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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

ARMENIA

**JOINT OPINION
OF THE VENICE COMMISSION AND THE DIRECTORATE GENERAL
HUMAN RIGHTS AND RULE OF LAW OF THE COUNCIL OF
EUROPE**

ON

**THE DRAFT AMENDMENTS TO THE JUDICIAL CODE OF ARMENIA
(REGARDING EVALUATION OF JUDGES)**

**Adopted by the Venice Commission
at its 140th Plenary Session
(Venice, 11-12 October 2024)**

On the basis of comments by

**Mr Zlatko KNEŽEVIĆ (Member, Bosnia and Herzegovina)
Mr Lauri MÄLKSOO (Member, Estonia)
Ms Hanna SUCHOCKA (Honorary President of the Venice
Commission)
Mr Đuro SESSA (Expert, DGI)**

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I. Introduction

1. By letter of 5 August 2024, Mr Grigor Minasyan, Minister of Justice of Armenia, requested the Venice Commission and the Directorate General Human Rights and Rule of Law (DGI) of the Council of Europe to prepare a Joint Opinion on the draft amendments to the Judicial Code of Armenia regarding evaluation of judges ([CDL-REF\(2024\)035](#) – “draft law”).
2. Mr Z. Knežević, Mr L. Mälksoo and Ms H. Suchocka acted as rapporteurs on behalf of the Venice Commission. Mr D. Sessa acted as a rapporteur on behalf of DGI.
3. On 20 September 2024, the rapporteurs conducted a series of on-line meetings with the representatives of the Ministry of Justice, the National Assembly, the Supreme Judicial Council, the Performance Evaluation Commission of Judges, and the Court of Cassation. Meetings were also held with representatives of international and civil society organisations. The Commission and DGI are grateful to the Ministry of Foreign Affairs and the Council of Europe Office in Armenia for the excellent organisation of the meetings and to the interlocutors for their availability.
4. This 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 opinion was drafted on the basis of comments by the rapporteurs and the results of the online meetings on 20 September 2024. Following an exchange of views with Mr Karen Karapetyan, Deputy Minister of Justice, it was adopted by the Venice Commission at its 140th Plenary Session (Venice, 11-12 October 2024).

II. Background

A. General remarks

6. Following the 2018 'Velvet Revolution', the newly formed government made judicial reform a priority, aiming to improve the overall efficiency of the judiciary and restore public trust therein. Various proposals were put forward, which were discussed with the Venice Commission¹ as well as within the framework of a Council of Europe project dedicated to this matter.²
7. On 21 July 2022, the Government of Armenia approved the Strategy of Judicial and Legal Reforms for 2022 – 2026³ and the resulting Action Plan. In December 2022, the Venice Commission and DGI assessed the role of the Minister of Justice in initiating the disciplinary proceedings against judges and suggested avenues of ensuring the appellate review of the disciplinary decisions of the Supreme Judicial Council.⁴ In its report on Armenia, GRECO also addressed those matters.⁵
8. In December 2023, the Venice Commission and DGI issued an Opinion concerning the reform of the Ethics and Disciplinary Commission of the General Assembly of Judges.⁶ The Ethics and

¹ Venice Commission, [CDL-AD\(2019\)024](#), Armenia - Joint Opinion on the amendments to the Judicial Code and some other Laws, §§ 12 and 13; [CDL-AD\(2022\)002](#), Armenia - Joint Opinion on the draft laws on making amendments to the Constitutional Law on the Judicial Code and to the Constitutional Law on the Constitutional Court, §§ 16-21.

² The Council of Europe [project](#) “Support to the judicial reform – enhancing the independence and professionalism of the judiciary in Armenia”.

³ Decision of the Government of Republic of Armenia No 1133-L of July 21, 2022, [Appendix N 1](#).

⁴ Venice Commission, [CDL-AD\(2022\)044](#), Armenia - Joint Opinion on the draft amendments to the Judicial Code.

⁵ GRECO, [Second Interim Compliance Report](#): Armenia, Fourth Evaluation Round, adopted on 20-24 March 2023, paras. 34 - 43.

⁶ Venice Commission, [CDL-AD\(2023\)045](#), Armenia - Joint opinion on the Concept Paper concerning the reform of the Ethics and Disciplinary Commission of the General Assembly of Judges.

