

# NATIONAL HUMAN RIGHTS SYSTEM IN MONTENEGRO<sup>1</sup>

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## ABSTRACT

*The text is structured into three sections. The first section examines the protection of human rights under the Constitution of Montenegro, the second section focuses on the adjudication of fundamental rights in Montenegro, and the third section is dedicated to the Protector of Human Rights.*

*The first section on the protection of human rights in the Constitution provides an analytical overview of human rights safeguards, discussing topics such as the guiding constitutional principles regarding the status of individuals, significance of certain rights and freedoms, and whether the current regulation of rights and freedoms adequately addresses contemporary societal needs. The key areas of analysis include terminological issues, cataloguing of human rights in the Constitution, and the relationship between the Constitution and international law. This section also examines constitutional limitations on human rights.*

*The second section examines the judicial protection of human rights in Montenegro, with a focus on the Constitutional Court. It analyses the powers and functions of the Court, including its two primary roles: reviewing the constitutionality of laws and addressing constitutional complaints. This section also explores the impact of the Constitutional Court decisions and factors that influence the judicial protection of human rights. The Court's norm control powers are defined as ex post norm control. A constitutional complaint is a mechanism to assess the compatibility of an individual act by a state authority or other entity performing public functions, with human rights protected by the Constitution and international treaties.*

*The third section focuses on national human rights institutions in Montenegro, with emphasis on the Protector of Human Rights and Freedoms. The Protector fulfils duties typically associated with other national human rights institutions. Compliant with the*

- 1 | This text has been prepared as educational material for the 'Human Rights and Rule of Law' LL.M. course established by the Central European Academy. Similar materials have been prepared for Albania, Bosnia and Herzegovina, Georgia, Moldova, North Macedonia, Serbia, and Ukraine. These texts serve as resources for comparative studies. To ensure comparability, the editor has provided a standardised questionnaire that authors of national reports are required to follow. The questionnaire comprises three parts; accordingly, this text is divided into three corresponding sections. In each section, the editor's questions – rephrased as subheadings – are answered below. For certain questions, concise answers are explicitly required.
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*Paris Principles, this section analyses six key pillars of the Protector's institution: independence, pluralism, cooperation, accessibility, funding, and a broad mandate.*

## KEYWORDS

Constitution  
human rights  
Constitutional Court  
Ombudsman

## 1. Introduction

Information for this report was primarily drawn from relevant sources, including the Constitution, statutory laws, subordinate legal instruments, decisions of the Constitutional Court, and reports from the Constitutional Court and the Protector of Human Rights and Freedoms. The list of statutory laws used in the text is attached at the end of the article. It is relevant to mention here that Montenegro has entered into all universal human rights treaties through succession or accession, except the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Montenegro is a Contracting Party to the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and other regional human rights treaties. As Montenegro is a multi-ethnic State, and the 1994 Framework Convention for the Protection of National Minorities is important for Montenegro.

Montenegro has a population of approximately 650,000 people living in 25 municipalities, spread over 14,000 km.<sup>2</sup> This demographic and geographic information is essential for understanding the organisation of the country's judicial system and national human rights institutions, as both are based on the country's territorial size and number of population.

## 2. Protection of Human Rights in the Constitution of Montenegro

This section provides analytical insights into various aspects of protection of human rights in the Constitution of Montenegro. It addresses topics such as the guiding constitutional principles regarding the status of individuals, the significance of certain rights and freedoms, and whether the current regulation of rights and freedoms adequately meets contemporary social needs. This analysis includes considerations of the vertical and horizontal dimensions of human rights, and the duties associated with those rights. Another key area of focus is terminological issues, cataloguing of human rights in the Constitution, relationship between the Constitution and international law, and identification of constitutional holders of human rights and those responsible for their protection. Additionally, this section examines the constitutional limitations on human rights, and the provisions related to the right of access to justice and the right to an effective remedy.

**| 2.1. *There Is No Remarkable Distinction Between the Terms ‘Human Rights’, ‘Fundamental Rights’, and ‘Constitutional Rights’ in the National Legal System***

The Constitution of Montenegro predominantly uses the terms ‘human rights and freedoms’ or simply ‘rights and freedoms.’ These terms are also commonly used in legislation. Notably, the Criminal Code uses the term ‘fundamental human rights and freedoms’, while the Code on Criminal Procedure and the Law on Civil Procedure refer to ‘human rights and fundamental freedoms’. In addition to ‘human rights and freedoms’, the Law on Minority Rights and Freedoms and the Law on Non-Governmental Organizations also use the term ‘minority rights and freedoms’. Similarly, the Law on the Prohibition of Discrimination employs the term ‘human and minority rights’. In judicial practice, the terms ‘human rights and freedoms’ and occasionally ‘constitutional rights’ are used. The academic doctrine mainly uses the terms ‘human rights and freedoms’,<sup>3</sup> although ‘human and minority rights’<sup>4</sup> are also referenced. All these terms are employed as synonyms, with no distinct legal meanings attached to them. No legal distinction exists between ‘human rights’, ‘constitutional rights’, or ‘fundamental human rights’. They are understood as encompassing the rights laid down in the Constitution and international treaties.

**| 2.2. *The Regulation of Human Rights Is Organised in a Separate Part of the Constitution***

The Constitution of Montenegro organises human rights and freedoms in its second part, titled ‘Human Rights and Freedoms’.

**| 2.3. *The Relationship Between the Constitution and International Law in Montenegro, Specifically in the Context of International Human Rights Treaties***

The relationship between international human rights treaties and national law in Montenegro is primarily governed by Arts. 17 and 9 of the Constitution. Art. 17(1) stipulates that rights and freedoms shall be exercised based on the Constitution and ratified international conventions. This provision must be read alongside Art. 9, which states that ratified and published international treaties, and generally accepted rules of international law: form an integral part of the domestic legal order, have supremacy over national legislation, and are directly applicable when they regulate matters differently from domestic law. The prevailing interpretation of Art. 9 extends this direct applicability to cases where domestic law does not regulate the relevant matter at all. The Constitutional Court has adopted this approach, applying provisions of the European Convention on Human Rights (ECHR), as interpreted by the European Court of Human Rights (ECtHR), in cases where the Constitution and laws do not provide regulation. The Constitution does not explicitly address the relationship between itself and international treaties. However, based on the practice of the ECtHR, it is anticipated that priority will be extended to international human rights treaties in cases of conflict.

3 | Vučinić, 2001; Vučinić, 2008; Vukčević and Čupić, 2024.

4 | Jelić, 2004, pp. 136–145; Džankić, 2012, pp. 40–59.

| **2.4. The State Bodies Responsible for Protecting Freedoms and Rights According to the Constitution; Vertical and Horizontal Conception of the Functioning of Human Rights**

The Constitutional Court has the primary responsibility of protecting freedoms and rights. The Protector of Human Rights and Freedoms plays an important role in this regard. Likewise, all courts and state bodies are obliged to ensure respect for human rights in their application of laws and implementation of policies. The Constitution explicitly adopts both vertical and horizontal conceptions of the functioning of human rights, requiring respect for these rights not only in the relationship between the State and individuals but also in relationships among private persons.

| **2.5. Persons and Particular Groups Protected by the Montenegrin Constitution in Terms of Human Rights**

The Montenegrin Constitution provides human rights protection to every natural and legal person, and to organisations, settlements, groups of persons, and other forms of organisation that lack legal personality. All these entities are authorised to lodge a constitutional complaint, thereby enjoying constitutional protection of human rights. The Constitution affords special protection to certain groups, including children, youth, and elderly persons, women, particularly pregnant women, and mothers, persons with disabilities, and ethnic minorities.

| **2.6. The Guiding Principles Concerning the Status of the Individual in Montenegro Under the Constitution, and Their Axiological Inspirations**

The guiding principles of the status of the individual in Montenegro are enshrined in Arts. 1(2) and 10 of the Constitution. Art. 1(2) declares: 'Montenegro is a civil, democratic, ecological state of social justice, based on the rule of law'. This provision frequently serves as part of the legal framework referenced by the Constitutional Court in proceedings concerning constitutionality and legality.<sup>5</sup> Art. 10 states: 'Everything that is not prohibited by the Constitution and the law is free in Montenegro. Everyone is obliged to comply with the Constitution and the law.' Although this Art. is less frequently cited in court decisions, it remains a fundamental determinant of the individual's status, emphasizing freedom constrained by the non-arbitrary application of the law. In the *ZIPI* case, which involved a constitutional complaint, the Constitutional Court emphasised that arbitrariness in legal reasoning is incompatible with the rule of law and human rights. The Court stated:

A legal order in a society based on the rule of law cannot be built, and the protection of constitutional rights of individuals cannot be based on reasons that lack valid arguments and basic principles of law. Otherwise, unforeseeable consequences may arise in the realization and protection of individual rights.<sup>6</sup>

- 5 | Decision of the Constitutional Court U-I no. 5/13, 26 February 2018, para. 5; Decision of the Constitutional Court U-I no. 11/16, 12/17 and 13/17, 27 March 2018, para. 5; Decision of the Constitutional Court U-I no. 64/12, 27 March 2018, para. 5; Decision of the Constitutional Court U-I no. 1/16, 26 June 2018, para. 5; Decision of the Constitutional Court U-I no. 29/17, 26 June 2018, para. 5.
- 6 | Decision of the Constitutional Court U-III no. 552/24, 18 July 2024, para. 21.

