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THE CONSTITUTIONAL COURT OF MONTENEGRO: (UN)PREPARED FOR THE EU?

Beyond Filling Judicial Vacancies: Moving Towards Quality Decision-Making

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1. Introduction

As Montenegro prepares to finalize its accession negotiations with the European Union, the Constitutional Court has finally moved past a prolonged period of vacancy-driven blockages and no longer operates with a depleted bench. Yet, this does not settle the question of its readiness for EU membership; rather, it opens the door to a more rigorous evaluation of how the institution actually operates. After years in which public discourse on the Constitutional Court was dominated by judicial appointments and political disputes, attention must now pivot toward the quality of its jurisprudence, its internal procedural practices, and the full exercise of its constitutional powers.

In its previous two reports, CDT addressed the outcomes of the long-standing judicial reform in Montenegro and examined the extent to which the judiciary is prepared for European Union membership. We highlighted both the progress achieved, but also the challenges that persist despite reforms, legislative amendments, and substantial financial resources invested in their implementation. In this third report, we turn our attention to the Constitutional Court, whose institutional role and powers warrant an assessment that goes beyond general indicators of the overall state of the judiciary.

As the ultimate domestic instance for safeguarding constitutionally guaranteed human rights and ensuring legislative compliance with the Constitution, the Court's performance impacts both individual rights and broader legal certainty, as well as institutional checks and balances. Consequently, its efficiency must be measured not merely by the number of disposed cases, but by the legal quality of its rulings, its timeliness in adjudication, and its level of transparency before the public.

This analysis seeks to establish what has genuinely changed in the functioning of the Constitutional Court, where progress has been made, and which issues remain unresolved. We examine whether the Court makes full and effective use of all its powers, whether its internal procedures are clear and lawful, and whether its heightened public visibility translates into greater transparency.

This is the third in a series of analyses prepared by CDT, with the support of the National Endowment for Democracy (NED), examining judicial reform and progress under rule of law benchmarks. It aims to foster an evidence-based debate on the work of the Constitutional Court and to highlight issues that should not be sidelined while the success of reforms is increasingly judged by the pace of closing negotiation chapters.

2. Context

Speaking at the opening of the international conference "On the Constitution, State, and Democracy" in October 2026, co-organized by the Constitutional Court of Montenegro and the Ministry of European Affairs to mark two decades of constitutionalism in independent Montenegro, the Court's President stated that the Constitutional Court is institutionally and constitutionally ready to assume the responsibilities of EU membership, to protect the rights of its citizens as European Union citizens alongside those of all other EU nationals, and to contribute to safeguarding the common legal and democratic values upon which the Union rests[1].

In the period following the restoration of independence, the Constitutional Court drew criticism from legal experts, civil society, the media, and political actors alike, over a wide range of issues. For nearly every politically sensitive case brought before the previous bench of the Constitutional Court, it was practically a given that the same five out of seven judges would adopt a legal stance aligned with the interests of the executive branch. Adjudication of constitutional complaints dragged on for years, undermining the primary mechanism for citizens to challenge acts or actions violating their constitutionally guaranteed human rights or freedoms. In the early 2010s, the European Court of Human Rights in Strasbourg found the constitutional complaint before the Montenegrin Constitutional Court to be an ineffective legal remedy, citing their systematic rejection or dismissal and the failure to publish decisions[2]. It was not until 2015 that the Strasbourg Court re-assessed the constitutional complaint as an effective domestic remedy, thereby establishing proceedings before the Constitutional Court a mandatory prerequisite for lodging an application with ECtHR[3]. The work of the Court was also marked by a number of controversies; in 2019, the Court repealed a provision of the Law on the Constitutional Court of Montenegro that had obligated the Court to render a decision in each individual case within 18 months from the commencement of proceedings[4]. In early 2020, the judges of the Constitutional Court elected as *"presiding judge"*[5] a judge who had previously served a full term as President of the Court and was thus legally ineligible for re-election; notably, the designation of presiding judge was recognized neither in the Constitution nor in primary or secondary legislation. A few months later, the Constitutional Court itself ruled its own decision unconstitutional and unlawful[6]. Following a partial bench renewal, in late 2024 the Court was again entangled in controversy regarding the termination of judicial office for one female judge. Initially, during a session, the Constitutional Court concluded that the conditions were not met to notify Parliament of her upcoming eligibility for old-age pension, which constitutes one of the grounds for termination of judicial office[7]. Subsequently, upon

1 Milan Zugic, "Armenko: Constitutional Court Ready to Assume Responsibilities of EU Membership," MINA, October 2, 2026.
2 European Court of Human Rights, Case of Koprivica v. Montenegro, Application no. 41158/09, Judgment of 22 November 2011, para. 46.
3 European Court of Human Rights, Case of Sinistaj and Others v. Montenegro, Application nos. 1451/10, 7260/10 and 7382/10, Judgment of 24 November 2015, para. 123.
4 Decision of the Constitutional Court of Montenegro U-I No. 2/19 of July 18, 2019.
5 Biljana Matijasevic, "Constitutional Court Without a President, Lopicic Presiding Judge," Vijesti, January 27, 2020.
6 Mila Radulovic, "Lopicic Elected Unlawfully," Vijesti, December 2, 2020.
7 Venice Commission Opinion CDL-AD(2025)029 of June 16, 2025, p. 5.

request from the Parliamentary Constitutional Committee, the President of the Constitutional Court submitted a notification regarding the judge's age and years of service[8]. Acting on this notification, the Constitutional Committee proposed that Parliament formally record the termination of the judge's tenure, which Parliament subsequently did[9]. These developments sparked a parliamentary crisis, culminating in a political compromise to ultimately seek an opinion from the Venice Commission.

