkans*, 2024, p. 8.

weaknesses and political influence over institutions, as only consistent and non-selective prosecution can ensure the rule of law and public trust.

An additional illustration of the negative impact of inconsistency and selectivity in the judiciary is reflected in inadequate responses to hate speech. Although clearly defined in law, tolerance of hate speech sends a message of social acceptability. As early as 2018, the European Parliament recognised the dangers of the spread of neo-fascist ideologies and adopted a resolution calling on Member States to ban neo-fascist and neo-Nazi groups. The resolution expressed deep concern over the "normalisation" of fascism, racism, xenophobia and other forms of intolerance, as well as alleged "collusion" between certain political actors and extremist groups. In recent years, Montenegro has witnessed numerous instances of hate speech, unscientific historical revisionism and the relativisation of fascist crimes, without an adequate response from competent authorities.

Civil society organisations have repeatedly called on the State Prosecution to take a clear position on whether the glorification of the Chetnik movement constitutes hate speech warranting sanction[93]. Despite timely warnings regarding this growing problem - which deepens social divisions, fuels hate speech, undermines the anti-fascist foundations of the state and rehabilitates ideologies responsible for mass crimes—an adequate response from the Supreme State Prosecution has been lacking. This climate of impunity has contributed to further escalation, culminating in the erection of the monument to Pavle Đurišić, with the involvement of the Serbian Orthodox Church[94], both in its installation and subsequent concealment, as well as the inadequate response of competent authorities[95].

Another negative example of tolerance of hate speech is the failure to sanction the Mayor of Nikšić, Marko Kovačević. During a commemoration of the Battle of Grahovac, he stated: "If someone does not want us to be brothers, if someone wants to resemble the Turks more, then, indeed, we will treat them as we did the Turks[96]." This was followed by the Administrative Committee of the Parliament avoiding a decision on lifting his immunity, as requested by the Higher State Prosecution, and ultimately the prosecution dismissed the case[97]. Notably, this concerns a public official with a pattern of similar incidents. For example, in June 2021, he denied the genocide in Srebrenica during a television appearance. In that case, the High Court in Podgorica held at first instance that this did not constitute hate speech, reflecting problematic interpretation of international standards, according to which genocide denial is a typical form of hate speech[98].

Further, following a physical altercation involving Montenegrin and foreign nationals in the Podgorica neighbourhood of Zabjelo in October 2025, a dangerous wave of violence targeting Turkish nationals was driven by misinformation and inflammatory rhetoric. Certain media outlets initially reported that the perpetrators were predominantly of Turkish nationality, which later proved inaccurate. Representatives of some ruling political parties also disseminated misinformation regarding both the number of Turkish nationals in Montenegro and their alleged involvement in criminal activity. At the same time, the Prime Minister proposed, and the Government adopted, a hasty decision to temporarily suspend the visa-free regime for Turkish citizens. These developments contributed to an atmosphere of hostility and the escalation of violence. At public gatherings following the incident, chants such as "Kill the Turk" were heard, constituting clear hate speech under international standards and domestic case law. Attacks on venues and business premises owned by Turkish nationals were recorded across several cities, as well as the burning of their vehicles. These incidents cannot be considered isolated offences, but rather acts motivated by national hatred, in some cases taking on elements of persecution, thereby requiring stricter application of the Criminal Code, which

93 Centre for Civic Education (CCE), *NGOs Call on the Supreme State Prosecutor to React to the Glorification of the Chetnik Movement and Pavle Đurišić*, available at: https://cgo-cce.org/2025/05/22/nvo-traze-reakciju-vdt-a-zbog-velicanja-cetnickog-pokreta-i-pavla-durisica/

94 Centre for Civic Education (CCE), *Urgently Remove the Illegal Monument to Pavle Đurišić as It Represents a Monument to Crime, Not Heroism*, available at: https://cgo-cce.org/2025/08/07/hitno-ukloniti-nezakoniti-spomenik-pavlu-djurisicu-jer-je-to-spomenik-zlocinu-a-ne-herojstvu/

95 Centre for Civic Education (CCE), *Lawful Removal of the Monument to Pavle Đurišić Is a Matter of Justice and Values*, available at: https://cgo-cce.org/2025/10/11/zakonito-uklanjanje-spomenika-pavlu-djurisicu-pitanje-pravde-i-vrijednosti/

