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COMPILATION
OF VENICE COMMISSION OPINIONS AND REPORTS
CONCERNING JUDICIAL COUNCILS

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I. Introduction

This document is a compilation of extracts taken from selected relevant opinions and reports/studies adopted by the Venice Commission dedicated solely to Judicial Councils.¹ It covers notably the source of law regulating the institution, its competence, functions, and duties, its independence and impartiality, the duration of mandate and security of tenure of its members, its composition, the election of both the judicial and the lay members, as well as their required qualifications, the staggered technique for their election, their accountability, the role of the chairperson and vice-chairperson of the Council, the working methods of the institution and the appeals against its decisions, and the relationship of Judicial Councils with other bodies of the judicial (self-) governance.

This compilation does not deal with the anti-deadlock mechanism of both Judicial and Prosecutorial Councils, as this has been the object of a specific Venice Commission *Compilation on Opinions and Reports relating to the Qualified Majorities and Anti-Deadlock Mechanisms in relation to the Election by Parliament of Constitutional and Supreme Court Judges, Prosecutors General, Members of Prosecutorial and Judicial Councils, Regulatory Bodies and Ombudsperson*.

The compilation is intended to serve as a source of reference for drafters of constitutions and of pieces of legislation on the judiciary, researchers, as well as the Venice Commission's members, who are requested to prepare comments and opinions concerning legislation dealing with such issues. When referring to elements contained in this draft compilation, please cite the original document but not the compilation as such.

Venice Commission reports and studies quoted in this compilation seek to present general standards for all member and observer states of the Venice Commission. Recommendations made in the reports and studies will therefore be of a more general application, although the specificity of national/local situations is an important factor and should be taken into account adequately.

Each citation in the compilation has a reference that sets out its exact position in the opinion or report/study (paragraph number, page number for older opinions), which allows the reader to find it in the opinion or report/study from which it was taken. In order to shorten the text, most of further references and footnotes are omitted in the text of citations; only the essential part of the relevant paragraph is reproduced.

The compilation is not a static document and will be regularly updated with extracts of recently adopted opinions by the Venice Commission. The Secretariat will be grateful for suggestions on how to improve this draft compilation (venice@coe.int).

¹ This compilation concerns specialized bodies which deal with judicial appointments, promotions, disciplinary proceedings against judges and, more generally, secure autonomy of the judicial system vis-à-vis other branches of the Government. In European literature, different terms are used to describe such institutions. For instance, judicial council, high council of the magistracy, judicial service board or commission. Therefore, the name, as well as composition and powers of these institutions may vary from one country to another. Some countries have no councils of justice at all. In this compilation, the term Judicial Council is used to refer to the self-governing/regulatory bodies of the judiciary.

II. Constitutional and statutory regulation

22. [...] The basic principles ensuring the independence of the judiciary should be set out in the Constitution or equivalent texts.

[CDL-AD\(2010\)004](#), Report on the Independence of the Judicial System Part I: The Independence of Judges, §22.

22. It is positive that the draft Law will be adopted as a law, and not as a decree-law (as the current Decree-Law no. 150/1983). However, certain basic parameters of the composition and powers of the Supreme Council of Magistracy (SCM) should be entrenched in the Constitution, in order not to expose the system of judicial governance to the imperatives of the prevailing politics. Otherwise, any new political majority could be tempted to change the system, which may be detrimental to the independence and efficiency of the judiciary. While a constitutional reform may not be currently on the agenda, if it is to be envisaged in a foreseeable future, the Venice Commission would strongly recommend entrenching some basic rules on the judicial governance at the constitutional level. Procedures before the SCM, discipline and performance evaluations, administration of the judicial process, etc. may be regulated by the ordinary legislation.

25. That being said, the Venice Commission is aware that the process of constitutional amendment may be a politically difficult endeavour, as stressed by the Ministry in their written comments. It may be more realistic, in the current context, to expect a gradual approach by defining, first, functioning and organisation of key institutions of the justice system at the legislative level and, once there is a political will and consensus prospects, including a package of amendments regarding the judiciary into the Constitution.

105. The Venice Commission notes at the outset that the system of judicial governance in Lebanon lacks a clear constitutional basis. The Commission invites the authorities to consider possible constitutional entrenchment of some basic features of this system, and, in particular, of the powers and the composition of the Superior Council of Magistracy (the SCM). In the meantime, a “sunset” clause could be included in the law, requiring its revision several years later.

[CDL-AD\(2022\)020](#), Lebanon - Opinion on the draft law on the independence of judicial courts, §§22, 25, 105.

14. In this respect, the Commission recalls that, in its previous Opinions, it has repetitively underlined the importance of providing the HJPC with a constitutional status, which would facilitate the role of the HJPC as the guarantor of the independence of the judiciary of Bosnia and Herzegovina. As this has not happened to date, the Commission reiterates its recommendation on this point.

[CDL-AD\(2024\)009](#), Bosnia and Herzegovina - Interim Follow-up Opinion to previous Opinions on the draft law on the High Judicial and Prosecutorial Council, §14.

73. [...] The process of assessing judicial candidates is sensitive and, rather than being left to practice, needs clearer guidelines in the law, including specifying the grounds for advisory opinion, its scope, rules on collecting information, duties of the NCJ in respect of the submitted opinion, including the need to provide reasons for not following it.

76. [...] It would be counterproductive to the goal of restoring confidence in the judiciary if the statutory rules could be changed at the next change of government. It therefore appears to be advisable to enshrine in the Constitution itself the method of election of the NCJ members, the security of their tenure, the main functions of the NCJ, and the forms of participation of civil

society. The matter of the joint term of the members of the NCJ and the composition of the NCJ alongside European standards (and best practices) could also be addressed on this occasion.

[CDL-AD\(2024\)018](#), Poland - Urgent Joint Opinion on the draft law amending the Law on the National Council of the Judiciary, §§73, 76.

63. Because of their primary role as guarantors of the independence of the whole judiciary, the security of tenure and functional immunity of the members of the CJP should be set out in the Constitution. The Constitution should refer to the law for the establishment of clear and limited grounds for disciplinary actions and possibly dismissal, which should not relate to the exercise of their functions as members of the CJP. The legislation should also ensure all appropriate / necessary procedural safeguards, in line with the Constitution.

64. The lack of constitutional guarantees combined with broad and vague legal provisions (“their acts and manners have caused delays in the service or been incompatible with the dignity and honour of the Council membership”), applicable to acts committed in the performance of the members’ function and leading to extreme consequences (resignation or dismissal), constitutes a clear violation of the principle of security of tenure and the guarantee of functional immunity.

65. Therefore, the Venice Commission recommends establishing clearly, at constitutional and legislative level, that members of the CJP should enjoy security of tenure, as well as strong safeguards setting clear and limited grounds for sanction and dismissal.

[CDL-AD\(2024\)041](#), Türkiye - Opinion on the composition of the Council of Judges and Prosecutors and the procedure for the election of its members, §§63-65.

See also: [CDL-AD\(2002\)033](#), Kyrgyzstan - Opinion on the Draft Amendments to the Constitution, §11; [CDL-AD\(2005\)003](#), Georgia - Joint Opinion on a Proposal for a Constitutional Law on Changes and Amendments to the Constitution, §105; [CDL-AD\(2008\)010](#), Finland - Opinion on the Constitution, §113; [CDL-AD\(2011\)010](#), Montenegro - Opinion on the draft amendments to the Constitution of Montenegro, as well as on the draft amendments to the law on courts, the law on the state prosecutor's office and the law on the judicial council, §10; [CDL-AD\(2015\)037](#), Armenia - First Opinion on the Draft Amendments to the Constitution (Chapters 1 to 7 and 10) of the Republic of Armenia, §156; [CDL-AD\(2016\)009](#), Albania - Final Opinion on the revised draft constitutional amendments on the Judiciary, §35; [CDL-AD\(2018\)011](#), Serbia - Opinion on the draft amendments to the constitutional provisions on the judiciary, §46.

21. Article 108(4) of the Constitution does not provide for any criteria for the selection of the members of the KJC, but states that these shall be “provided by law.” Despite the delegation to the law in the Constitution, the Law on the KJC only briefly describes the procedure for nomination, election, and dismissal of the Council members by the Assembly (Article 10). The entirety of election procedures for the judges elected by their peers is left to by-laws adopted by the KJC, whereas the Rules of Procedure of the Assembly (hereinafter, the Rules) do not further elaborate the procedure described in Article 10 of the Law on the KJC.

22. In this regard, it should be noted that members of judicial councils “must be selected in a transparent procedure that supports the independent and effective functioning of the Council and the judiciary and avoids any perception of political influence, self-interest or cronyism.” Therefore, the Venice Commission recommends that the Law on the KJC be amended to include the procedures and recommendations described herein, rather than leaving this to the internal regulations of the KJC and the Assembly.

[CDL-AD\(2025\)015](#), Kosovo - Opinion on the Law on the Judicial Council and the draft law amending and supplementing it, §§21-22.

23. The Venice Commission has previously noted that “the basic principles ensuring the independence of the judiciary should be set out in the Constitution or equivalent texts”, and that “certain basic elements, such as the appointment, guarantees and powers of the judiciary, should be entrenched in the Constitution [...] to preserve the system of judicial governance from political fluctuations.” Given that the appointment of judges is of vital importance for guaranteeing their independence and impartiality, the Venice Commission has previously recommended that the procedure for judicial appointments be regulated by the Constitution, while some States have chosen to entrench also eligibility criteria on a constitutional level. The Venice Commission therefore invites the authorities to regulate the main features of the proposed system in the constitutional amendments themselves and not in the subsequent organic laws.

75. The Venice Commission recommends to include the main features of the proposed system of judicial governance and merit-based appointment process in the constitutional amendments themselves and not in the subsequent organic laws. [...] Likewise, the introduction of an autonomous body needs to be accompanied by a description of the main features of its competences and composition (see for example Section III.F).

[CDL-AD\(2025\)021](#), Chile - Opinion on the draft constitutional amendments in respect of judiciary, §§23, 75.

27. The Venice Commission has consistently advocated that the fundamental features of judicial councils should be established at the constitutional level. In 2008, it expressed the view that constitutional guarantees should extend to the composition, powers and autonomy of the councils. The Commission elaborated that the constitutional entrenchment of these elements is important in order not to expose the system of judicial governance to the imperatives of the prevailing politics, as otherwise, any new political majority could be tempted to change the system, which may be detrimental to the independence and efficiency of the judiciary. Recently, the Commission recommended, for the same considerations, that the method of election of the members of the judicial council should be set out in the Constitution.

29. The Venice Commission considers it suitable to provide, at the constitutional level, for the election method of not only the lay members, but also the judicial members of the Council, should a constitutional reform be considered in the future in Spain.

[CDL-AD\(2025\)038](#), Spain - Opinion on the manner of election of the judicial members of the General Council of the Judiciary, §§27, 29.

See also: [CDL-AD\(2007\)028](#), Report on Judicial Appointments, §48; [CDL-AD\(2022\)020](#), Lebanon - Opinion on the draft law on the independence of judicial courts, §22; [CDL-AD\(2024\)018](#), Poland - Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe on the draft law amending the Law on the National Council of the Judiciary, §76.

III. Competence, functions, and duties

25. The Venice Commission is of the opinion that a judicial council should have a decisive influence on the appointment and promotion of judges and (maybe via a disciplinary board set up within the council) on disciplinary measures against them. [...]

[CDL-AD\(2007\)028](#), Report on Judicial Appointments, §22.

See also: [CDL-AD\(2010\)004](#), Report on the Independence of the Judicial System Part I: The Independence of Judges, §32; [CDL-AD\(2025\)002](#), The Updated Rule of Law Checklist, §§105, 108.

65. The (High Judicial and Prosecutorial Council) has broad competences [...]: it appoints judges and prosecutors [...], decides on the suspension of judges, determines criteria for the assessment of judges and prosecutors, decides on the appeals in disciplinary proceedings, gives its views on the annual budget for courts and prosecutors' offices, gives its opinions on draft laws and regulations concerning the judiciary etc. [...].

66. Article 24 of the draft Law gives the HJPC power to require courts, prosecutors' offices and state authorities, as well as judges and prosecutors to provide it with information, documents and other materials in connection with the exercise of its competencies. It can also have access to all premises of courts and prosecutors' offices and their records. Such competences confirm that the HJPC is the central organ within the judiciary.

67. Under Article 25 of the draft Law, the HJPC prepares a draft annual budget, which is then submitted, through the Ministry of Justice, to the Ministry of Finance and Treasury of BiH for approval. Under Article 23.2 of the draft Law, the HJPC may also make recommendations relating to the annual budgets of courts and prosecutors' offices. The system of financing the judiciary remains, however, highly fragmented, with the budgets determined at several different levels (BiH, the Entities, the FBiH cantons, the District Brčko).

68. The extent of the competences seems to be in line with European standards, with the exception of the reservations made under Sections D, E and F above.

[CDL-AD\(2014\)008](#), Bosnia and Herzegovina - Opinion on the draft Law on the High Judicial and Prosecutorial Council, §§65-68.

46. There is no standard model that a democratic country is bound to follow in setting up its judicial system. With the exception of very few countries where the independence of the judiciary is maintained by other checks and balances, most European countries have established an independent judicial council which has the task of ensuring the proper functioning of an independent judiciary within a democratic state.

[CDL-AD\(2018\)003](#), Republic of Moldova - Opinion on the Law on amending and supplementing the Constitution (Judiciary), §46.

See also: [CDL-INF\(1998\)009](#), Albania - Opinion on recent amendments to the law on major constitutional provisions, §5.

50. There are several different and conflicting roles of the HCJ. Most notably, the body which will conduct the monitoring, will also later determine the disciplinary case on its merits. The separation of investigating and decision-making roles was the guiding principle of the previous amendments to the legislation on judiciary in Ukraine. These considerations remain pertinent to the present draft law.

51. The draft law employs the concept of "monitoring the lifestyle of a judge". It can be assumed that this notion refers to Article 59 of the Law "On the judiciary and the status of judges". This

measure would be used “to establish whether the standard of living of a judge is in line with the property owned by him/her and members of his/her family and the income received by them”. This has to be clarified in the draft law. It is notable that Article 52-2 of the Law “On prevention of corruption” provides that the procedure for monitoring the lifestyle of judges shall be determined by the National Agency on Corruption Prevention with the approval of the HCJ. However, without further clarification on the statutory level, these discretionary powers raise concerns. The wording of the draft law is dangerously broad and might include all kinds of intimate – and irrelevant – aspects of the judge’s private or family life protected by Article 8 ECHR.

65. The draft law stipulates that the HCJ may use a lie detector within procedures for judicial appointments and transfers, as well as during court monitoring and disciplinary proceedings. The draft law remains silent as to the criteria for using that discretion. This creates a risk for a discriminating and arbitrary use of lie detectors.

[CDL-AD\(2023\)027](#), Ukraine - Joint Follow-Up Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe to the Joint Opinion on the Draft Amendments to the Law “On the Judiciary and the Status of Judges” and Certain Laws on the Activities of the Supreme Court and Judicial Authorities, §§50-51, 65.

