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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW
ON THE JUDICIAL COUNCIL
OF MONTENEGRO

LAW ON THE JUDICIAL COUNCIL OF MONTENEGRO

CHAPTER I

INTRODUCTORY PROVISIONS

Article 1 General Provisions

- (1) This Law regulates the organisation, competences and the operations of the Judicial Council of Montenegro (hereinafter referred to as the: Judicial Council).
- (2) The Judicial Council is an independent and autonomous State organ of Montenegro and has legal personality.
- (3) The Judicial Council shall have a stamp, with the name of the Judicial Council, the name of the State and the National Coat of Arms, in accordance with the Law on Stamps of Institutions of Montenegro.
- (4) The work of the Judicial Council shall be public if not otherwise provided for in this law.

Article 2 Financing of the Judicial Council

Financial means for the operation of the Judicial Council shall be provided for in a special part of the budget of Montenegro.

Article 3 The tasks and mandate of the Judicial Council

- (1) The Judicial Council shall have the task of ensuring the maintenance of an independent, autonomous, accountable and professional judiciary in Montenegro.
- (2) The mandate of the Judicial Council shall be four (4) years from the date the President has proclaimed the composition of the Judicial Council in accordance with Article 127 of the Constitution of Montenegro.

CHAPTER II

MEMBERS

Article 4 Membership of the Judicial Council

- (1) The Judicial Council shall consist of a President and nine (9) members:
 - (a) one (1) member who shall be elected by the Conference of Judges from amongst the judges of the Supreme Court;
 - (b) one (1) member who shall be elected by the Conference of Judges from amongst the judges of the Court of Appeal and the Administrative Court;
 - (c) one (1) member who shall be elected by the Conference of Judges from amongst the judges of the Higher Courts;

- (d) two (1) members who shall be elected by the Conference of Judges from amongst the judges of the basic and commercial courts;
 - (e) one (1) member who shall be elected by the Parliament from amongst the representatives of the majority of the Parliament;
 - (f) one (1) member who shall be elected by the Parliament from amongst the representatives of the opposition of the Parliament;
 - (g) two (2) members who shall be elected by the President of Montenegro from amongst renowned lawyers in Montenegro;
 - (h) one (1) member who shall be the Minister of Justice of Montenegro.
- (2) Members of the Judicial Council shall be persons of high moral standing. They shall have a reputation for efficiency, expertise and professional impartiality.
- (3) As far as possible there shall be an equal representation of men and women on the Judicial Council.
- (4) Members of the Judicial Council shall act independently and impartially in the exercise of their duties as members of the Judicial Council.

Article 5 The President and Vice-President

- (1) The President of the Supreme Court shall be the President of the Judicial Council.
- (2) The President of the Judicial Council shall establish the agenda for each session of the Judicial Council convene and preside over session of the Judicial Council and supervise the overall operations of the Judicial Council, including the Secretariat.
- (3) The President of the Judicial Council shall represent the Judicial Council before third parties and undertake such other duties as regulated in the internal acts of the Judicial Council.
- (4) The Judicial Council shall have a Vice-President who shall be elected from amongst the judge members of the Judicial Council by all of the members of the Judicial Council. The duration of the mandate of the Vice President shall be the duration of the mandate of the Judicial Council.
- (5) The Vice President of the Judicial Council shall assist the President in carrying out those tasks which are necessary to ensure that the Judicial Council operates in an efficient and effective manner and shall undertake such other duties as regulated in the internal acts of the Judicial Council. The Vice President shall replace the President when he/she is absent.

Article 6 Election of judge members of the Judicial Council

- (1) The member of the Judicial Council from the Supreme Court shall be elected in accordance with the following procedure:
- (a) A secret ballot organized by the Court President of the Supreme Court shall take place at the Meeting of Judges of the Supreme Court in order to select two (2) candidate nominees, preferably one man and one woman, from the Supreme Court.

- (b) The Conference of Judges shall elect one (1) of the candidate nominees proposed by the judges of the Supreme Court as a member of the Judicial Council.
- (2) The member of the Judicial Council from the Court of Appeal and the Administrative Court shall be elected in accordance with the following procedure:
 - (a) Secret ballots organized by the Court President of the Court of Appeal and the Court President of the Administrative Court shall take place at the Meeting of Judges of the Court of Appeal and the Administrative Court respectively in order to select two (2) candidate nominees, preferably one man and one woman, from each court.
 - (b) The Conference of Judges shall elect one (1) of the candidate nominees proposed by the judges of the Court of Appeal and the judges of the Administrative Court through a secret ballot
 - (c) Membership of the Judicial Council from the Court of Appeal and the Administrative Court shall alternate between the two courts every four (4) years
- (3) The member of the Judicial Council from the Higher Courts shall be elected in accordance with the following procedure:
 - (a) Secret ballots organized by each of the court presidents of the Higher Courts shall take place at the Meeting of Judges of each of the Higher Courts in order to select two (2) candidate nominees, preferably one man and one woman, from each of the courts.
 - (b) The Conference of Judges shall elect one (1) of the candidates proposed by the judges of the Higher Courts as a member of the Judicial Council.
 - (c) Membership of the Judicial Council from the Higher Courts shall alternate between the two courts every four (4) years.
- (4) The member of the Judicial Council from the basic and commercial courts shall be elected in accordance with the following procedure:
 - (a) Secret ballots organized by the court presidents of the basic and commercial courts shall take place at the Meeting of Judges of each court in order to select one candidate nominee from each of the courts.
 - (b) The Conference of Judges shall elect one (1) of the candidate nominees of the basic and commercial courts as a member of the Judicial Council.
 - (c) In order to encourage membership of the Judicial Council from a broad range of basic and commercial courts, the basic and/or commercial courts from which judges have previously been selected to serve on the Judicial Council shall be precluded from nominating a candidate for the next four years.
- (5) Presidents of courts cannot be nominated as potential members of the Judicial Council.
- (6) The Conference of Judges to elect new Judicial Council members shall be organised and chaired by the President of the Supreme Court every four (4) years, at least three (3) months prior to the expiry of the mandate of the Judicial Council. All judges and court presidents in Montenegro shall be invited to and may vote at the Conference of Judges.

