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MONTENEGRO

URGENT FOLLOW-UP OPINION

**TO THE OPINIONS ON THE
LAW ON THE STATE PROSECUTION SERVICE**

**Issued on 16 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

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Table of Contents

I.	Introduction	3
II.	Preliminary remarks	3
III.	Analysis.....	4
A.	Draft amendments concerning the 2021 recommendations	4
1.	Prior consultations with the public and main stakeholders	4
2.	Prosecutorial Council.....	5
3.	Election of the permanent PG and appointment of the interim PG	8
4.	Reporting obligations.....	8
B.	Other draft amendments.....	8
1.	Initial training for candidate state prosecutors.....	9
2.	Transfers	9
3.	Performance evaluation.....	11
4.	Dismissal of PC members	12
5.	Transparency of the PC's work.....	12
6.	Ethics and Discipline	13
IV.	Links with the Law on the Special State Prosecutor's Office	14
V.	Conclusion	15

I. Introduction

1. By letter of 1 April 2024, the Minister of Justice of Montenegro requested an urgent opinion of the Venice Commission on the draft Law "On Amendments to the Law on the State Prosecution Service" ([CDL-REF\(2024\)011](#)), hereinafter the "draft law".

2. An urgent opinion of the Venice Commission has also been requested on the draft Law "On the Special State Prosecutor's Office".

3. On 10 April 2024, the Bureau of the Venice Commission authorised the preparation of the Opinion through the urgent procedure, pursuant to Article 14a of the Commission's Revised Rules of Procedure. Furthermore, given the number of previous opinions adopted on the same Law (see para 9 below), it was decided to use the follow-up format to prepare this Urgent Opinion.

4. Ms Renata Deskoska (Member, North Macedonia), Mr António Henriques Gaspar (Member, Portugal) and Mr Pere Vilanova Trias (Member, Andorra) acted as rapporteurs for this Urgent Follow-up Opinion.

5. On 22-23 April 2024, the rapporteurs, along with Mr Mamuka Longurashvili and Ms Tania Van Dijk from the Secretariat, had online meetings with the Supreme State Prosecutor (*ex officio* President of the Prosecutorial Council), the Chief Special Prosecutor, the representatives of the Ministry of Justice, the parliamentary majority and opposition, the representatives of the Supreme Court of Montenegro, the High and Basic Courts in Podgorica, the Ombudsman, representatives of the Delegation of the European Union to Montenegro, as well as with representatives of civil society organisations. The Commission is grateful to the Ministry of Justice of Montenegro and the Council of Europe Programme Office in Podgorica for the excellent support provided in organising the online meetings.

6. On 25 April 2024, the NGO "Centre for Civil Freedoms" provided comments on the draft Law. The NGO "Institut Alternativa" provided input on 26 April 2024. On 27 April 2024, input on the draft Law was also received from the Ombudsman. The Venice Commission is grateful to all the interlocutors for their input and welcomes their willingness to move forward with the reform of the State Prosecution Service.

7. 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.

8. This Urgent Follow-up Opinion was drafted on the basis of comments by the rapporteurs and the results of the online meetings held on 22-23 April 2024. In line 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 15 May 2024 for comments. It was issued on 16 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, State Secretary, Ministry of European Affairs of Montenegro, and Ms Jelena Grdinic, Director General, Ministry of Justice of Montenegro, it was endorsed by the Commission at its 139th Plenary Session (Venice, 21-22 June 2024).

II. Preliminary remarks

9. The Law "On the State Prosecution Service" has been the most frequently analysed Law in the Venice Commission's opinions adopted on Montenegro. The first Opinion adopted in this

regard in 2008¹ was followed by seven other opinions in 2011,² 2012,³ 2013,⁴ 2014,⁵ 2015⁶ and 2021.⁷ The Venice Commission analysed various, often repetitive, draft amendments to the Law and followed up to the implementation of its earlier recommendations in subsequent opinions. Interim and final formats, as well as standard and urgent procedures, were applied.

10. The present request for an urgent opinion is linked to Montenegro's EU integration process and, in particular, the need to meet interim benchmarks in Negotiation Chapters 23 – Judiciary and Fundamental Rights and 24 – Justice, Freedom and Security requirements before the issuance of the Interim Benchmark Assessment Report (IBAR) in June 2024. In parallel to being submitted to the Venice Commission, the draft law was published on the website of the Ministry of Justice for public consultations.

11. The latest opinions (one ordinary and one urgent) of the Venice Commission on this Law were adopted/endorsed in March and July 2021, respectively. The Commission analysed the draft amendments and their revised version in light of its previous (2014-2015) recommendations.

12. This Urgent Follow-up Opinion will analyse the draft amendments to the Law in light of its 2021 recommendations. The draft law also contains a number of other amendments that echo earlier recommendations of the Venice Commission; some new provisions have also been introduced. In the short time available, the Venice Commission will focus on the most important elements of the draft law. The absence of remarks on other aspects of the draft law should not be interpreted as tacit approval.

III. Analysis

13. It is recalled that the State Prosecution Service of Montenegro consists of the Supreme State Prosecution Office, the Special State Prosecution Office (see Urgent Follow-up Opinion CDL-PI(2024)011), two High State Prosecution Offices and 13 Basic State Prosecution Offices (Article 11 of the draft Law).

A. Draft amendments concerning the 2021 recommendations

1. Prior consultations with the public and main stakeholders

14. The Venice Commission understands the importance of the timely adoption of the current draft legislation for the EU integration process and welcomes the publication of the draft law for public consultations, which took place in April 2024. The Commission has also taken note of the concerns raised by some interlocutors that more time could have been dedicated to the public debate, that the consultations with the civil society were informal and that there was only an invitation to submit written comments.

15. The Commission recalls that "when adopting legislation on issues of major importance for society, such as criminal justice and the fight against corruption, wide and substantive consultations are a key condition for adopting a legal framework which is practicable and

¹ Venice Commission, [CDL-AD\(2008\)005](#), Opinion on the Draft Amendments to the Law on the State Prosecutor.

² Venice Commission, [CDL-AD\(2011\)010](#), Opinion on the draft amendments to the Constitution of Montenegro, as well as on the draft amendments to the law on courts, the law on the state prosecutor's office and the law on the judicial council.

³ Venice Commission, [CDL-AD\(2012\)024](#), Opinion on two sets of draft amendments to the constitutional provisions relating to the judiciary.

⁴ Venice Commission, [CDL-AD\(2013\)028](#), Opinion on the Draft Amendments to three Constitutional Provisions relating to the Constitutional Court, the Supreme State Prosecutor and the Judicial Council.