Recent years were also marked by frequently vacant judicial seats, posing an objective operational hurdle for the Court. However, during 2026, the remaining vacant positions were filled, and the Constitutional Court now operates at full capacity with a considerably younger bench. Today, the longest-serving judges on the Court have completed less than four years of their twelve-year terms.

The current bench faces the challenging task of restoring credibility among legal professionals and the broader public while departing from past flawed practices. This paper aims to shed light on how the Court is navigating these challenges and whether it is truly *"institutionally and constitutionally ready to assume the responsibilities of membership"* in the European Union.

3. Progress: Quantity vs. Quality

In line with its constitutional mandate, the Constitutional Court adjudicates on: the compliance of laws with the Constitution and ratified and published international treaties; the compliance of other regulations and general acts with the Constitution and the law; constitutional complaints regarding human rights and freedoms guaranteed by the Constitution, following the exhaustion of all effective domestic remedies; whether the President of Montenegro has violated the Constitution; conflicts of jurisdiction between judicial and other state authorities, between state and local authorities, or among local self-government entities; ban on activities of political parties or non-governmental organizations; electoral and referendum disputes that fall outside the jurisdiction of other courts; the constitutionality of measures and acts undertaken by state authorities during states of war or emergency, as well as other duties prescribed by the Constitution.

The powers of the Constitutional Court are strictly defined by the Constitution itself, and their scope can therefore be expanded or restricted exclusively through constitutional amendments. It would therefore be unconstitutional to grant or revoke powers of the Constitutional Court through statutory amendments.

Over the past two years, the Parliament of Montenegro received multiple constitutional amendment proposals - a notable departure

[8] *Ibidem.*
[9] Proposal of the Parlimentary Constitutional Committee of Montenegro 00-74/24-62 of December 17, 2024.

from previous practice - which addressed the composition of the Judicial Council, the constitutional setup of the Prosecutorial Council, immunity rules, the Central Bank of Montenegro, etc. However, none of these proposals pertained to the jurisdiction of the Constitutional Court or broader issues vital to the institution.

The renewed focus on constitutional amendments might have presented a timely opportunity to evaluate whether adjustments were needed regarding the jurisdiction of the Constitutional Court; however, no such discussions were initiated, at least not publicly, neither by the executive or legislative branches, nor by the Constitutional Court itself.

It is certainly worth debating whether the review of decisions issued by top judicial bodies should be transferred to the Constitutional Court rather than the ordinary courts, as is currently the case. This is particularly relevant when it comes to decisions of the Judicial Council. At present, Judicial Council decisions are challenged via administrative disputes before the Administrative Court of Montenegro. If the claim is rejected by the Administrative Court, the Supreme Court may review the ruling; if upheld, the Administrative Court effectively serves as the court of last instance. In practice, this means that when the Judicial Council decides on the rights and duties of judges, judges themselves have the "final say." For instance, if the Judicial Council adopts a legal stance on judicial salaries, performance evaluation, disciplinary liability, or promotion criteria - which is then applied generally to all judges - this stance will be reviewed upon appeal by judges of the Administrative Court. If the Administrative Court upholds the claim, the Judicial Council is legally bound by the legal reasoning of the Administrative Court and its observations regarding the procedure[10]. In practice, this dynamic creates a risk of co-optation: a Judicial Council decision on appointment of a new Administrative Court judge can be challenged before that very court, giving sitting judges a say in deciding who joins their bench. Were the review of Judicial Council decisions assigned to the Constitutional Court instead, such scenarios would be avoided, as the Judicial Council exercises no authority over the Constitutional Court, nor do its rulings affect the rights and obligations of constitutional judges.

Conversely, there is scope to consider narrowing the jurisdiction of the Constitutional Court, at least by removing from its purview the review of legality of general acts issued by local self-government units and legal entities exercising public authority. Comparative legal frameworks feature concepts where this matter falls under the jurisdiction of administrative courts[11]. This would relieve the Constitutional Court from adjudicating on price lists of local public utility companies and similar matters that hardly warrant constitutional adjudication.

[10] Article 56, paragraph 2 of the Law on Administrative Disputes ("Official Gazette of Montenegro" Nos. 54/2016, 11/2024, and 53/2025).
[11] See Article 3 of the Law on Administrative Disputes of the Republic of Croatia ("Official Gazette" Nos. 36/24 and 39/26).

3.1. Constitutional Complaints

Constitutional complaints make up the vast majority of the Constitutional Court's workload, consistently accounting for over 90% of its total caseload.

A constitutional complaint may be lodged by any individual or legal person, organization, local community, group of persons, or other unincorporated forms of association, if they consider that their human rights or freedoms guaranteed by the Constitution have been violated through an individual act, action, or omission by a state authority, state administration body, local self-government or local administration body, legal entity, or other entity exercising public authority.

A constitutional complaint may be submitted only after all effective legal remedies have been exhausted.

This mechanism therefore serves as the ultimate recourse for human rights protection within the national legal system. Once exhausted, an applicant's sole remaining avenue is the European Court of Human Rights in Strasbourg, acting as the international mechanism for the protection of human rights and fundamental freedoms within the Council of Europe framework.

When deciding on a constitutional complaint, the Court has the authority to quash individual acts that violate a constitutional right or freedom. In practice, these contested acts are frequently judgments rendered by the Supreme Court as the country's highest judicial instance.

Under certain conditions, when acting upon a constitutional complaint, the Constitutional Court may order the adoption of an act or the undertaking of another measure or action to redress incurred damage or prevent future adverse effects of the established violation, or determine the manner of just satisfaction to compensate the applicant for the violation.

It goes without saying that these powers inherently reflect the Constitutional Court's immense institutional authority and pivotal role within the legal system.

