



Strasbourg, 18 November 2025

CDL-REF(2025)050

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
OF THE COUNCIL OF EUROPE
(VENICE COMMISSION)

MONTENEGRO

**LAW AMENDING THE LAW ON THE CONSTITUTIONAL COURT OF
MONTENEGRO AND EXPLANATORY REPORT**

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I. LAW AMENDING THE LAW ON THE CONSTITUTIONAL COURT OF MONTENEGRO

Article 1

In the Law on the Constitutional Court of Montenegro (Official Gazette of Montenegro 11/15, 55/19 and 92/25) after Article 5a a new article shall be added worded as follows:

“Article 5b

A judge of the Constitutional Court and the President of the Constitutional Court shall fulfil the conditions for old-age pension when he/she reaches the age of 66 and completes at least 15 years of insurance service.”

Article 2

In Article 7, paragraph 2 shall be amended to read:

“The Constitutional Court shall, at its session, establish when the office of a judge or of the President of the Constitutional Court terminates due to the fulfilment of the conditions for old-age pension or the expiry of his/her term of office, and shall notify the competent proposer thereof, one year before the fulfilment of the conditions for old-age pension or before the expiry of his/her term of office.”

Article 3

After Article 7 a new article shall be added worded as follows:

“Article 7a

A judge or the President of the Constitutional Court may not participate in establishing the occurrence of the grounds for the termination of his/her office.

If, due to the reason for recusal referred to in paragraph 1 of this Article or for other justified reasons, there is not a sufficient number of judges to hold a session of all judges of the Constitutional Court at which the grounds for the termination of the office of a Constitutional Court judge are to be established, the President of the Constitutional Court shall notify the Parliament and the other competent proposer of the grounds for the termination of the office, while in the case of the President of the Constitutional Court, they shall be notified by the Deputy President, or, if there is no Deputy President, by the most senior judge in terms of judicial experience in the Constitutional Court.

The provisions of this Law regulating recusal shall apply mutatis mutandis to the procedure for the recusal of a judge or the President of the Constitutional Court referred to in paragraph 1 of this Article.”

Article 4

Article 15 shall be amended to read:

“When the office of a Constitutional Court judge terminates due to the fulfilment of the conditions for old-age pension or due to the expiry of the term of office and the proposer does not nominate or the Parliament does not elect a Constitutional Court judge to fill the vacant position, if it is necessary for decision-making by majority vote of all judges of the Constitutional Court, that judge, with his/her consent, may continue to perform the office of a Constitutional Court judge until a new judge is elected.”

Article 5

This Law shall enter into force on the eighth day following that of its publication in the Official Gazette of Montenegro.

II.EXPLANATORY REPORT

1. CONSTITUTIONAL BASIS FOR ADOPTION OF THE LAW

The constitutional basis for the adoption of the Law Amending the Law on the Constitutional Court of Montenegro is enshrined in Article 16 paragraph 1 point 5 of the Constitution of Montenegro which stipulates that a law shall regulate other matters of interest to Montenegro in accordance with the Constitution.

2. REASONS FOR ADOPTION OF THE LAW

The reason for the adoption of this Law is to improve certain legal provisions in accordance with the recommendations contained in the Opinion of the Venice Commission CDL-AD(2025)029 on some questions relating to the procedure of early termination of the mandate of Constitutional Court judges due to age limits. The following was recommended in the mentioned Opinion:

Recommendation No. 1 – to adopt a clear statutory framework expressly addressing the retirement age of the judges of the Constitutional Court.

Recommendation No. 2 – to introduce a simplified default mechanism concerning the notification on the fulfilment of conditions for old-age pension of the constitutional court judges.

Recommendation No. 3 – to adopt a provision allowing a judge to continue to perform his or her office until the new judge takes up office, in order to avoid a situation in which judicial positions are vacant due to the fact that new judges have not been nominated.

Recommendation No. 4 – to consider expanding the provisions on recusal of constitutional court judges on account of conflict of interest, with due regard to procedural guarantees and to the preservation of the functioning of the Constitutional Court.