The preamble of the Constitution enumerates the following basic values: freedom, peace, tolerance, respect for human rights and freedoms, multiculturalism, democracy, and the rule of law. Among these, the rule of law has been designated in some decisions of the Constitutional Court as the highest value of the constitutional order.<sup>7</sup> Nonetheless, freedom and the rule of law can be regarded as the key axiological determinants of an individual's status in Montenegro. The Constitution and laws do not establish distinctions among human rights based on their values. No official hierarchy exists among human rights, and they are treated as having equal force.

### **| 2.7. The Freedoms and Rights Enshrined in the Constitution Are Organised Into Six Sections**

The Constitution of Montenegro organises freedoms and rights into six sections, presented in the second part of the Constitution. They include rights from the three generations of human rights. Rights from the first generation-civil and political rights-are addressed in the second and third sections. Rights from the second generation-economic and social rights-are laid down in the fourth section. Some rights from the third generation, such as the right to a healthy environment or the right to protection of natural and cultural heritage are presented in various sections. The first section under the title 'Common Provisions' includes the following rights and principles: equality before the law, gender equality, equal protection of human rights, right to legal remedy, right to legal assistance, right to local self-government, right to a healthy environment, limitation of human rights and freedoms, and temporary limitation of human rights and freedoms. The second section, entitled 'Individual Rights and Freedoms' includes the following rights and principles: prohibition of death penalty, rights related to biomedicine, dignity and inviolability of personality, guarantees regarding deprivation of liberty, guarantees regarding detention, right to respect for human personality in criminal or other proceedings, right to a fair and public trial, principle of legality in criminal matters, and presumption of innocence, *Non bis in idem*, right to defence, freedom of movement, settlement, and the right to leave Montenegro, right to respect for private and family life, inviolability of the home, inviolability of communication, protection of personal data, and right to asylum. The third section entitled 'Political Rights and Freedoms' includes the following rights and principles: right to vote, freedom of thought, conscience, and religion, freedom of expression, conscientious objection, freedom of the press, prohibition of censorship, right of access to information, freedom of assembly, freedom of association, prohibition of organisation in State institutions, prohibition of activities or organisations aimed at forcibly overthrowing the constitutional order, right to petition international organisations, and right to petition state bodies. The fourth section entitled 'Economic, Social, and Cultural Rights' includes the following rights and principles: right to property, freedom of entrepreneurship, right to inheritance, rights of foreigners, right to work, prohibition of forced labour, employee rights, right to strike, social security, rights of persons with disabilities, health insurance, consumer protection, marriage and family rights, protection of mothers and children, child rights, right to education, freedom of scientific, cultural, and artistic creativity, and protection of natural and cultural heritage. Importance that

7 | Decision of the Constitutional Court U-I no. 13/16, 29 January 2019, para. 7.1. Decision of the Constitutional Court U-I no. 12/15, 28 February 2019, para. 7.2.1. Decision of the Constitutional Court U-I br. 28/18 no 27 February 2020, para. 8.1.

Montenegro attributes to the rights from the second generation is manifested in the fact that Montenegro ratified the 2008 Optional Protocol to the Covenant on Economic, Social, and Cultural Rights, thus accepting competence of the Committee on Economic, Social and Cultural Rights to consider individual communications from Montenegro. The fifth section is dedicated to the protection of minority rights and provides for the protection of identity and prohibition of assimilation. Art. 79 of the Constitution enumerates the rights that protect the identity of persons belonging to minorities. Wishing to equalise the status of persons belonging to minorities and persons belonging to majority people, instead of the term 'minorities' the Art. uses terms 'minority nations' and 'minority national communities'. These rights include: right to publicly express national, ethnic, cultural and religious particularities and to protect and develop them, right to publicly post national symbols and to celebrate national holidays, right to use their own language and alphabet in private, public and official use, right to education in their own language and alphabet in public institutions, and the right to the history and culture of persons belonging to minority nations and other minority national communities is included in the curricula, right to local self-government when certain conditions are met, and other rights. The sixth section entitled 'The Protector of Human Rights and Freedoms' focuses on the institution responsible for overseeing the protection of rights and freedoms.

### **| 2.8. *Freedoms and Rights Enshrined in the Constitution Particularly Important in the Political, Social, and Economic System of Montenegro***

Several freedoms and rights hold particular significance in Montenegro's current political and social context, including dignity and inviolability of personality, guarantees regarding deprivation of liberty, guarantees regarding detention, the right to respect for human personality in criminal or other proceedings, and the right to a fair and public trial. These rights are critical given Montenegro's ongoing fight against organised crime, a critical issue in the country.<sup>8</sup> In recent years, some police officers, allegedly connected to criminal gangs, have been implicated in acts of torture against imprisoned members of rival gangs. In the past, inhumane treatment of detained individuals was a widespread practice.<sup>9</sup> There are credible suspicions and judicial proceedings regarding alleged connections between high-ranking state officials and certain criminal groups.<sup>10</sup> In this context, protection of these fundamental rights is vital to uphold the rule of law and address systemic issues within the justice and law enforcement systems.

### **| 2.9. *The Constitution's General Clauses Limiting the Exercise of Constitutional Freedoms and Rights, Clauses Limiting Specific Freedoms and Rights and the Proportionality Test***

The Constitution of Montenegro addresses restrictions on the exercise of rights and freedoms through both general and specific provisions. Arts. 24 and 25 of the Constitution provide the general framework for limiting rights and freedoms: Art. 24 states:

Guaranteed human rights and freedoms can be restricted only by law, to the extent permitted by the Constitution and to the extent necessary to satisfy the purpose for which the restriction

8 | Montenegro Report, 2023, pp. 5, 52, 54, 55.

9 | Gorjanc Prelević and Malović, 2022.

10 | Montenegro Report, 2023, pp. 5, 27, 54, 55.

is allowed in an open and free democratic society. Restrictions may not be introduced for purposes other than those for which they are prescribed.

Art. 25(1) allows the restriction of certain human rights and freedoms during a declared state of war or emergency if deemed necessary. However, Art. 25(3) explicitly excludes certain rights from such restrictions, including the right to life, right to legal remedy and legal aid, right to dignity and respect for the person, right to a fair and public trial and the principle of legality, the presumption of innocence, right to defence, compensation for illegal or unjustified deprivation of liberty and wrongful conviction, freedom of thought, conscience, and religion, and the right to conclude a marriage. The purpose and conditions for restrictions are detailed in specific provisions of the Constitution. For example: Art. 39 states that freedom of movement, and settlement, and the right to leave Montenegro may be restricted for specific reasons such as conducting criminal proceedings, preventing the spread of infectious diseases, or ensuring national security. Art. 41(4) allows officials to enter a private residence without a court order and without witnesses if it is necessary to prevent a criminal offense, apprehend the perpetrator, or save lives and property. Art. 42(2) permits departure from the principle of inviolability of communication only by court order for reasons such as conducting criminal proceedings or national security. The Constitutional Court applies the proportionality test in accordance with the jurisprudence of the ECtHR. The test involves evaluating whether: the restrictive measure is suitable for achieving its intended purpose, the measure is not harsher than necessary to achieve the purpose, a balance is struck between individuals' constitutional rights and community interests.<sup>11</sup> The Court further specifies that when restricting a right, State authorities must consider the essence of the right being restricted, importance of the purpose of the restriction, nature and scope of the restriction, relationship between the restriction and its purpose, and whether there is a less restrictive way to achieve the same purpose.<sup>12</sup>

### **2.10. Appropriateness of the Current Regulation of Freedoms and Rights in Montenegro's Constitution to the Challenges of Modern Times**

The current regulation of freedoms and rights in Montenegro's Constitution suffers from insufficient implementation to effectively address the contemporary challenges. In particular, the ongoing combat against organised crime and corruption requires further constitutional reforms to strengthen the judiciary's independence and efficiency and enhance the implementation of the rule of law. Improvements in these areas would better align Montenegro's constitutional framework with modern challenges and international standards.