The Constitutional Court rules on constitutional complaints in three-judge panels. If unanimous panel decision is not reached, the matter is referred to a full-court plenary session, requiring a majority vote of all judges.

In 2025, the Court registered 1,144 new constitutional complaint cases, compared to 1,269 cases in 2024, 1,161 cases in 2023, 1,004 cases in 2022, and 1,220 cases in 2021[12].

In terms of case clearance, the Court resolved 1,462 constitutional complaints in 2025, 1,509 in 2024, 1,549 in 2023, 1,613 in 2022, and 1,443 in 2021[13].

[12] Statistical data on the work of the Constitutional Court.
[13] *Ibid.*

These figures show that for five consecutive years, the Constitutional Court maintained a clearance rate well above 100% for constitutional complaints. By resolving more cases than it registers annually, the Court has been actively reducing its backlogs i.e. accumulated cases from previous periods, thereby improving its operational efficiency. In quantitative terms, this is a highly commendable result.

It is worth highlighting that annual case clearance has risen substantially compared to, for instance, 2016 and 2017, when the Court resolved 1,055 and 949 cases per year, respectively[14]. Over the past five years, annual disposition output has expanded by nearly 50% compared to those baselines. Nevertheless, one must account for the fact that periodic spikes in incoming cases largely consisted of repetitive applications (such as benefits for mothers with three or more children), which were adjudicated en masse using nearly identical legal reasoning across these decisions[15].

In any event, the Constitutional Court continuously resolves far more constitutional complaint cases throughout the year than it receives, which helped reduce disposition times and shorten the waiting period for applicants awaiting a constitutional ruling.

However, these statistical data are of limited value. They do not shed light on the respective contributions of individual judges versus constitutional legal advisors in case processing, as it does not contain data on case breakdown per individual judge, which is not uncommon for constitutional courts.

Paradoxically, in 2022 - the year marking a five-year peak in resolved complaints (1,613 cases) - the Court was operating either on the verge of a quorum shortfall or lacked a decision-making quorum altogether (except in cases of unanimous panel decisions). The Court entered 2022 with five judges, dropped to four as early as in January, and saw its bench drop to just three judges over the course of the year.

Similarly, the Court entered 2025 with two vacancies, with the number of judges dropping to four during the year, until two new appointments were finalized only in the final quarter. Yet, despite operating under capacity, the Court managed to dispose of nearly 1,500 cases that year.

Consequently, in situations where the Constitutional Court lacks a third, a half, or more than half of its full bench, it paradoxically clears a high volume of cases. Whether the remaining judges doubled their workload during those years - and how that would be possible if they ordinarily work full-time - or whether the actual workload was shifted to legal advisors is a dilemma the Constitutional Court has never addressed.

It is worth noting that the Court's Rules of Procedure require a panel session for deciding of constitutional complaints on the merits to be convened whenever more than 20 cases are prepared for deliberation[16].

The obvious ratio behind this provision is to ensure that judges can adequately prepare for the session, while safeguarding the quality of deliberations. Session materials are distributed to judges no later than five days prior to the session date, and their preparation entails reviewing

[14] The official website of the Constitutional Court does not contain statistical data prior to 2016.
[15] The term "decision" is used throughout the analysis for ease of understanding, collectively referring to all formal acts rendered by the Constitutional Court, regardless of their specific procedural designation – decision or ruling.
[16] Article 40, paragraph 2 of the Rules of Procedure of the Constitutional Court of Montenegro ("Official Gazette of Montenegro" Nos. 7/2016, 95/2023, 13/2025, and 124/2025).

case files (for cases assigned to another judge-rapporteur), analyzing legal issues, case law, and legal doctrine, as well as preparing for debate and identifying potential points of contention (where the judge acts as rapporteur). In-session work then entails an oral presentation of the draft decision by the rapporteur where applicable, discussion, the tabling of proposals, and voting.

It is evident though that the Constitutional Court does not comply with this procedural obligation, or at least departs from its underlying ratio.

To illustrate, the Court's Second Panel for deciding of constitutional complaints on the merits adjudicated 68 cases in a single session on February 25, 2026[17]. Assuming the session lasted an uninterrupted eight-hour workday, judges spent an average of roughly seven minutes per case. One month later, the same panel deliberated on 92 cases in a single sitting[18], averaging just over five minutes per file, again, assuming full working hours without a break. Similarly, the First Merit Panel examined 50 cases during its May 11, 2026 session[19]. Even if these sessions involved repetitive cases centering on the identical points of law, it is clear that adequate quality of judicial scrutiny requires considerably more time.

While summary statements from other sessions of both merit panels do not reflect figures quite as extreme, it is nevertheless noticeable that the number of cases per session routinely exceeds the 20-case threshold.

These findings inevitably raise a fundamental question: does the Constitutional Court's quantitative output come at the expense of quality in the decisions rendered on constitutional complaints.

Conducting a comprehensive qualitative audit of the Court's case law remains impossible due to the manner in which the Court (fails to) publish its decisions. Any analytical sample limited exclusively to the published rulings is inherently unreliable from a methodological standpoint.

It is within that limitation that we offer below several observations regarding the available published decisions.

Qualitative analysis reveals that in situations where an applicant alleges multiple violations of individual human rights or freedoms, and the Constitutional Court finds a violation of, for example, the right to a fair trial, it does not examine other alleged violations nor mention them further in its reasoning[20].

The Strasbourg Court to deem it unnecessary to examine remaining violation claims once a core violation is found, this procedural economy is explicitly stated in ECtHR judgments and voted on separately by the judges. By contrast, in the case highlighted below, the applicant alleged breaches of: non-discrimination rules, fair trial guarantees, and property rights under Article 1 of Protocol No. 1 to the ECHR. In its ruling, the Constitutional Court selectively noted that the applicant pleaded fair trial violation, concluding that *"therefore, the Constitutional Court will examine the complaint from the perspective of a possible violation of the right to a fair trial"*. Why the Constitutional Court omitted consideration of the remaining alleged violations was not stated in the decision.

