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

**HUNGARY**

**OPINION**

**ON CONSTITUTIONAL AND LEGISLATIVE AMENDMENTS  
CONCERNING THE REQUIREMENTS TO BE APPOINTED  
PROSECUTOR GENERAL AND CONSTITUTIONAL COURT JUDGE,  
AS WELL AS THE APPOINTMENT AND RETIREMENT OF JUDGES**

**Adopted by the Venice Commission  
at its 143rd Plenary Session  
(online, 13-14 June 2025)**

**on the basis of comments by**

**Ms Irēna KUCINA (Member, Latvia)  
Mr James HAMILTON (Expert, Former Member, Ireland)  
Mr Kaarlo TUORI (Honorary President, Finland)**

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## I. Introduction

1. By letter of 30 January 2025, Ms Zanda Kalniņa-Lukaševica, Chairperson of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe, requested an opinion of the Venice Commission of the Council of Europe on the Fourteenth Amendment to the Fundamental Law of Hungary as well as on Act LXVII of 2024, which amended Act CLI of 2011 on the Constitutional Court and Act CLXIV of 2011 on the status of the Prosecutor General, public prosecutors and other members of the public prosecution service and on the career of public prosecutors ([CDL-REF\(2025\)022](#)).

2. Ms Irēna Kucina, Mr James Hamilton and Mr Kaarlo Tuori acted as rapporteurs for this opinion.

3. On 28 April 2025, the rapporteurs, assisted by Mr Domenico Vallario and Mr Adrià Rodríguez-Perez from the Secretariat, had online meetings with representatives of the parliamentary majority and opposition, the Office of the Prosecutor General, the Hungarian Association of Judges, as well as with civil society organisations. The Commission is grateful to the Ministry of Justice of Hungary for the assistance in the organisation of these meetings. Written observations were received from the Constitutional Court of Hungary, the National Judicial Council, the National Office for the Judiciary and the Hungarian Association of Prosecutors.

4. This opinion was prepared in reliance on the English translation of the amendments. 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, the results of the online meetings on 28 April 2025 as well as of the written observations mentioned above. Following an exchange of views with Mr Róbert Répássi, Secretary of State, Ministry of Justice, it was adopted by the Venice Commission at its 143<sup>rd</sup> Plenary Session (online, 13-14 June 2025).

## II. Background and scope of the Opinion

6. The present Opinion analyses:

- The Fourteenth Amendment to the Fundamental Law of Hungary; and
- Act LXVII of 2024, which amended Act CLI of 2011 on the Constitutional Court and Act CLXIV of 2011 on the status of the Prosecutor General, public prosecutors and other members of the public prosecution service and on the career of public prosecutors.

### A. Fourteenth Amendment to the Fundamental Law

7. On 19 November 2024, the President of the Parliamentary Committee on Justice of the Hungarian National Assembly, pursuant to Section S(1) of the Fundamental Law, submitted a proposal to the Speaker of Parliament to amend Article 29(4) of the Fundamental Law of Hungary. Initially, the draft proposal only amended the eligibility criteria to be elected Prosecutor General by eliminating the criterion according to which the Prosecutor General should be a serving career prosecutor.<sup>1</sup>

8. The constitutional amendment proposal was however supplemented in December 2024 with two additional changes to Article 26(2) of the Fundamental Law: (i) increasing the age of appointment of judges from 30 to 35 years old,<sup>2</sup> and (ii) opening the possibility for judges to remain in office beyond the general retirement age (65 years in Hungary), until 70 years old, in cases specified by a “cardinal Act”.<sup>3</sup>

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<sup>1</sup> As of 1 January 2025.

<sup>2</sup> As of 1 March 2025.

<sup>3</sup> As of 1 January 2026.

9. On 17 December 2024, the Parliament adopted these proposals as Fourteenth Amendment to the Fundamental Law, with 135 votes in favour and 53 against. The Amendment was promulgated in the Official Gazette on 20 December 2024.

10. The changes to the appointment and retirement age of judges were introduced following the conclusion of an agreement between the Ministry of Justice and the Curia (Supreme Court), the National Office for the Judiciary, and the National Judicial Council (NJC) on 22 November 2024 (“the Agreement”).<sup>4</sup> The parties agreed to increase monthly salaries of judges, court secretaries, clerks and judicial officials,<sup>5</sup> and further agreed on certain judicial reforms, including those that were subsequently included in the Fourteenth Amendment to the Fundamental Law.<sup>6</sup>

11. Reportedly, the Agreement and the way it was concluded raised certain criticism from professional organisations representing judges.<sup>7</sup> Among other things, it was argued that the judiciary had only learned of the draft agreement a few days before the meeting. It was further maintained that a judicial reform could only be envisaged after extensive professional consultations, so that the entire judiciary could express their opinion. The then-President of the National Judicial Council resigned on 3 December 2024, allegedly as a consequence of the criticism raised by part of the judiciary.<sup>8</sup> On 15 January 2025, the National Judicial Council withdrew from the Agreement, reportedly for, among other things, not having been duly consulted in the framework of the constitutional and legislative amendments that occurred in December 2024.<sup>9</sup>

## **B. Act LXVII of 2024**

12. In parallel, on 19 November 2024, the President of the Parliamentary Committee on Justice of the Hungarian National Assembly, pursuant to Article 6(1) of the Fundamental Law, tabled a proposal to amend Act CLI of 2011 on the Constitutional Court, by repealing Article 6(2) of the Act. The effect of the amendment is that while it is still required that candidates for the position of a Constitutional Court judge have a law degree and be either academics with “outstanding theoretical knowledge” (meaning, according to the law, university professors or doctors of the Hungarian Academy of Sciences) or have at least twenty years of professional experience in the field of law, it is no longer necessary that such professional experience “in the field of law” be acquired in a position for which there is a statutory requirement to have a law degree.

13. The proposal also included an amendment to Article 11 of Act CLXIV of 2011 on the status of the Prosecutor General, public prosecutors and other members of the public prosecution service and on the career of public prosecutors, which detailed the eligibility criteria for appointment as a prosecutor. Pursuant to the amendment, candidates for the position of Prosecutor General will be subject to the same eligibility criteria as foreseen for any other prosecutor. This amendment is to be read in conjunction with the amendment to the Fundamental law which no longer requires the Prosecutor General to be a serving career prosecutor.

14. These proposals were promulgated on 20 December 2024 as Act LXVII of 2024.

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<sup>4</sup> The agreement is available on the [website](#) of the National Judicial Council.

<sup>5</sup> See Section II of the Agreement.

<sup>6</sup> See Section III of the Agreement.

<sup>7</sup> See [Notice on the agreement concerning courts](#) (in Hungarian only), Res Iudicata, 21 November 2024 and [Call for expressions of opinion, submission of statements of support](#) (in Hungarian only), Hungarian Association of Judges (MABIE), 21 November 2024; see also, Hungarian Helsinki Committee, [Judges' salary is a public matter, and not an issue of personal finances](#), 3 December 2024.

<sup>8</sup> See [here](#) (in Hungarian only).

<sup>9</sup> See [here](#). See also a statement of the National Judicial Council [here](#) (in Hungarian only).

**C. Other parallel and subsequent constitutional and legislative developments which do not fall within the scope of the opinion**

15. Other constitutional and legislative amendments, which do not fall within the scope of the Opinion, are nevertheless relevant for the assessment of the provisions under examination.