### **2.11. The Right of Access to Justice and the Right to an Effective Remedy as They Are Provided by the Constitution**

The Constitution of Montenegro explicitly guarantees both the right of access to justice and the right to an effective remedy: Art. 32 ensures the right to a fair and public

11 | Decision of the Constitutional Court U-II no. 64/12, 27 March 2018, para. 2.4.1.

12 | Ibid. Decision of the Constitutional Court U-I no. 29/17, 26 June 2018, para. 7.2.1. Decision of the Constitutional Court U-I no. 10/14, 30 October 2018, para. 8.2.1.

trial, interpreted by the Constitutional Court to include the right of access to a court.<sup>13</sup> The Court has emphasised that this right is among the most fundamental constitutional guarantees.<sup>14</sup> Art. 32 states: 'Everyone has the right to a fair and public trial within a reasonable time before an independent, impartial court established by law'. Art. 20 guarantees the right to a legal remedy, specifying: 'Everyone has the right to a legal remedy against a decision that determines his right or interest based on law.' These provisions reflect Montenegro's commitment to safeguarding access to justice and effective remedies, consistent with international human rights standards. The right of access to justice is further elaborated in Arts. 118–128 related to the judicial system composed of basic and higher courts, Appellate Court, Supreme Court, and the Judicial Council. The system of courts includes also Commercial Court and Administrative Court. Arts. 118–128 secure independence and impartiality of courts, a public hearing, and other components of the right to a fair trial.

### | **2.12. Montenegro's Constitution Impose Some Duties on Individuals**

The Constitution of Montenegro imposes several duties on individuals, which include the general duty to respect human rights and specific duties. The general duty is stated in Art. 6(3): 'Everyone is obliged to respect the rights and freedoms of others.' Another general duty is expressed in Art. 10(2): 'Everyone is obliged to comply with the Constitution and the law.' Specific duties are outlined in Arts. 23(3) and 78(1). Art. 23(3) declares: 'Everyone, especially the state, is obliged to protect and improve the environment.' Art. 78(1) provides: 'Everyone is obliged to preserve the natural and cultural heritage of general interest.'

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## 3. Fundamental Rights Adjudication in Montenegro

This section explores the judicial protection of human rights in Montenegro, with a focus on the Constitutional Court as the primary judicial body responsible for safeguarding these rights. Other state bodies, including ordinary courts, are also considered for their role and functions in upholding human rights. The key areas of analysis include the powers and functions of the Constitutional Court, and the Court's two main functions are: reviewing the constitutionality of laws and addressing constitutional complaints, statistical data regarding the Court's activities, the roles of the President of the Constitutional Court, rapporteur judges, and advisory staff, and the effect of Constitutional Court decisions and circumstances impacting judicial protection of human rights.

### | **3.1. The Fundamental Rights Protection Bodies in Montenegro, the Functions of These Bodies, and the Division of Functions and Powers Between Them**

There are several fundamental rights protection bodies in Montenegro, each with specific functions and responsibilities. The Constitutional Court ensures respect for and application of the Constitution, including the protection of human rights and freedoms

13 | Decision of the Constitutional Court U-I no. 2/19 od 18 July 2019, para. 7.2.1.1. Order of the Constitutional Court U-I no. 31/18, 30 May 2019, para. 8.3.

14 | Decision of the Constitutional Court U-I no. 31/18, 30 May 2019, para. 8.3.

guaranteed by the Constitution and international treaties. The Protector of Human Rights and Freedoms undertakes measures to protect and promote human rights and freedoms. The Supreme Court ensures uniform application of the law by courts, acts as a court of third instance, resolves conflicts of jurisdiction between courts and transfers territorial jurisdiction in certain cases, and adopts general legal opinions and informs the Assembly of Montenegro about court-related issues. The Administrative Court decides on administrative disputes across Montenegro. The Commercial Court handles disputes between commercial entities and other issues outlined in the Law on the Courts for the entire territory of Montenegro. Basic Courts act as first-instance courts for criminal, civil, and labour matters. Higher Courts handle certain first-instance criminal offenses and act as appellate courts for decisions from basic courts. The Court of Appeal handles appeals against first-instance decisions from higher courts and the Commercial Court and resolves jurisdictional conflicts between basic and higher courts. Misdemeanour Courts decide on requests for initiating misdemeanour proceedings and judicial decision-making, and the Higher Misdemeanour Court decides on appeals against the decisions of misdemeanour courts and resolves conflicts of jurisdiction among them. All courts are bound by the Constitution, laws, and ratified international treaties. The realisation of human rights and freedoms is regulated by various laws, and all courts are obliged to uphold these rights while applying the law.

### **| 3.2. Montenegro Has a Constitutional Court, Whose Powers Are Established by the Constitution**

Montenegro has a Constitutional Court with significant powers, as outlined in Art. 149 of the Constitution. These powers include:

1. Reviewing the compatibility of laws with the Constitution and ratified international treaties.
2. Ensuring compliance of other regulations and general acts with the Constitution and the law.
3. Addressing constitutional complaints regarding human rights violations, after the exhaustion of effective legal remedies.
4. Determining whether the President of Montenegro has violated the Constitution. Resolving conflicts of jurisdiction between: courts and other state bodies; state bodies and local self-government units; bodies of local self-government units
5. Banning the activities of political parties or non-governmental organisations.
6. Handling election disputes and referendum-related disputes that do not come under the jurisdiction of other courts.
7. Assessing the constitutionality of measures and actions undertaken by state authorities during a state of war or emergency.

The Court does not review the consistency between legal acts of the same legal force. The Law on the Constitutional Court further regulates the functions and powers of the Constitutional Court. Art. 23 of this Law empowers the Court to adopt its Rules of Procedure, which govern its work and decision-making processes.

### **| 3.3. The Two Main Roles of the Constitutional Court in Protecting Fundamental Rights**

The Constitutional Court of Montenegro has two principal roles in protecting fundamental rights:

1. The judicial review (norm control) function represents the collective protection of fundamental rights by ensuring the constitutionality of laws and legality of general legal acts.
2. The constitutional complaint function provides individual protection of fundamental rights by addressing specific violations.

### 3.3.1. *Judicial Review (Norm Control) Function*

The Constitutional Court's norm control powers are established as ex post norm control. A proposal or initiative for reviewing the constitutionality of laws and legality of or other regulations can be submitted while the legal act remains in force. If the provision ceased to be in force during the review process, but its application has caused unresolved consequences, the Constitutional Court assesses its compatibility with the Constitution or law during the time it was in effect. Norm control powers do not include individual legal acts, such as executive decisions or judicial judgments. They extend to abstract norm control, examining the constitutionality of laws and legality of regulations, or their specific provisions. The Court can initiate proceedings independently, and it also examines conflicts between laws and international treaties.

Norm control ensures the hierarchical harmony of international treaties, the Constitution, statutory laws, and other general legal acts. It is essential for upholding the rule of law. Anyone (natural persons, legal entities, organisations, settlements, or groups) may submit an initiative, regardless of having a legal interest. Courts, State authorities, local self-government bodies, and five deputies may submit a formal proposal. Courts may propose a review when a question of constitutionality arises regarding a law or regulation to be applied in their proceedings. In such cases, the judge adjourns the proceedings and notifies the president of the court, who informs the President of the Supreme Court. The Constitutional Court must resolve these cases within 45 days. Art. 39(2) of the Law on the Constitutional Court provided that in all other events, the time-limit for deciding the case was 18 months, but the Constitutional Court terminated this provision as unconstitutional.<sup>15</sup> Other state bodies may propose a review regarding laws or regulations applicable in their work. Local self-government bodies may propose proceedings for laws or regulations affecting local governance. No specific conditions are required for proposals submitted by five deputies.

The Law on the Constitutional Court differentiates between two types of submissions: a) initiative to start the procedure (*inicijativa za pokretanje postupka*), which is available to anyone; and b) proposal for review (*predlog za ocenu*), which is available only to courts, state authorities, local self-government bodies, and five deputies. Their effects and procedural treatment differ. By order, the Court may open the proceedings, reject submissions as inadmissible, dismiss initiatives as unfounded, and suspend proceedings (in accordance with Arts. 37, 38, and 64 of the Law). By decision, the Court may declare a law or regulation incompatible with the Constitution, international treaties, or a statutory law, and dismiss a proposal as unfounded.