[17] Constitutional Court of Montenegro, Communiqué on the Third Session of the Second Panel for deciding on constitutional complaints on the merits, February 25, 2026.
[18] Constitutional Court of Montenegro, Communiqué on the Fourth Session of the Second Panel for deciding on constitutional complaints on the merits, March 25, 2026.
[19] Constitutional Court of Montenegro, Communiqué on the Eighth Session of the First Panel for deciding on constitutional complaints on the merits, May 11, 2026.
[20] See eg. Decision of the Constitutional Court U-III No. 88/23 of December 17, 2025.

Among the most recent acts published on the Constitutional Court's website concerning constitutional complaints, at the time of drafting this analysis, is a decision granting a request for interim relief and staying the execution of a final judgment of the Basic Court in Podgorica and an enforcement order issued by a Public Bailiff pending the Constitutional Court's final decision[21]. In accordance with the relevant statutory and procedural provisions, this decision was rendered by the Court sitting in plenary. Instances where the Constitutional Court grants a stay of execution prior to ruling on a complaint are exceptionally rare, making this case particularly noteworthy for analysis. As for this specific mechanism, it must be emphasized that filing a constitutional complaint does not automatically stay execution; exceptionally, upon request, the Court may grant an interim stay pending a final ruling if the applicant substantiates the likelihood of irreparable harm.

The operative part of the Constitutional Court's decision in this case reads: *"The application for stay of execution is granted, and the execution of the final judgment of the Basic Court (...) and the enforcement order of the Public Bailiff (...) is hereby suspended."*

Given that the Law on the Constitutional Court explicitly prescribes that the *"Constitutional Court may order a stay of execution"*[22], statutory logic dictates that the operative part should be worded as: *"A stay of execution is hereby ordered."* This is because the Law grants the power to *"order"* a stay of execution of an individual act in exceptional cases, which the Constitutional Court failed to do in this instance.

Moreover, in the operative part of the ruling in question, the Constitutional Court suspends, inter alia, the enforcement order of the Public Bailiff. The Law does not confer such authority upon the Constitutional Court. The Court could have ordered the stay of execution of the individual act (the final judgment) as specified in the enforcement order, but not the "suspension of the enforcement order" itself. The Law on the Constitutional Court contains no provision granting the power to suspend an individual act, but rather to order the suspension of enforcement actions - pending a final decision.

To examine how the Court evaluates admissibility, we reviewed a January 2026 decision declaring a constitutional complaint inadmissible[23]. The admissibility of a constitutional complaint serves as a prerequisite prior to examining whether a violation of human rights or freedoms alleged in the complaint has occurred. While not explicitly defined as a statutory term in the Law on the Constitutional Court of Montenegro, admissibility a concept transposed from the ECHR jurisprudence, under which the Strasbourg Court likewise screens applications for compliance with admissibility criteria[24]. Domestic statutory grounds for inadmissibility parallel these Convention standards and are laid down in the Law on the Constitutional Court[25], serving as a basis for dismissal. In the case at hand, the Constitutional Court applied the cited provision by finding the complaint manifestly ill-founded, which constitutes a statutory ground for dismissal. Inadmissibility for manifest ill-foundedness is likewise a well-established standard under the Convention system[26].

21 Decision of the Constitutional Court of Montenegro U-III No. 414/26 of September 11, 2026.
22 See Article 73, para. 2 of the Law on the Constitutional Court of Montenegro ("Official Gazette of Montenegro" Nos. 11/2015, 55/2015, 92/2025, 31/2026, 71/2026, and 145/2026).
23 Decision of the Constitutional Court of Montenegro U-III No. 599/24 of January 27, 2026.
24 In domestic practice, the term "admissibility criteria" is translated using different terms, including "dozvoljenost", "dopuštenost", and "prihvatljivost.
25 See Article 37 of the Law on the Constitutional Court of Montenegro
26 Practical Guide on Admissibility Criteria, European Court of Human Rights, 2026, p. 86

However, although it dismissed the constitutional complaint - and inadmissible complaints are indeed subject to dismissal - and provided seemingly sound reasoning, the Constitutional Court contradictorily stated in the rationale that the complaint was admissible.

R J E Š E NJ E

ODBACUJE SE ustavna žalba.

O b r a z l o ž e nj e

1. D. B. iz T., D. G. iz H. N. i A.B. iz T., koje zastupa V. P., advokatica, iz P., podnijeli su Ustavnom sudu Crne Gore blagovremenu i dozvoljenu ustavnu žalbu protiv presude Vrhovnog suda Crne Gore, Rev. br. 285/23, od 13. marta 2024. godine, zbog povrede prava iz čl. 8, 32, 62 i 64 Ustava Crne Gore, člana 6 stav 1 i člana 14 Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda.

Due to limited sample, it is not possible to draw a definitive conclusion on the overall quality of decisions on constitutional complaints; however, we believe that these illustrative cases substantiate that this subject warrants dedicated and rigorous scrutiny.

3.2. Constitutional Review of Legislation

Assessing the conformity of laws with the Constitution and ratified and published international treaties, as well as the conformity of other regulations and general acts with the Constitution and statutory law, is a cornerstone of the Constitutional Court's mandate, as it involves reviewing general acts that bind an indefinite number of individuals facing similar legal circumstances.

Under this mandate, the Constitutional Court may repeal an entire law or any of its individual provisions upon finding non-conformity with the Constitution or ratified and published international agreements.

