

Mandate of the Special Rapporteur on the independence of judges and lawyers

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19 August 2026

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolution 62/12.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning draft amendments XVII to XXI to the Constitution of Montenegro (hereinafter "the Constitution"), adopted by the Parliament of Montenegro on 9 July 2026, in particular the amendments relating to the composition, appointments and terms of office of the Judicial Council and the Prosecutorial Council.

The proposed amendments have been advanced in the context of Montenegro's ongoing constitutional reform process and its efforts to align its legal framework with European standards. Parliament initiated the constitutional amendment procedure on 7 July 2026, followed by a public consultation process that concluded on 11 August 2026.

I wish to recall that in September 2023, during my official visit to Montenegro, I noted that the establishment of the Judicial and Prosecutorial Councils was an important step for insulating the judiciary and the prosecution service from undue political interference. However, I also noted issues regarding their composition and effective functioning.¹ My report on the visit made some specific recommendations in this regard ([A/HRC/56/62/Add.1](#)).

I am pleased to see that reforms on this subject are being taken forward and would like to offer some considerations on how these amendments may be brought closer in line with international human rights standards related to the independence of the judiciary and the right to a fair trial, including the separation of powers and the ability of judges and prosecutors to perform their functions free from undue influence, pressure or interference.

I refer to your Excellency Government's international human rights obligations, specifically those related to the independence of the judiciary and the right to a fair trial, protected in both the Universal Declaration of Human Rights (UDHR) and in the International Covenant on Civil and Political Rights (ICCPR), to which Montenegro acceded on 23 October 2006.

In this communication, I do not intend to offer an exhaustive analysis of the draft amendments in their entirety. Instead, I focus on the provisions that relate to the

¹ Preliminary observations on the official visit of the Special Rapporteur on the independence of judges and lawyer to Montenegro in 2023; at: <https://www.ohchr.org/sites/default/files/documents/issues/ijudiciary/statements/20230926-EOM-SRIJL-EN.pdf>

functions of judges and prosecutors and the principle of the separation of powers, and the compatibility of those provisions with international human rights law and applicable standards.

At the outset, I would like to recall that article 14 of the ICCPR states that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.² The Human Rights Committee has emphasized that the requirement of independence is an absolute right that is not subject to any exception. The requirement of independence encompasses, *inter alia*, the procedure and qualifications of judges, guarantees relating to their security of tenure until a mandatory age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and the legislature. States bear the responsibility of adopting effective constitutional, legislative and institutional safeguards to preserve judicial independence and to shield judges from any form of direct or indirect political influence or interference by the executive and legislative branches. Any situation in which the executive branch is able to control, direct, or otherwise exert undue influence over the judiciary is incompatible with the notion of an independent tribunal.³

Judicial Council

In my recent report on the Principles of Judicial Appointments, I note that judicial councils “hold the power to administer recruitment, selection and often appointment processes”. I recalled that “(s)uch councils have a variety of compositions, but they are frequently more or less independent bodies made up, at least in part, of sitting judges. Councils may also include political appointees or representatives of elected branches of the State, as well as academics and civil society leaders”.⁴

Previous thematic reports have noted positively that “(e)stablishing a judicial council through a constitutional provision emphasizes the vital role that such a council plays as a guarantor of judicial independence”, granting it a legitimacy that may help insulate it from interferences from the executive, legislative or judiciary. The report further notes that the “Constitution should include provisions relating to the setting up of such body, its composition and the definition of its functions, as well as its autonomy vis-à-vis the executive and legislative branches of power”.⁵

The European Commission for Democracy through Law (hereinafter “the Venice Commission”) has consistently emphasized that, although there is no single model of judicial governance applicable to all European states given the diversity of legal traditions, the establishment of an independent judicial council or a comparable body constitutes an important safeguard for judicial independence. The Commission has stressed that such bodies should have a pluralistic composition, with a substantial proportion, and preferably a majority, of members being judges. Except for *ex officio*

² International Covenant on Civil and Political Rights art. 14(1), 16 Dec. 1966, 999 U.N.T.S. 171.

