

# Contribution to European Commission's Rule of Law report

2025



UNITED NATIONS  
**HUMAN RIGHTS**  
Regional Office Europe

## RULE OF LAW & HUMAN RIGHTS

The 'rule of law' is a concept at the heart of the United Nations' mission. It refers to a principle of governance which is consistent with international human rights standards ([S/2004/616](#)). There is no rule of law within societies if human rights are not protected and human rights cannot be protected in societies without a strong rule of law. This interlinkage is reiterated by the UN Secretary-General in his [New Vision for the Rule of Law](#): *"Human rights and the rule of law are mutually reinforcing – the advancement of the rule of law is essential for the protection of all human rights, and human rights are central to the rule of law."*

The Office of the UN High Commissioner for Human Rights (OHCHR, also known as UN Human Rights Office) is mandated by the UN General Assembly to promote and protect the enjoyment and full realization, by all people, of all human rights. As part of its mandate, OHCHR works to mainstream human rights to strengthen the rule of law ([Management Plan 2024 - 2027](#)).

Established in 2009, OHCHR Regional Office for Europe (ROE) aims to advance the protection and promotion of human rights in the European Union and its member States. ROE works to mainstream international human rights standards to strengthen the rule of law in the EU by engaging in and contributing to the European Commission's Rule of Law Report. ROE furthermore promotes the UN human rights mechanisms and processes by giving their work visibility at the regional level.

## OHCHR ROE'S CONTRIBUTION

The contribution by OHCHR Regional Office for Europe (ROE) is grounded in the Universal Declaration of Human Rights and nine international human rights treaties:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Rights of the Child (CAT)
- Convention on the Rights of Persons with Disabilities (CERD)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)
- International Convention for the Protection of All Persons from Enforced Disappearance (CPED)

The current submission consists of a compilation of findings and recommendations contained in reports of UN international human rights mechanisms including human rights treaty bodies, special procedures and the Universal Periodic Review of the UN Human Rights Council. It also includes statements and reports by the UN High Commissioner for Human Rights and his Office.

# UN HUMAN RIGHTS MECHANISM

Each of the nine international human rights treaties creates a **human rights treaty body or committee of independent experts** to monitor the implementation of the provisions of the treaty. With the support from OHCHR, the treaty bodies:

- considers reports submitted by State parties detailing how they are implementing the treaty;
- adopts general comments interpreting the treaty provisions, and organize discussions on themes related to the treaties; and
- considers complaints (communications) from individuals alleging that their rights have been violated by a State party, provided that the State has accepted the complaints procedure.

The **UN Human Rights Council (HRC)** is a subsidiary body of the UN General Assembly and the main intergovernmental body within the UN responsible for human rights. It meets at the UN Office at Geneva in three regular sessions each year, and may convene special sessions to respond to urgent human rights situations. The HRC benefits from substantive, technical, and secretariat support from OHCHR.

The **special procedures of the UN Human Rights Council** are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. As of November 2024, there are 46 thematic and 14 country mandates. With the support of OHCHR, special procedures undertake country visits, act on individual cases of alleged violations and concerns of a broader nature by sending communications (letters of allegation) to States and other entities; contribute to the development of international human rights standards; and engage in advocacy.

The **Universal Periodic Review (UPR) of the UN Human Rights Council** is a State-led mechanism that conducts a peer review of the human rights situation of each UN Member State once every 4.5 years. It is carried out by the UPR Working Group of the Human Rights Council. In each review, the State under review reports on the actions it has taken to improve its human rights situation and overcome challenges to the enjoyment of human rights. It also receives recommendations from UN Member States for improvement. In addition to the national reports of States under review, the UPR is informed by compilations of stakeholder information and UN system reports.

In recent years, States have established **National Mechanisms for Implementation, Reporting and Follow-up (NMIRF)**, some of whom with the technical assistance of UN Office of the High Commissioner for Human Rights (OHCHR). This mechanism, which is often based within the ministry of foreign affairs, has a mandate which includes following-up on all treaty body obligations, UPR recommendations, as well as recommendations from other international and regional human rights mechanisms, and generally works closely with government ministries, national human rights institutions and civil society organizations. (See: [National Mechanisms for Reporting and Follow-up: A Study of State engagement with International Human Rights Mechanisms; A Practical Guide to Effective State Engagement with International Human Rights Mechanisms](#))

The **Office of the UN High Commissioner for Human Rights (OHCHR)** also known as **UN Human Rights Office** is the main human rights entity of the UN. The High Commissioner is responsible to protect and promote all human rights for everyone all over the world.