To illustrate the weight of this authority, a simple majority of four constitutional judges can strike down a law initiated by the Government, unanimously passed by all 81 MPs in Parliament, and formally promulgated by Presidential decree.

Over the past year, the Court held two public hearings in constitutional review proceedings, broadcasting them live on television and web-streaming them to the public, providing citizens with direct insight into the Court's deliberations. This practice was previously exceptionally rare, marking a welcome shift in approach.

In 2025, the Constitutional Court registered 36 cases concerning the review of legislative acts; combined with 170 pending cases carried over from previous years, the total docket reached 206 cases, of which 42 were disposed of during the year. Although the number of disposed cases exceeded incoming filings (by six cases), thereby preventing backlog growth, the net reduction was virtually negligible.

In April 2026, the Constitutional Court published an inventory of pending constitutional review cases, which at that moment comprised 157 challenges to laws and 192 petitions concerning bylaws[27]. In an official statement, the President of the Constitutional Court said that the Court resolved 28 constitutional review cases in the first three months of 2026 alone, doubling the target set out in the 2026 Caseflow Management Plan.

Disclosing the list of pending constitutional review cases is a notable step forward in institutional transparency where none existed before. It allows the public and legal community to keep track of which laws and bylaws are undergoing constitutional review. The Court committed to updating this public register on a quarterly basis.

In June 2026, the Court established that Article 29, paragraphs 1 and 2 of the Law on Residential Building Maintenance ("Official Gazette of Montenegro" Nos. 41/16 and 84/18) were unconstitutional while in force. However, this case originated in 2019; by the time the Court adjudicated it, the ruling had lost its practical relevance, as the challenged provisions were abrogated through legislative amendments in 2022. Consequently, the Constitutional Court confirmed the unconstitutionality of these provisions nearly four years after they ceased to be in force.

[27] Constitutional Court of Montenegro, Communiqué "Constitutional Court Publishes Updated List of 349 Pending Constitutional Review Cases," April 6, 2026.

It is clear that whenever a statutory norm conflicts with the Constitution, the overarching public interest demands its removal from the legal system. However, when a Constitutional Court decision is stalled for years, and especially when a contested provision is repealed or expires before a ruling is handed down, that public interest is effectively undermined.

A contrasting example is provided with a recent case in which the Court reviewed the constitutionality of a provision of the Law on the Protection of the Population from Infectious Diseases ("Official Gazette of Montenegro" No. 2/26), which establishes mandatory vaccination, except in cases of prescribed medical exemptions, as a prerequisite for children's enrollment in public and private preschool educational institutions.
The contested provision entered force in early 2026, the constitutional challenge was lodged in February, and the Court prioritized the case - holding a public hearing and issuing the ruling by late September. In this instance, the Court's adjudication can be deemed genuinely prompt and timely.

By contrast, a different dynamic applied to the provisions of the former Law on the Protection of the Population from Infectious Diseases ("Official Gazette of Montenegro" Nos. 12/18 and 64/20), whose constitutional review was initiated in 2021. The law ceased to be in force upon the enactment of the aforementioned new Law in early 2026, without the Constitutional Court having adjudicated the challenge prior to the new enactment.

Interestingly, the 2021 initiative challenged provisions that are virtually identical in substance to those re-enacted in the 2026 law. The legislature simply re-adopted these provisions, precisely because the Constitutional Court's ruling was not rendered during the entire lifespan of the previous Law.

3.3. Report on Observed Instances of Unconstitutionality and Illegality

Under the Constitution, the Constitutional Court is mandated to oversee systemic compliance with constitutionality and legality and to report observed unconstitutional or unlawful practices to Parliament, which, as stipulated by law, is to be carried out through annual reports published in the Official Gazette[28].

There are numerous topics of public importance where questions arise as to whether certain developments comply with or contravene the Constitution.

However, a review of official records, statistical reports, and the public portals of both Parliament and the Constitutional Court reveals that the Constitutional Court has never exercised this constitutional authority and obligation.

Under an equivalent mandate, the Constitutional Court of the Republic of Croatia has so far addressed matters related to constitutional amendments[29], enactment of laws under expedited procedure[30], protection of the right to a trial within a reasonable time[31], prison conditions[32], the observed failure to statutorily regulate the organization and scope of the Office of the President of the Republic of Croatia[33], among others.

Almost all the issues on which the Croatian Constitutional Court acted ex officio are matters where hearing the stance of the Constitutional Court of Montenegro would be equally valuable, should it choose to exercise this authority.

28 112 of the Law on the Constitutional Court of Montenegro ("Official Gazette of Montenegro" Nos. 11/2015, 55/2015, 92/2025, 31/2026, 71/2026, and 145/2026).
29 Constitutional Court of the Republic of Croatia, *Report on the procedure for the fifth amendment of the Constitution of the Republic of Croatia initiated on 10 July 2013 by the proposal of 46 Members of the Croatian Parliament*, No. U-X-5076/2013 of 15 October 2013.
30 Constitutional Court of the Republic of Croatia, *Report on Legislative Enactment Procedures and the Rules of Procedure of the Croatian Parliament*, No. U-X-99/2013 of January 23, 2013.
31 Constitutional Court of the Republic of Croatia, *Report on the Protection of the Right to a Trial Within a Reasonable Time Regulated by Articles 63–70 of the Courts Act*, No. U-X-4090/2020 of February 23, 2021.
32 Constitutional Court of the Republic of Croatia, *Report on Conditions of Detention*, No. U-X-5464/2012 of June 12, 2014.
33 Constitutional Court of the Republic of Croatia, *Report on the Observed Omission of Statutory Regulation Concerning the Organization and Scope of the Office of the President of the Republic of Croatia*, No. U-X-2270/2010 of May 12, 2010.