⁵ Venice Commission, [CDL-AD\(2014\)042](#), Interim Opinion on the Draft Law on the State Prosecution Office.

⁶ Venice Commission, [CDL-AD\(2015\)003](#), Final Opinion on the revised draft Law on the Public Prosecution Office.

⁷ Venice Commission, [CDL-AD\(2021\)012](#), Opinion on the draft amendments to the Law on the State Prosecution Service and the draft law on the Prosecutor's Office for organised crime and corruption and [CDL-AD\(2021\)030](#), Urgent Opinion on the revised draft amendments to the Law on the State Prosecution Service.

acceptable for those working in the field".⁸ Therefore, as in its previous opinions, the authorities are invited to ensure comprehensive dialogue with the major stakeholders and civil society at further stages of the legislative process.

2. Prosecutorial Council

a. Composition

16. According to Article 18 of the draft law, the Prosecutorial Council (PC) is composed of the Prosecutor General (PG) (*ex officio* President) and ten members as follows: *five* state prosecutors (four of whom are from the Supreme State Prosecution Office, Special State Prosecution Office and High State Prosecution Offices and one from a Basic State Prosecution Office) elected and dismissed by the Prosecutorial Conference; *four* eminent lawyers elected and dismissed by Parliament (*three* – of whom one should be an attorney - are proposed by the competent working body of the Parliament and *one* is nominated by the NGOs) and *one* member appointed by the Minister of Justice from amongst his/her own staff.

17. Thus, in the future PC, prosecutors will regain a (slight) majority, together with the PG, which is not against European standards. The proposed set-up returns to the 2014 balance, which the Venice Commission had considered appropriate.⁹ Furthermore, according to the 2023 Opinion of the Consultative Council of European Prosecutors (CCPE), "In Councils with mixed composition, it would be preferable that prosecutor members constitute the majority, elected by their peers".¹⁰

b. Method of election of the lay members

18. It is recalled that the election of all the lay members by Parliament by a simple majority at the same time (hence by the same political majority and only those persons who have the support of those parties with the majority in Parliament) remains a source of concern as it entails serious risks of the politicisation. In March 2021, the Venice Commission proposed several solutions in this regard: a) election of the lay members by Parliament by a qualified majority (with an effective anti-deadlock mechanism); b) election of the lay members by Parliament on the basis of a proportional system (so that lay members represent different political forces); c) nomination or even direct appointment by external non-governmental actors (such as universities, the Bar, the judiciary, etc.).

19. In its July 2021 Urgent Opinion, the Venice Commission reiterated that it is necessary to ensure that the PC should not be politicised. The Commission did not consider that election by Parliament by simple majority is conducive to political neutrality or at least pluralism. It noted that when qualified majority or proportional voting systems do not appear as an acceptable solution, as a transitional solution, a simple majority may be accepted only if it is coupled with additional solid guarantees and safeguards. Instead, the authorities introduced two mitigating measures in the Law to reduce the politicisation of the PC: new ineligibility criteria and the nomination of one lay member by the NGOs.

- *Ineligibility criteria*

20. In its July 2021 Urgent Opinion, the Venice Commission welcomed the introduction of the new ineligibility criteria (not to have been elected officials or members of the Government in

⁸ Venice Commission, [CDL-AD\(2018\)021](#), Romania - Opinion on draft amendments to the Criminal Code and the Criminal Procedure Code, para 39. Regarding the importance of prior consultations with the public and main stakeholders, see also [CDL-PI\(2021\)003](#), Compilation of Venice Commission opinions and reports concerning the Law making procedures and the quality of the law, paras 28-100.

⁹ Venice Commission [CDL-AD\(2014\)042](#), para. 38.

¹⁰ CCPE, [Opinion No. 18 \(2023\)](#) on Councils of Prosecutors as key bodies of prosecutorial self-governance, para. 46.

the past five years; not to have been members of political parties with leading roles; excluding close relatives, spouses, and partners of politicians; not to have been former prosecutors – Article 18) as creating a "safety distance" between lay members and party politics. The Commission considered that they should continue to apply throughout the mandate of the PC members and recommended devising a procedure in this regard. No such procedure has been provided in the draft Law. Therefore, this recommendation has not been followed and the Commission reiterates it.

- *Nomination of one PC lay member by the NGOs*

21. As regards the lay member nominated by the NGOs and approved/dismissed by Parliament, the Venice Commission made several recommendations: the candidate proposed by these NGOs should not be part of the vote on the other candidate lay members. Parliament should separately decide to endorse such a candidate; the criterion of formal equality of all NGOs should be abandoned, and most experienced and senior NGOs should be entitled to present more than one candidate; the Law should contain a mechanism for selecting a candidate, should it happen that none receives more nominations than the others; the choice should remain with the NGOs and not be left to the discretion of Parliament.¹¹ None of those recommendations were followed. Therefore, the Commission reiterates them.

22. In addition, the Commission concluded that although the two above-mentioned mitigating measures go in the right direction to reduce politicisation, in all, they are not yet sufficient to eliminate completely the risks of politicisation which are inherent in the election by a simple majority".¹² Therefore, the authorities were encouraged to improve their model. However, no such improvement appears to have been made in the draft Law, and the previous recommendations remain valid.

c. *Need for a more sustainable solution*

23. Most importantly, the Commission has previously noted that the "Constitution of Montenegro does not define the composition of the Prosecutorial Council and the method of election of its members but leaves these questions to be regulated by an ordinary law. The Venice Commission has previously recommended that the composition and core competences of the Prosecutorial Council be entrenched in the Constitution. Unfortunately, this recommendation has not been followed in Montenegro. In the 2015 Opinion, the Venice Commission also suggested that the requirement to have a qualified majority for the election of lay members may be introduced in the law, and this recommendation remains valid. The Montenegrin legislator should consider introducing one of the alternative ways of ensuring depoliticisation, such as those mentioned above. However, any legal mechanism will only function if it is coupled with political will. A future Parliament, dominated by a different majority, may be tempted to try to gain control over the lay members and, through them, over the Prosecutorial Council. Consequently, it is highly recommendable to find a more sustainable solution and describe the composition of the Prosecutorial Council and the method of election of its members in the Constitution itself – as it is done in respect of the Judicial Council".¹³ The Venice Commission reiterates its recommendation that a constitutional amendment in this respect is necessary.

d. *Observations on the eligibility requirements for lay members*

24. According to Article 26 of the draft law, the conditions for the appointment of a PC member from among eminent lawyers require a minimum age of 40 years and increases the minimum

¹¹ Venice Commission, [CDL-AD\(2015\)030](#), para. 67.