16. On 20 December 2024, Act LXXIV of 2024 was also promulgated. It amended Article 4 of Act CLXII of 2011 on the Status and Remuneration of Judges,<sup>10</sup> and introduced a new eligibility criterion for appointment as a judge.

17. As of 1 March 2025, candidates for the position of a judge, among other things, will be now required to fulfil a new criterion: gather two years of professional experience outside the judiciary. This adds to the pre-existing requirement of having at least one year of practice in a designated legal role, such as judicial clerk, deputy prosecutor, attorney-at-law, notary, legal adviser, government official, or civil servant. This additional professional experience is to be read in conjunction with the amendment to the Fundamental Law which increased the age to be appointed judge from 30 to 35 years old.

18. The Fifteenth Amendment to the Hungarian Fundamental Law, adopted by the Hungarian Parliament on 14 April 2025, among other changes extended the possibility to remain in service until 70 years old to prosecutors as well (with the exception of the Prosecutor General), similarly to what the Fourteenth Amendment has provided for judges.<sup>11</sup>

19. On 17 April 2025, the Government of Hungary published on its website, for public consultation, a draft Omnibus law on the amendment of judicial laws.<sup>12</sup>

20. Among other things, the draft Omnibus law proposes to amend Act CLXII of 2011 on the legal status and remuneration of judges by setting the criteria for the continued employment of judges after reaching the general retirement age. Henceforth, the draft Omnibus law is meant to be the “cardinal Act” referred to in the provision of the Fourteenth Amendment on the possibility for judges to remain in office until 70 years old. In its original version, the draft law introduced a mechanism according to which, at the request of a judge who is about to retire, and subject to the passing an extraordinary aptitude test and an extraordinary evaluation, the President of the National Office for the Judiciary or the Curia President (depending on the applying judge) could decide whether to prolong the service of a judge until 70, subject to administrative considerations relating to the work organisation, workload, or budget.

21. In their comments of 9 June 2025, the Ministry of Justice informed the Venice Commission that the draft Omnibus Law as finally submitted to Parliament (Act No. T/11917)<sup>13</sup> on 13 May 2025, was substantially revised on this point. Indeed, Section 66 of the draft Omnibus Law introduces a new Chapter 13/A in Act CLXII of 2011 on the legal status and remuneration of judges. This chapter explicitly stipulates that, at the request of the judges, the President of the National Office for the Judiciary (NOJ) (or, in the case of a judge of the Curia, the President of the Curia) shall approve the request for the prolongation of service without a substantive examination.<sup>14</sup>

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<sup>10</sup> See the version currently in force [here](#) (in Hungarian only).

<sup>11</sup> Available [here](#).

<sup>12</sup> Available [here](#). During online meetings, the Hungarian Association of Judges raised with the delegation of the Venice Commission the issue of the extremely limited time (until 25 April 2025) that they were given for comments, having also regard to the size of the draft (124 pages) and the conjunction of the period to comment with the Easter break.

<sup>13</sup> Available [here](#) (in Hungarian only).

<sup>14</sup> The explanatory memorandum attached to the draft Omnibus Law clarifies that it is necessary to grant this approval power to the President of the NOJ insofar as the tasks of the President of the NOJ include taking measures for dismissal in the event of termination of the judicial service. Accordingly, the NOJ should have information on which judges are requesting to remain in service.

### III. Analysis

#### A. The legislative process

22. The Venice Commission notes that both the Fourteenth Amendment to the Fundamental Law of Hungary and Act LXVII of 2024 have been introduced by the President of the Parliamentary Committee on Justice on 19 November 2024. The Fourteenth Amendment and Act LXVII of 2024 were adopted by the Parliament a few weeks later, without public consultation. Representatives of opposition parties who are members of the Committee on Justice indicated to the Venice Commission delegation that they received the supplemented version of the draft Fourteenth Amendment (the one which included the new rules on appointment and retirement of judges, see paragraph 8 above) only a few hours before the Committee meeting in which the decision was taken to submit the bill to Parliament.

23. Given that these pieces of legislation have been introduced by an individual member of Parliament, the procedure followed was in accordance with Article 19 (1) and (2) of the Act on Legislation as well as with Articles 1 and 8(1)-(2) of the Act on Social Participation in the Preparation of Laws, which provide that public consultations and impact assessment are not required for proposals submitted by individual MPs.<sup>15</sup>

24. Regardless of the formal rules in place, the Venice Commission has previously expressed the view that the process for enacting laws should be transparent, accountable, inclusive and democratic as it has underlined in its Rule of Law Checklist,<sup>16</sup> as well as in its Report on the Role of the opposition in a democratic Parliament.<sup>17</sup> The Commission is of the view that the lack of a mandatory prescription for public consultations does not rule out the desirability of holding such consultations, especially in crucial cases such as constitutional amendments. Formal rules should not be (mis)used to circumvent the need of holding public consultations. No reason has been offered as to why a non-inclusive process was necessary or appropriate in this case. This is a remark that the Venice Commission has been making repeatedly in respect of Hungary,<sup>18</sup> including when, like in the instant case, laws have been enacted on the motion of individual MPs.<sup>19</sup>

25. Moreover, it appears that the judiciary was not effectively consulted on the constitutional changes that directly impacted on the appointment and retirement of judges. Under Article 103(1)(b) of the Act on Courts,<sup>20</sup> the National Council of the Judiciary shall give its opinion on draft legislation affecting the judicial system in the area of general central administration.<sup>21</sup> Regardless of the fact that this provision does not in principle apply to constitutional amendments<sup>22</sup> the Venice Commission believes that there should have been effective

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<sup>15</sup> Act CXXX of 2010 on Legislation is available (in Hungarian only); Act CXXXI of 2010 on Social Participation in the Preparation of Laws is available [here](#) (in Hungarian only).

<sup>16</sup> Venice Commission, [CDL-AD\(2016\)007](#), *Rule of Law Checklist*, § 18 and II.A.5.

<sup>17</sup> Venice Commission, [CDL-AD\(2010\)025](#), *Report on the role of the opposition in a democratic Parliament*, §§ 106-115.

<sup>18</sup> See, among others, Venice Commission, [CDL-AD\(2024\)001](#), *Opinion on Act LXXXVIII of 2023 on the Protection of National Sovereignty*, §§ 24-26; [CDL-AD\(2021\)036](#), *Opinion on the amendments to the Act on the organisation and administration of the Courts and the Act on the legal status and remuneration of judges*, §§ 19-22; [CDL-AD\(2021\)039](#), *Joint Opinion of the Venice Commission and the OSCE/ODIHR on the 2020 amendments to electoral legislation*, §§ 18-21; [CDL-AD\(2021\)029](#), *Opinion on the constitutional amendments adopted by the Hungarian parliament in December 2020*, §§ 12-14; [CDL-AD\(2013\)012](#), *Opinion on the fourth amendment to the Fundamental Law of Hungary*, § 131.

<sup>19</sup> Venice Commission, [CDL-AD\(2017\)015](#), *Hungary - Opinion on the Draft Law on the Transparency of Organisations receiving support from abroad*, §§ 25-28.