# INSIDE THE CONTRIBUTION

# MONTENEGRO

- Period of contribution: January - December 2024
- Contents of contribution:
  - The Committee on the Elimination of Discrimination against Women (CEDAW) adopted its concluding observation on Montenegro on 15 May 2024 and the report ([CEDAW/C/MNE/CO/3](#)) was published on 6 June 2024.
  - The Special Rapporteur on the independence of judges and lawyers visited Montenegro from 19 to 26 September 2023. At the end of the visit, the Special Rapporteur shared a [preliminary statement](#) and subsequently, published the official report ([A/HRC/56/62/Add.1](#)) at the 56th session of the UN Human Rights Council (18 June - 12 July 2024).
  - The special procedures of the UN Human Rights Council sent a communication letter to Montenegro ([MNE 1/2024](#)) dated 8 March 2024 concerning the judicial proceedings against civil society activist, academic and columnist Mr. Boban Batrićević. A [response](#) was received.
  - The special procedures of the UN Human Rights Council sent a communication letter to Montenegro ([MNE 2/2024](#)) dated 20 August 2024 concerning the alleged surveillance of Ms. Dinara Smailova and her husband Mr. Almat Mukhamedzhanov in Montenegro and the alleged risk of Ms. Smailova's extradition to Kazakhstan, where she allegedly faces prosecution for her legitimate human rights work. A [response](#) was received.
- Forthcoming relevant information (January - May 2025):
  - The Human Rights Committee (CCPR) will review Montenegro at its 143rd session (3 - 28 March 2025).
- Resources:
  - [Rule of Law in Europe | OHCHR](#)
  - OHCHR country page - [Montenegro](#)
  - [Universal Human Rights Index \(UHRI\)](#) allows you to explore over 230.000 observations and recommendations made by the international human rights protection system (treaty bodies, special procedures and the Universal Periodic Review)

## Pillar I: JUSTICE SYSTEM

There is no true respect for the rule of law without a judicial power guaranteeing compliance therewith. Judges guarantee compliance with laws and with it the reality of democratic coexistence. The duty to promote equality among all persons, especially to ensure that everyone has the right to access justice on an equal basis with others, rests with the judiciary. Guaranteeing access to justice is indispensable to democratic governance and the rule of law, as well as to combating inequality and exclusion.

Respecting the rule of law through fostering the separation of powers and the independence of justice ensures protection of human rights. The judiciary is the ultimate guarantors of human rights. However, at the same time, judges, prosecutors and lawyers are subject to attacks and violations of their rights, including threats, intimidation, external interference in conducting their professional activities, arbitrary detention, prosecution, and killings. These attacks threaten the impartiality and independence of the judiciary and the legal profession and in turn, deter their role as guarantors of human rights and the rule of law.

For more info:

- [Basic Principles on the Independence of the Judiciary](#)
- [Human rights in the administration of justice: a manual on human rights for judges, prosecutors and lawyers](#)
- [International principles and guidelines on access to justice for persons with disabilities](#)
- [General Recommendation No. 33 on women's access to justice \(CEDAW/C/GC/33\)](#)
- [Special Rapporteur on the independence of judges and lawyers](#)

### ***Appointment and selection of judges, prosecutors and court presidents (incl. judicial review)***

- The Special Rapporteur referred to the weak legal framework as a threat to judicial independence ([A/HRC/56/62/Add.1](#), paras. 25 – 30):
  - Both the Constitution and ordinary legislation include provisions to protect the independence of the judiciary from other branches of Government (institutional independence) and the independence of individual judges to adjudicate the cases before them impartially and autonomously (personal independence). The Constitution enshrines the principles of the separation of powers (art. 11) and the independence of the judiciary (art. 118). It also guarantees the security of tenure (art. 121) and functional immunity of judges (art. 122).
  - The requirements of judicial independence and key aspects of the judicial career are spelled out in greater detail in the Law on Courts and the Law on Judicial Council and Judges, which provide that the judiciary has jurisdiction over all issues of a judicial nature and is to decide matters before it impartially and without any improper influence, pressures, threats or interference. In general terms, these provisions are drafted in line with international and regional standards on the independence of the judiciary. However, as observed by the European Commission for Democracy through Law (Venice Commission), in one of its first opinions on the judiciary in Montenegro, it would have been preferable to regulate the independence of the judiciary and the judicial career in a single law, so as to “make the regulations more coherent and understandable”.
  - The Law on Judicial Council and Judges regulates the qualifications and appointment of judges (arts. 33–71), promotion (arts. 72–75), transfer (arts. 82–86), periodic evaluation (arts. 87–101), termination of office (arts. 103–107) and disciplinary proceedings (arts. 108–129). It also sets out specific provisions on the composition and functioning of the Judicial Council (arts. 9–32).
  - At present, important aspects of the judicial career, for instance, work-related rights or political participation of judges, are not regulated by law. Other important issues, such as salaries or the rules on pension and retirement, are governed by ordinary legislation on the rights and duties of public sector employees.

- This is not in line with international standards. The Basic Principles on the Independence of the Judiciary provide that adequate remuneration of judges, their conditions of service, pensions and the age of retirement are to be “adequately secured by law” (principle 11). The Special Rapporteur is of the view that applying ordinary legislation on civil servants to judges fails to acknowledge the fundamental constitutional mission that judges exercise and may pose threats to judicial independence.
- The ongoing review of the Law on Judicial Council and Judges offers an important opportunity to bring national legislation fully into line with international standards on the independence of the judiciary.

