



JUDICIAL MONITOR

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TOPIC 1

HIGH COURT JUDGES IN PODGORICA APPEAL: CURRENT NUMBER OF JUDGES INSUFFICIENT TO ADDRESS CASE BACKLOG

In the first nine months of 2024, judges in the Special Department of the High Court in Podgorica successfully completed 29 cases, marking an increase of 11 cases compared to the same period last year. However, this achievement does not significantly enhance their overall performance, as the Special Department still has 162 pending cases on its docket. This information was detailed in an appeal sent by the judges of the department to the Judicial Council, the Supreme Court, the Ministry of Justice, the President of Montenegro, the Prime Minister, and the Parliament of Montenegro on October 10, 2024.

In their appeal, the judges concluded that the six judges responsible for special criminal cases, along with two investigative judges, “cannot manage the influx of cases from the Special State Prosecutor’s Office, which currently employs 18 special prosecutors.” The judges of the Special Department of the High Court assert that the number of judges should have been significantly increased as soon as materials obtained through the SKY ECC application began to be utilized in ongoing cases.

They further highlighted that they are still operating under the Criminal Procedure Code of the Socialist Federal Republic of Yugoslavia from 1976, which has not been updated regarding provisions related to main hearings and is inadequate for combating organized crime.

As a result, the judges of the Special Department of the High Court in Podgorica have urgently requested:

- Amendments to the Criminal Procedure Code;
- The appointment of new judges and supporting staff;
- Solutions for the spatial and technical resources necessary for judges to perform their duties effectively.



The judges of the Special Department of the High Court in Podgorica are requesting amendments to the Criminal Procedure Code, the selection of new judges and associates, as well as better working conditions, as they are unable to resolve the backlog of cases. Judgments are missing in 162 court proceedings.

The judges warned that if these changes do not take place, the number of cases will continue to rise, and Montenegro “will not be able to provide an adequate response in terms of finalizing procedures that are of exceptional importance for society.” They expressed their willingness to be the first to undergo vetting, including property and asset verification.

Following the appeal, the NGO Human Rights Action (HRA) emphasized that improving working conditions for the Special Department of the High Court in Podgorica should be an absolute priority for the Judicial Council, the Ministry of Justice, the Government, and the Parliament of Montenegro. The HRA stated that “the authorities’ approach to resolving this serious issue is a testament to their commitment to the rule of law and their readiness to advance Montenegro’s aspirations to join the European Union.”

The HRA has proposed that the Judicial Council urgently assign criminal judges from the High Court in Bijelo Polje, the Appellate Court, or the Supreme Court to the Special Department of the High Court to provide assistance. They are also advocating for expediting the election of four judges to the High Court, a process that has been ongoing since April 2024, along with the appointment of advisory staff.

During a session held on October 18, the Judicial Council concluded that it would take measures related to the ongoing selection of judges and consider increasing the number of judges. However, the temporary assignment of judges to the Special Department was not addressed.

TOPIC 2

NINTH ATTEMPT TO ELECT THE PRESIDENT OF THE SUPREME COURT OF MONTENEGRO

Since Vesna Medenica stepped down as President of the Supreme Court at the end of December 2020, Montenegro’s highest judicial authority has operated without a full-term president. The position has remained in an “acting status” since September 2021.

Since January 2021, there have been eight unsuccessful attempts to advertise the position of President of the Supreme Court. The primary reason for not finalizing the election process has been the candidates’ inability to secure the necessary two-thirds majority of votes from judges during the General Session of the Supreme Court; this issue arose four times. In three instances, the voting process was marred by judges submitting invalid ballots, while in the fourth attempt, there were six invalid ballots. In the subsequent

The Supreme Court of Montenegro has been without a full-term president for nearly four years. The ninth attempt to appoint the head of the highest judicial body is currently underway, a decision that also influences the allocation of funds from the EU's Growth Plan for the Western Balkans.

attempts, the seventh had five invalid ballots, and the eighth mirrored that same count.

The election protocol stipulates that a candidate must receive the required majority of votes at the General Session of the Supreme Court to be proposed to the Judicial Council, which makes the final decision on the nomination. To date, the Council has not approved the proposed candidates in two instances—specifically, during the voting for Supreme Court judges Miraš Radović and Vesna Vučković.

Following the failure of the eighth competition, the NGO Human Rights Action (HRA) remarked that “the inability of the Supreme Court to approve the election proposal for its president once again highlights the institution’s unpreparedness for Montenegro’s European integration.”