See also: [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), §§67-71; [CDL-AD\(2022\)022](#), Bulgaria - Opinion on the draft amendments to the Judicial System Act concerning the Inspectorate to the Supreme Judicial Council, §29.

25. The second key recommendation of the March 2023 Opinion was to circumscribe the wide powers of the HCoJ when seconding or transferring judges without their consent. The Commission recommended adding narrower criteria for the secondment/transfers, introducing time and location limitations on secondments/transfers, providing for a random system of secondments/transfers.

27. [...] The Venice Commission reiterates that the current powers of the HCoJ to second or transfer a judge of their choosing for up to four years on wide and partly unclear grounds carry a real risk of undue interference by the HCoJ with judges’ safety of tenure that is problematic in itself and more so in the specific context of Georgia connected to the issue of the comprehensive reform of the HCoJ.

[CDL-AD\(2023\)033](#), Georgia - Follow-up Opinion to Previous Opinions Concerning the Organic Law on Common Courts, §§25, 27.

50. The Commission recommended dividing the list of competencies in the draft law between the respective formations and bodies of the Council. Article 54(2) and (3) of the draft law aims to accommodate that recommendation by explicitly establishing that certain competencies as regards judges (or: prosecutors) shall be exercised by the Judicial Department (or: Prosecutorial department). Yet, the other competencies could be more clearly divided between the Plenary and the other formations (disciplinary bodies, performance appraisals committees and asset declarations department).

51. The phrase “any matter” has been abolished in the draft law and the wording in Article 49(2) sufficiently clarifies that the plenary shall not have the competence to reconsider any decision by a Department.

52. As to the recommendation to reallocate the competence to decide on “objections in the appointment procedures for judges and prosecutors” (see Article 54(1) sub c) to a court, for

example the Court of Bosnia and Herzegovina, the Commission considers the judicial review provided by Article 80 sufficient, as long as it assesses the conformity with the law and the respect of procedural rules for decision-making.

[CDL-AD\(2025\)004](#), Bosnia and Herzegovina - Follow-up Opinion to previous Opinions on the draft law on the High Judicial and Prosecutorial Council, §§50-52.

See also: [CDL-AD\(2024\)009](#), Bosnia and Herzegovina - Interim Follow-up Opinion to previous Opinions on the draft law on the High Judicial and Prosecutorial Council, §§70-74, 76.

IV. Independence and impartiality

32. [...] While respecting this variety of legal systems, the Venice Commission recommends that states which have not yet done so consider the establishment of an independent judicial council or similar body. In all cases the council should have a pluralistic composition with a substantial part, if not the majority, of members being judges. With the exception of ex-officio members these judges should be elected or appointed by their peers.

82. The following standards should be respected by states in order to insure internal and external judicial independence:

[...]

4. It is an appropriate method for guaranteeing the independence of the judiciary that an independent judicial council have decisive influence on decisions on the appointment and career of judges. While respecting the variety of legal systems existing, the Venice Commission recommends that states not yet having done so consider the establishment of an independent judicial council. In all cases the council should have a pluralistic composition, with a substantial part if not the majority of the members being judges. With the exception of ex-officio members these judges should be elected or appointed by their peers.

[CDL-AD\(2010\)004](#), Report on the Independence of the Judicial System Part I: The Independence of Judges, §§32, 82.

36. The Commission summarises these parameters here below, as they will be the main principles of reference for most of the following analysis:

- A balance needs to be struck between judicial independence and self-governance, on the one side, and the necessary accountability of the judiciary, on the other side, in order to avoid negative effects of corporatism within the judiciary. One way to achieve this goal is to establish a judicial council with a balanced composition of its members. [...]

[CDL-AD\(2025\)021](#), Chile - Opinion on the draft Constitutional amendments in respect of the judiciary, §36.

See also: [CDL-AD\(2018\)003](#), Republic of Moldova - Opinion on the Law on amending and supplementing the Constitution (Judiciary), §56; [CDL-AD\(2020\)015](#), Republic of Moldova - Urgent 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) of the Council of Europe on the draft law on amending the law No. 947/1996 on Superior Council of Magistracy.

31. [...] In general, members, including both judicial and lay members, must be selected in a transparent procedure that supports the independent and effective functioning of the judicial council and the judiciary and avoids any perception of political influence, self-interest or cronyism. As a safeguard against politicisation, the Venice Commission has recommended the introduction of a requirement for a qualified majority in the election of the parliamentary component of the judicial council.

49. [...] Given the important functions entrusted to the judicial council, including judicial appointments and other career-related matters, its independence is inextricably linked to that of the entire judiciary and must be preserved accordingly. There are admittedly no legally binding standards imposing the establishment of a judicial council. However, as the ECtHR has held, “where a judicial council is established, the authorities should be under an obligation to ensure its independence from the executive and legislative powers in order to, inter alia, safeguard the integrity of the judicial appointment process. ... States are free to adopt such a model as a means of ensuring judicial independence. What they cannot do is instrumentalise it so as to undermine that independence.”

[CDL-AD\(2025\)038](#), Spain - Opinion on the manner of election of the judicial members of the General Council of the Judiciary, §§31, 49.

See also: [CDL-AD\(2007\)028](#), Report on Judicial Appointments, §§30-32.

V. Duration of mandate and security of tenure

A. Duration

60. The Venice Commission observes that the members of the CJP are elected for a term of four years. Their tenure is rather short. Moreover, they can be re-elected (once), which could make them dependent on the appointing/electing authority.

[CDL-AD\(2024\)041](#), Türkiye - Opinion on the composition of the Council of Judges and Prosecutors and the procedure for the election of its members, §60.

12. Concerning the transitional and closing provisions, the Commission welcomes that a new Chapter VI has been added to the draft law. Article 233(1) of the draft law aims at ensuring the continuity of the work of the HJPC during the transitional period by establishing that the mandate of HJPC members would continue for a period of 12 months. While for certain members, this represents an extension of their mandate, which is well justified, for most members, this is in fact a reduction of their mandate which is at odds with the principle of security of tenure. For Council's members, as it is the case for judges, this can only be exceptionally accepted in the context of a “reform of the organisation of the judicial system”, which is a concept that has to be interpreted narrowly.

13. The Venice Commission acknowledges that the reform of the HJPC carried out with the draft law at stake can be considered the first step of a reform of the whole judicial system and that it justifies the early termination of the mandate of several members, as long as it is provided, as it seems to be the case in Article 234(7), that Council members who did not serve more than half of their mandate can apply to be re-elected.

[CDL-AD\(2025\)004](#), Bosnia and Herzegovina - Follow-up Opinion to previous Opinions on the draft law on the High Judicial and Prosecutorial Council, §§12-13.

B. Re-appointment

49. Under the draft Law, members of the [High Judicial and Prosecutorial Council] shall serve a term of four years and may be re-elected once (Article 9). No one may be elected for more than two consecutive terms (Article 3.7). The length of the term of office is a standard one, as in most countries, members of judicial councils are elected for a rather short period of time (three years in the Netherlands, six years in ‘the former Yugoslav Republic of Macedonia’ etc.). [...] All these solutions are legitimate.

[CDL-AD\(2014\)008](#), Bosnia and Herzegovina - Opinion on the draft Law on the High Judicial and Prosecutorial Council, §49.

53. The exclusion of direct reappointment / re-election while prolonging the mandate [six-year term] is aimed at creating more independence for the SCM [Superior Council of the Magistracy] members. This is positive.

[CDL-AD\(2018\)003](#), Republic of Moldova - Opinion on the Law on amending and supplementing the Constitution (Judiciary), §53.

See also: [CCJE\(2021\)11](#), CCJE - Opinion No. 24 on the evolution of the Councils for the Judiciary and their role for independent and impartial judicial systems, II.4.36.

23. The Venice Commission suggested that fixed non-renewable terms for the HCoJ members are to be preferred to ensure the appearance of independence of the HCoJ, given the public controversies over its composition and independence. In that context, allowing re-appointment required a specific justification. [...]

[CDL-AD\(2023\)033](#), Georgia - Follow-up Opinion to Previous Opinions Concerning the Organic Law on Common Courts, §23.

44. By excluding judges or prosecutors “who have not completed a period of four years” from the end of the previous term in the Council, Article 7.2(e) prohibits a person from being elected for another consecutive mandate. Although a system in which two consecutive mandates are allowed has its advantages (i.e., ensuring continuity and retaining certain experienced members), this prohibition may be appropriate in the context of Bosnia and Herzegovina and is not at odds with any international standard. Continuity can efficiently be ensured by staggering terms of office, which does not seem to be excluded in the draft law but could be made explicit.

[CDL-AD\(2024\)009](#), Bosnia and Herzegovina - Interim Follow-up Opinion to previous Opinions on the High Judicial and Prosecutorial Council, §44.

C. Security of tenure

19. The Venice Commission and the Directorate consider that as a matter of principle, the security of the fixed term of the mandates of members of constitutional bodies serves the purpose of ensuring their independence from external pressure. Therefore, measures which would jeopardise the continuity in membership and interfere with the security of tenure of the members of this authority would raise a suspicion that the intention behind those measures was to influence its decisions.

[CDL-AD\(2020\)033](#), Republic of Moldova - Urgent Joint Amicus Curiae Brief of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on three Legal Questions Concerning the Mandate of Members of Constitutional Bodies, §19.

34. In the context of the Republic of Moldova, it is all the more important that members of the SCM enjoy adequate legal protection for their impartiality and independence. As a result, Article 12 of the Law “on the Superior Council of Magistracy” should undergo systemic revision in the light of the principle of security of tenure. It is essential to specify the substantive grounds for termination of office and introduce adequate procedural safeguards in the relevant proceedings against the SCM member.

[CDL-AD\(2022\)019](#), Republic of Moldova - Opinion on the draft law on amending some normative acts (Judiciary), §34.

59. Members of judicial councils should enjoy security of tenure and functional immunity as key safeguards of their independence. In light of the principle of security of tenure, it is essential to specify the substantive grounds for termination of office and introduce adequate procedural safeguards in the relevant proceedings against CJP members. Granting immunity to members of the CJP allows them to carry out their work without having to defend themselves against, for instance, unfounded and vexatious accusations. Ensuring that individual members enjoy appropriate guarantees of independence is essential to ensure the independence of the council as such. Only an independent council can be the guarantor of the independence of the judiciary.

63. Because of their primary role as guarantors of the independence of the whole judiciary, the security of tenure and functional immunity of the members of the CJP should be set out in the Constitution. The Constitution should refer to the law for the establishment of clear and limited grounds for disciplinary actions and possibly dismissal, which should not relate to the exercise of their functions as members of the CJP. The legislation should also ensure all appropriate / necessary procedural safeguards, in line with the Constitution.

[CDL-AD\(2024\)041](#), Türkiye - Opinion on the composition of the Council of Judges and Prosecutors and the procedure for the election of its members, §§59, 63.

D. Equal treatment of judicial and lay members

54. As to the non-judicial members of the Council, they may be subjected to disciplinary punishment, suspended or dismissed by Royal Decree on the recommendation of the Minister of Justice Article 86 (5) of the Judicial Act.

55. The Venice Commission and DG I recalls the importance of security of tenure of all Council members as a crucial precondition for the independence of the Council: “Judges appointed to the council for the judiciary should be protected with the same guarantees as those granted to judges exercising jurisdictional functions, including the conditions of service and tenure and the right to a fair hearing in case of discipline, suspension, and removal. Non-judicial members should have equivalent protection.”

56. The difference in treatment (albeit reportedly never applied in practice) between judicial and non-judicial members cannot be justified. Therefore, the Venice Commission and DG I recommend the Dutch authorities to modify the law accordingly.

[CDL-AD\(2023\)029](#), The Netherlands - Joint Opinion of the Venice Commission and 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, §§54-56.

36. The Commission summarises these parameters here below, as they will be the main principles of reference for most of the following analysis:

[...]

- Non-judicial members should have the same protection as judicial members especially as concerns security of tenure and the right to a fair hearing in case of discipline, suspension, and removal, as a crucial precondition for the independence of the Council. Any difference in treatment between judicial and non-judicial members should be duly justified.

[CDL-AD\(2025\)021](#), Chile - Opinion on the draft constitutional amendments in respect of judiciary, §36.

See also: [CDL-AD\(2023\)029](#), The Netherlands - Joint opinion on the legal safeguards of the independence of the judiciary from the executive power, §§55-56; [CCJE\(2021\)11](#), CCJE - Opinion No. 24 on the evolution of the Councils for the Judiciary and their role for independent and impartial judicial systems, §§37-38.

VI. Composition of the Judicial Councils

A. General approach

25. The Venice Commission notes that Article IX(3) of the Constitution of Bosnia and Herzegovina sets forth that “officials appointed to positions in the institutions of Bosnia and Herzegovina shall be generally representative (*italics added*) of the peoples of Bosnia and Herzegovina”. In previous Opinions, the Commission has also held that, in the specific context of Bosnian and Herzegovina, it would be preferable to refer to a general representation of the peoples, in line with the Constitution. The Commission agrees that the composition of any institution at State level should reflect as much as possible the country’s diversity in terms of ethnic, gender, linguistic, religious or other criteria, as this diversity would enhance the legitimacy of and public trust in such institution. However, the Commission also holds that the composition of a key-institution of the judiciary, as is the HJPC, should primarily rely on objective merit-based criteria. As it was done in different context, the Commission encourages the authorities to progressively move forward from the ethnical approach towards a system of appointments which is based on the merits of candidates.

27. Given the great variety, both in respect of institutional design as well as in respect of the mandate and powers, of the various judicial and prosecutorial councils, the Venice Commission has been hesitant to formulate hard rules and has instead promoted parameters which the legislator needs to meet.

[CDL-AD\(2024\)009](#), Bosnia and Herzegovina - Interim Follow-up Opinion to previous Opinions on the draft law on the High Judicial and Prosecutorial Council, §§25, 27.

38. [...] The Commission recalls that the election of judges to councils of the judiciary aims to guarantee the presence of persons benefiting of internal experience and knowledge in the governance of the judiciary, with a strong culture of independence and impartiality, balancing the composition with lay members, non-judges, appointed in accordance with democratic legitimacy, conferred namely (but not only) by Parliaments. The judicial component, through judges elected by their peers, must be balanced and must correspond to at least half of the Council's members, in order not to go against international standards.

[CDL-AD\(2025\)026](#), North Macedonia - Opinion on the draft Law on the Judicial Council, §38.

B. Balance of judicial and lay members

108. As concerns the composition of the Judicial Council, both politicisation and corporatism must be avoided. [...]

[CDL-AD\(2025\)002](#), The Updated Rule of Law Checklist, §108.

48. As stated in previous Venice Commission opinions, what is also very important is to have a well- balanced council, not only between the judicial and non-judicial members, but also among the judicial members so that they represent different types of judges and levels of the judiciary, while ensuring balance between the regions, gender balance etc. This can be difficult to achieve, particularly on a body which if it is to be effective should not have too many members. It is sufficient that the Constitution expresses the principle, while the specific procedures and criteria for a balanced representation of all levels of courts should be regulated in law.

123. The composition of the SJC is in line with the recommendations of the Venice Commission. The majority of the members would be judges (ten out of fifteen), and eight judicial members

would be elected from various levels of courts. The Presidents of the Supreme Court of Cassation and Supreme Administrative Court would be members ex officio. [...]

[CDL-AD\(2023\)039](#), Bulgaria - Opinion on the Draft Amendments to the Constitution, §§48, 123.

See also: [CDL-AD\(2020\)035](#), Bulgaria - Urgent Interim Opinion on the draft new Constitution, §46.

93. The Commission considers that the overall number of the HJPC members should be increased by adding three lay members, who would better counterbalance the judicial and prosecutorial components (7 out of 23 in the Plenary, 7 out of 15 in the Department); this would also allow to have an uneven number to avoid tie votes. As to the lay members appointed by the parliament, an anti-deadlock mechanism must be put in place if the two-third majority is not reached (that is not reducing the threshold), and the process should be simplified by requiring only the vote of the House of Representatives.

[CDL-AD\(2025\)004](#), Bosnia and Herzegovina - Follow-up Opinion to previous Opinions on the draft law on the High Judicial and Prosecutorial Council, §93.

36. The Commission summarises these parameters here below, as they will be the main principles of reference for most of the following analysis:
[...]

- Corporatism should be counterbalanced by membership of other legal professions, the 'users' of the judicial system. This representation is justified since the objectives of a judicial council relate not only to the interests of the members of the judiciary, but especially to general interests. Such non-judicial members may provide democratic legitimacy of the judicial council and a fresh perspective on what is needed to become or be 'a good judge'. Merit is not solely a matter of legal knowledge, analytical skills or academic excellence. It also includes matters such as character, judgment, accessibility, communication skills, efficiency to produce judgements.

[CDL-AD\(2025\)021](#), Chile - Opinion on the draft Constitutional amendments in respect of the judiciary, §36.

See also: [CD-LAD\(2014\)008](#), Bosnia and Herzegovina - Opinion on the draft law on the High Judicial and Prosecutorial Council, §§30-31; [CDL-AD\(2018\)003](#), Republic of Moldova - Opinion on the law on amending and supplementing the Constitution (Judiciary), §56; [CDL-AD\(2021\)043](#), Cyprus - Opinion on three Bills reforming the Judiciary, §§50-51

31. As regards the non-judicial component of the judicial council, it fulfils an important balancing function. A large majority of the judges may give rise to concerns about the risk of corporatist management or self-government. The inclusion of lay members is therefore broadly justified by the principle that the supervision of the quality and impartiality of justice extends beyond the interests of the judiciary itself. By exercising such oversight, the judicial council can enhance public confidence in the administration of justice. In many systems, legislative bodies elect part of the membership of judicial councils from qualified legal professionals, ensuring a measure of pluralism and democratic legitimacy in the council's composition. [...]

[CDL-AD\(2025\)038](#), Spain - Opinion on the manner of election of the judicial members of the General Council of the Judiciary, §31.

[CDL-AD\(2007\)028](#), Report on Judicial Appointments, §§30-32.

36. "[...] At least half of the members of judicial councils should be judges elected or appointed by their peers. In its Opinions (most notably on Bulgaria, Serbia and France), the Commission has made reference to the standard set in this respect by the Committee of Ministers of the Council of Europe, i.e. that "*not less than half the members of such councils should be judges*

chosen by their peers from all levels of the judiciary and with the respect of pluralism inside the judiciary". This is a standard that has also been reflected in the case-law of the European Court of Human Rights ("ECtHR"). [...]"

[CDL-AD\(2025\)021](#), Chile – Opinion on the draft constitutional amendments in respect of the judiciary, §36.

C. Representation of the executive in the Council; ex officio members

20. However, principles are by their definition general standards which are not immutable and set in stone, and, when applied, must always take into consideration the particular circumstances of the case at stake. In the specific case of Montenegro, the Venice Commission takes note of the recommendations of GRECO. It further notes that the current formulation of Article 128 § 3 of the Constitution provides that the Minister of Justice shall not vote in the disciplinary proceedings related to accountability of judges. The Constitution is silent about the possibility for the Minister of Justice to take part in any other vote, including those on any career-related issue (transfer, appointment, dismissal, appraisal). Therefore, it is for the legislature to decide whether the Minister of Justice should be prevented from voting in these matters, in line with the above-mentioned standards, and for the Constitutional Court of Montenegro to review such a legislative amendment. Insofar as the Minister's presence in the Judicial Council is concerned, the Venice Commission reiterates that it is not regulated at the legislative level and, therefore, any change to this provision would need to be done via a constitutional amendment. [...]

[CDL-AD\(2022\)050](#), Montenegro - Opinion on the draft amendments to the Law on the Judicial Council and Judges, §20.

16. [...] If the participation of the Minister of Justice in the work of the CSM is maintained, it is welcome that the Minister cannot participate in disciplinary proceedings against magistrats *du siège*. However, given the fact that the provision appears to be obsolete in French practice and in light of the recent judgment of the ECtHR stating, with respect to the Minister of Justice, that "the presence, even if only passive, of a member of the Government on a body empowered to impose disciplinary sanctions on members of the judiciary is, in itself, extremely problematic in the light of the requirements of Article 6 of the Convention and, in particular, the requirement that the disciplinary body be independent", the Venice Commission recommends consideration of the continued merit of this provision in light of evolving best practices.

[CDL-AD\(2023\)015](#), France - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Superior Council of Magistracy and the Status of the Judiciary as Regards Nominations, Mutations, Promotions and Disciplinary Procedures, §16.

73. As reiterated in the 2020 Opinion on Bulgaria, the presence of the Minister of Justice on the councils, even on a non-voting basis - which has been retained in the draft amendment to the Constitution - is a source of concern for the Venice Commission. While there may be occasions where the presence of the Minister of Justice in the councils is required, for example in budgetary matters, a general right for the Minister of Justice to participate on the work of the councils may be regarded by the judiciary as a form of pressure from the executive power, especially when the councils decide on disciplinary or career matters.

74. The Venice Commission has so far been cautious in its approach (while the Group of States against corruption, GRECO, has taken a stricter position in this regard). In an opinion on Montenegro, it stated that "it is wise that the Minister of Justice should not him- or herself be a member". Similarly, in an opinion on the Republic of Moldova: "The self-governing nature of the Superior Council of Prosecutors might be questioned given the ex officio membership of the Minister of Justice". If the participation of the Minister of Justice in the work of the SJC is

maintained, the Minister should not participate in disciplinary proceedings against judges. However, in light of the recent judgment of the ECtHR stating, with respect to the Minister of Justice, that “the presence, even if only passive, of a member of the Government on a body empowered to impose disciplinary sanctions on members of the judiciary is, in itself, extremely problematic in the light of the requirements of Article 6 of the Convention and, in particular, the requirement that the disciplinary body be independent”, the Venice Commission recommends consideration of the merit of this provision in light of evolving best practices. An alternative could be to limit the possibility of the presence of the Minister of Justice to some specific issues and exclude it for others.

[CDL-AD\(2023\)039](#), Bulgaria - Opinion on the draft Amendments to the Constitution, §§73-74.

See also: [CDL-AD\(2014\)042](#), Montenegro - Interim opinion on the draft law on the state prosecution office of Montenegro, §38; [CDL-AD\(2015\)005](#), Republic of Moldova - Joint Opinion on the draft Law on the Prosecution Service, §131; [CDL-AD\(2020\)035](#), Bulgaria - Urgent Interim Opinion on the draft new Constitution, §43; [CDL-AD\(2023\)015](#), France - Joint Opinion on the Superior Council of Magistracy and the status of the judiciary as regards nominations, mutations, promotions and disciplinary procedures; and ECtHR, *Catană v. the Republic of Moldova*, application no. 43237/13, 21 February 2023

54. The extensive involvement of the Minister of Justice in the (Council of Judges and Prosecutors’) operations, particularly in areas directly affecting judges’ and prosecutors’ career, as well as in relations to the inspections and investigations of judges, prosecutors and the members of the CJP, poses a substantial risk to the separation of powers and the independence of the judiciary. It also significantly affects the appearances of independence of the CJP.

57. The Undersecretary (the Deputy Minister of Justice), by virtue of her/his role, is likely to carry the priorities and perspectives of the Ministry of Justice into the CJP’s deliberations. The presence of the Undersecretary, particularly in a voting capacity, raises further concerns about interference with judicial independence. The inclusion of the Undersecretary within the CJP allows the executive branch to have a direct role in decisions related to the appointment, promotion, and discipline of judges and prosecutors. [...]

58. The Venice Commission recalls that European standards discourage ex officio membership of the judicial councils. Furthermore, ex officio members who are part of the executive are extremely problematic. As with the Minister of Justice, the Venice Commission strongly recommends removing the Undersecretary of Justice from the CJP.

[CDL-AD\(2024\)041](#), Türkiye - Opinion on the composition of the Council of Judges and Prosecutors and the procedure for the election of its members, §§54, 57-58.

See also: [CDL-AD\(2014\)042](#), Montenegro - Interim opinion on the draft law on the state prosecution office of Montenegro, §38; [CDL-AD\(2015\)005](#), Republic of Moldova - Joint Opinion on the draft Law on the Prosecution Service of the Republic of Moldova, §131; [CDL-AD\(2023\)015](#), France - Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Superior Council of Magistracy and the status of the judiciary as regards nominations, mutations, promotions and disciplinary procedures, §16.

28. [...] The European Court of Human Rights considers that the presence of a member of the government in the Judicial Council, even if passive, is very problematic from the point of view of the separation of powers. The Venice Commission has also taken a critical stance on such arrangement, as has the GRECO. The Venice Commission therefore recommends that the Minister of Justice should not be any more a member of the Judicial Council [...]. It is noted that there remains a constitutional obstacle to that change. Article 43(2) includes a general limitation according to which the Minister and the President of the Supreme Court are assumed to be in

the same position as all other members of the Judicial Council except in matters prescribed by this law. It would be suitable that the legislation be clearer as to what differences apply to those two members. [...]

[CDL-AD\(2025\)026](#), North Macedonia - Opinion on the draft Law on the Judicial Council, §28.

VII. Election of judicial members

A. Election by peers

32. [...] With the exception of ex-officio members these judges should be elected or appointed by their peers.

[CDL-AD\(2010\)004](#), Report on the Independence of the Judicial System Part I: The Independence of Judges, §32.

35. The objective of the draft Law to respect and apply the principle of election of judicial members of the NCJ by their peers is not only legitimate, but it is required by the decisions of the ECtHR and the CJEU and the Venice Commission and DGI commend the Polish authorities for this proposed change.

[CDL-AD\(2024\)018](#), Poland - Urgent Joint Opinion on the draft law amending the Law on the National Council of the Judiciary, §35.

36. The Commission summarises these parameters here below, as they will be the main principles of reference for most of the following analysis:

[...]

- At least half of the members of judicial councils should be judges elected or appointed by their peers. In its Opinions (most notably on Bulgaria, Serbia and France), the Commission has made reference to the standard set in this respect by the Committee of Ministers of the Council of Europe, i.e. that “not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary and with the respect of pluralism inside the judiciary”. This is a standard that has also been reflected in the case-law of the European Court of Human Rights (“ECtHR”).

[CDL-AD\(2025\)021](#), Chile - Opinion on the draft Constitutional amendments in respect of the judiciary, §36.

See also: [CDL-AD\(2017\)018](#), Bulgaria - Opinion on the Judicial System Act §14; [CDL-AD\(2019\)031](#), Bulgaria - Opinion on draft amendments to the Criminal Procedure Code and the Judicial System Act, concerning criminal investigations against top magistrates, §69; [CDL-AD\(2020\)035](#), Bulgaria - Urgent Interim Opinion on the draft new Constitution, §44; [CDL-AD\(2021\)032](#), Serbia - Opinion on the draft Constitutional Amendments on the Judiciary and draft Constitutional Law for the Implementation of the Constitutional Amendments, §64; [CDL-AD\(2022\)030](#), Serbia - Opinion on three draft laws implementing the constitutional amendments on Judiciary, §71; [CDL-AD\(2023\)015](#), France - Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Superior Council of Magistracy and the status of the judiciary as regards nominations, mutations, promotions and disciplinary procedures, §§23-25; [CM/Rec\(2010\)12](#) Committee of Ministers of the Council of Europe, Recommendation on the independence, efficiency and responsibilities of judges, §27; ECtHR, *Grzęda v. Poland* (GC), application no. 43572/18, 15 March 2022, §305.

30. According to Recommendation [CM/Rec 2010\(12\)](#) of the Committee of Ministers of the Council of Europe, not less than half the members of judicial councils should be judges elected

by their peers. This approach has been consistently maintained in the Venice Commission's country-specific Opinions. The Consultative Council of European Judges (CCJE) recommends that the majority of members of judicial councils should be judges elected by their peers and that election of judicial members by parliament or selection by the executive must be avoided. This standard is also supported by the European Network of Councils for the Judiciary.

32. Moreover, the Venice Commission has warned against the politicisation of the process of electing the judicial members of the judicial councils. Where judicial reforms shifted the power to elect judicial members from the judiciary to the Parliament, the Commission considered that this change carried the risk of politicisation and recommended reverting to the election of judicial members by their peers.

35. According to Option 1, (i) judicial candidates are nominated by 25 judges or by a judicial association; and (ii) the candidates are directly elected by judges.

36. [...] Option 1 reflects the European standard of peer election by permitting the judicial community to directly elect the judicial members of the Council. To the extent that these elections are free, direct, pluralistic and fair, they could eliminate the risk of politicisation. The Venice Commission considers, however, that the election process should be protected not only from external political influence but also from internal politicisation. Judicial independence requires that the election of the members of judicial councils be protected from direct interference by political actors, as well as from indirect dependence on, or alignment with, such actors, notably through judicial associations. In some countries, particularly where judicial associations hold significant influence on the electoral process, the judicial council faces dual risks: external political interference and internal politicisation.

[CDL-AD\(2025\)038](#), Spain - Opinion on the manner of election of the judicial members of the General Council of the Judiciary, §§30, 32, 35-36.

51. [...] Requiring judicial candidates – even after being pre-elected by the judicial community – to undergo a political process in Parliament risks attributing a “political colour” to those judges for the rest of their professional careers. It is irrelevant whether such risk actually materialises; as the ECtHR stated on many occasions, “even appearances may be of a certain importance, or in other words, “justice must not only be done, it must also be seen to be done. What is at stake is the confidence which the courts in a democratic society must inspire in the public.”

54. [...] Option 2 contains significant improvements in securing participation of the judiciary in the election of the judicial members of the GCJ; however, this aim is frustrated by the involvement of Parliament in their final election. The mere nomination and pre-election by the judiciary would not suffice to render this model compatible with the European standard of peer election. While, in the Venice Commission's opinion, compliance with this standard is not necessarily ruled out when a second phase of selection is envisaged, it should not be of a political nature. Therefore, Option 2, as it is, cannot be considered to align with this standard.

[CDL-AD\(2025\)038](#), Spain - Opinion on the manner of election of the judicial members of the General Council of the Judiciary, §§51, 54.

B. Nominating stage

39. Election by peers presupposes freedom of candidacy to be able to have freedom of choice. For candidatures to be free, candidates cannot be subject to restrictions or filtering, and the admissibility criteria must be general and abstract, formal and equal, and not based on substantive assessments or dependent on disproportionate assumptions or procedures. The present version of Article 12 § 2 provided for the following requirements: biographical data on the vocational and professional development, as well as a certificate of the candidate's experience

as a judge. The draft includes a motivation letter, the final performance evaluation issued by the Council, and a certificate on any imposed disciplinary measures. These requirements are useful for informing the Council about the candidates and do not seem to be excessive and thus to go against international standards.

[CDL-AD\(2025\)026](#), North Macedonia - Opinion on the draft Law on the Judicial Council, §39.

41. As regards the nomination process, the practice in other jurisdictions varies. Judges can be nominated by other judges, associations of judges, courts, the conference of judges or by the different instances or courts they represent. Option 1 provides that candidates not endorsed by an association need 25 endorsements from other individual judges (while Option 2 requires 30 endorsements). In view of the practical difficulties of securing this number of signatures, particularly for judges in remote or isolated areas, and depending on the mechanisms available for the collection of these signatures (in person, by electronic means, etc.), this requirement could be substantially reduced, or even abolished in both Options 1 and 2, in order to avoid unduly favouring the role of judicial associations in the nomination process. Another possibility would be to allow nominations to be based on an open call for independent candidates. However, this approach would require careful consideration in view of the risk of overburdening the electoral administration with a large number of submissions in a short period, potentially delaying procedures.

[CDL-AD\(2025\)038](#), Spain - Opinion on the manner of election of the judicial members of the General Council of the Judiciary, §41

C. Pre-selection committees

16. Furthermore, the fact that the integrity checks will be carried out not by the self-governing bodies of the judiciary and procuracy themselves, but rather by an external body to be constituted by Moldova's "development partners" and parliamentary majority and minority requires that the utmost consideration be given to respecting the constitutional principles of separation of powers and checks and balances.

43. Integrity checks targeted at the candidates to the position of SCM, SCP and their specialised bodies represent a filtering process and not a judicial vetting process, and as such may be considered, if implemented properly, as striking a balance between the benefits of the measure, in terms of contributing to the confidence of judiciary, and its possible negative effects.

[CDL-AD\(2021\)046](#), Republic of Moldova - Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on some measures related to the selection of candidates for administrative positions in bodies of self-administration of judges and prosecutors and the amendment of some normative acts, §§16, 43.

44. Taking also into consideration that the Ethics Council normally makes recommendations which can be appealed directly with the Supreme Court, international participation can be considered as an additional guarantee of independence of the judges concerned, because the persons designed by international and foreign organizations will a priori be more independent from legislative and executive power or persons and any authorities within the Ukrainian judiciary. The inclusion of international members can provide guarantees for the independence of judges because they add an additional element of objectivity, not being involved in interests, strategies and politics of national stakeholders.

[CDL-AD\(2022\)023](#), Ukraine - Joint amicus curiae brief of the Venice Commission and DGI on certain questions related to the election and discipline of the members of the High Council of Justice, §44.

D. Role of judicial and professional associations

39. In the Sejm, the draft Law was amended and the right to nominate a judge as candidate was also granted to the Polish Bar Council, the National Bar Council of Attorneys-at-Law and the Polish National Council of Notaries. The involvement of these bodies can be seen as an element of additional involvement and an official acknowledgment of the interest of the relevant stakeholders in an adequate composition of the NCJ. De facto, it is most unlikely that they will put forward candidates which would not have found the support of the necessary number of judges, and the interests of these entities without doubt would have been articulated by comments on the candidates which will be nominated by the other actors, as will be done by the public at large, by several NGOs and others.

[CDL-AD\(2024\)018](#), Poland - Urgent Joint Opinion on the draft law amending the Law on the National Council of the Judiciary, §39.

36. The Venice Commission finds that Option 1 reflects the European standard of peer election by permitting the judicial community to directly elect the judicial members of the Council. To the extent that these elections are free, direct, pluralistic and fair, they could eliminate the risk of politicisation. The Venice Commission considers, however, that the election process should be protected not only from external political influence but also from internal politicisation. Judicial independence requires that the election of the members of judicial councils be protected from direct interference by political actors, as well as from indirect dependence on, or alignment with, such actors, notably through judicial associations. In some countries, particularly where judicial associations hold significant influence on the electoral process, the judicial council faces dual risks: external political interference and internal politicisation.

37. As concerns Spain, the question arises as to whether Option 1 would merely transfer the opportunity for politicisation from parliament to the judiciary. A number of interlocutors indeed stressed that at least two of the four main judicial associations may be closely linked to the two main political orientations – conservative or progressive – existing in the country. As judicial associations would play a significant role in the nomination process and in the election campaigns, thus influencing the choice of the voters, this procedure would not rule out political interference in this selection process. [...]

38. The Commission notes that, since 1985, Spanish judges have not had the opportunity to vote for their candidates. Judicial members, like lay members, have all been elected by Parliament, in which the two main parties have taken turns in holding a majority. Consequently, since 1985 all members of the GCJ have been elected through political processes along partisan lines. It appears logical, in this context, that judicial associations may have developed close links with the political sphere.

39. The Commission cannot predict whether judicial associations would maintain these links under the new system. A substantial proportion of judges remain unaffiliated (as of September 2024, 58% of judges were members of judicial associations), and no peer elections have taken place in the last forty years. It is therefore uncertain to what extent judicial associations might exert influence over judges, particularly non-associated ones. Nevertheless, the Commission accepts that, against the background of forty years of political election of the judicial members of the GCJ, the risk of political influence being exercised through judicial associations cannot be entirely excluded, at least during the initial stages of the operation of a new system of peer election.

40. In this light, direct elections by the judicial community alone may be insufficient to address entirely the risk of politicisation. Where such elections are envisaged, judicial associations – which as such play an important role for the judicial community – may, in practice, act as proxies for political actors. Further safeguards may therefore be necessary to prevent internal politicisation adequately. In particular, measures should be taken to encourage non-associated judges to stand as candidates and to ensure that they are not placed at a significant disadvantage compared to those supported by associations. This consideration is significant given the substantive proportion of non-associated judges in Spain. In this context, the electoral framework would require further elaboration to ensure that independent candidates have adequate opportunities to be elected. [...]

[CDL-AD\(2025\)038](#), Spain - Opinion on the manner of election of the judicial members of the General Council of the Judiciary, §§36-40.

E. Representation of different levels of the judiciary and different groups

31. As to the selection of judicial members by their peers, the Commission reiterates the principle of broad and fair representation of all levels and types of courts. At present, 2 out of 5 positions are allocated to magistrates of 1st instance, on the basis of an indirect suffrage by “collège de grands électeurs”. Given the fact that most judges work in these courts, the Commission recommends considering re-balancing the representation of lower and higher courts. It also endorses the proposal currently in the draft organic law to abolish the indirect suffrage by “collège de grands électeurs”.

[CDL-AD\(2023\)015](#), France - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Superior Council of Magistracy and the Status of the Judiciary as Regards Nominations, Mutations, Promotions and Disciplinary Procedures, §31.

See also: [CDL-AD\(2021\)043](#), Cyprus - Opinion on three Bills reforming the Judiciary, §§49, 60.

18. In its previous Opinion, the Venice Commission recommended to progressively move forward from the ethnical approach towards a system of appointments which is based on the merits of the candidates, ensuring that the HJPC be generally representative of the peoples of Bosnia and Herzegovina, as required by the Constitution. The Commission also expressed a preference for a model that combines diversity and varied representation with a limited and uneven number of members, and a balance between judges and prosecutors.

19. The recommendation has been partially followed inasmuch as Article 5 of the draft law provides for a diverse and varied representation of the judiciary with a limited number of members (eight) that is equal between judges and prosecutors. However, the overall number of members is still even. This problem could be easily solved by adding a lay member (or three, see below).

20. More important, and more problematic, is the fact that Article 4(5) of the draft law states as a “principle” that the composition of the Council “must have at least four members from each constituent people and two members who are the Others”. Codifying such a “principle” risks reinforcing rather than phasing out the ethnic approach. The Venice Commission wishes to clarify that “phasing out” means that the ultimate aim should be that ethnicity is not anymore a relevant factor in the appointment of members of the HJPC (or any other judicial position). However, in light of the specificities of Bosnia and Herzegovina, a specific transitional phase with a 'sunset clause' could be considered. In their comments of 5 March 2025, the national authorities expressed disagreement with the approach of the Commission and insisted on the necessity to maintain a form of proportional representation of the constituent peoples in the HJPC. In particular, the authorities refer to the fact that 97% of the citizens of Bosnia and Herzegovina identify themselves as members of the constituent peoples and the HJPC should therefore follow

this proportional representation, which cannot happen “naturally”, without the establishment of minimum quota. The authorities demonstrate this statement by providing the example of the Supreme Court of Bosnia and Herzegovina, that is composed of 44 judges, out of which 28 are Bosniaks, 10 are Serbs, 4 are Croats, and 2 are Others, while, according to the latest census of 2013, the Federation of Bosnia and Herzegovina is composed of 70% Bosniaks, 22.4% Croats, 2.6% Serbs, and approximately 4.6% of Others. Hence, according to the authorities, a clear disproportion emerges. Similarly, looking at the current ethnic composition of the HJPC, out of 27 managerial positions, 20 are Bosniaks, 5 are Serbs and 2 are Croats.

21. In addition, Article 5(9) of the draft law provides for a drawing lot procedure to be regulated by the Book of Rules for ensuring the gender and ethnic representation. The Commission could not understand how the drawing lot procedure would work, either during the online visit or through written submissions provided by several interlocutors. Hence, the Venice Commission is not in a position to endorse this method of selection and recommends clarifying this procedure. In addition, if such a drawing lot procedure was to be maintained, the law should provide that this is carried out in a transparent fashion with the possibility for monitoring by the public.

[CDL-AD\(2025\)004](#), Bosnia and Herzegovina - Follow-up Opinion to previous Opinions on the draft law on the High Judicial and Prosecutorial Council, §§18-21.

See also: [CDL-AD\(2024\)009](#), Bosnia and Herzegovina - Interim Follow-up Opinion to previous Opinions on the draft law on the High Judicial and Prosecutorial Council, §§18, 25-26, 33-36.

29. A further reason for concern is the election methods prescribed in the KJC’s Regulation No. 09/2019 on the procedure and criteria for the election of members of the Kosovo Judicial Council by the Judiciary (hereinafter, the Regulation). According to these rules, each of the judges from the three instances are elected only by the judges in their ranks, whereas, according to the Law on the KJC, the judges elected by their peers are from among, respectively, the members of the Supreme Court, the Court of Appeals, and the Basic Courts. Hence, the internal rules limit the election of each member to the judges from their own ranks.

30. The Venice Commission would like to recall that the members of a judicial council should act in the interest of the judiciary and the justice system as such, and not in the interest of a group of judges of a certain type of court. Quotas for judges across different levels and jurisdictions may facilitate pluralism and broad representation within the judiciary. However, the current allocation of judges elected by their peers disproportionately favours those serving in the Supreme Court, Courts of Appeal, and second-instance specialised courts, to the detriment of judges from Basic Courts and first-instance specialised courts, who collectively constitute the majority of the judiciary in Kosovo. Moreover, the current system for election discussed in para. 29, which is not necessitated by the Law on the KJC as such, exacerbates the disproportionate representation of certain courts over others. The Venice Commission recommends that the method for electing the judges of the KJC ensure that they do not represent the interests of their respective judicial tiers, but the judiciary as a whole. One way to achieve this is to require that at least some of the judges at the KJC be elected by the entire judiciary, rather than solely by their peers within the same rank. Various models of direct elections are possible, and the choice belongs to the Kosovar authorities, provided that it meets the relevant standards and the system is enshrined at the level of the Law on the KJC.

[CDL-AD\(2025\)015](#), Kosovo - Opinion on the Law on the Judicial Council and the draft law amending and supplementing it, §§29-30.

36. The Commission summarises these parameters here below, as they will be the main principles of reference for most of the following analysis:

[...]

- The judicial component in a council should represent the whole judiciary. The Commission has recommended that there should be a balanced representation of judges from all different levels and courts and the widest possible diversity and representation of gender and regions.

[CDL-AD\(2025\)021](#), Chile - Opinion on the draft constitutional amendments in respect of judiciary, §36.

See also: [CDL-AD\(2011\)010](#), Montenegro - Opinion on the Draft Amendments to the Constitution of Montenegro, as well as on the Draft Amendments to the Law on Courts, the Law on the State Prosecutor's Office and the Law on the Judicial Council, §§20-22; [CDL-AD\(2023\)029](#), The Netherlands - Joint opinion on the legal safeguards of the independence of the judiciary from the executive power, §42; [CDL-AD\(2023\)039](#), Bulgaria - Opinion on the draft amendments to the Constitution, §48.

55. In line with the standards, the Venice Commission has consistently recommended balanced representation of judges from all different levels and courts, as well as the widest possible diversity and representation of gender and regions. Indeed, the system should be designed so that the election results are seen as representative of the country's judiciary. The CCJE maintains this approach by referring to "the widest possible representation of courts and instances, as well as diversity of gender and regions." GRECO also "clearly supports these efforts to ensure the judiciary is not isolated".

57. Regarding proportionality among the three groups of judges, Options 1 and 2 differ in their approach ensuring the diversity. As a general remark, a majority of senior judges may place greater emphasis on experience and perceived legitimacy but could potentially lead to corporatism or resistance to reform. On the other hand, equal representation across all judge categories could encourage a wider range of perspectives, as judges from different court levels could contribute their particular expertise. It should be noted, however, that less experienced judges might be more susceptible to internal or external pressures, though it appears unlikely that very inexperienced judges would be elected.

[CDL-AD\(2025\)038](#), Spain - Opinion on the manner of election of the judicial members of the General Council of the Judiciary, §§55, 57.

58. Reserving a separate quota for Supreme Court judges is a possible solution. Despite the fact that this category of judges represents only a small proportion of the overall number of judges in Spain, it should be noted that these candidates come from the highest judicial authority in all branches of justice (Article 123 (1) of the Constitution). However, it should be made clear that these candidates will not be eligible under the other two quotas. [...]

[CDL-AD\(2025\)038](#), Spain - Opinion on the manner of election of the judicial members of the General Council of the Judiciary, §58

59. Option 1 further elaborates the voting system based on the gender parity principle, providing a mechanism ensuring gender balanced composition of the Council (draft Article 577(15)(b)). This arrangement is welcome.

[CDL-AD\(2025\)038](#), Spain - Opinion on the manner of election of the judicial members of the General Council of the Judiciary, §59.

F. Election models

36. The draft Law provides that the judicial members of the NCJ will be chosen through direct elections managed by the National Electoral Commission, instead of assemblies of judges as in the pre-2017 system.

37. A direct election model is also found in other European systems and is acceptable, provided that the representation of different courts as required by Art. 187(1) of the Constitution is guaranteed. In this regard, the draft Law provides quotas for judges of different levels and jurisdictions (new Art. 11f(1)), which is a way to ensure wide representation of the judiciary in the NCJ as required by the Constitution and European standards. Other models of direct or indirect elections would be possible, but the choice belongs to the Polish authorities, provided that it meets the relevant standards.