96 CDM, *Video: Kovačević Delivers a Scandalous Hate Speech, Threatening Montenegrins "You Will End Up Like the Turks If We Are Not Brothers"*, available at: https://www.cdm.me/politika/video-kovacevic-u-skandaloznom-govoru-mrznje-prijetio-crnogorcima-ako-nismo-braca-zavrsicete-kao-turci/

97 RTCG, *Prosecution Dismisses Criminal Complaint: Kovačević Did Not Incite Hatred with His Speech at Grahovo*, available at: https://rtcg.me/hronika/753493/tuzilastvo-odbacilo-krivicnu-prijavu-kovacevic-nije-izazivao-mrznju-govorom-na-grahovu.html

98 Vijesti, *Kovačević Acquitted of Charges Related to Denial of the Srebrenica Genocide and Incitement of National and Religious Hatred*, available at: https://www.vijesti.me/vijesti/crna-hronika/644818/kovacevic-oslobodjen-optuzbe-da-je-negiranjem-genocida-u-srebrenici-mogao-da-izazove-nacionalnu-i-vjersku-mrznju

provides for enhanced penalties for hate-motivated offences[99]. Nevertheless, the response of state authorities was inadequate. Proceedings were initiated in a limited number of cases, primarily concerning physical violence, while hate speech remained largely unprosecuted.

Even these selected examples provide sufficient grounds to conclude that judicial and other state authorities still do not sufficiently recognise the seriousness of hate speech and its consequences. It is therefore essential to strengthen training for judges and prosecutors to ensure timely and effective responses, accompanied by a clear message that hatred and discrimination are not acceptable in Montenegro.

Key Findings and Recommendations

Based on the analysis conducted of the state of the judiciary in Montenegro, key systemic shortcomings have been identified, alongside certain institutional advancements that may serve as a foundation for further reform. In this context, the recommendations are aimed at strengthening the independence, accountability and efficiency of the judiciary, with a clear need to move from formal to substantive reforms.

1. ***IBAR and the limited scope of reforms*** - The granting of IBAR represents an important political signal in the EU integration process, but not a confirmation of a substantive transformation of the judiciary. Progress has largely resulted from the fulfilment of technical criteria within a favourable geopolitical context, as evidenced by the subsequent need to amend key laws adopted during that period. It is recommended that the focus of reforms shift from formal compliance to measurable results in practice, particularly in the areas of independence, efficiency and accountability of judicial institutions.

2. ***Constitutional and institutional guarantees of independence*** - The current model for the election of members of the Prosecutorial Council, as well as the role of the Minister of Justice in the Judicial Council, presents a risk of political influence. It is necessary to follow the recommendations of the Venice Commission by regulating the composition and method of appointment of the Prosecutorial Council at the constitutional level, ensuring that members of both the Prosecutorial and Judicial Councils are elected by the same qualified majority, and excluding the Minister of Justice from membership in the Judicial Council.

3. ***Normative and strategic framework as a solid foundation, but weak implementation*** - The adoption of guidelines, strategies and protocols represents a positive step forward; however, their implementation and practical effects remain limited. It is necessary to introduce a system of regular monitoring of the implementation of strategic and operational documents, ensure measurable performance indicators and public reporting on results, and strengthen inter-institutional cooperation, particularly between courts and prosecution service.

4. ***Reform planning and public participation*** - The absence of evaluation of previous reform measures hampers the planning of future policies. This requires a comprehensive evaluation of the Action Plan of the Judicial Reform Strategy, the inclusion of civil society and academia in the preparation of new policy documents, and ensuring transparency in decision-making processes.

5. ***Material and infrastructural conditions*** - Inadequate material and technical conditions limit the functioning of the judiciary. It is recommended to adopt a dedicated law regulating the status and salaries of judicial office-holders, taking into account the specific nature of their function and the need to safeguard judicial independence. In addition, budget allocations for the judiciary should be increased, and infrastructure deficiencies (spatial and technical capacities) addressed without delay.