(7) The Conference of Judges may adopt a book of rules for election of members of the Judicial Council. The quorum necessary for carrying out election of members of the Judicial Council shall be two thirds of the total number of judges and court presidents in Montenegro. The elections of the members of the Judicial Council at the Conference of Judges shall take place through secret ballots.

(8) All members of the Judicial Council from among the judges shall be elected by the Conference of Judges by a majority of the votes of all judges present. Repeated voting rounds shall be undertaken if this is necessary in order to secure a majority vote for a proposed candidate nominee. Should a third round of voting fail, the procedure shall be repeated with new candidate nominees at an extraordinary Conference of Judges where voting may take place by post.

(9) The judge members of the Judicial Council shall serve for the duration of the mandate of the Judicial Council and shall be eligible to serve for maximum two consecutive Judicial Council mandates. A judge who has served as a member of the Judicial Council for a period of two consecutive mandates may not be elected again as a member of the Judicial Council until the expiry of four (4) years since the end of his/her previous mandate as a member of the Judicial Council.

Article 7 Termination of Mandate

- (1) The mandate of a member of the Judicial Council shall terminate:
- (a) upon the expiry of the mandate of the Judicial Council to which the member has been elected;
 - (b) upon cessation of the function by virtue of which the member was elected;
 - (c) upon application for a position in a higher court or for the position of court president in any court by a judge member of the Judicial Council;
 - (d) by resignation;
 - (e) if he or she fails to perform his or her duties properly, effectively or in an unbiased manner and is therefore dismissed as a member of the Judicial Council by the Conference of Judges with respect members elected in accordance with Article 4 subparagraph (a), (b), (c) and (d), by the Parliament with respect to members elected in accordance with Article 4 subparagraph (e) and (f) and by the President of Montenegro for members elected in accordance with Article 4 subparagraph (g);
 - (f) for the commitment of an act that would make him or her unworthy to perform duties in the Judicial Council and he or she is therefore dismissed as a member of the Judicial Council by the Conference of Judges with respect members elected in accordance with Article 4 subparagraph (a), (b), (c) and (d), by the Parliament with respect to members elected in accordance with Article 4 subparagraph (e) and (f) and by the President of Montenegro for members elected in accordance with Article 4 subparagraph (g);
 - (g) upon a final conviction of a criminal offence pronouncing a prison sentence, which conviction shall result in automatic termination.
- (2) The mandate of a Judicial Council member under subparagraphs (c) and (d) of paragraph (1) of this Article shall expire on the day when the Judicial Council receives his or her

written statement of resignation from the Judicial Council or when the Judicial Council receive his/her written application for promotion to a higher position in the judiciary.

(3) The mandate of a Judicial Council member under subparagraphs (e) and (f) of paragraph (1) of this Article shall expire on the day the appointing body relieves him or her of duty.

(4) The procedure for dismissing a member of the Judicial Council in accordance with paragraph 1 subparagraphs (e) and (f) of this Article may be initiated by at least three members of the Judicial Council. If the member to be dismissed is a judge, at least two of the three initiators must be judge members elected by the Conference of Judges.

(5) If the member whose mandate has expired is a judge elected by the Conference of Judges, the court(s) that nominated the judge shall carry out a new nomination process in accordance with Article 6 of this Law and an extraordinary Conference of Judges shall be organized by the President of the Supreme Court to select a new Judicial Council member. Voting may take place by post as regulated in the book of rules for election of members of the Judicial Council.

(6) If the member whose mandate has expired is a person elected by the Parliament or the President of Montenegro, the Parliament or President shall immediately elect a new member.

Article 8 Suspension of a Member

(1) A member of the Judicial Council shall be suspended *ex lege* in the following cases:

- (a) if he or she is suspended from the function by virtue of which he or she was elected or appointed to the Judicial Council; or
- (b) if he or she is confined to pre-trial detention.

(2) A decision of the Judicial Council shall not be required for the suspension to come into effect. The suspension shall be confirmed in writing by the President of the Judicial Council and the member shall immediately be informed.

(3) If the suspended member is a judge elected by the Conference of Judges, the candidate nominee who received the closest number of votes to that of the elected member at the Conference of Judges shall replace the suspended member during the suspension period.

(4) If the suspended member is elected by the Parliament or President of Montenegro, the appointing Parliament or President respectively shall appoint a temporary substitute during the suspension period.

