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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW

**ON AMENDMENTS
TO THE LAW ON
JUDICIAL COUNCIL**

OF

MONTENEGRO

Proposal**LAW ON AMENDMENTS TO THE LAW ON JUDICIAL COUNCIL****Article 1**

Article 4 of the Law on Judicial Council (Official Gazette of MNE, 13/08) shall be amended as follows:

“The Judicial Council shall protect courts and judges from political and other inappropriate interference.”

Article 2

In Article 8 after paragraph 2 three new paragraphs shall be added as follows:

- (3) “The Conference of Judges shall pass the Code of Ethics for Judges.
- (4) The Conference of Judges shall establish the Commission for the Code of Ethics for Judges for a four years term of office.
- (5) The Secretariat of the Judicial Council (hereinafter: the Secretariat) shall perform the administrative and technical affairs for the Conference of Judges and the Commission for Code of Ethics for Judges.”

Article 3

After Article 8 a new article shall be added as follows:

“Commission for the Code of Ethics for Judges

Article 8a

- (1) Commission for the Code of Ethics shall consist of a president and two members appointed from among the judges, upon the proposal of the extended session of the Supreme Court and with the previously obtained opinion of the session of judges from all courts in Montenegro.
- (2) Commission for Code of Ethics of Judges shall monitor the application of Code of Ethics for Judges.
- (3) A judge and/or a person in charge of initiating disciplinary procedure may submit the request to the Commission referred to in paragraph 1 of this Article to give an opinion whether the certain conduct of a judge is in line with the Code of Ethics for Judges.
- (4) The Commission referred to in Paragraph 1 of this Article shall submit the report on its work to the Judicial Council at least once a year and until 31st March of the current year for the previous year.
- (5) The Commission referred to in Paragraph 1 of this Article shall adopt the Rules of Procedure which precisely determines the manner of working and making decisions.”

Article 5

Article 10 shall be amended as follows:

“The judge members of the Judicial Council shall be:

- (1) Three judge members from the Supreme Court of Montenegro (hereinafter: the Supreme Court), Court of Appeals of Montenegro, Administrative Court of Montenegro, high courts and commercial courts,
- (2) One judge member of the basic courts.”

Article 5

After Article 10 a new Article shall be added as follows:

“Judicial Appointments Commission

Article 10a

- (1) The Judicial Appointments Commission shall prepare the list of judge candidates for membership in the Judicial Council and shall elect the judge members in the Judicial Council at the Conference of Judges.
- (2) The Judicial Appointments Commission shall have a president and two members who are elected from among the judges at the extended session of the Supreme Court upon the proposal of the sessions of judges of all courts.
- (3) The Judicial Appointments Commission shall be appointed for a four years term of office no later than three months before the expiration of the term of office of the Judicial Council.

Article 6

Article 11 shall be amended as follows:

- (1) The list of candidates for the membership in the Judicial Council referred to in Article 10 paragraph 1 item 1 of this law shall be specified:
 - 1) at the special sessions of judges of the Supreme Court and of the Court of Appeals of Montenegro at which two candidates shall be nominated from each of these courts;
 - 2) at the special sessions of the judges of the Administrative Court and the high courts at which one candidate is nominated from each of these courts;
 - 3) at the joint session of commercial courts at which one candidate is nominated from these courts.
- (2) The Judicial Appointments Commission shall compile the list of eight candidates referred to in paragraph 1 of this Article, in alphabetical order, on the basis of the information on the nominated candidates.
- (3) For the purpose of establishing the list of candidates for the membership in the Judicial Council referred to in Article 10 paragraph 1 item 2 of this law, the Judicial Appointments Commission shall collect the initial nominations nominating two candidates put forward by every basic court judge and president, and shall take care of ensuring the secrecy of the initial nominations.
- (4) The Judicial Appointments Commission shall prepare a list of four candidates who won the majority of initial nominations referred to in paragraph 3, in alphabetical order.
- (5) Notwithstanding paragraph 4 of this Article, if, upon submitting the initial nominations referred to in paragraph 4 of this Article, there are more than four candidates with the same number of the initial nominations, the list shall be compiled in a manner that includes all the candidates with the highest i.e. same score.
- (6) The Rules of Procedure of the Judicial Council shall prescribe the form of the initial proposal under paragraph 3 above.

