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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

CYPRUS

DRAFT OPINION

ON THREE BILLS REFORMING THE JUDICIARY

On the basis of comments by

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Mr Martin KUIJER (Substitute Member, Netherlands)
Mr Zlatko KNEŽEVIĆ (Member, Bosnia and Herzegovina)

**This document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

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I. Introduction

1. By letter of 22 September 2021, the Minister of Justice and Public Order, Ms Stephie Dracos, requested an opinion of the Venice Commission on three Bills reforming the Judiciary: the Bill entitled the Law of 2021 on the Sixteenth Amendment to the Constitution (CDL-REF(2020)091), the Bill entitled Law amending the Laws relating to the Courts 1960 to (no 3) 2020 5 CDL-REF(2020)092) and the Bill entitled Law amending the Regulations on the Acquisition of the Justice (Miscellaneous Provisions) Laws of 1964 to 2015 (CDL-REF(2020)093).

2. Mr Michael Frendo, Mr Martin Kuijer and Mr Zlatko Knežević acted as rapporteurs for this opinion.

3. On 18 November 2021, a delegation of the Commission composed of Mr Kuijer and Mr Knežević, accompanied by Mr Schnutz Dürr from the Secretariat visited Nicosia and had meetings (in chronological order) with the Minister of Justice and Public Order, the Attorney General of the Republic of Cyprus, the Committee of Legal Affairs of the Parliament, the President and a member of the Supreme Court of Cyprus, the President and Members of the Judges Association and the President and Members of the Cyprus Bar Association. The Venice Commission wishes to express its gratitude to the Cypriot authorities for the excellent organisation of the visit.

4. This opinion was prepared in reliance on the English translation of the three bills. The translation may not accurately reflect the original version on all points.

5. This opinion was drafted on the basis of comments by the rapporteurs and the results of the visit to Nicosia. It was adopted by the Commission at its … Plenary Session … (Venice and online).

II. Analysis

A. The need for judicial reform

6. All stakeholders the delegation met in Nicosia, including those representing the judiciary, agreed that urgent reforms of the judiciary were needed in the country. Various interlocutors referred in this regard to the findings of previous reports, such as the 'Functional Review of the Courts System of Cyprus' of March 2018 conducted by the Irish Institute of Public Administration with the support of the Structural Reform Support Service of the European Commission.[1]

7. From the outset, it should be emphasised that the problems encountered in the Cypriot judiciary are not related in any way to a lack of integrity or independence of the judges. Instead, the main problem is the enormous backlog of cases pending before the courts and the average time it takes to get a final judicial decision in any given case.

8. A combination of factors is relevant in this regard, among which: the significant increase in the number of appeals, the increased complexity of the cases pending before the courts, the unrestricted right of appeal, the fairly limited use of legal officers supporting the judges in the research and drafting of judgments, and the fact that the administration of justice is primarily paper-based leading to significant inefficiencies in areas such as the preparation of files and case management (the use of IT facilities – both internally as well as in interaction with external users

[1] http://www.supremecourt.gov.cy/Judicial/SC.nsf/All/EBD26B775C1A627DC225843F0041884A/$file/Functional%20Review%20of%20Courts%20System%20of%20Cyprus%20(IPA%20Ireland)%20-%20Final%20Report%20March%202018.pdf

– is underdeveloped, which also means that the necessary management information is often lacking).

9. Some of these factors are obviously outside the control of the judiciary. However, it needs to be stressed that other factors are within the control of the judiciary itself (assuming that the necessary budget is made available to the judiciary). For the proper functioning of a judiciary in a modern-day society it is necessary to embrace a greater use of IT facilities, to invest in inter alia support staff and judicial training.

10. These issues equally affect the Supreme Court (hereinafter: the SC). Following the intercommunal troubles of 1963-64 and the mass exit of Turkish Cypriot representatives from the institutions of the state, Law No. 33/64 was enacted in order to address the constitutional difficulties that arose from that situation. This Law also made several changes to the justice system, most notably the amalgamation of the Supreme Constitutional Court and the High Court in the present Supreme Court exercising the powers of the previous courts.