[CDL-AD\(2024\)018](#), Poland - Urgent Joint Opinion on the draft law amending the Law on the National Council of the Judiciary, §§36-37.

42. Secondly, holding an election with alternates, as provided by Option 1, implies that candidates must find another judge to participate in the election to act as substitute of the elected judge in case of early termination of his/her mandate. This arrangement may place an additional burden on candidates, particularly those who are not affiliated. One possibility could be to envisage a by-election in the event of the early termination of a Council member's mandate.

[CDL-AD\(2025\)038](#), Spain - Opinion on the manner of election of the judicial members of the General Council of the Judiciary, §42.

54. [...] Option 2 contains significant improvements in securing participation of the judiciary in the election of the judicial members of the GCJ; however, this aim is frustrated by the involvement of Parliament in their final election. The mere nomination and pre-election by the judiciary would not suffice to render this model compatible with the European standard of peer election. While, in the Venice Commission's opinion, compliance with this standard is not necessarily ruled out when a second phase of selection is envisaged, it should not be of a political nature. Therefore, Option 2, as it is, cannot be considered to align with this standard.

[CDL-AD\(2025\)038](#), Spain - Opinion on the manner of election of the judicial members of the General Council of the Judiciary, §54.

G. Number of votes per voter

38. Article 11.f(2) of the draft Law provides that "a judge may cast a vote for one candidate". This seems to mean that a judge has only one vote which he/she can cast for any candidate regardless which category this judge is from. This interpretation supports the aim that the members of the NCJ should act in the interests of the judiciary as such and not in the interest of a group of judges of a certain type of court.

[CDL-AD\(2024\)018](#), Poland - Urgent Joint Opinion on the draft law amending the Law on the National Council of the Judiciary, §38.

43. Thirdly, the electoral model in Option 1 proposes that voters will be able to cast a maximum of eight votes. While the authorities are free to determine the number of votes to be granted to each voter, they are invited to consider if the proposed maximum number of votes per voter could potentially favour associated candidates. A high number of votes may have a majoritarian effect, thereby reducing the chances for individual and minority candidates to be elected, and diminishing the judicial council's pluralistic vocation.

[CDL-AD\(2025\)038](#), Spain - Opinion on the manner of election of the judicial members of the General Council of the Judiciary, §43.

H. Body in charge of elections

40. The elections are to be managed by the National Electoral Commission (NEC), which is the body in charge of all kinds of elections at all levels, from Elections to the European Parliament to national or local elections. It is composed of one judge of the Constitutional Court, one judge of the Supreme Administrative Court, and seven members elected by the Sejm who must have the qualifications to become a judge. The members are appointed for a non-renewable term of nine years. While this is a body designed to manage elections for general bodies of representation, and while it is preferable in principle that the elections of representative bodies of the judiciary be managed by the judiciary itself, the Commission and DGI have been informed that the NEC has already the task of managing other elections (such as those for the agricultural commissions) and it enjoys public trust as a neutral body; it has experience and the necessary infrastructures and facilities to fulfil this role. Its task is only to control if the formal criteria are met. In addition, the draft law facilitates judicial review of the decisions of the NEC providing for the possibility to appeal to the Supreme Administrative Court in case the NEC refuses to accept the application of a candidate for member of NCJ, which is an adequate regulation. The Venice Commission and DGI therefore find that, in the current specific circumstances of Poland, the managing role of the NEC is suitable to safeguard the integrity of the election procedure. The draft Law does not regulate the elections in as detailed a manner as for general elections, which is acceptable as there is a comparatively much more limited number of candidates and voters.

[CDL-AD\(2024\)018](#), Poland - Urgent Joint Opinion on the draft law amending the Law on the National Council of the Judiciary, §40.

34. The elections are managed by an Ad hoc Committee consisting of three members of the KJC (Article 7 of the Regulation). This is in line with the principle that elections of representative bodies of the judiciary be managed by the judiciary itself. [...]

[CDL-AD\(2025\)015](#), Kosovo - Opinion on the Law on the Judicial Council and the draft law amending and supplementing it, §34.

61. Option 1 provides that an election committee shall be formed to oversee the electoral process; it will be composed of three judges of the Supreme Court and a secretary (draft Article 578 (1)). This approach is a possible solution ensuring that the election of the governing bodies of the judiciary is managed by the judiciary itself.⁴⁶ However, other possibilities could be examined, such as establishing an election committee within the Council, especially in view of the appeal role of the Supreme Court and the risks of incompatibilities and conflict of interest.

62. As regards the composition of the election committee, it will include three members, and a secretary. Given the scope of duties and the deadlines proposed in the Option 1 (example, see draft Article 577 (10) and (16)), it might be relevant to increase the number of members and envisage sufficient staff in the technical support secretariat.

[CDL-AD\(2025\)038](#), Spain - Opinion on the manner of election of the judicial members of the General Council of the Judiciary, §§61-62.

I. Procedural safeguards in electoral process

41. The draft law provides for a public hearing of the candidates (new Art. 11o), aiming to enhance transparency and foster trust in the process. While this is commendable in principle, the procedure must be shaped very carefully. Although there are limitations on questions and participation outlined in Art. 11o (7), those limitations are constrained narrowly and may not suffice to shield the process from politicisation or possible abuse. A preferable approach would be to determine a clear scope of the hearings and involve designated entities (e.g., ombudsman, judicial associations, civil society organisations) as filters, to pose questions, ensuring relevance

and integrity of the process. The Venice Commission and DGI recommend providing therefore stricter grounds, scope, and conditions for participation in the public hearings.

[CDL-AD\(2024\)018](#), Poland - Urgent Joint Opinion on the draft law amending the Law on the National Council of the Judiciary, §41.

J. Judicial remedy in electoral process

62. The draft law should clarify that judicial protection is available to a candidate who is deemed not to meet the criteria of professional ethics and integrity by the Ethics Council. As it stands, the draft law does not refer to the procedure for appeals against decisions of the Ethics Council. During the online meetings, the Ukrainian authorities pointed out that that in conformity with other legislation, any individual public act can be appealed against. This means that a decision that terminates a candidacy for a position at the HCJ or that establishes the non-compliance of a current member of the HCJ with ethics and integrity criteria can be appealed against in court.

63. Draft Law no. 5068 should explicitly provide for appeals against the decisions of the Ethics Council to the Supreme Court, even if the parallel draft law no. 5067 already envisages reducing the jurisdiction of the unreformed Kyiv City Administrative Court.

[CDL-AD\(2021\)018](#), Ukraine - Urgent joint opinion of the Venice Commission and the Directorate General of Human Rights and the Rule of Law (DGI) of the Council of Europe 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 of Ukraine (Draft law no. 5068), §§62-63.

49. Moreover, the international element affects only the composition of the HCJ, while, as a national institution, the HCJ itself works completely without any international involvement. Finally, all decisions of the Ethics Council, both concerning candidates and current members of the HCJ, can be appealed to the Supreme Court. Therefore, the final decision remains with a national body in all cases.

[CDL-AD\(2022\)023](#), Ukraine - Joint amicus curiae brief of the Venice Commission and DGI on certain questions related to the election and discipline of the members of the High Council of Justice, §49.

34. [...] decisions made by the Ad hoc Committee [managing the election of judicial members of the KJC] seems to be final, as neither the Law on the KJC nor the Regulation foresee any judicial review neither by the Council itself nor by the Courts. The Venice Commission considers that such a review should be foreseen in the Law on the KJC.

[CDL-AD\(2025\)015](#), Kosovo - Opinion on the Law on the Judicial Council and the draft law amending and supplementing it, §34.

63. The Venice Commission recognises the importance of providing a judicial remedy in the elections to judicial councils. It is welcome that Option 1 introduces an appeal against decisions of the Election Committee to the Supreme Court (draft Article 577 (11) and (17)). However, since the Election Committee consists of Supreme Court judges, it is necessary to establish clear rules on withdrawals and recusals to avoid conflicts of interest. [...]

[CDL-AD\(2025\)038](#), Spain - Opinion on the manner of election of the judicial members of the General Council of the Judiciary, §63.

VIII. Election of lay members

A. Nominating stage

13. The provision in draft Article 127 that the candidates for lay members should be selected on the basis of a public call for candidatures is welcome, as it enhances the transparency of the procedure, hence the public trust in the High Judicial Council.

[CDL-AD\(2013\)028](#), Opinion on the Draft Amendments to three Constitutional Provisions relating to the Constitutional Court, the Supreme State Prosecutor and the Judicial Council of Montenegro, §13.

27. As concerns the election of lay members, the Venice Commission recommended to provide for a public call prior to the nomination of lay members and to elaborate in(eligibility) criteria and procedures for their election. The recommendation has been partially followed as Article 18(1) of the draft law refers to Article 9(1) concerning the public call, Articles 5(4) to (7), 8(2) and 18 of the draft law establish the procedures for the election of the lay members, and Article 6(5) and (6) provides for ineligibility criteria. However, Article 5(8) of the draft law provides for eligibility criteria that are too vague, especially for selecting the candidates to be elected by the parliament.

[CDL-AD\(2025\)004](#), Bosnia and Herzegovina - Follow-up Opinion to previous Opinions on the draft law on the High Judicial and Prosecutorial Council, §27.

68. [...] The principle of pluralism should likewise apply to lay members, who should represent academia and other legal professions. [...]

[CDL-AD\(2025\)038](#), Spain - Opinion on the manner of election of the judicial members of the General Council of the Judiciary, §68.

B. Electing bodies

29. [...] In order to provide for democratic legitimacy of the Judicial Council, other members should be elected by Parliament among persons with appropriate legal qualification taking into account possible conflicts of interest.

[CDL-AD\(2007\)028](#), Report on Judicial Appointments, §29.

38. [...] The Commission recalls that the election of judges to councils of the judiciary aims to guarantee the presence of persons benefiting of internal experience and knowledge in the governance of the judiciary, with a strong culture of independence and impartiality, balancing the composition with lay members, non-judges, appointed in accordance with democratic legitimacy, conferred namely (but not only) by Parliaments. [...]

[CDL-AD\(2025\)026](#), North Macedonia - Opinion on the draft Law on the Judicial Council, §38.

C. Qualified majorities in parliament

123. [...] The non-judicial members would be elected by the National Assembly with a two-thirds majority, no dead-lock mechanism is provided for. It is recommended to foresee such an anti-deadlock mechanism (for which examples can be taken from the several possibilities presented previously by the Venice Commission).

[CDL-AD\(2023\)039](#), Bulgaria - Opinion on the Draft Amendments to the Constitution, §123.

29. The composition of the Council must be such as to guarantee the conditions of independence and impartiality for the exercise of its powers. To this end, the Venice Commission has identified some key parameters on judicial and prosecutorial councils:

[...]

- If non-judicial members are elected by Parliament, this should be done with the broadest agreement, in principle by a qualified majority vote which involves the opposition, following an open and transparent competition. Effective anti-deadlock mechanisms should be provided.

[CDL-AD\(2024\)041](#), Türkiye - Opinion on the composition of the Council of Judges and Prosecutors and the procedure for the election of its members, §29.

28. The Commission also recommended that parliamentary control is to be exercised over the appointment of the member by the Council of Ministers and that the lay member chosen by the parliament should be elected by qualified majority with an anti-deadlock mechanism. [...] The Commission wishes to underline that, on the one hand, the recommended increase of lay members may be done by way of parliamentary election and, on the other hand, the influence of the executive branch on the body in charge of the independence of the judiciary should be possibly avoided.

[CDL-AD\(2025\)004](#), Bosnia and Herzegovina - Follow-up Opinion to previous Opinions on the draft law on the High Judicial and Prosecutorial Council, §28.

See also: [CDL-AD\(2024\)009](#), Bosnia and Herzegovina- Interim Follow-up Opinion to previous Opinions on the draft law on the High Judicial and Prosecutorial Council, §§40-41, 52, 54.

31. [...] As a safeguard against politicisation, the Venice Commission has recommended the introduction of a requirement for a qualified majority in the election of the parliamentary component of the judicial council.

[CDL-AD\(2025\)038](#), Spain - Opinion on the manner of election of the judicial members of the General Council of the Judiciary, §31.

D. Anti-deadlock mechanism in election of lay members

See [CDL-PI\(2025\)023](#), Updated compilation on Opinions and Reports relating to the Qualified Majorities and Anti-Deadlock Mechanisms in relation to the Election by Parliament of Constitutional and Supreme Court Judges, Prosecutors General, Members of Prosecutorial and Judicial Councils, Regulatory Bodies and Ombudsperson, Section IV.

E. Judicial remedy in electoral process

63. [...] Regarding Option 2, it has been discussed above that it remains unclear if an effective judicial review of parliamentary appointment decision would be available. Accordingly, this issue would require further attention from the authorities.

[CDL-AD\(2025\)038](#), Spain - Opinion on the manner of election of the judicial members of the General Council of the Judiciary, §63.

IX. Qualification requirements for judicial members

A. Professional competence and experience

36. The requirement of 10 years of experience for judges [to be eligible at the Council] should be reconsidered because it will make the election of qualified candidates from all levels of the judiciary, especially from first level courts, very difficult.

[CDL-AD\(2011\)019](#), Kyrgyzstan - Opinion on the draft law on the council for the selection of judges of Kyrgyzstan, §36.

40. [...] Members ought to be elected based on their capacity, competence, experience and understanding of judicial life. The ten-year experience requirement significantly limits the pool of eligible candidates to senior judges. It is worth noting that such a significant minimum experience requirement is not common in countries with a judicial council [...]

[CDL-AD\(2025\)021](#), Chile - Opinion on the draft constitutional amendments in respect of judiciary, §40.

32. Article 11 (Conditions for election from the ranks of judges) provides that the prerequisite of having served as a judge is extended from six years to ten years. While not going against international standards, 10 years' experience on the bench appears as limiting excessively the possibility to apply. The Commission suggests that consideration be given to reducing that number of years to 7.

[CDL-AD\(2025\)026](#), North Macedonia - Opinion on the draft Law on the Judicial Council, §32.

58. [...] Looking further into the seniority principle, it could be argued that the requirement of 25 years of experience (Option 1) is excessive and thus inadequate. The Venice Commission deemed a seven-year requirement to be adequate, but not a ten-year one. On the other hand, it is also questionable whether the lack of any experience for the judges falling into the third category, for whom there is no length of service requirement, is compatible with the level of required professional experience required for the effective exercise of duties on the judicial council. In this latter regard, Option 1 makes no requirement for length of service, while Option 2, which includes only a brief description of the approach and is much less elaborated, does not mention this requirement either.

[CDL-AD\(2025\)038](#), Spain - Opinion on the manner of election of the judicial members of the General Council of the Judiciary, §58.