Article 7

Article 12 shall be amended as follows:

- (1) The lists of candidates for the membership in the Judicial Council prescribed in accordance with Article 11 of this law, shall be submitted to all courts in order to be displayed on the notice boards of the courts, no later than two months prior to the expiration of the term of office of the members of the Judicial Council.
- (2) The President of the Supreme Court shall convene the Conference of Judges no later than 30 days prior to the expiration of the term of office of the members of the Judicial Council.
- (3) The judge members of the Judicial Council shall be elected from the lists of candidates referred to in paragraph 1 above at the Conference of Judges.
- (4) In case none of the candidates from the lists wins the necessary majority of votes, voting shall be repeated among five candidates from the list referred to in Article 11 paragraph 2 of this law, and between two candidates from the list under Article 11 paragraph 4 of this law who received the highest number of votes.
- (5) Notwithstanding paragraph 4 of this law, in case there are more candidates who received the same number of votes which provides for the possibility of their candidature in the second round of voting, those candidates shall be included in the list and voting procedure shall be repeated.
- (6) Three candidates from the list referred to in Article 11 paragraph 2 of this law and one candidate from the list referred to in Article 11 paragraph 4 of this law who received the highest number of votes at the Conference of Judges shall be appointed as the members of the Judicial Council."

Article 8

After Article 13 a new article shall be added as follows:

"Election of members amongst prominent lawyers

Article 13a

- (1) The President of Montenegro shall compose a list of at least four candidates for the membership in the Judicial Council upon the consultations with the Bar Association, Association of Judges, law faculties and academies of sciences and arts and shall submit the list to the extended session of the Supreme Court for their consideration.
- (2) The President of Montenegro shall appoint two members in the Judicial Council amongst prominent lawyers upon the previously obtained opinion of the extended session referred to in paragraph 1 of this Article."

Article 9

In Article 15 after paragraph 1 a new paragraph shall be added as follows:

"(2) A judge member of the Judicial Council shall be dismissed from office even when he/she is imposed a disciplinary measure."

Paragraphs 2 and 3 become paragraphs 3 and 4.

Article 10

In Article 17 paragraph 1 after item 1 two new items shall be added as follows:

- (3) In case the indictment is issued against him/her for the criminal offence that renders him/her unworthy of remaining in office in the Judicial Council up until the final decision in the criminal proceedings is reached.
- (4) In case he/she submits the proposal for dismissal from duty before the dismissal procedure is finished.

After paragraph 1 a new paragraph shall be added as follows:

“(2) A judge member of the Judicial Council may be temporarily dismissed from office in case he/she has been initiated a disciplinary procedure, up until the reaching of the final decision in the disciplinary procedure”.

Paragraph 2 becomes paragraph 3.

Article 11

In Article 21, after paragraph 1, a new paragraph shall be added as follows:

(2) The President of the Judicial Council may not be the president neither a member of commissions and expert teams referred to in paragraph 1 of this article”.

Paragraph 3 shall be amended as follows:

(3) Members of the commissions and expert teams established by the Judicial Council, members of the Commission for the Code of Ethics and Judicial Appointment Commission shall be entitled to compensation for their work in the amount determined by the Judicial Council.

Paragraphs 2 and 3 become paragraphs 3 and 4.

Article 12

Article 22 shall be deleted.

Article 13

In Article 23 paragraph 1, item 1 shall be amended as follows:

(1) recommend three candidates to the President of Montenegro, Speaker of the Parliament and Prime Minister and to the relevant parliamentary body for the purposes of nominating candidates for the function of a President of the Supreme Court to the Parliament of Montenegro”;

In paragraph 1 following item 7 a new item shall be added as follows:

“8) deal with the complaints on the judges’ performance”

Items 8 and 9 become items 9 and 10.

In paragraph 1, item 10 shall be deleted.

After paragraph 1, a new paragraph shall be added as follows:

(2) The procedure on complaints about the judges’ performance shall be stipulated by the Rules of Procedure of the Judicial Council.”

Article 14

In Article 26, paragraph 5 shall be deleted.

Article 15

In Article 27 paragraph 5, wording “unconscientious” shall be replaced by “improper”.

Article 16

After Article 28 a new Article shall be added as follows:

“Appointment of the President of the Supreme Court

Article 28a

- (1) The Judicial Council shall announce the vacancy for the position of the President of the Supreme Court in the Official Gazette of Montenegro and in one of the print media.
- (2) The Judicial Council shall obtain the elaborated opinion of the extended session of the Supreme Court on each of the candidates who applied for the position of the President of the Supreme Court.
- (3) After examining the applications and upon obtaining the opinion of the extended session of the Supreme Court, the Judicial Council, by a majority vote, shall recommend three candidates for the position of the President of the Supreme Court.
- (4) Notwithstanding paragraph 3 of this Article the Judicial Council may recommend less than three candidates only in case there is not a sufficient number of applications of the candidates who meet the criteria stipulated by law.
- (5) Recommendation referred to in Paragraph 5 of this Article shall be elaborated.”