6. ***Ethical and disciplinary accountability*** - The current framework creates legal ambiguity due to the overlap between ethical violations and disciplinary offences, which may result in selective accountability. It is therefore necessary to clearly distinguish between ethical and disciplinary accountability in normative terms, define violations more precisely, prescribe proportionate sanctions, and strengthen the capacities of bodies responsible for oversight and enforcement of ethical standards.

99 Centre for Civic Education (CCE), *Montenegro Is Not a Country of Hatred – Stop Persecution and Hate Speech*, available at: https://cgo-cce.org/2025/10/29/crna-gora-nije-zemlja-mrznje-zaustavimo-progon-i-govor-mrznje/

7. ***Judicial transparency*** - Transparency remains uneven and insufficiently developed in practice. In order to improve it, the publication of information should be standardised across all institutions, access to judicial and prosecutorial decisions enhanced, and training in communication with the public provided to both institutional leadership and other judicial staff.

8. ***Selective justice and political influence*** - There are indications of selective action in criminal cases, which undermines trust in the judiciary. To address this, clear criteria for case prioritisation should be introduced, transparency of prosecutorial decision-making ensured, and institutional integrity and resilience to political influence strengthened.

9. ***Efficiency of proceedings and case management*** - The excessive length of proceedings is partly a consequence of weak institutional coordination and case management. It is essential to improve cooperation between the judiciary and the police, introduce a case complexity assessment system in line with CEPEJ standards, and optimise case allocation and staffing capacities.

10. ***Follow-up on findings of the State Audit Institution (SAI)*** - Insufficient follow-up on negative SAI findings undermines institutional accountability. In line with European Commission recommendations, it is necessary to introduce an obligation for the prosecution to provide action in response to SAI findings and to develop mechanisms of institutional accountability for ignoring audit reports.

11. ***Pre-trial detention and alternative measures*** - Pre-trial detention is too often used as a rule rather than an exception. This highlights the need to strengthen the use of alternative measures (bail, supervision), align practice with international standards, and improve the capacities of the prison system, particularly in the area of rehabilitation.

12. ***Vetting and alternative mechanisms*** - Comprehensive vetting carries risks of politicisation and reduced efficiency; therefore, such a model should be abandoned. Instead, existing accountability mechanisms (disciplinary and criminal procedures) should be strengthened, alongside the development of targeted ("pre-appointment") vetting for high-risk segments of the system.

13. ***Information Leakage and Protection of Rights*** - The publication of private communications irrelevant to criminal proceedings often undermines the presumption of innocence, privacy and the integrity of the judiciary, while also creating pressure on judiciary. A balance between the public's right to know and the protection of individual rights requires clear communication protocols, sanctions for unauthorised disclosures, and stronger protection of personal data and procedural rights.

14. ***Media and the presumption of innocence*** - Media reporting frequently violates the presumption of innocence and further jeopardises the rights of the accused. It is therefore crucial to promote professional reporting standards, develop guidelines for reporting on criminal proceedings, and ensure enhanced protection of minors in the media.

15. ***Social context and hate speech*** - The insufficient institutional response to hate speech and historical revisionism represents a serious social and legal concern. It is essential to consistently apply criminal law mechanisms, strengthen institutional capacities to identify and prosecute such conduct, and develop preventive and educational programmes.

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The judicial system of Montenegro continues to be characterized by a gap between normative progress and its practical implementation. Although the granting of IBAR represents a positive signal in the process of European integration, it does not constitute evidence of substantive reform but rather reflects the fulfilment of technical criteria within a specific geopolitical context.

Key challenges remain present in three main areas: limited judicial independence due to political influence, insufficient efficiency of proceedings, particularly in cases of high-level corruption and organised crime, and weaknesses in the system of accountability and transparency.

Additional concerns arise from the frequent use of pre-trial detention, uneven transparency among judicial institutions, and the perception of selective justice, all of which directly undermine public trust. Furthermore, the material and infrastructural capacities of the judiciary remain inadequate and represent a limiting factor for its effective functioning.

Some of the priority measures include:

- strengthening judicial independence at the constitutional level;
- improving efficiency through better case management;
- clearly delineating and consistently enforcing accountability;
- limiting the use of pre-trial detention in line with international standards;
- enhancing transparency and institutional capacities.

The key challenge remains the transition from normative alignment to the consistent and impartial application of the law, as reforms will ultimately be measured by tangible results, which are currently lacking.