11. The Supreme Court also acts as the Supreme Council of the Judicature, dealing with judicial appointments, promotions, transfers and disciplinary matters. And in addition to its judicial role and duties, the President of the Supreme Court also has the overall responsibility for the management and administration of the courts system in Cyprus. Regardless of whether such a concentration of functions and responsibilities in one single judicial body is opportune, it suffices to note that it prevents the SC to dedicate all its time to handling appeals.

12. The Venice Commission agrees with previous reports and the interlocutors its delegation met in Nicosia that holistic reforms of the judiciary are called for. It welcomes that a detailed action plan for judicial reform has been prepared over the last few years in consultation with the relevant stakeholders. The current proposals include institutional measures affecting the court system (such as most notably the establishment of the Administrative Court, the establishment of a new Court of Appeal, and the proposal to re-establish the Supreme Constitutional Court) as well as measures affecting judicial practice (such as most notably the digitalisation of the courts). The latter category of measures is essential for the success of the judicial reform, as the above-mentioned institutional initiatives will not in and by themselves solve the problems currently faced by the Cypriot judiciary.

13. Some of the measures have already been implemented (such as the establishment of a training school for judges and the establishment of the Administrative Court), others are currently pending and are the subject of this Opinion.

B. The re-establishment of the Supreme Constitutional Court (SCC)

14. According to the proposals, the present Supreme Court of 13 justices would be split into a Supreme Constitutional Court (composed of 9 judges) and the 'new' Supreme Court (composed of 7 justices). The main arguments advanced in favour of the proposal are the following:

1. specialisation: currently the 13 SC judges need to rule as the highest court in the land on a great variety of constitutional and legal issues (see above). The proposal would allow the SC judges to specialise in civil and criminal matters, while their colleagues in the SCC would be able to specialise in constitutional and administrative matters.
2. de-concentration: it was already mentioned that in the current court system many functions and responsibilities are concentrated in one single judicial body. This may have adverse consequences. For example: in the current system SC judges will decide on disciplinary proceedings vis-à-vis one of their own colleagues, while the proposals

foresee a situation in which the SCC would be responsible if the disciplinary proceedings concern an SC justice, and vice versa.[2]

3. Increased number of judges in the highest courts of the land: the current SC has – as already mentioned – 13 justices; with the enactment of the proposals there would be 16 judges divided between the SCC and the SC.

15. Most of the interlocutors the delegation met in Nicosia were in favour of the proposal. Nonetheless, the proposed re-establishment of a separate Supreme Constitutional Court is controversial. This is due to the fact that the Supreme Court in its current composition, while it is in favour of the judicial reform as such, is divided on the merits of this proposal (with a slight majority being against it).

16. As a consequence, the delegation noted that some in the political domain are hesitant to support the proposal because they want to avoid a situation in which the judiciary following the enactment of the legislation rules that the measure is unconstitutional. The main argument of those against the proposal is that a proper impact assessment is lacking as a foundation for such a far-reaching proposal, i.e. it has not been adequately demonstrated that the proposed re-establishment of the SCC will indeed alleviate the problem of the current backlogs.

17. The Venice Commission has never held that there is a general requirement to establish a separate constitutional court,[3] although it has held that the establishment of such an organ as a separate institution has often proved to be a motor in implementing the rule of law in a given country.[4]

18. The Commission notes in the Cypriot situation that the arguments in favour of a split are not exclusively related to the issue of backlog and that it is therefore doubtful whether additional studies would provide persuasive arguments for or against the proposal. In addition, the Commission is receptive of the argument that no single judicial body – regardless of its high level of independence – should have such a concentration of tasks and responsibilities. It therefore sees no reason to object to the proposal as such.

19. The Supreme Constitutional Court will have a jurisdiction for the review of constitutionality of laws, but it will also act as the supreme administrative court ("*on referral from the Court of Appeal, an appeal against a decision of the Administrative Court on a matter of public law of major public interest or of general public importance"* (Article 9 (b) Administration of Justice (Miscellaneous Provisions) Law). This will also ensure that the SCC does not remain idle when there are no constitutional cases pending.

20. Constitutional review cases, notably from the civil and criminal courts, can reach the SCC via a system of leave to appeal by referral from an ordinary court of *"questions of constitutionality which are essential to the determination of the case pending before it"* (Article 9 (a) Administration of Justice (Miscellaneous Provisions) Law). This ensures that all courts - and indirectly - individuals have access to the SCC.

[2] In this respect the Cypriot authorities also refer to the need for reform on the basis of the relevant GRECO recommendation of the Fourth Evaluation Round on Corruption prevention in respect of members of parliament, judges and prosecutors : *"the composition of the Supreme Council of Judicature be subject to a reflection process considering its representation within the judiciary as a means of preventing potential or perceived situations of conflicts of interest within the Council",* para 119 (see also subsequent compliance reports).

[3] Venice Commission, CDL-AD(2021)031, Netherlands - Opinion on the Legal Protection of Citizens, para. 129.

[4] Venice Commission, CDL-AD(2016)007, Rule of Law Checklist, II.E.3.

C. No constitutional amendment

21. As a rule, the (re-)establishment of a constitutional court should be conducted by a constitutional amendment. However, amending the Cypriot Constitution is extremely difficult. The Constitution of Cyprus was ratified on 16 August 1960 following the so-called London and Zürich Agreements between Turkey, Greece, the United Kingdom and Cypriot community leaders (Archbishop Makarios III for the Greek Cypriots and Dr. Fazıl Küçük for the Turkish Cypriots) on which basis a constitution was drafted and Cyprus was proclaimed an independent state.

22. The 1960 Constitution divided the Cypriot people into two communities, based on ethnic origin, and sought to balance the rights and interests of both communities, *inter alia* by providing an intricate and detailed system of mixed representation in state organs. As the text of the Constitution was a delicate compromise, Article 182 of the Constitution provided for a long list of unamendable provisions of the Constitution. Some of those unamendable provisions concern the judiciary.

23. Following the intercommunal troubles of 1963-64 and the mass exit of Turkish Cypriot representatives from the state institutions, the constitutional dilemma was how to ensure the continued functioning of a state based on a constitution premised on the cooperation of the two communities. The Supreme Court attempted to solve this dilemma in the Ibrahim Case by deciding that the 'doctrine of necessity' (or 'law of necessity' as it is called in Cyprus) could be used to essentially amend or disapply constitutional provisions that could no longer be complied with.

24. For the application of the doctrine of necessity, the following prerequisites must be satisfied:
1. An imperative and inevitable necessity or exceptional circumstances should exist;
2. There should be no other remedy available;
3. The measure taken should be proportionate to the necessity, and finally
4. The measure must be of a temporary character limited to the duration of the exceptional circumstances.

25. Since 1964 the doctrine has been invoked many times. It is also invoked in the preamble to the bills under consideration in the present Opinion. The doctrine of necessity has become the unwritten cornerstone of the Cypriot legal order and is – also after almost 60 years – nearly undisputed. This is undoubtedly related to the fact that the authorities of the Republic of Cyprus wish to expressly demonstrate that the state does not acquiesce or accept the current factual situation.

26. Even though it is generally acknowledged under public international law that the successful use of violence does not constitute a valid method of acquiring territory in itself, (international) (in)direct recognition of such an annexation might be relevant over time when assessing whether a basis of title to the land exists. It is therefore understandable that the Cypriot authorities have so far chosen not to depart from the framework as laid down in the 1960 Constitution.

D. Assignment of the current SC justices to the new SC or the SCC

27. The proposals specify that the current SC judges shall continue as either a member of the SCC or the new SC *"under the same conditions of service as before"*.[5] The proposals also specify that SCC judges and SC judges shall have the same salary. The delegation was informed by the Minister of Justice and Public Order that the individual justices of the current SC are free to choose between the SCC and the new SC as concerns the continuation of their duties.

[5] Section 19 (3) Administration of Justice (Miscellaneous Provisions) Law, 1964 to 2015.

28. However, there is a (theoretical) possibility that all SC justices opt for one and the same court. In that case, not all justices can be placed in their court of preference. The current text of the bill reads that *"the President of the Republic shall make the appointments and determine the final allocation to each Court".*[6] Given the abovementioned (theoretical) possibility and in light of the fact that judges of both courts will earn the same salary and work under the same conditions of service, it appears acceptable to include such a provision. It is however recommended to stipulate in the legislative text that the President will as rule determine the final allocation in accordance with the wish expressed by the judge concerned.

E. The number of judges in the new SC

29. Given the numerical significance of civil/criminal matters, it is difficult to understand why the new SC would only have 7 judges (in comparison to the SCC with 9 judges). To some extent, this lower number will be compensated by the introduction of the new Court of Appeal, but the Commission would nonetheless recommend – also in light of the current backlogs – to reconsider the number of SC justices and possibly raise it to 9. An additional side effect would be that the theoretical possibility described above is less likely to materialise.

F. Appointment of SCC and SC judges

30. Under the 1960 Constitution, the appointment of the President and judges of the SCC and the SC are the prerogative of the President and the Vice President (Turkish Cypriot) of the Republic (see Article 133.1(2) and Article 153.1(2) of the Constitution). Both constitutional provisions are fundamental, i.e. unamendable. Following the events in 1963 and invoking the doctrine of necessity, the appointments are made by the President of the Republic alone since then.

31. In practice however a 'convention' is adhered to by the President: all Presidents of the Republic have so far, before exercising this constitutional power, consulted the judges of the Supreme Court. The SC submits its recommendation as to who should be appointed to fill a particular vacancy. Usually, the recommendation of the SC is based on seniority of first instance judges. Almost without exception, these recommendations have been followed by the President. In practice, therefore, the current state of affairs may be described as a system of informal co-optation.

32. Under the proposed amendments the power of the President of the Republic to appoint the judges of the SCC and the new SC would remain unaltered, which – at least in part – is a consequence of the unamendable constitutional provision cited above. However, the reform Bills provide for the setting up of the Advisory Judicial Council, "an independent Council"[7] which should act as an advisory body to the President on the suitability of candidates for appointment as Judges of the Supreme Constitutional Court and the Supreme Court with the aim to enhance and give legislative force to the above-described well-established practice currently in place as part of Cypriot legal culture and tradition.

33. If a vacancy arises in the SCC, the Advisory Judicial Council would be composed of the President of the SCC as the chairman of the Council, the four most senior members of the SCC, the Attorney General and the President of the Bar Association. If a vacancy arises in the new SC, the Council would be composed of the President of the SC as the chairman of the Council, the four most senior members of the SC, the Attorney General and the President of the Bar Association. The Council would therefore have seven members.

[6] Ibid.
[7] Article 4 (4) (b) Administration of Justice (Miscellaneous Provisions) Law, 1964 to 2015.

34. The bill stipulates that five members of the Council shall constitute a quorum. The Advisory Council shall prepare a list of persons deemed suitable for appointment, the number of whom shall be at least three times the number of vacancies. It shall prepare evaluation reports for each of the candidates and present its list to the President in alphabetical order, i.e. the Council would not rank the candidates.

35. There exists a great variety in the method by which judges are appointed in domestic legal orders.[8] No single 'model' exists which could ideally comply with the principle of the separation of powers and secure full independence of the judiciary.[9] But it is fair to say that international standards are more in favour of the extensive depoliticisation of the process. Political considerations should not prevail over the objective merits of a candidate. Article 6 ECHR protects not only the independence of the individual judges but requires a system of judicial appointments that excludes arbitrary appointments.[10]

36. The fact that the Cypriot authorities envisage two distinct judicial appointments procedures (one for the judges of both highest courts of the land, and one for other judicial appointments) is not uncommon in other jurisdictions and not contrary to European standards.

37. The fact that the executive power, i.e. the President of the Republic, appoints the judges is thus not in violation of international and European standards.[11] The Commission is mindful in this respect that the above-mentioned 'convention' has ensured extensive depolitisation in practice. The Commission welcomes the effort to codify this unwritten 'convention' in the law.

38. As such, the proposed composition of the Advisory Judicial Council does not raise concerns in this regard either as the council will be composed of five judges, and one representative of the Bar which is an a-political representative as well.

39. According to Part VI of the Cypriot Constitution the Attorney General is an "independent officer". His or her security of tenure is protected constitutionally and is exactly the same way as that of a Judge. However, the Advocate General is both the highest prosecutor and the legal adviser to the President and the Government. Therefore, the Attorney General is close to, and indeed an essential part, of the State machinery serving the government of the day.

40. While including non-judicial members in the Advisory Judicial Council is justifiable, the inclusion of the Attorney General who holds this double role,[12] including the position of legal adviser to the executive, is not desirable. Instead of the Attorney General, other persons could

[8] See M. Kuijer, *The Blindfold of Lady Justice - Judicial Independence and Impartiality in Light of the Requirements of Article 6 ECHR*, Wolf Legal Publishers, 2004.
[9] CDL-AD(2007)028, Report on Judicial Appointments by the Venice Commission, para. 3.
[10] ECtHR, Oleksandr Volkov v. Ukraine of 9 January 2013, application no. 21722/11.
[11] European Court of Human Rights, Moiseyev v. Russia (2008): "173. As regards the issue of "independence", the Court reiterates that in order to establish whether a tribunal can be considered "independent" for the purposes of Article 6 § 1, regard must be had, inter alia, to the manner of appointment of its members and their term of office, the existence of safeguards against outside pressures and the question whether it presents an appearance of independence (see, among many other authorities, Findlay v. the United Kingdom, judgment of 25 February 1997, Reports 1997-I, p. 281, § 73)"; see also Court of Justice of the European Union, Case C-896/19 Repubblika v Il-Prim Ministru where a member of the judiciary is appointed by the President on the advice of the Prime Minister the Courts : "as regards, in particular, the circumstances in which decisions to appoint members of the judiciary are made, the Court has already had occasion to state that the mere fact that the judges concerned are appointed by the President of a Member State does not give rise to a relationship of subordination of those judges to the latter or to doubts as to the judges' impartiality, if, once appointed they are free from influence or pressure when carrying out their role".
[12] See also, Venice Commission, CDL-AD(2018)028, Malta - Opinion on Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement, para. 61.

be included in the Advisory Judicial Council (and the Supreme Council of Judicature, see below), e.g. academics from the university law departments.

41. The Advisory Judicial Council not only prepares *"a list of persons deemed suitable for appointment"* but also evaluates each candidate thus chosen and presents a reasoned report on the suitability of each of the candidates *"and its contents shall be advisory to the President of the Republic".* The emphasis on the contents of the evaluation being advisory to the President is unfortunate. One can retain the right of the President to make the final choice but to emphasise in the law that whatever the Council says is merely advisory vis-a-vis the President is to devalue the evaluation of the Council. This sentence can be rectified by saying that the Council shall advise the President.

42. Nonetheless, while the Venice Commission believes that the detailed reports on the candidates could enable the President to make an informed choice,[13] in line with the established convention where the President follows the advice given to him in this regard, a graduated recommended choice by the Council would assist the credibility and objectivity of the appointment by the President.

43. To further strengthen the independence of the process leading to the appointment of the top judges, one could also envisage including in the law not only that the Advisory Judicial Council shall place the suitable candidates in their order of recommendation but also that the President would need to motivate in writing any decision which he might take which does not respect that recommendation and the order of preference laid out in the evaluation of the Advisory Council.

44. In addition, the law could be further improved if "pre-existing, clear and transparent criteria for appointment"[14] would be elaborated in the law. At the moment the bill only stipulates that candidates are only eligible for being appointed a judge in the SCC or the SC if they have at least twelve years of experience and if they are of high moral standing. These very basic criteria offer little guidance to the selection process in search of suitable candidates.