***Independence (including composition and nomination and dismissal of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)***

- In relation to the Constitutional Court and the Judicial Council, the Special Rapporteur noted ([A/HRC/56/62/Add.1](#), paras. 33 – 38):
  - In recent years, however, the Constitutional Court and the Judicial Council were unable to function or were forced to operate in incomplete composition, due to the inability of the parliament to carry out its constitutional responsibilities.
  - In September 2022, the Constitutional Court lost its quorum after the retirement of one judge, leaving the Court with only three out of seven judges. This unprecedented paralysis of the Court, due to its incomplete composition, led to significant delays in the Court’s work. It was only in February 2023 that the parliament appointed three new judges to the Constitutional Court, restoring the quorum needed for the Court’s functioning. The remaining vacant position was filled in November 2023, more than three years after the process of appointing judges to the Constitutional Court began.
  - With regard to the Judicial Council, there was a long-standing failure to secure a qualified majority in the parliament for the election of non-judicial members. A temporary anti-deadlock mechanism, introduced in 2018, extended the terms of office of three lay members for almost five years beyond their term of office, which is limited to four years by the Constitution. This situation undermined the Council’s democratic legitimacy. Only in December 2023 did the parliament reach a qualified majority for the election of new lay members.
  - Furthermore, from 2019, the Judicial Council operated in incomplete composition following the resignation of its President. This prevented the adoption of decisions requiring a two-thirds majority, such as the appointment of the President of the Supreme Court, pending since 2020, and had a significant adverse impact on the overall functioning of the justice system. After two years in incomplete composition, the Judicial Council restarted its operations with all its members in June 2022, when the General Conference of Judges elected four new judge members to the Council.
  - The Special Rapporteur welcomes the appointment of the new judges of the Constitutional Court and the new lay members of the Judicial Council. However, she wishes to recall that, as observed by the Venice Commission in its 2022 advisory opinion on Montenegro, the respect for the principle of separation of powers requires that “no branch of power/constitutional institution should be permitted by way of deliberate inaction or mere incapability of acting to block the functioning of another branch of power/constitutional institution”.
  - There is no easy solution to the serious issue of lack of political will to find a broad agreement on appointments to key judicial institutions. As observed by the Venice Commission, it would be a sign of maturity and responsibility on the part of the political class to find consensus or agreement, in particular as to the election of Constitutional judges or the appointments of independent judicial institutions, as such political agreement is necessary for guaranteeing the independent and democratic functioning of the judiciary as a whole.
- The Special Rapporteur furthermore referred to the participation of members of the Judicial Council ([A/HRC/56/62/Add.1](#), paras. 53 – 56):
  - In relation to judge members, the Special Rapporteur wishes to stress that, while there is no standard model that a democratic country is bound to follow in setting up its judicial council, there

is a tendency at the international level for a majority of members to be judges elected by their peers). In this regard, she notes that, in Montenegro, judges elected by their peers constitute a minority of the Council members (4 out of 10).

- The Special Rapporteur is of the view that the participation of members who are not part of the judiciary can add value to the Council's work and reduce the perception of self interest, self-protection and corporatism. However, she is concerned about the vague requirements for lay members of the Judicial Council ("15 years of work experience in legal affairs" and "personal and professional reputation"), which do not provide sufficient guarantees against political interference, a fortiori considering that reputable lawyers are elected by the parliament.
  - The participation of the Minister of Justice as an ex officio member of the Judicial Council does not, in itself, impair the independence of the Council, insofar as appropriate measures are put in place. In this regard, the Special Rapporteur notes that the Constitution expressly prohibits the election of the Minister as president of the Judicial Council (art. 127 (49)) and his or her participation in disciplinary proceedings against judges (art. 128 (3)), but remains silent on the participation of the Minister of Justice in other decisions concerning essential aspects of the judicial career (e.g. decisions on the appointment, transfer or promotion of judges).
  - The Constitution provides that the President of the Judicial Council is to be elected by the Judicial Council from among its members who do not perform judicial functions (art. 127 (3)). The Special Rapporteur considers that this provision does not provide sufficient guarantees to ensure that the judiciary and judicial career processes are effectively insulated from external political pressure, in particular because non-judge members are currently elected by the legislative power. It would be preferable if the president of the Council were elected by the Council from its judicial members. To avoid undue concentration of powers, the president of the Supreme Court should not be eligible for election as president of the Council.
- The Special Rapporteur furthermore identified internal interference as a factor affecting judicial independence ([A/HRC/56/62/Add.1](#), paras. 45 - 47):
    - Another important factor affecting judicial independence comes from the broad supervisory powers that higher courts and court presidents retain over lower courts or judges under their supervision. According to the Law on Courts, the Supreme Court may, ex officio or upon the request of a court, take a "legal opinion of principle" on a contentious legal issue, with a view to providing uniform application of the laws by the courts (art. 26). Similar powers are conferred on the general meeting of judges of a court (art. 40 (1) (2)).
    - Although the Law on Courts no longer provides that legal positions of principle are binding, such positions could nonetheless interfere with judicial decision-making. In its Opinion No. 783/2014, the Venice Commission recommended that in order to avoid any misunderstanding, "the non-mandatory character [of legal positions of principle] should be stated explicitly". The Special Rapporteur regrets that that recommendation has not been duly implemented.
    - The supervisory power that the Law on Courts confers to court presidents vis-à-vis judges in their courts (art. 37) and to higher courts over the work of lower courts (art. 62) are also too broad. Although such powers are aimed at monitoring the overall efficiency of the relevant court, and not the content of decisions, their exercise may have a chilling effect on individual judges or lower courts, in violation of the principle of personal independence.