Article 17

Article 31 shall be amended as follows:

- (1) The Judicial Council shall seek the opinion on the expertise and professional qualities of each candidate with regard to holding judicial office from the following:
 - 1) Courts, other bodies, companies or other legal entities in which the candidate is currently or was previously employed;
 - 2) The next higher instance court for an advancing judge.
- (2) In case a candidate is currently or was previously employed in a court, the opinion referred to in paragraph 1 of this article shall be given by a president of the court based on the opinion of the session of judges and on the available information on candidate's performance.
- (3) The opinion referred to in paragraph 1 of this article shall contain detailed information on the following:
 - 1) Work experience;
 - 2) Types of assignments and performance;
 - 3) Attitude towards the work, relations with colleagues;
 - 4) Communication skills.
- (4) The opinion for the appointment of an advancing judge, in addition to data referred to in paragraph 3 shall contain as well the detailed data referred to in Article 32a paragraph 1 item 2 indent 2 of this law.
- (5) The opinion on the candidates for a court president shall contain, in addition to data referred to in paragraph 3 of this article, the detailed data referred to in Article 32b of this law.
- (6) The form of the opinion referred to in paragraphs 3 and 4 of this Article shall be stipulated by the Rules of Procedure of the Judicial Council.”

Article 18

Article 32 is amended as follows:

„Criteria for the appointment of a judge to be appointed for the first time
Article 32

- (1) The criteria for the appointment of a judge to be appointed for the first time shall be the following:
 - 1) Professional knowledge assessed on the basis of:
 - Average grade and the length of studies;
 - Professional trainings (initial training, seminars, workshops);
 - Title awarded (Master of Arts, master degree, PhD);
 - Computer literacy and foreign language skills

- 2) Ability to perform judicial office assessed on the basis of:
 - written examination;
 - work experience (types of assignments a candidate performed so far, the length of work experience, work performance, promotions etc.);
 - Communication skills and personal conduct.
- 3) Worthiness for the performance of judicial office assessed on the basis of:
 - the fact that he/she has not been convicted for criminal offences which renders him/her unworthy of judicial office, nor sentenced in a misdemeanour procedure;
 - Reputation and irreproachable conduct;
 - Relationship with colleagues and clients;

Article 19

After Article 32, three new articles shall be added as follows:

“Criteria for the appointment of an advancing judge

Article 32a

- (1) The criteria for the appointment of an advancing judge shall be the following:
 - 1) Knowledge assessed on the basis of:
 - professional trainings (regular constant trainings and other forms of training);
 - Title awarded (Master of Arts, master degree, PhD);
 - published scientific papers and expertise and other professional activities;
 - Computer literacy and foreign languages skills.
 - 2) Capability of holding a judicial office assessed on the basis of:
 - work experience;
 - work performance during the last three years assessed on the basis of: number and type of resolved cases and the manner of resolving the cases; the number of confirmed, altered, abolished judgements and the judgements resulting in trials conducted upon legal remedies; percentage of resolved cases in relation to approximate norms; resolving cases in the order of their receipt; acting in a timely manner and the time needed for drafting judgments; the number of cases which resulted in the statute of limitations; the number of justified review requests;
 - Communication skills and personal conduct.
 - 3) Worthiness for holding a judicial office assessed on the basis of:
 - The fact that he/she has not been charged in a disciplinary procedure with the violation of the dignity of a judicial office;
 - Relationship with colleagues and clients;
 - Reputation and irreproachable conduct.

Criteria for appointment of a court president

Article 32b

A court president, in addition to the criteria under Article 32a of this law, shall be capable of managing and organising the work in a court, which comprises the following:

- Ability to organize work;
- Knowledge of court administration;
- Reputation that a candidate enjoys among the judges of the court in which he/she performs judicial office;
- Dedication to preserve the independence of courts and judges.

Provision of expert assistance during the appointment procedure

Article 32c

While interviewing the candidates who are applying for the first time for a judicial office, the Judicial Council may, for the purpose of assessing professional capacities for the performance of judicial duty, consult a psychologist.”