<sup>20</sup> Act on the Organisation and Administration of the Court of Hungary, Act CLXI of 2011, available [here](#).

<sup>21</sup> The National Council of the Judiciary sent a request to the Ministry of Justice requesting to be consulted on the Fourteenth Amendment, see [here](#).

<sup>22</sup> See in this regard the reply of the Ministry of Justice to the President of the National Judicial Council [here](#).



consultations with the judiciary, which could have taken place as consultations with the National Judicial Council and with the judicial community. The Venice Commission believes that it is essential for the judiciary, both for the judicial community and for the councils of the judiciary, where they exist, to be involved in the development of legislative reforms.

26. These findings are all the more relevant insofar as they concern changes to the Fundamental Law of Hungary. The Commission has found that constitutional amendments should only be made after extensive, open and free public discussions and in an atmosphere favouring such discussions. They should, as a rule, be based on a large consensus among the political forces and within the civil society,<sup>23</sup> and should be marked by the highest levels of transparency and inclusiveness.<sup>24</sup> These amendments should be the result of a “slow and incremental” process and should follow other procedures than those of everyday politics.<sup>25</sup> In respect of Hungary, the Commission has already stated that it does not deny the sovereign right of the Parliament to adopt the Constitution or to amend it; however, the procedure and methods of doing so in Hungary raise concerns. The Constitution of a country should provide a sense of constitutionalism in society, a sense that it truly is a fundamental document and not simply an incidental political declaration. Hence, both the manner in which it is adopted and the way in which it is implemented must create in the society the conviction that, by its very nature, the constitution is a stable act, not subject to easy change at the whim of the majority of the day.<sup>26</sup> In that regard, the Venice Commission believes that the considerable number of constitutional amendments since the adoption of the Fundamental Law in 2011 has resulted in partial and piecemeal reforms which are harmful to the overall coherence of the legislative framework,<sup>27</sup> and to the specific status and auctoritas the Fundamental Law must enjoy within the legal order.

27. In conclusion, the Venice Commission regrets that these amendments were adopted using a non-inclusive procedure and in the absence of a genuine consultation of the parliamentary opposition and the judiciary. It urges the Hungarian authorities, in the parliamentary discussions in future law-making procedures, to ensure an inclusive public debate and a meaningful participation of all the relevant stakeholders.

## B. Eligibility and appointment of the Prosecutor General

28. Pursuant to the constitutional and legislative amendments under examination, the Prosecutor General no longer needs to be appointed from among career prosecutors and is now subject to the general eligibility criteria required to become an ordinary prosecutor in Hungary. These are listed at Article 11 of Act CLXIV of 2011.<sup>28</sup> The explanatory memorandum accompanying the

<sup>23</sup> Venice Commission, [CDL-AD\(2004\)030](#), *Opinion on the Procedure of Amending the Constitution of Ukraine*, § 28.

<sup>24</sup> Venice Commission, [CDL-AD\(2022\)031](#), *Mexico - Opinion on the draft constitutional amendments concerning the electoral system*, § 21.

<sup>25</sup> Venice Commission, [CDL-AD\(2010\)001](#), *Report on Constitutional amendment*, § 75.

<sup>26</sup> CDL-AD(2013)012, cited above, § 137.

<sup>27</sup> See, *mutatis mutandis*, Venice Commission, [CDL-AD\(2010\)020](#), *OSCE/ODIHR - Venice Commission Guidelines on Freedom of Peaceful Assembly (2nd edition)*, Section B.I.1, § 13.

<sup>28</sup> “(1) A person may be appointed prosecutor **or elected Prosecutor General** if he or she holds Hungarian citizenship, a university degree in law, has passed the professional examination in law, and who is not under guardianship affecting legal capacity or supported decision-making. [...]

(2) In addition to the conditions in paragraph (1), a person may be appointed as a prosecutor if, after passing the professional legal examination:

a) has worked as a junior prosecutor, court secretary, notary, lawyer, legal counsel, researcher at the OKRI, or investigator at an investigative authority for at least one year;

b) has worked for at least one year in a position requiring a public administration or legal examination at an organ specified in Section 2 of Act CXXV of 2018 on Government Administration, and in a position requiring a public administration or legal examination at an organ specified in Section 2 of Act CXCV of 2011 on Civil Servants, the State Audit Office, the central, regional and local organs of the police, the penitentiary system and the professional disaster management organ ;

c) has served as a public prosecutor, constitutional judge, or judge;

Fourteenth Amendment argues that this choice “*is also in line with international practice, given that in many European countries [...] the position of prosecutor general is not conditional on the prosecutor-general having a background as a prosecutor*”. It appears that the (now repealed) requirement of being a career prosecutor had been enacted by Act CXXI of 2010; prior to that, as highlighted by the Ministry of Justice in their comments of 9 June 2025, Hungary already had (from 1990 to 2000) a Prosecutor General who came from outside the prosecution service.

29. The Venice Commission notes that, following the entry into force of the constitutional and legislative amendments under examination, beside the mandatory three-year legal traineeship needed to pass the bar exam and the further requirement of having one year of professional experience in any of the posts listed in Article 11 § 2, no further professional expertise is required to be elected as the Prosecutor General of Hungary.

30. The Venice Commission has carried out a comparative research on the eligibility criteria to be appointed head of prosecution service<sup>29</sup> in a number of Venice Commission’s member states.<sup>30</sup> Given the time and thematic constraints of this opinion, it has not been possible to carry out a thorough comparative study, and only some selected pertinent examples will be cited. The Venice Commission wishes to underline in this context that evidence from different legal systems cannot be definitively compared in isolation from the whole legal framework and without taking into due account the specific broader social, political and historical background.

31. This research suggests that eligibility criteria for head of prosecution service can generally be divided in the following categories: 1) legal qualifications, 2) minimum age, and 3) a minimum period of professional experience before the appointment, usually in judicial or legal practice. In addition, there may be other criteria, in particular regarding ethical standards and managerial and organisation skills.

32. Many of the countries observed explicitly require a law degree (Albania, Armenia, Costa Rica, Denmark, Estonia, Finland, Iceland, Latvia, Lithuania, Liechtenstein, Mexico, Republic of

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*d) at an international organisation or body of the European Union, performing justice-related activities for at least one year.*

*(3) For the purposes of paragraph (2), up to six months may be credited as junior prosecutorial experience for those who, after passing the professional legal exam, worked at least three years in a legally qualified role not listed in paragraph (2) [...].*

<sup>29</sup> The Venice Commission examined the legal frameworks of Albania, Andorra, Armenia, Bosnia and Herzegovina, Bulgaria, Canada, Chile, Costa Rica, Croatia, Cyprus, Czechia, Denmark, Finland, Georgia, Greece, Iceland, Ireland, Korea, Kosovo, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, the Republic of Moldova, Montenegro, North Macedonia, Norway, Peru, Romania, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Ukraine. In addition, it should be noted that the position of Prosecutor General may not be foreseen in certain national systems. For example, in **Austria** all prosecutors are subordinated to the Federal Minister of Justice (FMJ), the position of a "Head of the Prosecution Service" in the sense of a General Prosecutor does not exist. In **France**, there is not a single head of the Prosecution service but rather hierarchically superior prosecutors (*procureurs généraux et procureurs de la République*). In **Italy**, the prosecution service is hierarchical only within the single prosecutorial offices. In the **Netherlands** there is not a single Prosecutor General; the prosecutorial service is headed by the College of Prosecutors general, which consists of 3 to 5 Prosecutors General. In **Poland**, the Minister of Justice is by law the Prosecutor General, but a reform aiming at the separation of the two roles is under way (see CDL-AD(2024)034, cited above). In **San Marino**, the judicial system (lastly regulated by the Constitutional Law no. 1 of 7 December 2021), does not provide for the existence of a General Prosecutor's Office, nor for the position of a Prosecutor General, given the limited dimensions of the justice system. The *Procuratore del Fisco* is part of the judiciary and is subject to the direction and supervision of the Head of the Court (articles 2 and 5 of Constitutional Act 1/2021). In **Türkiye** there is not a country chief public prosecution system; the Chief Public Prosecutors are the head of the respective prosecution offices. In the **United Kingdom**, there is no uniform national system but a decentralised system with different frameworks for England and Wales; Scotland; and Northern Ireland.