³ Human Rights Committee, general comment No. 32: article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial, para. 19, U.N. Doc. CCPR/C/GC/32 (23 Aug. 2007).

⁴ A/HRC/62/43, paragraph 11. See also A/HRC/38/38.

⁵ A/HRC/38/38, para. 42.

members, judicial representatives should be elected or appointed by their peers.⁶ The Venice Commission has also repeatedly advocated for the key features of judicial councils, including their composition, powers, and autonomy, to be enshrined at the constitutional level. Constitutional protection of these elements is considered important to safeguard the system of judicial governance from shifting political majorities, which might otherwise be tempted to alter its structure in ways that could undermine the independence and effectiveness of the judiciary.⁷

I take this opportunity to recall that judicial councils are key to “strengthening judicial independence, since by transferring administrative functions to a judicial council independent of the executive branch, external interference in the administration of justice is limited”.⁸ As such, judicial councils should be safeguarded from undue influence and political pressure.

Article 127 of the Constitution of Montenegro governs the composition, election, and term of office of the Judicial Council. Amendment XVIII seeks to replace current article 127 of the Constitution.

Under the current constitutional framework, the Judicial Council is composed of a President and nine members. Its membership includes the President of the Supreme Court, four judges elected and dismissed by the Conference of Judges with due regard for equal representation across the judiciary, four distinguished lawyers elected and dismissed by Parliament upon the proposal of the competent working body of the Parliament, following an announced public invitation, and the Minister in charge of judicial affairs. The Constitution stipulates that the President of the Judicial Council shall be elected from among the Council members who do not perform judicial functions, by a two-thirds majority vote of all Council members. It expressly excludes the Minister responsible for judicial affairs from eligibility for the position of President of the Council. In the event of an equal division of votes, the President shall have the casting vote. The composition of the Judicial Council is proclaimed by the President of Montenegro, and the Council’s mandate lasts four years.

Amendment XVIII retains the overall structure of the Judicial Council, composed of a President and nine members, while introducing several significant changes to its composition. Most notably, the number of judicial members is increased from four to five, while maintaining the requirement that they be elected and dismissed by the Conference of Judges with due regard for balanced representation across the judiciary. International standards consistently require judicial councils to enjoy institutional independence and provide that judges elected by their peers should constitute at least a substantial proportion, and preferably a majority, of their membership. In this respect, the increase in the number of judicial members strengthens the judicial character of the Council and constitutes a welcome response to concerns I previously expressed regarding the Council’s balance of membership.⁹

⁶ Report on the independence of the judicial system part 1: the independence of judges, adopted by the Venice Commission at its 82nd Plenary Session, 12-13 March 2010.

⁷ CDL-AD (2025)038, Spain – Opinion on the manner of election of the judicial members of the General Council of the Judiciary.

⁸ A/HRC/38/38, para. 33.

⁹ A/HRC/56/62/Add.1, para. 53.

Nevertheless, judges elected by their peers would still not hold a majority of seats within the Council. Consequently, the question remains as to whether the composition of the Council provides sufficient guarantees to ensure that decisions affecting the judiciary are primarily determined by members of the judiciary themselves. While Amendment XVIII represents a welcome improvement, the overall balance of membership continues to fall short of the approach advocated by international standards and a recommendation that I made in the report on my 2023 visit to Montenegro.

Amendment XVIII also removes the Minister responsible for judicial affairs from the membership of the Judicial Council altogether. This change eliminates the risks inherent in Executive participation in decisions relating to judicial governance and judicial careers and should be commended as a major step forward. It also addresses concerns I previously raised regarding ministerial involvement in matters such as judicial appointments, promotions, transfers, evaluations and disciplinary proceedings.¹⁰ By removing the Minister from the Council altogether, rather than merely restricting participation in specific categories of decisions, the amendment establishes stronger and more coherent safeguards against Executive influence. As a logical consequence of this amendment, Amendment XIX repeals paragraph 3 of article 128 of the Constitution, which previously restricted the Minister's participation in disciplinary proceedings, as this provision would become obsolete.

