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

MONTENEGRO

FOLLOW-UP OPINION TO THE OPINION
ON SOME QUESTIONS RELATING TO THE PROCEDURE OF EARLY
TERMINATION OF THE MANDATE OF CONSTITUTIONAL COURT
JUDGES DUE TO AGE LIMITS

Adopted by the Venice Commission
at its 145th Plenary Session
(Venice, 12-13 December 2025)

On the basis of comments by

Ms Marta CARTABIA (Member, Italy)
Mr Philip DIMITROV (Expert, Former Member, Bulgaria)
Mr Michael FREND (Member, Malta)
Mr Eirik HOLMØYVIK (Member, Norway)

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Table of Contents

I.	Introduction	3
II.	Analysis.....	3
A.	Preliminary remarks.....	3
B.	Follow-up to the recommendations.....	4
1.	The definition of the retirement age of the judges of the Constitutional Court	4
2.	The introduction of a simplified default mechanism concerning the notification on the fulfilment of conditions for old-age pension of the constitutional court judges and refusal of the constitutional court judges on account of conflict of interest	4
3.	The introduction of a provision allowing a judge to continue to perform his or her office until the new judge takes up office	6
III.	Conclusion	8

I. Introduction

1. By letter of 28 October 2025, Mr Bojan Božović, Minister of Justice of Montenegro, requested an opinion of the Venice Commission of the Council of Europe on the draft law amending the Law on the Constitutional Court of Montenegro ([CDL-REF\(2025\)050](#), hereinafter “the draft law”). Having regard to the fact that the draft law is directly related to the Venice Commission’s previous Opinion on some questions relating to the procedure of early termination of the mandate of Constitutional Court judges due to age limits¹ ([CDL-AD\(2025\)029](#), hereinafter “the June Opinion”), adopted by the Venice Commission at its 143rd Plenary Session (online, 13-14 June 2025), it was decided to use the follow-up format to prepare this Opinion.

2. Ms Marta Cartabia, Mr Philip Dimitrov, Mr Michael Frendo, and Mr Eirik Holmøyvik acted as rapporteurs for this follow-up Opinion.

3. Taking into account that broad consultations with the relevant stakeholders had taken place during the preparation of the June Opinion, neither a country visit nor online consultations with the stakeholders were considered necessary.

4. This follow-up Opinion was prepared in reliance on the English translation of the draft law. The translation may not accurately reflect the original version on all points.

5. This follow-up Opinion was drafted on the basis of comments by the rapporteurs. Following an exchange of views with Mr Momo Koprivica, Deputy Prime Minister for Political System, Justice, and Anti-Corruption of Montenegro, it was adopted by the Venice Commission at its 145th Plenary Session (Venice, 12-13 December 2025).

II. Analysis

A. Preliminary remarks

6. The Venice Commission adopted the June Opinion following a request which stemmed from a political agreement between the government and opposition representatives in order to put an end to a controversy as regards the interpretation of the relevant domestic law relating to early termination of the mandate of a judge of the Constitutional Court on the grounds that he/she reached the retirement age. In the June Opinion, the Venice Commission made the following observations and recommendations:

“The Commission warmly welcomes the fact that its interlocutors were of the opinion that legislative reform is required to ensure that a similar situation should not arise again. This opinion refers to elements which could become part of such reforms. In order to avoid similar situations in the future, the Venice Commission recommends considering the following proposals:

- to adopt a clear statutory framework expressly addressing the retirement age of the judges of the Constitutional Court;*
- to introduce a simplified default mechanism concerning the notification on the fulfilment of conditions for old-age pension of the constitutional court judges;*
- to adopt a provision allowing a judge to continue to perform his or her office until the new judge takes up office, in order to avoid a situation in which judicial positions are vacant due to the fact that new judges have not been nominated;*

¹ According to the explanatory report of the draft law, the reason for its adoption is “to improve certain legal provisions in accordance with the recommendations contained in the Opinion of the Venice Commission CDL-AD(2025)029 on some questions relating to the procedure of early termination of the mandate of Constitutional Court judges due to age limits” (see [CDL-REF\(2025\)050](#)).