<sup>30</sup> To carry out such analysis, the Venice Commission relied on CODICES ([www.codices.coe.int](http://www.codices.coe.int)), its database which contains constitutions and laws on constitutional courts and equivalent bodies of Venice Commission member states in English and French. The Venice Commission also relied on the [Compilation of responses to the questionnaire](#) for the preparation of CCPE Opinion no. 19 on managing prosecution services to ensure their independence and impartiality, see in particular question 8(i).



Moldova, Norway, Serbia, Slovakia, Ukraine). In many other cases, the requirement of a law degree can be implicitly inferred from the fact that a professional experience in the field of law is required (see below paragraph 35).

33. Some legal frameworks further provide for a minimum age requirement. When established, such limit varies between 35 (Armenia,<sup>31</sup> Brazil,<sup>32</sup> Costa Rica,<sup>33</sup> Iceland,<sup>34</sup> Lithuania,<sup>35</sup> Mexico<sup>36</sup>), 40 (Chile,<sup>37</sup> Latvia,<sup>38</sup> Slovakia<sup>39</sup>), and 45 (Peru<sup>40</sup>). While in Estonia the minimum age of 21 applies (as for any other prosecutor), the law also establishes that only someone who is an experienced and recognised lawyer may be appointed as the Prosecutor General.<sup>41</sup>

34. Insofar as professional experience is concerned, the head of the Prosecution Service is mandatorily appointed among the career prosecutors in Brazil,<sup>42</sup> Czechia,<sup>43</sup> Kosovo,<sup>44</sup> Liechtenstein,<sup>45</sup> Romania,<sup>46</sup> Slovenia.<sup>47</sup>

35. Other than that, a minimum period of experience (normally as a prosecutor, as a judge or as a lawyer) is required in a substantial number of countries, varying between 3 (Iceland<sup>48</sup>), 8 (Bosnia and Herzegovina<sup>49</sup>), 10 (Armenia,<sup>50</sup> Canada,<sup>51</sup> Chile,<sup>52</sup> Costa Rica,<sup>53</sup> Czechia,<sup>54</sup> Georgia,<sup>55</sup> Ireland,<sup>56</sup> Lithuania,<sup>57</sup> the Republic of Moldova,<sup>58</sup> North Macedonia,<sup>59</sup> Ukraine<sup>60</sup>) 12

<sup>31</sup> Article 35 § 4 of the Constitution.

<sup>32</sup> Article 128 § 1 of the Constitution.

<sup>33</sup> Article 23 of Law 7442/94 refers to Article 159 of the Constitution (Judges of the Supreme Court).

<sup>34</sup> Article 20 of the Code of Criminal procedure refers to the requirements of Supreme Court judge, which are contained in Article 4 of the Act on the Judiciary no. 15/1998.

<sup>35</sup> Article 22 of the Law on Prosecution Service.

<sup>36</sup> Article 102 of the Constitution.

<sup>37</sup> Article 85 § 2 of the Constitution.

<sup>38</sup> Article 36 of the Prosecution Office Law.

<sup>39</sup> Article 7 § 3 of Law no. 153/2001.

<sup>40</sup> Articles 147 and 158 of the Constitution.

<sup>41</sup> Article 15 of the Prosecutor's Office Act.

<sup>42</sup> Article 128 § 1 of the Constitution.

<sup>43</sup> Article 9 § 3 of Act no. 283/1993 on public prosecution service.

<sup>44</sup> Article 28 of the Law on State Prosecutor.

<sup>45</sup> Article 5 § 2 of the Public Prosecution Act (StAG).

<sup>46</sup> Article 144 of the Law on the Statute of Judges and Prosecutors.

<sup>47</sup> State prosecutors who are under 64 years of age at the time of application and meet the criteria for appointment to the title of supreme state prosecutor may be appointed State Prosecutor General; see Article 111 § 3 of the State Prosecutor's Office Act (ZDT-1).

<sup>48</sup> Article 4 § 7 of the Act on Judiciary.

<sup>49</sup> As a prosecutor, a judge or a lawyer after having passed the second state examination – while this is not formally provided in the Law on the Prosecutor's Office of Bosnia and Herzegovina, these criteria are enforced by both the High Judicial and Prosecutorial Council of Bosnia and Herzegovina.

<sup>50</sup> Article 177 of the Constitution.

<sup>51</sup> Article 4 § 2 of the Director of Public Prosecutions Act. In Canada, the person holding the position of Minister of Justice in the federal government also holds the position of Attorney General of Canada. As such, the only requirement to hold the position of Minister of Justice and Attorney General is to be an elected member of Parliament capable of providing legal advice to government. However, and insofar as since 2006 the power to prosecute in Canada is delegated from the Attorney General to the Director of Public Prosecutions, the Venice Commission considered the eligibility requirements for this latter position for the purposes of this comparative research.

<sup>52</sup> Article 85 § 2 of the Constitution.

<sup>53</sup> 5 years if they are judicial officials already. Article 23 of Law 7442/94 refers to Article 159 of the Constitution (Judges of the Supreme Court).

<sup>54</sup> Article 9 § 3 of Act no. 283/1993 on public prosecution service. At least 6 years should be as a public prosecutor.

<sup>55</sup> 5 if working as a judge on criminal cases, as a prosecutor or as a criminal defence lawyer – Article 16 § 1 of the Organic Law on Prosecutor's Service.

<sup>56</sup> Prosecution of Offences Act, 1974, § 2.

<sup>57</sup> Article 22 § 1 of the Law on Prosecution Service.

<sup>58</sup> Articles 17 and 20 of the Law on the Prosecutor's Office. At least 5 years should be as a judge, prosecutor, lawyer or prosecution officer.

<sup>59</sup> Article 62 of the Law on Public Prosecutor's Office.

<sup>60</sup> Article 40 of the Law on Prosecution Service.