Arts. 58(1) and 58(2) of the Law on the Constitutional Court outline the necessary content for proposals and initiatives as follows: identification of the law or a regulation in question, specification of the disputed provisions, reference to the Official Journal of Montenegro where the act was published, reasons supporting the proposal or initiative,

15 | Decision of the Constitutional Court U-I no. 2/19 od 18 July 2019.

and additional relevant information. If the contested regulation has not been published in the Official Journal, a copy must be attached. Submissions do not limit the Constitutional Court's scope of review. Art. 151 of the Constitution specifies the key characteristics of Constitutional Court decisions: decisions are adopted by a majority vote of all judges; decisions are binding, enforceable, and published; and enforcement, where necessary, is secured by the Government. The judicial review function is fundamental to maintaining the legal order and safeguarding human rights through a consistent interpretation and application of constitutional norms.

### *3.3.2. Constitutional Complaint Function*

A constitutional complaint allows a litigant to challenge an individual act or failure to act by a state authority, state administration body, local self-government authority, legal person, or other entity performing public functions, if such acts or omissions violate the litigant's constitutionally guaranteed rights or freedoms. The primary issue in these proceedings is whether a human right has been violated by an act of the State or bodies performing public functions. A constitutional complaint can be submitted by natural and legal persons, organisations, settlements, groups of persons, and other forms of organisation without a legal personality. The term 'State authority' includes all courts, enabling litigants to challenge judicial decisions. Litigants may argue that the application of substantive or procedural law by a court resulted in a human rights violation. The admissibility of a constitutional complaint is conditioned upon the prior exhaustion of all legal remedies.

### **| 3.4. The Role of Other Courts in Reviewing Norms or Constitutional Complaints**

Apart from the Constitutional Court, no other court in Montenegro is empowered to review the constitutionality or legality of norms, and rule on constitutional complaints. All courts are authorised to submit a proposal to the Constitutional Court for a review of constitutionality or legality of laws or regulations. A court can file such a proposal if a question of constitutionality or legality arises regarding a law or regulation to be applied in a pending case. In addition to this role, ordinary courts are obliged to ensure respect for human rights while applying the law in their proceedings.

### **| 3.5. Frequency and Caseload of the Constitutional Court**

The annual caseload of the Constitutional Court reflects a significant disparity between its judicial review and constitutional complaint functions:

Table 1: Caseload statistics (2021–2023)<sup>16</sup>

Year	Total resolved	Constitutional complaints	Reviewing constitutionality and legality
2023	1641	1549 (94%)	30 (1.8%)
2022	1651	1613 (97%)	36 (2.1%)
2021	1498	1433 (95%)	59 (3.9%)

Constitutional complaints constitute an overwhelming majority of the Court's caseload (94%–97% of cases in the period 2021–2023). Cases involving review of constitutionality and legality represent a small percentage of the Court's docket, ranging from 1.8% to 3.9%. While constitutional complaints dominate numerically, statistical data does not fully reflect the actual workload distribution. Cases involving a review of constitutionality and legality are generally more complex and require more working time. The plenary Court decides these cases. Constitutional complaints are often resolved more quickly because decisions are made by chambers of three judges when they are unanimous. The contrast between these two functions illustrates the procedural and substantive differences in the Constitutional Court's work and the significant weight constitutional complaints carry in its operations.

### 3.6. Success of Different Types of Submissions: Statistics on Submissions Rejected Without Examination on Merits, Dismissed After Examination on Merits, and Upheld

The Constitutional Court rejected 11% submissions for reviewing the constitutionality of laws without examination on merits in 2023, 50% in 2022, and 50% in 2021. It dismissed, after examination on merits, 22% such submissions in 2023, 25% in 2022, and 19% in 2021. The Court found that a provision was unconstitutional but did not terminate the provision, as it had ceased to be in force during the proceedings, in 11% cases in 2023, 0% in 2022, and 6% in 2021. The Court terminated a provision as unconstitutional in 56% cases in 2023, 25% in 2022, and 25% in 2021.

Regarding constitutional complaints, the Constitutional Court rejected 33% complaints in 2023, 17% in 2022, and 22% in 2021. During each of the three years, the Court suspended proceedings on constitutional complaints in 1% of all cases. It dismissed complaints after consideration on merits in 54% cases in 2023, 74% in 2022, and 68% in 2021. The Court upheld the complaints in 12% cases in 2023, 8% in 2022, and 9% in 2021. Thus, success in proceedings regarding the review of constitutionality is significantly higher than in proceedings on constitutional complaints.

### 3.7. The Role of the President of the Constitutional Court in the Exercise of Powers of the Constitutional Court

The judges of the Constitutional Court elect the President of the Court from among themselves. The President's mandate is for three years and is not renewable. The President represents the Constitutional Court before State bodies and institutions in Montenegro

16 | All statistical data used in the text are from the website of the Constitutional Court [Online]. Available at: <https://www.ustavnisud.me/ustavnisud/objava/blog/2/objava/27-statistika> (Accessed: 25 February 2026).

and before international bodies, organisations, and institutions in the country and abroad. He or she ensures the independent position of the Constitutional Court and organises the work of the Court.

The Court's electronic information system selects a judge rapporteur, but the President can change the selected candidate for reasons not precisely defined in the Rules of the Constitutional Court. The President of the Constitutional Court convenes and presides over sessions of the Constitutional Court and professional meetings and coordinates the work of the Constitutional Court. The President nominates the presidents and members of chambers for constitutional complaints through the annual work schedule. A request for the disqualification of a judge of the Constitutional Court due to the reasons referred to in Art. 43 of the Law on the Constitutional Court may be submitted by the President of the Constitutional Court, a judge, or a participant in the procedure.

The President of the Constitutional Court signs decisions and orders adopted at a session of the plenary Court. He or she signs other general or individual acts of the Court. The president of a chamber signs decisions and orders adopted by the chamber. The President of the Constitutional Court has the right to participate in the work of the Assembly session where the budget proposal of the Constitutional Court is discussed. The President of the Constitutional Court orders payments from the Court's budget. He or she considers complaints about the work of the Constitutional Court. The President decides on the rights and duties of officials employed in the Court.

The President of the Court does not have the right to decide in the event of a tie vote. He or she does not have a dominant role, but some authorities, such as nominating members and presidents of chambers for constitutional complaints or changing a rapporteur judge, elevate the President slightly above other judges.

### **| 3.8. The Role of the Rapporteur Judge and the Role of the Advisory Staff**

A rapporteur judge is responsible for the legal analysis of a case, preparing a proposal for a decision, and drafting the text to be sent to the Editorial Commission of the Court. The rapporteur judge investigates a submission with the assistance of an advisor. If deemed necessary, the rapporteur judge can explain their proposal during a Court session. In proceedings on the constitutionality of a law or the legality of other regulations, the rapporteur judge is authorised to propose adjourning the proceedings and setting a time limit within which the author of the act can correct the unconstitutionality or illegality. After the discussion, the President of the Court or the president of a chamber invites the rapporteur judge to comment on proposals made during the discussion. The rapporteur judge may then reformulate their proposal. The plenary Court or a chamber vote on the final proposal of the rapporteur judge. If the proposal is adopted, the rapporteur judge and the advisor prepare the adopted proposal for the Editorial Commission, which finalises the text for publication. If the rapporteur judge's proposal is rejected, the President of the Court invites the judges to vote on other proposals made during deliberation. If another proposal is adopted, the rapporteur judge may accept the task of preparing a new text of the decision in accordance with the adopted proposal. Otherwise, the President of the Court will nominate another judge to draft the new text.

The advisor prepares the text of the proposed decision in accordance with the instructions of the rapporteur judge and is responsible for the legal and technical aspects of handling the case. While working on the case, the advisor considers the practice and general legal opinions of the Constitutional Court and the jurisprudence of the ECtHR.

The advisor signs the proposal of the decision they helped prepare and is accountable for its content and correctness. He or she may also be present during the Court session.

### | **3.9. The Relationship Between Ordinary Courts and the Constitutional Court**

As stated above, ordinary courts can propose that the Constitutional Court review the constitutionality of laws or the legality of other legislations. Any court is empowered to refer a matter to the Constitutional Court for a review of constitutionality or legality if a question arises regarding the law or other regulations that must be applied in proceedings before it. Ordinary courts are expected to consider and respect the Constitutional Court's interpretations of human rights constitutional provisions when applying the law.

### | **3.10. The Circumstances in Montenegro Influencing Effective Protection of Fundamental Rights**

The effective protection of human rights in Montenegro is impacted by issues related to the organisation and functioning of the judicial system. An institutional blockade in the election of Constitutional Court judges, owing to the lack of cross-party consensus in Parliament, rendered the Court unable to function between September 2022 and February 2023. This paralysis resulted in a backlog of approximately 3,000 constitutional complaints and over 250 initiatives for reviewing the constitutionality of laws and the legality of other regulations.<sup>17</sup> Although the Constitutional Court resumed its functions in February 2023, the backlog of cases continued to grow that year. There were 288 such cases at the beginning of the year and 318 by the end. The number of cases related to constitutional complaints decreased from 2,569 at the beginning of 2023 to 2,181 at the end of the year. In 2025, new differences appeared among the judges of the Constitutional Court regarding their retirement and replacement that threatened to blockade the Constitutional Court again.

The functioning of the Judicial Council was similarly affected by difficulties at the same time. The Assembly failed to elect three members from the rank of eminent lawyers, leaving the Judicial Council in an incomplete composition for two years. This undermined its decision-making, as two-thirds majority is required in several instances, such as the appointment of the Supreme Court President.<sup>18</sup> The problem was resolved in December 2023 when the Assembly elected the missing members, and a new Council was constituted. A similar issue arose regarding the appointment of the Supreme State Prosecutor.<sup>19</sup> Further reforms of judicial laws are pending. However, a positive report on the fulfilment of interim benchmarks (IBAR) in Chapters 23 and 24, related to the rule of law and human rights, issued by the EU Commission on 26 June 2024, indicates that the reforms are progressing in the right direction.

17 | Montenegro Report, 2023, p. 22.

18 | *Ibid.*, p. 23.

19 | National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21-Montenegro, Human Rights Council, A/HRC/WG.6/43/MNE/1, 8 February 2023, para. 66.

**3.11. The Legal Consequences of the Constitutional Court's Decisions That Declare the Unconstitutionality of the Challenged Norm or Individual Act/Decision and in Particular the Consequences in the Ordinary Court System of Annulment of a Judicial Decision**

Art. 152 of the Constitution governs the consequences of finding a law unconstitutional or a regulation illegal. Such laws and regulations cease to be valid on the day the Constitutional Court's decision is published. Laws, regulations, or specific provisions deemed unconstitutional or illegal by the Constitutional Court cannot be applied to cases that arose before the publication of the decision if such cases have not been completed by that date. Similarly, Art. 66 of the Law on the Constitutional Court states that the execution of final individual acts adopted on the basis of unconstitutional laws or illegal regulations cannot be implemented. If execution has already commenced, it will be suspended. A holder of a right violated by a final or binding individual act based on an unconstitutional law or illegal regulation has the right to request the competent authority to amend that individual act, provided the amendment does not affect the rights of conscientious third parties. The request must be submitted within six months of the publication of the decision in the Official Journal.

By a decision finding the unconstitutionality of a law or illegality of a regulation, the Constitutional Court may determine a method for compensating damages for individuals whose rights have been violated by an individual act passed under the unconstitutional law or illegal regulation, regardless of whether they submitted an initiative for reviewing the constitutionality or legality. During the review of constitutionality or legality, the Constitutional Court may, as a preliminary measure, order the suspension of an individual act adopted under the disputed law or regulation until a final decision is made. This can be done at the applicant's request if the applicant demonstrates that irreversible harmful consequences are likely to occur.

If the rapporteur judge finds a law unconstitutional or a regulation illegal, they must explore whether its termination would result in a legal lacuna before proposing the termination to the President of the Constitutional Court. If a legal lacuna is anticipated, Art. 65 of the Law on the Constitutional Court allows the Court to set a publication date for the decision in the Official Journal, postponing its publication for a maximum of three months. During this time, the Court will inform the competent State authorities and the public through its website and deliver the decision to the participants in the procedure. If the unconstitutionality or illegality and its consequences are remedied by the specified date, the Court will suspend the procedure and not publish the decision. However, if the consequences remain, the Court will publish the decision in the Official Journal.

A constitutional complaint does not delay the execution of the individual act against which it is filed. Exceptionally, during the proceedings, the Constitutional Court may suspend the execution of an individual act until a final decision is made, upon the complainant's request, if irreversible harmful consequences are demonstrated. When the Constitutional Court finds that the disputed individual act violated human rights, it will repeal the act, either in whole or in part, and return the case for retrial to the authority that issued the repealed act. If, during the decision-making process on a constitutional complaint, the legal effect of the impugned individual act ceases, and the Constitutional Court finds that the act violated a human right, the Court will adopt a decision upholding the constitutional complaint and determine a method for fair satisfaction of the applicant. However, in practice, satisfaction is missing in some cases. If the violation was committed

by an act of a State body, State administration body, local self-government body, legal entity, or other entity exercising public powers, the Constitutional Court will prohibit further actions, order the adoption of an act, or require other appropriate measures to correct the damage already caused or to eliminate future harmful consequences of the established violation of human rights or freedoms. When the Constitutional Court annuls an individual act and returns the case for retrial, the competent authority is required to take up the case immediately, and no later than 30 days from the date of receiving the Court's decision. In the repeated procedure, the competent authority must respect the legal reasoning of the Constitutional Court and decide within a reasonable time.

A civil procedure concluded by a final court decision may be reopened at the request of a party if the Constitutional Court determines that human rights or basic freedoms have been violated during the proceedings and the judgment was based on such a violation. The violation must be correctable through the repetition of the procedure. The provisions of the Code on Criminal Procedure related to the repetition of criminal proceedings apply when a request is made to amend a final court decision based on a law or regulation annulled by the Constitutional Court. The Supreme State Prosecutor's Office may file a request for the protection of legality against final court decisions and the court proceedings that preceded them if the decisions are based on a law or regulation annulled by the Constitutional Court. This applies if the court did not permit the repetition of the criminal proceedings or if the violation can be remedied by cancelling or amending the decision without repeating the procedure.

If an authority required by the Constitutional Court to fulfil its decision fails to do so within the specified time frame or manner, the Court will issue an order declaring the decision unfulfilled. This order will be sent to the Government, published in the Official Journal, and posted on the Court's website.

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## 4. National human rights institutions in Montenegro

The third section of the article is dedicated to the national human rights institutions in Montenegro, with a particular focus on the Protector of Human Rights and Freedoms. For reasons outlined in the Introduction, the Protector assumes duties that would typically fall under the purview of other national human rights institutions. Consistent with the Paris Principles, this section examines six key pillars of the Protector's institution: independence, pluralism, cooperation, access, funding, and a broad mandate.

### | 4.1. Human Rights Ombudsman of Montenegro

The national human rights institution in Montenegro is the Protector of Human Rights and Freedoms of Montenegro (Protector). In addition to fulfilling its core functions, as defined by the Constitution and the Law on the Protector of Human Rights and Freedoms of Montenegro (Law on the Protector), the Protector also performs the roles of other national human rights institutions. Under Art. 25 of the Law on the Protector, the Protector acts as the National Preventive Mechanism for the Protection of Persons Deprived of Liberty from Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment (National Preventive Mechanism), as mandated by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment

or Punishment. Additionally, Art. 27 of the Law on the Protector entrusts the Protector with the responsibility of a national mechanism for protection against discrimination, as outlined in Art. 21 of the Law on the Prohibition of Discrimination. In early 2023, with technical support from the UN service in Montenegro, the Protector established the Independent Monitoring Mechanism for the Promotion, Protection, and Monitoring of the Implementation of the UN Convention on the Rights of Persons with Disabilities (Independent Monitoring Mechanism for the UNCRPD), as required by Art. 33 of the UNCRPD. This mechanism comprises representatives from the Protector's Office and ten non-governmental organisations, including organisations of persons with disabilities. The six key pillars of the Protector's institution—*independence, pluralism, cooperation, access, funding, and a broad mandate*—are analysed in the following sections.

## | 4.2. Independence

### *4.2.1. Independence As Guaranteed by the Constitution and the Law on the Protector*

Art. 81(1) of the Constitution establishes the Protector as an 'independent and autonomous authority that takes measures to protect human rights and liberties.' Para. 2 of the same Art. states that the Protector functions in accordance with the Constitution, laws, and ratified international treaties, while upholding the principles of justice and fairness. Under para. 3, the Protector is appointed for a six-year term and can only be dismissed under conditions specified by law. Art. 54 of the Constitution further stipulates that the Protector cannot be a member of any political party.

Art. 11 of the Law on the Protector requires the incoming Protector to take oath before the Assembly prior to assuming office. Art. 12 grants the Protector, Deputy Protectors, and advisors immunity for opinions and recommendations made in the performance of their duties, and for actions undertaken in accordance with the powers prescribed by law during their term of office. Art. 13 prohibits the Protector from holding any other public office, engaging in professional activities unrelated to their role, or being a member of a political organisation or participating in political activities. However, these restrictions do not apply to scientific, educational, or artistic activities, or activities protected by copyright. Finally, Art. 15 of the Law on the Protector exhaustively enumerates the circumstances under which the Protector's term may end prematurely.