- to consider expanding the provisions on recusal of constitutional court judges on account of conflict of interest, with due regard to procedural guarantees and to the preservation of the functioning of the Constitutional Court.”²

7. To address the Venice Commission’s recommendations of the June Opinion, the Ministry of Justice established a working group which prepared the draft law amending the Law on the Constitutional Court.

8. This follow-up Opinion will therefore examine the draft law in the light of the recommendations made in the June Opinion. The current Opinion will further provide additional guidance and assistance on the implementation of these recommendations.

B. Follow-up to the recommendations

1. The definition of the retirement age of the judges of the Constitutional Court

a) Recommendation to adopt a clear statutory framework expressly addressing the retirement age of the judges of the Constitutional Court

9. The draft law proposes the introduction of a new Article 5b which clearly specifies that “a judge of the Constitutional Court and the President of the Constitutional Court shall fulfil the conditions for old-age pension when he/she reaches the age of 66 and completes at least 15 years of insurance service”. The Venice Commission welcomes the introduction of this provision expressly and clearly providing for the retirement age of the judges of the Constitutional Court in the legislation on the Constitutional Court. The adoption of this provision will avoid any future doubt or ambiguity. The Venice Commission also does not see any problem as regards the requirement of at least 15 years of insurance service in the light of Article 153 paragraph 4 of the Constitution which requires at least 15 years of experience in order to be elected to the position of the judge of the Constitutional Court.

10. Accordingly, the Venice Commission considers that this recommendation has been fully followed in the draft law.

11. The Venice Commission further calls upon the Montenegrin authorities to make amendments to the relevant provisions of the Law on Pension and Disability Insurance and, if necessary, any other legislative acts in order to avoid any contradiction between the Law on the Constitutional Court of Montenegro and other legislative acts as regards the retirement age of the judges of the Constitutional Court.

2. The introduction of a simplified default mechanism concerning the notification on the fulfilment of conditions for old-age pension of the constitutional court judges and recusal of the constitutional court judges on account of conflict of interest

b) Recommendation to introduce a simplified default mechanism concerning the notification on the fulfilment of conditions for old-age pension of the constitutional court judges

c) Recommendation to consider expanding the provisions on recusal of constitutional court judges on account of conflict of interest, with due regard to procedural guarantees and to the preservation of the functioning of the Constitutional Court.

12. It is proposed to amend Article 7 paragraph 2 of the law on the Constitutional Court concerning the notification on the fulfilment of conditions for old-age pension of the constitutional

² Venice Commission, [CDL-AD\(2025\)029](#), Montenegro - Opinion on some questions relating to the procedure of early termination of the mandate of Constitutional Court judges due to age limits, para. 68.

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

13. Amended Article 7 paragraph 2, firstly, extends the notice of upcoming attainment of age limit or of mandate expiry from six months to one year; secondly, it clarifies that the Constitutional Court must declare when the relevant mandate terminates.

14. The Venice Commission at the outset welcomes the existence of the above notification procedure.³ The proposed extension of the mandatory period of advance notice will provide the competent proposer with sufficient time to initiate and conduct the procedure for nomination of the new judges of the Constitutional Court.

15. As regards the change concerning the explicit duty of the Constitutional Court to establish, at its session, the date of termination of the mandate of the judge, the Venice Commission observes that this change follows the wording of Article 154 of the Constitution of Montenegro which requires the establishment of this fact by the Constitutional Court “at a session.”⁴

16. The Commission notes, in this connection, that the draft law also introduces a new Article 7a which reads as follows:

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

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

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

17. Draft Article 7a clarifies two aspects of the procedure for the establishment of the ground for the termination of mandate at a session. Firstly, it provides for a duty to self-recuse for those judges who are personally affected by possible termination. Secondly, it introduces a simplified default mechanism concerning the notification of the ground for termination in case, due to recusal or for other justified reasons, there is not a sufficient number of judges to hold a session of all judges of the Constitutional Court. In particular, this provision indicates explicitly who has the duty to notify.