3.4. Electoral Disputes

Disputes concerning rights violations during parliamentary and local elections are initiated by appealing a decision of the competent election commission that dismissed or rejected an objection against a decision, action, or omission by an electoral board or a municipal election commission.

Appeals must be lodged directly with the Constitutional Court within a strict 48-hour window following official delivery of the challenged decision.

Upon receiving an electoral appeal, the Court forwards a copy to the relevant election commission, requiring a written response and the necessary electoral case file within a deadline set by the Court, not exceeding 24 hours from the commission's receipt of the notification.

The Law also prescribes a 48-hour deadline for the Constitutional Court, running from the receipt of the election commission's response, to render a decision on the appeal.

Thus, in these obviously urgent proceedings, there is a 48-hour deadline for lodging an appeal with the Constitutional Court, a maximum deadline of 24 hours for the election commission to submit its response, and a 48-hour deadline for the Constitutional Court to issue a final ruling upon receiving the response and case record from the election commission.

The time limit within which the Constitutional Court submits a request for a response and the delivery of electoral documentation is the only one that remains unregulated. However, given the spirit of a law defined by strict, compressed timelines for all procedural steps, the Court is manifestly obligated to transmit these requests without delay. This is further reinforced by international standards establishing that decisions on electoral appeals should be rendered as rapidly as possible[34].

However, in its past practice, the Constitutional Court has exploited the absence of an explicit statutory deadline for transmitting requests to the election commission, effectively undermining the urgency of the proceedings while disregarding both statutory intent and international standards.

The Constitutional Court has routinely stalled forwarding appeals to election commissions, thereby compromising the tight statutory deadlines - namely, 48 hours for the appellant to lodge an appeal, 24 hours for the commission to respond, and 48 hours for the Court to decide upon receiving the commission's observations and supporting documentation.

Were another institution to similarly *"use"* a legal loophole, the Constitutional Court would have been expected to intervene - either through its jurisprudence or by submitting a report to Parliament on observed instances of unconstitutionality and illegality (the very reports it never submits) - to prevent such practices. However, instead of curbing such abuses of procedure, the Constitutional Court actively creates them.

[35] See Venice Commission, Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev2-cor, Explanatory Report, para. 95.

4. The Drafting Committee

Under the Constitutional Court's Rules of Procedure, the Drafting Committee is designated as a *"standing working body of the Constitutional Court."* The Committee consists of a president and five members, elected by the Court upon the proposal of the President of the Court. Among them, the president and three members are elected from among the judges, while two members are elected from among the appointed officials within the Court. According to the Rules of Procedure, the Drafting Committee is tasked with: finalizing the official text of decisions and rulings adopted in sessions or panels, proposing to the Court the reconsideration of judgments/decisions prior to their dispatch, whenever it deems that reasons for such action exist, establishing the methodology for drafting Court acts, and executing other duties assigned by the Court.

Under the Rules of Procedure, upon a written and reasoned request by a judge, the Drafting Committee, or another standing working body, the President of the Court or the presiding judge of the panel is required to place the review of an adopted act on the session agenda if new, essential facts emerge that impact the correctness of the decision and the safeguarding of constitutionality and legality. In such cases, the session minutes formally record the suspension of the decision's dispatch, the annulment of the adoption conclusion, and the remanding of the case file to the judge-rapporteur for re-examination, following which the matter is resubmitted for re-adjudication.

While such committees exist in comparative constitutional law, the framework governing the Drafting Committee of the Constitutional Court of Montenegro raises several contentious issues.

Primary among these concerns is the question of legality. Neither the Constitution nor the Law on the Constitutional Court of Montenegro contain any provision on a Drafting Committee. The Law explicitly stipulates that the Court adjudicates matters within its jurisdiction at full plenary sessions and in three-judge panels when deciding constitutional complaints. Furthermore, statutory provisions expressly foresee regular consultative meetings on cases and convening a judicial collegium for issues of operational management and international cooperation. While the Law also provides for the establishment of panels, it delegates procedural details to the Rules of Procedure.

The Drafting Committee as such is therefore not recognized by the Law on the Constitutional Court, nor is the Court granted statutory authority to establish new working bodies or operational formats through its Rules of Procedure.

The normative similarities indicate that Montenegro's Constitutional Court modeled its Drafting Committee after the Rules of Procedure of the Constitutional Court of Serbia. Crucially, however, Serbia's Law on the Constitutional Court[35] explicitly empowers the Court to establish standing committees and working bodies - a statutory mandate entirely absent from Montenegrin legislation.

[35] See Article 43 of the Law on the Constitutional Court of the Republic of Serbia ("Official Gazette of the Republic of Serbia" Nos. 109/2007, (...) 63/2026).

Consequently, serious doubts arise as to whether the Rules of Procedure lawfully provide for the establishment of the Drafting Committee and the delegation of powers to it, given the absence of such authorization in the Law on the Constitutional Court.

Beyond the question of legal authority, the Committee's substantive powers - specifically the procedural rules governing the suspension of dispatch and the re-examination of previously adopted decisions - raise acute legal concerns.

The Rules of Procedure permit the pre-dispatch re-examination of an already adopted decision or ruling solely on the ground that *"new information or facts have emerged that are of essential importance for safeguarding constitutionality and legality and impact the correctness of the decision."*

Such an overly broad ground for re-examining finalized decisions creates ample room for procedural abuse. As formulated, these *"new findings"* can easily be introduced through various formal or informal backchannels.

For instance, a scenario could easily arise where a complainant identifies their case number from a post-session bulletin and learns that their complaint was dismissed. To secure a different outcome, the complainant might then submit additional arguments or filings to non-panel judges or the Drafting Committee, presenting them as *"new findings"*.