### *4.2.2. Selection and Appointment of the Protector and Members of the Office*

Under Art. 82 of the Constitution, the Assembly is responsible for appointing and dismissing the Protector of Human Rights and Freedoms. Pursuant to Art. 95 of the Constitution, the President of Montenegro proposes a candidate for this position. Before submitting a proposal to the Assembly, the President, consistent with Art. 7(2) of the Law on the Protector, consults scientific and professional institutions as well as non-governmental organisations whose primary focus is human rights. Art. 7(3) specifies that the process of appointing the Protector must commence no later than 60 days before the incumbent's mandate expires. According to Art. 8(1) of the Law on the Protector, candidates must meet the following criteria: Montenegrin citizenship, a high level of education, at least 15 years of work experience (including a minimum of seven years in the field of human rights), and an impeccable personal and professional reputation.

The Assembly also appoints the Deputy Protector based on the Protector's proposal. The Deputy serves a six-year term and is eligible for reappointment. The qualifications

required are similar to those for the Protector, except for a shorter work experience requirement: at least 10 years of work experience, including a minimum of five years in the field of human rights and freedoms. The General Secretary is selected by the Protector through a public call for a five-year term. The General Secretary reports directly to the Protector and is responsible for organizing and coordinating the work of the Office of the Protector. Advisors, including a chief advisor, perform professional tasks. Art. 51b (2) of the Law on the Protector mandates that the chief advisor hold a high level of education and possess at least 10 years of work experience, including a minimum of three years in the field of human rights. Other advisors must have a high level of education and at least five years of work experience, including one year in the field of human rights.

The Protector adopts the Act on Internal Organization and Systematization of the Office, considering the prior opinion of the Assembly's competent working body. Decisions on the employment of advisors, as well as their rights and duties, are made by the Protector in accordance with the available budget. As of 2023, the Office of the Protector included 35 employees, including the Protector and three Deputy Protectors.<sup>20</sup>

The representatives of non-governmental organisations in the Independent Monitoring Mechanism for the UNCRPD were selected through a public call issued to eligible organisations. The call outlined clear and objective selection criteria.

#### *4.2.3. Independence in Operations*

The Protector operates independently and autonomously, determining its own priorities, programs, projects, and activities without external interference. These are outlined annually in its reports. For instance, in its 2023 report, the Protector announced plans to promote the functioning of the Independent Monitoring Mechanism for the UNCRPD, compile a special report on deaths in prisons, monitor all extraditions and removal procedures for foreigners, and recruit new advisors.

#### *4.2.4. Independence in Policy*

Art. 2 of the Law on the Protector explicitly guarantees the Protector's autonomy and independence, enabling it to act based on principles of justice and fairness in protecting human rights and freedoms. Several instances affirm this independence. For example, Art. 28 of the Law empowers the Protector to initiate investigations into human rights violations either independently or based on complaints. In 2023, the Protector initiated 52 such cases. Similarly, of the 111 discrimination cases resolved in 2022, the Protector found evidence of discrimination or rights violations in 77 cases.

#### *4.2.5. Financial Independence*

Art. 53 of the Law on the Protector governs the institution's financial independence. Under Art. 53(1), financial resources are allocated to the Protector in a distinct section of the national budget. The working body of the Assembly responsible for human rights submits the Protector's budget request, as stipulated in Art. 53(2). Art. 53(3) permits the Protector to participate in Assembly sessions and working body meetings where the budget proposal is discussed. Art. 53(4) grants the Protector full discretion over the utilisation of allocated funds, in accordance with the Budget Law. In recent years, budget

20 | Report, 2023, p. 254.

allocations have increased for the Protector's Office, reflecting the policy of strengthening the institution and expanding its functions.

### | **4.3. Social Pluralism As Reflected in the Office of the Protector**

Although the legislation does not mandate criteria for appointing the Protector, Deputy Protectors, and advisors for ensuring gender or ethnic representation, these appointments are often made with attention to inclusivity. Members of different genders and ethnic backgrounds are typically represented in these roles. The spirit of pluralism is evident in the President's Office operations. The Protector collaborates with minority councils, national minority communities, and non-governmental organisations, including those representing sexual minorities.

### | **4.4. Cooperation**

#### *4.4.1. Cooperation With the Parliament*

The Protector maintains a productive relationship with the Assembly, particularly through the Committee for Human Rights and Freedoms and the Committee for Gender Equality. In 2022, the Protector initiated amendments to the Law on Civil Procedure, the Law on Internal Affairs, and the Code on Criminal Procedure, and contributed to drafting changes to the Law on Legal Aid. Additionally, the Protector provided views on the proposed amendments to legislation affecting the rights of persons with disabilities, minority rights, and election laws. The Protector's legislative competences are defined in Art. 18 of the Law on the Protector. This provision authorises the Protector to propose the adoption or amendment of laws, regulations, and general acts to align Montenegro's legal framework with internationally recognised human rights standards. The recipient of such proposals is obligated to respond. Art. 18(3) further empowers the Protector to deliver opinions on draft laws or regulations, whenever necessary, for the protection and advancement of human rights.

Under Art. 47 of the Law on the Protector, the annual report submitted to the Assembly outlines the Protector's work, including statistical data by subject area, an assessment of the state of human rights in Montenegro, and recommendations for improvement. A specific section addresses discrimination cases, analysing the legislative and institutional frameworks, observed shortcomings, and proposed remedies. The Assembly may request comments from the Government regarding the report, which must be made publicly accessible. Additionally, Art. 48 authorises the submission of special reports when deemed necessary for protecting human rights. In addition to annual reports, the Protector submits annual reports on the work of the National Mechanism for the Prevention of Torture and semi-annual reports on anti-discrimination activities.

#### *4.4.2. Cooperation With the Government*

The Protector plays a pivotal role in advising State institutions in amending their regulations and practices to align with human rights standards. For example, in 2022, the Protector initiated the creation of an independent monitoring mechanism, as required by Art. 33 of the UN Convention on the Rights of Persons with Disabilities. With technical support from the UN service in Montenegro, this mechanism was formally established in early 2023. The Protector has participated in various government-led initiatives, including the Coordination Body for the third National Anti-Human Trafficking Strategy

(2019–2024). The Protector also contributed to the preparation of national reports submitted to international human rights bodies.

#### *4.4.3. Cooperation With Civil Society*

Art. 21 of the Law on the Protector emphasises cooperation with organisations and institutions focused on human rights. A notable example of this collaboration is the inclusion of representatives from ten NGOs in the Independent Monitoring Mechanism for the UNCRPD. The Protector actively engages with civil society through initiatives such as the Parliament of Roma and the Parliament of Youth. For instance, during the Parliament of Roma, the Protector presented findings from a project examining the status of Roma and Egyptians in Montenegro. The Protector also participates in international networks, such as the European Network of Ombudsmen for Children and the Network of Golden Advisors. In 2023, the Protector collaborated with several NGOs, including the Sociological Center of Montenegro, the Center for Education and Social Emancipation of Youth, the Montenegrin Women’s Lobby, Kvir Montenegro, and Action for Human Rights. These partnerships aim to enhance public awareness of human rights and foster democratic processes within society.

#### *4.4.4. Cooperation With the Judiciary*

Art. 17 of the Law on the Protector empowers the Protector to act on complaints concerning court operations, specifically in cases of procedural delays, abuse of procedural powers, or failure to execute court decisions. However, Art. 22(2) stipulates that the Protector cannot represent parties in legal proceedings or make claims on their behalf, except as outlined in Art. 27(2). Art. 27 establishes the Protector as an institutional mechanism for protection against discrimination. With the consent of the discriminated person, the Protector may undertake appropriate measures for protection against discrimination, in accordance with the Law on the Protector and the specific legislation governing anti-discrimination. Under Art. 21(4) of the Law on the Prohibition of Discrimination, the Protector may initiate or intervene in court proceedings for protection against discrimination under prescribed conditions. Moreover, Art. 19 of the Law on the Protector authorises the Protector to initiate proceedings before the Constitutional Court to assess the compliance of laws with the Constitution and ratified international agreements, as well as the compatibility of other regulations with constitutional and legal provisions.

#### *4.4.5. Cooperation With International Human Rights Mechanisms*

As the National Preventive Mechanism (NPM) for the Protection of Persons Deprived of Liberty from Torture, the Protector directly collaborates with the UN Subcommittee on the Prevention of Torture in accordance with Art. 26 of the Law on the Protector. The Independent Monitoring Mechanism for the UN Convention on the Rights of Persons with Disabilities, established in 2023 within the framework of the Protector’s Office, is expected to adopt an alternative reporting model to the UN Committee on the Rights of Persons with Disabilities, thus enhancing Montenegro’s engagement with international human rights monitoring.