¹² *Ibid.*, para. 68.

¹³ Venice Commission, [CDL-AD\(2021\)012](#), para. 43.

professional experience from 10 to 15 years of work experience as a judge, state prosecutor, lawyer, notary public, public bailiff, professor of legal sciences or performing other legal affairs. Additionally, the candidates are required to enjoy a good personal and professional reputation and have not been convicted for criminal offences that render state prosecutors unworthy of performing the duties of the prosecutorial office. The competent working body of the Parliament plays a key role in publishing calls for applications, shortlisting received applications, and proposing the final list of candidates to the Parliament for appointment (Articles 26a, 26b and 26c).

25. The Venice Commission reiterates that the following points in Article 26 need clarification.

26. First of all, "other legal affairs" is too vague and risks leading to various interpretations as it might cover a wide array of matters/professions in the legal field that are not relevant to the required candidate profile. Several interlocutors also expressed concerns in this regard. The Commission reiterates its previous recommendation to specify the meaning of "other legal affairs".

27. Second, the condition for the candidate lay members to have a "good personal and professional reputation" is too vague to be used as an objective assessment criterion. As the CCPE noted in its 2023 Opinion, "Members of Councils of Prosecutors, whether prosecutors or not, are to be selected on the basis of predetermined, fair and clear criteria through a transparent procedure. The candidates' competence, experience, integrity, independence, impartiality and other relevant factors should be outlined and taken into consideration".¹⁴ The Venice Commission also recalls "the necessity of employing prosecutors as suitable persons of high standing and good character. The qualities required of a prosecutor are similar to those of a judge. ... It is evident that a system where both prosecutor and judge act to the highest standards of integrity and impartiality presents greater protection for human rights".¹⁵ The Venice Commission recommends replacing "good personal and professional reputation" with "impartiality, integrity and professional competence".

28. Third, regarding the PC member who is an attorney, the Venice Commission would like to formulate the following observations. As noted in para. 18 above, the election of all the lay members by Parliament by a simple majority remains a source of concern as it entails serious risks of politicisation. One of the solutions proposed by the Venice Commission in this context consisted of the nomination of the lay members by external non-governmental actors (such as universities, the Bar, the Judiciary, etc.). Therefore, the Venice Commission recommends specifying in the Law that the attorney member is nominated by the Bar Association. Secondly, care should be taken to avoid a conflict of interests as a defence lawyer participating in a criminal trial would at the same time be a PC member. The Venice Commission recommends reducing this risk by specific and narrowly formulated conflict of interest rules.

e. Early replacement of all the PC members

29. In its 2021 Opinions, the Venice Commission considered that a complete renewal of the PC composition following each parliamentary election when the ruling majority changes or each time the provisions concerning the number/ratio of its members are amended (which has been the case in Montenegro due to frequent changes in the balance of its prosecutor and lay members) would amount to an infringement of its independence and set a dangerous precedent in this regard. The Commission also noted that such a renewal could be justified only when the manner of appointment changed from simple to qualified majority, as this would pose a lesser risk to the politicisation of the PC.¹⁶

¹⁴ CCPE, [Opinion No. 18 \(2023\)](#), on Councils of Prosecutors as key bodies of prosecutorial self-governance, paras 51-52.

¹⁵ Venice Commission, [CDL-AD\(2010\)40](#), Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service, paras 18-19.

¹⁶ Venice Commission, [CDL-AD\(2021\)012](#), paras 45-48 and [CDL-AD\(2021\)030](#), para. 46.

30. Article 19 of the draft law changes the term of office of the PC from four to five years. The current members of the PC were appointed in January 2022, with the previous four-year term, which will expire at the end of 2025.

31. The election of all the PC lay members by Parliament with a simple majority is maintained in the draft law. Thus, the above-mentioned exceptional ground for complete renewal of the PC does not exist. The draft Law does not contain clear transitional provisions either (Articles 184 and 184c indicate previous years of the PC elections). During the online meeting, the representatives of the Ministry of Justice informed the rapporteurs that the current PC composition will continue its work until the expiry of its term of office, which is welcome. However, the Venice Commission recommends introducing a clear transitional provision in the draft Law in this regard.

3. Election of the permanent PG and appointment of the interim PG

32. In its July 2021 Urgent Opinion, the Venice Commission agreed, as a transitional arrangement, to the nomination of an interim PG by the Prosecutorial Council to avoid the constitutional impasse following the retirement of the previous PG. The Commission stressed nonetheless that such transitional arrangements do not represent a solution to the serious issue of the need to find a broad political consensus on the next PG.

33. On 29 January 2024, the Parliament of Montenegro elected the new PG with 61 (out of 81) votes. The election has been pending for four years due to a lack of cross-party consensus. Recalling that Article 91 of the Constitution requires a qualified (two-thirds) majority to elect the PG, the Venice Commission welcomes the consensus reached and confirms that its recommendation in this regard has been followed.

34. Regarding the interim PG, the Commission had recommended to elect him or her from the ranks of the top prosecutors; the Commission had also recommended abandoning the proposals to appoint the interim PG for a six-month term renewable once. Article 48 of the draft law provides that the Prosecutorial Council shall designate the interim PG from among the state prosecutors in the Supreme State Prosecution Office except those who are PC members. The same person may not be appointed interim PG twice. Therefore, the Commission's recommendations have been followed.

4. Reporting obligations

35. In the July 2021 Urgent Opinion, the Venice Commission recommended clarifying in the Law that the reports of the PG and the Chief Special Prosecutor to Parliament should not relate to individual – pending or terminated – cases and that the Law should allow the PG to give a reasonable justification to Parliament for failure to report or to appear before it.

36. Article 147, para 5 of the draft law provides for such an exception as regards individual cases - the specification concerning "pending" cases will be deleted. Furthermore, para. 7 of Article 147 requires the PG to provide "justified reasons" in case of the non-submission of the report within the deadline. In the absence of such "justified reasons", Parliament or the competent working body may submit an opinion, assessments, suggestions and recommendations to the PC. Therefore, the Commission's recommendations have been followed.

B. Other draft amendments

37. Other draft amendments to the existing provisions of the Law or new draft provisions have been introduced. Given their importance and relevance to the previous Venice Commission recommendations, they are also analysed in this Urgent Follow-up Opinion.