18. The Venice Commission endorses and welcomes the introduction of this duty of self-recusal and of the simplified default mechanism of notification. It notes with appreciation that the proposed default mechanism covers not only the situation in which it will not be possible to hold a session due to the reason for recusal, but also when it will not be possible to hold a session due to other justified reasons. In this connection, in order to avoid any misuse of this default mechanism other justified reasons must be understood as long-term justified reasons, excluding the cases of absence of a judge for health or other reasons for a short period of time. The Venice

³ Venice Commission, [CDL-AD\(2017\)011](#), Armenia – Opinion on the draft constitutional law on the Constitutional Court, paras. 22-23.

⁴ The relevant part of Article 154 of the Constitution of Montenegro reads as follows: “*The Constitutional Court shall establish the emergence of reasons for cessation of duty or release from duty, in its session and shall inform the Parliament of that case.*”

Commission considers that the introduction of such a mechanism is all the more important in the case of the Constitutional Court of Montenegro which does not currently operate with a full bench since two out of seven positions are still vacant.

19. Therefore, the Venice Commission considers that the recommendations b) and c) above have been fully followed.

3. The introduction of a provision allowing a judge to continue to perform his or her office until the new judge takes up office

d) to adopt a provision allowing a judge to continue to perform his or her office until the new judge takes up office, in order to avoid a situation in which judicial positions are vacant due to the fact that new judges have not been nominated

20. The draft law proposes to amend the current text of Article 15 in order to allow a judge to continue to perform his or her office until the new judge takes up office. Proposed new Article 15 reads as follows: “*when the office of a Constitutional Court judge terminates due to the fulfilment of the conditions for old-age pension or due to the expiry of the term of office and the proposer does not nominate or the Parliament does not elect a Constitutional Court judge to fill the vacant position, if it is necessary for decision-making by majority vote of all judges of the Constitutional Court, that judge, with his/her consent, may continue to perform the office of a Constitutional Court judge until a new judge is elected.*”

21. The Venice Commission observes at the outset that this proposal addresses its long-standing recommendation expressed in previous opinions about the advisability to adopt a provision allowing a judge of the Constitutional Court to continue to perform his or her office until the new judge takes up office, in order to avoid a situation in which judicial positions are vacant due to the fact that new judges have not been nominated.⁵ Accordingly, the Venice Commission welcomes this new provision. The Venice Commission also observes that most Council of Europe member states with a similar rule provide for automatic continuation of a judge’s term until a successor is elected, without any conditions.⁶ This approach provides a clear rule with less potential for conflict over interpretation.

22. However, the Venice Commission notes that this proposal does not provide for an automatic continuation of the term of office of a judge, but makes it conditional “if it is necessary for decision-making by majority vote of all judges of the Constitutional Court”. In the requesting letter to the Venice Commission, the Minister of Justice noted that the proposed legal provisions were drafted with careful consideration of the constitutional provisions, taking into account constitutional limitations and the potential for future questions concerning the constitutionality of the proposed legal solutions. The Venice Commission is also aware of the concerns expressed by some members of the working group about the continuation of the mandate of a judge of the Constitutional Court, proposing a solution limited in time to six months and solutions depending on special circumstances, such as state of war or state of emergency.

23. The Venice Commission reiterates that allowing constitutional judges to remain in office until the appointment of a successor, as an exception to constitutional provisions on the term of office of constitutional judges, is a relatively common practice in Europe, permitting constitutional courts to continue to function when appointments of new judges are blocked.⁷ Accordingly, the provision allowing a judge to remain in office until a successor is appointed should be connected to the

⁵ Venice Commission, [CDL-AD\(2014\)033](#), Montenegro – Opinion on the draft law on the Constitutional Court of Montenegro, para. 20, and Venice Commission, [CDL-AD\(2025\)029](#), Montenegro - Opinion on some questions relating to the procedure of early termination of the mandate of Constitutional Court judges due to age limits, para. 59.