Disciplinary Commission plays a crucial role in initiating and investigating disciplinary cases against judges, while the final decisions rest with the Supreme Judicial Council (SJC). The Venice Commission and DGI praised the authorities for their efforts to strengthen judicial accountability, particularly through the proposed increase in the number of lay members in the Ethics and Disciplinary Commission, a move aimed at reducing judicial corporatism. However, the Opinion underscored the importance of developing a clear and proper procedure for electing these lay members. The authorities are currently in the process of drafting the relevant amendments to address these concerns.

9. In addition, the authorities have opted to tackle another key aspect of judicial accountability: the system for the regular evaluation of judicial performance. The Venice Commission has previously reviewed reforms to Armenia's judicial evaluation system in 2014⁷ and 2019.⁸ This new draft law represents a further attempt to reform the system, which, however, should take into account the Venice Commission's earlier recommendations on the matter.

B. Current model and the proposed amendments

10. The current model for the regular evaluation of judges provides that the General Assembly of Judges is responsible for establishing the performance evaluation commission (PEC) and electing its members for a term of four years (Article 77 §§ 1 and 17 of the Judicial Code). The PEC is comprised of five members, three of whom must be judges, and two academic lawyers. Among the judicial members, one must be selected from the Court of Cassation, one from the Courts of Appeal, and one from the Courts of First Instance (Article 77 § 13). As for the academic lawyers, they are required to possess high professional qualifications, hold an academic degree in Law, and have at least five years of relevant work experience (Article 77 § 15). Candidates for the PEC can be elected by the General Assembly of Judges either through self-nomination or nomination by another judge, while lay members can also be nominated by non-governmental organisations (Article 77 § 16). If the PEC identifies facts that may indicate a disciplinary offence, it must refer the matter to the Ethics and Disciplinary Commission for consideration of disciplinary proceedings against the judge (Article 78 § 7(2)).

11. According to the Explanatory Report to the draft law, the existing evaluation system is deemed inefficient due to the excessive workload and the influence of judicial corporatism. This assessment has been echoed by the majority of interlocutors during their meetings with the rapporteurs. The interlocutors submitted that the five-member PEC is unable to manage, within a reasonable time, the evaluation of 310 active judges in Armenia. Another issue is that the PEC tends to assign excessively positive evaluations, with over 90% of judges receiving "excellent" ratings. This is viewed as inconsistent with the reported low public trust in the judiciary and contradicts the fact that a number of these highly-rated judges are simultaneously facing disciplinary proceedings for professional misconduct. Such circumstances highlight that the current evaluation system lacks practical utility, particularly as it fails to provide objective data necessary for merit-based promotions.

12. The Ministry of Justice thus proposes the following principal modifications by the present draft law:

- a) Increasing the total number of members of the PEC from five to twenty-five, with the number of lay members rising from two to fifteen (draft Article 137 § 3).
- b) Electing lay members of the PEC by the SJC based on nominations from (i) higher education institutions, (ii) non-governmental organisation, and (iii) Judicial Department of the SJC (draft Article 137 § 4), according to pre-determined criteria (see draft Article 137 §§ 11-14).

⁷ Venice Commission, [CDL-AD\(2014\)007](#), Joint Opinion on the Draft Law amending and supplementing the judicial code (evaluation system for judges) of Armenia.

⁸ Venice Commission, [CDL-AD\(2017\)019](#) Armenia - Opinion on the Draft Judicial Code, §§ 69-80.

- c) Increasing the frequency of evaluation cycles from every four years to every two years (draft Article 136 §1).
- d) Limiting the term of the PEC to a single evaluation cycle (draft Article 137 § 25).
- e) Limiting the duration of the evaluation cycle to four months with exceptional extension to six months (draft Article 139 § 1).

13. The Venice Commission and DGI will focus on these most relevant changes and issues arising from discussions with the relevant stakeholders. The absence of comments of the other provisions of the draft law should not be seen as tacit approval of these provisions.

III. Analysis

A. Composition of the PEC

1. Increase of the overall composition of the PEC

14. As previously stated, one of the primary reasons for the inefficiency of the current PEC is its inability to manage the evaluation of the entire judiciary in Armenia, which, according to interlocutors, consists of 310 judges. The proposed solution of increasing the PEC's size is a natural response to this issue. The draft law envisages an increase from five to 25 members. Moreover, the draft law grants the Supreme Judicial Council (SJC) the authority to further increase the number of PEC members (draft Article 137 § 3).