B. Integrity and reputation

16. The Venice Commission has continuously objected against the use of psychological tests for the recruitment of judges, and entrusting those tests to external experts in psychology. In addition, it is quite unusual to see these tests as a pre-condition for the election of a judicial member of the JC. This mechanism gives the JC the possibility of screening the candidates, who should, normally, be elected by and represent the judiciary. The Venice Commission recalls that all candidates to the positions of judicial members are already active judges, so they normally should have already at least minimal social skills and integrity. This mechanism is likely to replace the free election of the judicial members with a system of co-optation, which does not fit well to the idea of "judicial members elected by their peers". While it is perfectly reasonable to have formal eligibility requirements, and for the JC to control the process of elections, the rationale for the idea of the JC selecting or even shortlisting candidates is not clear nor seems acceptable. The Venice Commission invites the authorities to reconsider this provision.

[CDL-AD\(2019\)008](#), North Macedonia - Draft law on the Judicial Council, §16.

X. Qualification requirements for lay members

A. Professional competence and experience

29. Article 16 § 1 of the Law, in defining the required qualifications for being appointed lay members of the Judicial Council, employs the term “experience in legal affairs”. A similar wording (“legal matters”) is used in Article 38 of the Law. The Venice Commission finds that the expression employed is rather vague. What “legal affairs/legal matters” covers needs further explanation and a clearer definition, as previously recommended in 2014. [...]

[CDL-AD\(2022\)050](#), Montenegro - Opinion on the draft amendments to the Law on the Judicial Council and Judges, §29.

49. According to Article 130 (2), practising lawyers of high professional and moral integrity with at least fifteen years of professional experience are eligible for election to the SJC. The requirement of high moral and professional integrity and at least 15 years of professional experience should evidently also concern the non-judicial members. With respect to these members, “professional experience” can be assumed to refer to various legal professions. This could be explicitly stated in Art 130(2). This would also emphasize that at issue are not party-political mandates. The provision that the members of the SJC, elected from the parliamentary quota, should not be members of the judiciary is welcome. A recommendable rule to be added would also be to exclude active politicians (members of the National Assembly) from the “legal experts” that can be elected to the SJC.

[CDL-AD\(2023\)039](#), Bulgaria - Opinion on the draft Amendments to the Constitution of Bulgaria, §49.

33. Article 11-a (Eligibility criteria for election as a member of the Council by the Assembly): The requirements of Article 11-a §§ 1 and 2 appear as cumulative. The non-judicial members (university professors of law, attorneys-at-law, former judges of the Constitutional Court or of international courts, other distinguished legal professionals) have all a degree in law, which is in conformity with international standards.

34. The required length of the experience in legal professions is 15 years, except for university professors – or also lecturers? - for which it is seven years of scientific teaching. This difference does not appear as justified, and the requirement of 15 years’ experience seems excessive. The Venice Commission recommends reconsidering the requirements of duration of professional experience for all members of the Judicial Council, with a view to uniformising them.

[CDL-AD\(2025\)026](#), North Macedonia - Opinion on the draft Law on the Judicial Council, §§33-34.

See also: [CDL-AD\(2014\)026](#), North Macedonia - Opinion on the seven amendments to the Constitution of “the Former Yugoslav Republic of Macedonia” concerning, in particular, the Judicial Council, the competence of the Constitutional Court and Special Financial Zones, §73.

B. Integrity and reputation

30. With the aim to perfect the composition of the CSM and to ensure the necessary diversity of its members, in light of the principles recalled above, the Commission recommends elaborating some (in)eligibility criteria for the selection of the prominent citizens and setting the requirement

of a qualified majority (with due anti-deadlock mechanisms) for the selection of the prominent citizens, in order to ensure the maximum diversity.

[CDL-AD\(2023\)015](#), France - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Superior Council of Magistracy and the Status of the Judiciary as Regards Nominations, Mutations, Promotions and Disciplinary Procedures, §30.

24. The Venice Commission recommended adding an explicit ineligibility criterion excluding persons convicted of criminal acts of a certain nature or severity. The recommendation has been partially followed as Article 6(6) of the draft law provides for such ineligibility criterion without nuancing the severity of the conduct and, which is more problematic, including persons that are not yet convicted but simply subject to criminal proceedings, which would affect the presumption of innocence.

[CDL-AD\(2025\)004](#), Bosnia and Herzegovina - Follow-up Opinion to previous Opinions on the draft law on the High Judicial and Prosecutorial Council, §24.

See also: [CDL-AD\(2024\)009](#), Bosnia and Herzegovina - Interim Follow-up Opinion to previous Opinions on the draft law on the High Judicial and Prosecutorial Council, §§45-46.

C. Political neutrality and independence

54. [...] Again, concerning the lay members, the requirement in draft Article 122 of “not being politically affiliated” is valid. At the same time, the term “political affiliation” should not be understood as “conducting advocacy activities”; and the authorities could consider using the phrase “are not member of political parties” instead of “are not politically affiliated” in the draft provision.

[CDL-AD\(2020\)001](#), Republic of Moldova - Joint opinion on the draft law on amending and supplementing the constitution with respect to the Superior Council of Magistracy, §54.

33. [...] (T)he Venice Commission considers that the Law is too restrictive when it comes to the “political” ineligibility criteria. In particular, ten years of absolute distance from a political party seem to be a rather long period of time; especially in a small country like Montenegro, it might disproportionately restrict the potential pool of candidates, in particular insofar as lay members (of the Judicial Council) are concerned. While the aim of the Law is legitimate, it excessively penalises former activity in political/party affairs. A person of high reputation may well be a leading party figure who retired from politics in an indisputable manner. In addition, the catch-all “actively engaged in a party” is too vague a formula, that might be misused for the sake of excluding undesirable candidates; it requires clarification. The Venice Commission therefore recommends reducing the cooling off period to 5 years, as it is the case, for example, for members of the Prosecutorial Council, [...] and clarifying the formula “actively engaged in a party”. [...]

[CDL-AD\(2022\)050](#), Montenegro - Opinion on the draft amendments to the Law on the Judicial Council and Judges, §33.

See also: [CDL-AD\(2014\)038](#), Montenegro - Opinion on the draft laws on courts and on rights and duties of judges and on the Judicial Council of Montenegro, §44; and [CDL-AD\(2021\)030](#), Montenegro - Urgent opinion on the revised draft amendments to the Law on the State Prosecution Service, §§28-30.

32. [...] Among the guarantees of political neutrality of the SJC (Supreme Judicial Council), the authorities could consider, if necessary by way of constitutional amendment, the restrictions for the politicians (including recent politicians) to become the SJC members. The Judicial Code forbids the SJC members to engage, among other things, in political activities (Art 83, para.1),

however this restriction is not sufficient, and it does not address the problem of politicians who, without a cooling-off period, may take up a position in the SJC.

[CDL-AD\(2023\)045](#), Armenia - Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Concept Paper concerning the reform of the Ethics and Disciplinary Commission of the General Assembly of Judges, §32.

XI. Staggered technique for election of members

29. The very idea of a 'joint term of office' is open to criticism. Desynchronised terms of office are a common feature in collegiate bodies in Europe. They help to preserve institutional memory and continuity of such bodies. Moreover, they contribute the internal pluralism and hence to the independence of these bodies: where members elected by different terms of Parliament work alongside each other, there are better chances that they would be of different political orientation. By contrast, simultaneous replacement of all members may lead to a politically uniform NCJ.

[CDL-AD\(2017\)031](#), Poland - 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, §29.

23. [...] Quasi-total (excluding ex officio members) renewal of the composition of the HJC every three years may affect the institutional continuity of this body. The Concept Paper proposes a mid-term renewal of a part of the composition of the HJC [High Judicial Council]; the Venice Commission is in favour of this proposal but recommends also to extend the duration of the mandate of the HJC members.

[CDL-AD\(2018\)032](#), Kazakhstan - Opinion on the Concept Paper on the reform of the High Judicial Council, §23.

21. There are other ways of addressing the problem of judicial corporatism. One of them consists of the gradual renewal of the composition of the HCoJ, recommended in the 2022 opinion. The Commission again invites the authorities to make use of this staggered technique.

[CDL-AD\(2023\)006](#), Georgia - Follow-up Opinion to four previous opinions concerning the Organic Law on Common Courts, §21.

19. The Venice Commission recommended using a staggered technique in the election of members of the HCoJ.

20. The Commission considers that the introduction in para. 12 of Article 47 of a staggered election of the judge members of the HCoJ is a step in the right direction to fulfil the above recommendation. According to this provision as it stands, during a three-month period the election of more than four judicial members of the HCoJ is proscribed. However, it is doubtful that this limited gradation is sufficient to ensure the continuity and efficiency of the HCoJ.

21. Firstly, the gradation only applies to the judicial members, not the lay members elected by Parliament. As the rule currently stands, Parliament will still replace the lay members en bloc at the same time. In this regard, the September 2023 draft amendments provide that Parliament should not elect more than four lay members of the HCoJ during one session. However, given the long-standing controversy and difficulties in electing lay members, these amendments would rather be insufficient, and it may be better both for the appearance of independence as well as the continuity and efficiency of the HCoJ to divide the election of lay members over two parliamentary terms.

22. Secondly, the abovementioned three-month restriction in the context of electing four judicial members is not sufficiently long to ensure continuity in the HCoJ. The September 2023 draft amendments extend the period from three to six months, which is positive. However, it would be preferable to have longer intervals between elections, for example half of the members every two years, or one quarter of the members every year of the four-year term.

[CDL-AD\(2023\)033](#), Georgia - Follow-up Opinion to Previous Opinions Concerning the Organic Law on Common Courts, §§19-22.

44. [...] Although a system in which two consecutive mandates are allowed has its advantages (i.e., ensuring continuity and retaining certain experienced members), this prohibition may be appropriate in the context of Bosnia and Herzegovina and is not at odds with any international standard. Continuity can efficiently be ensured by staggering terms of office, which does not seem to be excluded in the draft law but could be made explicit.

[CDL-AD\(2024\)009](#), Bosnia and Herzegovina - Interim Follow-up Opinion to previous Opinions on the High Judicial and Prosecutorial Council, §44.

14. The Venice Commission however observes that, if new members of the new HJPC assume office all at the same time, as it seems to be the case in Article 234, the continuity of the functioning of the HJPC could be put at risk. The Commission recommends providing a system for staggered terms of office, for example by holding elections of judges and prosecutors in two different points in time, and subsequently proceeding to the selection and appointment of lay members. A system could be put in place to stagger also the termination of the mandate of previous members.

[CDL-AD\(2025\)004](#), Bosnia and Herzegovina - Follow-up Opinion to previous Opinions on the draft law on the High Judicial and Prosecutorial Council, §14.

XII. Accountability

86. The Venice Commission also recommends indicating explicitly that a member of the Council may be stripped of his or her mandate if he or she fails repeatedly to participate in the work of the Council without serious and objective reason (like serious illness etc.; on this point see more in the following section).

97. [...] the draft Law should describe more precisely in which situations the mandate of a member of the High Judicial Council may be terminated; the draft Law could provide explicitly that the failure of a member to participate in the work of the High Judicial Council without a serious and objective reason may result in the termination of his or her mandate, and such decisions are to be adopted by a simple majority. [...]

[CDL-AD\(2022\)030](#), Serbia - Opinion on three draft laws implementing the constitutional amendments on Judiciary, §§86, 97.

52. The Venice Commission has already expressed its preference for specific and detailed description of grounds for offences, whereas it recognised that, to a certain degree, it is unavoidable that a legislator uses open-ended formulas in order to ensure the necessary flexibility. The ECtHR also found that: “the absence of any guidelines and practice establishing a consistent and restrictive interpretation of the offence and the lack of appropriate legal safeguards resulted in the relevant provisions of domestic law being unforeseeable as to their effects”. The CCJE also stated that “Members may only be removed from office based on proven serious misconduct in a procedure in which their rights to a fair trial are guaranteed. Members may cease to be members in the event of incapacity or loss of the status on the basis of which they were

elected or appointed to the Council. If the Council itself or a special body within it are responsible for this decision, the rights of the dismissed member to an appeal must be ensured.

53. Even though the term “unsuitability” is rather broad and this provision has reportedly never been applied in practice, the explanatory note of the legal act shows, as noted by the Council of State, that this is an ultimum remedium in case of gross neglect of duties (e.g., gross mismanagement or deliberate abuse of power). [...] The Venice Commission and DG I nevertheless recommend to define in a more concrete and precise manner the concept of “unsuitability”. Moreover, although the Minister’s decision is subjected to the control of the Supreme Court, the “serious suspicion” of unfitness cannot be considered as evidence of any misconduct and the wording should therefore be rephrased with reference to concrete elements of proof. As confirmed also during the meetings with the national authorities in the Hague, the suspension or dismissal of a judicial member of the Judicial Council does not affect that member’s judicial function.

54. As to the non-judicial members of the Council, they may be subjected to disciplinary punishment, suspended or dismissed by Royal Decree on the recommendation of the Minister of Justice (Article 86 (5) of the Judicial Act.

[CDL-AD\(2023\)029](#), The Netherlands - Joint Opinion of the Venice Commission and 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, §§52-54. See also: [CDL-AD\(2024\)009](#), Bosnia and Herzegovina - Interim Follow-up Opinion to previous Opinions on the High Judicial and Prosecutorial Council, §28.

34. The text in Article 29(1)(b) to (h) of the draft law states that the mandate of a council member shall be terminated if disciplinary measures have been imposed “by virtue of which he/she was elected to the Council”. The explanatory note furthermore refers to Article 25(4) which states that removal from office can only be the result of misconduct of such severity that it led to “a serious damage to the reputation of the Council or the judiciary”. The recommendation to clarify that the term of office of council members can only be terminated as a result of a disciplinary measure of a certain gravity and where disciplinary liability is the result of the work performed as a council member may be considered fulfilled.

35. In the previous Opinion, the Commission recommended to clarify that the term of office of HJPC members can only be terminated as a result of criminal offences if the latter are of a certain gravity. Article 29(1)(f) of the revised draft law now reads that the mandate of a council member shall be terminated if the member has been “finally convicted of a criminal offence which renders him or her unworthy to continue to hold the office”. The recommendation has been partially followed as it is not clear what is considered “unworthy”, and it would be preferable to refer to a threshold of gravity. The Commission also notes that Article 29(1)(g) refers to Article 25(3)(c), which does not exist.

36. The recommendation to clarify the terms “seriously damages the reputation of the Council” was not followed. Indeed, Article 25(4) of the draft law still uses this notion for the removal from office of a HJPC member, and the explanatory note does not provide any clarification.

37. The previous Opinion recommended that an incompatibility shall not be a reason for removal if the member gives up the other position which gave rise to the incompatibility. This point has not been addressed in the draft law, but it could be simply clarified in the explanatory note. The Commission positively notes that automatic removal is no longer prescribed.

[CDL-AD\(2025\)004](#), Bosnia and Herzegovina - Follow-up Opinion to previous Opinions on the draft law on the High Judicial and Prosecutorial Council, §§34-37.

See also: [CDL-AD\(2024\)009](#), Bosnia and Herzegovina, Interim Follow-up Opinion to previous Opinions on the High Judicial and Prosecutorial Council, §§59-60, 62-63.

XIII. Chairperson and vice-chairperson of the Council

A. Competence, functions, and duties

98. The concentration of powers in one person, the President of the CJP, is problematic per se. Furthermore, as noted above, the President of the CJP being also the Minister of Justice, the combination of roles aggravates the concentration of powers in one person, that is also a member of the Government [...]