Article 9
Leave of Absence and Contributions

- (1) All members of the Judicial Council employed in public institutions shall be entitled to a partial leave of absence from their official positions in order to attend sessions and perform other duties in the Judicial Council.
- (2) Any member whose salary is paid from public funds shall be entitled to continue to receive salary and other benefits from his or her employer during such leave of absence.
- (3) The four judge members of the Judicial Council may, upon a decision of the Judicial Council, work up to 60% of their annual working hours at the Judicial Council. The work load at their regular work place shall be reduced accordingly. The decision of the Judicial Council shall specify the tasks to be carried out by the members working part time at the Judicial Council.
- (4) Members of the Judicial Council shall be entitled to compensation for the carrying out of their duties. The specific amount of the compensation shall be decided by the Government of Montenegro, acting upon a proposal of the Judicial Council.

CHAPTER III

ORGANIZATION

Article 10
Panels

- (1) The Judicial Council shall act and make all decisions as a single body.
- (2) In order to accomplish its tasks and carry out its duties as specified by Law in an efficient manner, the Judicial Council may establish panels, consisting of at least three (3) members, of which the majority shall always be judges, which are empowered to facilitate the work of the Judicial Council in specific fields. The Rules of Procedure of the Judicial Council shall regulate the work of panels.
- (3) The Judicial Council may establish working groups consisting of members of the Judicial Council and external experts to research and express opinions about issues of importance for the judiciary. Appointed working group members from within the judiciary are obliged to participate and may have their quota reduced by the Judicial Council if this is necessary in order to complete the tasks of the working group in a satisfactory manner.

Article 11
Voting and Sessions

- (1) Sessions of the Judicial Council shall be held as often as necessary in order to carry out the tasks of the Judicial Council efficiently and effectively.
- (2) Decisions of the Judicial Council shall be supported by a minimum of six (6) members of the Judicial Council of which a minimum of three (3) shall be judge members of the Judicial Council.
- (3) The Minister of Justice shall not vote in disciplinary proceedings against judges. Decisions made by the Judicial Council in disciplinary cases shall be supported by at least 5 Judicial Council members and a minimum of 3 judge members of the Judicial Council.
- (4) In case of equal votes for and against a proposed decision, the President of the Judicial Council shall have the casting vote.

Article 12 The Secretariat

(1) The professional, financial and administrative tasks for the Judicial Council shall be performed by the Secretariat.

(2) The Secretariat of the Judicial Council shall have a Director and Deputy Director. The Director and Deputy Director shall be appointed and removed by the Judicial Council. The mandate of the Director and Deputy Director shall be limited to four (4) years and may be renewed once. The requirements for the positions of Director and Deputy Director and the recruitment process shall be specified in an internal act of the Judicial Council. The Director and Deputy Director are not civil servants.

(3) The Secretariat shall have a staff that enables it to efficiently support the Council in the carrying out its task. The staff in the Secretariat shall be appointed and removed by the Judicial Council upon recommendation of the Director and Deputy Director. The regulations relating to civil servants and state employees shall apply to the staff of the Secretariat if not otherwise provided herein.

(4) The tasks of the Secretariat shall include, inter alia, provision of administrative support, the carrying out of legal, financial and other research necessary for the Judicial Council to carry out its mandate in accordance with Law, as well as strategic advice related to the execution of the competences of the Judicial Council. The Secretariat shall prepare draft decisions to be rendered by the Judicial Council, execute decisions adopted by the Judicial Council and regularly report to the Judicial Council with respect to its activities.

(5) The Secretariat shall also be responsible for preparing the draft annual budget of the Judicial Council and the draft annual report, required pursuant to Articles 14 and 17 of this law.

(6) The Director shall, within the approved budget of the Judicial Council and in accordance with relevant legislation and the Rules of Procedure of the Judicial Council, propose a Systematization of Posts and an organizational chart of the Secretariat to be adopted by the Judicial Council.

(7) The Director shall be responsible for the execution of the Judicial Council's approved budget in accordance with relevant internal financial and administrative acts of the Judicial Council and general instructions of the Judicial Council.

(8) The Director and the Deputy Director shall have the right to attend sessions of the Judicial Council as non-voting participants and to express their opinion on all issues on the agenda. The Director may also propose items on the agenda.

(9) The basic salary and benefits of the Director shall be equal to the basic salary and benefits received by judges of the Supreme Court of Montenegro. The basic salary and benefits of the Deputy Director shall be equal to the basic salary and benefits received by the judges of the Appeal Courts of Montenegro.

(10) The salaries of the Secretariat staff shall be decided in an agreement between the Judicial Council and the Government of Montenegro.

Article 13 Internal Acts

- (1) The Judicial Council shall adopt Rules of Procedure regulating details in relation to the manner of operation of the Judicial Council.
- (2) The Judicial Council shall adopt such internal books of rules as necessary to allow it to perform its administrative and financial obligations.
- (3) The Judicial Council shall adopt a book of rules on the internal systematization of posts of the Secretariat.
- (4) The Rules of Procedure of the Judicial Council shall be published in the Official Gazette of Montenegro. Other internal acts of the Judicial Council shall be published on the web page of the Judicial Council.

