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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT AMENDMENTS

**TO THREE CONSTITUTIONAL PROVISIONS RELATING TO
THE CONSTITUTIONAL COURT, THE PROSECUTOR GENERAL
AND THE JUDICIAL COUNCIL**

OF MONTENEGRO

The Constitutional Court

Proposal with alternative majority options

Article 153

The Constitutional Court shall be comprised of 7 judges.

The Constitutional Court judge shall be appointed for the period of 12 years.

The Constitutional Court judges shall be appointed and dismissed by the Parliament, upon hearing in the Constitutional Committee, as follows: two judges at the proposal of the President of Montenegro and five judges at the proposal of the relevant working body of the Parliament, based on the published public invitation procedure implemented by the proposers.

- a.) The appointment and dismissal of the Constitutional Court judges shall take place with two third majority in first round of voting and with the majority of all MPs in the second round, which can take place no earlier than one month following the first round.**
- b.) The appointment and dismissal of the Constitutional Court judges shall take place with two third majority in the first round of voting and with three fifths majority of all MPs in the second round, which can take place no earlier than one month following the first round.**

The Constitutional Court judge shall be appointed from amongst renowned lawyers that are minimum 40 years old and with a minimum of 15 years of work experience in legal profession.

Constitutional Court judges shall appoint the President of the Constitutional Court from amongst themselves for a three-year mandate.

The same person can be appointed only once to the duty of the President or a judge of the Constitutional Court.

The Constitutional Court President and judges shall not exercise the duty of the Member of the Parliament or some other public duty, and shall not engage in some other activities.

Judicial Council

Proposal with alternative majority options

Article 127

Judicial Council shall have a President and nine members.

Members of the Judicial Council shall be as follows:

- 1) President of the Supreme Court;
- 2) Four judges appointed and dismissed by the Conference of Judges, ensuring equal representation of judges and courts;
- 3) Four renowned lawyers appointed and dismissed by the Parliament, based on a public invitation to apply for this duty,
- 4) Minister responsible for judiciary affairs.

- a. **Appointment and dismissal of the Judicial Council members from amongst the renowned lawyers shall take place with two third majority in the first round of voting and with the majority of votes of all MPs in the second round of voting, which can take place no earlier than one month following the first round, based on the public invitation to submit applications.**
- b. **Appointment and dismissal of the Judicial Council members from amongst the renowned lawyers shall take place with two third majority in the first round of voting and with the three fifths majority of all MPs in the second round of voting, which can take place no earlier than one month following the first round.**

The president of the Judicial Council shall be appointed by the Judicial Council from amongst its members who do not hold the judicial duty, with two third majority of votes of all members of the Judicial Council.

The Minister responsible for judiciary affairs shall not be appointed the President of the Judicial Council.

The President of the Judicial Council shall have a casting vote in case of a draw (tie).

The President of Montenegro shall proclaim the composition of the Judicial Council.

The Judicial Council shall submit to the Parliament an annual report on the activities of the Judicial Council and the overall situation in the judiciary.

The Judicial Council shall have a four-year mandate.

Supreme State Prosecutor

Proposal with alternative majority options

Article 135

Functions of the State Prosecutor's Office shall be exercised by the heads of the state prosecutor's offices and state prosecutors.

- a. **The Parliament of Montenegro shall appoint and dismiss the state prosecutor, at the proposal of the Prosecutors' Council, based on the public announcement, after the hearing in the Constitutional Committee, with two third majority in the first round of voting, and with the majority of all MPs in the second round.**
- b. **The Parliament of Montenegro shall appoint and dismiss the state prosecutor, at the proposal of the Prosecutors' Council, based on the public announcement, after the hearing in the Constitutional Committee, with two third majority in the first round of voting, and with the three fifths majority of all MPs in the second round.**

The Supreme State Prosecutor shall be appointed for the period of five years.

The State Prosecutor shall hold a permanent duty.

The Supreme State Prosecutor shall be dismissed: if s/he was found guilty of an offense that makes him/her unworthy of the prosecutorial duty; if s/he performs the duty of the prosecutor in an unprofessional or non-conscientious manner or if s/he permanently loses the ability to exercise the duty of a prosecutor.

The head of the State Prosecutor's Office and the State Prosecutor shall cease and they shall be dismissed in cases and in accordance with the procedure stipulated by the law.