

## HUMAN RIGHTS ISSUES AT THE NEGOTIATIONS ON EU ACCESSION WITH CANDIDATE STATES: MONTENEGRO<sup>1</sup>

Nebojša B. Vučinić<sup>2</sup> – Sanja Grbović<sup>3</sup>

### ABSTRACT

*This paper analyses human rights issues and the independence of the judiciary in the context of Montenegro's EU accession negotiations, with a focus on Chapters 23 and 24 of the Acquis Communautaire. These chapters address the rule of law and the fundamental rights central to the EU enlargement process. The analysis is based on the European Commission's country reports and enlargement policy communications, offering a detailed assessment of the judiciary's functioning, the prosecution service, and the fight against corruption in Montenegro. It highlights key issues, such as judicial impartiality, anti-corruption initiatives, case-load handling, and clearance rates. Furthermore, it assesses the country's actions to combat organised crime and terrorism, its judicial and police cooperation, and its progress in implementing Schengen standards and managing migration. The findings underscore the importance of legal reforms and institutional integrity in Montenegro's path towards EU membership.*

### KEYWORDS

*human rights  
rule of law  
EU  
Montenegro  
judicial impartiality*

- 1 | Ksenija Mišović, LLM contributed to investigation and data collection, and provided resources/materials in her capacity as an expert with the Organization for Security and Co-operation in Europe in Podgorica, Montenegro, particularly in the area of monitoring and control of judicial processes.
- 2 | Full Professor, Faculty of Law, University of Montenegro, Montenegro; Former Judge of the European Court of Human Rights; ne.vu62@gmail.com.
- 3 | Teaching Assistant, PhD, Faculty of Law, University of Montenegro, Montenegro; sanjag@ucg.ac.me; ORCID: 0000-0003-3172-8136.



## 1. Constitutional Arrangement of Montenegro

By the decision of the citizens at the referendum held on 21 May 2006, Montenegro restored its independence. At the session held on 3 June 2006, the Parliament of Montenegro adopted the Decision on the Declaration of Independence of the Republic of Montenegro and the Declaration of the Independent Republic of Montenegro. The first part of the Declaration has the character of a preamble, stating the basic postulates and values on which the state organisation of Montenegro rests, emphasising its civil character, respect for human rights and the rights of minorities, the principle of parliamentary democracy, the rule of law, and the market economy.

The basic determinants of the foreign policy orientation of the State of Montenegro are stated in the continuation of the Declaration, such as respect for the principles and assumption of obligations established by the documents of the UN, the Council of Europe, and other international organisations, the EU integration process, respect for the principles of international law, including the decisions of the International Court of Justice, and the International Criminal Court for the former Yugoslavia (today, the International Residual Mechanism for Criminal Courts).

Montenegro has a republican form of government, with the constitutional attributes of a civil, democratic, ecological, and social-justice state, based on the principles of the rule of law.<sup>4</sup> In terms of organisation, it belongs to parliamentary systems. Citizens of Montenegro elect the president of the state by direct and secret ballot, on the basis of universal and equal suffrage. This is a characteristic of presidential systems. The justification for such an election of the head of state in a parliamentary system is that small states and 'young' democracies seek to give this function greater legitimacy, so that the newly elected president is a symbol of national unity.

Power in Montenegro is divided on the basis of the standard tripartite conception, into legislative, executive, and judicial power, and it rests on their 'balance and mutual control'. Art. 11 of the Constitution stipulates that the Constitutional Court is responsible for safeguarding constitutionality and legality. Through this provision, constitutional framers have crafted the 'constitutional judicial power' as a *sui generis* power, assigning the court the role of ensuring that all bodies created by the Constitution, as well as other entities, conduct their actions in compliance with the state's supreme legal act.<sup>5</sup>

Below, Art. 15 of the Constitution defines the relationship of Montenegro with other international organisations, so that para. 3 specifically singles out the right of the Parliament of Montenegro to decide on the method of accession to the European Union, considering it a priority international integration that is of vital interest to the state of Montenegro. Art. 15 of the Constitution reinforces Montenegro's commitment to actively pursue EU integration, as previously expressed in the Declaration of Independence of Montenegro. This commitment is outlined in the section on 'accession to European and Euro-Atlantic structures' specifically in point 2, para. 5, and is also emphasised in the preamble of the Constitution, which speaks of 'equal cooperation with other nations and states and European and Euro-Atlantic integration'. These provisions underscore

4 | Vukčević, 2015, p. 52.

5 | Ibid., p. 72.

the significance of these objectives as they now carry explicit constitutional and legal obligations.

## 2. The Negotiation Process of Montenegro – a Retrospective

Montenegro confirmed its commitment to the comprehensive process of transition and reform, including political and economic transformation, as well as the strengthening of parliamentary democracy by signing the Stabilisation and Association Agreement and the Interim Agreement on Trade and Related Matters in Luxembourg in October 2007, which at the same time marked the beginning of the contractual relationship between Montenegro and the European Union. Montenegro officially submitted its request for membership in December 2008, based on a general political consensus and a high degree of support from Montenegrin citizens for EU membership. By submitting the request, Montenegro initiated internal reforms and preparations for the commencement of accession negotiations, aimed at strengthening democratic capacities and establishing independent institutions, in accordance with Art. 2 of the EU Treaty. This includes a particular emphasis on upholding human dignity, freedom, democracy, equality, the rule of law, and human rights. In 2010, Montenegro was granted candidate country status. The following year, the European Commission published a report on Montenegro, recommending the commencement of accession negotiations with the European Union. These negotiations officially began in 2012 with the convening of the first Intergovernmental Conference between Montenegro and the EU. With its future accession, Montenegro has committed to adopting the EU's legal *acquis* in the areas of justice, freedom, and security. This commitment includes contributing fully to the implementation of European standards regarding judicial independence and human rights, combating corruption and organised crime, and applying key international legal instruments in these areas.

In light of the conclusions from the Thessaloniki summit, where the EU reaffirmed its strong support for the European future of Western Balkan countries, and the introduction of the 'progress based on individual merit' criterion, the EU enlargement strategy for the Western Balkans was updated in 2018. This strategy underscores the Union's intention to build a stable, strong, and united Europe based on shared values. Starting from the strategic commitment to the European perspective of the WB countries, the Union adopted this accession methodology in February 2020. The intention was to make the accession negotiations even more dynamic and credible. The candidate states are expected to show significantly greater involvement in implementing fundamental reforms in areas of special importance, such as the rule of law and human rights. Thanks to the adoption of the mentioned methodology, thematic clusters have been formed within which several negotiation chapters are combined with the aim of a more intensive political focus of the candidate countries on certain sectors that are of particular importance for European integration. Montenegro was the first candidate country to which the new negotiation methodology was applied. Six clusters were formed of 33 negotiation chapters. They will be opened after meeting the benchmarks and factoring in negotiations on key reforms. Chapter 23-Judiciary and fundamental rights and Chapter 24-Justice, freedom, and security will remain open until the end of membership negotiations, and progress in these areas will be of crucial importance to the further negotiation process.

Thanks to the successful receipt of the IBAR in June 2024, Montenegro aims to close the remaining negotiation chapters by the end of the year. Under the slogan '28 member states until 2028', which may have overtones of premature optimism, work on implementing further reforms in the area of the rule of law and fundamental human rights is yet to come.

### 3. The Question of Judicial Independence

The rule of law and respect for human rights are among the fundamental values of the European Union, since its foundation, and the existence of an efficient, independent, and high-quality judicial system is considered a prerequisite for the preservation of democratic values. Judicial independence is crucial to the concept of a constitutional state, as it ensures the protection of human rights<sup>6</sup> and is regarded as a fundamental element of the rule of law. This independence allows for the oversight of the executive and legislative branches, preventing the abuse of power and maintaining the separation of powers.

The importance of judicial independence is also evidenced by the Constitution of Montenegro, in the preamble, which emphasises the importance of the independence of the courts, through the citizens' determination to live in a state where the rule of law, among other things, is highlighted as the highest social value. Also, the second part of the Constitution, which deals with the regulation and guarantees for human rights, contains key elements for the exercise of the judicial function and the position of the courts, such as equality before the law, the right to a legal remedy, the right to a fair and public trial, the principles of legality, the presumption of innocence, the principles *ne bis in idem*, and others.

The administrative body that is responsible for the effective management and coordination of the judicial system, and whose main goal is to ensure the independence, autonomy, and professionalism of the judicial system, is the Judicial Council. The Judicial Council submits an annual report on the judiciary to the Parliament, proposes the budget for the judiciary to the Government, evaluates, appoints, dismisses and considers complaints about judges and presidents of courts.

However, since the adoption of the Constitution, international institutions have criticised the way judges are appointed and dismissed, which can also be seen in the reports of the European Commission on Montenegro. The 2008 Report highlighted the need for further reform of the judicial system in order to ensure judicial independence, responsibility, and efficient functioning of the entire system. The 2009 report did not state any progress in the fulfilment of given recommendations and harmonisation with European standards in the field of justice and prosecution, due to the still present political influence.

The problem of judicial independence, the unclear division of competences between the Judicial Council and the Ministry of Justice, and the appointment and dismissal of the President of the Judicial Council by the Assembly were causes for concern for the

6 | In this sense, the principle of independence of the judicial system has become a universal value that has found its place in numerous international conventions and modern constitutions.