⁶ Venice Commission, [CDL-AD\(2024\)002](#), Bosnia and Herzegovina – Opinion on certain questions relating to the functioning of the Constitutional Court of Bosnia and Herzegovina, para. 22.

⁷ Venice Commission, [CDL-AD\(2024\)002](#), Bosnia and Herzegovina – Opinion on certain questions relating to the functioning of the Constitutional Court of Bosnia and Herzegovina, para. 22.

necessity of the proper functioning of the Constitutional Court without interruption, and not to other special circumstances. Moreover, setting a time limit for such an anti-blocking mechanism could still lead to a blockage of the Constitutional Court, should new judges fail to be elected within the prescribed period. The period of six-month might have some instructive effect, but it does not help avoiding blockages.

24. As to the condition “if it is necessary for decision-making by majority vote of all judges of the Constitutional Court”, the purpose of this condition appears to be twofold: on the one hand, it aims to achieve the continuing functioning of the Constitutional Court by ensuring necessary decision-making by majority vote of all judges of the Constitutional Court and, on the other hand, it aims to avoid any possible abuse or procrastination of the election of new judges of the Constitutional Court by the appointing authority.

25. In this connection, the Venice Commission understands the legitimate concerns about the risk of deliberate prolonged inactivity by the appointing authority to keep a judge in office. While the provision allowing a judge to remain in office until a successor is appointed is an important safeguard for ensuring the continuing functioning of a Constitutional Court, it should not be seen as a long-term solution to the potential instability of a Constitutional Court.⁸ In that connection, the Venice Commission underlines the importance of the mutual respect and cooperation between all the constitutional bodies in a democratic society. Compliance with the rule of law cannot be restricted to the mere implementation of the explicit and formal provisions of the Constitution and of the law. It also implies constitutional behaviour and practices, which facilitate the compliance with the formal rules by all the constitutional bodies and the mutual respect between them.⁹

26. The Venice Commission further observes that although this proposed condition aims to achieve the continuing functioning of the Constitutional Court by ensuring decision-making by majority vote of all judges of the Constitutional Court, it lacks clear regulation of some important elements.

27. Firstly, regarding the “necessary number of judges”, the Venice Commission considers that if the intention of the authorities is to refer to the *minimum* number required for decision-making by majority vote, – namely, four judges, which is as also the number needed for a quorum¹⁰, – this should be worded in clear and unequivocal terms.

28. Secondly, the Venice Commission observes that this condition creates a difference in treatment between judges based on the number of vacant positions at the Constitutional Court

⁸ Venice Commission, [CDL-AD\(2025\)005](#), Moldova – Opinion on the draft law on the Constitutional Court, para. 63.

⁹ Venice Commission, [CDL-AD\(2012\)026](#), Romania – Opinion on the compatibility with constitutional principles and the rule of law of actions taken by the Government and the Parliament of Romania in respect of other State institutions and on the Government emergency ordinance on amendment to the Law No. 47/1992 regarding the organisation and functioning of the Constitutional Court and on the Government emergency ordinance on amending and completing the Law No. 3/2000 regarding the organisation of a referendum, para 72, and Venice Commission, [CDL-AD\(2025\)029](#), Montenegro – Opinion on some questions relating to the procedure of early termination of the mandate of Constitutional Court judges due to age limits, para. 43.