1. Initial training for candidate state prosecutors

38. According to Article 66 of the draft law, candidate state prosecutors shall complete initial training that consists of theoretical and practical parts. The draft amendment to Article 66 proposes to reduce the duration of the initial training from 18 to six months and to undergo the practical part of training at the basic state prosecutor's offices according to the candidate's place of residence. During the online meetings, most of the interlocutors welcomed the above-mentioned changes to remedy staff shortages. It was mentioned that the decentralisation of training would attract young candidates as the current regulation discourages main potential candidates from living in the regions due to the high cost of living in the capital and low remuneration.

39. The Venice Commission welcomes the decentralisation of the practical part of the initial training. This option will reduce the duration of the whole training and improve accessibility in regions. At the same time, according to Article 66, the theoretical part of the training remains to be completed in the capital. The Venice Commission encourages the authorities to take measures in order to facilitate access to the theoretical part of the training to young professionals coming from all parts of the country, especially those with insufficient financial means to live in the capital during the period of theoretical training.

40. On the other hand, such an important reduction in the total training duration will undoubtedly affect its quality. The Venice Commission recalls that the European Commission has already criticised the reduction in the duration of the initial training for judges and prosecutors from 18 to 12 months, noting that "Montenegro did not consult with the European Commission on these amendments, which are not in line with European standards and with the recommendations already submitted to Montenegro".¹⁷ The CCPE also noted in this regard that "[t]he highest level of professional skills and integrity is a prerequisite for an effective prosecution service and for public trust in that service. Prosecutors should, therefore, undergo appropriate education and training with a view to their specialisation".¹⁸

41. While the partial decentralisation of the initial training is an important novelty for further development and staffing of the Prosecution Service, the necessary professional knowledge and skills for the newly appointed prosecutors are equally important for the efficiency and independence of the Prosecution Service. The authorities could consider aligning the initial training programme and duration with European standards.

2. Transfers

42. The Venice Commission recalls that already in 2008, it noted that "[i]n introducing secondment against the will of a prosecutor, the potential risks should be balanced by safeguards. While a full appeal with suspensive effect against a secondment order might lead to an inability to deal with urgent situations of staff shortages, the prosecutor who is being seconded could be allowed to file a protest to the [PC], which would at least allow for an *ex-post* review of the contended secondment".¹⁹ In 2014, it was noted that since the transfer decisions are taken by the PC, (current) Article 40 allowing administrative dispute against it should be applicable. "Yet, explicitly mentioning a right to appeal against transfer decisions and more detailed indications of the criteria to be taken into account when such a decision is adopted would be beneficial".²⁰ In 2015, the Commission noted, once again, the importance

¹⁷ European Commission, [Montenegro 2023 Report](#), p. 29.

¹⁸ CCPE, [Opinion No. 9 \(2014\)](#) on the "European norms and principles concerning prosecutors", para. 57.

¹⁹ Venice Commission, [CDL-AD\(2008\)005](#), Opinion on the Draft Amendments to the Law on the State Prosecutor of Montenegro, para. 48.

²⁰ Venice Commission, [CDL-AD\(2014\)041](#), para. 81.

of ensuring the possibility to appeal against transfers without consent.²¹ Regarding the reorganisation as one of the grounds for transfers, the Venice Commission noted in its March 2021 Opinion that "the process of reorganisation would take months to complete. The most probable result of this reorganisation will be an administrative chaos which would lead to unjustified delays ... for many months".²²

43. Articles 81-85a of the draft law distinguish four types of transfers to be decided by the PC:

- Transfer, with consent, for a maximum of one year, to another state prosecution office of the same or lower instance to improve the functioning of the latter (in case of difficulties due to recusals, massive case backlog or other justified reasons) (Article 81).
- Transfer, with consent and for up to three years, to the Ministry of Justice, the legal entity authorised to train state prosecutors or the PC Secretariat to contribute to the improvement of work of the State Prosecution Service (Article 83).
- Article 84 provides for permanent and temporary transfers, without consent, to the same level in another state prosecutor's office (Article 84) for the following reasons:
 - a) *Permanent compulsory transfer* following the reorganisation, which leads to decreasing or dissolving the number of posts of the state prosecutors and
 - b) *Temporary compulsory transfer* due to the absence of prosecutors in a state prosecutor's office (temporary inability to work, other absence or other justified reasons) - until such reasons are eliminated, but no longer than six months.
- Article 85 provides for permanent voluntary transfer to another state prosecutor's office of the same or lower instance) requiring the permanent mandate and "excellent" or "good" performance evaluation. Article 85a provides for compensation if a state prosecutor is transferred from one region to another.

44. The Venice Commission welcomes the existence of the compensation component in the draft law. Transferring a prosecutor, even for a short period of time, is a very costly option, as the prosecutor should be given appropriate housing and otherwise compensated for the important change in his/her lifestyle.²³ The Commission recalls that transfers from one office to another should aim to support the normal functioning of the latter, i.e., be an organisational measure and not a punishment.

45. However, in light of the above, the Venice Commission finds that its previous recommendation to provide the right to appeal against compulsory transfer decisions has not been taken into account. Therefore, it remains valid.

46. Additionally, the Commission sees several risks stemming from the amended Article 84 due to the absence of remedy and the vagueness of the following provisions.

47. According to Article 40, para. 1, PC decisions are subject to an appeal and "an administrative dispute may be initiated against them unless otherwise provided for by this law". The draft amended para. 3 of the same Article specifies the types of PC decisions subject to such an appeal: selection of the of candidates for the state prosecutor, selection and dismissal of the head of a state prosecutor's office, the termination of prosecutorial functions, and other rights and obligations of state prosecutors and heads of the state prosecutor's offices. Transfers under Article 84 are not among these grounds, and it is unclear whether "other rights and obligations" include compulsory transfers. Article 40, para. 1 specifies that other possible

²¹ Venice Commission, [CDL-AD\(2015\)003](#), para. 45.

²² Venice Commission, [CDL-AD\(2021\)012](#), para. 33.

²³ Venice Commission, [CDL-AD\(2015\)042](#), Opinion on the Laws on the Disciplinary Liability and Evaluation of Judges of "The Former Yugoslav Republic of Macedonia", para. 59.

remedies should be provided for by this Law, which is not the case either. Against this background, the Venice Commission reiterates its recommendation that the right to appeal against compulsory transfer decisions and more detailed indications of the criteria to be taken into account when such a decision is adopted be explicitly mentioned in the Law.

48. Article 84, para. 2 concerning the "temporary inability to work" provides additional grounds such as "other absence of justified reasons". Phrased in such a broad manner, the provision risks being applied arbitrarily. Therefore, the Venice Commission recommends specifying the types of absence and reasons.