15. The first question to consider is whether such a large composition is justified. Generally, a large number of members does not necessarily enhance efficiency and may instead lead to excessive bureaucracy and a more complex decision-making process. While the final decision on the total number of PEC members rests with the authorities, a preliminary assessment suggests that the body could include a maximum of 15 members. In the given context, a moderate increase to 15 members, rather than 25, would enhance decision-making process, foster better collaboration, reduce costs, maintain focus, and ensure clearer accountability within the evaluation body. Accordingly, this expansion would help improve the PEC's efficiency, which should be pursued alongside other measures such as clarifying evaluation criteria, refining working methods, and digitalising the process.

16. Granting the SJC discretion to increase the PEC's size does not appear justified. It would be preferable to maintain statutory stability in the composition of the PEC, including the proportion of judicial and lay members (regarding the latter, see below).

17. It is also important to note that under the draft law, the PEC will *de facto* operate in at least five autonomous groups. The draft law stipulates that evaluations will be carried out by specific groups of the PEC; the SJC will approve the composition of each group, which must include at least five members. When conducting evaluation of judges, "*the groups shall act as a Commission*" (draft Article 139 § 4).

18. This *modus operandi* raises concerns. First, it may lead to varying proportions between judicial and lay members within each group, undermining the principle of a balanced evaluation body. Second, it risks creating divergent practices, as well as a lack of coherence and coordination among the groups.

19. While it is possible to assign different working groups or rapporteurs to conduct evaluations and make recommendations, it is advisable that these proposals be reviewed and approved by the full PEC. A full-composition review ensures consistency, inclusiveness, and coherence in working methods, approaches, and outcomes. Nevertheless, if the decision-making autonomy is to be given to the specific panels of the evaluation body, then the draft law must ensure that the mixed composition of the overall body is also guaranteed at the panel level.

20. The Venice Commission and DGI therefore recommend reducing the overall number of PEC members from the draft law's proposed 25 to a lower figure, possibly 15 members, and ensuring that evaluation results are examined and approved by the PEC, preferably in its full composition. This would enhance the consistency, efficiency and integrity of the judicial evaluations.

2. Balance of judicial and lay members in the PEC

21. The draft law proposes a significant increase in the number of lay members on the PEC, leaving judicial members a minority.

22. During the rapporteurs' discussions with various interlocutors, opinions on this issue were divided. Proponents of this increase argued that the inefficiency of the current system stems from the judicial majority in the PEC, which has led to cronyism and self-protection. As a result, nearly all judges are rated as "excellent", raising doubts about the accuracy and credibility of these evaluations. Others cited the general atmosphere of public mistrust in the judiciary, which they believe that undermines the objectivity of evaluations by the current PEC, including the majority of judges. However, opponents of the increase argued that a majority of judicial members should be retained. They expressed concerns that allowing a lay majority to regularly assess judges would compromise judicial independence; such a system would lack the necessary professional expertise, and it would similarly fail to produce objective results.

23. This issue was previously addressed in the 2014 Opinion concerning Armenia highlighting the need to safeguard judicial independence, which could be jeopardised by the system of regular evaluation of judges.⁹ This matter should also be viewed in light of the Council of Europe Committee of Ministers Recommendation 12(2010), which provides that decisions affecting judges' careers should be made by bodies with at least half of the members being judges chosen by their peers.¹⁰ Later, the Consultative Council of European Judges (CCJE) suggested that "[i]n order to protect judicial independence, evaluation should be undertaken mainly by judges".¹¹

24. The Venice Commission, in turn, has recognised the challenges posed by having only judges evaluate their peers. It has noted that such practice may *"lead to bad personal relationships between colleagues and has the potential to further undermine the morale of the judiciary. Alternatively, where judges receive favourable evaluations this could give rise to allegations of cronyism. There is a danger that such a system could lack credibility."*¹² It concluded that *"establishing a mixed team of evaluators, inviting legal professionals from outside the current judicial system may be the least bad option"*.¹³

25. The Venice Commission and DGI emphasise that new solutions should be in accordance with the above guiding principles. Firstly, judicial independence must be the paramount consideration, and the concerns for judicial cronyism and self-protection cannot outweigh the need for States to safeguard judicial independence at all times. Secondly, professional expertise is essential, particularly when assessing judicial performance, as it requires a deep understanding of the specifics of judicial work and the related criteria. Thirdly, inclusiveness of

⁹ Venice Commission, [CDL-AD\(2014\)007](#), Joint Opinion on the Draft Law amending and supplementing the judicial code (evaluation system for judges) of Armenia, §§ 126 and 127.

¹⁰ Committee of Ministers, CoE, Recommendation [CM/Rec\(2010\)12](#) on judges: independence, efficiency and responsibilities, § 46.

¹¹ CCJE, [Opinion N° 17 \(2014\)](#) on the evaluation of judges' work, the quality of justice, § 37.

¹² Venice Commission, [CDL-AD\(2014\)007](#), Joint Opinion on the Draft Law amending and supplementing the judicial code (evaluation system for judges) of Armenia, § 69.

¹³ Venice Commission, [CDL-AD\(2014\)007](#), Joint Opinion on the Draft Law amending and supplementing the judicial code (evaluation system for judges) of Armenia, § 70.

the evaluation body should be enhanced, but this must be done by various possible measures (see below) rather than simply resorting to a drastic increase in the lay component.

26. In light of the above, when increasing the composition of the PEC, it is important to ensure that lay members, while remaining in the minority compared to judicial members, nevertheless have a meaningful impact on the decision-making process. One possible solution is to design rules governing quorum and decision-making majorities promoting inclusiveness of lay members. An increased quorum requirement might foster greater involvement, though it should not be so high as to create blockages that impede the PEC's operations. As for voting majorities, it may be prudent to establish that PEC's decisions require the support of representatives from both judicial and lay members.¹⁴ The rules could also specify the exact number of lay members whose votes are necessary for a valid decision, similarly to the models that have been discussed by the Venice Commission in other contexts.¹⁵

3. Eligibility criteria and nomination of candidates to the PEC

27. Under the draft law, judicial members of the PEC are elected by the General Assembly of Judges following either self-nomination or nomination by another judge (draft Article 137 § 6). To be eligible for election, a judge must have at least five years of judicial experience and have received a previous positive evaluation (draft Article 137 § 5). The draft law commendably aims to ensure representation across all judicial levels, establishing quotas for the Court of Cassation, the Courts of Appeal, and the First-Instance Courts. While this approach is welcome, the quota allocated to the First-Instance Courts should not be overly significant. Greater representation should be afforded to senior judges with significant judicial background from higher courts, given their broader perspectives and depth of experience.

28. With regard to lay members, they are to be elected by the SJC based on nominations from three distinct entities: (i) higher education institutions, (ii) non-governmental organisations, and (iii) the Judicial Department of the SJC¹⁶ (draft Article 137 §§ 3 and 4). The inclusion of diverse nominating entities is a positive feature, as it broadens access to the PEC for a wider range of legal professionals. It is also commendable that lay candidates are not nominated by political institutions, which helps to safeguard their neutrality. However, including the Judicial Department as a nominating authority may raise concerns due to its structural proximity to the SJC, which is the electing body. It is generally undesirable for the electing body to also have nominating authority, as this creates a risk of bias in favour of its own candidates, undermining the independence and significance of the other nominating entities. The Venice Commission and DGI therefore recommend removing the Judicial Department from the list of nominating entities to enhance impartiality and fairness in the election process.

¹⁴ Venice Commission, [CDL-AD\(2023\)045](#), Armenia - Joint opinion of the Venice Commission on the Concept Paper concerning the reform of the Ethics and Disciplinary Commission of the General Assembly of Judges, § 26; [CDL-AD\(2022\)019](#), Opinion on the draft law on amending some normative acts (Judiciary) of Moldova, § 49; [CDL-AD\(2023\)006](#), Georgia - Follow-up Opinion to four previous opinions concerning the Organic Law on Common Courts, §19.

¹⁵ For a similar approach see: Venice Commission, [CDL-AD\(2023\)033](#), Georgia - Follow-up opinion on previous opinions concerning the Organic Law on Common Courts, § 18; [CDL-AD\(2021\)018](#), Ukraine - Urgent joint opinion of the Venice Commission on the draft law on amendments to certain legislative acts concerning the procedure for electing (appointing) members of the High Council of Justice (HCJ) and the activities of disciplinary inspectors of the HCJ (Draft law no. 5068), § 48; [CDL-AD\(2023\)022](#), Ukraine - Follow-up Opinion to the opinion on the draft Law on amendments to certain legislative acts of Ukraine on improving the procedure for the selection of candidates for the position of judge of the Constitutional Court of Ukraine on a competitive basis (Draft Law no. 9322 of 25 May 2023), §§ 21 and 24.

¹⁶ According to Article 36 of the Judicial Code, the Judicial Department is formed by the SJC. The Judicial Department ensures the operation of the SJC, courts, General Assembly and commissions of the latter. The operation of the SJC shall be ensured by the central body of the Judicial Department.

29. Regarding the eligibility of lay candidates, the draft law should facilitate access to this role for a broad spectrum of legal professionals and academics. It introduces a requirement for "political restraint and neutrality" for lay candidates, but this criterion is vague and open to broad interpretation, potentially allowing for manipulation. It may be difficult, if not impossible, to find a legal scholar who has never expressed a critical view on the legal policies of his/her country. More specific criteria are advisable, such as introducing a cooling-off period for individuals who have previously held political office before becoming eligible for PEC membership.¹⁷

30. As suggested in the Venice Commission's 2014 Opinion, it would also be prudent to impose clear eligibility restrictions on prosecutors and advocates to avoid conflicts of interest: *"both prosecutors and advocates are well placed to know a judge's strengths and weaknesses. However, they are not disinterested observers. There is a risk that a judge may tailor his or her relations with particular prosecutors or advocates to secure a more favourable assessment or may be perceived as doing so."*¹⁸

31. Moreover, the draft law could consider the eligibility of foreign legal professionals. Several countries facing similar issues of public mistrust in their judiciaries and law-enforcement sectors have included international members in various bodies operating within domestic legal system, vetting commissions¹⁹ (Moldova), ethics council²⁰ (Ukraine's judiciary), advisory panel²¹ (Constitutional Court of Ukraine), various selection commissions.²² Incorporating foreign experts could be considered as an option as it can provide valuable perspectives and further enhance the credibility of the PEC.

B. Evaluation framework

1. Duration of the PEC's mandate

32. Draft Article 137 § 25 provides for a limitation of the mandate of the PEC members to a single evaluation cycle, which is set at four months, with a possible extension to six months (draft Article 139 § 1). Under this framework, a new evaluation cycle would occur every two years, necessitating the election of new PEC members. The reasoning behind establishing such a relatively short mandate remains somewhat unclear and has not been fully elaborated upon by interlocutors during discussions with the rapporteurs.

33. The short mandate may present challenges, as it imposes additional demands on a system that already has a complicated process for nominating and electing both judicial and lay members. The *ad hoc* principle of appointing the PEC members may not facilitate the retention

¹⁷ See also: Venice Commission, [CDL-AD\(2023\)045](#), Armenia - Joint opinion on the Concept Paper concerning the reform of the Ethics and Disciplinary Commission of the General Assembly of Judges, § 32 (*in fine*).

¹⁸ Venice Commission, [CDL-AD\(2014\)007](#), Joint Opinion on the Draft Law amending and supplementing the judicial code (evaluation system for judges) of Armenia, § 67.

¹⁹ Venice Commission, [CDL-AD\(2023\)005](#), Republic of Moldova - Joint opinion on the draft Law on the external assessment of Judges and Prosecutors, §§ 33-35.

²⁰ Venice Commission, [CDL-AD\(2021\)018](#), Ukraine - Urgent joint opinion on the draft law on amendments to certain legislative acts concerning the procedure for electing (appointing) members of the High Council of Justice (HCJ) and the activities of disciplinary inspectors of the HCJ (Draft law no. 5068), §§ 21-22.

²¹ Venice Commission, [CDL-AD\(2022\)054](#), Ukraine – Opinion on the draft law "On Amendments to Certain Legislative Acts of Ukraine on improving the procedure for the selection of candidates for the position of judge of the Constitutional Court of Ukraine on a Competitive Basis", §§ 27-30.

²² See examples mentioned in [CDL-AD\(2022\)054](#), Ukraine – Opinion on the draft law "On Amendments to Certain Legislative Acts of Ukraine on improving the procedure for the selection of candidates for the position of judge of the Constitutional Court of Ukraine on a Competitive Basis", § 32.

of institutional memory, and the advantages of such a model are not immediately apparent. A four-year term, as currently practised, could offer a more effective approach.

34. Additionally, ensuring a gradual replacement of members would help maintain continuity and enhance the efficiency of the PEC.²³ The use of such staggered technique might be beneficial in fostering a stable and consistent system for judicial evaluations in a longer perspective.

2. Frequency of regular evaluations

35. The draft law provides an increase of the frequency of judicial evaluations from the current four-year cycle (as stipulated in Article 137 § 1) to a two-year cycle (see draft Article 136 § 1), applicable to all judges with at least two years of experience (see draft Article 137 § 2). The Explanatory Report provides the rationale for this change, stating that the current four-year evaluation period lacks the flexibility required to keep pace with dynamic social developments and does not sufficiently encourage judges to engage in continuous self-improvement.