45. The delegation was informed that it is standing practice in Cyprus to appoint only (the most senior) first instance judges in the present SC, so the actors involved may not feel a need for more detailed criteria. However, the Venice Commission wishes to emphasise that a supreme court (or a constitutional court for that matter) may benefit from having experienced lawyers from other legal professions on the bench. In various jurisdictions the composition of a supreme court is 'mixed', i.e. career judges, academics and other legal professions such as former advocates or civil servants having worked for a legal department in a ministry. The Venice Commission therefore welcomes the fact that the bill mentions that the Advisory Judicial Council "shall take into account the need to enrich the courts with qualified lawyers".

G. Appointment of other judges

46. The Bills also amend the provisions regulating the Supreme Council of Judicature (SCJ) which is the body responsible for all other judicial appointments. According to Article 157 of the Constitution, the "High Court shall be the Supreme Council of Judicature". Vacancies for judicial office are publicly announced and published after which interested candidates may submit their application within a specified period of time and may be invited for an oral interview by the SC. The delegation was informed that – as part of the holistic judicial reform – the SC recently introduced detailed and transparent eligibility criteria for judicial office, which is welcome.

[13] Venice Commission, CDL-AD(2020)006, Malta - Opinion on proposed legislative changes, para 40.
[14] Venice Commission, CDL-AD(2018)028, Malta - Opinion on Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement, para. 44.

47. Under the proposed reform, this procedure will remain unaltered. However, the bill proposes to change the composition of the SCJ. The proposed SCJ will consist of 9 members: the President and the three senior judges of the SC, the President of the Court of Appeal, the most senior President of the District Court, the President of the Association of Judges, the Attorney General and the President of the Bar Association.

48. Together with the proposed re-establishment of the SCC, this proposal appears to be the most controversial of the reform package. It seems that objections are raised against the proposal on three levels:

1. Article 157 is one of the unamendable provisions of the Cypriot Constitution and its wording is unambiguous: the SCJ shall consist of the judges of the High (Supreme) Court.
2. The SCJ should consist solely of judges; the involvement of others is detrimental to judicial independence.
3. If others than judges are involved in the SCJ they should not represent parties to judicial proceedings, which is an argument more specifically relevant for the Attorney General and the Bar Association.

49. Generally speaking, the Venice Commission welcomes the thrust of the reform which 'opens up' the composition of the judicial council involving all court levels in the court system and introducing a non-judicial component in the judicial council. The current composition of the SCJ, in which the judicial component represents 100% of its composition, is unique in Europe.

50. As some of the Cypriot interlocutors rightfully stress, there should be a strong judicial component in the composition of a judicial council. However, this does not mean that the quality of a judicial council necessarily increases if such a council is composed exclusively of judges. While the main purpose of the very existence of a judicial council is the protection of the independence of judges by insulating them from undue pressures from other powers of the State, involving only judges carries the risk of raising a perception of self-protection, self-interest and cronyism. Corporatism should be counterbalanced by membership of other legal professions, the 'users' of the judicial system, e.g. attorneys, notaries, academics, civil society.[15]

51. This representation is justified since the objectives of a judicial council relate not only to the interests of the members of the judiciary, but especially to general interests. Such non-judicial members in a judicial council may provide democratic legitimacy of the judicial council and a fresh perspective on what is needed to become or be 'a good judge'. Merit is not solely a matter of legal knowledge analytical skills or academic excellence. It also includes matters such as character, judgment, accessibility, communication skills, efficiency to produce judgements, et cetera. The Venice Commission therefore considers the proposed composition as a step in the right direction.

52. However, as concerns the participation of the Attorney General, see the remarks relating to the Advisory Judicial Council above.

53. As concerns the judicial component in the SCJ, the Venice Commission reiterates that Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe states that "not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary and with the respect of pluralism inside the judiciary".[16] The

[15] Venice Commission, CDL-AD(2018)003, Opinion on the Law on amending and supplementing the Constitution (Judiciary) of the Republic of Moldova, para. 56; CDL-AD(2014)008, Opinion on the draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, paras. 30,31.