This Proposal for a Law is the result of the work of a working group composed of representatives of the Ministry of Justice, the Constitutional Court, the Parliament of Montenegro (from among the parliamentary majority), the Ministry of Social Welfare, Family Care and Demography, as well as a representative of the civil sector. The representative of the civil sector was included in the work of the working group at the invitation of the Minister of Justice, since no candidates applied in response to the Public Call for nominating NGO representatives to the working group. Even though they were invited, the parliamentary opposition did not delegate its representative to the working group. The work of the working group was also observed, as an observer, by a representative of the Delegation of the European Union to Montenegro.

The proposed legal provisions were drafted with careful consideration of the constitutional provisions and their relationship to other legal provisions (Article 8 of the Law on Pension and Disability Insurance), taking into account constitutional limitations and the potential for future questions concerning the constitutionality of the proposed legal solutions.

3. COMPLIANCE WITH THE EUROPEAN UNION ACQUIS AND RATIFIED INTERNATIONAL CONVENTIONS

There is no provision in the EU primary legislation with which the proposed legislation could be compared in order to assess the level of their alignment.

4. EXPLANATION OF BASIC LEGAL CONCEPTS

The proposed law supplements the current law by adding a new article after Article 5a in the way that the new article will stipulate that a judge of the Constitutional Court and the President of the Constitutional Court shall fulfil the conditions for old-age pension when he/she reaches the age of 66 and completes at least 15 years of insurance service.

Article 2 proposes amendment to Article 7 paragraph 2 in the way that the Constitutional Court shall, at its session, establish when the office of a judge or of the President of the Constitutional Court terminates due to the fulfilment of the conditions for old-age pension or the expiry of his/her term of office, and shall notify the competent proposer thereof, one year before the fulfilment of the conditions for old-age pension or before the expiry of his/her term of office.

Article 3 proposes amendment concerning the reason for the recusal of judges when establishing the fulfilment of the conditions for old-age pension in the way that a judge or the President of the Constitutional Court may not participate in establishing the occurrence of the grounds for the termination of his/her office. If, due to the reason for recusal or for other justified reasons, there is not a sufficient number of judges to hold a session of all judges of the Constitutional Court at which the grounds for the termination of the office of a Constitutional Court judge are to be established, the President of the Constitutional Court shall notify the Parliament and the other competent proposer of the grounds for the termination of the office, while in the case of the President of the Constitutional Court, they shall be notified by the Deputy President, or, if there is no Deputy President, by the most senior judge in terms of judicial experience in the Constitutional Court.

The provisions of this Law regulating recusal shall apply *mutatis mutandis* to the procedure for the recusal of a judge or the President of the Constitutional Court.

Article 4 regulates the existing deblocking mechanism in the way that when the office of a Constitutional Court judge terminates due to the fulfilment of the conditions for old-age pension or due to the expiry of the term of office and the proposer does not nominate or the Parliament does not elect a Constitutional Court judge to fill the vacant position, if it is necessary for decision-making by majority vote of all judges of the Constitutional Court, that judge, with his/her consent, may continue to perform the office of a Constitutional Court judge until a new judge is elected.

5. ASSESSMENT OF FUNDS NECESSARY FOR THE IMPLEMENTATION OF THE LAW

It is not necessary to provide additional funds in the Budget of Montenegro for the implementation of this Law.

6. REASONS FOR ADOPTING THE LAW UNDER URGENT PROCEDURE

In accordance with Article 151 of the Rules of Procedure of the Parliament of Montenegro (Official Gazette of the Republic of Montenegro 51/06 and 66/06 and Official Gazette of Montenegro 88/09, 80/10, 39/11, 25/12, 49/13, 42/15, 52/17, 17/18, 47/19, 112/20, 129/20, 65/21, 48/24 and 80/24), we propose that this Law be adopted under urgent procedure since its adoption is necessary to fulfil the recommendations of the Venice Commission.