(Bulgaria,<sup>61</sup> Malta,<sup>62</sup> Serbia<sup>63</sup>), 15 (Albania,<sup>64</sup> Andorra,<sup>65</sup> Croatia,<sup>66</sup> Korea,<sup>67</sup> Latvia,<sup>68</sup> Peru,<sup>69</sup> Romania,<sup>70</sup> Slovakia,<sup>71</sup> Spain<sup>72</sup>), and 20 years (Montenegro<sup>73</sup>). In Cyprus, while a specific period of professional experience is not required, the Constitution requires that the Attorney General be appointed from amongst lawyer of high professional and moral standard,<sup>74</sup> while in Estonia it is required that the candidate be an experienced and recognised lawyer.<sup>75</sup> Similarly, in Luxembourg, it is required that the candidates be selected by the National Council of Justice based on their professional skills and personal qualities, as well as their seniority in the judiciary.<sup>76</sup> In Greece, the Prosecutor General must be one of the ten most senior Vice Prosecutors General of the Supreme Court or of the Vice Presidents and Judges of the Supreme Court.<sup>77</sup>

36. The requirement of having a high moral character and/or professional integrity is explicitly set out in the legislative frameworks of Albania, Bulgaria, Cyprus, Czechia, Estonia, Georgia, Kosovo, Latvia, Liechtenstein, Lithuania, Mexico, the Republic of Moldova, Montenegro, Serbia, Slovakia, and Ukraine. Specific managerial/organisational skills are required in Bulgaria,<sup>78</sup> Czechia,<sup>79</sup> Finland,<sup>80</sup> Kosovo,<sup>81</sup> the Republic of Moldova,<sup>82</sup> Serbia,<sup>83</sup> Ukraine.<sup>84</sup>

37. The comparative-law analysis shows that the only country, among those examined, in which there are no formal requirements to be appointed Prosecutor General is Sweden.<sup>85</sup> In Switzerland, the sole criteria is the Swiss nationality.<sup>86</sup> In Denmark and Norway, only a law degree is required.

38. In its Opinion no. 19 on managing prosecution services to ensure their independence and impartiality, the Consultative Council of European Prosecutors (CCPE) acknowledged that: [...]

<sup>61</sup> Article 170 § 4 of the Judicial System Act, which refers to Article 164 § 7.

<sup>62</sup> Article 91 § 2 of the Constitution which refers to Article 96 § 2.

<sup>63</sup> Article 82 § 4 of the Law on Public Prosecutor Office.

<sup>64</sup> Article 148/a of the Constitution.

<sup>65</sup> Article 10 § 2 of the Law on Public Prosecution which refers to the eligibility criteria for the position of *Magistrat*, which are to be found in Article 66-ter of the Organic Law on Justice. 12 years if they are already judges or prosecutors.

<sup>66</sup> Article 63 § 3 of the Law on State Attorney Office.

<sup>67</sup> Article 27 of the Prosecutor's Office Act.

<sup>68</sup> Article 36 of the Prosecution Office Law. 15 years as a judge or prosecutor. 10 years as a judge of a regional court, a chief prosecutor, a prosecutor of the judicial region Prosecution Office or Prosecutor General's Office. 5 years in the office of a judge of the Constitutional Court, a judge of the Supreme Court, a judge of an international court, or a judge of a supranational court.

<sup>69</sup> Articles 147 and 158 of the Constitution. 10 years if the candidate held the office of Justice of the Superior Court or Senior Prosecutor.

<sup>70</sup> Article 144 of the Law on the Statute of Judges and Prosecutors of Romania. Among prosecutors who have a minimum of 15 years' seniority as a prosecutor or judge.

<sup>71</sup> Article 7 § 3 of Law no. 153/2001.

<sup>72</sup> Article 29 of the Organic Statute on the public prosecution service.

<sup>73</sup> Article 43 of the Law on the State Prosecution Service. 15 years if the professional experience is as a state prosecutor or judge.

<sup>74</sup> Articles 112 and 153 of the Constitution.

<sup>75</sup> Article 15 of the Prosecutor's Office Act.

<sup>76</sup> Article 11 of Law of 23 January 2023 on the status of magistrates.

<sup>77</sup> Article 90 § 5(b) of the Constitution.

<sup>78</sup> Article 170 § 5 of the Judicial System Act.

<sup>79</sup> Article 9 § 3 of Act no. 283/1993 on public prosecution service.

<sup>80</sup> Article 13 of the Act on the Prosecution Service.

<sup>81</sup> Article 28 § 1.5 of the Law on State Prosecutor.

<sup>82</sup> Article 17 § 3 of Law no. 3/2016 on the Prosecutor's Office.

<sup>83</sup> Article 83 of the Law on Public Prosecutor's Office.

<sup>84</sup> Article 40 of the Law on Prosecution Service.

<sup>85</sup> The Swedish authorities have however indicated to the CCPE that the Prosecutor General has normally a background as senior / chief judge.

<sup>86</sup> In practice, professional criteria (legal training, professional experience, management and negotiation skills), personal criteria (working method, debt history and criminal record) and language skills are all taken into account, see GRECO, [Fourth evaluation round](#), *Corruption prevention in respect of Members of Parliament, Judges and Prosecutors - Switzerland*, 15 March 2017, §209.

*[E]ligibility criteria may vary from one member state to another due to the differences in legal systems and traditions. [...] Notwithstanding the type of legal system, the CCPE considers that it should always be checked that the candidates for the position of prosecutor general have the necessary legal expertise and determination, having fully accepted the need to protect and promote prosecutorial independence [...]. Furthermore, an appropriate legal and professional background should be a primary requirement (emphasis added), in order to ensure the candidates' capacity to lead the prosecution service efficiently. Additionally, the merits of the candidates, including experience, proven management and other skills should also be considered as important. The combination of the aforementioned criteria is relevant to assess the capacity of a candidate to safeguard the independence and impartiality of the prosecution services [...].*<sup>87</sup>

39. In its opinions the Venice Commission has called for the appointment of the Prosecutor General to be based on his/her objective legal qualifications and experience. The Commission found that it is usually not sufficient for a candidate for such a high office to be subjected to the general qualification requirements that exist for any other prosecutorial position.<sup>88</sup> This appears to be confirmed by the findings of the comparative analysis, seeing as a minimum period of experience (normally as a prosecutor, as a judge or as a lawyer) is required in a substantial number of countries (see paragraph 35 above). In one of its recent Opinions, the Venice Commission welcomed the fact that criteria for the Prosecutor General restricted the pool of candidates to senior career prosecutors and advocated for more specific competency-based criteria, including managerial skills.<sup>89</sup>

40. Establishing clear criteria in the law regarding the objective legal qualifications and professional experience required for appointment can also contribute to reducing a risk of politicisation of the office of the Prosecutor General, as this would demonstrate that candidates for such an important position are selected on the basis of their competencies and experience and not because of their political affiliation.<sup>90</sup> In that regard, the Venice Commission considers that the assessment of the new eligibility criteria of the Prosecutor General cannot be detached from a reflection on the procedure for his/her appointment, which should provide adequate safeguards against politicisation of this position.

41. When assessing different models for the appointment of heads of prosecution services, the Commission has always been concerned with finding an appropriate balance between the need for democratic legitimacy of such appointments, on the one hand, and the requirement of depoliticisation, on the other.<sup>91</sup> The Commission has maintained that an appointment process which involves the executive and/or the legislative (as it is the case in Hungary)<sup>92</sup> has the advantage of giving democratic legitimacy to the appointment of the head of the prosecution service. However, in this case, additional safeguards are needed in order to reduce the risk of politicisation of the prosecution service. In particular, the Commission has consistently argued that the establishment of a prosecutorial council, which would play a key role in the appointment of the Prosecutor General, could be considered as one of the most effective modern instruments

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<sup>87</sup> CCPE, [Opinion No. 19 on managing prosecution services to ensure their independence and impartiality](#), 29 October 2024.