This is also a welcome amendment, considering that the participation of a member of the Executive branch in judicial governance risks undermining both the actual and perceived independence and impartiality of judges, particularly where such a body may exercise influence over judges' careers.

The amendment further revises the category of non-judicial members. Instead of four "distinguished lawyers", the Council would include four "distinguished legal experts", elected and dismissed by Parliament following a public call and upon the proposal of the competent parliamentary committee. This broader formulation appears to expand the pool of candidates beyond members of the legal profession strictly understood.

At the same time, the amendment leaves unchanged the requirement that the President of the Judicial Council be elected from among non-judicial members, all of whom derive their mandate from Parliament. As previously noted, such arrangement does not provide sufficient guarantees that judicial governance and decisions relating to judicial careers will be effectively insulated from external political influence. In circumstances where all non-judicial members derive their mandate from the legislative branch, the requirement that the President be selected exclusively from among those members risks perpetuating perceptions of political influence over the governance of the judiciary. It may also weaken the appearance of institutional independence, which is itself an essential component of public confidence in the administration of justice. In this regard, I therefore reiterate my recommendation that the President of the Council be elected by the Council itself from among its judicial members.¹¹

¹⁰ A/HRC/56/62/Add.1, para. 55.

¹¹ A/HRC/56/62/Add.1, para. 56 and 110(e).

Furthermore, Amendment XVIII does not introduce any change regarding the eligibility of the President of the Supreme Court, who serves as an *ex officio* member of the Council, for election as President of the Council. This is a missed opportunity to align the constitutional framework with my earlier recommendation to reduce the risk of undue concentration of powers.¹² This concern is consistent with the broad consensus that the administrative governance of the judiciary should be institutionally separated from its adjudicative functions, one of the fundamental *rationales* underlying the establishment of judicial councils.¹³

With regard to the selection of non-judicial members, I previously recommended that the appointment process be reviewed in order to reduce the potential for political interference and that consideration be given to entrusting the election of lay members to a non-political authority.¹⁴ Amendment XVIII retains Parliament as the appointing authority and therefore does not address this recommendation. In this regard, I recall that international standards provide that States must take specific measures to protect judges from any form of political influence in their decision-making.¹⁵ Nevertheless, the existing requirement of a qualified parliamentary majority, namely a two-thirds majority in the first round and a three-fifths majority in subsequent rounds, constitutes an important safeguard designed to foster broad political consensus and reduce the risk of institutional deadlock.

Prosecutorial Council

International standards on the role of prosecutors emphasize that “prosecutors play a fundamental role in the administration of justice” and make clear that “the rules governing the performance of their important functions should (...) contribute to a fair and equitable criminal justice system and to the effective protection of citizens against crime.”¹⁶ I would like to point out that my predecessor, Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul, emphasized that “When assessing the independence and impartiality of prosecutors, it is important to examine both the structural independence of the prosecution service and its operational independence and impartiality, or functional independence”.¹⁷ For these reasons, any involvement of the other branches in selecting members of a prosecutorial council must be carefully calibrated to ensure that the selection procedure allows the requirements of the standards to be met.

Unlike judicial councils, international standards provide only limited guidance regarding prosecutorial councils. The principles developed for judicial councils cannot be transposed automatically to prosecutorial councils, given the distinct nature of prosecutorial office and its implications for the organization and functioning of the

¹² A/HRC/56/62/Add.1, para. 56 and 110(e). In this regard, I recall my 2024 report on Chile, in which I noted that such a concentration of powers may infringe upon judges’ internal independence, when apex courts that review the decisions of lower courts at the same time exercise direct authority over human resources and judicial careers. *See* A/HRC/59/52/Add.1, para. 32.