Article 14 Budget

- (1) The Judicial Council shall adopt an annual budget proposal for the operations of the Judicial Council.
- (2) The Judicial Council shall forward the proposal for its annual budget to the Ministry of Finance with sufficient time for the ministry to consider it. In case the Government does not accept the budget proposed by the Judicial Council, the President of the Judicial Council shall have the right to defend the proposal of the Judicial Council directly before the Parliamentary Assembly of Montenegro.
- (3) The Judicial Council may receive donations from international donors to its operational budget and for special judicial reform projects outside the operational budget of the Judicial Council. Such funds shall be transferred to a special purpose account with the Central Bank of Montenegro. The funds shall be spent upon the order of the Director and Deputy Director of the Secretariat, in accordance with the conditions of the grant agreement with the donor and in compliance with general regulations adopted by the Judicial Council.

Article 15 Strategic Plan

- (1) The Judicial Council shall adopt a Strategy outlining the main goals and strategic issues facing the judiciary in Montenegro over the upcoming years and indicating the measures that the Judicial Council intends implementing in order to address these issues.
- (2) The Strategy of the Judicial Council shall be in compliance with relevant justice sector strategies and justice sector financial frameworks adopted by the Parliament and/or Government.
- (3) The Strategy shall be printed and distributed to all courts and to the Parliament and Government.
- (4) To achieve the strategic objectives outlined in the Strategy the Judicial Council shall cooperate as necessary with the executive and legislative branches of government.
- (5) The Secretariat shall develop and maintain an Implementation Plan for the Strategy to be adopted by the Judicial Council. The Implementation Plan shall be the main management tool of the Director and Deputy Director and shall include timelines and milestones necessary to record the progress of the implementation of the Strategy.

(6) The Secretariat shall report to the Judicial Council on a quarterly basis with respect to the implementation of the Strategy. Delays or problems in the implementation shall be explained.

CHAPTER IV

COMPETENCES AND AUTHORITY

Article 16

Competences of the Judicial Council

- (1) The Judicial Council shall have the following competencies:
- (a) Appointment of judges, court presidents and lay judges;
 - (b) Appointment of reserve judges for a period of up to two years in order to assist courts in reducing case backlogs, or where the prolonged absence of a judge requires additional judicial resources;
 - (c) Dismissal of judges, court presidents, reserve judges and lay judges;
 - (d) Discipline of judges, court presidents, reserve judges and lay judges;
 - (e) Establishment of cessation of judicial duty;
 - (f) Determining the number of judges, lay judges and support staff in each court;
 - (g) Deciding upon the temporary assignment of a judge to another court;
 - (h) Deciding issues related to incompatibility for judges, court presidents and reserve judges;
 - (i) Controlling and supervising the administration and management of courts and issuing a Book of Rules on Internal Operation of Courts;
 - (j) Setting criteria for the performance of judges, court presidents and reserve judges, develop and maintain a system for annual performance evaluation of judges, court presidents and reserve judges and ensuring that the evaluation system is implemented;
 - (k) Assessing the activity reports of courts and decide on corrective measures when necessary;
 - (l) Receiving and processing complaints on the work of courts and taking standpoint with respect to such complaints;
 - (m) Preparing a consolidated budget for the courts in Montenegro, presenting the consolidated budget to the Ministry of Justice, advocating for the adoption of the proposed budget vis-à-vis the Government and the Parliament, monitoring the execution of the approved budget and, if necessary, recommending reallocations during the budget year to the Ministry of Finance;
 - (n) Initiating, coordinating, supervising and controlling the use of information technology by courts in order to achieve and maintain uniformity between courts in this area;

- (o) Overseeing the operations of the Centre for Training of Holders of Judicial Offices;
- (p) Preparing and issuing an Annual Report on the state of the judiciary in accordance with Article 17 of this Law;
- (q) Collecting information and maintaining documentation on the professional status of judges, including their date of appointment, termination of office, statistical information relevant to their work performance, and any other information which the Judicial Council considers relevant to the work of judges, court presidents and reserve judges;
- (r) Providing opinions on complaints lodged by judges, court presidents and reserve judges who consider that their rights provided for by this or other law have been violated or that their independence has been threatened;
- (s) Providing opinions on draft laws and regulations of importance that may affect the judiciary, proposing relevant legislation and other regulations and providing guidance to courts on matters falling under the competence of the Judicial Council;
- (t) Draft a Code of Ethics for judges to be adopted by the Conference of Judges;
- (u) Exercising other competencies as determined by this or other Law.

(2) When determining the number of judges, lay judges and support staff in a court the Judicial Council shall seek the prior opinion of the court president and the Ministry of Justice before a final decision is made. The decisions shall, as far as possible, be based on objective criteria which are equally applied in all courts.

(3) The Book of Rules on Internal Operations of Courts shall be drafted in close cooperation with the Ministry of Justice and the Supreme Court.

(4) The Judicial Council may appoint reserve judges based on application by the president of a court and provided that the application is supported by evidence that a reserve judge is needed. The Judicial Council must have secured the necessary funds from the Ministry of Finance before an appointment of a reserve judge is made.

Article 17 **Annual Report of the Judiciary**

(1) The Judicial Council shall, by first of May each year, prepare an Annual Report documenting the activities of the Judicial Council in the previous year, the status with respect to implementation of the Strategic Plan of the Judicial Council and a description of the state of the judiciary in Montenegro, including recommendations for improvement.

(2) The Annual Report shall include detailed data with respect to the number of cases received and solved during the reporting year and the accumulated case backlog at the end of the year for each court.

