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مجلس حقوق الإنسان

الدورة السادسة والخمسون

18 حزيران/يونيه - 12 تموز/يوليه 2024

البند 3 من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

زيارة إلى الجبل الأسود

تقرير المقررة الخاصة المعنية باستقلال القضاة والمحامين، مارغريت ساتيرثويت*

موجز

زارت المقررة الخاصة المعنية باستقلال القضاة والمحامين، مارغريت ساتيرثويت، الجبل الأسود في الفترة من 19 إلى 26 أيلول/سبتمبر 2023. وكان الغرض من الزيارة تقييم التقدم الذي أحرزه الجبل الأسود في تعزيز استقلال القضاء ودائرة الادعاء العام وضمان الأعمال الفعال لمبدأ الفصل بين السلطات.

ومنذ بداية عملية الانضمام إلى الاتحاد الأوروبي، أحرز الجبل الأسود تقدماً كبيراً في إصلاح إطاره المؤسسي والتشريعي. وشهدت عملية الانضمام إلى الاتحاد الأوروبي أيضاً تقدماً كبيراً في مكافحة الفساد والجريمة المنظمة.

وعلى الرغم من هذه التطورات الإيجابية، لا يزال نظام العدالة في الجبل الأسود يواجه ثغرات تشريعية خطيرة وأوجه قصور مؤسسية ومشاكل عملية تقوض استقلال ونزاهة السلطة القضائية ودائرة الادعاء العام وتحد من إمكانية لجوء ضحايا انتهاكات حقوق الإنسان إلى العدالة أو تمنعها. وفيما يتعلق بحرية ممارسة مهنة المحاماة، لا بد من بذل المزيد من الجهود لضمان حرية المحامين في الاضطلاع بأنشطتهم المهنية دون أي تدخل أو ضغط بدون وجه حق.

وتختتم المقررة الخاصة تقريرها بتقديم عدد من التوصيات الرامية إلى زيادة تعزيز استقلال القضاة والمدعين العامين والممارسة الحرة لمهنة المحاماة.

* يعمم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الوارد في مرفق هذا الموجز، فيُعَمَّم باللغة التي قُدِّم بها فقط.



المرفق

تقرير المقررة الخاصة المعنية باستقلال القضاة والمحامين، مارغريت ساتيرثوايت عن زيارتها إلى الجبل الأسود

I. Introduction

1. At the invitation of the Government, the Special Rapporteur on the independence of judges and lawyers, Margaret Satterthwaite, visited Montenegro from 19 to 26 September 2023.
2. During her mission, the Special Rapporteur met with representatives of the Ministries for Foreign Affairs, Justice and Human and Minority Rights, the Protector of Human Rights and Freedoms of Montenegro (Ombudsman), members of the parliament, judges from the Constitutional Court and the Supreme Court, the Chair and members of the Judicial Council, prosecutors from the Supreme State Prosecution Service and the Office of the Special State Prosecutor, members of the Prosecutorial Council, the Representative of Montenegro before the European Court of Human Rights and the director and staff of the Centre for Training in Judiciary and State Prosecution Service. She also met with judges and prosecutors from lower courts and prosecution services in Podgorica, Bijelo Polje and Kolašin.
3. The Special Rapporteur met with a wide range of civil society representatives, including from non-governmental organizations, members of the Bar Association and associations of judges and prosecutors, defence lawyers, academics and representatives of the diplomatic community and international and regional organizations, including the European Union and the Council of Europe. She also met with a number of individuals with experience seeking protection through the legal system.
4. The Special Rapporteur wishes to reiterate her gratitude to the authorities of Montenegro for the invitation and for their support in the preparation of the visit and to the United Nations Resident Coordinator, the United Nations Development Programme and the human rights adviser for the support that they provided before, during and after the visit. She would also like to express her appreciation to all the judges, prosecutors, lawyers, academics, civil society activists and court users who took the time to share their expertise and opinions with her.

II. Legal and institutional framework

A. International obligations

5. An effective, efficient, independent and impartial judicial system is vital to protect and promote the rule of law and respect for human rights and fundamental freedoms. The independence of judges and prosecutors and the free exercise of the legal profession are enshrined in a number of human rights treaties to which Montenegro is a party, including the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), which provide that everyone is entitled to a fair and public hearing by an independent and impartial tribunal established by law. Also relevant are the various treaties ratified by Montenegro that require equal protection and equal treatment before the law, including the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of Persons with Disabilities. Concerning corruption, Montenegro has ratified the United Nations Convention against Corruption.
6. As a candidate country to the European Union, Montenegro is also bound to respect and implement European Union treaties and the values that they enshrine, including respect

for the rule of law and human rights (Treaty on European Union, art. 2). Meeting the interim benchmarks on the rule of law set out in chapters 23 and 24 of the negotiating framework is key to Montenegro achieving further progress in accession negotiations.