36. However, the Venice Commission has previously expressed reservations regarding the adoption of a two-year evaluation cycle in Armenia.²⁴ In other previous assessments, the Commission advised against such frequent evaluations, citing concerns about their potential impact on judicial independence.²⁵ The Venice Commission and DGI reiterate this position and recommend that the authorities reconsider the proposed frequency, suggesting that the evaluation periods be extended to at least three years to strike a more balanced approach.

37. As a broader observation, the Venice Commission and DGI note that the issue of frequent regular evaluations may become less pressing if the integrity and professionalism of candidates are rigorously assessed at the point of entry into the judicial profession. Strengthening these initial selection mechanisms may prove even more pertinent, as it could diminish the necessity for overly frequent evaluations during a judge's tenure.

3. Evaluation criteria

38. The Venice Commission has previously provided recommendations to the Armenian authorities regarding the evaluation criteria for judges.²⁶ In general, judicial performance evaluations may be based on a combination of qualitative criteria (such as professional competencies, organisational capacity, social skills, etc.) and quantitative criteria (such as the number of judgments overturned on appeal, procedural delays, etc.). The CCJE has noted that *“Evaluation must be based on objective criteria. Such criteria should principally consist of qualitative indicators but, in addition, may consist of quantitative indicators.”*²⁷ Similarly, the Venice Commission has previously criticised systems that relied too heavily on mathematical assessments of judges' quantitative performance.²⁸

²³ Venice Commission, [CDL-AD\(2022\)010](#), Georgia - Opinion on the December 2021 amendments to the organic Law on Common Courts, § 56 with further references.

²⁴ Venice Commission, [CDL-AD\(2014\)007](#), Joint Opinion on the Draft Law amending and supplementing the judicial code (evaluation system for judges) of Armenia, §§ 29 and 36.

²⁵ Venice Commission, [CDL-AD\(2018\)022](#), Opinion on the law amending the law on the Judicial Council and on the law amending the law on Courts of “the former Yugoslav Republic of Macedonia”, §47; [CDL-AD\(2019\)008](#), Opinion on the Draft Law on the Judicial Council of North Macedonia, §46.

²⁶ Venice Commission, [CDL-AD\(2014\)007](#), Joint Opinion on the Draft Law amending and supplementing the judicial code (evaluation system for judges) of Armenia, §§ 34-58; [CDL-AD\(2017\)019](#) Armenia - Opinion on the Draft Judicial Code, § 74 et seq.

²⁷ CCJE, [Opinion N° 17 \(2014\)](#) on the evaluation of judges' work, the quality of justice, § 49 (6).

²⁸ Venice Commission, [CDL-AD\(2015\)042](#), Opinion on the Laws on the Disciplinary Liability and Evaluation of Judges of “the Former Yugoslav Republic of Macedonia”, §§ 99 et seq.

39. The draft law retains the evaluation criteria existing currently in the Judicial Code, maintaining a balance between the above-mentioned qualitative and quantitative measures, with qualitative criteria appearing predominant. This is a positive approach, aligning with the Venice Commission's general recommendations, and it should be effectively implemented through the SJC regulations on evaluation methodology. For instance, one of the qualitative criteria – the “ability to justify judicial acts” – involves assessing a judge’s capacity to provide well-reasoned decisions. Various qualitative methods can be employed for this assessment, including the analysis of quashed decisions. As a general observation, such methods must be applied with caution to avoid undermining the principle of *res judicata* and to respect the notion that court decisions are subject to review through the appellate process. If reversal rates are used as part of this evaluation, the criterion may shift towards a quantitative measure, and it is crucial to ensure that only consistently high and persistent reversal rates are considered in this context²⁹ In any event, no criterion should be decisive by itself and the circumstances surrounding the judge’s work during the evaluation period (staffing situation, influx of cases, their complexity, etc.) should be duly taken into account.

40. The current criteria for evaluation remain somewhat vague and open to subjective interpretation. While the development of a more detailed methodology at the level of the SJC is a viable approach, the system would benefit from the inclusion of more concrete and specific criteria at the statutory level. Admittedly it is a complex task, but providing greater clarity in the evaluation criteria at the statutory level would enhance the objectivity and transparency of the process.

41. In addition to clear criteria, the use of reliable and objective data is essential for an effective evaluation system. A key challenge, as highlighted by several interlocutors during discussions with the rapporteurs, is the absence of a comprehensive electronic database and a digitalised judicial workflow in Armenian courts. While efforts to improve this area are ongoing, the necessary digitalisation facilities and AI tools for objective evaluations have not yet been fully developed, making the implementation of the draft Law seem somewhat premature at this stage.