49. The wording of the provision "for a period until the reasons which caused such condition are eliminated, but no longer than six months" appears contradictory as it is unclear what happens if the "temporary inability to work" lasts more than six months. Such unclarity might suggest that either the transfer of the same state prosecutor might be renewed or there will be, each time, a need to find another available prosecutor to secure such a transfer – which is another risk for the stability of the prosecutorial system given the reported staff shortages. This is not clear from the Draft Law and should be specified.

3. Performance evaluation

50. In its 2015 Opinion, the Venice Commission found that the provisions of the Law relating to the performance evaluation "appear to be unchanged...; therefore, the Commission's earlier comments and recommendations remain applicable. ... In particular, it was recommended that a more independent evaluation commission and improved evaluation criteria be provided".²⁴ The detailed 2014 recommendations are still relevant; the Venice Commission will examine some specific amendments proposed in the draft law.

51. Article 86 stipulates that the work of state prosecutors with a permanent mandate, except for the Supreme State Prosecutor and state prosecutors in the Supreme State Prosecution Office, is evaluated in accordance with the Performance Evaluation Plan every four years. However, the Commission had recommended that an indication be provided with regard to the reasons for the exception of the state prosecutors in the Supreme State Prosecution Office from evaluation and had pointed out that "all prosecutors, with the possible exception of the Supreme State Prosecutor, should be evaluated."²⁵ As such justification has not been provided, the Commission's recommendation remains valid.

52. As regards the sub-criteria for evaluating the professional knowledge and the general abilities to perform the prosecutor's function of the state prosecutor (Articles 89 and 90), the Venice Commission noted that "Some of the proposed sub-criteria, in particular the quantitative ones, would need careful consideration to ensure that measuring the quantity of work will not be done merely by counting cases without due regard to their weight. The number of 'convicting judgments should in no circumstances be a criterion. No prosecutor should have a personal interest in securing a conviction. ... Similarly, success on appeal should not be a criterion. While it is reasonable to examine the track record of any prosecutor whose 'results' diverge more than 20% from the average, the evaluator must remain open to considering possible explanations likely to justify these figures".²⁶

53. The Venice Commission considers contradictory evaluating the quality of work "on the basis of the number of accepted indictments, number of confirmed indictments, number of convicting judgments and number of adopted appeals" (Article 89, para 4) rather than, for example, based on the quality of legal writing, the complexity of cases, the level of legal

²⁴ Venice Commission, [CDL-AD\(2015\)003](#), para 47.

²⁵ Venice Commission, [CDL-AD\(2014\)042](#), para. 82.

²⁶ *Ibid.*, paras 86-87.

reasoning provided in the procedural documents, application the effective investigation criteria (adequacy, independence, thoroughness, promptness, openness to public scrutiny/accessibility to the victims or their families). Based on its previous observations, the Venice Commission recommends improving the performance evaluation criteria, giving priority to the qualitative ones, in line with European standards.

4. Dismissal of PC members

54. According to Article 30, any PC member shall be dismissed if: 1. S/he performs his/her duties in an unconscientious or unprofessional manner (i.e., an action that is contrary to the statutory powers, as a failure to fulfil statutory duties); 2. S/he is convicted of a criminal offence (is prosecuted *ex officio*, for which imprisonment is prescribed) that renders him/her unworthy of the performance of duties. A PC member from the ranks of state prosecutors shall also be dismissed if a final and enforceable disciplinary sanction has been imposed on him/her for severe and the most severe disciplinary offences. The dismissal motion shall be filed by the PC to the authority that appointed him/her, and the term of office of the PC member concerned shall end on the date the appointing body dismisses him/her. It is also clarified that the provisions governing the procedure for establishing the disciplinary liability of state prosecutors apply to PC members.

55. The Venice Commission makes the following observations regarding Article 30.

56. Article 30, para. 1 specifies two grounds for dismissal. The first is linked to the statutory powers and obligations of PC members, and the second ground (criminal offence punished by imprisonment) is similar to one contained in Article 108 (Disciplinary offences). The amended Article 30, para. 4 requires the existence of "a final and enforceable disciplinary sanction imposed ... for severe and the most severe disciplinary offences". This amendment echoes the 2014 observation of the Venice Commission that "in some cases, disciplinary sanctions may be imposed for relatively minor matters, in which case dismissal will be a disproportionate measure".²⁷ Therefore, the Venice Commission welcomes the clarification made in this regard. Article 30, para. 5 stipulates that the motion for the dismissal of a PC member shall be filed by the PC to the Prosecutorial Conference, the Parliament and the Ministry of Justice. However, the draft law is silent on what happens if the motion is declined.

57. The Venice Commission reiterates its concern²⁸ that the dismissal proposal may be declined even where there are grounds for dismissal, recalling that according to the procedure for establishing disciplinary liability (Articles 112-116 in particular), the dismissal motion should be based on a final decision adopted by the Disciplinary Panel (for "severe" offences) or the PC (for "most severe" offences). In other terms, the preliminary investigation and evidence gathering have been conducted by the disciplinary plaintiff according to Articles 112-113 of the draft law, proving that a PC member is in breach of his/her disciplinary duties.

58. The Venice Commission reiterates its previous recommendation that the provision on remission of the dismissal decision to the electing body - an external and sometimes political body - be deleted and that the dismissal be decided upon by the other members of the Council, with a qualified majority, without the member concerned.

5. Transparency of the PC's work

59. According to new Article 42, the PC work shall be public with the following exceptions: determining the disciplinary liability of state prosecution offices and state prosecutors (unless

²⁷ Venice Commission, [CDL-AD\(2014\)042](#), para 53.

²⁸ Venice Commission, [CDL-AD\(2014\)042](#), paras 54-56 and [CDL-AD\(2015\)003](#), para. 26.

they request a public hearing) and considering complaints about the legality of the work of heads of state prosecution offices and state prosecutors, considering specific cases.

60. In its 2023 Opinion, the CCPE noted that "to reinforce public confidence in the justice system, Councils of Prosecutors should act transparently and be accountable for their activities, through periodical reports or other appropriate means".²⁹ The Venice Commission recalls that "the majority of the [PC's] procedures are of a personal nature (election, dismissal) and the persons involved (candidates to positions of prosecutors or prosecutors in office) are not political actors, they are therefore not expected to reveal their personal data to the public. Security or other reasons related to the protection of personal data might also require closed sessions."³⁰

61. The Venice Commission welcomes the above-mentioned new provision, which clarifies the modalities of public and *in-camera hearings* to balance transparency with the need for confidentiality, particularly in sensitive matters such as disciplinary proceedings. It echoes its 2011 and 2012 recommendations on transparency as regards disciplinary proceedings. Also, the provision allowing the state prosecutor whose liability is being decided to demand a public debate in his/her case is also commendable, as it provides an avenue for individuals to advocate for transparency and fairness in their proceedings.

6. Ethics and Discipline

a. Interplay between the principles of ethical conduct and disciplinary regulations

62. The draft law introduces a new chapter concerning the ethics of the prosecutors (Article 107a-107d). It specifies the scope of regulation by the Code of Ethics of State Prosecutors and the composition and jurisdiction of the Commission for the Code of Ethics, which shall make decisions of violation of the Code of Ethics and issue opinions and guidelines. The draft law also regulates who can address the Commission for the Code of Ethics, how the Commission acts upon submitted initiatives and introduces the right to a legal remedy against the Commission's decisions.

63. Recalling that "Respect for ethical rules is a fundamental duty that should guide the activities of prosecutors",³¹ the Venice Commission welcomes the introduction of a separate thematic chapter in the draft law. Ethical and disciplinary responsibility should be distinct and regulated by the Law so that the state prosecutors can know in advance the types and consequences of ethical misconduct on the one hand and the disciplinary offences on the other hand, as well as the means of protecting their rights. It is recalled and stressed that ethical standards should not be confounded with a disciplinary regime. "Ethics standards aim at achieving, in an optimal manner, the best professional practices, while disciplinary regimes are essentially meant to sanction failures in the accomplishment of duties".³²

64. The Venice Commission notes that the draft law is silent as to the consequences of the violation of the Code of Ethics found by the Commission for the Code of Ethics. The Venice Commission also notes that some disciplinary offences listed in Article 108 (for example, inappropriate behaviour while in a public place) may also lead to ethical misconduct. The Venice Commission recalls that "[d]iscipline takes the floor only when ethical recommendations have been repeatedly or seriously infringed".³³ "The purpose of a code of

²⁹ CCPE, [Opinion No. 18 \(2023\)](#), para. 84.

³⁰ Venice Commission, [CDL-AD\(2014\)029](#), Opinion on the Draft amendments to the Law on the State Prosecutorial Council of Serbia, para. 40

³¹ CCPE, [Opinion No. 13\(2018\)](#), para. 21.

³² Recommendation [CM/Rec\(2010\)12](#) of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities and its [Explanatory Memorandum](#), para. 71.

³³ Venice Commission, [CDL-AD\(2016\)013](#), Kazakhstan, Opinion on the Draft Code of Judicial Ethics, para. 28.

ethics is entirely different from that achieved by a disciplinary procedure. ... However, serious violations of ethical norms could also imply fault and acts of negligence that should, in accordance with the law, lead to disciplinary sanctions".³⁴ Explicit provisions should be provided in the Law in this regard.

65. Regarding the disciplinary liability, the Venice Commission, has several observations as to the relevance of amended provisions of Article 108 as some "minor" and "severe" disciplinary offences are described in a quantitative manner (for example, "unjustifiably fails to proceed in at least three/two cases").

66. The observation in para. 52 above - that quantitative criteria need careful consideration to ensure that measuring the quantity of work will not be done merely by counting cases without due regard to their weight - is also relevant here. Some interlocutors expressed concern – which the Venice Commission shares - that taking into account the number of cases instead of their importance/complexity might encourage a state prosecutor to ignore sensitive cases without engaging his/her liability. The Venice Commission recommends that the relevant criteria in Article 108 be reconsidered.

b. Dismissal of the head of the state prosecutor's office on disciplinary grounds

67. Article 126 of the draft law excludes three PC members from the possibility of submitting a motion for the dismissal of the head of the state prosecution office. Such a motion may be filed by the head of an immediately higher state prosecution office, Supreme State Prosecutor and Minister of Justice. According to the Explanatory Note, this draft amendment is based on the previous Venice Commission recommendations and aims to prevent the conflict of interest since the decision on the dismissal of the state prosecutor is made by the PC.

68. The Venice Commission recalls its recommendation made in the 2014 Interim Opinion that "since a complaint may be initiated by a person who is a member of the Council or represented on the Council, there should be a provision excluding such a person from participating in the ensuing proceedings".³⁵

69. The Commission finds that the draft amendment does not directly address its recommendation. It excludes the PC members not only from "ensuing proceedings" but also the possibility for them to initiate disciplinary proceedings even if they have information that offences that can lead to dismissal have occurred. Therefore, the authorities are invited to reconsider the draft amendment in line with the recommendation.

IV. Links with the Law on the Special State Prosecutor's Office

70. As noted in para. 2 above, the urgent opinion request was also submitted concerning the draft amendments to the Law on the Special State Prosecutor's Office. It is recalled that the Law creating the Special State Prosecutor's Office (SSPO) was adopted in 2015. The SSPO deals with organised crime, high-level corruption, money laundering, terrorism and war crimes. According to Article 7 of the Law on the SSPO, "provisions of the Law on State Prosecution Service shall apply accordingly to the matters that are not regulated under this Law."

71. Detailed analysis and recommendations concerning the Law on the SSPO have been provided in Urgent Follow-up Opinion CDL-PI(2024)011 and in the previous opinions of the Venice Commission.³⁶

³⁴ Venice Commission, [CDL-AD\(2013\)035](#), Tajikistan, Opinion on the Draft Code on Judicial Ethics, paras 30-31.

³⁵ Venice Commission, [CDL-AD\(2014\)042](#), para. 96.

³⁶ Venice Commission, [CDL-AD\(2014\)041](#), Interim Opinion on the Draft Law on Special State Prosecutor's Office, [CDL-AD\(2015\)002](#), Final Opinion on the revised draft Law on Special Public Prosecutor's Office, [CDL-AD\(2021\)012](#), Opinion on the

V. Conclusion

72. The initiative of the Montenegrin Minister of Justice to improve the Law "On the State Prosecution Service" is commendable, as is the cross-party compromise reached to elect the PG and the willingness of domestic stakeholders to contribute to the EU integration process. The Venice Commission welcomes the fact that the draft law addresses some previous recommendations concerning the election of the PG and the modalities of appointing interim PG, clarifying reporting obligations and providing guarantees for the dismissal of PC members. The Commission also welcomes the new provisions concerning the transparency of the PC work and Ethics. The Commission, nevertheless, also notes that most of the key recommendations in the previous opinions have not been followed and thus remain valid.

73. Regarding the proposed draft amendments to the Law, the Venice Commission, thus, draws the attention of the authorities to the following pending key recommendations:

- to specify that the current PC composition will continue working until the expiry of its term;
- to clarify the eligibility criteria for the PC members;
- to improve the transitional model for further depoliticisation of the PC: devise a procedure in order to verify that the ineligibility criteria continue to be fulfilled throughout the mandate of the PC members and improve the process of nomination of a lay member by the NGOs;
- it is highly recommendable to find a more sustainable solution and describe the composition of the PC and the method of election of its members in the Constitution itself – as is the case with the Judicial Council.

74. The Commission also makes the following recommendations concerning other draft amendments:

- to provide that the right to appeal against compulsory transfer decisions and more detailed indications of the criteria to be taken into account when such a decision is adopted be explicitly mentioned in the Law;
- to improve the scope and criteria of performance evaluation in line with European standards;
- to clarify the procedure and criteria for ethical and disciplinary accountability;
- to clarify the procedure of dismissal of PC members and the head of the state prosecutor's office.

75. Lastly, the Venice Commission encourages the authorities to facilitate access to the theoretical part of the training to young professionals coming from all parts of the country and to align the initial training duration and programme with European standards.

76. The above-mentioned recommendations are mostly repetitive. Through its eight previous opinions adopted in 2008-2021, the Venice Commission made a number of recommendations. The full list of the key recommendations is appended to the present Urgent Follow-up Opinion. The Commission invites the authorities to make full use of those recommendations in order to consolidate the Law and provide the State Prosecution Service with the necessary sustainable safeguards, protecting it from corporatism and politicisation.

draft amendments to the Law on the State Prosecution Service and the draft law on the Prosecutor's Office for organised crime and corruption and [CDL-AD\(2021\)030](#), Urgent Opinion on the revised draft amendments to the Law on the State Prosecution Service.

77. The Commission also invites the authorities of Montenegro to ensure comprehensive dialogue with the major stakeholders and civil society at further stages of the legislative process.

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

Appendix

2008-2021 KEY RECOMMENDATIONS OF THE VENICE COMMISSION CONCERNING THE LAW ON THE STATE PROSECUTOR SERVICE OF MONTENEGRO

(Further detailed recommendations are to be found in the text of the opinions)

CDL-AD(2008)005, Opinion on the Draft Amendments to the Law on the State Prosecutor

1. A prosecutor who is being seconded against his or her will should be allowed to file a non suspensive protest to the Prosecutorial Council... 3. The deletion of the provision on special reports to be provided upon the request by Parliament and by Government is to be welcomed. If such a provision were to be re-introduced it should be formulated in a way to exclude requests concerning individual cases.

CDL-AD(2011)010, Opinion on the draft amendments to the Constitution of Montenegro, as well as on the draft amendments to the law on courts, the law on the state prosecutor's office and the law on the judicial Council

76. In addition, as a change in the Constitution would not be sufficient in order to redress the situation of the judiciary in Montenegro, in the Venice Commission's Opinion the legislation should also be changed in the way recommended above and in particular concerning: a. The transparency and effectiveness of disciplinary proceedings against ... prosecutors. b. The composition of the disciplinary panel inside the ... the prosecutorial Council. ...d. The competencies of the ... Prosecutorial Councils. E. The improvement of the processes of appointment of ... prosecutors.

CDL-AD(2012)024, Opinion on two sets of draft amendments to the constitutional provisions relating to the judiciary of Montenegro

56. ... a change in the Constitution of Montenegro will not be sufficient in order to redress the situation of the judiciary. The legislation should also be changed to guarantee the transparency and effectiveness of disciplinary proceedings against ... prosecutors, the parity in the composition of the disciplinary panel inside the ... prosecutorial Council and the improvement of the processes of appointment of ... prosecutors.

CDL-AD(2013)028, Opinion on the Draft Amendments to three Constitutional Provisions relating to the Constitutional Court, the Supreme State Prosecutor and the Judicial Council

30. As concerns the appointment and dismissal of the Supreme State Prosecutor, while the proposal to do so by two rounds of voting, at two-thirds and subsequently three-fifths majority would seem acceptable, the Venice Commission considers that more suitable alternatives could be found.

CDL-AD(2014)042, Interim Opinion on the Draft Law on the State Prosecution Office

123. ...It is recommended in particular that:

- the scope of the activities of the prosecution service be limited to the criminal field, and that the law clearly state that state prosecutors shall carry out their functions impartially and objectively, on the basis of the principles of legality and equality before the law;
- the procedures for proposal and election of the Prosecutorial Council members from among state prosecutors be simplified and a proportional and fair representation of all levels of the prosecution service be secured; for the election of the eminent lawyers members a qualified majority of two-thirds and anti-deadlock mechanisms be introduced;
- in order to give increased credibility and democratic legitimation to the disciplinary procedure and in line Article 136 of the Constitution guaranteeing the autonomy of the state prosecution, the disciplinary plaintiff and the President of the disciplinary panel be elected from lawyers outside the prosecution service (and without requesting the Opinion of the session of the Supreme State Prosecution Office);
- the proposed system of supervision by the Ministry of Justice over the activities of the prosecutorial management be revised with a view to guaranteeing full and effective respect of the principles of independence of the State prosecution and functional immunity of individual state prosecutors.

124. The Venice Commission further stresses, in relation to the future implementation of the draft law, the necessity of ensuring full respect of the principles of legal continuity and life tenure of current state prosecutors, as well as stability in function and autonomy, for prosecutors, heads of prosecution offices and the state prosecution service as a whole.

CDL-AD(2015)003, Final Opinion on the revised draft Law on the Public Prosecution Office

71. A number of matters raised by the Commission have nevertheless not been addressed or the solutions proposed are still to be improved, notably:

- The multiplicity of prosecutorial structures entailing the risk of sometimes overlapping functions;
- in relation to the Prosecutorial Council:
 - the procedures for elections to the Prosecutorial Council, in particular: the need to simplify these procedures and to ensure the fair and proportional representation of basic public Prosecutor's Offices in the Council, as well as to apply the qualified majority for the election of the lay members of the Council;
 - the decision on the dismissal of Prosecutorial Council members, which should be taken only by the other members of the Council, without involving external bodies;
 - the variety of functions to be carried out by the Prosecutorial Council, and the appropriateness of some of these functions (such as conducting all interviews) being carried out by the Council itself rather than being delegated;
- the need for increased clarity for certain criteria for appointment as public prosecutor as well as for the secondment/transfer system of public prosecutors, where a possibility to appeal against compulsory transfers should be provided;
- the system of performance evaluation, where a more independent evaluation commission and improved evaluation criteria should be provided;
- the need to appoint the disciplinary prosecutor from among eminent lawyers and to reconsider the appointment of the members of the Disciplinary Committee on the nomination of the Supreme Public Prosecutor.

CDL-AD(2021)012, Opinion on the draft amendments to the Law on the State Prosecution Service and the draft law on the Prosecutor's Office for organised crime and corruption

59. The envisaged new composition of the Prosecutorial Council (which would have a slight majority of lay members) is not as such directly contrary to the European standards and could be explained by the need to avoid corporatism. However, in the current setting – where all lay members are elected at the same time by a simple majority of votes in Parliament – this reform may lead to the increased politicisation of the Prosecutorial Council. To avoid it, the authorities have a choice of options. For example, lay members may be elected by a qualified majority. But in this case an effective anti-deadlock mechanism should be in place. Another option would be to elect the lay members on the basis of a proportional system (so that they represent different political forces) or to provide for their nomination or even direct appointment by external non-governmental actors (such as universities, the Bar, the Judiciary etc.). Ideally, the composition and the method of election of lay members should be entrenched in the Constitution.

60. The immediate replacement of all currently sitting members of the Prosecutorial Council has no justification and infringes their security of tenure. The role of the Prosecutorial Council is to ensure the autonomy or independence of the prosecution system. To achieve the desired balance between prosecutorial and lay members it would be sufficient to elect one additional lay member and remove one prosecutorial member, for example by drawing the lots (or, possibly, to re-elect all prosecutorial members), and wait until the mandate of the remaining members expires (which is shortly).

61. As regards the current stalemate regarding the election of the new Prosecutor General, the Venice Commission regrets that the Constitution of Montenegro does not provide for an anti-deadlock mechanism, despite the Venice Commission's earlier recommendation to this effect. Pending the introduction in the Constitution of an appropriate anti-deadlock mechanism for the appointment of the Prosecutor General, the law should be amended to provide that the outgoing Prosecutor General will continue to exercise its functions *ad interim*. This solution is likely to motivate the current majority to find a compromise with the opposition to elect a new Prosecutor General. The current proposals as concerns an interim prosecutor who may be appointed twice for a six-month term should be abandoned. Once the anti-deadlock mechanism is introduced, the law may be changed to provide that an interim prosecutor be appointed with the duration of his/her interim functions limited to the operation of the anti-deadlock mechanism.

62. Finally, the Venice Commission recommends reviewing the new provisions on disciplinary liability of prosecutors in order to specify that such liability may only be imposed for gross misbehaviour and not simply for an incorrect application of the law.

CDL-AD(2021)030, Urgent Opinion on the revised draft amendments to the Law on the State Prosecution Service

65. As concerns the method of election of the lay members, the Venice Commission reiterates that it is necessary to ensure that the Prosecutorial Council should not be politicised. The Commission does not consider that election by Parliament by simple majority is conducive to political neutrality or at least pluralism. When qualified majority or proportional voting systems do not appear as an acceptable solution, as a transitional solution simple majority may be accepted only if it is coupled with additional solid guarantees and safeguards.

66. As concerns the lay members, the revised draft maintains that their number is increased to 5 and that their election is done by simple majority. However, it contains two proposals aiming at mitigating the risk of politicisation and conflicts of interest. In the first place, new ineligibility criteria will be introduced for the lay members - and also for the prosecutor members - of the Prosecutorial Council. These new criteria create a "safety distance" between lay members and party politics, which will make the PC more politically neutral. They are therefore welcome; a procedure should be devised in order to verify that these criteria continue to be fulfilled throughout the mandate.

67. Secondly, under the revised draft, one of the lay members would be nominated by selected NGOs and would be endorsed by Parliament. The candidate proposed by these NGOs should not be part of the vote on the other candidate lay members. Parliament should separately decide to endorse such candidate. The authors of the revised draft have devised a system which attempts to address the difficulty of ensuring that this candidate represents "civil society". Several criteria have been introduced to select the NGOs who are entitled to submit candidates: to have existed for more than three years, to have worked in the field of the rule of law, and to have implemented projects in this area with a budget of more than EUR 20,000 per year. The Commission finds it positive that the revised draft introduces some objective criteria, safeguards and thresholds, even if it is difficult to say whether these are realistic and whether they may effectively ensure the representative character of the process in the medium and long term. Representativeness would be increased if the criterion of formal equality of all NGOs were abandoned and the most experienced and senior NGOs were entitled to present more than one candidate. At any rate, the law should contain a mechanism for selecting a candidate, should it happen that none receives more nominations than the others. The choice should remain with the NGOs, it should not be left to the discretion of Parliament.

68. In the Commission's Opinion, the two proposals contained in the revised draft go in the right direction to reduce politicisation, but in all they are not yet sufficient to eliminate completely the risks of politicisation which are inherent in election by simple majority. The Commission encourages the Montenegrin authorities to pursue the reflection and improve their model.

69. The revised draft maintains the provision for the immediate replacement of all currently sitting members of the PC upon the entry into force of the law, that is before the end of their mandate (which expires on 22 January 2022). The Commission has previously stated in respect of judicial councils that as one of their important functions is to shield judges from political influence, "it would be inconsistent to allow for a complete renewal of the composition of a judicial council following parliamentary elections. The Venice Commission found on the other hand that the renewal of the members could be justified only when the manner of appointment changed from simple to qualified majority, as this would pose a lesser risk to the politicisation of the Council.

70. The Venice Commission is not convinced that the extent of the reform is sufficient in this regard, even if it contains several positive features which have the potential to mitigate the risk of politicisation brought about by election by simple majority. As a consequence, the Commission does not consider that the termination of mandate of all the current members of the Prosecutorial Council would be justified. It would amount to a serious infringement of its independence.

71. However, the Commission considers that the ineligibility criteria introduced by the draft should become immediately applicable to all members of the PC. A procedure should be devised for assessing their possible ineligibility in the light of these criteria, and the balance between lay members and prosecutor members should be reassessed after this exercise, making the necessary arrangements, if need be.

72. As concerns the nomination of an interim prosecutor by the PC, while the Commission is not in favour of it, it seems that the expected retirement of the Prosecutor General will lead to a constitutional impasse, so that this transitional arrangement might be necessary. There is a strong case for selecting an interim PG from the ranks of existing top prosecutors. The Commission stresses nonetheless that these transitional arrangements do not represent a solution to the serious issue of the need to find a broad political consensus on the next Prosecutor General.

73. Finally, the law should indicate explicitly that the obligation of the two top prosecutors to present regular and special reports before the Parliament and its committees does not include individual cases, pending or completed, and/or that it should be possible to give reasonable justification for failing or refusing to do so.