(3) The Annual Report shall be delivered to the Parliament, the President, the Government, to each court and to other relevant institutions and organizations as decided by the Judicial Council. It shall also be published on the web page of the Judicial Council.

(4) Upon the invitation of the Parliament, the President of the Judicial Council shall explain the Annual Report and answer questions from the representatives directly at the session of the Parliament. Following the discussion of the Annual Report, suggestions and proposals, which do not dispute the independence of the Judicial Council and the judiciary, may be given by the Parliament. Individual court cases and the performance of individual judges shall not be discussed.

Article 18
Obligation to Comply with Inquiry and Requests

(1) All courts shall comply with requests by the Judicial Council for information, documents, and other material related to the realisation of the competencies of the Judicial Council and all judges, court presidents, reserve judges and employees of courts shall comply with requests made by the Judicial Council to attend meetings in respect of the exercise of the competencies of the Judicial Council.

(2) To the extent necessary for the realisation of its competencies under this or any other law, the Judicial Council and its representatives shall have access to all premises occupied by and documentation in the possession of the courts.

CHAPTER V

APPOINTMENT TO OFFICE

Article 19
Public Announcement of Vacant Positions

A public announcement of vacant positions, conducted by the Judicial Council shall precede the appointment of judges, reserve judges and court presidents. The announcement shall be published throughout Montenegro in a manner determined by the Judicial Council in its Rules of Procedure.

Article 20
Standardized Application Form

(1) Applicants may be required to use a standardized application form as produced by the Judicial Council when applying for judicial positions.

(2) The Judicial Council shall regulate the appointment procedure in detail in its Rules of Procedure.

Article 21
Written Examination

(1) The Judicial Council may introduce a competitive written examination for applicants. In the event that a competitive written examination is introduced it will be conducted prior to the interview stage of the appointment process and all applicants shall be ranked based on the score which they receive on the competitive written examination. The ranking of the candidate may later be altered based on their performance at the interview stage of the appointment process.

(2) In the event that a written examination is conducted, the Judicial Council shall seek to ensure that the persons marking the examination are not aware, during the process of marking the examination, of the identity of the applicant.

Article 22 Interview

- (1) All applicants who fulfill the basic and the additional criteria for the position for which they have applied shall be interviewed.
- (2) Notwithstanding paragraph 1 of this Article, an applicant may not be interviewed in the following circumstances:
 - (a) in the event that he has been interviewed for a position in a court of the same or higher level in the past twenty (20) months and received a below average score at the interview;
 - (b) in the event that he has been interviewed for a position in a court of the same or higher level on several occasions and has repeatedly received a below average score at interview regardless as to when he was last interviewed.
- (3) The interview shall be conducted by a panel of at least three (3) members of the Judicial Council, the majority of whom shall be judges. The members of the interview panel shall elect a chairman to lead the interview process. As far as possible, one member of the Secretariat shall be present at the interview to assist the interview panel with administrative matters.
- (4) At the interview stage of the appointment process the interview panel shall take into account, amongst other matters, the following criteria:
 - (a) Professional knowledge, work experience and performance;
 - (b) Capacity through academic written works and other professional activities;
 - (c) Professional ability based on previous career results, including participation in organized forms of training;
 - (d) Work capability and capacity for analysing legal problems;
 - (e) Ability to perform impartially, conscientiously, diligently, decisively, and responsibly the duties of the office for which he or she is being considered;
 - (f) Communication abilities;
 - (g) Relations with colleagues, conduct out of office, integrity and reputation; and
 - (h) Managerial experience and qualifications, in relation to the positions of court president.
- (5) The interview panel shall score each applicant in accordance with a scoring system adopted by the Judicial Council in its Rules of Procedures.
- (6) For each interviewed applicant a standardized applicant evaluation form shall be completed by the chairman of the interview panel immediately following the interview. The form shall include the agreed score to be awarded to the applicant and the justification for the score. The score is decided by majority vote. The form shall be kept in the applicants file.
- (7) The Judicial Council may seek written opinions regarding the professional and other qualifications and characteristics of an applicant. Such written opinions shall be kept in the applicants file.

Article 23 Recommendation on Appointment

- (1) Following the finalization of the interviews for all eligible applicants, the chairman of the interview panel shall draw up a recommendation to the Judicial Council together with the reasoning behind the recommendation.

(2) The recommendation shall include a ranking list of candidates for the vacant position based on the results of the written test (if any), the interview and the written opinions received. The ranking list shall include the score of all interviewed applicants and a summary of each applicant's background, experience and performance at the interview.

(3) Following the adoption of the recommendation by the interview panel, the recommendation and the reasoning behind the recommendation shall be presented to the Judicial Council for discussion and possible adoption.

Article 24 Decision on Appointment

(1) The Judicial Council shall adopt or reject the recommendation of the interview panel in a council session which shall not be open to the public.

(2) The decision to appoint a candidate to a judicial post shall include a justification in writing.

(3) With respect to the position of President of the Supreme Court, Articles 19, 22 and 23 of this Law shall apply and the Judicial Council shall discuss the recommendation of the interview panel and formulate a recommendation which shall be sent to the President, Speaker of Parliament and Prime Minister of Montenegro.

(4) The Judicial Council may annul a decision on appointment if it, after the decision on appointment, but before the appointee has commenced his or her function, receives information which, if it had been known at the time of the appointment of that person by the Judicial Council, would have resulted in the Judicial Council not appointing the person to the position. The Judicial Council may, if it considers necessary, postpone the date of commencement of function of a person in respect of whom information as described in this paragraph is received, in order to enable it to conduct a proper investigation of the information concerned.