European Commission.<sup>7</sup> For these reasons, the Constitution was amended on 31 July 2013 and after the adoption of the aforementioned amendments, Art. 127 of the Constitution of Montenegro reads as follows: ‘... the president of the Judicial Council is elected by the Judicial Council from among its members who are not holders of judicial office, by a two-thirds majority of the members of the Judicial Council’. It is important to note that a minister responsible for judicial affairs cannot be elected as the president of the Council.<sup>8</sup> For several years, the Judicial and Prosecutorial Councils, the two primary self-governing bodies of the judicial system responsible for overseeing the careers of judges and prosecutors, were not fully constituted. The Judicial Council began to function again with full composition only after August 2022 and the appointment of new members from the judges’ ranks. However, the GRECO committee found the inclusion of the Minister of Justice in the Judicial Council particularly problematic, given past concerns about the politicisation of Montenegro’s judicial system. According to Opinion No. 10 from 2007, the Advisory Council of European judges, or members of the Judicial Council, should not be active politicians or members of the Government. For many years, Montenegro has failed to respond to this GRECO recommendation, as indicated by the European Commission’s annual reports.

To move towards fulfilling the criteria from the EU agenda, Montenegro, and more precisely, the Ministry of Justice, after a series of consultations, in October 2022 requested the opinion of the Venice Commission on the draft amendments to the Law on the Judicial Council and Judges, which would clarify in more detail the issues of the working rights of judges (including a strict limit for retirement)<sup>9</sup>, harmonisation of evaluation, and disciplinary procedures against judges with European standards, all with the aim of strengthening the independence of the Judicial Council and providing legal guarantees to avoid undue political influence.

However, the results of the work of the Ministry of Justice were very modest, in the sense that the Draft Amendments to the Law on the Judicial Council and Judges were adopted, but the recommendations of the Venice Commission and the European Commission were not respected. This means that Montenegro continues to be out of line with the legal acquis of the Union in terms of independence, impartiality, accountability, integrity, and efficiency of the judicial system.

Montenegro has yet to fully implement the Venice Commission’s recommendations on the Law on State Prosecution, particularly concerning the appointment of members

7 | It is common knowledge that most European countries have established special bodies whose primary function is to ensure the independence of courts and judges. In this way, the aforementioned bodies directly participate in the process of selection and promotion of judges, and an institution of this type in Montenegro is the Judicial Council, whose work is defined both by the Constitution and by the Law on the Judicial Council and Judges.

8 | As for its internal organisation, in addition to the president, the Council consists of nine other members, and their mandate lasts for 4 years.

9 | The Montenegrin judiciary faced a significant issue that sparked public debate regarding the interpretation of legal requirements for the retirement of judges and prosecutors. Specifically, the 2020 Law on Pension Insurance lowered the general retirement age, deviating from the provisions of the General Labor Law. In late 2022, the Administrative Court overturned the Judicial Council’s decision to end a Supreme Court judge’s mandate based on retirement eligibility. Following this, the Judicial Council informed the Supreme Court that the judge had the right to return to work. It’s important to note that proceedings on this matter are still ongoing before the Administrative Court.

to the Prosecutorial Council. Specifically, the recommendation that members should not be selected from among the ranks of judges has not yet been fully adhered to. Due to evident delays in the adoption of recommendations, the Ministry of Justice formed a working group that will deal with the issue of amending the above-mentioned Law in more detail.

According to the European Commission's report, Montenegro is still moderately prepared to implement the EU *acquis* and European standards in the area of justice and fundamental rights, with only limited progress.<sup>10</sup> It should certainly be borne in mind that the above-mentioned laws are of key importance for the functioning of the judiciary, and that their full compliance with the EU *acquis* is a *conditio sine qua non* for the further course of the negotiation process.

### | 3.1. Organisation of Courts in Montenegro

In addition to the Constitution, the basic provisions of courts are given in the Law on Courts<sup>11</sup>, which was created as a result of the reform of Montenegro's judicial system. Other principles of the exercise of judicial authority were elaborated in the Law, with the aim of ensuring a greater degree of efficiency in the work of the courts, to improve and protect human rights and freedoms while respecting international standards. The Law on Courts establishes the principle of judicial independence so that judges in the performance of their duties are obliged to adhere only to the Constitution, laws, and international treaties.

Montenegro's judicial system consists of basic courts, high courts, the Court of Appeal, and the Supreme Court. Montenegro has 15 basic courts, which are responsible for resolving disputes and conducting cases in the first instance. The basic courts are responsible for both civil and criminal cases. There are two higher courts in Montenegro, Podgorica and Bijelo Polje, which, as courts of second instance, decide on appeals against the decisions of basic courts, and are competent for civil and criminal cases. The Court of Appeal is located in Podgorica and is competent to decide on appeals against first-instance decisions of higher courts, as well as appeals against decisions of the Commercial Court. The Supreme Court of Montenegro is the highest court, responsible for ensuring the uniform application of the law and resolving disputes between different courts in Montenegro. Its jurisdiction extends to all types of cases, including civil, criminal, and administrative cases.

The Constitution of Montenegro, more precisely, Art. 124 stipulates that an individual can be elected president of the Supreme Court a maximum of two times, and the Law on Judicial Council in Art. 42 stipulates that no one can be elected president of the same court more than twice. However, in 2019, the Judicial Council elected the former president of the Supreme Court and several other court presidents for the third term (some elected court presidents were elected for their fifth or eighth terms). The European Union sent a sharp

10 | For the year 2024, according to the survey conducted by Eurobarometer FL540, we have information that 35% of the general population and 28% of businesses considered the level of independence of the courts to be 'fairly' or 'very good'.

11 | Alongside the Law on Courts, the Law on the Special State Prosecution is crucial for the judicial system. It outlines the organisation and jurisdiction of the Special State Prosecution, details the conditions and procedures for electing the Chief State Prosecutor and special prosecutors, and defines their interactions with other state bodies and administrative institutions to combat corruption.

criticism to the Judicial Council, and in a ‘non-paper’ document from 2019 regarding the situation in Chapters 23 and 24, the Union pointed out that high-ranking appointments in the judiciary, even after the expiration of two mandates, caused serious concern regarding the interpretation of the Constitution and valid laws by the Judicial Council.<sup>12</sup> Under pressure from the European Union and other internal political actors, Vesna Medenica, the then-President of the Supreme Court, resigned at the end of 2020 after holding the position for 13 years.<sup>13</sup> On the other hand, the Judicial Council elected Valentina Pavličić as President of the Supreme Court only on 2 December 2024.

In addition to regular courts, Montenegro also has specialised courts, such as the Administrative Court, which decides on cases in the field of administrative law, and the Commercial Court, which decides on commercial disputes. Amendments to the Law on Courts from 2015 also established three misdemeanour courts in Podgorica, Bijelo Polje, and Budva.

Montenegro has 263 full-time judicial and 103 prosecutorial positions. The efficiency of the judiciary is significantly hampered due to the lack of effective systems for managing human resources and personnel, and the insufficient financial resources.<sup>14</sup> Meanwhile, a positive trend can be observed in alternative dispute resolution. Over the past year, the Center for Alternative Dispute Resolution has received 10,773 cases of mediation. Considering the efficiency of Montenegrin courts, in 2022, there were 130,881 pending cases, of which 78,758 were resolved. By the end of 2022, 51,539 cases were pending before the courts. Of these, 4,890 were cases older than three years. The average time resolution of disputes amounted to 178 days for cases of the Basic Court, 442 days for cases of the Commercial Court, and 1,158 days for cases of the Constitutional Court, and the execution rate in 2022 was reduced from 92% to 86% from the previous year.

The EU’s recommendations regarding the rationalisation of the court network have not yet been implemented, and the full implementation of instructions for the collection of statistical data in accordance with the guidelines of the European Commission for efficiency in the judiciary remains a challenge. The new judicial information system (PRIS) for the modernisation and reform of the judicial system has not yet been established. Workspaces and working conditions at all levels of the judiciary are still inadequate. Appropriate information and communication infrastructure, as well as equipment for work in the judiciary, are also still lacking.

## 4. Fundamental Rights

According to the latest Report of the European Union, the Montenegrin legislative and institutional framework on fundamental rights largely continues to fulfil its international

12 | In the Report of Montenegro from 2020, the European Commission observed that as many as seven court presidents were elected using a misinterpretation of the Constitution by the Judicial Council.

13 | In 2022, Ms. Medenica was arrested on suspicion of abuse of office and involvement in a criminal organisation.

14 | In the first quarter of 2023, there were 79,027 cases before Montenegrin courts, of which 20,262 were resolved in the first quarter. The backlog in the number of pending enforcement cases before the courts has decreased.

obligations regarding respect for human rights. However, the problems that persist primarily concern the fight against discrimination, where some of the most vulnerable social groups, such as the Roma and Egyptians, people with disabilities, and the LGBTIQ population, continue to be exposed to hate speech and hate crimes. It is important to note that the Law on Life Partnerships of Persons of the Same Sex, which was adopted in 2020, must be subject to further harmonisation with European standards to provide full legal security to same-sex marriages and cohabiting unions, while the Law on Legal Recognition of gender identity based on self-determination has not yet been adopted.

#### | 4.1. *Discrimination Issues as Part of the Human Rights Challenges*

##### 4.1.1. *Gender Equality*

Unfortunately, the Montenegrin legislation did not ensure complete compliance with the EU acquis, and neither did it follow the recommendations of the European Commission for the fight against racism and intolerance, which dates back to 2017.<sup>15</sup> The increasing polarisation of society, misogyny, and hate speech have largely characterised Montenegrin society and its political scene in the last few years. According to recent research conducted in 2022 by the Center for Democracy and Human Rights, 67% of respondents felt that discrimination exists in Montenegro, primarily based on political orientation. In the same year, the Office of the Protector of Human Rights received 256 complaints about discrimination, which represents a significant growth trend compared to 2021, when there were 173.

When we talk about discrimination based on gender, Montenegro continued with the implementation of national strategies, but failed to tackle the fight against gender-based violence and domestic violence. The concept of 'violence against women' is not defined in Montenegrin legislation, but the Law on Gender Equality refers to 'violence based on gender'.<sup>16</sup> Considering the reports of the GREVIO Committee for Montenegro, it is unequivocally concluded that the national legal framework, more specifically the Law on Gender Equality, provided a definition of gender-based violence that is not in accordance with the definitions of the same name given in Art. 3 of the Istanbul Convention. On the other hand, we also have a problem with the different formulations of domestic violence

15 | The Constitution of Montenegro, in Art. 8 st. 1 prohibits any direct or indirect discrimination on any basis, while para. 2 of the same article states that the application of special measures aimed at: '...creating conditions for achieving gender equality and overall equality and protection of persons who are on what basis in an unequal position'. Also, Art. 18 of the Constitution, prescribes that the state guarantees the equality of women and men and develops a policy of equal opportunities.

16 | Law on Gender Equality, Gazette of the Republic of Montenegro, no. 046/07 of July 31, 2007, Official Gazette of Montenegro, no. 073/10 from 10.12.2010, 040/11 from 08.08.2011, 035/15 from 07.07.2015. Art. 7 st. 7.

within two national laws, namely the Law on Protection from Domestic Violence<sup>17</sup> and the Criminal Code of Montenegro.<sup>18</sup>

Despite the robust legal framework, there is a significant lack of systematic responses to cases of violence. Investigative and judicial practices remain lenient, with only a few protective measures applied in misdemeanour cases and very few security measures imposed in criminal proceedings.<sup>19</sup> Data on gender-based violence in Montenegro indicate that every fifth woman has been a victim of at least one form of violence. In the last seven years, as many as 17<sup>20</sup> femicides occurred, where the youngest victim was 18 years old, and the oldest was 84.

Thus, according to the latest report, of all misdemeanour sanctions imposed, fines accounted for 1/3, conditional sentences for 1/5, and prison sentences are still very rarely imposed.

The law on protection against domestic violence is *lex specialis* and, as such, introduces specific provisions aimed at preventing and protecting against domestic violence, citing coercion and physical abuse as forms of the criminal offence of domestic violence. At the same time, the Criminal Code introduces new offences, such as genital mutilation of women and persecution, thus only partially harmonising with the Istanbul Convention because it did not include the criminal offence of inciting, coercing, and inducing girls to undergo the aforementioned procedure.

On the other hand, women continue to be insufficiently present on the political scene and in the decision-making process. In Montenegro, gender inequality is most visible in the economic sphere, where not even a quarter of the business entities are owned by women. Of the total number of unemployed women make up to 60% and represent the majority of those who are not actively looking for work. Less than 10% of all property in Montenegro is owned by women, and the gender gap in income is 16%. The Labour Law<sup>21</sup> has integrated the principle of equal pay for work of equal value, which is poorly applied in practice. In its Report on the Progress of Montenegro for 2021, the European Commission

17 | Law on Protection from Domestic Violence, Official Gazette of Montenegro, No. 46/2010.

18 | Criminal Code of Montenegro Gazette of the Republic of Montenegro, no. 70/2003, 13/2004-corr. I 47/2006 and Gazette of the Republic of Montenegro, no. 40/2008, 25/2010, 32/2011, 64/2011, 40/2013, 56/2013 - amended 14/2015, 42/2015, 58/2015 - dr. law, 44/2017, 49/2018 and 3/2020. The first law defines violence as: '...an act or omission of a family member that endangers the physical, psychological, sexual or economic integrity, mental health and peace of mind of another family member' without taking into account the place where the violence took place, which is in accordance with the definition given in the Istanbul Convention, while another law, more precisely CC, in its art. 220, narrows the circle of criminal offenses by referring only to the one who 'uses gross violence to violate physical or mental integrity', applying only to 'family members'.

19 | One of the main problems of the increased rate of violence, and which we have noted before, is reflected in the extremely low rate of trust of victims of violence in the national legislative system. We have data according to which even 74% of victims of sexual violence have never reported the violence to anyone, which can be explained by a lack of trust in the competent institutions, because unfortunately we have still not fully harmonised the penal policy with international standards.

20 | Protector of Human Rights and Freedoms of Montenegro, Analysis of the decisions of the courts for misdemeanours of Montenegro in the area of domestic violence and gender-based violence with reference to the practice of the institution of the protector and the ECtHR in that area, Podgorica, 2021.

21 | Official Gazette of Montenegro, no. 74/2019 and 8/2021.

stated, ‘...women continue to experience inequality in participation in political and public life and access to employment and economic opportunities, and gender-based violence and violence against children cause serious concern.’

#### 4.1.2. Minorities

Art. 79 and 80 of the Constitution of Montenegro guarantee the identity protection of the members of the minority nations, as well as the prohibition of assimilation. Notably, the set of minority rights reflects the democratic character of the constitutional arrangement of Montenegro, since its content complements rather than opposes the civil concept of the state proclaimed in the preamble of the Constitution.<sup>22</sup>

We encounter a problem in defining minorities when defining the term ‘identity’, and as is already known, the constituent elements of identity are not the same in all countries; they change and are supplemented depending on the expansion of the body of human rights. In this sense, Art. 80 of the Constitution defines the rights related to the protection of identity, while the development of the same is foreseen by the Law on Minority Rights and Freedoms,<sup>23</sup> which, in Art. 1, stipulates that

Montenegro, in accordance with the Constitution, confirmed and published international treaties and generally accepted rules of international law, provides minority peoples and other minority national communities, i.e. their members, with the protection of human rights and freedoms guaranteed to all citizens, as well as the protection of special minority rights and freedoms.<sup>24</sup>

This law establishes several fundamental principles regarding the status of minority members, including: the methods for exercising their rights, the illegality and culpability of violating minority rights, and the obligation of state authorities to take action to protect these rights, among other provisions.

However, regarding the prohibition of assimilation<sup>25</sup> outlined in Art. 80 of the Constitution of Montenegro, it is important to consider the stance of the Constitutional Court. The Court has ruled that requiring knowledge of the Montenegrin language sufficient for basic communication as a condition for acquiring Montenegrin citizenship does not constitute an excessive constitutional restriction and does not violate the anti-assimilation provisions of Art. 80.<sup>26</sup>

As for the specific steps taken by the Montenegrin legislation, with the aim of protecting members of minority nations, we can single out the Action Plan for 2022 for the

22 | Vukčević and Pajvančić, 2012, p. 202.

23 | Official Gazette of Montenegro, no. 031/06, 051/06, 038/07, 002/11, 008/11, 031/17.

24 | The electoral legislation of Montenegro introduced a model for the authentic representation of minority peoples as well as other minority national communities. In this sense, their electoral lists that do not pass the general electoral census of 3%, acquire the right to participate in the distribution of mandates if they individually achieve (a special census for them) 0.7% of valid votes.

25 | The prohibition of assimilation is contained in numerous international documents. Thus, the Framework Convention for the Protection of the Rights of Members of National Minorities from 1995 prescribes in Art. 16 that ‘states must refrain from measures that change the population ratio in areas inhabited by members of national minorities’.

26 | Decision of the Constitutional Court of Montenegro U. no. 111/08.

implementation of the policy strategy for minorities for the period 2019/23 (whose data are not available) and the Action Plan for 2023. In July 2022, the Ministry for Human and Minority Rights established a new Directorate for the Promotion and Protection of the Rights of Minority Peoples and Other Minority Communities. The Roma and the Egyptians remain the most vulnerable groups<sup>27</sup>, with no progress made in reducing their census representation in the Assembly due to the lack of implementation of changes to the Law on the Election of Councillors and Members of Parliament.

The Framework Convention for the Protection of National Minorities<sup>28</sup>, to which Montenegro is a signatory, represents one of the most comprehensive treaties designed to protect the rights of members of national minorities. It obliges the provision of full and effective equality for members of national minorities in the fields of economic, social, cultural, and political life, thereby enabling them to express, preserve, and develop their cultures and identities. Montenegro's fourth report on the implementation of the Framework Convention highlighted amendments, supplements, and innovations in the legal and institutional framework for the protection of minority peoples and other national minority communities in Montenegro, as well as the measures taken and planned to improve and develop their rights. It also noted the progress in implementing the recommendations of the Advisory Committee on the Framework Convention, thus confirming its advancement. However, Montenegro has not taken any concrete steps to address child begging and marriage, nor has it made efforts to resolve the issue of statelessness<sup>29</sup>, as recommended by the United Nations High Commissioner for Refugees (UNHCR).

#### 4.1.3. *Persons With Disabilities*

Persons with disabilities in Montenegro are unable to fully exercise their rights and, unfortunately, remain subjected to various forms of discrimination. The draft law on a single body for disability assessment has yet to be adopted, and the importance of its adoption is reflected precisely in fairer and easier access to rights, which would enable the transition from a medical model to a model based on human rights. Another important document awaiting adoption is the Law on Professional Rehabilitation and Employment of Persons with Disabilities. To compensate for the inertia of legislators and the failure to fulfil the recommendations of the UN Committee on the Rights of Persons with Disabilities from 2017 regarding the necessary reforms of guardianship and decision-making on behalf of persons with disabilities, the Office of the Protector of Human Rights established an independent mechanism in May 2023 for monitoring in accordance with the Convention on the Rights of Persons with Disabilities.