99. According to the Consultative Council of European Judges (CCJE), “it is necessary to ensure that the Chair of the Council for the Judiciary is held by an impartial person who is not close to political parties. Therefore, in parliamentary systems where the President / Head of State only has formal powers, there is no objection to appointing the Head of State as the chair of the Council for the Judiciary, whereas in other systems the chair should be elected by the Council itself and should be a judge”. This requirement becomes crucial in the system of Türkiye, considering the broad and substantial powers conferred to the President of the CJP combined with his role as Minister of Justice. The combination of roles aggravates the interference of the executive power with the independence of the judiciary.

100. [...] although the President of the CJP does not participate in the work of the chambers, and therefore does not take part in decisions related to the appointments of judges and prosecutors or disciplinary matters, she/he has a key role in consenting to inspections and investigations of judges and prosecutors as well as to criminal investigations and disciplinary investigations and prosecutions related to the members of the CJP. The Venice Commission therefore recommends that the President of the CJP should be a neutral figure, elected by its members; that the overall powers of the President of the CJP be reduced, irrespective of who shall become the President; and in particular that the power to consent to inspections and investigations of judges and prosecutors, as well as the power related to criminal investigations and disciplinary investigations and prosecutions of members of the CJP should be removed. [...]

[CDL-AD\(2024\)041](#), Türkiye - Opinion on the composition of the Council of Judges and Prosecutors and the procedure for the election of its members, §§98-100.

B. Appointment/election of the chairperson and vice-chairperson

68. Article 32.2 of the draft law stipulates that “President and Vice-Presidents shall not belong to the same Constituent People. No more than one of them shall be from the ranks of Others.” The Venice Commission has previously said that “it is not appropriate for the President and the Vice Presidents of the (High Judicial and Prosecutorial Council) to be chosen along ethnic lines”. The Commission thus reiterates its recommendation.

69. Moreover, Articles 33 and 34 of the draft law do not allow the lay members to be elected President or Vice-President of the Council. As already mentioned, the Venice Commission has previously held that a difference in treatment between judicial and non-judicial members should be duly justified. Neither the draft law nor the explanatory note put forward any specific reason for excluding lay members from these positions. The Venice Commission encourages the authorities to reconsider the exclusion of lay members in Articles 33 and 34.

[CDL-AD\(2024\)009](#), Bosnia and Herzegovina - Interim Follow-up Opinion to previous Opinions on the draft law on the High Judicial and Prosecutorial Council, §68-69.

See also: [CDL-AD\(2014\)008](#), Bosnia and Herzegovina - Opinion on the draft Law on the High Judicial and Prosecutorial Council, §47; [CDL-AD\(2023\)029](#), The Netherlands - Joint

opinion of the Venice Commission and Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the legal safeguards of the independence of the judiciary from the executive power, §§55-56.

62. The KJC elects its Chair and Vice-chair from among its judge members for a non-extendable three-year term (Article 11(1) of the Law on the KJC). Some international standards, like those by the CCJE, do support that a judge is elected as Chair of the Council. Nevertheless, the current composition of the KJC, coupled with the composition of some of the committees, heavily favours judges, raising concerns about balance and pluralism. The Venice Commission has previously criticised the requirement for a judge to serve as chair, warning against corporatist tendencies. In view of the current composition of the KJC, and in the absence of a constitutional reform ensuring that all the members elected by the Assembly are non-judge members, the Venice Commission recommends entrusting either the Chair or the Vice-Chair of the KJC to a lay member to increase democratic legitimacy and credibility before the public or, alternatively, to introduce a rotational system between judge and non-judge members for the position of Chair.

[CDL-AD\(2025\)015](#), Kosovo - Opinion on the Law on the Judicial Council and the draft law amending and supplementing it, §62.

See also: [CDL-AD\(2012\)024](#), Montenegro - Opinion on two Sets of draft Amendments to the Constitutional Provisions relating to the Judiciary of Montenegro, §22; [CDL-AD\(2015\)022](#), Bulgaria - Opinion on the draft Act to amend and supplement the Constitution (in the field of the Judiciary), §71; and [CDL-AD\(2019\)008](#), North Macedonia - Opinion on the Draft Law on the Judicial Council, §12.

29. Article 8 on the JC President: Paragraph 3 states that the President must be a member with voting rights, elected by the Assembly. Consequently, the Minister of Justice and the President of the Supreme Court are not eligible to be President. Conversely, the lay members of the JC are eligible to hold the position of President of the JC. On 9 March 2023, the Constitutional Court of the Republic of North Macedonia found that the provision stipulating that the President of the Judicial Council is elected from among lay, not judicial, members of the Council elected by the Assembly of the Republic of North Macedonia (a provision that had been introduced in the law further to a Venice Commission recommendation), creates a distinction between the two categories of members and runs counter to the principle of equality and violates the principle of the separation of powers. The new President and his Deputy, elected in May and June 2023, are both judges. The Venice Commission recommends that, in conformity with the decision of the Constitutional Court, the text of the law does not include any more the phrase “elected by the Assembly”.

[CDL-AD\(2025\)026](#), North Macedonia - Opinion on the draft Law on the Judicial Council, §29.

See also: [CDL-AD\(2015\)042](#), North Macedonia - Opinion on the Laws on the Disciplinary Liability and Evaluation of Judges of “the former Yugoslav Republic of Macedonia”, §66.

C. Removal of the chairperson and vice-chairperson

30. Article 8 also adds rules on the procedure for dismissal from the position of President of the Council and Deputy President - §§ 6 to 11. However, these rules do not refer to the grounds for dismissal: what are the facts or circumstances which justify such dismissal, and what is the level of severity must they reach? In the absence of specific provisions on the dismissal of the President in Article 34, and as confirmed in the online meetings, the rules for dismissal from the positions of President and Deputy President are the same as those for dismissal from the Council. Furthermore, the authorities argue that because the procedure for dismissal can only be initiated by a reasoned request submitted by at least four voting members of the Council, frivolous and ungrounded dismissals are prevented. Nevertheless, the Venice Commission recommends clarifying the grounds for dismissal.

31. Article 8 § 7 imposes the publicity of the procedure for dismissal from the position of President of the Council and Deputy President, which appears to refer to a public hearing or debate. Given the institutional nature of the JC, the risk of stakeholders taking an excessive account of the possible presence of media is greater than for other procedures and the consequences may be more serious for the institutions. There is no similar rule for the dismissal of other members of the Council. The Venice Commission has warned of this risk and affirmed the right of an evaluated person to request a closed session, whose refusal should be based on cogent reasons. The Venice Commission recommends revising Article 8 § 7 in the sense.

[CDL-AD\(2025\)026](#), North Macedonia - Opinion on the draft Law on the Judicial Council, §§30-31.

See also: [CDL-AD\(2023\)005](#), Republic of Moldova - Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft Law on the external assessment of Judges and Prosecutors, §93.

XIV. Working methods

A. Rules of procedure

In the Commission's view, this provision enables the High Council of Justice to determine its own rules of procedure by adopting an appropriate 'statute', but does not allow for important matters governing its powers and affecting the rights and duties of magistrates to be so regulated. These matters should rather be regulated by a law adopted by Parliament.

[CDL\(1995\)074rev](#), Opinion on the Albanian law on the organisation of the judiciary, p.9.

55. [...] First, it is by no means clear in the draft law how the structural unit of the High Council of Justice will be composed and which working methods will be used. For dealing with highly confidential information, special requirements for the members of such a unit must be laid down in the legislation and also the conditions for their appointment/selection by the High Council and their responsibilities must be made clear.

[CDL-AD\(2014\)031](#), Georgia - Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate of Human Rights and the Rule of Law (DGI) of the Council of Europe, on the draft Law on Amendments to the Organic Law on General Courts, §55.

B. Quorum and deciding majority

19. The ideal of pluralism implies that lay members of the HCoJ should participate in that body and have a meaningful role in the decision-making of the HCoJ. Accordingly, it is necessary to ensure not only the full composition of the HCoJ including the lay members, but also their effective participation in the HCoJ. Where the representation of judges and lay members in the judicial council was a matter of constitutional principle, the Commission recommended that – for effective participation of both judicial and non-judicial groups – the decision-making majorities could not be secured exclusively by votes of one of those groups.

20. The Venice Commission recommends that the Georgian legislator revise the decision-making procedure within the Council to ensure an appropriate balance between the two groups represented in the Council (lay and judicial members).

[CDL-AD\(2023\)006](#), Georgia - Follow-up Opinion to four previous opinions concerning the Organic Law on Common Courts, §§19-20.

See also: [CDL-AD\(2022\)019](#), Republic of Moldova - Opinion on the draft law on amending some normative acts (Judiciary), §49.

18. The September 2023 draft amendments intend to increase the majority required for a decision on the disciplinary liability of judges: it would be 2/3 of the full composition of the HCoJ (which consists of fifteen members). This means that at least ten members should vote in favour of a decision. In view of the fact that nine of the fifteen members are judicial, they will now need only one lay member to have a decision adopted. In these circumstances, the proposed amendment would not always ensure sufficient participation of the lay members in the decision-making process. While it is difficult to give more precise guidance on this matter in the absence of comprehensive factual and contextual information, an additional requirement could provide that for a decision to be adopted, it should be upheld by at least three lay members of the HCoJ.

[CDL-AD\(2023\)033](#), Georgia - Follow-up Opinion to Previous Opinions Concerning the Organic Law on Common Courts, §18.

78. The Venice Commission has previously drawn attention to the need to ensure the effective operation of a judicial / prosecutorial council in practice. In that regard rules on voting in the council are important. The Commission stated in respect of Serbia: “this high quorum and the super-majority raise the risk of blockages in the work of the HJC” and “the high quorum (...) may prevent the HJC from operating effectively”. Especially, in respect of judicial appointments, the blockage of a judicial council can be very problematic. “The Council’s task in respect of filling (judicial) vacancies will (...) be crucial (...). A blockage of the Council’s work (because of the rather high quorum for the Council to take decisions (...)) would thus be highly problematic for the continued functioning of the judiciary.”

79. The Venice Commission acknowledges that the relevant provisions of the draft law do not raise any special concerns as regards blockages of the Council. However, the requirement that at least five judges (or prosecutors) should be in favour of a decision, reduces (or actually neutralises) the influence of lay members. The Commission therefore recommends modifying this provision by including the lay members in the threshold.

[CDL-AD\(2024\)009](#), Bosnia and Herzegovina - Interim Follow-up Opinion to previous Opinions on the draft law on the High Judicial and Prosecutorial Council, §§78-79.

See also: [CDL-AD\(2022\)030](#), Serbia - Opinion on three draft laws implementing the constitutional amendments on Judiciary, §89-90; [CDL-AD\(2022\)043](#), Serbia - Follow-up Opinion on three revised draft Laws implementing the constitutional amendments on the Judiciary, §68.

59. Article 15 of the Law on the KJC stipulates that the Council requires a quorum of nine members for decisions to be made. Decisions are made by a simple majority. This means that, in practice, a decision at the KJC can be reached with as few as five votes in favour, potentially allowing for outcomes based either solely on the support of members elected by the judiciary or those elected by the Assembly, without due consideration for the perspectives of the other group. The current requirement for the quorum and a simple majority in decision-making thus appears inadequate in view of the Council's unbalanced composition, and it is suggested to implement a qualified majority decision-making procedure for significant decisions so as to ensure a more pluralistic approach. The Venice Commission advises the Kosovo legislature to establish rules that do not allow either the judges elected by their peers or the lay members to govern alone, while at the same time excluding the possibility of blockages of meetings. A “special majority” preventing either judicial or lay members to govern alone could be envisaged, at least for the most important decisions, combined with an anti-deadlock mechanism. The specific parameters of such majorities and the anti-deadlock mechanism should be identified by the legislator in dialogue with the main stakeholders and international partners.

60. The absence of provisions addressing deadlocks in scenarios where the quorum is not reached, which could arise if not all seats in the KJC have been filled (as it is currently the case), also poses a concern. While no concrete situations of deadlock have been reported for the KJC, the risk of blocking the decision-making in the KJC remains a possibility. Furthermore, Article 15 lacks a mechanism to resolve tie votes, and it would be prudent to introduce a provision granting the president a casting vote in such instances. It is recommended that the Law on the KJC be amended to include provisions addressing deadlocks or tie votes.

[CDL-AD\(2025\)015](#), Kosovo - Opinion on the Law on the Judicial Council and the draft law amending and supplementing it, §59-60.

12. In the 2019 opinion, the Venice Commission noted that the decision-making process in the plenary of the JC required a very high majority for decisions on the appointment and promotion of judges (eight votes out of the 13 members with a voting right), or on the disciplinary liability of judges and members of the JC (two-third majority). This means that in some situations, the decision may be impossible or extremely difficult to make, for instance in cases of recusal.

59. [...] the authorities are invited to assess whether the majorities/special majorities required in the Plenary of the Judicial Council (the JC) to take decisions on the appointment and promotion of judges, or on the disciplinary liability of judges and members of the JC are realistic. The decision-making process should be designed in such a way as to ensure that the Plenary of the JC would not find itself in situations where it would be impossible or extremely difficult to take a decision. It should ensure that lay members, while remaining in the minority compared to judicial members, nevertheless have a meaningful impact on the decision-making process; [...]

[CDL-AD\(2025\)026](#), North Macedonia - Opinion on the draft Law on the Judicial Council, §§12, 59.

See also: [CDL-AD\(2019\)008](#), North Macedonia - Opinion on the draft law on the Judicial Council.

C. Transparency

21. The Commission considers that the disclosure of the identity of the members together with their votes would serve the purpose of enabling public scrutiny of the behaviour of the single members of the HCoJ, thus further enhancing the trust of the public in the HCoJ as a body. It would also serve as a deterrent from taking political or other irrelevant factors into consideration.

[CDL-AD\(2020\)021](#), Georgia - Opinion on the draft Organic Law amending the Organic Law on Common Courts, §21.

XV. Appeals against decisions of the Council

25. [...] [A] judicial council should have a decisive influence on the [...] promotion of judges and (maybe via a disciplinary board set up within the council) on disciplinary measures against them. An appeal against disciplinary measures to an independent court should be available.

[CDL-AD\(2007\)028](#), Report on Judicial Appointments, §25.

48. The draft Law seeks to respond to some of the earlier recommendations of the Venice Commission and GRECO. In particular, the draft Law introduces a new system of appeal against the decisions of the Supreme Judicial Council in disciplinary matters, by a second-instance panel created within the Council itself. The Venice Commission is of the view that the new mechanism would address the essence of the recommendation of the Committee of Ministers [\(CM/Rec\(2010\)12\)](#). An appeal to an external judicial body could be a better option, but it requires

amending the Constitution. Therefore, the creation of an appellate instance within the Supreme Judicial Council appears to be an acceptable compromise.

[CDL-AD\(2022\)044](#), Armenia - Joint Opinion on the draft amendments to the Judicial Code, §48.

37. The Venice Commission previously criticised the power of the Judicial Council to “resolve complaints on the work of judges”, in that it failed to specify the scope of the complaints which may be received by the Council, taking into account that the complaints against judgments are to be decided through the appeals system. The Law currently reads that the Judicial Council “considers” complaints on the work of judges (Article 27 § 1 (5) of the Law). While this formulation is an improvement vis-à-vis the former, it still leaves open who is entitled to submit such complaints and on what grounds. [...]