### ***Independence/autonomy of the prosecution service***

- On the election of the Supreme State Prosecutor, the Special Rapporteur noted ([A/HRC/56/62/Add.1](#), paras. 65 – 69):
  - Candidates for the position of the Supreme State Prosecutor must meet the requirements set out in article 43 of the Law on the State Prosecution Service. The Special Rapporteur is of the view that these requirements are currently too broad and generic. Furthermore, neither the Constitution nor the law provide any guidance on how to assess the requirements of "professional impartiality" and "high professional and moral qualities". This means that, in practice, candidates are currently

assessed on the basis of formal and overly general requirements that do not allow for a proper assessment of their moral integrity, independence and professional qualifications.

- According to the Constitution, the Supreme State Prosecutor is elected by the parliament at the proposal of the Prosecutorial Council (arts. 91 (3) and 135). Article 46 of the Law on the State Prosecution Service provides that the Prosecutorial Council is to compose a list of candidates meeting the requirements in law for election. The list is then to be submitted to the extended session of the Supreme State Prosecution Office (composed of the Supreme State Prosecutor, State prosecutors from the Supreme State Prosecution Office, heads of high State prosecution offices and the head of the Special State Prosecution Office), which is to provide a reasoned opinion for each candidate. Along with an interview, this opinion forms the basis of the Prosecutorial Council's proposal for the Supreme State Prosecutor, which is passed to the parliament for consideration.
  - In the first round of voting, the Supreme State Prosecutor is elected by a qualified majority of two thirds of all members of the parliament; however, if the proposed candidate is not supported by the required majority, in the second round of voting, the parliament elects the Supreme State Prosecutor from among all the candidates that meet the legal requirements (art. 91 (4)).
  - This provision is extremely problematic. The lack of a qualified majority in the first round of voting allows for the parliament to vote for any candidate in the list prepared by the Prosecutorial Council. In the Special Rapporteur's view, such a procedure does not provide sufficient safeguards against elections based on political affiliation or other improper motives.
  - For more than four years, Montenegro had no permanent Supreme State Prosecutor, owing to the parliament's inability to build political consensus. It was only in January 2024 that the parliament was able to elect a new Supreme State Prosecutor with the required two thirds majority. The Special Rapporteur welcomes the election of the Supreme State Prosecutor. However, she reiterates that, in a State governed by the rule of law, the inability of a constitutional body to exercise its functions cannot prevent another constitutional body from carrying out its responsibilities in accordance with the Constitution and ordinary legislation (see para. 37 above).
- Regarding the Prosecutorial Council, the Special Rapporteur noted ([A/HRC/56/62/Add.1](#), paras. 74 – 77):
    - The Special Rapporteur notes that, unlike judicial councils, international standards provide little guidance on the composition of prosecutorial councils. She also notes that the standards elaborated for judicial councils cannot be applied to prosecutorial councils because of the different meaning that “independence” assumes in relation to the organization and functioning of the prosecution service.
    - The Special Rapporteur welcomes the inclusion of one representative of a non governmental organization among the eminent lawyer members of the Council, hearing repeatedly during the visit that this step has improved the transparency of the Council's proceedings. The fact that a representative of the Ministry of Justice, and not the Minister himself or herself, is a member of the Council also reduces the risk of politicization. Nevertheless, the Special Rapporteur is concerned that the current composition of the Council, in which non-prosecutor members elected by a simple parliamentary majority outnumber prosecutorial members in relation to disciplinary matters, for which the Supreme State Prosecutor is excluded, risks politicization and could undermine the independence of the Council.
    - The Special Rapporteur considers that some of the requirements in article 26 (1) of the Law on the State Prosecution Service for the selection of eminent lawyers (10 years of experience in law; personal and professional reputation) are too broad or generic and do not provide sufficient guarantees against appointment for improper motives. In addition, the inclusion of practising defence lawyers in the Council is problematic, as there may be a perceived or actual conflict of interest between membership in the Council and the exercise of their professional functions.
    - In relation to the selection process for lay members, the Special Rapporteur shares the view expressed by the Venice Commission that, in order to avoid a politicization of the body, the parliament should elect eminent lawyers with a qualified majority of two thirds and that an anti-deadlock mechanism should be envisaged, as is the case for the Judicial Council.