As noted above, the regulation of Montenegro's Drafting Committee was likely inspired by the Rules of Procedure of the Constitutional Court of Serbia. Crucially, however, the Serbian counterpart permits the Drafting Committee (as well as the Court's President or judges) to initiate a review on far more restrictive grounds - namely, only where a decision rests on an obvious error that cannot be rectified as a simple clerical correction, or where it runs counter to the established constitutional case law. Consequently, the Serbian framework establishes a much more tightly defined logical basis for re-examination.

Even though the Committee cannot formally overturn a vote on its own, it is evident that it can exert substantial influence over the final outcome.

The practice of withholding and re-examining adopted decisions prior to their formal dispatch is widespread in the Court's practice; yet, official records fail to show whether this occurs at the request of individual judges or the Drafting Committee itself. It should also be noted that the Constitutional Court does not publish any statements or summaries from sessions of the Drafting Committee.

Most remarkably, during a single sitting of one of its merit panels, judges disposed of 74 cases while simultaneously approving requests to re-examine 12 previously decided files. Within that very same session, all 12 cases were remanded to the judge-rapporteur, who immediately presented new draft decisions for each file - allowing all 12 cases to be promptly re-adjudicated on the spot[36].

While reiterating that the Drafting Committee lacks the independent authority to overturn a decision, we nonetheless consider its legal status highly questionable and deem it imperative for the Constitutional Court to assess the compatibility of its Rules of Procedure with the Law on the Constitutional Court of Montenegro.

[36] Communiqué on the 4th Session of the Second Panel for deciding on constitutional complaints on the merits, held on April 24, 2026.

Furthermore, the establishment and powers of the Drafting Committee warrant rigorous scrutiny against international standards guaranteeing the right to an independent and impartial tribunal established by law[37], as embedded in ratified international treaties[38].

5. Transparency vs. PR Tactic

At the opening of the aforementioned international conference *"On the Constitution, State, and Democracy,"* the President of the Constitutional Court emphasized that the Court had *"made substantial progress in strengthening its openness and transparency, significantly improving communication with citizens and the media in a short period of time making information on the Court's work accessible and rendering constitutional justice more visible and understandable to the broader public..."*

Undeniably, the Constitutional Court has taken visible steps forward by establishing social media accounts, proactively issuing official statements on select decisions to media outlets, which resulted in greater coverage than in previous years, and convening the two aforementioned public hearings with live television and web-streaming feeds. Furthermore, in September, the Court's President appeared on a prime-time political talk show - a notable departure from the practice of previous court presidents that further contributes to transparency.

However, during that very television appearance on September 10, 2026, the President of the Constitutional Court stated that she had initiated amendments to the Rules of Procedure *"to publicly disclose the name of judge-rapporteur in each case and reveal how each judge votes."* She added that judges *"alongside rights and privileges, must also bear accountability,"* signaling that the bench was scheduled to vote on the proposal at a plenary session the following day[39].

Yet, a full month after this broadcast[40], despite the cited imperative for accountability, no information can be found on the Constitutional Court's official website indicating whether the President's initiative was ever deliberated, nor how sitting judges voted on it.

In fact, the official statement from the September 11, 2026 plenary session shows that no discussion of proposed amendments to the Rules of Procedure took place[41]. The hyperlink to the subsequent session's summary statement was non-functional at the time of drafting this report, while the September 29 communiqué likewise omitted any reference to procedural reform. By mid-October 2026, no further post-session statements had been published, suggesting no additional sessions had been convened.

Outside of plenary session updates, the Constitutional Court issued several media rebuttals and case-specific statements during September and October, yet remained completely

37 See Judgment of the Grand Chamber of the Court of Justice of the European Union in Joined Cases C-554/21, C-622/21 and C-727/21 of 11 July 2024.
38 European Convention for the Protection of Human Rights and Fundamental Freedoms.
39 Tv show Nacisto: Interview with Snezana Armenko, President of the Constitutional Court, TV Vijesti, September 10, 2026.
40 As of October 13, 2026.
41 Communiqué on the 15th Session of the Constitutional Court of Montenegro, held on September 11, 2026.

silent regarding the President's initiative aimed at amending the Rules of Procedure.

Official records show that no court sessions - whether plenary or panel - were convened throughout August. This aligns with standard judicial practice, as August coincides with collective annual leave across the judiciary and public administration.

Nevertheless, throughout August, official statements regarding previously adopted decisions were published incrementally: *"Constitutional Court: Surveillance measures against Rade Milosevic extended without genuine assessment of their necessity"* (published 04.08.2026)[42]; *"Constitutional Court: Judge Medjedovic's mandate could not be terminated except on constitutional grounds"* (published 06.08.2026)[43]; *"Constitutional Court: Judges elected under old system not entitled to transport allowance"* (published 11.08.2026)[44]; *"Constitutional Court Upholds Complaint: Citizens must not bear the consequences of proceedings lasting nearly 20 years"* (published 18.08.2026)[45]; *"Constitutional Court repeals provision on NGO registration denial due to vague criteria, dissenting opinion by Armenko"* (published 24.08.2026)[46]; *"Constitutional Court: Appeal granted, applicant unjustifiably denied access to third-instance court"* (published 29.08.2026)[47]; *"Constitutional Court: Pension Fund ordered to conclude retirement proceedings pending since 2011 within three months"* (published 30.08.2026)[48].

Some of these summary statements were never posted on the Constitutional Court's website, while others were published simultaneously in a single batch on August 31, 2026.

Strategic timing to release information during low-news periods is a well-known public relations tactic, but it is hardly a hallmark of genuine transparency. True transparency requires institutional information to be timely - meaning the Constitutional Court should have published notices regarding these decisions when they were actually rendered.