¹³ A/HRC/59/52/Add.1, para. 32.

¹⁴ A/HRC/56/62/Add.1, para. 110(c).

¹⁵ CCPR/C/GC/32, para. 19.

¹⁶ Guidelines on the Role of Prosecutors, adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990, UN Document A/CONF.144/28/Rev.1 p. 189 (1990), at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/guidelines-role-prosecutors>, paragraph 5.

¹⁷ A/HRC/20/19 paragraph 26.

prosecution service.¹⁸ The Venice Commission has consistently recognized that democratic legal systems may legitimately adopt different institutional models. My predecessor, Gabriela Knaul, emphasized that where prosecution services are linked to the Executive branch, the career management of prosecutors should be overseen by a prosecutorial council or a comparable independent body.¹⁹ Although prosecutors must be effectively protected from undue political interference, and although a prosecutorial council may contribute to achieving this objective, international standards do not require such bodies to be composed of a majority of prosecutors.²⁰ The Venice Commission has repeatedly advocated for a composition in which prosecutors elected by their peers constitute a substantial component of the council, without necessarily forming a majority.²¹ At the same time, it has cautioned that the election of lay members by a simple parliamentary majority creates a tangible risk of political capture and may undermine public confidence in the independence of the prosecution service.

Article 136, paragraph 3 of the Constitution of Montenegro provides that the composition, election and term of office of the Prosecutorial Council is regulated by law. These matters are governed by the Law on the State Prosecution Service (2024), which establishes the legal framework for the Council's status and operation. Amendment XX seeks to replace current paragraph 3 of article 136 of the Constitution.

Pursuant to article 18 of the Law on the State Prosecution Service (2024), which would no longer apply, the Prosecutorial Council consists of a President and ten members. The Supreme State Prosecutor serves *ex-officio* as the president of the Council. The membership of the Council includes five state prosecutors holding permanent office and having at least five years of prosecutorial experience, who are elected and dismissed by the Conference of State Prosecutors, two distinguished legal professionals elected by Parliament upon the proposal of the competent parliamentary committee, one representative of the Ministry of Justice appointed by the Minister of Justice, one representative of civil society nominated by eligible NGOs and elected by Parliament, and one attorney-at-law proposed by the Bar Association and elected by Parliament.

Amendment XX incorporates into the Constitution provisions governing the composition, election and term of office of the Prosecutorial Council, matters that previously were regulated by law. It retains the overall structure of the Council, including the total number of members and the categories of members represented. However, it introduces two notable changes.

First, the amendment modifies the procedure for appointing the member representing civil society. Under the current framework of the Law of the State Prosecution Service, this member is nominated by eligible non-governmental organizations before being elected by Parliament. Under Amendment XX, however, candidates would be proposed by the competent parliamentary committee and subsequently elected by Parliament. This change effectively removes the direct

¹⁸ Venice Commission, CDL-ADL(2021)051, Opinion on the draft amendments to the Law on the Prosecutorial Council para. 26.

¹⁹ A/HRC/20/19, para. 30.

²⁰ Venice Commission, CDL-AD(2010)040, para. 64-68; Venice Commission, CDL-ADL(2021)051, Opinion on the draft amendments to the Law on the Prosecutorial Council para. 26.

²¹ Venice Commission, CDL-AD(2014)008, Opinion on the draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, para. 45.

involvement of civil society organizations from the nomination process, thereby expanding rather than constraining Parliament's influence over appointments. In doing so, the amendments appear difficult to reconcile with my previous recommendation that the appointment of eminent lawyers should, wherever possible, be entrusted to a non-political body.²² Rather than reducing the risk of political influence, the proposed mechanism is likely to increase parliamentary control over the composition of the Council. Moreover, the amendment represents a step backwards in terms of civil society participation, reducing the inclusiveness and transparency of the appointment process. In this regard, I would advise a review of the provision in a manner that ensures public trust and a merit-based selection process. Consideration should be given to preserving a meaningful role for civil society organizations in the nomination process.