In response, the Law on the Judicial Council and Judges was amended to facilitate the election process. Under the new rules, judges are allowed to vote for three candidates instead of just one, and there will be two rounds of voting. If none of the registered candidates secures the necessary majority in the first round, voting will be repeated among those who receive more than a quarter of the total votes from Supreme Court judges. If no candidate achieves the required majority in the second round—more than half of the total votes—this will indicate that the candidate proposal for the Supreme Court presidency has not been approved.

On July 10, 2024, the Judicial Council announced the ninth public competition for the President of the Supreme Court. Four candidates applied: two judges of the Supreme Court, the president of the Administrative Court, and a former High Court judge turned representative of Montenegro before the European Court of Human Rights. The election process could not be finalized until the amendments and supplements to the Rules of Procedure of the General Session of the Supreme Court were adopted, which occurred on October 18.

The amendments to the above document specify that if a candidate for the competition is a Supreme Court judge and another candidate is not, the Supreme Court judge who is participating in the competition will not be allowed to take part in the General Session’s work, voting, or decision-making. Consequently, the total number of judges counted for the majority will be reduced by the vote of the Supreme Court judge who is a candidate.

However, despite the Judicial Council’s recommendation and the Human Rights Action (HRA) proposal, the Rules of Procedure did not clarify the meaning of the term “total

number of judges of the Supreme Court” from which the majority needed to elect a candidate is calculated. This ambiguity likely refers to the number of judges prescribed by the Systemization of Job Positions, which is 19. This creates a challenge for the election process, as there are currently only 17 judges eligible to vote. As a result, the majority of votes required for a candidate to secure election unjustifiably increases from 9 to 10.

At the beginning of November, Minister of Justice Bojan Božović addressed the Parliament of Montenegro, highlighting the urgent need to elect the head of the Supreme Court. He noted that the president of Montenegro’s highest judicial body should be elected as soon as possible, deeming it a pressing issue. Božović explained that, according to the reform agenda, Montenegro is obligated to elect the head of the Supreme Court by the end of the year. Failure to do so could jeopardize the state’s funding from the EU Enlargement Plan for the Western Balkans, which amounts to nearly EUR 30 million.

“The European Commission may not strictly enforce the year-end deadline, even though we are bound by this agenda, but it will certainly not view us favorably if we enter the next year without resolving this issue,” Božović remarked.

As for the ninth attempt to elect the head of the Supreme Court, interviews with the candidates are scheduled for November 19, exactly four months after the competition closed.

TOPIC 3

VESNA MEDENICA IN COURT PROCEEDINGS: HEARINGS DELAYED 23 TIMES ACROSS TWO CRIMINAL CASES

Three criminal proceedings are pending against Vesna Medenica, the former president of the Supreme Court, who served in that capacity for thirteen years (from December 19, 2007, until December 31, 2020). One of these cases has recently concluded with a guilty verdict in the first instance. Additionally, the competent authorities are contemplating the initiation of another proceeding based on an anonymous report from employees of the Railways of Montenegro, who have accused her of abuse of office.

Among the cases against her, the most complex involves allegations that she was part of a criminal organization

Two criminal proceedings initiated against the former President of the Supreme Court, Vesna Medenica, have been marked by 23 hearing postponements. In a third criminal proceeding, she was sentenced to six months in prison by a first-instance judgment.

allegedly led by her son, Miloš. The indictment filed by the Higher Court in Podgorica accuses her of abusing her official position between 2019 and 2021 by unlawfully influencing court rulings in favor of the criminal organization.

Thus far, this court process has been plagued by delays, with no fewer than 17 hearings postponed. The first main hearing in this case was scheduled for May 4, 2023, but was postponed because several defendants failed to appear.

The pattern of delays continued as follows:

- 1) Defendants' failure to appear at the hearing (10 instances);
- 2) Defence attorneys' failure to appear (twice);
- 3) Merger of proceedings;
- 4) Postponements pending decisions on the defence's requests to disqualify judges and prosecutors;
- 5) Delays resulting from appeals against decisions concerning trials in absentia;
- 6) Postponements to allow the defence attorney time to review the case file.

Progress in the proceedings was notable in August 2023, when the accused were heard for the first time. The most recent hearing on October 3, 2024, was postponed due to the absence of the defence attorney for one of the defendants.

In a separate case involving Vesna Medenica and suspended judge Milica Vlahović-Milosavljević, which is also before the High Court in Podgorica for suspected abuse of office, there have been six postponements. Although the trial commenced on July 2, 2023, substantive actions have only occurred during the hearing on September 17, 2024, when witnesses were finally heard. The reasons for the postponements in this case included:

- 1) Request for evidence extraction from the case file (twice);
- 2) Defence attorney's requests for postponements;
- 3) Defence attorney's requests to disqualify the judge;
- 4) Absence of witnesses;
- 5) Absence of the president of the panel.