42. The authorities are aware of these challenges, and the Action Plan for e-Justice, introduced in 2019, along with the 2022-2026 Strategy for Judicial and Legal Reforms,³⁰ underscores the importance of setting up a unified ‘e-Justice’ management system and ensuring the accessibility and updating of electronic databases. These initiatives are commendable and should be pursued in tandem with efforts to refine the current evaluation system.

43. A digitalised framework for judicial activity can offer valuable, objective data for judicial evaluations. In this context, the Venice Commission and DGI encourage the authorities to consult the general guidelines and resources developed within the Council of Europe on the digitalisation of judicial systems and the use of artificial intelligence tools in assessing judicial performance.³¹

²⁹ Venice Commission, [CDL-AD\(2018\)022](#), Opinion on the law amending the law on the Judicial Council and on the law amending the law on Courts of “The former Yugoslav Republic of Macedonia”, § 44.

³⁰ Decision of the Government of Republic of Armenia No 1133-L of July 21, 2022, [Appendix N 1](#).

³¹ See European Commission for the Efficiency of Justice (CEPEJ), [Guidelines](#) on e-filing and digitalization of courts: the guidelines provide a robust framework for digital data processing; [Report](#) on case weighting. See also [Resource Centre Cyberjustice and AI | Tableau Public](#) which provides information on AI systems and other key cyberjustice tools applied in the digital transformation of the judiciary. In addition, see [Handbook](#) on court dashboards: the handbook offers detailed examples of how various quantitative parameters of judicial activity can be digitalised, such as the length of hearings and procedural stages. It also outlines how case dispositions (e.g., procedural decisions, judgments on the merits) can be tracked. While the handbook distinguishes between dashboards and performance evaluation, the dashboard concept can be adjusted to facilitate statistical data collection for evaluation purposes.

4. Consequences of the evaluation

44. Under draft Article 140.1 § 1, if a judge's performance is evaluated as low or average, s/he will be required to undergo additional training. Positive evaluations, in turn, provide the basis for the SJC to consider judicial promotions (current Article 89 § 1(1) which remains unchanged).

45. In its previous Opinions, the Venice Commission has consistently emphasised the need to make a clear distinction between the evaluation of judges and the disciplinary accountability system.³² Admittedly, if any errors or misconduct are identified during the evaluation process, this information may be referred to a disciplinary body for appropriate action.³³

46. In line with this approach, draft Article 140.1 § 2 retains the existing provision from the Judicial Code, whereby if the PEC identifies *prima facie* grounds for disciplinary action during the evaluation process, it may refer the matter to the Ethics and Disciplinary Commission for consideration. Importantly, this referral should not carry any binding effect on the disciplinary body, which must remain free to independently examine the material and decide whether to initiate proceedings based on its own assessment. This approach will preserve the necessary distinction between performance evaluations and disciplinary accountability, while ensuring that any serious concerns raised during evaluations are appropriately addressed through the correct channels.

5. Appeals against the PEC's decisions

47. Under draft Article 140 § 7, appeals against evaluation decisions will be reviewed by other members of the PEC, with no further recourse to challenge the decision before an ordinary court. This raises the question of whether such a model aligns with the right of "access to a court" in respect of the claims against negative evaluation decisions. The CCJE has highlighted the importance of judicial review of evaluation decisions, as these decisions may impact "civil rights"³⁴. Such claims may fall within the scope of Article 6 of the ECHR.³⁵

48. While the right of access to court is not absolute and is subject to restrictions and limitations, it remains uncertain whether the restriction on "access to a court" will be justified by the provision of an internal review within the evaluation body, particularly because the PEC may not qualify as a "tribunal" under Article 6 of the ECHR.

49. Even though the Venice Commission previously accepted internal appeals within the SJC as a reasonable compromise in the Armenian legal system – given the SJC's special constitutional status and its potential qualification as a "tribunal" in the meaning of Article 6 of the ECHR³⁶ – this rationale may not apply beyond that specific context. In principle, a model where the entire process, including evaluation and appeal, remains within a single institution may not be the most optimal solution.