7. The principle of separation of powers constitutes an essential guarantee for the independence of the judiciary. According to this principle, the judicial branch must be independent and separated from the other branches of the State. Within the justice system, judges, prosecutors and lawyers must be free to carry out their professional duties without political interference and must be protected, in law and in practice, from any attack, harassment or persecution in the exercise of their professional activities.

8. The Constitution of Montenegro provides that international agreements and generally accepted norms of international law form an integral part of the domestic legal order. In case of conflict with national laws or regulations, they take precedence over national legislation and may be directly applied by the national courts (art. 9).

B. Justice system

1. Courts

9. According to the Law on Courts, the multitiered judicial system of Montenegro consists of misdemeanour courts, basic courts, high courts, a high misdemeanour court, a commercial court, an appellate court, which hears appeals against first-instance decisions of the high courts and commercial courts, an administrative court and the Supreme Court of Montenegro (art. 8). The establishment, organization and jurisdiction of these courts is regulated by the Law (art. 1). The Constitution prohibits the establishment of courts martial and extraordinary courts (art. 118 (3)).

10. There are 329 judicial positions in Montenegro, of which 59 are currently vacant. Out of 270 judges currently in service, 105 are men (38.9 per cent) and 165 are women (61.1 per cent). Statistics concerning judges from communities that experience historical discrimination other than on the basis of sex are not available.

11. The Constitutional Court is separate from the judicial pyramid. It decides on the conformity of laws and regulations with the Constitution and duly ratified international agreements, hears constitutional appeals on alleged violations of human rights and liberties protected in part II of the Constitution and performs other duties set out in the Constitution (art. 149). Its composition and functioning are regulated by the Constitution and the Law on the Constitutional Court.

12. The Supreme Court is the highest court in Montenegro. The court ensures the uniform application of laws by courts and performs other activities prescribed by law. Its composition and jurisdiction are regulated by the Constitution (art. 124) and the Law on Courts (arts. 23–27).

13. The Judicial Council is an autonomous and independent authority that protects and promotes the independence of the courts and individual judges. Its composition and functioning are regulated by the Constitution (arts. 126–128) and the Law on Judicial Council and Judges, currently under review.

2. Prosecution service

14. The State Prosecution Service is an independent and impartial authority in charge of prosecuting the perpetrators of criminal offences and other punishable acts that are prosecuted ex officio. The mandate of the prosecution service is carried out by the Supreme State Prosecutor and State prosecutors.

15. The organization of the State Prosecution Service mirrors that of the court system. It consists of an Office of the Supreme State Prosecutor, which heads the State Prosecution Service, a Special State Prosecution Office, high State prosecution offices and basic State prosecution offices (Law on the State Prosecution Service, art. 11).

16. According to the Prosecutorial Council, the total number of public prosecutors in Montenegro is 141, but only 85 are actually in service (36 men and 59 women). Statistics concerning prosecutors from communities that experience historical discrimination other than on the basis of sex are not available.

17. The Law on the Office of the Special State Prosecutor establishes and regulates the Office. The Office is a part of the State Prosecution Service but enjoys a certain autonomy. It deals with high-level corruption involving public officials, organized crime, terrorism, money-laundering and war crimes.

18. The Prosecutorial Council is an independent authority tasked with guaranteeing the autonomy of the State Prosecution Service. Its composition, election, mandate, organization and methods of work are regulated by the Constitution and the Law on the State Prosecution Service (arts. 18–42).

III. Positive developments

19. Since becoming an independent and sovereign State in 2006, Montenegro has made considerable progress in strengthening its institutional and legislative framework to protect and promote the independence of the judiciary and the prosecution service and the free exercise of the legal profession.

20. The accession process to the European Union, initiated by Montenegro in June 2012, gave new impetus to the reform of the justice system. In 2013, Montenegro introduced several constitutional amendments that imposed limitations on the parliament's role in the sphere of the judiciary and provided a constitutional framework for the depoliticization of the judiciary. In 2015, Montenegro enacted new legislation to further strengthen the independence of judges and prosecutors.

21. The European Union accession process has also significantly advanced reform in relation to the fight against corruption. In 2013, Montenegro adopted the Law on the Prevention of Corruption and established the Agency for the Prevention of Corruption. In 2015, the Office of the Special State Prosecutor was created. In recent years, the number of high-level corruption and organized crime cases before the courts increased significantly.

22. A number of measures have been adopted to strengthen the efficiency and transparency of the judiciary. Courts have been reducing the backlog of cases, and transparency of the justice system has improved with the publication of court decisions and the appointment of media officers to present the work done by national courts. Women are well-represented, outnumbering men among both judges and prosecutors.

23. Montenegrin civil society is particularly vibrant and committed, and many civil society organizations play an important role in analysing proposed law reforms, providing legal aid and facilitating access to justice, in particular for marginalized communities. More recent legislative amendments have been drafted on the basis of widespread consultation with judges, prosecutors and representatives of civil society; this inclusive approach, in which lawmakers seek to learn from those with experience of the functioning of the justice system, is crucial to ensuring its strength and resilience.

24. Notwithstanding these positive developments, the justice system of Montenegro continues to face serious legislative gaps, institutional shortcomings and practical problems that undermine the independence and impartiality of the judiciary and the prosecution service and limit or prevent access to justice for victims of human rights violations.

IV. Challenges to an independent and impartial justice system

A. Judges

1. Threats to judicial independence

(a) Weak legal framework

25. 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).

26. 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”.¹

27. 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).

28. 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.

29. 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.

30. 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.

(b) Judicial appointments

31. Montenegro has made progress in strengthening the independence of the judiciary from other State institutions. The Constitutional amendments of 2013 eliminated the role of the parliament in the election of the President of the Supreme Court and the judge members of the Judicial Council, thereby limiting the politicization of judicial appointments. The parliament retains the power to elect and release from duty the judges of the Constitutional Court and the lay members of the Judicial Council (art. 82 (13)).

¹ European Commission for Democracy through Law (Venice Commission), Opinion No. 783/2014 on the draft laws on courts and on rights and duties of judges and on the Judicial Council of Montenegro, adopted by the Commission at its 101st session (12–13 December 2014), paras. 13–14.

32. The election of Constitutional Court judges by the parliament does not per se raise any issue in relation to judicial independence, due the special functions of the Constitutional Court and the corresponding need for the democratic legitimacy of its judges. Similarly, the participation of the parliament in the election of lay members of the Judicial Council is in line with international standards.²

33. 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.

34. 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.

35. 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.

36. 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.

37. 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".³

38. 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.⁴

(c) Security of tenure

39. Security of tenure is an essential guarantee of the independence of the judiciary vis-à-vis other branches of power. According to the Constitution, judges are appointed for life and have guaranteed tenure until a mandatory retirement age or their removal from office for reasons of incapacity or behaviour that renders them unfit to discharge their duties (art. 121).

² A/HRC/38/38, para. 78.

³ Venice Commission, Opinion No. 1110/2022 on the draft amendments to the Law on the Judicial Council and Judges, adopted by the Commission at its 133rd session (16–17 December 2022), para. 25.

⁴ Ibid., para. 27.

40. 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.

41. 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.

42. 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.

(d) Statements by politicians undermining the independence of the judiciary

43. The Special Rapporteur was dismayed to learn that it is not uncommon for government representatives and elected officials to make statements that undermine judicial independence. For example, politicians may make instrumental use of a few isolated cases to demonize judges more broadly or portray the judiciary as an inefficient and corrupt institution. On other occasions, politicians have taken credit for judicial action, making it appear as if the judiciary is subject to political control, or put individual judges dealing with politically sensitive cases under the spotlight, in an apparent attempt to influence their decision-making. Coming from government officials charged with upholding the rule of law, these attacks have a widespread negative impact on public trust in the judiciary, which remains very low, despite the progress made in strengthening the independence and efficiency of the justice system.

44. A free and uncensored media and unhindered communication of information and ideas about public and political issues are essential in a free and democratic society. It is crucial that the Government makes information about the administration of justice available to the media and the broader public. However, government representatives and elected officials carry special duties and responsibilities to uphold the constitutional separation of powers and protect judges from threats to their independence. The Special Rapporteur stresses that public officials should refrain from the kind of commentary on the judiciary that could be perceived as undermining judicial independence.

(e) Internal interference

45. 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)).

46. 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”.⁵ The Special Rapporteur regrets that that recommendation has not been duly implemented.

47. 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

⁵ Venice Commission, Opinion No. 783/2014, para. 22.

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.

(f) Low salaries and poor conditions of service

48. 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.

49. 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.

50. 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.

2. Judicial Council

51. The Special Rapporteur welcomes the establishment of the Judicial Council through a constitutional provision. This emphasizes the vital role that this institution plays as a guarantor of judicial independence (Constitution, art. 126).

52. The Judicial Council consists of 10 members: the president of the Supreme Court; four judges elected by the Conference of Judges; four reputable lawyers elected by the Parliament; and the Minister of Justice (Constitution, art. 127). In general terms, the composition of the Council is in line with international standards. However, the Special Rapporteur has concerns in relation to the judge and non-judge members of the Council, the participation of ex officio members and the presidency of the Council.

53. 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 peers⁶. In this regard, she notes that, in Montenegro, judges elected by their peers constitute a minority of the Council members (4 out of 10).

54. 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.

⁶ A/HRC/38/38, para. 66.

55. 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.⁷ 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).

56. 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.

B. Prosecutors

1. Threats to the autonomy of the prosecution service

57. In Montenegro, the independence of the prosecution service is enshrined in the Constitution (art. 134). Prosecutors are appointed for life and enjoy security of tenure until they reach their retirement age or are removed from office in the cases and according with the procedure established by law (art. 135).

58. Guarantees of prosecutorial independence are spelled out in greater detail in the Law on the State Prosecution Service. The Law provides that prosecutors must carry out their duties in accordance with the Constitution, law and duly ratified international agreements (art. 2) and in an impartial and objective manner (art. 4). Article 3 prohibits any threat, influence and improper interference with the work of the Service and its prosecutors. According to article 130, State prosecutors enjoy personal independence in their work and decision-making.

59. The Law on the Office of the Special State Prosecutor does not include any specific provision on the independence of the Office of the Special State Prosecutor and its prosecutors; however, article 7 of the Law expressly provides that that the Law on the State Prosecution Service applies to any matter not expressly regulated under the Law on the Office of the Special State Prosecutor.

60. In general terms, the Constitution and ordinary legislation are drafted in line with international standards on the independence of the prosecution service, but gaps in the legislation remain. Furthermore, in practice, a number of forms of interference continue to undermine both the independence of the prosecution service from other branches of Government (institutional independence) and the independence of individual prosecutors to carry out their professional functions impartially and autonomously (personal independence).

(a) Weak legal framework

61. The Law on the State Prosecution Service regulates the qualifications and procedure for the appointment of candidates to the various prosecution offices (arts. 43–74), their promotion (arts. 75–77), reassignment and transfer (arts. 81–85), performance evaluation (arts. 86–100), termination of office (arts. 101–107) and disciplinary liability (arts. 108–128). It also sets out specific provisions on the internal organization of the work of the Service (arts. 129–157).

62. The Law does not regulate important aspects of the prosecutorial career, such as reasonable conditions of service or cooperation with the police, the courts, the legal

⁷ Ibid., para. 111.

profession and other government agencies or institutions. Other important aspects of the prosecutorial career, including remuneration, pension and age of retirement, are currently governed by ordinary legislation on the rights and duties of public sector employees.

63. The Law on the Office of the Special State Prosecutor governs the organization and jurisdiction of the Office, the requirements and procedure for the election of the Special State Prosecutor and special prosecutors and the relationship of the Office with other State authorities. Having a special law for the Office underlines the autonomy of the Office of the Special State Prosecutor vis-à-vis the State Prosecution Service.

64. As is the case for ordinary legislation on the judicial career, the Law on the State Prosecution Service and the Law on the Office of the Special State Prosecutor are currently under review. Draft amendments to both Laws were elaborated by the previous Government but were not adopted before the end of the legislative term.

(b) Election of the Supreme State Prosecutor

65. 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.⁸

66. 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.

67. 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)).

68. 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.

69. 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).

⁸ [A/HRC/23/43/Add.1](#), para. 43.

(c) Low salaries and poor conditions of service

70. The concerns expressed about judges' adequate standard of living (see sect. IV.A.1.f above) also apply to the prosecution service.

71. 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.

2. Prosecutorial Council

72. The Prosecutorial Council plays an essential role in guaranteeing the independence and the autonomy of the prosecution service. It is entrusted with key responsibilities regarding the career of prosecutors, enumerated in the Constitution (art. 136). The underlying rationale for its creation was the need to insulate the prosecution service and the prosecutorial career from external political pressure. The composition and functioning of the Prosecutorial Council are regulated in the Law on the State Prosecution Service (arts. 18–42).

73. The Prosecutorial Council is composed of 11 members: the Supreme State Prosecutor, elected by the Parliament; four prosecutors elected by the Prosecutorial Conference; five eminent lawyers elected by a simple majority in Parliament, including one representative of non-governmental organizations; and a representative of the Ministry of Justice. The Supreme State Prosecutor is the president of the Council, except in disciplinary proceedings.

74. 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.

75. 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.

76. 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.

77. 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.⁹

⁹ Venice Commission, Interim Opinion No. 785/2014 on the draft law on the State Prosecution Service of Montenegro, adopted by the Commission at its 101st session (12–13 December 2014), paras. 48 and 49.

C. Corruption

78. The Special Rapporteur heard repeatedly that corruption was perceived as a major issue of concern for people living in Montenegro. In a public opinion poll conducted in 2023, respondents ranked “the fight against crime and corruption” as one of the top priorities that the Government of Montenegro should address in its domestic policy, second only to “the fight for a better standard of living and new jobs”.¹⁰ The justice system is an integral part of the fight against corruption, but it is also at risk of being tainted by corruption. If prosecutors do not act with integrity and judges are not independent, convictions for corruption offences will not take place, and a culture of impunity will flourish.

79. The Montenegrin judiciary and prosecution service are exposed to several risk factors for corruption. The Special Rapporteur was repeatedly reminded of the unusual situation in Montenegro in which, with a population of 600,000, many people are well known to one another. This creates a heightened risk of nepotism or clientelism, including among judges and prosecutors, in turn nourishing a climate in which corruption may flourish. A further risk factor is the inadequacy of judicial and prosecutorial salaries, which increases the vulnerability of justice system actors to financial inducements aimed at biasing their decisions. The politicization of appointments and the resulting close ties between political parties and the judiciary, including at the highest levels, is a further source of potential exposure to improper influence.

80. As holders of this mandate have previously stressed, corruption has a significant impact on public institutions, reducing their legitimacy and weakening society’s confidence in them and in States in general and consequently impeding their ability to ensure that human rights are protected. These negative impacts include direct and indirect effects on the ability of judges, prosecutors, lawyers and other legal professionals to carry out their professional work and duties in an impartial and independent manner.¹¹

81. Such a loss of confidence can arguably be seen in Montenegro; the same public opinion poll referred to above found that only 45.6 per cent of people in Montenegro trust the prosecution service, and only 42.4 per cent trust the judiciary. This is perhaps unsurprising, given recent, well-publicized events. In 2022 and 2023, Montenegro witnessed an unprecedented number of criminal cases brought by the Office of the Special State Prosecutor against high-profile actors in the judiciary and prosecution services, including the former President of the Supreme Court, the former President of the Commercial Court, a former special prosecutor and a former prosecutor of a basic court. The indictments issued against these individuals include allegations that suggest significant penetration of criminal enterprise into judicial structures through the creation of a criminal organization, numerous acts of corruption and serious abuse of office. The outcome of these cases is pending and must be left to the proper operations of the judicial system.

82. Despite these troubling incidents, Montenegro achieved some progress in the fight against organized crime and corruption, following the reform of the prosecution service and the creation of the Office of the Special State Prosecutor. Nevertheless, under its previous leadership, the Office reportedly managed to permanently confiscate very little of the proceeds of corruption crimes.¹² More recently, the very fact of indictments being issued against individuals in the highest echelons of the justice system may be seen as evidence that a culture of impunity is being overturned. Overall, the number of investigations and prosecutions for serious and organized crimes in Montenegro has increased, including prosecutions of several prominent politicians for corruption-related offences. In 2023, Montenegro was ranked sixty-third out of 180 countries in Transparency International’s Corruption Perceptions Index, with a score of 46/100 (where a score of 0/100 indicates a

¹⁰ Centre for Democracy and Human Rights, “Political public opinion of Montenegro”, May 2023.

¹¹ A/HRC/44/47, para. 9.

¹² Centre for Investigative Journalism of Montenegro, “Investigating the investigations: monitoring the conduct of Montenegrin prosecutors”, August 2023, pp. 10–14. Available at <https://www.cin-cg.me/en/publications>.

“highly corrupt” country and 100/100 a “very clean” country).¹³ This score is slightly better than the global average of 43/100.

83. Nevertheless, obstacles to further progress remain. The European Commission has observed that the track record of trials and final convictions is almost non-existent.¹⁴ This suggests bottlenecks in the judicial system, which are preventing the full realization of reforms to end impunity in Montenegro. The European Commission notes that the number of high-level corruption and organized crime cases pending before the courts continued to rise in 2022, reflecting a larger number of investigations since 2020. However, the adjudication of these cases on occasion took up to seven years, and many cases were resolved using plea bargain agreements.¹⁵ The ability of prosecutors to advance anti-corruption efforts is also stymied by an outdated and not fully digitized cadastre and a lack of a centralized register of all bank accounts. The Special Rapporteur heard of occasions where delays in the adjudication of certain cases resulted in the expiry of the statute of limitations, leading to the complete frustration of the justice process, and suggestions that certain high-profile cases were being intentionally de-prioritized.¹⁶

84. 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.¹⁷

85. 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.¹⁸ 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.

86. 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.

D. Lawyers

1. Free exercise of the legal profession

87. The lawyers’ profession in Montenegro is governed by the Constitution and the Law on Lawyers’ Profession, as well as the Law on Advocacy. The Bar Association of Montenegro is an autonomous and independent professional organization of lawyers, which

¹³ See <https://www.transparency.org/en/cpi/2023>.

¹⁴ European Commission, “Montenegro 2023 report”, Commission staff working document, 8 November 2023, p. 38.

¹⁵ *Ibid.*, pp. 55 and 56.

¹⁶ Centre for Investigative Journalism of Montenegro, “Investigating the investigations”, pp. 55–57.

¹⁷ European Commission, “Montenegro 2023 report”, pp. 27 and 28.

¹⁸ Centre for Monitoring and Research, “Enhancing judicial and prosecutorial accountability: national framework for ethics and discipline”, policy study, 2023, pp. 15 and 16.

is responsible for licensing and regulating lawyers, including questions of lawyers' discipline.

88. 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.

89. 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.¹⁹ 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.

90. 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.

2. Legal aid

91. 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.

92. 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.²⁰ This is a step in the right direction.²¹

¹⁹ Basic Principles on the Role of Lawyers, principle 18.

²⁰ Government of Montenegro, Ministry of Justice, Judicial Reform Strategy (2024–2027), p. 46.

²¹ See United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

E. Accessibility of courts and tribunals

93. The right of access to justice and equality before the law is guaranteed in numerous treaties to which Montenegro is a party (see para. 5 above). Montenegro has also created a framework that enshrines legal aid for all and creates legal avenues for persons from vulnerable and marginalized communities to vindicate their rights, such as through the Law on Prohibition of Discrimination. However, the Special Rapporteur observed, and was informed, that physical, procedural and attitudinal obstacles prevent many individuals and communities from achieving equitable and effective access to justice.

94. 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.²² 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.

95. 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.

96. 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.

V. Conclusions

97. The Special Rapporteur welcomes the efforts of Montenegro to strengthen the independence of the judiciary and the prosecution service and ensure the effective realization of the principle of separation of powers.

98. Since the beginning of the accession process to the European Union, Montenegro has made considerable progress in reforming its institutional and legislative framework. The constitutional amendments of 2013 and the enactment of new legislation regulating the judicial and prosecutorial career contributed to the de-politicization of the judiciary and the

²² *Ibid.*, para. 49.

prosecution service, and the establishment of the Judicial and Prosecutorial Councils further reduced the risk of external political interference.

99. The European Union accession process has also marked significant advances in the fight against corruption and organized crime. The establishment of the Agency for the Prevention of Corruption and the Office of the Special State Prosecutor led to a significant increase in the number of high-level corruption and organized crime cases before the courts, as evidenced by recent indictments against senior judges and prosecutors.

100. Notwithstanding these positive developments, the justice system of Montenegro continues to face serious legislative gaps, institutional shortcomings and practical problems that undermine the independence and impartiality of the judiciary and the prosecution service and limit or prevent access to justice for victims of human rights violations. Legislation does not currently address important aspects of the career of judges and prosecutors. The current composition and functioning of the Judicial and Prosecutorial Councils are not sufficient to ensure the actual insulation of the judiciary and the prosecution service from external interference. In relation to the free exercise of the legal profession, more needs to be done to ensure that lawyers are free to carry out their professional activities without any undue interference or pressure.

VI. Recommendations

A. Reform of the justice system

101. **The Special Rapporteur encourages Montenegro to continue its ongoing reform of the justice system. This reform should be carried out in accordance with existing norms and standards relating to the independence of the judiciary, the autonomy of the prosecution service and the rule of law, as well as with the recommendations of the European Commission and expert mechanisms of the Council of Europe, such as the Venice Commission and the Group of States against Corruption.**

102. **Reform should be the result of an open, fair and transparent process, involving not only the parliamentary majority and the opposition, but also judges, prosecutors and their representative organizations, the Protector of Human Rights and Freedoms and members of civil society.**

B. Legislative framework

103. **The Law on Judicial Council and Judges should be amended as a matter of priority, in accordance with the procedure outlined in paragraphs 101 and 102 above, to bring it into line with international and regional standards on judicial independence. The amendments should be focused on those aspects of the judicial career that are not currently regulated by the current Law (adequate remuneration of judges, conditions of service, pension, age of retirement, work-related rights and political participation of judges).**

104. **The Special Rapporteur urges the parliament to clarify that the new retirement regime only applies to judges who took up their functions following the entry into force of the law, so as to be in line with the principle of security of tenure.**

105. **The Law on the State Prosecution Service should be amended as a matter of priority, in accordance with the procedure outlined in paragraphs 101 and 102 above, to bring it into line with international and regional standards on the autonomy of the prosecution service. The amendments should be focused on: (a) those aspects of the prosecutorial career that are not currently regulated by the current Law (adequate remuneration of prosecutors, conditions of service, pension and age of retirement); and (b) the cooperation of prosecutors with the police, the courts, the legal profession and other government agencies or institutions.**

C. Election and appointment of key justice institutions

106. The Special Rapporteur urges all political forces to work in a fair and collaborative manner to find a durable solution to the deep institutional crises that have led to the limited operation and functioning of key justice institutions (Constitutional Court, Judicial Council and State Prosecution Service). The requirement of a qualified majority should be retained. Tailor-made, effective deadlock-breaking mechanisms should be developed to guarantee the functioning of key justice institutions in case of political impasse, while at the same time ensuring that they are not dominated by the ruling majority.

D. Attacks against judges and prosecutors

107. The Special Rapporteur urges politicians and State officials to refrain from statements concerning the judiciary and the prosecution service that could amount to interference with the work of judges and prosecutors dealing with politically sensitive cases. In order to guarantee judicial independence and maintain the public's confidence in the justice system, it is essential that politicians carry out their duties and responsibilities in a professional manner and do not create an unfounded perception that the judiciary or the prosecution service are not independent or that judges' decisions can be influenced by outside pressure.

E. Salaries and working conditions

108. The Special Rapporteur recommends that the remuneration of judges and prosecutors be increased, so as to ensure that it is in conformity with the scope of their duties and commensurate with the dignity of their profession.

109. Additional financial resources should be allocated to the judiciary and the prosecution service in order to renovate buildings, increase and improve office space, improve security and working conditions and secure evidence and archives. Judicial vacancies should be filled rapidly, and any obstacles to recruitment, including low salaries, should be rectified.

F. Judicial Council

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

(a) Its composition should be reviewed to ensure that the majority of its members are judges elected by their peers. Consideration should be given to the addition of a lawyer representative of civil society;

(b) The definition of "eminent lawyer" should be reviewed, with a view to excluding active politicians and representatives of the legislative or executive branches of power from participation;

(c) The procedure for the selection and appointment of lay members should be reviewed so as to eliminate interference from political parties in their selection. An appropriate anti-deadlock mechanism should be devised to ensure the functioning of the Judicial Council in case of delays in the appointment of the new lay members by the parliament. Montenegro should consider entrusting the election of lay members to a non-political authority;

(d) The participation of the Minister of Justice as an ex officio member of the Judicial Council in decisions concerning essential aspects of the judicial career, not only discipline, should be expressly prohibited by law;

(e) Article 127 (3) of the Constitution should be reviewed to ensure that the President of the Judicial Council is elected by the Council itself from among its judge

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

G. Election of the Supreme State Prosecutor

111. The qualifications and procedure for the election of the Supreme State Prosecutor should be reviewed to ensure a proper assessment of the moral integrity, independence and professional qualifications of the candidates and to minimize the risk of political interference.

H. Prosecutorial Council

112. The Special Rapporteur recommends that the requirements set out in article 26 (1) of the Law on the State Prosecution Service for the selection of eminent lawyers be reviewed, with a view to excluding active defence lawyers from participation in the Council.

113. With regard to the appointing authority, the Special Rapporteur considers that it would be preferable to entrust the appointment of eminent lawyers to a non-political authority. If the parliament continues to elect them, lay members should be elected by a qualified majority of two thirds, necessitating significant opposition support, and an anti-deadlock mechanism should be devised to ensure the functioning of the Council in case of delays in the appointment of new lay members by the parliament.