<sup>88</sup> See also Venice Commission, [CDL-AD\(2015\)039](#), *Joint Opinion of the Venice Commission, the Consultative Council of European Prosecutors (CCPE) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on the draft amendments to the Law on the Prosecutor's Office of Georgia*, § 27.

<sup>89</sup> Venice Commission, [CDL-AD\(2024\)034](#), *Poland – Opinion on the draft amendments to the Law on the Public Prosecutor's Office*, §§ 37-39.

<sup>90</sup> See, *mutatis mutandis*, [CDL-AD\(2015\)039](#), cited above, § 30.

<sup>91</sup> Venice Commission, [CDL-AD\(2024\)034](#), *Poland – Opinion on the draft amendments to the Law on the Public Prosecutor's Office*, § 27, with further references.

<sup>92</sup> In Hungary, as per Article 29 § 4 of the Fundamental Law, the Prosecutor General shall be elected by the National Assembly for nine years, on a proposal from the President of the Republic, and with the votes of two thirds of its members.

to reduce the risk of politicisation of the prosecution service, as professional expertise would be involved in the selection process.<sup>93</sup>

42. Lastly, the provision under examination has to be assessed in light of the Hungarian system of the prosecution service. Article 29 § 3 of the Fundamental Law provides that “[t]he organisation of the Prosecution Service shall be headed and directed by the Prosecutor General, who shall appoint public prosecutors”. The prosecution system is thus established as a hierarchical body, headed by the Prosecutor General.<sup>94</sup> Moreover, the Prosecutor General’s has extremely wide powers within the prosecution system,<sup>95</sup> and he/she enjoys a wide immunity.<sup>96</sup> As stated by the Hungarian Association of Prosecutors in its written comments, in this context it is important that the Prosecutor General have not only theoretical knowledge, but also practical experience, due to the role of the prosecution service in the organisation of the State.

43. In light of the above-mentioned standards, the Venice Commission finds that a candidate will not have acquired the necessary experience to lead the prosecution service efficiently after having passed the bar exam and having had one year of relevant legal experience. The Venice Commission takes note of the standpoint of the Ministry of Justice according to which the mere fact that Act CLXIV of 2011 prescribes the same eligibility criteria for the Prosecutor General and ordinary prosecutors does not mean that professional filters do not apply in relation to the position of the Prosecutor General. In this context, the Ministry of Justice points out that the President of the Republic, in the framework of the nomination process of the new Prosecutor General – carried out under the new legal framework - publicly stated that he consulted the heads of the judicial professions prior to the nomination, as a result of which he decided to nominate a candidate who has served as a prosecutor since 2011 (in various and increasingly senior positions). The Venice Commission welcomes this development. However, it recalls that informal norms should complement and support, and not substitute formal safeguards altogether.<sup>97</sup> In this regard, the Commission finds that the lack of stricter eligibility criteria concerning the professional and managerial experience of the Prosecutor General remains questionable.

44. In addition to that, the Venice Commission finds that these stricter criteria could also contribute to the de-politicisation of the position of Prosecutor General, together with adequate safeguards in the appointment process.<sup>98</sup> In particular, and as recommended previously, the presence of a Prosecutorial Council which could provide professional expertise in the appointment process would constitute an overall important element for the system of democratic checks and balances.<sup>99</sup> This would be particularly relevant in a system, such as the Hungarian, where the Prosecutor General enjoys wide powers.

45. Accordingly, the Venice Commission recommends amending the eligibility criteria for the position of Prosecutor General. The Prosecutor General should be appointed among the senior career prosecutors or have a significant work experience as a prosecutor, judge, lawyer, or similar and have specific competencies required for this high-level organisational role, including

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<sup>93</sup> CDL-AD(2024)034, cited above, §§ 27 and 33, with further references; see also [CDL-AD\(2010\)040, Report on European Standards as regards the Independence of the Judicial System: Part II- the Prosecution Service](#), §§ 34-40.

<sup>94</sup> Venice Commission, [CDL-AD\(2012\)008](#), *Opinion on Act CLXIII of 2011 on the prosecution service and Act CLXIV of 2011 on the status of the Prosecutor General, prosecutors and other prosecution employees and the prosecution career of Hungary*, §16.

<sup>95</sup> *Ibidem*, §§ 47, 87.

<sup>96</sup> *Ibidem*, § 21.

<sup>97</sup> Venice Commission, [CDL-AD\(2023\)029](#), *The Netherlands – Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on legal safeguards of the independence of the judiciary from the executive power*, §§ 9-10.

<sup>98</sup> The Venice Commission notes that the European Commission’s [Rule of Law Report Chapter on Hungary 2024](#) found that “Political influence on the prosecution service remains, with the risk of undue interference with individual cases”, see p. 1.

<sup>99</sup> CDL-AD(2012)008, cited above, §§ 49-51; see also CDL-AD(2010)040, cited above, §§ 34-40.

managerial skills. The Commission further recommends introducing sufficient guarantees in the Prosecutor General's appointment process, such as the establishment of a Prosecutorial Council.

### C. Appointment and retirement of judges

#### a. Appointment age

46. The Fourteenth Amendment increases the appointment age for judges from 30 to 35 years. Council of Europe standards regarding conditions for appointing judges do not mention certain age as a limit even though there are national systems with such provisions.<sup>100</sup> CM Recommendation 2010(12) suggests that decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities. Such decisions should be based on merit, having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity.<sup>101</sup>

47. The explanatory memorandum states that raising the age limit for appointment as a judge to 35 years can ensure that the professional skills of future judges are further strengthened and can contribute to enhancing public confidence and the quality of judicial decision-making.<sup>102</sup> This is a legitimate aim. In the past, the Commission had not criticised raising the minimum age requirement from 25 to 30 years for newly appointed judges in order for them to gather more experience.<sup>103</sup>

48. The Venice Commission notes that Act LXXIV of 2024, adopted in parallel to the Fourteenth Amendment (see paragraphs 16-17 above) introduced the requirement according to which candidates should now have two years of practice gained outside the judiciary and at least one year practice (a pre-existing requirement) gained in one of certain specified legal positions (such as judicial clerk, deputy prosecutor, attorney-at-law, notary, legal adviser, government official, civil servant), thus giving decisive importance to experience gained outside the judiciary. Some representatives of the judiciary met by the Venice Commission's delegation expressed the fear that, instead of attracting new candidates, the new rules, coupled with the allegedly low salaries paid to judges, would rather discourage them from aiming at the judicial career, as they would now have to wait a long period of time before becoming judges. They further argued that it would be appropriate knowledge and training within the very court system or other law enforcement bodies that would contribute to an improvement in the quality of judicial decision-making.

49. The Venice Commission finds that raising the minimum age for the appointment of judges from 30 to 35 years, although rather high, is not *per se* contrary to international standards. Moreover, the Venice Commission finds that the requirement to have a fresh outside view into the court system may be welcomed. When the Council of Europe standards are followed (i.e. judges are appointed without any discrimination, on the base of merit, having regard to qualifications, skills and capacity to fulfil judicial duties), the age of the candidate is within the discretion of the authorities.<sup>104</sup> Whether raising the minimum age, coupled with the new requirement of having two years of practice gained outside the judiciary will serve, alone and in the abstract, to enhance public confidence in the judiciary and the quality of judicial decision-making it is a question that the Venice Commission cannot answer at this early stage.