Second, Amendment XX reduces the term of office of Council members from five years to four years.

With regard to the selection of lay members, I have previously expressed concern that the current system may expose the Council to political influence, particularly because members elected by Parliament may play a decisive role in important decisions.²³ In this regard, I would like to reiterate the recommendation I made in paragraph 113 of my 2023 visit report that the appointment of eminent lawyer members should preferably be entrusted to a non-political authority. I, however, welcome the fact that Amendment XVII introduces an important safeguard requiring the election of members by a qualified parliamentary majority. The introduction of a two-thirds majority requirement, combined with a deadlock-breaking mechanism based on a three-fifths majority, is consistent with the standards developed by the Venice Commission.²⁴

Furthermore, I reiterate the concern expressed in paragraph 76 of my 2023 visit report, and the corresponding recommendation contained in paragraph 112, which remain relevant in the context of the proposed constitutional reform. The inclusion of practicing defence lawyers among the Council's members carries a risk of actual or perceived conflict of interest, may enable members to leverage their position for the benefit of their clients, and could thereby undermine public confidence.²⁵

Recalling the Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors, I stress that the issue of instructions by non-prosecutorial authorities, such as those appointed by Parliament to a Prosecutorial Council, should be: "transparent, consistent with lawful authority and subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence."²⁶

²² A/HRC/56/62/Add.1, para. 77.

²³ A/HRC/56/62/Add.1, para. 113.

²⁴ Venice Commission, Interim Opinion No. 785/2014 on the draft law on the State Prosecution Service of Montenegro, adopted by the Commission at its 101st session (12-13 December 2014), paras. 48 and 49.

²⁵ A/HRC/56/62/Add.1, para. 76.

²⁶ A/HRC/20/19, paragraphs 72 and 74; Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors on the twenty third day of April 1999, at: <https://www.icj.org/wp-content/uploads/2014/03/IAP-Standards-of-professional-responsibility-duties-rights-prosecutors-instruments-1999-eng.pdf>.

In light of the foregoing, I respectfully recommend that the proposed constitutional amendments be carefully reconsidered to ensure their full compatibility with international standards. Although several of the proposed changes represent positive developments, amendments that concentrate appointment powers in another branch of the State or reduce the participation of civil society actors may risk weakening the perception and reality of institutional independence. I therefore encourage the authorities to continue the reform process through an inclusive, transparent and meaningful consultation process and to adopt safeguards capable of ensuring that the governance of the judiciary and prosecution service remain effectively protected from undue political influence.

In closing, I wish to highlight to your Excellency's Government that I stand ready to engage in dialogue with your Excellency's Government on this very important matter and to provide any technical advice it may require in ensuring these amendments are fully compliant with international human rights obligations.

In this regard, I would be very grateful if you could transmit a copy of this letter to the Parliament of Montenegro, including its Constitutional Committee, for consideration in the debate on the draft amendments.

In the spirit of cooperation and dialogue, and in line with the mandate entrusted to me by the Human Rights Council, I would be grateful for any information and comments your Excellency's Government may wish to provide regarding the above-mentioned concerns. In particular, I respectfully invite clarification on the measures taken to ensure that the proposed amendment and the process to bring it forward comply with international standards on the independence of judges, including:

1. Please provide any further information on this reform, including the status of the proposed reform.
2. Please provide any additional information and/or comments you may have concerning the analysis set out in the present communication.
3. Please provide information on the safeguards implemented to prevent executive or political influence in judicial and prosecutorial councils, and in judicial and prosecutorial careers in Montenegro.
4. Please provide information on any consultations undertaken with judges, prosecutors, the Judicial Council, the Prosecutorial Council, the Bar Association of Montenegro, civil society organizations, academic experts and other relevant stakeholders regarding the proposed constitutional amendments, and on how their views have been reflected in the reform process.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of my highest consideration.

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers