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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

MONTENEGRO

URGENT FOLLOW-UP OPINION

**ON THE REVISED DRAFT AMENDMENTS TO THE LAW ON THE
JUDICIAL COUNCIL AND JUDGES**

**Issued on 6 May 2024 pursuant to Article 14a
of the Venice Commission's Revised Rules of Procedure**

**Endorsed by the Venice Commission
at its 139th Plenary Session
(Venice, 21-22 June 2024)**

on the basis of comments by

**Ms Marta CARTABIA (Member, Italy)
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I. Introduction

1. By letter of 1 April 2024, the Minister of Justice of Montenegro, Mr Andrej Milović, requested a follow-up opinion of the Venice Commission on the revised draft amendments to the Law on the Judicial Council and Judges (hereinafter the consolidated version of the draft law is referred to as: “the draft law”) ([CDL-REF\(2024\)009](#)), indicating that Parliament planned to enact it, along with other draft laws, urgently.

2. Ms Marta Cartabia, and Mr Philip Dimitrov acted as rapporteurs for this Urgent Follow-up Opinion, having acted as rapporteurs also in the earlier opinions on the same issues (Opinion [CDL-AD\(2022\)050](#); Follow-up Opinion [CDL-AD\(2023\)011](#)).

3. On 10 April 2024, the Bureau of the Venice Commission, acting on the basis of Article 14a of the Revised Rules of Procedure, authorised the rapporteurs to prepare an Urgent Follow-up Opinion.

4. On 22 and 23 April 2024, a delegation of the Commission composed of the two rapporteurs, as well as Mr Nikolaos Sitaropoulos and Mr Domenico Vallario from the Secretariat, held on-line meetings with the State Secretary and other officials of the Ministry of Justice, representatives of the Supreme Court, of the Judicial Council and the Association of Judges, and MPs from the parliamentary majority and the opposition. On-line meetings were also held with representatives of civil society organisations and of the EU Delegation to Montenegro. The Venice Commission is grateful to the Ministry of Justice and the Council of Europe Programme Office in Podgorica for the excellent organisation of these on-line meetings.

5. This Urgent Follow-up Opinion was prepared in reliance on the English translation of the draft law. The translation may not accurately reflect the original version on all points.

6. This Urgent Follow-up Opinion was drafted on the basis of comments by the rapporteurs and the results of the aforementioned on-line meetings held on 22 and 23 April 2024. In accordance with paragraph 10 of the Venice Commission’s Protocol on the preparation of urgent Opinions ([CDL-AD\(2018\)019](#)), the draft Urgent Follow-up Opinion was transmitted to the authorities of Montenegro on 3 May 2024 for comments. The Urgent Follow-up Opinion was then issued on 6 May 2024, pursuant to the Venice Commission’s Protocol on the preparation of urgent opinions, and Article 14a of the Venice Commission’s Revised Rules of Procedure. Following an exchange of views with Mr Bojan Božović, Secretary of State, Ministry of European Affairs, and Ms Jelena Grdinic, Director General, Directorate for Criminal and Civil Legislation, Ministry of Justice, it was endorsed by the Venice Commission at its 139th Plenary Session (Venice, 21-22 June 2024).

II. Background

7. The draft law is the revised text of the draft amendments to the Law on the Judicial Council and Judges following the recommendations contained in the Follow-Up Opinion adopted by the Venice Commission in March 2023 ([CDL-AD\(2023\)011](#)).

8. In its Report¹ on Montenegro issued in November 2023 the European Commission noted that the country’s judicial system was “moderately prepared” to apply European standards in this area, “with no progress on the implementation of key judicial reforms”. However, in January 2024 at the Ministerial Accession Conference the EU “welcomed Montenegro’s efforts, including latest positive steps taken by the newly formed Montenegrin government, and its ambition to meet the rule of law interim benchmarks”. It was also noted that “the ultimate priority for continued progress towards EU accession remains the fulfilment of the rule of law interim benchmarks set under chapters 23 and 24...Montenegro needs in particular to...resume, continue, accelerate and deepen reforms on the independence, professionalism and accountability of the judiciary”.²

¹ European Commission, [Montenegro 2023 Report](#), 08/11/2023, p. 21. See also UN Special Rapporteur on the independence of judges and lawyers, [preliminary observations](#) on the official visit to Montenegro, 19-26/09/2023.

² Council of the EU, [Press release of 24/01/2024](#).

9. In the aforementioned letter Minister Milović noted that in the preceding months the Ministry of Justice was engaged in preparatory legislative work in order to improve the implementation of the rule of law in the country and harmonise legislation with international standards and recommendations made by the Venice Commission and the European Commission. He added that the enactment of the examined draft law, along with other draft laws, is considered by the authorities to be extremely important for the fulfilment of Montenegro's obligations in the process of accession negotiations with the European Union, notably the requirements arising from the interim benchmarks in Chapters 23 and 24, and the receipt by Montenegro of the Interim Benchmark Assessment Report (IBAR) which is expected in June 2024.

10. The Venice Commission notes that, in December 2023, after more than five years of unsuccessful attempts, the three remaining lay members of the Judicial Council were elected by Parliament with a large majority. This complements the appointment of the last judge of the Constitutional Court in November 2023 which now operates with a full bench. The Venice Commission welcomes these positive developments.³

11. The Venice Commission also notes with satisfaction the adoption by the Judicial Council in February 2024 of a new communication strategy of the Judicial Council and Courts 2024-2026 and the 2024 Action Plan⁴ creating a framework for continued work on transparency and on the improvement of judges' communication competencies. The overarching aim is to increase transparency of the judiciary and to inform the public, thus contributing to restoring and rebuilding the latter's trust in judicial institutions.

III. Analysis

A. Preliminary remarks

12. The Ministry of Justice has revised the draft law in light of the March 2023 Follow-up Opinion and submitted it to the Venice Commission for an Urgent Follow-up Opinion. The Commission appreciates this constructive approach and reiterates its appreciation for the opportunity to continue the cooperation on this significant reform.

13. The Venice Commission welcomes the participatory nature of the inter-agency working group that prepared the draft law and included, among others, representatives of civil society organisations. It recalls and emphasises that a transparent, accountable, inclusive and democratic law-making process is paramount for the thriving of the rule of law.⁵

14. In this Urgent Follow-up Opinion, the Venice Commission will examine to what extent its pending recommendations contained in the March 2023 Follow-up Opinion have been followed and will provide its advice to the authorities.

B. Key recommendations

Work-related rights of judges

15. The Commission would like to recall and underline that judges are not merely civil servants, insofar as they perform a unique and fundamental constitutional function: it is therefore important to preserve the specificity of the rules applicable to the judiciary when required by the judges' special status, to protect and uphold the basic principle of judicial independence.⁶

³ See also [CDL-AD\(2022\)050](#), §§21-27.

⁴ See Council of Europe [press release](#), 15/04/2024. The Strategy is informed by CEPEJ's [Guide on Communication with the Media and the Public for Courts and Prosecution Authorities](#).

⁵ Venice Commission, [CDL-AD\(2016\)007](#), Rule of Law Checklist, II.A.5.iii-iv; see also [CDL-AD\(2019\)015](#), Parameters on the relationship between the parliamentary majority and the opposition in a democracy: a checklist, § 79.

⁶ See [CDL-AD\(2022\)050, §14](#); see also [CDL-AD\(2010\)004](#), Report on the Independence of the Judicial System Part I: The Independence of Judges. The ECtHR has also noted that the judiciary is not part of the ordinary civil service, although it is considered part of typical public service, *Baka v. Hungary* (GC), judgment of 23/06/2016, §104.

16. In the 2023 Follow-up Opinion (§11) the Commission noted that “neither Article 5 of the draft amendments has been amended, nor any other relevant provision has been added in the law. Insofar as the right to salary and other work-related rights of judges are concerned, the revised draft law still refers to the general framework of the regulations governing the rights and duties of public sector employees. The Venice Commission finds that, in order to comply with the recommendation, either a specific body of legislation shall apply to judges, or the specific work-related rights of judges be specified in the very revised draft law.”

17. It is noted that the amended draft Article 105 now provides for the termination of office of all judges, including the presidents of court and of the Supreme Court, at the age of 67. A number of interlocutors, during the on-line meetings, expressed the view that this issue should rather be regulated by the Law on social security and pensions, in view of Article 121 of the Constitution which provides, *inter alia*, that “The duty of a judge shall cease at his/her own request, when he/she fulfils the requirements for age pension”. However, given that the Law on social security and pensions is not organic, this *lex generalis* does not exclude the possibility for the issue of termination of judicial office to be regulated by the draft law, as a *lex specialis* regulating the judicial profession.

18. Furthermore, a new provision has been added to the draft law (draft Article 2a) on “Financial independence” reading: “Judges shall be entitled to salary and pension in accordance with the dignity of the judicial office and liability of the judges. The amount of the salary and pension of judges shall guarantee their independence and financial security.” Moreover, under amended draft Article 5 on “Rights and duties of judges”, “judges shall exercise their right to a salary, salary compensation, other income and other rights related to the performance of the judicial office in accordance with the law regulating income of judicial office holders”. Under draft Article 142a “Until adoption of the law regulating the income of the judicial office holders, the court presidents and judges shall exercise the right to income in accordance with the law regulating salaries of employees in the public sector”.

19. Despite the above-mentioned, positive, programmatic provision of new draft Article 2a, the authorities have opted for regulating the income and other work-related rights of judges through new statutory legislation (this being one of the two options proposed by the Venice Commission) which has not as yet been prepared. During the on-line consultations the Ministry of Justice representatives indicated that the authorities plan to initiate the preparation of this new piece of legislation after the adoption and enactment of the present draft law, envisaging an adoption of the former during the first quarter of 2025.

20. In view of the above, whilst welcoming the introduction of draft Article 2a and the amended draft Article 5, until the enactment of the new law regulating the income and other work-related rights of judges, this recommendation by the Venice Commission may be considered fulfilled only if and when the new body of legislation regulating the working rights of the members of the judiciary enters into force. Until then, the Commission reiterates the recommendation and insists on a timely introduction of the specific legislation envisaged in draft Article 5.

Political incompatibility of members of the Judicial Council

21. In its 2023 Follow-up Opinion (§15) the Commission considered it “dangerous to accept the idea that having political convictions is *per se* a factor that hampers the capacity for honest, responsible, and non-biased professional performance” and recommended “removing the word “member” from Article 12 and 16 of the revised draft law and confining the political incompatibility to high-level officials of a political party only”.

22. This recommendation has been incorporated in draft Article 12 concerning judicial members which now provides for the incompatibility linked to a “high official of a political party (party president, presidency member, deputy president or deputy member, member of the executive or the main board, member of the party council or another party official)”. However, draft Article 16 concerning members being “prominent lawyers” now provides for the incompatibility linked to an

“official of a political party (party president, member of the presidency, deputy president or member, member of the executive or main board, member of the party’s council and another party official)”.

23. In view of the above considerations, the Commission’s recommendation may be considered to be partially followed in draft Article 12, and it is recommended that the political incompatibility in draft Article 16 also refer expressly to a “high official of a political party”. Also in order to achieve clarity and coherence in the law and its interpretation, *in fine* of both draft provisions it is recommended that “another party official” be replaced by “another high-level party official”.

Appointment of acting court presidents

24. The Commission in its 2023 Follow-up Opinion (§17) stressed that “by providing for the election of an acting president even on the occasion of an ordinary turnover, the revised draft law perpetuates the impression that the exception shall be the rule. The legal framework in place should allow enough time for the procedure of election of the new president to be completed before the expiration of the outgoing president’s term.”

25. The Venice Commission reiterates that appointment of acting court presidents should be the exception not the rule, and thus occurring only under exceptional, unforeseeable circumstances. The Commission welcomes the fact that under new draft Article 106a in conjunction with Articles 36a and 106, an acting court president (including the Supreme Court president) may now be appointed by the Judicial Council for a maximum period of six months only in two cases: termination “when his/her judicial office is terminated” and “at his/her own request”, excluding the cases of: expiration of term of office and dissolution or merger of courts.

26. In conclusion under the draft law the election of acting court presidents is now delimited and is no more the rule. The Commission’s recommendation may thus be considered to have been followed. However, it is noted that the aforementioned phrase “when his/her judicial office is terminated” lacks clarity and it is recommended that it be reworded to clarify that it refers only to unforeseeable situations.

Judges’ appraisal criteria

27. In its 2023 Follow-up Opinion (§21) the Commission noted that the draft law “provides that the quality of work of a judge is evaluated based, *inter alia*, on the number of decisions “quashed” on appeal. The Venice Commission recalls that this threshold is fixed to 30% by secondary legislation (a judge who has 30% or more annulled decisions in relation to the total number of decisions taken has his/her score evaluated as unsatisfactory). The Commission reiterates that this threshold is too low and could impair the independence of the judge and subdue the creativity of the jurisprudence.”

28. The Commission would like to recall and stress that the evaluation of judges’ work must be based on objective criteria which should principally consist of qualitative indicators although quantitative indicators may also be used.⁷ New draft Article 90⁸ maintains the above criterion of decisions quashed on appeal. During the on-line consultations with national authorities and other stakeholders it was made clear that the 30% threshold is maintained in the current secondary legislation (Rules for the Evaluation of Judges and Court Presidents). The representatives of the Ministry of Justice informed the rapporteurs that new Rules for the Evaluation of Judges and Court Presidents are planned to be adopted, in keeping with the Venice Commission’s recommendations, after the enactment and entry into force of the draft law, in accordance with draft Article 138a.⁹

⁷ See also [CCJE Opinion No 17 \(2014\)](#) on the Evaluation of Judges’ Work, the Quality of Justice and Respect for Judicial Independence, §49.6.

⁸ “The quality of work is evaluated based on the ratio of abolished decisions of the judge being evaluated and the total number of decisions the judge has issued during the appraisal period, as well as the number of appraised decisions by the immediately higher court and based on the number of opened hearings or trials by the second-instance court.”

⁹ In this context it is also noted that draft Article 90 (*in fine*) added a new paragraph and criteria concerning judicial efficiency - case/trial management competencies, which appear to be reasonable. In addition, new draft Article 97 sets out details of the judges’ appraisal scores, taking into account the criteria mentioned in draft Article 90.

29. In light of the above, the Venice Commission finds that this recommendation has not, as yet, been followed. It also recommends that the forthcoming new Rules for the Evaluation of Judges and Court Presidents should not maintain the low threshold of 30% of quashed decisions, opting for a more flexible approach.

Appraisal of Supreme Court judges

30. In its 2023 Follow-up Opinion (§22) the Commission noted that “the Supreme Court judges are still exempted from the evaluation cycle, as Article 87 has not been amended. Mindful of the specific role they occupy in the judicial system, the Venice Commission had recommended that some form of evaluation, tailored to the specificity of the role of Supreme Court judges (for example one that focuses on the effectiveness of the judge’s work and on respect of integrity and respect for judicial ethics), be devised”.

31. The Venice Commission welcomes the fact that the draft law introduces a new set of provisions (draft Articles 101a-101f) on the appraisal of judges of the Supreme Court, following upon the Commission’s recommendations. Interlocutors during the on-line consultations expressed their overall satisfaction with the introduction of these new draft provisions which provide notably for the following: appraisal of performance every five years based on efficiency and integrity (as defined in draft Article 101c); appraisal shall be conducted by the Appraisal Commission (under draft Article 88, the Appraisal Commission, established by the Judicial Council, shall include the president of the Supreme Court and four members of the Judicial Council, three of whom are from the ranks of judges and one from the ranks of eminent lawyers); the appraisal decision will be based on the proposal of the Panel of Judges for Performance Appraisal of the Supreme Court Judges, composed of high level representatives of the Supreme Court departments.

32. Moreover, it is noted that the Appraisal Commission may invite the appraised Supreme Court judge for an interview before determining the final appraisal score. Draft Article 101d also provides that “an administrative dispute may be initiated against” the final appraisal decision. During the on-line consultations it was clarified that this provision provides in fact for the possibility of challenging the appraisal decision before administrative courts, in line with the Council of Europe standards.¹⁰

33. In conclusion, the Venice Commission considers that this recommendation has been followed by the authorities.

Separation of ethical and disciplinary violations

34. In the 2023 Follow-up Opinion (§25) the Commission noted that “the Commission for the Code of Ethics retains its power to “submit a proposal” to determine disciplinary liability of the judge...as Article 110 of the draft law has not been amended. To fully implement this key recommendation, the Commission for the Code of Ethics should limit itself to “informing” the Judicial Council”.

35. Under the amended draft Article 110, the Commission for the Code of Ethics may not file a disciplinary liability motion. This may be filed only by a member of the Judicial Council, the court president, the president of the immediately higher court and the Supreme Court president. However, under amended draft Article 107c, the Commission for the Code of Ethics may “submit an initiative [no longer a proposal] to determine disciplinary liability” of a judge.¹¹ During the on-line consultations the representatives of the Ministry of Justice submitted that

¹⁰ See notably ECtHR (GC), *Guðmundur Andri Ástráðsson v. Iceland*, judgment of 01/12/2020, § 218 ff; ECtHR (GC), *Grzęda v. Poland*, judgment of 15/03/2022, §343, ECtHR, *Gloveli v. Georgia*, judgment of 07/04/2022, §§56-59; [CM/Rec\(2010\)12](#) on judges: independence, efficiency and responsibilities, §58.

¹¹ It is noted that under draft Article 107b, the “President of the Commission for the Code of Ethics for Judges and his/her deputy are elected from among the members of the Judicial Council who are not judges, while two members and their deputies are elected from among the judges, by the Conference of Judges”.

the phrase “submit an initiative” means in fact to provide information to the Judicial Council which will then decide as to whether initiation of disciplinary proceedings is warranted.

36. The Commission welcomes the above explanation provided by the Ministry of Justice representatives. However, in order to attain clarity in the law and in its application, the Commission recommends the amendment of this draft provision, in order to fully align it with its recommendation, clearly providing that the Commission for the Code of Ethics may “inform” the Judicial Council about a judge’s potential disciplinary liability. It is also recommended that the draft law clarify that in such cases, since the president of the Commission for the Code of Ethics is a member of the Judicial Council, he/she should not participate in the disciplinary proceedings, in order to respect the distinction between the ethical and the disciplinary assessments.

Striking a balance between disciplinary offenses and sanctions

37. In the 2023 Follow-up Opinion (§28) the Commission noted that under the draft law “unsatisfactory performance of a judge could form the basis for a “most severe disciplinary offence”. The Venice Commission found that the professional evaluation of a judge and disciplinary liability should be kept clearly distinct and that, to serve as a ground for dismissal, a “bad evaluation” should convincingly demonstrate the incapability of the judge to perform judicial functions. It therefore invited the drafters to revise this provision.”

38. The amended draft Article 108 has followed the Commission’s recommendation and now provides that unsatisfactory performance of a judge twice in a row could only form the basis for a “severe disciplinary offence”, which does not provide for the dismissal of judges but for a fine in the amount of 20% to 40% of the judge’s salary, for a period of three to six months (Article 109 § 3 of the draft law).¹²

39. In view of this amendment, the above recommendation may be considered as implemented.

40. Also, despite the fact that in the 2023 Follow-up Opinion (§29) the Commission recommended the amendment of the then draft law so that it would not provide for the dismissal from the Judicial Council of judicial members who have received a disciplinary sanction regardless of its seriousness, draft Article 20 still provides that “A member of the Judicial Council from the ranks of judges shall also be dismissed if he/she is given a disciplinary sanction”, without any consideration of the seriousness of the disciplinary offense.

41. It follows that this specific recommendation has not been followed. In this context it is also noted that amended draft Article 12 provides that “A judge whose performance is appraised as unsatisfactory or who has been imposed a disciplinary sanction for severe and most severe disciplinary offences may not be appointed as a member of the Judicial Council from among the judges.” The alignment of draft Article 20 with the Commission’s recommendation would also lead to its alignment with draft Article 12, and thus to the overall coherence of the draft law. The representatives of the Ministry of Justice during the on-line consultations expressed readiness to make this amendment.

Initiation of disciplinary proceedings by the members of the Judicial Council

42. In its 2023 Follow-up Opinion (§31) the Venice Commission recommended “restricting the pool of potential initiators of disciplinary proceedings to the members of the Judicial Council alone (rather than also to the court president, the president of the immediately higher court, the president of the Supreme Court or the Commission for the Code of Ethics, as provided for by the amendments)”. It also suggested that “the subjects other than the members of the Judicial Council could limit themselves to “inform” the Judicial Council rather than having the power to file a motion for establishment of the disciplinary liability”.

¹² Also, amended draft Article 108 now provides that the “most severe disciplinary offence” may be imposed if the judge concerned has been convicted for an offence rendering them “unworthy to perform judicial office” or if they perform the judicial office “incompetently or unconscientiously”, as defined in detail in the above provision.

43. Under the amended draft Article 110 “If there is reasonable suspicion that a judge has committed a disciplinary offence, the motion to establish disciplinary liability of the judge may be filed by a member of the Judicial Council, the court president, the president of the immediately higher court and the president of the Supreme Court”.¹³

44. In view of the above, the Commission considers that the above recommendation has not been implemented by the authorities.

C. Other recommendations

Transfers of judges

45. In the 2023 Follow-up Opinion (§34) the Venice Commission reiterated “that an explicit provision that a judge should not be transferred against his/her will due to court restructuring to a lower court than the court where he/she has his/her actual judgeship would constitute an important guarantee”.

46. Under the amended draft Article 85, “In case of the reorganisation of courts...[the] Judicial Council may transfer a judge to work in another court of the same jurisdiction and the same instance without his/her consent. In the case referred to in paragraph 1 of this Article, the judge shall keep the salary he/she was earning at the court where he/she was working prior to the reorganisation.”

47. In view of the above amendment, the Commission considers that the above-mentioned recommendation has been followed.

48. At the same time, the Commission notes that the amended draft Article 86a provides for certain financial advantages/allowances for judges who have been transferred voluntarily and permanently to courts outside the place of their habitual residence under draft Article 86. This is not though the case, under the current draft law, with regard to judges who have been involuntarily transferred under draft Article 85. The Commission considers reasonable and advisable the amendment of the draft law so that judges transferred outside the place of their habitual residence on an involuntary basis are treated equally with those transferred on a voluntary basis. Hence it is recommended that these provisions be harmonised accordingly.

Members of the Judicial Council and disciplinary proceedings

49. In the 2023 Follow-up Opinion (§37) the Commission recommended that the law explicitly provide that a member of the Judicial Council who initiates the inquiry should not decide on the case.

50. The amended draft Article 120 now reads: “The disciplinary prosecutor, a member of the Disciplinary Council, member of the Judicial Council who filed the motion for establishing disciplinary liability of the judge or a member of the Judicial Council may not take part in the procedure to determine the disciplinary liability of a judge *if there are circumstances that cause doubt about the impartiality of those persons* [italics added]....”

¹³ The authorities made the following comment in the draft law that they submitted to the Commission: “We consider justified the decision that the referred subjects be authorised initiators, for the reason that the president of the court organises the work in the court, carries out work schedule and takes measures for the timely and duly performance of tasks in the court, deliberated complaints and applications from citizens about the performance of judges, therefore he/she should have also the power to initiate appropriate procedures in order to establish the liability of judges for their work failures. In support of the statement that the group of persons who may submit the proposal for establishing disciplinary liability of judges should not be narrowed, is the fact that the results in Montenegro in terms of establishing the liability of judges and state prosecutors are limited, which was also noted by the European Commission in its reports.”

51. Although the draft provision has been modified and included the phrase “member of the Judicial Council who filed the motion for establishing disciplinary liability of the judge”, still does not provide for an absolute exclusion of a member of the Judicial Council who files a disciplinary motion but conditions their exclusion on “circumstances that cause doubt about the impartiality” of that person. The Venice Commission recalls that in disciplinary proceedings a person who initiates the inquiry should not decide on the case; in simple terms the member initiating the disciplinary procedure as an “accuser” should not then take part in the determination of charges in the capacity of a “judge”. A clear distinction between the authority initiating proceedings and the authority making decisions in this context upholds and safeguards impartiality.

52. In view of the foregoing, the Commission considers that its recommendation has not been implemented.

Other issues

53. Lastly, the Commission notes that during the on-line consultations almost all the interlocutors expressed their deep regret that under draft Article 51 the initial training of judges will continue to be carried out only in the Basic Court of the capital, Podgorica. It has been argued that this obligation of all new judges to carry out their initial training (which is of six months under draft Article 54) in the capital will have a dissuasive effect upon young judges, especially those without adequate financial means, who come from outside the capital due to the significant financial costs they will have to incur during the months of their initial training.

54. The Commission underlines that access to the judiciary should be provided to all qualified persons from all sectors of society given that diversity within the judiciary enhances public’s trust in it.¹⁴ Therefore it encourages the authorities to take measures in order to facilitate access to the judiciary of young professionals coming from all parts of the country, especially those with insufficient financial means to live in the capital during the period of initial training, a situation which may also raise issues of indirect discrimination.

IV. Conclusion

55. The Venice Commission welcomes the ongoing efforts made by the Ministry of Justice of Montenegro to reinforce the rule of law and the independence and efficiency of the judiciary, and the draft law that was amended in order to align it with the recommendations made earlier by the Venice Commission, notably in its 2023 Follow-up Opinion. The Commission also commends the adoption of the 2024-2026 communication strategy of the Judicial Council and Courts aiming to increase transparency of the judiciary and to enhance public trust therein. It encourages the Montenegrin authorities to build upon the progress made to-date and to pursue the work undertaken, including through public consultations in the preparatory legislative work and the inclusion therein of all national stakeholders, maintaining also a constructive dialogue with the Venice Commission.

56. The Venice Commission welcomes the amendments made to the draft law. It also reiterates its previous overall positive assessment of the draft law, noting, at the same time, that some of its previous recommendations have not yet been reflected in the draft law.

57. The Commission notes, in particular, that a number of recommendations have been followed: the introduction of incompatibility of judicial membership in the Judicial Council only of persons who are high officials of a political party (with the caveat that more clarity and coherence should be introduced in the relevant text); the introduction of the rule that acting court presidents should be appointed under specific conditions (with the caveat of the need to reword the draft provision in order to clarify one of these conditions); the introduction of new provisions concerning the appraisal of Supreme Court judges; the clear delimitation of the “most severe disciplinary offense” delinking it from professional evaluation; limitation of involuntary transfer of judges due to court restructuring only to courts of the same jurisdiction and instance (with the caveat that allowances

¹⁴ See [CDL-AD\(2010\)004](#), Report on the Independence of the Judicial System Part I: The Independence of Judges, §26.

foreseen in cases of judicial voluntary transfers should also apply to cases of judicial involuntary transfers).

58. Other recommendations have not, as yet, been followed and remain relevant. Particularly, the Commission draws attention to the following recommendations:

- To regulate the income and other work-related rights of judges through statutory legislation, as undertaken by the authorities, the soonest possible after the enactment and entry into force of the draft law;
- To introduce in clear terms the incompatibility of prominent lawyers' membership in the Judicial Council only for persons who are high officials of a political party;
- To avoid setting the low threshold of 30% of quashed decisions in the forthcoming new Rules for the Evaluation of Judges and Court Presidents, which the authorities undertook to prepare, opting for a more flexible approach;
- To provide clearly that the Commission for the Code of Ethics may only "inform" the Judicial Council about a judge's potential disciplinary liability;
- To amend the draft law so that judicial members of the Judicial Council may only be dismissed therefrom for severe and most severe disciplinary offences;
- To provide that disciplinary proceedings may be initiated only by members of the Judicial Council; also, in cases where the Commission for the Code of Ethics informs the Judicial Council about a judge's potential disciplinary offense, the Commission's president, being a member of the Judicial Council, should not participate in the disciplinary proceedings;
- To provide that a member of the Judicial Council who files a disciplinary motion be absolutely excluded from deciding upon it.

59. Lastly, the Commission encourages the authorities to take measures in order to facilitate access to the judiciary of young professionals coming from all parts of the country, especially those with insufficient financial means to live in the capital during the obligatory period of initial training.

60. The Venice Commission remains at the disposal of the Montenegrin authorities for further assistance in this matter.