¹⁰ The Venice Commission made the following observations about the absence of the quorum rule in the Montenegrin legislations: “Another point concerns the number of judges required to have a quorum. Neither the draft law nor the Constitution lay down explicitly if a valid vote requires the attendance of all seven judges or if a still smaller, minimum number is sufficient. A provision setting up a minimum number for decision-making secures the autonomy and independence of the Court since otherwise the absence of a single judge is capable of paralysing the Court.” (Venice Commission, [CDL-AD\(2008\)030](#), Montenegro – Opinion on the draft law on the Constitutional Court of Montenegro, para. 29). Given the fact that the Constitutional Court is composed of seven judges and in the light of the relevant provisions of Article 151 of the Constitution (the Constitutional Court shall decide by majority vote of all judges) and Article 39 of the law on the Constitutional Court (The Constitutional Court shall decide on matters within its jurisdiction at a session of all judges) this quorum was considered to be four and in practice in 2022 when the Constitutional Court remained only with three judges it could not function for the lack of quorum (Venice Commission, [CDL-AD\(2022\)053](#), Montenegro – Urgent Opinion on the law on amendments to the law on the President, para. 17).

at the time of the termination of their office. In other words, a judge will not be allowed to continue to remain in his or her office until the election of a new judge when the Constitutional Court operates with a full bench or with five or six judges, but will be allowed to do so if the Constitutional Court operates only with four judges. The Venice Commission can accept such a difference in treatment between judges in the particular circumstances of the Constitutional Court of Montenegro, having regard to the importance of the continued functioning of the Constitutional Court of Montenegro.

29. In that context, the Venice Commission does not overlook the fact that this condition may also create a difference in treatment between judges when the termination of office of two or more judges occurs *on the same date* leaving the Constitutional Court below the number of judges required for decision-making by majority vote. In particular, it is not clear from the proposed amendment, in such circumstances, which of the outgoing judges may continue to remain in his or her office and which judge may not do so or whether all the judges concerned may continue to remain in office.

30. Therefore, the Venice Commission considers that the draft law should clearly regulate the above-mentioned aspects of the condition “if it is necessary for decision-making by majority vote of all judges of the Constitutional Court”, in order to avoid any possible conflict of interpretation on this notion and its application.

31. Consequently, the Commission’s recommendation may be considered to be only partially followed.

III. Conclusion

32. At the request of the Minister of Justice of Montenegro, the Venice Commission of the Council of Europe assessed the draft law amending the Law on the Constitutional Court of Montenegro. In this Opinion, the Venice Commission has examined to which extent the draft law follows the Commission’s previous Opinion on some questions relating to the procedure of early termination of the mandate of Constitutional Court judges due to age limits ([CDL-AD\(2025\)029](#)).

33. The Venice Commission is aware of the fact that the Constitutional Court of Montenegro does not currently operate with a full bench since two out of seven positions are still vacant. This situation shows again the need to adopt a legislative reform in order to ensure the effective functioning of the Constitutional Court without interruption. The Venice Commission praises the efforts made by the Ministry of Justice and all the relevant stakeholders in Montenegro in order to amend the law on the Constitutional Court of Montenegro in light of the Venice Commission recommendations made in June this year.

34. The Venice Commission welcomes the fact that the draft law addresses all four recommendations of the June Opinion. The draft law fully follows three recommendations: (1) the definition of the retirement age of the judges of the Constitutional Court, (2) the introduction of a simplified default mechanism concerning the notification on the fulfilment of conditions for old-age pension of constitutional court judges, and (3) recusal of the constitutional court judges on account of conflict of interest. The Venice Commission also welcomes the introduction of the provision allowing a judge to continue to perform his or her office until the new judge takes up office (fourth recommendation) and considers that the proposed provision is a right step towards the implementation of the fourth recommendation.

35. The Venice Commission can accept the conditional nature of the provision providing the continuation of the term of office of an outgoing judge in the particular circumstances of the Constitutional Court of Montenegro, having regard to the importance of the continued functioning of the Constitutional Court of Montenegro. However, it considers that this provision should be drafted in clear and unequivocal terms, without leaving any uncertainty in its application. In particular, firstly, it should be clearly established to which number of judges refers the condition

“if it is necessary for decision-making by majority vote of all judges of the Constitutional Court”. Secondly, the applicability of this condition in case of termination of office of several judges on the same date, leaving the Constitutional Court below the number of judges required by this condition, should also be clarified.

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