Furthermore, Vesna Medenica faced charges for allegedly creating an undue benefit for former Rožaje judge Milosav Zekić in 2019 by not informing the Judicial Council about ongoing criminal proceedings against him, which should

have led to his removal from office until the conclusion of those proceedings. In this particular case, on November 4, 2024, the High Court in Podgorica issued a first-instance verdict sentencing her to six months in prison.

The Council of Europe has determined that the efficiency of Montenegro's judiciary significantly deteriorated during 2022. The main issues are in the Administrative Court, the Civil Division of the Supreme Court, and in criminal proceedings.

TOPIC 4

CEPEJ SHOWS SIGNIFICANTLY REDUCED EFFICIENCY OF THE MONTENEGRIN JUDICIARY

According to the report from the specialized body of the Council of Europe, the European Commission for the Efficiency of Justice (CEPEJ), the Montenegrin judiciary did not operate efficiently in 2022, with a significant decline compared to previous periods. Particularly alarming are the conditions in the Administrative Court and the prolonged duration of trials in civil, commercial, and criminal proceedings.

The CEPEJ report encompasses 44 member states of the Council of Europe, as well as Israel and Morocco as observer states. Notably, the report indicates that the Administrative Court of Montenegro experienced the largest drop in efficiency at the European level, plummeting by 89%. Proceedings before this Court averaged 739 days, with only Serbia displaying a similarly troubling situation.

Montenegro ranks fourth in Europe regarding the number of cases in relation to its population, trailing behind Serbia, Bosnia and Herzegovina, and Croatia; however, its efficiency is notably worse than these countries. Among the countries analyzed, Montenegro is unique in that the increase in the inflow of cases correlates with decreased court efficiency.

“The analysis of performance indicators reveals a concerning state in Montenegro, where resolution times have increased by 136 days—nearly 50%—accompanied by a 21% drop in case resolutions,” the document states.

Furthermore, for the first time in the last six evaluation cycles, the time required to resolve civil and commercial disputes exceeded 300 days. The backlog of cases in these types of disputes within the Supreme Court of Montenegro stands at 93%, the highest in Europe, with Croatia following at 42%.

In contrast, while 68% of European countries reported improvements in the efficiency and duration of criminal proceedings between 2020 and 2022, Montenegro saw a 15% decline in efficiency, with the duration of proceedings

extending to 313 days. This places Montenegro among six countries where judicial efficiency has deteriorated.

Tea Gorjanc-Prelević, Executive Director of the NGO Human Rights Action, remarked that the CEPEJ report “places the issues facing the Montenegrin judiciary in a European context, underscoring that the situation is alarmingly poor relative to other European nations.”

She cautioned that the next CEPEJ report may well categorize Montenegro among states with a worryingly ineffective judiciary, a situation that could hinder Montenegro’s EU accession process. Gorjanc-Prelević emphasized the urgent need for remedial actions such as filling vacant judicial positions, electing judges, advisors, and interns, amending procedural laws, improving working conditions, and increasing salaries.

The Judges’ Association of Montenegro announced a partial work stoppage in the courts during November. They are dissatisfied with the government’s attitude toward the judiciary and the low salaries.

TOPIC 5

JUDGES DECLARE NOVEMBER WORK STOPPAGE IN DEMAND FOR HIGHER SALARIES

The Association of Judges of Montenegro has alerted the Government that, due to a negative attitude towards the judiciary and non-compliance with obligations under the Law on the Judicial Council and Judges, they will intermittently suspend work in certain court proceedings throughout November 2024.

The Association has stated that they will continue to handle custody cases, proceedings involving minors, and urgent matters where irreparable harm could occur. The first work stoppage is scheduled for November 11, lasting from 11:00 a.m. to 12:00 p.m., followed by a longer suspension from November 18 to 29.

According to the Association of Judges, these initial measures will cease once the Government of Montenegro agrees to their demands. They are advocating for higher wages, specifically requesting that the proposed Law on Salaries of Judicial Office Holders be approved by March 31, 2025.

Prime Minister Milojko Spajić responded to the judges’ request during the presentation of the European Commission’s report on Montenegro’s progress, expressing disbelief that judges were complaining about their salaries amidst public discontent regarding some judicial decisions. “I am often embarrassed by some judges’ decisions, such as

when thugs are set free. There are so many errors made by the judiciary that it is unbelievable to me that it is this branch that complains the most about salaries,” stated Spajić. “I am frequently ashamed of some of the judges’ decisions, when thugs are set free... We have so many errors made by the judiciary that it is unbelievable to me that it is this branch that complains about their salaries the most”, said Spajić.