### ***Independence of the Bar (chamber/association of lawyers) and of lawyers***

- Regarding lawyers and the free exercise of their legal profession, the Special Rapporteur noted ([A/HRC/56/62/Add.1](#), paras. 88 - 90):
  - The law makes provision for lawyers to have confidential communication with their clients and to have timely access to evidence. However, lawyers informed the Special Rapporteur that delays in obtaining access to clients held in detention centres were common and meant that some accused persons gave incriminating statements without the benefit of legal representation or advice. Furthermore, lawyers reported that the deficient infrastructure in the Montenegrin judicial system impeded the adequacy and confidentiality of their conversations with clients. With few separate rooms for interviews, lawyers may be forced to converse with their clients in the corridor outside a prosecutor's or judge's office, sometimes in the presence of police guards.
  - The Special Rapporteur heard reports, and witnessed instances, of lawyers being disparaged for relying on procedural rules designed for the protection of their clients, with this being presented as obstructionist or somehow in bad faith. Worryingly, some of these comments have been made by officials representing the Government of Montenegro. This suspicion of the legal profession appears to the Special Rapporteur to be associated with a pattern of identifying lawyers with their clients, contrary to international standards. During several interviews with government officials, lawyers who had represented individuals charged with acts related to organized crime were identified with their clients. Such statements have also been quoted in news stories and likely contribute to an atmosphere of intimidation and harassment for lawyers. Indeed, lawyers spoke of receiving threats and experiencing violence as a result of their work.
  - According to the Basic Principles on the Role of Lawyers, the Government must ensure that lawyers are able to perform their professional functions without intimidation, hindrance, harassment or improper interference (principle 16 (a)). At the same time, the bodies responsible for the regulation of lawyers must ensure that lawyers at all times maintain the honour and dignity of their profession as essential agents of the administration of justice (principle 12). The Bar Association must actively monitor compliance with the Attorneys' Code of Ethics, respond appropriately to complaints against individual lawyers and take steps to ensure that its members treat all people with equality and dignity. Given the apparently very small number of lawyers coming from vulnerable and marginalized communities in Montenegro, the Bar Association should take positive steps to encourage young people from such communities to train as lawyers and dismantle any obstacles that may make integration into the profession difficult for them.

### ***Independence - significant development capable of affecting the perception that the general public has of independence of the judiciary***

- Regarding the problem of corruption within the judiciary and a vetting process in the judiciary, the Special Rapporteur noted ([A/HRC/56/62/Add.1](#), paras. 84 - 86):
  - The systems of Montenegro are currently not adequate to tackle the problem of corruption within the judiciary. Judges and prosecutors are required by the Law on Prevention of Corruption to declare their assets. However, the verification of declarations by the Agency for the Prevention of Corruption is limited to the fulfilment of the obligation to submit declarations, and failure to submit can result only in administrative and misdemeanour proceedings. In addition, the Judicial and Prosecutorial Councils currently take an inconsistent approach to disciplining judges and prosecutors for not submitting reports.
  - The Special Rapporteur was surprised and concerned to hear of the relatively low number of disciplinary proceedings brought before the Judicial and Prosecutorial Councils in relation to declarations of assets. She was informed that the majority of disciplinary proceedings related to "minor errors" in the declaration of income or assets. She also heard that the current legal framework lacked a clear distinction between the definitions of specific disciplinary offences and ethical violations outlined in the codes of ethics for judges and prosecutors. This risks introducing



an unacceptable level of ambiguity, which may be used to dispense punishment in some cases unfairly and avoid appropriate action in others.

- In October 2023, the Government conducted an analysis of the introduction of a vetting process in the judiciary, in which it concluded that vetting should be introduced gradually and in phases, starting with holders of the highest judicial functions. The Special Rapporteur notes that vetting is an extreme step, as it risks violating the security of judicial and prosecutorial tenure, which is vital for ensuring the independence of those professions. If the Executive and the Legislature conclude that vetting is warranted, it should be conducted by bodies that are judicial, not political. The procedure adopted must be set out in law, independent, objective and temporary and guarantee a fair trial for all, including a right of appeal.

### **Quality of justice – accessibility of courts (legal aid)**

- The Committee on the Elimination of Discrimination against Women welcomes the initiation in 2021 of the informative campaign “Tell the Story to the End” for free legal aid for victims of domestic violence, in cooperation with the Ministry of Justice, Human and Minority Rights and non-governmental organizations. It also notes with interest the State party’s indication that foreign women seeking international protection have the right to free legal aid. The Committee expresses concern, however that there have been no complaints regarding gender-based discrimination before the courts in recent years. ([CEDAW/C/MNE/CO/3, para. 13](#))
- The Committee on the Elimination of Discrimination against Women, recalling its general recommendation No. [33 \(2015\)](#) on women’s access to justice, recommends that the State party strengthen programmes to improve access to justice for women and girls and increase their awareness of their rights and the remedies available to claim those rights. It further recommends that the State party provide systematic capacity-building for judges, prosecutors, lawyers and law enforcement officials on gender equality and gender-responsive court procedures, and establish an accountability mechanism to address judicial gender bias. ([CEDAW/C/MNE/CO/3, para. 14](#))
- On legal aid from the perspective of lawyers, the Special Rapporteur noted ([A/HRC/56/62/Add.1, paras. 91 - 92](#)):
  - Montenegro has instituted a broad system of free legal aid, which is commendable. The right to legal aid is enshrined in article 21 of the Constitution and governed by the Law on Legal Aid of 2012, as amended in 2015. The latter provides that legal aid may be provided by lawyers from a list compiled by the Bar Association (art. 30), with cases being assigned in the order of appearance in that list (art. 48 (4)). However, both lawyers and civil society representatives informed the Special Rapporteur that this system did not ensure the provision of adequate specialist advice and representation in certain sensitive cases, in particular those involving trauma-affected persons, including survivors of crimes like trafficking in persons and intimate partner violence. One lawyer described being asked to represent a child survivor of rape without the benefit of any specialist training.
  - The Special Rapporteur notes that the Government proposes the organization of continuous training courses on the rights of particularly vulnerable groups of citizens and improving cooperation with legal clinics and the non-governmental organization sector, with the aim of continually raising the quality and availability of free legal aid. This is a step in the right direction.<sup>21</sup>

### **Quality of justice – accessibility of courts (language and other physical access)**

- On challenges related to physical inaccessibility of courts, the Special Rapporteur noted ([A/HRC/56/62/Add.1, paras. 94 - 96](#)):
  - Obstacles to physical access were readily apparent to the Special Rapporteur. Many courthouses and other buildings within the justice system are inaccessible to users of wheelchairs, and there is little provision for persons with visual impairments. Where elevators had been installed, some were

not operational. The Government's draft judicial reform strategy (2024–2027) contains proposals to increase the numbers of ramps, elevators and audio information systems and the use of Braille and tactile surfaces in buildings that house courts and the offices of State prosecutors. The Special Rapporteur welcomes this first step but urges detailed and ongoing person-centred action, involving feedback by the court users affected, to ensure full and effective access. Furthermore, the Special Rapporteur is concerned that the Government's draft judicial reform strategy does not include any proposals for procedural adaptations, which are critical to ensure access to justice for all. Currently, documents and court decisions are not available in Braille, and some reported that court-certified interpreters and translators were not available in adequate number for users of Romani.

- The Special Rapporteur heard that justice system actors are creating a further obstacle to justice by failing to apply provisions of domestic and international human rights law in force in Montenegro. The Special Rapporteur received reports that hate crimes against persons based on their sexual orientation or gender identity have rarely been qualified as such, with prosecutors and judges instead classifying them as public order offences, which carry a lower penalty. The Special Rapporteur also heard that prosecutors and judges had failed to apply effectively the law to protect Roma and Egyptian girls from child marriage and trafficking in persons.
- The Special Rapporteur is concerned that these trends may be indicative of a broader pattern of ignorant or even hostile attitudes by legal professionals to certain individuals and communities. The Special Rapporteur was particularly struck by the reported pervasiveness of insensitive and even negligent treatment within the justice system of individuals complaining of family or intimate partner violence. The Special Rapporteur heard that such complainants experience systemic failures, lack of gender-sensitive support and disparagement by judges and prosecutors. The Special Rapporteur also heard that offences were too often minimized by being classified as misdemeanours, rather than crimes, and that temporary protective measures were not used with sufficient regularity. The failure to recognize the seriousness and escalating nature of these crimes has had tragic consequences; the Special Rapporteur was informed of more than one case where women were killed in circumstances where authorities were aware that they were regularly experiencing violence from their partners.

***Resources of the judiciary (human/financial/material), remuneration/bonuses/rewards for judges and prosecutors, including observed changes (significant and targeted increase or decrease over the past year)***

- On security of tenure, the Special Rapporteur noted ([A/HRC/56/62/Add.1](#), paras. 40 - 42):
  - In 2020, amendments to the Law on Pension and Disability Insurance of 2003, which currently applies to all civil servants, including judges, entered into force. The main changes related to the pensionable age, which was significantly lowered for all public officials. The amendments also stipulated different retirement ages depending on gender and years of service (art. 17 (1)). This led to the termination of the judicial function of 23 judges, on the basis of those judges meeting the new conditions for retirement.
  - During the visit, the Special Rapporteur expressed the view that the application of the new pension scheme to judges who were already in service at the entry into force of the amendments undermined both the security of tenure of sitting judges and the independence of the judiciary in general. She was also concerned that, by setting a different retirement age for men and women judges, the amendments were discriminatory on the basis of gender.
  - On 24 October 2023, the Constitutional Court ruled that these provisions were unconstitutional and instructed the Government to submit an amended draft law to the parliament of Montenegro. The new law, as enacted by the parliament, prescribes that insured persons are entitled to an old-age pension when they reach the age of 65, regardless of their gender, and have at least 15 years of service.
- On low salaries and poor conditions of service for judges, the Special Rapporteur noted ([A/HRC/56/62/Add.1](#), paras. 48 - 50):

- The Law on Salaries of Employees in the Public Sector, which applies to judges and public prosecutors, defines salary coefficients, which vary depending on the years of experience of the judge and the rank of the court that he or she belongs to (art. 22). Additional benefits that judges may have access to include life insurance, a rental subsidy (for judges who do not own an apartment in their place of work) and unemployment benefits. During the visit, several judges noted that their salaries are not commensurate with the status of their profession nor sufficient to guarantee an adequate standard of living. This is especially true for judges who do not own an apartment in their place of work and are required to pay for additional accommodations.
  - Judges also noted that their working conditions were manifestly inadequate. Buildings are old, too small and in a poor state of repair. There is insufficient office space and not enough courtrooms. In many courts, there is a chronic shortage of judges and clerks, which has an adverse impact on workload and contributes to delays in the administration of justice. Facilities for the storage of archives and evidence, including confiscated firearms and drugs, are not secure. Information technology systems and digitalization remain inadequate, especially outside Podgorica. Furthermore, judges dealing with corruption, organized crime and politically sensitive cases face significant security risks that do not appear to be taken sufficiently into account by the responsible national authorities, such as the Ministry of the Interior and the police.
  - The Special Rapporteur recalls that adequate remuneration and conditions of work are essential preconditions for judicial independence. The level of remuneration for judges should be in conformity with the dignity of their office and the scope of their duties and commensurate with the judge's burden of responsibility. Judicial salaries should be sufficient to guarantee an adequate standard of living, so as to ensure that judges are not incentivized to earn an additional income in an inappropriate manner.
- On low salaries and poor conditions of service for prosecutors, the Special Rapporteur noted ([A/HRC/56/62/Add.1](#), paras. 70 - 71):
    - The concerns expressed about judges' adequate standard of living (see sect. IV.A.1.f above) also apply to the prosecution service.
    - During the visit, the Special Rapporteur witnessed that the resources allocated to the prosecution service remain largely insufficient. Prosecutors work in buildings that are old and in poor condition. Several prosecutors are required to share one office, which has a serious impact on confidentiality during interrogations and victim interviews and thus the privacy of individuals. Furthermore, many prosecutors are subject to significant security risks that are not adequately addressed by the responsible national authorities.

## Pillar II: ANTI-CORRUPTION

Corruption has a destructive effect on State institutions and it undermines the functioning and legitimacy of institutions and processes, the rule of law and ultimately the State itself. In particular, corruption effects on the capacity of States to respect, protect and fulfil human rights particularly of those persons and groups in situation of vulnerability and marginalization.

Corruption pose a major challenge to many societies as they divert public revenues and cripple public budgets that should provide healthcare, housing, education, and other essential services, they undermine States' ability to meet their minimum core obligations and their pre-existing legal obligations to maximize all available resources to respect, protect and fulfil human rights.

For more info:

- [Corruption and human rights | OHCHR](#)
- [OHCHR Key messages on the negative impact of corruption in the enjoyment of human rights](#)

Regarding the problem of corruption within the judiciary, please see above, Pillar I.

## Pillar III: MEDIA FREEDOM

Free, independent, plural and diverse media are a core component of the right to freedom of expression, a cornerstone of democratic societies and plays an essential role in strengthening the rule of law. Journalists and the media are crucial to ensure transparency and accountability for public and governmental authorities.

For more info:

- [OHCHR and the safety of journalists and the issue of impunity](#)
- [Special Rapporteur on freedom of opinion and expression](#)
- [General comment No.34 on Article 19: Freedoms of opinion and expression \(CCPR/C/GC/34\)](#)

There is no relevant information under this pillar for the coverage period.

## Pillar IV: CHECKS AND BALANCES

Civic space is the environment that enables civil society to play a role in the political, economic and social life of our societies. In particular, civic space allows individuals and groups to contribute to policy-making that affects their lives, including by: (1) accessing information; (2) engaging in dialogue; (3) expressing dissent or disagreement, and (4) joining together to express their views. An open and pluralistic civic space that guarantees freedom of expression and opinion as well as freedom of assembly and association, is a prerequisite for making development and peace sustainable.