It is important to mention that the High Court in Podgorica, in December 2022, confirmed the earlier verdict of the Basic Court in Podgorica, which established that one individual faced repeated discrimination based on disability from the social work centres

27 | In the 2022/2023 school year, 202 Roma children attended preschool, 1,833 attended elementary school, and 214 attended high school. As for the high education, there are currently 14 Roma students.

28 | The Framework Convention for the Protection of National Minorities, adopted in Strasbourg on November 10, 1995, entered into force on February 1, 1998; Series of European International Treaties No. 157. [Online]. Available at: <https://rm.coe.int/okvirna-konvencija-za-zastitunacionalnih-manjina/168094dfe6> (Accessed: 8 April 2026).

29 | From the entry into force of the Law on Foreigners in 2018 and until 2023, 9 persons have been determined to be stateless, while the procedure for determining statelessness is ongoing for 17.

in Kotor, Tivat, and Budva. This is the first final judgment in Montenegro concerning the protection of persons with disabilities, which may indicate a future positive trend in the exercise of the rights guaranteed to them by the Constitution (Art. 68) and other laws.

#### | 4.2. Children's Rights

In the field of children's rights, the legislative and institutional framework is mostly aligned with international standards, including the UN Convention on the Rights of the Child and its accompanying protocols. The Constitution of Montenegro, in Art. 74 defines the rights of children, who enjoy rights and freedoms, that are 'appropriate to their age and maturity'. Para. 2 of the aforementioned article introduces additional protection of children against psychological, physical, economic, and any other forms of exploitation or abuse. It is noteworthy that Art. 74 of the Constitution of Montenegro does not enumerate the specific individual rights of the child, unlike the Universal Declaration of Human Rights, which outlines such rights in Arts. 25 and 26, while the International Covenant on Civil and Political Rights talks about it in Art. 24, and the European Social Charter in Art. 7.<sup>30</sup>

The right to education belongs to the rights of positive status and inevitably requires the active role of the state in its realisation. It should be borne in mind that the Constitution differentiates between levels of education, so we have a constitutional provision that indicates the obligation of basic education, that is, the first level of education.<sup>31</sup> Other levels of education are not mandatory, but the principle of availability applies to them as well.

However, an increase in peer violence has been observed in Montenegrin society in the last few years. According to research conducted by the Institute for Education on the prevalence and types of violence in schools in Montenegro in 2023, 43% of students will report witnessing peer violence.<sup>32</sup> The Criminal Code of Montenegro stipulates prison sentences ranging from six months to five years for individuals who disrupt public order and peace or endanger others through severe insults, abuse, violence, physical altercation, or brazen behaviour. A juvenile over the age of 14 years may be sentenced to educational measures, juvenile prison sentence, or other measures for committing such a crime. If the perpetrator is under the age of 14, the cases are typically referred to social services. These services are responsible for supporting the victims, advising the young offender, monitoring their behaviour, and implementing other protective measures. Under the

30 | Of all the international documents that exclusively refer to children's rights, it is important to highlight the UN Declaration on the Rights of the Child from 1959 and the UN Convention on the Rights of the Child from 1989, which, unlike the Declaration, is a legally binding act. The right to education is provided for in Art. 75 of the Constitution of Montenegro and is guaranteed to all citizens, starting from the principle of equality of conditions in its use. On the basis of this article, the absence of discrimination in the educational process on any basis is also understood, and it is considered a prerequisite for the realisation of other human rights and freedoms.

31 | This right is contained in the International Covenant on Civil and Political Rights, which in Art. 13 prescribes the obligation of states to provide free primary education, as well as to provide primary education to adults.

32 | The Institute for Education of Montenegro conducted 'Research on the prevalence of forms of violence in schools in Montenegro during 2022/23. school years', author of the research, Zoran Lalović, MSc, independent consultant at the Institute of Education of Montenegro, document [Online]. Available at: <https://www.gov.me/clanak/mjere-za-upravljanje-problemom-nasilja-u-skoli-prevenција-i-intervencija> (Accessed: 8 April 2026).

Basic Education Act<sup>33</sup>, schools can address student violence by imposing disciplinary actions. These may include educational measures such as reprimands or transferring the student to different classes or schools.

However, there is no satisfactory level of protection of children from the perpetrators of sexual offences, nor are there any systematically collected data on sexual abuse of children. In 2022, the Police Directorate registered 23 criminal acts of sexual abuse of children (three related to rape, five qualified as child abuse, 11 as illicit sexual acts, and four as child pornography). In this sense, the Criminal Code needs to be revised to comply with the Convention on the Rights of the Child and the First Optional Protocol on the sale of children, child prostitution, and child pornography.

#### | 4.3. *Freedom of Thought, Conscience and Religion*

The framers of the Montenegrin Constitution combined the freedoms of thought, conscience, and religion under a single article (Art. 46), as they view all three as essential components of a person's spiritual integrity.<sup>34</sup> Freedom of religion encompasses both the right to freely develop one's own religious beliefs and the right of each individual to choose not to adhere to the doctrines of any religion.

In accordance with Art. 55 of the Constitution, this right includes the prohibition of the abuse of religion for political purposes; more specifically, the prohibition of the activities of political parties and all other organisations whose work would be aimed at inciting religious hatred and intolerance. Attempts by other persons to convert a certain group of people in a religious sense are not in the domain of absolute rights, as stated in the practice of the European Court of Human Rights, which distinguishes between 'permitted' and 'unpermitted' proselytism, i.e. the right to spread religious conviction, including the right to persuade others to change of faith.<sup>35</sup> In this context, it is important to note Art. 14 of the Constitution, which states that 'Religious communities are separate from the state'. This confirms the principle of church-state separation. The principle of secularity does not mean the absolute separation of the church and state, but rather a principled division in which the church is free to perform religious affairs and ceremonies, and the state is sovereign in exercising its powers related to the secular level.<sup>36</sup> This way, the regime of separation of the church and state fully creates the conditions for the equality of all religious communities and affirms the right to religion as the right of every individual. However, there is a concerning piece of information regarding Montenegro's adherence to the principle of secularity. Research from 2003 indicated that Montenegro was one of the most secular countries globally. However, by 2023, it is expected to be comparable to countries such as Iran, Turkey, and Tunisia in terms of secularism.

When we talk about the limitations of freedom of thought, conscience, and religion, based on Art. 25, para. 3 of the Constitution, they are prohibited, even during the declaration of war or a state of emergency. More detailed regulation of religious freedom is

33 | Official Gazette of Montenegro, no. 64/2002, 49/2007, 45/2010, 40/2022, other laws 39/2013, 47/2017.

34 | Vukčević, 2015, p. 147. In the Constitution of Slovenia, Art. 41 talks about freedom of conscience, and the Croatian Constitution, in Art. 40, talks about freedom of conscience and religion and the free public expression of religion or other beliefs.

35 | *Kokkinakis v. Greece*, application no. 14307/88.

36 | Vukčević, 2015, p. 83.

contained in the Law on Freedom of Religion or Belief and the Legal Position of Religious Communities<sup>37</sup>, and the regulation of the relationship between the state and religious communities is regulated through contracts.<sup>38</sup>

#### | 4.4. *Freedom of Expression*

Freedom of expression occupies an important place in the body of law of every state. It represents the basis of questioning and discussion about the social values upon which the community rests. Art. 47 st. 1 of the Constitution of Montenegro guarantees the right to freedom of expression by speech, written word, image or other means. This freedom encompasses both a personal and a political dimension: it includes the ability to express one's own views on various issues and the activities of political actors whose main objective is to influence public change. Both aspects are integral to the same fundamental right.

Freedom of expression is not absolute, but can be limited by the other's right to dignity, reputation, and honour, as well as in cases of endangering public morals or security (Art. 47, para. 2 of the Constitution of Montenegro). As stated in the Decision of the Constitutional Court, 'it is the task of the independent judiciary to clearly determine in

37 | Official Gazette of Montenegro, no. 074/19, 008/21.

38 | The latest signing of the contract (the Basic Contract) regulating the relationship between the state of Montenegro and the Serbian Orthodox Church (SPC) caused violent reactions from the public. Going back just a few years, in 2019 to be exact, the Parliament passed the Law on Freedom of Religion, which caused huge protests by members of the Serbian Orthodox Church due to the provision of the Law, which stipulates that the state becomes the owner of all religious buildings that were built before December 1918, if religious communities do not prove ownership. Back in 2015, Montenegro sent to the Council of Europe's Venice Commission a draft law on freedom of religion and the status of religious communities, but it was withdrawn due to numerous criticisms from the Montenegrin public. The new draft was sent in 2019, and the commission's experts praised a number of adopted legal solutions. However, the most controversial continued to be the points (according to those who contested this law) which foresee the transfer of religious buildings to state property if there is no proof of ownership before 1918, when Montenegro became an integral part of the Kingdom of Serbs, Croats and Slovenes. According to the experts of the Venice Commission, the state has the right to impose strict conditions for the use of property in order to protect the cultural heritage, but it must also foresee protection measures in administrative and judicial proceedings in order to prove the right to the property of religious communities. The Serbian Orthodox Church strongly opposed the adoption of the Law, especially because it stipulated that in the administrative procedure, religious communities prove ownership of property and therefore have the obligation to register, which the members of the Serbian Orthodox Church categorically considered unnecessary because 'the Church has existed for centuries'. According to the assessment of some political analysts, the adoption of the aforementioned law had a major impact on the outcome of the parliamentary elections organised in August 2020, when the government was changed. Among the first laws passed, the new government passed amendments to the Law on Freedom of Religion, which, according to some Montenegrin politicians, led to the desecularisation of the state. Protests were not absent in this case either, especially by members of the Montenegrin Orthodox Church (CPC), which led to an even more intense polarisation of Montenegrin society, especially if we bear in mind the fact that the CPC remained the only religious organisation with which the state of Montenegro did not sign an agreement on organisation mutual relations, which continued to deepen discrimination among the believers of the SPC and the CPC.