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<sup>100</sup> Venice Commission, [CDL-AD\(2019\)024](#), *Armenia - Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI), on the amendments to the Judicial Code and some other Laws*, §55.

<sup>101</sup> Committee of Ministers of the Council of Europe, [CM/REC\(2010\)12 and explanatory memorandum](#), *Judges: independence, efficiency and responsibilities*.

<sup>102</sup> In its written comments, the National Office for the Judiciary pointed out that the average age of the judges appointed in Hungary since 2022 (nearly 190 judges) was 39.5 years.

<sup>103</sup> Venice Commission, [CDL-AD\(2013\)014](#), *Opinion on the Draft Law on the amendments to the Constitution, Strengthening the Independence of Judges and on the Changes to the Constitution proposed by the Constitutional Assembly of Ukraine*, § 26.

<sup>104</sup> CDL-AD(2019)024, cited above, § 55.



b. Retirement age

50. In parallel, the Fourteenth Amendment provides that judges may continue to serve until they reach the general retirement age or, in cases provided for by a cardinal Act, until they reach the age of 70. The explanatory memorandum is silent on the reasons for this change. The Agreement that triggered the amendment mentions that the reason is to “*maintain the high quality of the work of the court*”.

51. As the Venice Commission has stated earlier, it is up to the democratic legislator to define the retirement age of judges.<sup>105</sup> However, retirement age for judges should be clearly set out in the legislation. Any doubt or ambiguity has to be avoided and a body taking decisions on retirement should not be able to exert discretion.<sup>106</sup> Similarly, the Court of Justice of the European Union has found that although it is for the Member States alone to decide whether or not they will authorise an extension to the period of judicial activity beyond the normal retirement age, the fact remains that, where those Member States choose to adopt such a mechanism, they are required to ensure that the conditions and the procedure to which such an extension is subject are not such as to undermine the principle of judicial independence.<sup>107</sup> In this regard, the Commission had already the chance to comment on changes to the retirement age in Hungary in a 2012 Opinion and examined the issue with respect to its effect on judicial independence.<sup>108</sup>

52. The draft amendments to Act CLXII of 2011 setting the criteria for the continued employment of judges after reaching the general retirement age are still pending before the Parliament.

53. In the context of the present Opinion, the Venice Commission stresses that the possibility of prolongation of the term of office should be based on criteria which are sufficiently clear, verifiable and objective,<sup>109</sup> so that no undue discretion would be conferred on the deciding authority, and no risk of pressure on judges would be introduced.

54. The Venice Commission, nevertheless, would like to stress that a generalised increase of the retirement age for judges would also be acceptable, provided that it is not discriminatory.<sup>110</sup> This would also serve the stated aim of maintaining high the quality of the work of courts, by allowing judges who wish to continue working to remain in office beyond the general retirement age of 65 years until 70. Indeed, in the past, the Commission has also observed that there is a general trend which consists of introducing a higher age of retirement for judges.<sup>111</sup>

55. Accordingly, since the authorities appear to wish to increase the retirement age for judges, they could for example introduce a system in which judges can remain in office until the mandatory retirement age of 70 if they so wish, otherwise retire when they have reached the ordinary legal threshold for retirement. In the opinion of the Commission, such a system would be more respectful of the judicial independence. While the assessment of the draft Omnibus law amending Act CLXII of 2011 falls beyond the scope of this Opinion, it appears *prima facie* that the new draft provisions, in their version as introduced before Parliament in May 2025, pursue

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<sup>105</sup> Venice Commission, [CDL-AD\(2017\)031](#), *Opinion on the Draft Act amending the Act on the National Council of the Judiciary; on the Draft Act amending the Act on the Supreme Court, proposed by the President of Poland, and on the Act on the Organisation of Ordinary Courts*, § 45.

<sup>106</sup> Venice Commission, [CDL-AD\(2013\)034](#), *Opinion on proposals amending the Draft Law on the amendments to the Constitution to strengthen the independence of Judges of Ukraine*, § 52; see also, [CDL-AD\(2022\)050](#), *Montenegro - Opinion on the draft amendments to the Law on the Judicial Council and Judges*, §§ 14-15.

<sup>107</sup> CJEU, *Commission v. Poland (independence of ordinary courts)*, [C-192/18](#), 5 November 2019, § 118.

<sup>108</sup> Venice Commission, [CDL-AD\(2012\)001](#), *Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary*, §§ 102 et ff.

<sup>109</sup> See, *mutatis mutandis*, CJEU, [C-192/18](#), cited above, § 122.

<sup>110</sup> Venice Commission, [CDL-AD\(2018\)028](#), *Malta - Opinion on Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement*, § 41.

<sup>111</sup> [CDL-AD\(2017\)031](#), cited above, § 45.



this approach. Any alternative mechanism authorising extensions upon request to the period of judicial activity beyond the normal retirement age, should be based on clear, verifiable and objective criteria to avoid any undue discretion of the deciding authority. The Venice Commission invites the authorities to take into account this recommendation when developing the further regulation of the retirement age in the cardinal Act.

#### **D. Eligibility criteria for Constitutional Court judges**

56. According to the law as amended, while it is still required that candidates for the office of a judge of the Constitutional Court have a law degree and be either academics with “outstanding theoretical knowledge” (meaning, according to the law, university professors or doctors of the Hungarian Academy of Sciences) or have at least twenty years of professional experience in the field of law, it is no longer necessary that such professional experience “in the field of law” be acquired in a position for which there is a statutory requirement to have a law degree.

57. The Venice Commission recently carried out a comparative survey on the qualification criteria for judges of constitutional courts.<sup>112</sup> The survey showed that no unambiguous European standard exists in respect of professional experience. Most constitutions and/or laws on constitutional courts contain as an eligibility criterion for Constitutional Court judges a certain level of professional legal experience prior to appointment, either by specifying the professions or professional groups (i.e., judges, professors of law etc.) from which candidates are drawn or by requiring experience in the legal field in general, with a duration anywhere from five to 20 years.<sup>113</sup> There are some notable exceptions: the French Constitution is silent about any qualification criteria for members of the Constitutional Council, which in theory allows all French citizens enjoying full civil and political rights to become members of the Constitutional Council. Moreover, certain constitutions and constitutional laws do not specify the years of legal experience required but instead refer to the pertinence of this experience, for example professional experience appropriate for the high status of a member of the Constitutional Court in Georgia.<sup>114</sup>

58. Hungary falls within the group of States which value a robust legal experience, by requiring that candidates for the post of a constitutional court judge, in addition to having a law degree and being between forty-five years and seventy years of age, be either academics with “outstanding theoretical knowledge” (university professors or doctors of the Hungarian Academy of Sciences) or have at least twenty years of professional experience in the field of law.