(5) If the Judicial Council annuls a decision on appointment, it shall either appoint the next best candidate from the pool of ranked candidates for that specific position or re-announce the position as vacant.

Article 25 Procedure for Appointment of a Lay Judge

(1) The Court President shall announce a vacancy for a lay judge in his court in the daily newspaper "Pobjeda".

(2) The Court President shall interview each of the applicants who fulfill the basic requirements outlined in Article [] of the Law on Courts and on the basis of the interview process shall compile a list of potential candidates.

(3) The Court President shall forward the list referred to in paragraph 2 of this Article together with the opinion of the Meeting of Judges of his court on each potential candidate to the Judicial Council.

(4) The Judicial Council shall appoint lay judges based on the list referred to in paragraph 2 of this Article and the opinion referred to in Paragraph 3 of this Article.

Article 26
Announcement of Appointment Decision

- (1) The Judicial Council shall inform the successful applicant, the relevant court and the Ministry of Justice of its decision on appointment.
- (2) The decision on appointment shall be published in the Official Gazette of the Republic of Montenegro and shall be published on the web page of the Judicial Council.

Article 27
Rights of Applicants

Each applicant shall have the right to:

- (a) Request and receive information regarding the application and appointment procedure;
- (b) Review his or her own application materials provided to the Judicial Council with respect to his/her application;
- (c) Review the result of the written exam (if any) and the applicants' evaluation form prepared by the interview panel;
- (d) Review and comment upon any opinion regarding the applicant submitted to the Judicial Council;
- (e) Address comments to the Judicial Council about a matter affecting the applicant's application.

Article 28
Commencement of Official Function

- (1) A person appointed as a judge, court president, reserve judge or lay judge shall commence official function on a date as determined by the Judicial Council.
- (2) The President of the Supreme Court shall commence official function on a date as determined by the Parliament.
- (3) If the appointed person fails to commence official function for unjustified reasons within the period prescribed by the Judicial Council or by the Parliament in the case of the President of the Supreme Court, the Judicial Council or the Parliament respectively shall annul the decision on appointment. The Judicial Council shall either appoint the next best ranked candidates from the pool of applicants to that specific position or re-announce the position as vacant.

Article 29 Declaration of Office

- (1) Before taking up their official function, judges, court presidents, reserve judges and lay judges shall make a solemn declaration: "I swear upon my honour that I shall perform judicial office in accordance with the Constitution and the law".
- (2) The individual appointed to office shall take the oath orally before the President of the Judicial Council, or a Judicial Council Member designated by the President of the Judicial Council, and by attesting his or her signature to the declaration.
- (3) Reserve judges and lay judges shall take the oath orally before the president of the court to which he/she has been appointed and by attesting his or her signature to the declaration.
- (4) The President of the Supreme Court shall take the oath before the Parliament of Montenegro and by attesting his or her signature to the declaration.
- (5) If a person appointed to office refuses to take the oath it shall be deemed that he or she has not been appointed.

Article 30 Assignment with Consent

- (1) Judges may be assigned by the Judicial Council to perform judicial service, with their consent, at another court for a period of up to six (6) months during a calendar year in the event that regular performance of duties in the court to which the judge is being assigned have been brought into question due to the disqualification of a judge or his/her inability to attend to his/her duties or due to other justified reasons.
- (2) A judges that is temporarily assigned to another court must fulfil all criteria for the position to which he/she is assigned.
- (3) Remuneration and other costs incurred due to assignment with consent to another court shall be borne by the court to which the judge has been assigned.

Article 31 Assignments without Consent

- (1) A judge may only be the subject of a temporary or permanent assignment without his consent if the conditions set out in Article 121 of the Constitution are fulfilled.
- (2) Remuneration and other costs incurred due to assignment without consent to another court shall be borne by the court to which the judge has been assigned.

Article 32 Procedure for Assignment

- (1) The Judicial Council shall make a decision on temporary assignment, pursuant to Articles 30 and 31, upon a request from the president of a court who wishes to have a judge temporarily assigned to his or her court or ex officio.
- (2) Before a decision on temporary assignment is made the Judicial Council shall consult the president of the court who made the request, the judge who is being considered for temporary assignment, and the president of the court where that judge regularly performs judicial service.

CHAPTER VI

INCOMPATIBILITY OF JUDICIAL FUNCTION WITH OTHER FUNCTIONS

Article 33 References to the Judicial Council

If a Court President believes that a judge or reserve judge is performing activities which are prohibited by Articles [] in the Law on Courts, the judge or reserve judge shall be informed and the Court President shall refer the matter to the Judicial Council, which shall issue a binding decision.

Article 34 Opinions on Extrajudicial Activities

A judge, court president or reserve judge may request the Judicial Council to provide an opinion on whether his activities are compatible with his judicial function. Such request shall contain details of the activities concerned. The Judicial Council shall respond in writing to such a request within a reasonable time from the receipt of such request. The response of the Judicial Council provided in accordance with this paragraph shall be binding.