For more info:

- [OHCHR and protecting and expanding civic space](#)
- [Special Rapporteur on human rights defenders](#)
- [The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#)

### ***Independent authorities - Office of the Protector of Montenegro (The Ombudsman)***

- The Committee on the Elimination of Discrimination against Women notes that the Office of the Protector of Montenegro (The Ombudsman) was accredited with “B” status in May 2016, by the Global Alliance of National Human Rights Institutions and regrets that it has remained in this category since then. ([CEDAW/C/MNE/CO/3, para. 17](#))
- The Committee recommends that the State party implement the recommendations of the Subcommittee on Accreditation to amend the Ombudsman’s enabling law to make its promotional mandate explicit; formalize a clear, transparent and objective selection and appointment process; ensure adequate funding

with full financial autonomy of the Office of the Protector of Montenegro, given its national preventive mechanism and anti-discrimination mandate. It also recommends that the State party ensure that the Office is legislatively empowered to determine its staffing structure and recruit staff according to an open, transparent and merit-based selection process that ensures a pluralistic staff composition with the skills required to fulfil its mandate, in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, annexed to General Assembly resolution 48/134 of 20 December 1993). The Committee further recommends that the State party seek the advice and technical support of the Office of the United Nations High Commissioner for Human Rights in this regard. ([CEDAW/C/MNE/CO/3, para. 18](#))

### ***The enabling framework for civil society – legal threats***

- The special procedures of the UN Human Rights Council sent a communication letter to Montenegro ([MNE 1/2024](#)) dated 8 March 2024 concerning the judicial proceedings against civil society activist, academic and columnist Mr. Boban Batrićević:
  - On 11 August 2023, an article written by Mr. Batrićević was published on the portal of the news outlet Antena M strongly criticizing the Serbian Orthodox Church. In response to the article, a lawyer affiliated with the Church filed a criminal complaint against Mr. Batrićević, accusing him of inciting religious hatred.
  - After finding that the article did not contain elements to give rise to criminal proceedings, on 27 October 2023, the Higher State Prosecution charged the academic with a misdemeanour under article 19 of Montenegro’s National Law on Public order and Peace, which prohibits national, racial, or religious insults and carries a fine ranging from €250 to €1,500, or imprisonment for up to 60 days.
  - On 22 January 2024, Mr. Batrićević’s first hearing took place in Podgorica Court. Despite calls from civil society to hold the hearing in public, it was held in the judge’s office, reportedly due to a lack of available court rooms. As a result, only a very limited number of observers were reportedly permitted to attend.
- In its [response](#), the Government of Montenegro stated, among others:
  - In terms of safeguarding the rights of individuals, including civil society activists, to exercise and defend their right to freedom of expression without fear of harassment and reprisal, I would like to highlight that the new Media Law Proposal, to be adopted by the Parliament of Montenegro, includes certain provisions to cover journalists for the first time, encompassing category of columnists like Mr. Batrićević. Notably, it bolsters source protection, stipulating that journalists are obligated to reveal their sources only upon a court order, at the request of the state prosecutor, and solely in cases vital for national security, territorial integrity, public health, or individual protection in instances of media content publication without consent. Additionally, the Media Strategy for 2023–2027 and the inaugural Action Plan for 2023–2024 outline an array of measures aimed at strengthening freedom of expression, alongside efforts to improve the socio-economic standing of media professionals and provide safe working environments for journalists.

### ***The enabling framework for civil society – surveillance***

- The special procedures of the UN Human Rights Council sent a communication letter to Montenegro ([MNE 2/2024](#)) dated 20 August 2024 concerning the alleged surveillance of Ms. Dinara Smailova and her husband Mr. Almat Mukhamedzhanov in Montenegro and the alleged risk of Ms. Smailova’s extradition to Kazakhstan, where she allegedly faces prosecution for her legitimate human rights work:
  - Ms. Dinara Smailova is a woman human rights defender and the founder of the “NeMolchiKZ” (Do Not Be Silent) Foundation in Kazakhstan. Her organization uses social media to publicize cases of domestic and gender-based violence, expose alleged inaction by law enforcement, and share human rights information. Additionally, it provides support to victims of violence and their families.

- On 26 October 2023, Ms. Smailova and her husband applied to the Ministry of Interior of Montenegro for international protection status. On 27 December 2023, the authorities of Kazakhstan placed Ms. Smailova on an interstate wanted list, and on 8 January 2024, an international wanted list. There is allegedly a risk of her extradition from Montenegro to Kazakhstan.
- Additionally, between December 2023 and March 2024, unidentified individuals – specifically three men and one woman, allegedly agents of Kazakhstan – allegedly followed and photographed Ms. Smailova and Mr. Mukhamedzhanov in [retracted] on at least four occasions. In two instances, they allegedly approached Ms. Smailova and Mr. Mukhamedzhanov separately (her in a cafe, him in a store), took close-up photos, and then left. In other cases, they allegedly photographed them together on the street and in a cafe.
- In its [response](#), the Government of Montenegro stated, among others:
  - In connection with the claims of the special procedures mandate holders, which they received about the alleged surveillance of Ms, Smailova and her husband, in Montenegro, and the risk of extradition of Ms, Smailova, where she is threatened, as stated, with criminal prosecution for her activities in the field of human rights, the Police Directorate of Montenegro - Division for International Operational Police Cooperation (INTERPOL - EUROPOL - SIRENE) acted solely in response upon the foreign request of INTERPOL Astana, conducting police checks only related to the individuals mentioned in the request.