#### *4.4.6. Cooperation With Other Human Rights Bodies Regarding Vulnerable Groups*

Art. 21 of the Law on the Protector obligates the institution to cooperate with organisations and institutions focused on human rights. In recent years, the Protector’s role in promoting

and protecting the rights of vulnerable groups – particularly children, migrants, and asylum seekers – has been strengthened through partnerships with international and local actors.<sup>21</sup> A key initiative was the signing of the Protocol on the Treatment of Children Living and Working on the Streets by relevant authorities, institutions, and organisations in Montenegro.<sup>22</sup> In 2023, the Protector conducted field visits to Roma settlements, collected data directly from communities, and maintained continuous dialogue with community representatives, local authorities, and civil society organisations. These efforts culminated in the publication of a report titled ‘Position of the Roma and Egyptians in Montenegro through the Prism of the Work of the Protector of Human Rights and Freedoms of Montenegro and the Situation with Field Visits’, which is publicly available on the Protector’s website.<sup>23</sup>

#### 4.4.7. Partnerships With GANHRI and Journalists

The Protector’s Office was accredited with ‘B’ status by the Global Alliance of National Human Rights Institutions (GANHRI) in 2016. Achieving ‘A’ status requires additional reforms to fully align the Protector’s structure and functioning with the Paris Principles. The GANHRI Subcommittee has recommended several improvements, including strengthening the Protector’s mandate, refining the selection and appointment processes, securing adequate resources and financial autonomy, clarifying staff positions and employment autonomy, and enhancing interaction with the international human rights system. To address these recommendations, the preparation of a new Law on the Protector is included in Montenegro’s EU Accession Program for the period 2024–2027.

The Protector’s work has consistently attracted media attention. According to an EU report from November 2023, the media frequently quotes the Protector’s opinions, reflecting substantial public interest. The Protector maintains daily communication with the media, enabling citizens to familiarise with the institution’s work through practical examples. Media coverage has encouraged many citizens to approach the Protector, often recognizing their own situations through reported cases and seeking corresponding action.

### | 4.5. Access

#### 4.5.1. Access to the Protector Without Costs

Under Art. 3 of the Law on the Protector, any individual who believes their rights have been violated by an act of a State authority has the right to address the Protector. Additionally, the Protector is authorised to act on own initiative. Art. 3(3) guarantees that all procedures before the Protector are free of charge. In its 2023 report, the Protector noted a sustained trend of citizens utilizing its services, primarily due to their flexibility, simplicity, and cost-free nature. This trend, observed over a prolonged period, has been further confirmed through numerous direct interactions between citizens and officials from the Protector’s Office. In response to citizen complaints, the Protector provided advisory legal assistance, often directing complainants to the relevant authorities or

21 | National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21-Montenegro, Human Rights Council, A/HRC/WG.6/43/MNE/1, 8 February 2023, para. 11.

22 | *Ibid.*, para. 59.

23 | Položaj Roma I Egipćana U Crnoj Gori Kroz Prizmu Rada Zaštitnika Ljudskih Prava I Sloboda Crne Gore I Stanje Sa Terenskih Posjeta, 2023.

advising them on legal remedies to safeguard their rights. In certain instances, case files were forwarded to the appropriate authorities for action. When citizens requested interpretations of specific legal provisions, the Protector sought the views of the relevant ministry on the application of the regulations and conveyed these interpretations to the concerned individuals.

#### *4.5.2. Physical and Geographical Access to the Protector*

The Protector engages directly with citizens in their local communities through 'Protector's Days.' These events involve visits to local communities, where the Protector meets citizens to receive complaints and raise awareness about their rights, freedoms, and mechanisms for their protection. These visits also allow the Protector to identify community-specific challenges, understand issues faced by local authorities, and address the concerns of national minorities. As part of this outreach, the Protector and staff visit several municipalities each year.

#### *4.5.3. Access Through Various Communication Channels*

Citizens can communicate with the Protector personally or through representatives. Available communication channels include postal mail, fax, email, and social media platforms such as Instagram. The 2023 Report highlights a growing trend in digital communication, particularly through email and social media (Instagram and Facebook). The Protector's website serves as an additional platform for disseminating general information.

### **| 4.6. Funding**

#### *4.6.1. Adequate Funding, Autonomy, and Accountability*

The Protector's annual budget is proposed by the Assembly's Committee for Human Rights and Freedoms, following a request submitted to the Ministry of Finance. Budget allocations have increased annually, strengthening the Protector's personnel and administrative capacities. These funds are designed to sustain ongoing activities and fulfil obligations emerging from recommendations by the European Commission, United Nations bodies, and the Council of Europe, particularly those regarding torture prevention, anti-discrimination measures, and child rights protection.

To support new mechanisms, additional workspaces were secured through public procurement procedures, ensuring compliance with standards such as providing a physically separate workspace for the National Torture Prevention Mechanism. Under Art. 53(4) of the Law on the Protector, the institution independently manages its allocated financial resources in accordance with the dynamics established under the Budget Law. Financial management and control are governed by the Law on Management and Internal Controls in the Public Sector. The Protector has adopted a Financial Management and Control Plan, alongside a Risk Management Strategy, which serve as the foundation for its financial operations. These operations are guided by internal procedures outlined in the 'Book of Internal Procedures'. The Protector's annual reports include detailed financial statements, ensuring that all expenditures are publicly accessible and transparent.

#### 4.6.2. *Staffing and Recruitment*

The annual increase in budgetary allocations has been partially aimed at expanding the staff and enhancing professional capacities within the Office of the Protector. By 2023, the Office employed 35 staff members, with a request submitted to accommodate an increase to 43 employees during the 2025 budget.

### | 4.7. **Broad Mandate**

#### 4.7.1. *Mandate of the Protector*

Art. 81(1) of the Constitution, which empowers the institution to take ‘measures to protect human rights and liberties’ defines the mandate of the Protector. Art. 2 of the Law on the Protector further elaborates on this mandate, granting the Protector authority to act when human rights and freedoms are violated by acts, actions, or omissions of State bodies, local self-government units, public services, and other holders of public authority. The same Art. also mandates the Protector to take measures aimed at preventing torture, inhuman or degrading treatment, and discrimination.

The Regulation of Work of the Protector organises this mandate into four key areas:

1. **Judiciary, Public Administration, and General Jurisdiction**  
This area covers the protection of human rights and freedoms within the judiciary, state administration, local governments, public institutions, and other public authorities. It extends to areas such as employment, pension and disability insurance, education, science, culture, health, environmental protection, housing, tourism, and other sectors not included in the other groups.
2. **National Preventive Mechanism and Related Tasks**  
The Protector operates as the National Preventive Mechanism for the protection of persons deprived of liberty and those whose freedom of movement is restricted. This includes individuals detained, convicted, placed in institutions, or forcibly removed. The tasks involve addressing issues related to the execution of criminal sanctions, defence, national security, and the functioning of institutions housing such individuals.
3. **Children’s Rights, Youth, and Social Protection**  
This group focuses on the promotion, protection, and improvement of children’s rights, particularly vulnerable groups, such as children without parental care, children with disabilities, minority children, displaced children, and unaccompanied minors. It also encompasses broader social protection rights for children, adults, and the elderly, especially those in vulnerable situations.
4. **Protection Against Discrimination and Promotion of Equality**  
The Protector addresses issues of discrimination and promotes gender equality, focusing on combating racism, xenophobia, and intolerance while safeguarding the rights of vulnerable groups, including minority communities, persons with disabilities, and victims of domestic violence. This area includes initiating or intervening in court proceedings related to discrimination, public advocacy against severe discrimination, and providing guidance to individuals seeking protection from discriminatory acts.

Additionally, the establishment of the Independent Monitoring Mechanism for the UN Convention on the Rights of Persons with Disabilities in 2023 expanded the Protector's mandate to include monitoring the implementation of the UNCRPD.

#### *4.7.2. The Protector's Activities Associated With Raising Public Awareness on Human Rights Issues and Education and Training Programmes*

In its annual reports, the Protector draws public attention to the acute human rights issues in society. Thus, in its 2023 report, the Protector informed that cases related to administration and judiciary continued to be the most numerous in its docket. Issues of administration include silence, lack of response in breach of a right guaranteed by the Constitution, multiple cancellations and retrials in cases, length of administrative proceedings (with special emphasis on restitution cases), lack of transparency in procedures where this principle is an integral part of the legislative framework, non-execution of orders contained in court decisions, and, finally, issues of general interest, such as environmental and health protection.