each individual case the boundary between justified and necessary, and unjustified and unnecessary restrictions, which confirm a principle as a rule or deny it'.<sup>39</sup>

Drawing a parallel with the European Convention on Human Rights, Art. 10, para. 1 defines freedom of expression as 'the freedom to have one's own opinion, to receive and communicate information and ideas without the interference of public authorities and regardless of borders', and the practice of the European Court of Human Rights<sup>40</sup> has taken the position that this freedom represents the very core of a democratic society.<sup>41</sup>

According to the latest report from the European Commission, Montenegro has achieved a certain level of readiness in the area of freedom of expression, thanks to its pluralistic media landscape. In addition to the Constitutional provisions, media freedom is also defined by the Law on Audiovisual Media Services, the Law on the National Public Broadcaster, and the Law on Media, which is the umbrella document in the mentioned area<sup>42</sup>. The Agency for Audiovisual Media Services (formerly the Agency for Electronic Media)<sup>43</sup> is an independent regulator for audiovisual media services. The media strategy for the period 2023/2027, together with the Action Plan for 2023/24, represents the first government strategy in this area, whose primary goal is to improve freedom of expression and promote free journalism.<sup>44</sup>

A significant increase in hate speech and verbal threats against journalists and civil activists has been recorded in Montenegro, whereas the number of unsolved cases of

39 | Decision of the Constitutional Court of Montenegro no. 87/09 of January 19, 2012.

40 | The Charter of Fundamental Rights of the EU (2000), in Art. 11, defines freedom of expression in the same way as the European Convention on Human Rights.

41 | *Lingens v. Austria*, 1986, item 42. cited according to: T. Mendel (2014) *Freedom of expression - a guide to the interpretation of Art. 10 of the European Convention on Human Rights and its context*. Belgrade, p. 10.

42 | Law on the Public Broadcasting Services of Montenegro, (OG 80/202), Law on Media, (OG 80/202), Law on Audiovisual Media Services (OG 46/10, 40/11, 53/11, 6/13, 55 /16, 92/17 and 82/20).

43 | Law on Audiovisual Media Services, OG 54/2024 of 11.06.2024, Art. 139.

44 | On this occasion, it is important to mention the appointment of the General Director of Radio Television of Montenegro (RTCG) by the RTCG Council, which was contested in court. In January 2023, the Basic Court in Podgorica overturned the appointment of RTCG's chief director, a decision that was upheld by the Podgorica High Court, only for the RTCG Council to re-appoint the same person in January 2023, sparking strong public criticism and a subsequent criminal investigation into potential misconduct. In April 2024, the Basic Court in Podgorica once again annulled the decision of the RTCG Council, which the Council appealed to the Higher Court in Podgorica.

attacks on journalists has been constantly increasing.<sup>45</sup> Unfortunately, violence against journalists in Montenegro has a long history. The attack on the journalist Olivera Lakić from 2018 has not yet received its judicial epilogue, and neither has the murder of the former editor of the daily newspaper 'Dan', Duško Jovanović. Darko Šuković, editor of Antena M, as well as columnist Ljubomir Filipović, received death threats, which resulted in numerous appeals from both domestic and foreign organisations, to investigate all kinds of intimidation and violence against the media.

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## 5. State Authorities for the Protection of Human Rights

Judicial protection is the primary form of protection of human rights and, as such, is accepted and guaranteed in numerous international documents. The judicial protection of human rights is foreseen by the Constitution in Arts. 6, 19, 24, and 149 as the most significant and common form of institutional protection of human rights. It is, therefore, about the right of every citizen to request protection before regular courts, by filing a complaint with the competent court. Before the courts, there are different procedures for the protection of human rights depending on the type of violation thereof. If it is a violation of human rights with the features of a criminal offence, then the court will decide in the criminal procedure by applying the procedural rules of that procedure. However, if it concerns violations of human rights that do not have the characteristics of a criminal offence, then civil proceedings will be conducted.

In addition to regular courts, there are also special institutions whose task is to protect human rights. One such institute in the Montenegrin legislative system is the Protector of Human Rights and Freedoms, which operates within the institution of the Protector of Human Rights and Freedoms with the aim of preventing torture and other forms of cruel, inhuman, or degrading treatment—that is, punishment and discrimination.

The Institute of the Protector is also regulated by Art. 81 of the Constitution of Montenegro, which defines it as an independent body with the task of taking a series of measures aimed at protecting human rights and freedoms. He performs his function on the basis of the Constitution, laws, and confirmed international treaties, adhering to the principles of

45 | An interesting case was from October 27, 2023, where the Higher State Prosecutor's Office requested the Court for Misdemeanours in Podgorica to initiate proceedings against the professor of the Faculty of Montenegrin Language and Literature, Boban Batricević, because of his criticism of the Serbian Orthodox Church, in a column that was published on the Antene M portal in August of that year. According to the prosecution, Batricević is suspected of violating the Law on Public Order and Peace, i.e. an insult based on religious affiliation, because he stated in the column that the priests of the Serbian Orthodox Church 'do not preach the faith of Christ' but that they are 'spreading Serbian nationalism, hatred and xenophobia', and therefore that the church is 'destroying multi-ethnic and multi-religious Montenegro, and the Montenegrin national, cultural and territorial identity' in the long term. The procedure was formally suspended in March 2024. The second case dates back to April 2023, when Dritan Abazović was the prime minister at the time, when he accused the local broadcaster of one television station of spreading religious and national hatred, only to accuse another television station of being owned by organised crime and drug cartels just two months later. Like him, the President of Montenegro, Jakov Milatović, in September 2023 accused the daily 'Pobjeda' of being associated with crime.

justice and fairness.<sup>46</sup> He is not the embodiment of either a state or a judicial body; he does not judge, but rather points out and warns of irregularities. His mandate lasts six years, and he is elected by the Assembly on the proposal of the competent working body of the Assembly by a majority of votes from the total number of deputies.

The Ombudsperson can conduct investigations into alleged violations of human rights by the state, as well as conduct unannounced tours of prisons and detention centres. At the same time, the Ombudsperson can have access to all documents, regardless of their degree of secrecy (persons in detention or prison). On the other hand, the Ombudsperson cannot take action on complaints related to ongoing court proceedings, with the exception of complaints of delay, obvious violation of the procedure, or in cases of non-execution of a court decision.

The protector of human rights and freedoms can propose laws, ask for an assessment of the constitutionality of certain laws, give an assessment of issues related to human rights if a request has been sent to him by a competent authority, and deal with general issues that are important for the promotion of human rights and freedom. If the Ombudsperson establishes that there has been a violation of human rights by some state institutions, he can propose corrective measures that may include the dismissal of the person who committed the offence. Untimely non-fulfilment of requests for undertaking corrective measures submitted by the Ombudsperson is subject to a fine of up to 2,500 euros. The Government of Montenegro, as well as the courts, often implemented the recommendations of the Protector of Human Rights and Freedoms with delay<sup>47</sup>.

Regarding the fulfilment of its international obligations in the field of human rights, according to the latest report of the European Commission, Montenegro was positively evaluated, thanks to, among other things, the continuation of good cooperation with the European Court of Human Rights, which for 2023 did not issue a single verdict in relation to Montenegro, unlike the previous year, in 2022, when there were 5. However, the specific problem faced by the Montenegrin human rights protection system is the lack of institutional capacity. In this sense, it is important to mention the problem that existed until recently, specifically, it concerned the incomplete composition of the Constitutional Court<sup>48</sup>, which was responsible for providing a legal remedy for the violation of human rights.

The Office of the Protector of Human Rights and Freedoms<sup>49</sup> is still perceived by the Montenegrin public as one of the most trusted institutions. However, the decisions and recommendations of the Ombudsperson remain non-binding; they do not have the legal force of a verdict, and Montenegro must improve their systematic monitoring in all public institutions.

46 | Vukčević and Pajvančić, 2012, p. 256.

47 | It is important to mention that, in addition to the Ombudsperson institute, the Parliament of Montenegro has a permanent working body, the Committee for Human Rights and Freedoms, which has 13 members, as well as the Committee for Gender equality of also 13 members, while the Ministry of Human and Minority Rights is an integral part of the Government.

48 | By the end of 2022, there were 2,564 unresolved cases in the backlog before the Constitutional Court related to the protection of human rights.

49 | In 2023, the office processed 1,107 complaints and closed 958 cases. It conducted investigations in 576 cases, issued an opinion in 238 cases, while in 86 cases it pointed out the omissions of state bodies.

## 6. Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Other Forms of Ill-Treatment

The Constitution of Montenegro, specifically Art. 28, stipulates that 'No one shall be subjected to torture or to inhuman or degrading treatment'. Despite the strong legislative framework, which was further strengthened by the ratification of the European Convention on Human Rights, several reports of police torture of suspects, as well as cases of beatings in prisons and detention units throughout the country, were recorded in Montenegro. The state prosecuted individual police officers, as well as prison guards, who were accused of exceeding their authority; however, there were numerous delays in court proceedings, which compromised the efficiency of processing reported persons.