Article 20

Article 33 shall be amended as follows:

- (1) The Judicial Council shall interview the candidate who meets the criteria for the appointment.
- (2) It is not necessary to interview a candidate in the event of any of the following:
 - 1) The candidate received an “unsatisfactory” score for a position in a court of the same or higher instance within the past twelve months;
 - 2) The candidate received an “unsatisfactory” score for a position in a court of the same or higher instance on several occasions, regardless as to when he/she was last interviewed.”

Article 21

The Article 34 shall be amended as follows:

- (1) The Judicial Council may hold a written examination for the candidates being appointed a judge for the first time prior to the interview.
- (2) The Commission of the Judicial Council composed of at least three members of the Judicial Council shall hold the anonymous written examination and assess the results of the written examination.
- (3) The written examination shall consist of the questions available on the website of the Judicial Council.
- (4) A copy of the assessed test shall be submitted to all members of the Judicial Council.
- (5) The methodology of the written examination shall be prescribed by the Rules of Procedure of the Judicial Council.”

Article 22

After Article 34, two new articles shall be added as follows:

“Scoring Article 34a

- (1) A candidate applying for a judge office may score the total of 100 points on the basis of:
 - 1) acquired knowledge – up to 30 points;
 - 2) capability of holding a judicial office – up to 40 points;
 - 3) worthiness for holding a judicial office – up to 30 points.
- (2) A candidate who scores less than 60 points is assessed by “unsatisfactory”.
- (3) Points in total awarded when assessing sub criteria shall be prescribed by the Rules of Procedure of the Judicial Council within the limits provided for in paragraph 1 of this article.

Assessment of candidates

Article 34b

- (1) On the basis of the interview, the acquired documentation and the opinion referred to in Article 31 of this law, the members of the Judicial Council shall assess a candidate according to the criteria referred to in Art. 32, 32a and 32b of this law.
- (2) Members of the Judicial Council shall fill in the assessment form for the candidate determining the total number of points he/she gained.

- (3) Members of the Judicial Council shall submit the assessment form with total score of points gained to the Commission under Article 34 paragraph 2 of this law to establish the average number of points.
- (4) The Commission referred to in paragraph 3 of this article shall establish the average number of points and compile the ranking list.
- (5) The content of the assessment form under paragraph 2 of this article shall be prescribed by the Rules of Procedure of the Judicial Council.”

Article 23

Article 35 shall be amended as follows:

- (1) “On the basis of the number of points awarded to each candidate by each member of the Judicial Council, the Commission referred to in Article 34 paragraph 2 of this law shall establish the average number of points and compile the ranking list.
- (2) The ranking list shall be submitted to the Judicial Council for taking decision.
- (3) The Judicial Council shall make a decision on the appointment at a closed session.
- (4) The decision on the appointment must include a written justification“.

Article 24

In Article 37 paragraph 1 following the word “applicant”, wording “and all the applicants from the list for appointment” shall be added.

Article 25

Article 38 shall be amended as follows:

“Applicants shall be entitled to have an insight in their own entire documentation, as well as in the written test, opinion under Article 31 of this Law and in the final score of other applicants who applied for the vacancy for a judge position within 30 days following the day of the decision on the appointments.”

Article 26

In Article 42 paragraph 2, words “permanently or temporarily” shall be replaced by “no longer than one year”.

In paragraph 3, a word “temporarily” shall be replaced by “no longer than one year”.

Paragraph 4 shall be amended as follows:

“In the occasions referred to in par. 2 and 3 of this Article a judge shall have the remuneration from the court he/she is transferred. Costs incurred due to the transfer of a judge to another court shall be borne by the court to which the judge has been reassigned.

Article 27

In Article 43 paragraph 1 wording “or *ex officio*” shall be deleted.

Article 28

After Article 43 a new Article shall be added as follows:

“Transfer to another authority
Article 43a

- (1) A judge, with his/her consent, may be transferred to the Ministry of Justice, Judicial Training Centre or Secretariat for a period of no longer than three years for performing professional activities.
- (2) The transfer referred to in paragraph 1 of this Article shall take place upon the proposal of the head of the authority to which the judge is transferred, upon obtaining the opinion of the president of the court in which the judge performs the judicial office and the consent of the judge concerned.
- (3) The decision on transfer of a judge referred to in paragraph 1 of this Article shall be passed by the Judicial Council.
- (4) For the duration of transfer, a judge may be released from judicial duties or have the work load reduced up to 70%.
- (5) The judge referred to in paragraph 1 of this Article shall retain the remuneration provided for the judges.
- (6) Costs incurred due to the transfer of a judge referred to in paragraph 1 of this Article shall be borne by the authority to which the judge has been transferred.”