CHAPTER VII

TERMINATION OF OFFICE AND RETIREMENT

Article 35 Termination of Mandate to Hold Office

- (1) If a court president is aware in advance that the mandate of a judge, reserve judge or lay judge under his/her supervision will end, the court president shall notify the Judicial Council immediately in order for appointment proceedings to be commenced for the future vacancy.
- (2) The mandate of a judge, court president, reserve judge and lay judge shall end automatically upon reaching the mandatory retirement age.
- (3) The mandate of a judge, court president, reserve judge and lay judge shall end if it has been proven by medical documentation that he/she has permanently lost capacity to perform his/her judicial function. The expiration shall take effect from the date as decided by the Judicial Council.
- (4) The mandate of a judge, court president, reserve judge and lay judge shall end upon his removal by the Judicial Council as a consequence of disciplinary proceedings. The expiration shall take effect from the date as decided by the Judicial Council.
- (5) The mandate of a judge, court president, reserve judge and lay judge shall end upon his/her resignation from office. A resignation from office shall be submitted in writing to the Judicial Council, indicating the date of resignation. The mandate shall expire on the later of the date when the Judicial Council receives his/her written statement of resignation or on the date which the judge, court president, reserve judge or lay judge indicated as the resignation date.
- (6) The mandate as court president shall automatically end upon the expiry of the period for which he/she has been appointed as court president.

(7) A court president whose mandate has expired due to the expiry of the period for which he has been appointed as court president shall continue exercising the rights and duties as court president until a new court president is appointed. Such temporary extension of mandate shall not last for more than six (6) months.

(8) A court president shall have the right to resign from his or her position as Court President and continue to perform service as a judge. The mandate as a court president shall expire on the later of the date when the Judicial Council receives his written statement of resignation or on the date which the president indicated as the resignation date.

Article 36 Mandatory Retirement Age

- (1) The mandatory retirement age for judges and court presidents shall be 70 years.
- (2) The mandatory retirement age for lay judges and reserve judges shall be 73 years.

CHAPTER VIII

DISCIPLINARY RESPONSIBILITY

Article 37 Proceedings for Removal of the President of the Supreme Court

(1) An initiative for removal of the Supreme Court President shall be submitted to the Judicial Council.

(2) An initiative for removal (hereinafter the "Initiative") may be submitted by any of the following:

- (a) At least three members of the Judicial Council;
- (b) The Minister of Justice.

(3) The Judicial Council shall send a copy of the Initiative to the President of the Supreme Court and shall allow him/her to make a statement with respect to the Initiative within eight (8) days of receipt by him/her of the Initiative.

(4) The Judicial Council shall dismiss the Initiative if it establishes that there are no grounds for conducting the proceedings or if it concludes that the Initiative was submitted by an unauthorized person.

(5) The Judicial Council shall set up a Commission for Examination of the Conditions for Dismissal (hereinafter referred to as "the Commission") in the event that it concludes that there are grounds to conduct proceedings.

(6) A decision under paragraph 4 or 5 of this Article shall be made within 30 days of the submission of the Initiative.

(7) The Commission referred to in paragraph 5 of this Article shall have a Chairperson and two members who shall be appointed by the Judicial Council from amongst its members, the majority of the Commission shall be judges. The Chairman of the Commission shall rule on disqualification of a member of the Commission and the Judicial Council shall rule on disqualification of the Chairman of the Commission.

- (8) The Commission shall collect information and evidence relevant for determination whether or not the Initiative is founded and shall present its findings to the Judicial Council.
- (9) The Commission shall seek the opinion of the General Session of the Supreme Court, in the event that the Initiative is submitted because of alleged unprofessional or unconscientious performance of judicial duties.
- (10) The Commission shall seek the opinion of the competent body, in the event that the Initiative is submitted because of alleged permanent loss of the ability to perform judicial office.
- (11) The Judicial Council shall consider and review the findings of the Commission and shall make a proposal to the Parliament as to whether or not the President of the Supreme Court should be removed.
- (12) The Parliament shall pass a decision as to whether or not the President of the Supreme Court should be removed within thirty days (30) of receipt of the proposal of the Judicial Council.

Article 38
**Proceedings for Removal of a Judge,
Court President, Reserve Judge and Lay Judge**

- (1) An initiative for removal of a judge, court president, reserve judge and/or lay judge shall be submitted to the Judicial Council.
- (2) An initiative for removal (hereinafter the "Initiative") may be submitted by any of the following:
- (a) President of the Court in which the judge works;
 - (b) President of the immediately higher court to that in which the judge works;
 - (c) At least three members of the Judicial Council;
 - (c) President of the Supreme Court;
 - (d) Minister of Justice
- (3) The Judicial Council shall send a copy of the Initiative to the person in respect of whom the Initiative has been submitted and shall allow him/her to make a statement with respect to the Initiative within eight (8) days of receipt by him/her of the Initiative.
- (4) The Judicial Council shall dismiss the Initiative if it establishes that there are no grounds for conducting the proceedings or if it concludes that the Initiative was submitted by an unauthorized person.
- (5) The Judicial Council shall set up a Commission for Examination of the Conditions for Dismissal (hereinafter referred to as "the Commission") in the event that it concludes that there are grounds to conduct proceedings.
- (6) A decision under paragraph 4 or 5 of this Article shall be made within 30 days of the submission of the Initiative.
- (7) The Commission referred to in paragraph 5 of this Article shall have a Chairperson and two members who shall be appointed by the Judicial Council from amongst its members, the majority of whom shall be judges. The Chairman of the Commission shall rule on disqualification of a member of the Commission and the Judicial Council shall rule on disqualification of the Chairman of the Commission.