59. The further condition (now repealed) that such legal experience be acquired in a position for which a law degree is required by law was a unique specification that does not seem to exist anywhere else.<sup>115</sup> The stated aim of the legislator, as confirmed by the interlocutors of the Commission during the online meetings, is to broaden the pool of suitable people with a law degree to apply for the position of Constitutional Court judge. As an example, members of the parliamentary majority referred to people carrying out legal tasks at the Ministry of Justice, a work for which a law degree is not statutorily required.<sup>116</sup>

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<sup>112</sup> Venice Commission, [CDL-AD\(2024\)015](#), *Bosnia and Herzegovina - Opinion on the method of electing judges to the Constitutional Court*, §§ 8 et ff.

<sup>113</sup> Ibidem, § 19.

<sup>114</sup> Ibidem, § 12.

<sup>115</sup> Ibidem, § 14.

<sup>116</sup> The explanatory memorandum reads: “At present, many jobs are not linked to a law degree, although the job holder is undoubtedly engaged in professionally relevant legal work, which also qualifies him or her to be a constitutional judge. In line with this, neither the European Constitutions nor the laws on the Constitutional Court contain a condition that only legal practice for which a law degree is required is to be regarded as legal practice. In the vast majority of Member States, the only professional condition for becoming a constitutional judge is the length of the period of legal practice, without any additional condition, such as in Slovakia, Romania, Poland, Spain and the Czech Republic. In some cases, there are no professional conditions at all, for example in the case of France, where no such conditions are laid down in the Constitution for members of the Constitutional Council.”

60. The Venice Commission has previously noted that “constitutional courts often value a diverse composition”.<sup>117</sup> It is indeed common that constitutional courts be composed in ways that depart considerably from the manner in which ordinary courts are composed, with the former having a much broader flexibility and diversity in their composition, in recognition of the different political and institutional role that they play.<sup>118</sup>

61. However, the Commission would normally believe that “experience in the field of law” is acquired in legal professions which require a law degree. Framed as it is, the law increases the discretion of the appointing body in deciding what “experience in the field of law” means. The law and its explanatory memorandum are silent when it comes to the professional experience that could qualify a candidate for the post. It is not clear whether, for example, professional experience as a Minister would qualify the candidate to apply for the post, or whether only more technical positions within a Ministry would count. Similarly, it is unclear whether a member of Parliament who has served on a parliamentary legal committee, or an NGO employee who works on legal issues, can stand as a candidate.

62. The amendment, insofar as it broadens the pool of possible candidates to the post of Constitutional Court judge, does not go against international standards and practice. However, the Commission finds that the Law should avoid granting excessive discretion on the appointing body in deciding what “experience in the field of law” means. The Commission therefore recommends clarifying what kind of experience “in the field of law” (acquired in a position for which a law degree is not needed by law) would qualify a candidate to be appointed Constitutional Court judge.

#### **IV. Conclusions**

63. The Monitoring Committee of the Parliamentary Assembly of the Council of Europe requested an Opinion of the Venice Commission of the Council of Europe on the Fourteenth Amendment to the Fundamental Law of Hungary as well as on Act LXVII of 2024, which amended Act CLI of 2011 on the Constitutional Court and Act CLXIV of 2011 on the status of the Prosecutor General, public prosecutors and other members of the public prosecution service and on the career of public prosecutors.

64. The Fourteenth Amendment dealt with changes in the eligibility criteria to be appointed Prosecutor General, who will no longer need to be elected from among career prosecutors; the increase of the appointment age for judges from 30 to 35 years; and the possibility for judges, pursuant to criteria to be laid down in a cardinal Act yet to be adopted, to remain in service until 70 years old with the general retirement age being 65. Act LXVII of 2024 changed the requirement to be appointed Constitutional Court judge, by repealing the requirement according to which legal professional experience had to be acquired in a position for which there is a statutory requirement to have a law degree.

65. The Commission regrets that the amendments under examination have been adopted through a procedure which did not include any impact assessment or meaningful consultations with the public or with the relevant stakeholders, including the judiciary. The Commission notes that this has become a repetitive issue in Hungary.

66. The Venice Commission is concerned that the new eligibility criteria to be elected Prosecutor General no longer require candidates to be career prosecutors. Providing that candidates for Prosecutor General are career prosecutors or have significant professional experience as a legal

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<sup>117</sup> Venice Commission, [CDL-AD\(2017\)001](#), *Slovak Republic - Opinion on questions relating to the appointment of Judges of the Constitutional Court*, § 56.

<sup>118</sup> CDL-AD(2024)015, cited above, § 20.

professional and specific managerial skills would ensure the candidates' capacity to lead the prosecution service efficiently.

67. Moreover, together with sufficient guarantees in the appointment process, such as, for example, the involvement of an independent Prosecutorial Council, such stricter eligibility criteria would contribute to reduce the risk of politicisation of the Prosecutor General. The findings above are particularly relevant in a system, such as the Hungarian, where the Prosecutor General enjoys wide powers.

68. While the Commission does not criticise as such an increase in the age limit for appointment as a judge to 35 years, the question whether raising the minimum age, coupled with the new requirement of having two years of practice gained outside the judiciary will serve, alone and in the abstract, to enhance public confidence and the quality of judicial decision-making cannot be answered at this early stage.

69. As to the possibility for judges to remain in service beyond the general retirement age, the Commission finds that the system that would best respect the principle of judicial independence would be one in which judges can, as a rule, remain in office until a mandatory retirement age of 70 if they so wish, otherwise retire when they have reached the ordinary legal threshold for retirement, i.e. 65 years old. In the alternative, any mechanism authorising an extension to the period of judicial activity beyond the normal retirement age should be based on sufficiently clear, verifiable, and objective criteria to avoid conferring an undue discretion on the deciding authority and impinging upon judicial independence.

70. Lastly, the Commission finds that, while broadening the pool of possible candidates to the post of Constitutional Court judge does not go against international standards and practice, it is not clear what kind of experience "in the field of law" (acquired in a position for which there is no statutory requirement to have a law degree), could qualify a candidate for the post.

71. Accordingly, the Venice Commission recommends:

- (1) In order to ensure that candidates for the post of Prosecutor General have the necessary capacity to lead the prosecution service efficiently, amending the eligibility criteria for the position of Prosecutor General by providing that he/she be appointed among the senior career prosecutors or that he/she meets substantially higher professional eligibility criteria, such as a significant work experience as a prosecutor, judge, lawyer or similar and specific competencies required for this high-level organisational role, including managerial skills;
- (2) Considering introducing sufficient guarantees in the Prosecutor General's appointment process, such as the establishment of a Prosecutorial Council, so that, together with the stricter eligibility criteria indicated above under (1), this can contribute to reducing the risk of politicisation of the prosecution service;
- (3) Since the authorities appear to wish to increase the retirement age for judges, considering introducing a system in which judges can, as a rule, remain in office until the mandatory retirement age of 70 if they so wish, otherwise retire when they have reached the ordinary legal threshold for retirement, i.e. 65 years old. Any alternative mechanism authorising extensions upon request to the period of judicial activity beyond the normal retirement age (65 years old), should be based on clear, verifiable and objective criteria to avoid any undue discretion of the deciding authority;
- (4) Clarifying what kind of experience "in the field of law" (acquired in a position for which there is no statutory requirement to have a law degree) would qualify a candidate to be appointed Constitutional Court judge, in order to avoid any undue discretion of the appointing body.

72. The Venice Commission remains at the disposal of the Hungarian authorities and of the Parliamentary Assembly for further assistance in this matter.