Article 29

In Article 50 following paragraph 1 a new paragraph is added as follows:

“The president of the court shall be liable to disciplinary action in case he/she performs his/her duty improperly, negligently and unprofessionally.”

Article 30

In Article 51 paragraph 1, “one” shall be replaced by “two”.

Article 31

In Article 52 following paragraph 2, three new paragraphs are added as follows:

- (3) In addition to disciplinary measures under paragraph 1 of this Article a president of a court may be imposed the disciplinary measure of dismissal.
- (4) A judge or a court president who has been imposed the disciplinary measure of salary decrease, may not be appointed in a higher instance court before the expiration of a two year period of the day when the disciplinary measure comes into force.
- (5) The imposed disciplinary measures shall be deleted for the judge records after the expiration of a two year period of the day when the disciplinary measure comes into force.

Article 32

In Article 54 following paragraph 2, a new paragraph shall be added reading as follows:

- (3) The Commission for the Code of Ethics for Judges may submit the proposal for establishing disciplinary liability of a judge and a court president for the acts against the honour of a judicial office, in cases specified by law.

Paragraphs 3 and 4 become paragraphs 4 and 5.

Article 33

In Article 56 following paragraph 1, two new paragraphs are added reading as follows:

- (2) When the decision under paragraph 1 item 3 of this article is final, the proposal for establishing disciplinary liability shall be deemed as the proposal for dismissal according to which dismissal procedure shall be conducted unless the authorized proponent renounces the proposal.

- (3) In circumstances referred to in paragraph 2 of this article the final decision of the Disciplinary Commission on termination of the procedure under paragraph 1, item 3 of this article shall be considered as the report referred to in Article 64 paragraph 3 of this law.

Paragraph 2 becomes paragraph 4.

Article 34

In Article 61 paragraph 2, wording “and other members of the Judicial Council”, is deleted.

Article 35

In Article 67 following paragraph 1 a new paragraph is hereby added to read as follows:

- (2) Decision under paragraph 1 of this Article shall be justified and shall contain the advice on legal remedy.

Article 36

Article 71 is amended as follows:

“The actions undertaken by a judge while adjudicating in legal matters upon his his/her suspension, dismissal or after the termination of his/her term of office, shall be without legal effect, and judgements passed shall be rendered null and void.”

Article 37

Article 72 is amended as follows:

“The provisions of this law prescribing the procedure of determining the termination of office, disciplinary liability and dismissal shall apply accordingly to lay judges and court presidents, except to the President of the Supreme Court.”

Article 38

Following Article 72, a new Title is added reading as follows:

“VI a RECORD KEEPING

Article 72a

- (1) The Judicial Council's Secretariat shall keep the records on judges comprising in particular the following:
- (1) Given and family name, nationality and mother tongue, address and unique citizen's identification number etc.;
 - (2) The day of being appointed for the office;
 - (3) work experience;
 - (4) Scientific titles awarded (Master, Master of Arts, Ph. D.),
 - (5) Professional education and training;
 - (6) Foreign language skills;
 - (7) published scientific papers and expertise and other professional activities;
 - (8) Disciplinary liability;
 - (9) Termination of office;
 - (10) Dismissal;
 - (11) Classified data access permit.
- (2) Records keeping methodology referred to in paragraph 1 of this Article shall be stipulated by the Rules of Procedure of the Judicial Council.

The content and manner of keeping records under paragraph 1 above shall be stipulated by the Rules of Procedure of the Judicial Council.”

Article 39

In Article 76 paragraph 2, following “Judicial Council” a comma and “on the basis of a public announcement” are added.

Article 40

In Article 77 paragraph 2, following “Secretariat” a comma “on the basis of a public announcement” are added.

Article 41

The procedures of appointment, termination of office, disciplinary liability and dismissal initiated under the Law on Judicial Council (“OG of MNE”, 13/08), shall be completed under this law.

Article 42

The Rules of Procedure of the Judicial Council and other acts provided for by this law shall be passed within 30 days after the date of the entry into force of this Law.

Article 43

The Judicial Council established under the Law on Judicial Council (Official Gazette of MNE, 13/08), shall continue working until the end of its term of office.

Article 44

The President of the Supreme Court shall continue working until the end of its five year term of office.

Article 45

The Conference of Judges, no later than 30 days following the date of entry into force of this law, shall establish the Commission for Monitoring the Application of the Code of Ethics for Judges.

Article 46

This law shall enter into force on the eighth day following that of its publication in the Official Gazette of Montenegro.