Furthermore, as media coverage and official statements reveal, the Constitutional Court failed to indicate the actual adoption dates for any of these rulings. Genuine transparency requires full contextual disclosure; by withholding these dates, the Court effectively misled both the media - prompting them to report on "old news" - and the general public into believing that these were newly rendered decisions from that day or the day prior.

At its core, judicial transparency hinges upon the publication of constitutional court decisions. This allows the interested public to familiarize itself with the Court's current legal positions, evaluate their quality, compare rulings and monitor case law consistency over time.

Yet despite the grand public declarations on transparency cited at the outset of this chapter, the Court's actual publishing practices remain severely flawed in both manner and scope, falling short of basic standards for legal research and public scrutiny.

42 D.C., "Constitutional Court: Surveillance measures against Rade Milosevic extended without genuine assessment of their necessity," Vijesti, August 4, 2026.
43 MINA, "Constitutional Court: Judge Medjedovic's mandate could not be terminated except on constitutional grounds," Vijesti, August 6, 2026.
44 B.H., "Constitutional Court: Judges elected under the old system not entitled to transport allowance," Vijesti, August 11, 2026.
45 Ne.V., "Constitutional Court Upholds Complaint: Citizens Must Not Bear the Consequences of Proceedings Lasting Nearly 20 Years," Vijesti, August 18, 2026.
46 Da.M., "Constitutional Court repeals provision on NGO registration denial due to vague criteria, dissenting opinion by Armenko," Vijesti, August 24, 2026.
47 Ne.V., "Constitutional Court: Appeal granted, applicant unjustifiably denied access to third-instance court," Vijesti, August 29, 2026.
48 Ne.V., "Constitutional Court: Pension Fund ordered to conclude retirement proceedings pending since 2011 within three months," Vijesti, August 30, 2026.

Specifically, in the section of the Constitutional Court's website designated for publishing decisions, merely 150 decisions were "published" for 2026. While the date of adoption, case category, and docket number were provided, only 21 of the 150 individual hyperlinks actually contained the text of the ruling; all remaining links opened to empty pages with no attached files.

The platform's basic search functionality is similarly flawed: rulings from March 2026, for instance, are miscategorized under November 2025 dates, with their true date of adoption becoming apparent only upon opening the attached document.

A separate *"New Rulings"* section contains an additional 91 rulings[49], a modest sum given that a single panel regularly disposes of more files in a single sitting. Here too, numerous hyperlinks remain broken, blocking access to actual full-text rulings.

Inconsistent upload practices, delayed decision publishing, the absence of multi-criteria search capabilities, and selective publishing patterns - which fuel suspicions that only "cherry-picked" rulings are made public - are likewise incompatible with the principles of true transparency.

While any subsequent measures by the Constitutional Court to address these deficiencies would be a welcome development, retroactive website updates cannot undo the established record regarding decision accessibility and judicial transparency during the period under review.

Finally, for the purposes of this analysis, we exercised our rights under the Law on Free Access to Information to request from the Constitutional Court all initiating submissions concerning constitutional review in cases pending at the time of the request. The requested data was disclosed only months later, following two administrative appeals lodged with the Agency for Personal Data Protection - a further illustration of the Court's actual commitment to transparency.

6. Concluding Remarks and Recommendations

The Constitutional Court of Montenegro enters the final stage of EU accession negotiations on significantly stronger footing than in recent years. The bench is now fully staffed, complaint backlogs are gradually receding, and visible efforts have been made toward public outreach. Nevertheless, as this analysis reveals, beneath these favorable statistical indicators and heightened public visibility lie serious concerns regarding the qualitative rigor of its jurisprudence, the efficacy of constitutional remedies, and the legal soundness of its internal procedures.

It is particularly telling that the Constitutional Court maintained high case clearance rates even during periods when it was operating with a depleted judicial bench. Coupled with data showing dozens of cases disposed of in a single panel session, this raises legitimate questions regarding the depth of scrutiny devoted to individual constitutional

[49] As of October 13, 2026.

complaints and the actual role of judges in their resolution. This question cannot be answered conclusively because the Court fails to provide even baseline conditions for independent case law analysis - namely, the regular and systematic publication of its decisions.

Unlike its track record on individual complaints, the Constitutional Court has yet to enhance its timeliness in constitutional review proceedings. Remedial action that materializes years after proceedings are commenced - at times long after the challenged legislation has lapsed - fails to serve its core purpose.

Simultaneously, the Constitutional Court - whose primary role is to safeguard constitutionality and legality - persistently fails to fulfill its explicit constitutional and statutory duty to report annually to Parliament on observed instances of unconstitutionality. Furthermore, its recent handling of electoral disputes demonstrates that statutory mandates for expedited adjudication can be effectively subverted by exploiting procedural gaps. Of equal concern is the dubious legal basis of the Drafting Committee, whose power under internal bylaws to initiate the re-examination of already adopted decisions opens wide avenues for unduly influencing judicial outcomes.

The heightened media presence of the Constitutional Court marks a welcome departure from past practice, yet it must not be confused with genuine transparency. An institution that merely publicizes its outcomes while failing to provide systematic access to complete rulings and their legal reasoning falls short of enabling true public scrutiny. Promptly publishing all decisions and ensuring their full online searchability should constitute a baseline operational standard, rather than an aspirational reform promise.

Appointing a full bench has established the conditions for the Constitutional Court to overcome long-standing operational hurdles. However, as this analysis demonstrates, judicial vacancies were never the sole source of its flawed functioning. Key deficiencies stem from internal operating practices, requiring reforms that depend neither on Parliament nor on other external institutions, but lie entirely within the Court's own mandate. Ultimately, it is on these core issues - timeliness, jurisprudential quality, procedural compliance, and transparency - that the Court's genuine readiness for EU integration will be tested.


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