- (8) The Commission shall collect information and evidence relevant for determination whether or not the Initiative is founded and shall render a decision on removal of the judge in the first instance.
- (9) The Commission shall seek the opinion of the General Session of the Supreme Court, in the event that the Initiative is submitted because of alleged unprofessional or unconscientious performance of judicial duties.
- (10) The Commission shall seek the opinion of the competent body, in the event that the Initiative is submitted because of alleged permanent loss of the ability to perform judicial office.
- (11) Both the person in respect of whom the initiative was submitted and/or the person who submitted the initiative may appeal the decision of the Commission to the Judicial Council.
- (12) The Judicial Council shall decide upon the appeal within thirty days (30) of receipt of the appeal at a closed session of the Judicial Council.
- (13) The person who submitted the Initiative and the person in respect of who the Initiative was submitted shall be entitled to be present at the council session referred to in paragraph 12 of this Article.
- (14) Both the person in respect of whom the Initiative was submitted and/or the person who submitted the Initiative may appeal the decision of the Judicial Council to the Administrative Court within thirty (30) days from the date when he/she was informed about the decision.

Article 39
Disciplinary Proceedings resulting in Disciplinary
Measures other the Removal from Office

- (1) A proposal (hereinafter the "Proposal") for establishing disciplinary responsibility of a judge, court president, including the President of the Supreme Court, reserve judge and/or lay judge shall be submitted to the Judicial Council.
- (2) A Proposal may be submitted by any of the following:
 - (c) President of the Court in which the judge works;
 - (d) President of the immediately higher court to that in which the judge works;
 - (c) At least three members of the Judicial Council;
 - (e) President of the Supreme Court;
 - (f) Minister of Justice
- (3) The Proposal shall be submitted within fifteen (15) days of learning of the facts which are alleged in the proposal or within sixty (60) days of the facts having emerged.
- (4) The Judicial Council shall dismiss the Proposal for establishing the disciplinary responsibility if the Proposal is not submitted on time or if it is not submitted by an authorized person.
- (5) The Judicial Council shall send a copy of the Proposal to the person in respect of whom the Proposal has been submitted and shall inform him/her of his/her right to engage Counsel.
- (6) The Judicial Council shall establish a disciplinary committee (hereinafter the Disciplinary Committee") which shall conduct the proceedings for the establishment of disciplinary responsibility. The Disciplinary Committee shall have a Chairman and two members who shall be appointed by the Judicial Council from amongst its members. The Chairman of the

Disciplinary Committee shall rule on disqualification of a member of the Committee and the Judicial Council shall rule on disqualification of the Chairman of the Disciplinary Committee.

(7) The Disciplinary Committee shall consider such evidence as it deems important for proper and complete determination of the facts.

(8) Both the person who initiated the Proposal and the person against whom the Proposal is initiated shall be entitled to be heard by the Disciplinary Committee.

(9) The proceedings shall be dismissed in the event that the person who initiated the Proposal fails to appear before the Disciplinary Committee.

(10) The proceedings shall take place in the event that the person against whom the Proposal was initiated fails to appear before the Disciplinary Committee.

(11) The Disciplinary Committee may render the following decisions:

- (a) A decision rejecting the Proposal as unfounded;
- (b) A decision accepting the Proposal as founded and imposing a Disciplinary Measure;
- (c) A decision terminating the proceedings if it is established that there are reasons for removal of the judge and referring the case to the Judicial Council.

(12) The decision of the Disciplinary Committee shall be delivered to the Judicial Council, to the person who submitted the Proposal and to the person against whom the Proposal was submitted.

(13) An appeal against the decision of the Disciplinary Committee may be submitted to the Judicial Council by the person who submitted the Proposal or by the person against whom the Proposal was submitted within eight days of the delivery of the decision.

(14) On receipt of an appeal the Judicial Council may render one of the following decisions:

- (a) Dismiss the appeal as untimely and/or inadmissible;
- (b) Reject the appeal as unfounded;
- (c) Vacate the decision of the Disciplinary Committee and the remand the case for reconsideration to the Disciplinary Committee;
- (d) Revise the decision of the Disciplinary Committee.

(15) Proceedings to establish disciplinary responsibility must be completed within three months of the date of receipt of the proposal. In the event that the proceedings are not completed within three months, the proceedings shall be deemed to be suspended.

(16) Both the person in respect of whom the Proposal was submitted and/or the person who submitted the Proposal may appeal the decision of the Judicial Council to the Administrative Court within thirty (30) days from the date when he/she was informed about the decision.

CHAPTER IX

FINAL PROVISIONS

Article 40

(1) At the coming into effect of this Law the following Articles of the Law on Courts (Official Gazette) shall cease to be valid: [Fill in relevant articles]

(2) The Book of Rules for Internal Court Operations adopted by the Ministry of Justice in accordance with Article 109(1) of the Law on Courts shall remain in force until the Judicial Council has adopted a new Book of Rules on Internal Operations of Courts in accordance with Article 15 of this Law. Such new Book of Rules shall not be adopted before 1 January 2009 and not later than 1 January 2010.

Article 41

This Law shall enter into force on the fifteenth day as of the day of its publication in the "Official Gazette of the republic of Montenegro".