The Committee of the Council of Europe for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) concluded in its latest report that the Montenegrin authorities must act proactively to suppress abuse by the police, as well as officers of the Sector for the fight against organised crime and corruption, special units, criminal police, and inspectors from numerous police stations from several Montenegrin cities. Montenegro is in the process of amending the Criminal Code and the Code of Criminal Procedure in order to harmonise with the recommendations given by the CPT, harmonise the definition of torture with the Convention, and to punish committed torture or ill-treatment with punishments that would be proportionate to the nature and gravity of the offence, and abolish the statute of limitations of the criminal offence of torture.<sup>50</sup>

Regarding the implementation of the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which date back to 2019, Montenegro is making some progress. The Administration for the Execution of Criminal Sanctions initiated 11 disciplinary proceedings for breach of official duty, but not for abuse of official position or authority in connection with torture or inhumane treatment of persons deprived of their liberty.

When we talk about the capacity of the prison systems in Montenegro, based on data from 2022, there were 605 convicted persons, of which 19 were women. The number of detainees was 464, of which 16 were women (56 of them are housed in the pre-trial prison in Bijelo Polje, while the remaining 408 are in the pre-trial prison in Podgorica, which has a capacity for only 292 prisoners). As stated in the latest report by the European Commission, the material conditions in prisons, remand prisons, and psychiatric hospitals are still below international standards.<sup>51</sup> In Montenegro, the expansion of existing prison capacities has been planned for many years, as well as the construction of a new Institute

50 | One of the glaring examples of gross overstepping of authority by members of police units was recorded in Cetinje, in September 2021, during the enthronement of the Metropolitan of the Serbian Orthodox church at the Cetinje Monastery. An event that was accompanied by numerous controversies, especially regarding the excessive use of chemical agents against demonstrators who opposed the enthronement. In all cases, the National Preventive Mechanism established an excess in the use of chemical agents, which resulted in a violation of Art. 3 of the European Convention on Human Rights (prohibition of torture), as well as Art. 28 of the Constitution of Montenegro (dignity and inviolability of the person). Unfortunately, despite this, the investigations are still ongoing and there is still no judicial epilogue.

51 | European Commission, 2023, p. 44.

for the execution of criminal sanctions due to the decades-long problem of overcrowding and limited access to health care within them. Staying in the mentioned prison units causes concern in terms of respecting basic human rights, leaving less than three square meters of space per prisoner. Apart from the problem of insufficient space in prison structures, problems such as insufficient hygiene, poor ventilation, and irregular food supply primarily affect persons who are ordered to stay in police stations for up to 72 hours.

Violence among prisoners was one of the biggest problems faced by the main prison in Montenegro, which was attributed to the long-standing struggle between the two largest organised crime groups in the country. In addition to violence, prisoners were repeatedly denied psychiatric help, as well as difficult access to appropriate treatment. On the other hand, the Montenegrin authorities did conduct investigations into abuse, but they initiated those same investigations only after stormy media campaigns or recommendations of the Ombudsperson.

## 7. The Fight Against Corruption and Organised Crime

The fight against corruption and organised crime in Montenegro is not only an institutional problem, but also the result of historical, social, and cultural heritage. Montenegro is struggling with problems of corruption, like other transitional countries of Central and Eastern Europe. According to the Corruption Perceptions Index for 2023 published by Transparency International, Montenegro is rated 46/100, and ranks 63rd in the world (as it has been for the last five years).<sup>52</sup> The parliamentary elections held in 2020 brought a significant political change in government structures, after 30 years of dominance by one political party. Since 2021, a series of activities have been started that have significantly influenced the change in the attitude toward Montenegro's inaction in the fight against organised crime and corruption.<sup>53</sup>

The legal regulations for the prevention of corruption in Montenegro consist of the Law on Prevention of Corruption<sup>54</sup>, the Law on Financing of Political Entities and Election

52 | Transparency International (2024), Corruption Perceptions Index 2023. Based on the latest research conducted in the spring of 2024, 55.7% of respondents believe that corruption is very widespread in Montenegrin institutions, and citizens perceive the highest levels of corruption among customs officers (19.3%) and police officers (19.1%). When it comes to public officials, political party leaders are seen as the most corrupt, with a perception rate of 24.7%.

53 | In this sense, today we have the former president of the Supreme Court, who is being tried for various accusations precisely at the expense of organised crime, as well as the former president of the Commercial Court, who is being tried on the same basis. In addition to the president of the courts, we also have a former chief of police who was only recently released to defend himself, and who is accused of numerous criminal activities. There were also many former ministers, as well as public officials who were prosecuted under various charges, starting from abuse of official position and ending with embezzlement of public funds. On the other hand, we also have a couple of representatives of the new ruling structures who have been detained or are on trial, such as the mayor of Budva, who was accused of cocaine smuggling, and the former director of the Revenue and Customs Administration, who was accused of cigarette smuggling and abuse of office.

54 | Official Gazette of Montenegro, no. 53/14, 42/17 and 73/23.

Campaigns<sup>55</sup> and the Law on Lobbying<sup>56</sup>. They provide a legal basis and framework for the functioning of the main body for the prevention of corruption, namely the Agency for the Prevention of Corruption, which was founded in 2016.<sup>57</sup> The powers of the Agency are as follows: determining the existence of conflicts of interest in the work of officials, as well as taking concrete measures to prevent them; control of restrictions on the performance of public functions; control of receiving gifts, sponsorships, and donations; verification of data from the Report on income and assets of officials<sup>58</sup>, and others. The effectiveness of the work of the Agency is shown by the fact that 289 officials resigned due to the actions of the ASK in the period from 2016 to 2019, a number which dropped to 107 officials resigning in the period from 2020 to 2023.<sup>59</sup>

The Law on the Prevention of Corruption prescribes measures to prevent conflicts of public and private interest, introduces restrictions on the performance of public functions, and defines ways of submitting reports on the income and assets of officials. According to this law, corruption means any abuse of an official, economic, or social position or influence to achieve personal benefit, or benefit for another person. As for the Law on the Financing of Political Entities and Election Campaigns, it mainly deals with the method of obtaining and providing financial resources for the regular work and election campaigns of political entities, as well as prohibitions and restrictions on the disposal of state property, supervision and auditing of the financing of political entities, and all in to realise the legality and publicity of their business. The Law on Lobbying regulates the conditions and methods of carrying out lobbying activities and defines the rules of lobbying and other important issues. Based on Art. 2 of the law, lobbying is considered any activity that influences legislative bodies and executive power at the state and local levels, state administration bodies, independent bodies, regulatory bodies, public institutions, public companies, and other legal entities exercising public powers.

Issues such as high-level corruption continue to cause great concern, due to the still insufficiently developed legislative and strategic framework for preventing and fighting corruption that would be in line with the acquis of the Union, as well as European and international standards. Key deficiencies in the legal framework for preventing and

55 | Official Gazette of Montenegro, no. 3/20 and 38/20.

56 | Official Gazette of Montenegro, no. 52/14.

57 | On this occasion, it is important to mention the Law on confiscation of property benefits acquired through criminal activity, which regulates the conditions for confiscation of property benefits acquired through criminal activity, as well as the procedure for confiscation of property and property benefits, management of confiscated property, and other such. It should be borne in mind that the mentioned procedure can be conducted, based on Art. 4 of the Law, before, during and after the completion of criminal proceedings, while the confiscation of property must be carried out in accordance with the Criminal Procedure Law.

58 | At the beginning of 2023, the Agency submitted the final list of officials in Montenegro, a document that, according to the recommendations of the European Commission, should have been published in 2016.

59 | However, due to her questionable independence, impartiality and responsibility, the Director of the Agency is under the scrutiny of the Special State Prosecutor's Office, who was accused of abuse of office, which damaged the budget by more than 100,000 euros. In the first-instance verdict of the Basic Court in Podgorica, from August 2024, the Agency's director, Jelena Perović, will have to return 58,539.7 euros to the state, as well as default interest from May 17, 2019, because she sold an 87-square-meter apartment that she received for favourable conditions, but she did not fulfil the obligation and remained five years in the position of judge.

fighting corruption were primarily identified in the non-implementation of the recommendations of EU expert missions and the GRECO report. It is up to Montenegro to show an extremely strong and coherent response to the fight against organised crime, improving results in terms of investigations, prosecutions, final judgments, and confiscation of assets.<sup>60</sup>

Before the beginning of the negotiation process with the European Union, until December 2023, the Strategy for the fight against corruption and organised crime, which was adopted in 2010, was the first and only strategy adopted in this area, and it included a time interval of implementation of only four years. However, instead of a new strategic document, the Government of Montenegro adopted the Operational Document for the Prevention of Corruption in Areas of Special Risk in 2016, which was a kind of equivalent for the Strategy for the fight against corruption and organised crime. Continuity has been preserved in this way, whereas the issue of realistic upgrading, or more precisely, the successful implementation of the mentioned document, has become questionable. In October 2022, the Government of Montenegro carried out *par excellence* improvisation by adopting the Action Plan to address key priorities that led to the fulfilment of the remaining temporary benchmarks in Chapters 23 and 24. It was an *ad hoc* document created primarily to answer the needs of fulfilling the priority areas in Chapters 23 and 24. Unfortunately, the document did not produce any report on implementation, which undoubtedly had a detrimental effect on the creation of a sustainable and coherent system of regulations for the fulfilment of Montenegro's obligations in the process of negotiations with the union.