As the national mechanism for protection against discrimination, in accordance with Art. 21(5) of the Law on the Prohibition of Discrimination, the Protector warns the public about emerging serious forms of discrimination. In 2023, the Protector published the report entitled 'The position of Roma and Egyptians in Montenegro through the prism of the work of the Protector of Human Rights and Freedoms of Montenegro and the situation from the field visits'. In its special 'Report on Protection against Discrimination from the Standpoint of the Institution of the Protector of Human Rights and Freedoms', covering the first part of 2023, the Protector informed that it would continue to raise public awareness about the constitutive elements of discrimination, various legal avenues for protection, and the harmful effects of this phenomenon on all segments of life. The report emphasised the importance of education for achieving systematic protection. The Protector is continuously improving the training system in all areas of human rights protection, with special emphasis on prevention and protection against torture, as well as protection against discrimination.

#### *4.7.3. Protector's Activities on Monitoring and Reporting on the Human Rights Situation in the Country and Making Recommendations to Public Authorities*

Art. 21 of the Law on the Protector states that the Protector also addresses general issues of importance for the protection and improvement of human rights and freedoms. In its annual reports, the Protector presents a general overview of the human rights situation in Montenegro. The Protector uses these reports to inform the public about recommendations issued during the year. Thus, in 2023, after completing the investigation procedure in 190 cases, the Protector sent 455 recommendations to the competent authorities and institutions. In the 2023 Report, the Protector listed all recommendations that were not fulfilled or partially fulfilled.<sup>24</sup> About 140 recommendations were enumerated from these two groups. The Committee for Human Rights and Freedoms of the Assembly of Montenegro has considered periodically to implement the recommendations.

#### *4.7.4. Powers of the Protector To Address the Acts and Omissions of Both the Public and Private Sectors*

Addressing acts and omissions of the public sector is at the core of the Protector's mandate. The Protector also addresses the private sector in certain cases. In its capacity as a national mechanism for protection against discrimination, in accordance with Art. 21(1) of the Law on the Prohibition of Discrimination, the Protector is authorised to act on complaints of discriminatory behaviour by authorities, companies, other legal entities, entrepreneurs, and natural persons. It undertakes measures and actions to eliminate discrimination and protect the rights of the discriminated person if no court proceedings have been initiated. Semi-annual reports of the Protector on his/her actions against discrimination enable evaluation of effectiveness of the actions. Thus, during the period between 1 January 2023 and 31 July 2023, the Protector found discrimination in 39 cases from 110 resolved cases and made appropriate recommendations.<sup>25</sup> In its report for the first part of 2023, the Protector enumerated 10 cases in which recommendations were not fulfilled.<sup>26</sup> Beyond this, in pursuing a general mandate, the Protector addresses the private sector in various cases. Recommendations were issued to the private sector, particularly regarding the provision of information to journalists. The Protector is not authorised to act against private media, except in cases of discrimination, but it monitors how children's rights are respected in these media. It has also noted that the best interests of a child, as an international standard, are equally applicable in private and public institutions of social protection.

#### *4.7.5. Powers of the Protector To Conduct Unannounced Inspections of Any Public Premises, and Examine Any Documents, Equipment, or Assets Without Prior Written Notice*

In its capacity as the National Preventive Mechanism for the Protection of Persons Deprived of Liberty from Torture, under Art. 24 of the Law on the Protector, the Protector has the right to perform unannounced inspections of premises in bodies, organisations, institutions, and other places where a person deprived of liberty is or may be. On the same legal basis, the Protector has the right, without prior notice or approval, to visit a person deprived of liberty and verify compliance with relevant standards. Additionally, without the presence of an official or other persons, the Protector can, in person or through an interpreter, conduct confidential interviews with a person deprived of liberty, as well as with any other person who may provide necessary information. Furthermore, under Art. 25(c) of the Law, the Protector has access to data on bodies, institutions, and organisations where persons deprived of liberty are located, as well as information on the number of such persons and how they are treated. The Protector has regularly used these powers and reported on using them in yearly reports of the National Preventive Mechanism for the Protection of Persons Deprived from Liberty from Torture.

25 | Report of the Protector of Human Rights and Freedoms on the protection against discrimination for the period from 1 January 2023 to 31 July 2023, p. 10 [Online]. Available at: [https://www.ombudsman.co.me/docs/1707806232\\_polugodisnji%20izvjestaj%202023\\_29122023.pdf](https://www.ombudsman.co.me/docs/1707806232_polugodisnji%20izvjestaj%202023_29122023.pdf) (Accessed: 26 February 2026).

26 | *Ibid.*, pp. 16, 17.

#### *4.7.6. Powers of the Protector To Undertake Full Investigations Into All Alleged Human Rights Violations, Including Those Relating to Military, Police, and Security Officials*

The Protector is empowered to undertake full investigation into all alleged human rights violations, including those involving military, police, and security officials. The annual reports of the Protector indicate that investigations have been conducted into human rights violations by the Army of Montenegro. As a result, in the period 2020-2023 the Protector issued recommendations to the Ministry of Defence to address certain practices and improve relevant legal regulations.

The reports also highlight actions taken by the Protector in relation to the Ministry of Internal Affairs, the Central Police Department, and local police departments. Likewise, the Agency for National Security has been advised by the Protector.

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## 5. Conclusions

Human rights are enshrined in the second part of the Constitution of Montenegro. They are organised into six sections based on their subject matter. The legislation and courts use different terminology, such as constitutional rights or fundamental rights and freedoms, to refer to human rights and freedoms. Every natural and legal person, organisation, settlement, group of persons, and other forms of organisation that do not have legal personality enjoy constitutional protection of human rights. All legal entities in Montenegro are obliged to respect the human rights of others, but the Constitutional Court and the Protector of Human Rights and Freedoms bear the primary responsibility for their protection. The rule of law has been designated in some decisions of the Constitutional Court as the highest value of the constitutional order.

The Constitutional Court is the chief judicial defender of human rights in Montenegro. It protects human rights by performing two main functions: reviewing the constitutionality of laws and the legality of other regulations and resolving constitutional complaints. All entities that enjoy constitutional protection, can initiate the review of constitutionality or legality without demonstrating legal interest. Under conditions established by the Law on the Constitutional Court, courts, state bodies, including the Protector and organs of self-governance can propose the review. Five members of the Assembly may also propose the review. The Court can reject the initiative or proposal as inadmissible, dismiss it as unfounded, or uphold it. If upheld, the impugned law, regulation, or provision ceases to be valid. The execution of final individual acts adopted based on unconstitutional laws or other illegal regulations cannot be implemented. A holder of a right violated by a final or binding individual act based on an unconstitutional law or other illegal regulation has the right to request the competent authority to amend that individual act, provided the amendment does not affect the rights of conscientious third parties.

By a decision finding unconstitutionality of a law or illegality of another regulation, the Constitutional Court can determine the method of compensation for damages for all persons whose rights have been violated by an individual act passed on the basis of that unconstitutional law or illegal regulation, regardless of whether they submitted an initiative for reviewing constitutionality or legality. All entities enjoying constitutional protection are authorised to submit constitutional complaints against acts of a State authority, State administration authority, local self-government authority, legal person,

or any other entity performing public powers, provided they are affected by the act and have exhausted all national legal remedies. Most of the Court's workload comprises constitutional complaints, which are resolved in three-judge chambers. When the Constitutional Court finds that the disputed individual act violated human rights, it repeals the act, either in whole or in part, and returns the case for retrial to the authority that issued the repealed act. Judicial retrials are governed by laws on civil and criminal procedures.

In addition to performing its primary functions, as established by the Constitution and the Law on the Protector of Human Rights and Freedoms, the Protector is entrusted with the functions of other national human rights institutions. The Protector performs the duties of the National Preventive Mechanism for the Protection of Persons Deprived of Liberty from Torture, the national mechanism for protection against discrimination, and the Independent Monitoring Mechanism for the Promotion, Protection, and Monitoring of the Implementation of the UN Convention on the Rights of Persons with Disabilities.

The Constitution establishes the Protector as an 'independent and autonomous authority that takes measures to protect human rights and freedoms.' The Protector's mandate is broad. He or she is authorised to act against all acts of state bodies or entities performing public functions that violate human rights and freedoms, either upon the initiative of affected persons or *proprio motu*. Acting as a national mechanism for protection against discrimination, the Protector can address acts of discrimination in the private sector. In cases of discrimination, the Protector can represent victims before the courts and participate in judicial proceedings. In other cases, the Protector assists victims by providing information and advice. Being informed of human rights problems in this way and gathering information from independent research on human rights practices, the Protector informs the public about issues and sends recommendations to all state bodies to improve their practices.

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