Conversely, Minister of Justice Bojan Božović acknowledged the poor financial status of judges. In the Assembly, while addressing parliamentary inquiries, he remarked, “The financial status of judges and state prosecutors is, for the most part, at an unacceptably low level.”

To address potential issues regarding the functioning of the courts, there have been several meetings involving representatives of judges, the Ministry of Finance, and the Minister of Justice. While concrete results have yet to materialize, according to the president of the Association of Judges, Miodrag Pešić, “things are progressing.”

According to the report from the Council of Europe (CEPEJ), the gross salary of judges in Europe at the start of their careers averages 2.5 times higher than the nation’s average salary, increasing to 4.3 times higher by the end of their careers. In Montenegro, judges earn salaries that are 1.8 times higher at the beginning of their careers and 3.1 times higher at the end, which is below the European average.

The Constitutional Court is not informing the Parliament of Montenegro about the termination of judges’ terms, despite being legally obligated to do so. Two judges continue to serve even though they have met the conditions for termination of their function.

TOPIC 6

CONSTITUTIONAL COURT FAILS TO NOTIFY MONTENEGRO’S NATIONAL ASSEMBLY OF JUDGES’ TERMINATIONS, IGNORING STATUTORY OBLIGATION

The Law on the Constitutional Court of Montenegro requires the Court to notify the proponent (the National Assembly and President of State) six months in advance when a judge qualifies for retirement. Before doing so, the Court must first determine in a session that “the conditions for the termination of office have been fulfilled.”

In a response submitted to Human Rights Action by the president of the Constitutional Court, Snežana Armenko, it was revealed that at the session held on June 27, 2024, “an agreement was not reached regarding the proposal to establish the fulfilment of conditions for the termination of judicial office for a judge who is set to turn 65 in December of this year; two judges supported the proposal, while four were opposed.” Armenko concluded that she lacked the

constitutionally mandated majority needed to inform the Assembly of Montenegro regarding this matter.

Additionally, Armenko confirmed that the proponents had not been informed about the fulfilment of termination conditions for two other judges, whose reasons for termination arose before she assumed her position as head of the Court.

In response to these developments, Human Rights Action (HRA) and the Centre for Democratic Transition (CDT) questioned whether the Constitutional Court operates as an institution grounded in the Constitution and the law.

“It is particularly scandalous that two directly interested judges were not recused from decision-making, allowing them to decide in their own case, which presents a clear conflict of interest regarding the timing of their office termination. This is contrary to the principle of *nemo iudex in causa sua*, which is binding even for the Constitutional Court of Montenegro under the current law,” stated the HRA and CDT in a press release.

They pointed out that “only certain judges of the Constitutional Court seem to be insisting on extending their terms, leveraging the situation to impose their decisions as standard practice,” unlike other judges in regular courts, whose terms conclude according to the Law on Pension and Disability Insurance.

The HRA and CDT reminded the public that a fundamental requirement for Montenegro’s accession to the European Union is the existence of institutions capable of upholding the rule of law, asserting that “the Constitutional Court is not such an institution.”

TOPIC 7

INERTNESS OF THE JUDICIAL COUNCIL IS THREATENING THE TRANSPARENCY AND INDEPENDENCE OF THE JUDICIARY

The Judicial Council, a body which according to the Constitution of Montenegro is responsible for preserving the independence of the judiciary, is facing criticism for its lack of transparency and failure to respond to political pressures that threaten the judiciary.

The Judicial Council did not react to the statements of the Prime Minister of Montenegro, Miloško Spajić, who assessed the decisions of certain judges as “shameful”, or to the criticism of the ruling party of Democratic Montenegro that “by the decisions of the courts, thugs and criminals are

The Judicial Council does not respond to unfounded criticism directed at judges by officials and political parties. The Human Rights Action (HRA) has called on the Council to do its job and protect the integrity of the judiciary.

released extremely quickly after committing crimes”.

In a letter sent to the Judicial Council, the Human Rights Action (HRA), called on this body to respond to the statements of high-ranking state officials that undermine the integrity of the judiciary.

As stated in the HRA’s letter, “It is necessary to point out both the violation of the principle of separation of powers and the serious damage that such arbitrary political attacks cause to citizens’ trust in the judiciary”.

HRA also warned about the lack of transparency of the Judicial Council when it comes to holding sessions. The law and the Rules of Procedure governing the work of the Council prescribe the public nature of its sessions, but since June of this year, HRA has been denied access on five occasions due to “lack of room”. In addition, the agenda is often published on the day of the session itself, which makes it difficult for the public to monitor the work of this body.

The HRA appealed to the Judicial Council to audio-visually record and transmit its sessions, and to publish information about the scheduled sessions and the proposed agenda several days in advance.



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