The perception of impunity, which is highly expressed in the Montenegrin society, provides a picture of the inefficiency of the judicial system, which deeply worries international partners. Therefore, in June 2024, the Government of Montenegro presented its strategic response to corruption by adopting the Strategy for the fight Against Corruption for the period 2024/28 and the Action Plan for the two-year period, with which the Government of Montenegro placed the fight against corruption on its agenda. However, the human resources of the Special State Prosecutor's Office, which is responsible for

60 | At the 97th plenary session of the Group of Countries of the Council of Europe Against Corruption (GRECO), held from June 17 to 21 in Strasbourg, the first Compliance Report for Montenegro was discussed and adopted within the 5th evaluation round, on the topic 'Prevention of corruption in relation to the highest levels of executive power and the police'. The Montenegrin authorities fulfilled only 3 of the 22 recommendations, while of the remaining 19 recommendations, 11 were partially fulfilled and 8 were not fulfilled at all. With the compliance report, GRECO recognised the implemented and initiated activities aimed at further implementation of the given recommendations, which is a good signal for Montenegro and a green light for the continuation of further reforms towards meeting the standards of the Council of Europe and the introduction of practices that will bring Montenegro closer to membership in the European Union. Montenegro is obliged to submit additional information regarding the implementation of the remaining recommendations by December 31, 2025, on the basis of which the second Compliance Report for Montenegro will be prepared within the next evaluation round.

conducting investigations in the field of organised crime and corruption, continue to be insufficient, as reflected in the number of cases per special prosecutor, which is 100:1.<sup>61</sup>

The High Court in Podgorica is a specialised court responsible for high-level corruption cases and currently employs only 34 judges, of which only five work in the Special Department for Organised Crime, Corruption, Terrorism, and War Crimes. In the annual report on the work of the Special Department of the High Court in Podgorica, which deals with cases of organised crime, corruption, and war crimes, in 2023, there were only 176 cases, with a completion rate of 19.75% (33 verdicts in 176 cases). In the same period, the State Prosecutor's Office filed reports on corruption against 1,085 persons, with an additional 852 reports from previous years, which amounts to 1,937 active cases only for the year 2023. Thus far, no single final conviction has been issued for criminal offences of organised crime and corruption at a high level.

## 8. The Fight Against Terrorism

The dangers of terrorism and violent extremism in Montenegro are relatively low. Montenegro harmonised its legal framework with the EU *acquis* in the fight against terrorism and continued to implement the measures provided in the Agreement on the Implementation of the Joint Action Plan for the Fight against Terrorism for the Western Balkans, which was signed with the Union in November 2019.<sup>62</sup> In September 2022, the Parliament of Montenegro adopted the Law on the Processing of Air Passenger Data, with the aim of preventing and detecting acts of terrorism. Currently, there are no people convicted of terrorism in Montenegrin prisons, but concerns about its possible occurrence do not subside, especially if we consider the polarisation of society along ethnic lines, the increased level of misinformation online and hate speech.<sup>63</sup>

61 | In 2022, the Special Prosecutor's Office issued orders for the investigation of high-level corruption crimes in 11 cases against 76 natural persons and 5 legal entities, whereas in 2021 there were 15 cases against 70 natural persons and 19 legal entities, whereas financial investigations in 2022, initiated in 5 cases, against 43 natural persons and 4 legal entities (in 2021, there were 7 cases, against 40 natural persons and 4 legal entities).

62 | In January 2023, a new National Coordinator for Combating Violent Extremism, Terrorism, Money Laundering and Terrorist Financing was appointed, as the previous coordinator was nominated as director of the Revenue and Customs Administration and then arrested as part of an investigation into tobacco smuggling.

63 | It is important to mention the repeated trial of 13 defendants who were found guilty of terrorism in the case of the 'coup d'état' in 2016 on the day of the parliamentary elections. In 2022, the Court of Appeal annulled the first-instance verdict and sent the case back to the High Court for a new decision. In July 2024, the High Court acquitted all the accused, stating that there was no evidence of attempted terrorism.

## 9. Solving War Crimes Cases at the National Level

Montenegro convicted only 11 persons in 26 years, for war crimes committed on the territory of the former Yugoslavia during the period of the wars of the 1990s. This is less than a third of the accused. The indictments were dropped (because all the accused were acquitted) in three cases: Bukovica, Deportation and Kaluđerski laz. No single procedure was initiated using the criminal law institute of command responsibility, complicity, incitement, or assistance, although there were numerous criticisms by the European Commission on this issue.

For nine consecutive years since 2013, the European Commission has insisted on its reports on the obligation of the Montenegrin judiciary to process war crimes in accordance with domestic and international laws. In strategic documents on foreign policy and expansion to the Western Balkans from 2015, the EU highlighted transitional justice as a priority for candidate states, and highlighted the processing of war crimes as an issue that requires prompt resolution.<sup>64</sup>

The strategic approach in the investigation of war crimes in Montenegro was recognised in the very process of accession to the Union<sup>65</sup>. The temporary benchmarks for negotiations in chapter 23 required that it

effectively demonstrate the capacity of state authorities to apply the law for the independent resolution of war crimes cases in accordance with international humanitarian law and by the practice of the International Criminal Tribunal for the former Yugoslavia, while taking effective measures to solve the issue of impunity.<sup>66</sup>

Respecting the given recommendations, the former Supreme State Prosecutor Ivica Stanković in May 2015 adopted the Strategy for the Investigation of War Crimes, by which the Supreme State Prosecutor's Office undertook to strengthen the fight against impunity for war crimes 'through more efficient investigation, prosecution, trial and punishment in accordance with international standards'.<sup>67</sup> However, even after the establishment of the Strategy for the Prosecution of War Crimes in 2015, Montenegro did not achieve significant results in this regard, nor has the Strategy been revised until today. Improving the investigation and prosecution of war crimes in accordance with international humanitarian law is necessary to effectively implement and monitor the strategy.

In accordance with the recommendations of the International Residual Mechanism for Criminal Courts, Montenegrin criminal legislation should take a proactive approach to resolve legal and practical obstacles to conducting effective investigations, prosecutions, and trials and punishments for war crimes. In 2020, a case was submitted from The Hague, Montenegro, to 15 Montenegrin citizens who were suspected of having committed war crimes, including sexual violence, in the 1990s. However, investigative actions have

64 | European External Action Service, 2015.

65 | Government of Montenegro, Action plan for chapter 23 Judiciary and fundamental rights, area of Judiciary, measure 1.5.1.1, p. 64.

66 | Government of Montenegro, Ministry of European Affairs, 2018.

67 | Strategy for the investigation of war crimes, Supreme State Prosecutor's Office of Montenegro, Tu. no. 96/15 of 8 May 2015.

not yet been undertaken in this case due to the problem of access to certain witnesses. On the other hand, for the case of Bukovica, the Special State Prosecutor's Office of Montenegro formed a new case based on the files that were delivered to the Montenegrin prosecutors by colleagues from the Prosecutor's Office in Trebinje in May 2021. Meanwhile, the Ministry of Justice proposed amendments to the Code of Criminal Procedure to allow the use of evidence presented before the Hague Tribunal and the International Residual Mechanism in domestic courts.<sup>68</sup> Additionally, the proposed changes to the Criminal Code of Montenegro aim to incorporate the concept of command responsibility, including the accountability of subordinates, as a component of criminal offence.<sup>69</sup>

Unfortunately, the prosecution of war crimes was not the result of the self-initiative actions of the Montenegrin prosecutor's office, which the European Commission had expected since the 2013 report.<sup>70</sup> That is why the Commission, in the Report from 2023, characterised as 'limited' the progress achieved in solving war crimes cases.<sup>71</sup>

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## 10. Migrations

When we talk about the area of legal and illegal migration, Montenegro's legal framework is largely harmonised with the legal *acquis* of the union. Apart from the 12 agreements on readmission to non-EU countries, Montenegro has not signed an agreement with any of the countries to which most migrants come.<sup>72</sup> However, a modern system for identifying and registering migrants' fingerprints, linked to a central biometric database, has not yet been established.<sup>73</sup> However, owing to the collaboration with Frontex, efforts are underway to meet the technical requirements necessary to implement this system.

In 2022, 8,519 migrants will be registered based on data submitted by the Ministry of Internal Affairs, which is twice the number compared to the previous year. In the same

68 | Art. 2 of the Draft Law on Amendments to the CPC prescribes that: Under the conditions from para. 2 of this article, evidence obtained or produced in accordance with the Statute and Rules on Procedure and Evidence of the International Criminal Court and the International Residual Mechanism may be used in criminal proceedings in Montenegro in the manner in which it could be used before these bodies. Art. 3 of the Draft gives the meaning of the term International Residual Mechanism: 'The International Residual Mechanism is the International Residual Mechanism for Criminal Courts, i.e. the term that serves as a general name for the International Tribunal for the Criminal Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law on the territory of the former Yugoslavia after 1991 and the International Residual Mechanism for Criminal Courts.'

69 | Art. 440 of the Criminal Procedure Code stipulates that by applying the institute of command responsibility, the following will be punished: 'A military commander or a person who actually performs this function or a superior civilian person, who knowing that the forces he commands or controls are preparing or have started the commission of a criminal offense from Art. 426 to 430, Art. 432, 434 to 437 and Art. 439 of this Code does not take the necessary measures that he could and was obliged to take to prevent the commission of the act, and as a result, the commission of that act took place...'

70 | European Commission, 2013, p. 10

71 | European Commission, 2023, p. 31.