50. One alternative could be to allow the SJC to review on appeal the PEC's decisions. However, in 2014 the Venice Commission has observed that "*it would be preferable simply to provide for*

³² Venice Commission, [CDL-AD\(2014\)007](#), Joint Opinion on the Draft Law amending and supplementing the judicial code (evaluation system for judges) of Armenia, § 28; [CDL-AD\(2022\)050](#), Opinion on the draft amendments to the Law on the Judicial Council and Judges of Montenegro, §63

³³ Venice Commission, [CDL-AD\(2014\)007](#), Joint Opinion on the Draft Law amending and supplementing the judicial code (evaluation system for judges) of Armenia, § 107.

³⁴ CCJE, [Opinion N° 17 \(2014\)](#) on the evaluation of judges' work, the quality of justice, § 41.

³⁵ See, *mutatis mutandis*, ECtHR, *Gloveli v. Georgia*, no. [18952/18](#), § 51, 7 April 2022; *Oktay Alkan v. Türkiye*, no. [24492/21](#), 20 June 2023 § 58.

³⁶ Venice Commission, [CDL-AD\(2022\)044](#), Armenia - Joint Opinion on the draft amendments to the Judicial Code, § 19 (observing that the SJC has institutional and procedural features of "court"). See also Art 175 § 2 of the Constitution stating that the SJC "acts as a court".

*an appeal to a court of law.*³⁷ Should the preferable option of judicial appeal be pursued by the authorities, jurisdiction over such appeals could be conferred upon the Court of Cassation, as the highest judicial authority in Armenia.

IV. Conclusion

51. At the request of the Minister of Justice of Armenia, the Venice Commission and the Directorate General Human Rights and Rule of Law (DGI) of the Council of Europe have assessed the draft amendments to the Judicial Code of Armenia regarding evaluation of judges.

52. The draft law aims to reform the system of regular judicial evaluations by the performance evaluation commission (PEC) through several measures, including a significant increase in the number of lay members in the PEC and a higher frequency of evaluations.

53. The Venice Commission and DGI welcome the Armenian authorities' efforts to improve the current evaluation system, which has faced issues of inefficiency due to the excessive workload and ongoing reports of judicial cronyism and self-protection. The fact that nearly all judges receive overly positive evaluations, despite a reported general lack of public trust in the judiciary, raises concerns about the credibility of these evaluation processes.

54. While it is reasonable to consider enlarging the evaluation body, which currently comprises only five members who struggle to review all evaluation files in a timely manner, it is essential that any such an increase maintains a balanced proportion between lay and judicial members. The Venice Commission and DGI caution against an excessive rise in the number of lay members, which could result in judges becoming a minority within the evaluation body. In this respect, it is important to underscore that safeguarding judicial independence should remain the paramount concern. Furthermore, professional expertise is crucial in assessing judicial performance, as this requires a profound understanding of the complexities of judicial responsibilities. Inclusiveness within the evaluation body can be better achieved through alternative measures, such as establishing rules for quorum and decision-making majorities that enhance fair contributions by both judge members and lay members.

55. Additionally, the proposal to increase the frequency of evaluations should be accompanied by relevant efforts focusing on enhancing the verification of integrity and professionalism of candidates at the point of entry into the judiciary. Strengthening entry-level selection mechanisms would reduce the need for too frequent evaluations during a judge's tenure.

56. While the draft law seeks to pursue the legitimate goal of improving judicial accountability, the methods proposed require further consideration and refinement in accordance with the recommendations set out in this opinion. The Venice Commission and DGI would like to highlight the following key recommendations:

1. The operational structure of the evaluation body may involve various groups; however, it is advisable that evaluation decisions be approved, preferably, by the full composition of the body, which could be less numerous than 25 members.
2. The PEC should maintain a balanced proportion between judicial and lay members, with judges retaining a majority.
3. Inclusiveness of lay members can be enhanced by adopting rules on quorum and decision-making majorities to ensure that lay members have a meaningful impact on evaluation decisions.

³⁷ Venice Commission, [CDL-AD\(2014\)007](#), Joint Opinion on the Draft Law amending and supplementing the judicial code (evaluation system for judges) of Armenia, § 86.

4. In the judges' quota for the composition of the evaluation body, the representation of first-instance judges should be reduced, with a greater emphasis placed on senior judges from higher courts.
 5. The Judicial Department should be removed from the list of entities nominating lay candidates.
 6. The duration of the evaluation body's mandate should extend beyond a single evaluation cycle, favouring the existing four-year term.
 7. The frequency of regular evaluations should be extended to a period exceeding two years, providing intervals of at least three years.
 8. The decisions of the evaluation body should be subject to external appeal review, preferably before a court.
57. The Venice Commission and DGI remain at the disposal of the Armenian authorities for further assistance in this matter.