[16] Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, para. 27.

proposed composition does not meet those parameters as the judges are not chosen by their peers but are ex officio members of the council.

54. The interlocutors representing the judiciary with whom the delegation met did not express a wish to change this practice, expressing the view that membership of the SCJ is not so much a privilege but rather a burden. The rationale of Recommendation CM/Rec(2010)12 is to ensure that a judicial council reflects a balanced representation of judges from different levels and courts. The Venice Commission notes that this rationale in satisfied in the Cypriot case. The opening of the SCJ to persons who are not judges is a welcome first step in a situation where the SCJ is identical to the Supreme Court. Eventually, it should be considered to have the judicial members elected by their peers, instead of selecting them by seniority.

55. It is not for the Venice Commission to assess the constitutionality of the proposed reform, but – given the unambiguous wording of Article 157 of the Constitution – it is clear that the proposed reform can only be implemented by taking recourse to the doctrine of necessity.

56. The reforms provide another safeguard. The Venice Commission welcomes that judicial review against decisions taken by the SCJ lies with the new SCC.

H. Judicial discipline – quorum of the Supreme Council of Judicature

57. There might be an issue as concerns the ability for the Supreme Council of Judicature to take decisions. The amended Article 10 Administration of Justice (Miscellaneous Provisions) Act 1964 to 2015 provides for a quorum of seven of the nine members of the Supreme Council of Judicature. According to Article 10 (5) (iii) and (iv), the Attorney General of the Republic and the President of the Cyprus Bar Association, and in some cases also the most senior President of the District Court and the President of the Association of Judges are excluded from the Supreme Council of Judicature for certain decisions. This should be taken into account as concerns the quorum in such cases.

58. Finally, what happens if the President of the Court of Appeal himself or herself is subject to disciplinary proceedings? The bills do not give a solution in this case.

III. Conclusion

59. The Venice Commission agrees that urgent and holistic reforms of the judiciary are called for. It welcomes that a detailed action plan for judicial reform has been prepared over the last few years in consultation with the relevant stakeholders. The current proposals include institutional measures affecting the court system (such as most notably the establishment of the Administrative Court, the establishment of a new Court of Appeal, and the proposal to re-establish the Supreme Constitutional Court) as well as measures affecting judicial practice (such as most notably the digitalisation of the courts). The latter category of measures is essential for the success of the judicial reform, as the above-mentioned institutional initiatives will not in and by themselves solve the problems currently faced by the Cypriot judiciary.

60. As for the proposal to re-establish the Supreme Constitutional Court, it sees no reason to object to the proposal as such. It does however recommended to stipulate in the legislative text that the President will as rule determine the final allocation in accordance with the wish expressed by the judge concerned and to reflect on the number of SC justices.

61. As for the setting up of an Advisory Judicial Council, which should act as an advisory body to the President on the suitability of candidates for appointment as Judges of the Supreme Constitutional Court and the Supreme Court, the Commission sees no reason to object to the proposal as such. However, the Commission recommends to:

1. replace the Attorney General in the composition of the Council;

2. provide for a graduated recommendation by the Council to the President which would assist the credibility and objectivity of the appointment by the President and reflect on the desirability to stipulate that the President needs to motivate in writing any decision which does not respect that recommendation and the order of preference laid out in the evaluation of the Advisory Council;
3. to include "pre-existing, clear and transparent criteria for appointment" in the bill.

62. As for the Supreme Council of Judicature (SCJ), the Venice Commission – generally speaking – welcomes the thrust of the reform which 'opens up' the composition of the judicial council involving all court levels in the court system and introducing a non-judicial component in the judicial council. It recommends:

1. to replace the Attorney General in the composition of the Council; and
2. to consider to have the judicial members elected by their peers, instead of selecting them by seniority.

63. It is evident that the reform bills alone cannot solve the problem of the judicial backlog and important additional measures are required to address this problem. For the proper functioning of a judiciary in a modern-day society it is necessary to embrace a greater use of IT facilities, to invest in *inter alia* support staff and judicial training.

64. The Venice Commission remains at the disposal of the Cypriot authorities for further assistance in this matter.