I. Corruption

114. The Government must ensure that judges and prosecutors have adequate remuneration and sufficient professional resources to insulate them from corruption and to allow for the important work of ending impunity to be carried out.

115. Ethical codes for judges and prosecutors should undergo detailed scrutiny from a body that includes judges, prosecutors and civil society representatives to ensure that they are clear, current and exhaustive.

116. Legal ambiguities in the disciplinary and ethical legal frameworks for judges and prosecutors should be identified and amended to ensure a clear distinction between the definitions of specific disciplinary offences and ethical violations.

117. Steps should be taken to ensure that institutions tasked with considering disciplinary allegations concerning judges and prosecutors are rigorous and fair and are seen by the public to be acting in this way. The inclusion of civil society representatives in the Judicial and Prosecutorial Councils could support this process, by improving transparency, as could the regular publication of appropriately anonymized data revealing the number of complaints received, the general categories of complaints and their outcome.

118. The Judicial and Prosecutorial Councils should standardize their approach to failures to comply with asset disclosure requirements.

119. The Prosecutorial Council should be empowered to monitor cases where the statute of limitations is allowed to expire and should report on emerging patterns concerning such expiry.

120. The imposition of a vetting procedure should be used only if, after an inclusive public debate, the parliament and the Executive jointly find it to be necessary to combat systemic issues of corruption or human rights violations. If adopted, any vetting procedure must be designed in the light of the small population of Montenegro and its strong family ties. Any vetting process must:

- (a) Be set out in law and fully consistent with human rights standards;
- (b) Be independent, objective and temporary;

- (c) **Respect the right to a fair trial of all who are subject to vetting;**
- (d) **Be carried out by vetting bodies that are judicial in nature, and not political, and whose decisions are reviewable by an appeals tribunal.**

J. Lawyers

121. **The Government of Montenegro must ensure that lawyers can function without interference and intimidation. Government representatives and elected officials should refrain from making statements or otherwise associating lawyers with their clients.**

122. **The complex needs of survivors of family or intimate partner violence give rise to a need for a greater specialization of lawyers in these sensitive cases. Furthermore, the expertise and dedication of non-governmental organizations working in these sectors should be recognized and funded through the government budget for free legal aid.**

123. **In cooperation with the Bar Association, the Government of Montenegro should ensure that legal aid providers are subject to applicable professional codes of conduct, put in place mechanisms to ensure that all legal aid providers possess adequate education, training, skills and experience that are commensurate with the nature of their work and establish appropriate oversight mechanisms for legal aid providers. The Bar Association should increase opportunities and requirements for training in rights-sensitive lawyering and should adopt provisions to suspend lawyers who have been the subject of substantiated complaints from the Bar Association's free legal aid list.**

124. **The Bar Association of Montenegro must actively monitor compliance with the Attorneys' Code of Ethics and take steps to ensure that its members treat all people with equality and dignity.**

125. **Given the apparently very small number of lawyers coming from vulnerable and marginalized communities in Montenegro, the Bar Association should take positive steps to enable young people from such communities to train as lawyers and dismantle any obstacles that may make integration into the profession difficult for them.**

K. Access to justice

126. **The Government of Montenegro should take concrete steps to ensure equal access to justice for members of the community who are vulnerable to discrimination or abuse, especially survivors of family or intimate partner violence, individuals who are Romani or Egyptian, persons with disabilities, members of ethnic or religious minority groups; LGBTQI persons and women. The Government should consider the following specific measures:**

- (a) **Judges and prosecutors should continue receiving training on reducing discrimination and protecting the rights of such individuals, with the training designed in collaboration with members of such communities;**

- (b) **Additional services to support vulnerable court users should be put in place, such as increased availability of interpreters and translators and accompaniment by trained community justice workers from the communities in question;**

- (c) **Courthouses, prosecutors' offices and other justice premises should be made physically accessible through the provision of ramps, elevators, adapted sanitary facilities and other adaptations recommended by organizations advancing the rights of persons with disabilities.**

127. **A robust system of digitalization should be put in place to allow court users and lawyers to easily access case materials. Unless protected by judicial order, such information should be made available to the public and especially to journalists.**

128. Data disaggregated on the bases of axes of discrimination and vulnerability must be collected to inform activities aimed at improving access to justice, reducing discrimination and tracking improvements over time.