[CDL-AD\(2022\)050](#), Montenegro - Opinion on the draft amendments to the Law on the Judicial Council and Judges, §37.

See also: [CDL-AD\(2014\)038](#), Montenegro - Opinion on the draft laws on courts and on rights and duties of judges and on the Judicial Council, §52.

52. The Commission already noted in its 2020 opinion that the Constitution does not specify whether the decisions on disciplinary matters of the two councils are subject to judicial review. Previously, the Venice Commission noted that there should be a possibility of an appeal to an independent court against decisions of disciplinary bodies, in conformity with the case-law of the ECtHR; however, regarding the scope of such appellate review, the Venice Commission stressed that the appellate body should act with deference to the judicial council. This is a fortiori true if the disciplinary council itself is an independent body, and if the procedure before it offers guarantees of fair trial – in this case the need to have a review by an independent court becomes less relevant.

[CDL-AD\(2023\)039](#), Bulgaria - Opinion on the draft Amendments to the Constitution, §52.

See also: [CDL-AD\(2019\)008](#), North Macedonia - Opinion on the Draft Law on the Judicial Council, §35.

53. Article 72 (in two versions) provides for the right to appeal. In Alternative 1, the appeal would be filed to a Special Appeals Council, which would have the power to confirm or annul the decision of the Judicial Council. The draft does not specify the composition and the nature (judicial or administrative) of this Special Appeals Council, nor the manner of appointment of its members, their term of office or responsibilities. Alternative 2 provides for an appeal to two levels of administrative courts against the dismissal decision: first to the Administrative Court and then to the High Administrative Court.

54. Alternative 2 of Article 72 can be considered as a legitimate choice, even if the administrative judges, like all judges apart from those of the Constitutional Court, are not fully independent from the JC.

55. In the absence of more precise provisions on the Special Appeals Council, the Venice Commission cannot assess version 1. At any rate, this provision should be clarified. The Venice Commission recommends addressing in detail the composition of this Council, as well as the manner of appointment of its members, their term of office, and responsibilities. It reminds that, in a series of judgments related to the operation of a judicial council in North Macedonia (“The former Yugoslav Republic of Macedonia” at the time of the judgments), the European Court of Human Rights made it clear that when deciding on disciplinary matters resulting in the dismissal of a judge, a judicial council had to meet the conditions foreseen by Article 6 of the ECHR. Every system in accordance with these conditions would be acceptable.

[CDL-AD\(2025\)026](#). North Macedonia - Opinion on the draft Law on the Judicial Council, §§53-55.

XVI. Relationship with other bodies of the judicial (self-)governance

A. Judicial academies

31. It is ultimately for the domestic authorities to assess the conformity of ordinary legislation with the Constitution. However, it is important to emphasise that while the Judicial and Prosecutorial Councils are constitutionally entrusted with the power to appoint judges and prosecutors (Articles 150(2) and 162(2) of the Constitution), this competence must be interpreted in conjunction with other relevant constitutional provisions. In particular, Article 145 provides that "the conditions for the election of judges... shall be regulated by law," which grants the legislator discretion to determine such conditions, including the preliminary selection procedure. The legislator, however, must exercise this discretion in a manner that respects the principle of judicial and prosecutorial independence as well as the Councils' competence to appoint judges and prosecutors.

32. The draft law on the Judicial Academy seeks to address this issue by ensuring certain level of subordination of the Academy to the Judicial and Prosecutorial Councils. These Councils, according to the Constitution, are state bodies entrusted with safeguarding and guaranteeing the independence of judges and prosecutors. The following provisions are particularly pertinent:

- (i) the Academy is subject to monitoring and professional supervision by the Judicial and Prosecutorial Councils (Article 4);
- (ii) the Judicial and Prosecutorial Councils have a decisive role in the formation of the management bodies of the Academy (Articles 8 and 10);
- (iii) the Judicial and Prosecutorial Councils have a decisive role in the formation of (a) the commission responsible for the entry examination, (b) the appeal commission for the entry examination, and (c) the final examination commission (Articles 33, 36, and 43);
- (iv) the Judicial and Prosecutorial Councils determine, on a regular basis, the number of vacancies for the "prior training" programme (Article 27);
- (v) the Judicial and Prosecutorial Councils may review the report on the entrance examination and the ranking list of candidates applying for the "prior training" (Article 38).

33. It is also to be noted that the Judicial and Prosecutorial Councils retain the competence of finally deciding on the appointments, following a review and interview of successful candidates, particularly regarding their integrity.

34. These arrangements indicate that the level of subordination of the Academy to the Councils is sufficient to ensure respect for the appointing powers of the Councils provided for by the Constitution.

35. However, the Commission is of the opinion that it would be advisable that the draft law provide further clarification on the relationship between the Academy and the Councils by elaborating on and clarifying the procedures related to the exercise by the Councils of their specific competencies in this domain: (i) to monitor the operation of the Academy and perform professional supervision; (ii) to review the entrance examination report and ranking; (iii) to exercise their discretion in reviewing candidates following successful graduation from the Academy. Lack of procedural clarity in these provisions could lead to unnecessary tensions and inconsistent practices. If deemed appropriate, such clarifications could be incorporated into other legislative acts, notably the Law on Judges and the Law on Public Prosecutor's Office, with the current draft legislation including references to those provisions.

[CDL-AD\(2024\)036](#), Serbia - Opinion on the draft Law on the Judicial Academy and draft amendments to the Law on Judges and the Law on the Public Prosecutor's Office, §§31-35.

62. [...] In this regard, it is a positive development that the Academy is sufficiently distanced from other State branches while remaining institutionally linked to the Judicial and Prosecutorial Councils, which have a constitutional mandate to safeguard the independence of the judiciary and the prosecution service. [...]

[CDL-AD\(2025\)011](#), Kosovo - Opinion on the draft amendments to the Law on the Academy of Justice, §62.

See also: [CDL-AD\(2010\)040](#), Report on the independence of the judicial system: Part II – the Prosecution System, §70.

B. Appointment bodies

15. In some countries judges are appointed by the government [...]. There may be a mixture of appointment by the Head of State and appointment by the Government. [...] As pointed out above, this method may function in a system of settled judicial traditions but its introduction in new democracies would clearly raise concern.

16. Another option is direct appointment (not only a proposal) made by a judicial council [...].

17. To the extent that the independence or autonomy of the judicial council is ensured, the direct appointment of judges by the judicial council is clearly a valid model.

[CDL-AD\(2007\)028](#), Report on Judicial Appointments, §§15-17.

51. Consequently, the role of the Verkhovna Rada should be removed by way of a constitutional amendment [...] In case such a constitutional amendment cannot be introduced, the involvement of the parliament should be mainly ceremonial one and the decisive say in the election of judges should be entrusted to an independent body composed of a majority of judges or of a substantial element of judges elected by their peers [...] In this case, Draft Article 78(4) could provide that Parliament will appoint a candidate where the statutory requirements are met so as to avoid any possibility of political interference [...]

[CDL-AD\(2015\)008](#), Ukraine - Preliminary Opinion on the Draft Law on amending the Law on the Judicial System and the Status of Judges, §51.

See also: [CDL-AD\(2003\)019](#), Ukraine - Opinion on three Draft Laws Proposing Amendments to the Constitution, §40; [CDL-AD\(2015\)026](#), Ukraine - Opinion on the Amendments to the Constitution of Ukraine regarding the Judiciary as proposed by the Working Group of the Constitutional Commission in July 2015, §13.

45. [...] The Commission considers that the appointment of supreme court judges directly by the High Council of Justice without the involvement of Parliament, or their appointment by the President (who has otherwise limited powers in the proposed parliamentary system) upon proposal by the High Council of Justice, would better guarantee the independence of those judges.

[CDL-AD\(2017\)023](#), Georgia - Opinion on the draft revised Constitution as adopted by the Parliament of Georgia at the second reading on 23 June 2017, §45.

See also: [CDL-AD\(2015\)037](#), Armenia - First Opinion on the Draft Amendments to the Constitution (Chapters 1 to 7 and 10) of the Republic of Armenia, §158.

C. Advisory bodies

72. The draft Law envisages the establishment of a “Social Council”, as an advisory body to the NCJ (new Art. 27a). It seems that the underlying objective is to enhance the participation of civil society and the public in the affairs of the NCJ, especially considering that the Polish Constitution does not adequately address this aspect. Questions may arise regarding the constitutionality of the advisory council in the absence of explicit constitutional backing. Furthermore, there is room to question whether such a council effectively ensures the legitimate influence of civil society, or if this influence would be better facilitated through reforms to the composition of the NCJ itself.

[CDL-AD\(2024\)018](#), Poland - Urgent Joint Opinion on the draft law amending the Law on the National Council of the Judiciary, §72.

D. Evaluation bodies

24. The second point relates to the delimitation of powers between the Inspectorate and the SCJ. While the Venice Commission refrained from assessing whether the existing powers of the Inspectorate were in line with the European principles or were constitutionally permissible, it has previously noted that there was a danger for the independence of judiciary due to a considerable expansion of the functions of the Inspectorate, with the consequence of a possible shift of the real power from the SJC to the Inspectorate. The Bulgarian (constitutional) legislator has still not clarified the exact scope and mandate of the Inspectorate which would result in a clear demarcation with other bodies/mechanisms. This makes it practically impossible to understand the logic of the draft amendments to transfer additional powers to the Inspectorate.

25. In its 2008 Opinion, the Commission recommended that the “inspection [...] should only concern material issues such as the efficiency with which the judicial bodies have spent the money allocated to them. The inspectors should not have the power to investigate complaints; that power should be left to the SJC itself, since it requires knowledge of or experience with the administration of justice.” Not only was this recommendation not followed, but the 2016 reform of the JSA resulted in a considerable increase in the powers and competencies of the Inspectorate, which are moreover ambiguously defined by the JSA. This makes it difficult to understand the exact role of the Inspectorate vis-a vis the SJC.

26. The concerns caused by the blurred lines between the appraisals (by the SJC), inspections (by the Inspectorate) and disciplinary proceedings (by the SJC) are exacerbated by the fact that these various mechanisms are not part of one sequential procedure: sometimes they interrelate and sometimes they simply co-exist. The extensive functions of the Inspectorate, coupled with the lack of clarity concerning the role of the Inspectorate vis-a vis the SJC, may create the risk of the Inspectorate encroaching on the constitutional mandate of the SJC.

27. The Venice Commission also raised concerns in relation to the procedure and the form of the execution of the functions and powers of the Inspectorate, for example with regard to individual inspections.

28. The above concerns were echoed in the 2020 urgent Interim Opinion of the Venice Commission on the draft new Constitution. The main thrust of these concerns continued to be that (i) inspectors are competent to examine virtually every aspect of the activities of courts, prosecution offices, individual judges and individual prosecutors, and that (ii) the competences of the inspectors should therefore be more clearly specified in the law, in order to avoid overlapping with other existing mechanisms and with the (constitutional) mandate of the SJC.

29. [...] The Venice Commission maintains its position that there should be a clear distinction between the functions of the Inspectorate and the Supreme Judicial Council (SJC), and that there should be more detailed rules in the law itself concerning the procedure of inspections.

Overlapping functions, coupled with lack of clarity concerning their implementation, may lead to abuse of powers.

44. The Venice Commission welcomes the intention of the authorities to strengthen the integrity of the judiciary. However, the Commission would like to stress again the importance of sequencing reforms. Before giving new powers to the Inspectorate, it is necessary to review its institutional model and define more clearly the scope of its mandate. In particular it is necessary to delimit more clearly the powers of the Inspectorate and the Supreme Judicial Council itself, in order to ensure that the Inspectorate does not encroach on the constitutionally defined mandate of the Supreme Judicial Council in the matters of discipline and judicial appointments.

[CDL-AD\(2022\)022](#), Bulgaria - Opinion on the draft amendments to the Judicial System Act concerning the Inspectorate to the Supreme Judicial Council, §§24-29, 44.

See also: [CDL-AD\(2008\)009](#), Bulgaria - Opinion on the Constitution, §46; [CDL-AD\(2017\)018](#), Bulgaria - Opinion on the Judicial System Act, §57.

16. Granting the [Supreme Judicial Council] discretion to increase the [Performance Evaluation Commission]'s size does not appear justified. It would be preferable to maintain statutory stability in the composition of the [Performance Evaluation Commission], including the proportion of judicial and lay members [...].

[CDL-AD\(2024\)031](#), Armenia – Joint Opinion on the draft amendments to the Judicial Code of Armenia (regarding evaluation of judges), §16.

27. Under the draft law, judicial members of the [Performance Evaluation Commission] are elected by the General Assembly of Judges following either self-nomination or nomination by another judge [...].

28. With regard to lay members, they are to be elected by the [Supreme Judicial Council] based on nominations from three distinct entities: (i) higher education institutions, (ii) non-governmental organisations, and (iii) the Judicial Department of the SJC (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 [Supreme Judicial Council], 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.

[CDL-AD\(2024\)031](#), Armenia – Joint Opinion on the draft amendments to the Judicial Code of Armenia (regarding evaluation of judges), §§27-28.

50. One alternative could be to allow the [Supreme Judicial Council] to review on appeal the [Performance Evaluation Commission]'s decisions. However, in 2014 the Venice Commission has observed that “it would be preferable simply to provide for an appeal to a court of law.” 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.

[CDL-AD\(2024\)031](#), Armenia – Joint Opinion on the draft amendments to the Judicial Code of Armenia (regarding evaluation of judges), §50.

E. Disciplinary bodies

8. [...] The Ethics and 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. [...]

[CDL-AD\(2024\)031](#), Armenia - Joint Opinion of the Venice Commission and the Directorate General Human Rights and Rule of Law on the draft amendments to the Judicial Code of Armenia (regarding evaluation of judges), §8.

F. Vetting bodies

96. According to Article 19 (2) of the Draft Law, the SCM/SCP will examine the assessment report provided by the AC and will pass one of the following decisions: (a) accept the report and decide whether or not the assessment has been passed; (b) reject the report and order the reopening of the assessment procedure; (c) after the repeated assessment, accept the report and decide whether or not the assessment has been passed.

97. In its opinion of December 2022, the Venice Commission and DG I considered that the resumption of the evaluation procedure by the evaluation commission upon the rejection of the evaluation report by the SCM was time-consuming and cumbersome. However, it stressed that the authorities had a margin of discretion in that, as long as the decisive role of the SCM, as well as the guarantees against unnecessary procedural delays were clearly ensured.⁴⁴ Further to these considerations, the Commission wishes to underline the fact that vetting is an exceptional exercise that should be done concisely. Given the constitutional role of the SCM/SCP, those bodies should be able to take the necessary additional measures on their own and take a decision without sending the case back to the AC. The Commission and DG I, therefore, for the reasons of expediency, recommend removing the option of remittal of the case to the AC.

[CDL-AD\(2023\)005](#), Republic of Moldova - Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft Law on the external assessment of Judges and Prosecutors, §§96-97.

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