72 | We are talking about the following countries – Afghanistan, Bangladesh and Iran.

73 | Migrants' fingerprints are still collected through ink on paper.

year, 2022, 4,920 illegal entry attempts (situations in which illegal migrants returned from border crossings when they saw patrols) were prevented, and 511 people were detained by the border police for illegal entry. In addition to the apprehension, the border police discovered eight cases of migrant smuggling and arrested nine.<sup>74</sup>

The readmission agreement between Montenegro and the EU and its 15 protocols continue to be implemented. Readmission from Montenegro to neighbouring countries for the period 2022 is in decline compared to the previous year, from 60 to 33 people. In the same year, 37 voluntary returns were obtained. Of these, the border police managed 25 returns to neighbouring countries, and the International Organization for Migration facilitated 12 returns to countries of origin. Plans for the reintegration of Montenegrin returnees upon their return to Montenegro were created, along with a reintegration support team.

### 10.1. Asylum

The asylum system in Montenegro was established as part of fulfilling the conditions for obtaining a visa-free regime with Schengen Area countries through the adoption of the Law on Asylum, which was in effect from 25 January 2007 until the adoption of the new Law on International and Temporary Protection of Foreigners<sup>75</sup>, which remains in force today.

The right to asylum in Montenegro is defined in Art. 44 of the Constitution, based on which 'a foreigner who has a well-founded fear of persecution because of his race, language, religion or belonging to a nation or group or because of political beliefs can request asylum in Montenegro'. It is important to note that we are discussing the comparative existence of two rights, namely the right of foreigners to seek asylum and the right of the state to grant or deny asylum. Montenegro also adheres to the principle of non-refoulement under international law, meaning that it will not deport foreigners to the country they fled from for fear of persecution based on the grounds listed in Art. 44 of the Constitution. Only competent authorities can decide the expulsion of foreigners within the time prescribed by law.<sup>76</sup>

Thanks to cooperation with the EU Asylum Agency (EUAA), Montenegro continued to strengthen its institutional capacities, especially the Directorate for Asylum, and standard operating procedures were adopted to harmonise asylum procedures.

Submitting an application for asylum in Montenegro is carried out as follows: applicants must first register their intention to seek asylum with the border police<sup>77</sup>, after which they have a deadline of 15 days to submit a request to the Directorate for Asylum.<sup>78</sup> Montenegro has only 2 reception centres, with a total capacity of 164 beds, of which 60 beds

74 | In 2022, we had 5 indictments related to migrant smuggling combined with organised crime.

75 | Official Gazette of Montenegro, no.2/2017 and 3/2019.

76 | The Treaty of Amsterdam, Art. 63 contains standards and conditions for exercising the right to asylum, which is regulated in more detail by the Directive on Temporary Protection (2001), the Directive on Reception Conditions (2003), the Directive on Asylum Procedures (2005), and others.

77 | Since recently, that request is possible submitted in several municipalities, not only in the migrant centre Božaj.

78 | In 2022, the number of asylum applications was 8,320, which is 150% higher than in 2021. However, only 175 persons (of those registered) submitted in the end application for asylum, whereas the others continued their migratory route.

are in a temporary container settlement in Božaj, on the border with Albania. The average occupancy of these centres is approximately 30%, and Montenegro is the only country in the Western Balkans that finances these reception centres from the state budget. Since the beginning of the war between Ukraine and Russia, Montenegro has hosted the largest number of Ukrainian citizens compared to other countries of the Western Balkans. By the end of March 2023, 7,857 Ukrainian citizens received temporary protection (70% were women), as well as access to health care services and accommodation in a volume that exceeded EU standards.<sup>79</sup>

### | 10.2. Visa Policy – Schengen and External Borders

The Montenegrin legal framework in this area is largely harmonised with the legal acquisition of the Union. In May 2023, Montenegro and the EU signed a Status Agreement, which enabled the European Border and Coast Guard Agency (Frontex) to be deployed in the territory of Montenegro at the request of Montenegrin authorities. Montenegro continued to implement its strategy of integrated border management, as well as the Schengen Action Plan. The number of jobs in the border police increased to fulfil the requirements of the plan, and now amounts to 1,540. The optimal number of jobs should be increased by another 450. On the other hand, active cooperation between Interpol, Europol, and EU member states in the fight against smuggling continued.

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## 11. Closing Remarks

Montenegro, as one of the six former republics of the Federal Republic of Yugoslavia (SFRY), is an example of a very slow transition of a society and state, from the communist model of governance to the current model of hybrid democracy. The period from 1990 to 2020 in Montenegro was marked by the prolonged dominance of a single political party, during which numerous analyses highlighted concerns related to political corruption, the misuse of state resources, and the extensive influence exerted by partisan structures

79 | Based on Art. 92 of the Law on International and Temporary Protection of Foreigners, the Government of Montenegro issued a Decision on March 10, 2022, approving temporary protection for individuals from Ukraine. This decision grants temporary protection for a period of one year to Ukrainian nationals, stateless persons whose last residence was in Ukraine, and individuals who were granted international protection by Ukraine and who cannot return to Ukraine, which they were forced to leave due to armed conflicts, or to their country of origin. The existence of reasons for which these individuals will not be granted temporary protection, in accordance with Art. 94 of the Law on International and Temporary Protection of Foreigners, is determined by the competent authorities based on available data. This measure was taken to align Montenegro's laws and practices with the EU asylum policy, whose authorities made the decision based on Council Directive 2001/55/EC of July 20, 2001, on minimum standards for granting temporary protection in the event of a mass influx of displaced persons, and on measures to promote balanced efforts among member states in hosting these individuals. On the proposal of the European Commission, the EU Council adopted Implementing Decision No. 2022/382 on March 4, 2022, implementing Art. 5 of the aforementioned directive, which introduces temporary protection for Ukrainian nationals who were residing in Ukraine and who were displaced on or after February 24, 2022, due to the military invasion by Russian armed forces that began on that date.

over public institutions. Following the party's defeat in the parliamentary elections of August 2020, the incoming governing coalition, considered by some to consist of populist and clerically oriented political actors, Montenegro received a government with a lower level of democratic standards than the previous one. In this regard, it is essential to consider the broader Montenegrin political context, which significantly shapes the interpretation and implementation of legal norms, including those governing the protection of human rights.

The political commitment of the Montenegrin government towards European integration has been consistently cited as a key priority of the state since the beginning of the negotiation process. Unfortunately, more serious progress in the implementation of reforms, which would bring Montenegro closer to membership, has significantly stalled in the years behind us. The pronounced polarisation of society and political instability are considered to be the primary motives for inertia in the implementation of European reforms.<sup>80</sup>

On the other hand, increasing threats to peace, such as the Russian attack on Ukraine, geopolitical instability, and growing Russian influence on certain countries of the Western Balkans,<sup>81</sup> gave a clear message to the EU about the importance of continuing the process of expanding the Union towards the East.

By aligning its national legislation with European standards and meeting key benchmarks, Montenegro confirmed in June 2024, during the intergovernmental conference on accession, that it had fulfilled the transitional benchmarks in the crucial negotiation chapters 23 and 24, which pertain to the judiciary, fundamental rights, and governance. In this way, the accession negotiations were unfrozen, and new momentum was given to them. Alongside receiving the IBAR, the EU established criteria for closing this essential cluster, which is vital for the accession process to the Union. Further success of Montenegro on its way to the EU will depend on a consistent record of the implementation of adopted policies, with the aim of achieving results in the areas of fundamental rights, the fight against organised crime and high corruption, criminal prosecution and trial for remaining war crimes, and the policy of asylum, migration, and visa policy.<sup>82</sup>

Whether Montenegro can serve as a positive example of the Union's readiness for further expansion and integration, thereby demonstrating a clear commitment to

80 | Since declaring independence in 2006, Montenegro has had 44 different governments. Since 2020, there have been three changes in government and the formation of numerous coalitions within coalitions, leading to a form of challenging cohabitation.

81 | Let us revisit the interview given by Tonin Picula, the permanent rapporteur of the European Parliament for Montenegro since October 2019 and the head of the working group for the Western Balkans since 2020, who in an interview with Radio Free Europe in May 2024, assessed that 'The Serbian Ortofox Church, with the active support of the Serbian state, has significantly increased its already great influence in recent years, and does not give up promoting its political agenda, to the detriment of Montenegrin statehood and Podgorica's pro-Atlantic partnerships.' Complete interview [Online]. Available at: <https://www.slobodnaevropa.org/a/tonino-picula-zapad-eu-balkan-crna-gora/32947127.html> (Accessed: 8 April 2026).

82 | Based on official data obtained in accordance with the Law on Free Access to Information, out of 102 obligations undertaken by the end of June 2024, the institutions have implemented only 50, i.e. 49%, and 52 unfinished obligations are transferred to the second half of the year, when a total of 285 remain. Of the 102 planned obligations for the first half of 2024, 28 relate to laws, 28 to by-laws and 46 to strategic documents, and the lowest degree of fulfilment is recorded in relation to strategic documents (37%), laws (57%) and related by-laws (61%).

completing the process of forming a large and united European family, will depend on Montenegro's efforts to fulfil its obligations, rather than solely on the actions of the EU. It should not be expected that the Union will lower the criteria for accession, as it is essential for the citizens of member states to trust that new members will adhere to the same rules as existing ones to maintain legal security and uphold European standards. In this context, a robust and proactive approach is anticipated from the current Montenegrin government to finalise accession negotiations to ensure that Montenegro can join the community of democratic values, such as the European Union, as swiftly as possible.

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