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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

MONTENEGRO

EXPLANATORY REPORT

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

EXPLANATION

I CONSTITUTIONAL BASIS FOR THE ADOPTION OF THE LAW

The constitutional basis for the adoption of the Law on Amendments of the Law on Judicial Council and Judges is contained in Article 16, paragraph 1, item 3 of the Constitution of Montenegro, which prescribes that the law, in accordance with the Constitution, shall regulate the manner of establishment, organization and competences of the authorities and the procedure before those authorities, if so required for their operation.

II REASONS FOR THE ADOPTION OF THE LAW

The adoption of the Law on Amendments of the Law on Judicial Council and Judges was initiated with the aim to strengthen the independence, responsibility and efficiency of the judiciary.

Namely, the amendments of this regulation were initiated to overcome the issues arising in the practical implementation of this regulation, such as: the work of the Judicial Council; the system of ethical and disciplinary liability of judges; appointment of judges and presidents of the courts, drafting Plan of vacant positions for judges, assignment and transfer of judges, as well as the appraisal of judges.

Furthermore, one of the reasons for the amendments to the Law on Judicial Council and Judges is also contained in the Montenegro Country Reports prepared by the European Commission, which provide recommendations and indicate measures for further strengthening of judicial independence and for revision of the disciplinary and ethical framework for judges to strengthen the objectivity, proportionality and efficiency and to ensure the effective implementation of this framework.

The need to improve this law was also indicated by the Analysis of the legislative framework and the effects of its implementation in terms of judicial independence from March 2018, as well as by the report prepared by Luka Perili after the TAIEX mission on judicial independence in Montenegro held in November 2017.

Also, apart from the suggestions received by the courts and the Judicial Council, the Expert Opinion was also taken into account, which was prepared at the request of the Ministry of Justice by the consultants of the Council of Europe, Mr Gerhard Reissner, a member and former president of the Consultative Council of European Judges (CCJE) and president of the Floridsdorf District Court in Vienna and Mr Đuro Sessa, vice-president of the Consultative Council of European Judges and president of the Supreme Court of the Republic of Croatia, engaged under the European Union and the Council of Europe joint initiative "Horizontal Facility for the Western Balkans and Turkey 2019-2022 (under the action: "Accountability and Professionalism of the Judicial System in Montenegro")

III CONFORMITY WITH THE EU ACQUIS AND RATIFIED INTERNATIONAL CONVENTIONS

The draft amendments to the Law on Judicial Council and Judges are harmonised with the documents of the Council of Europe, the United Nations and the European Union, in particular the following:

- Recommendation of the Council of Europe pertaining to the independence, efficiency and responsibility of judiciary;
- Magna Carta of Judges of the Consultative Council of European Judges (2010);

- European Convention for the Protection of Human Rights and Fundamental Freedoms;
- European Charter on the Statute for Judges;
- Opinions of the Consultative Council of European Judges;
- Universal Declaration of Human Rights;
- International Covenant on Civil and Political Rights;
- The basic principles of judicial independence adopted by the 7th United Nations Congress and accepted by the General Assembly.

The standards of the European Union are contained in the constituent treaties and the Convention for the Protection of Human Rights and Fundamental Freedoms. There is no secondary legislation that regulates in detail the principles how the national judiciary of the EU member states is arranged, which is understandable given the principles on which the EU and its functioning are based. Thus, it may freely be said that, when it comes to judicial independence, the EU member countries rely on international standards developed by the UN and CoE.

The expert missions were particularly important for the harmonization with the European standards, as well as the workshops organized within the joint European Union and Council of Europe programme “Horizontal Facility for the Western Balkan and Turkey 2019-2022”.

IV EXPLANATION OF BASIC LEGAL CONCEPTS

I. BASIC PROVISIONS

When it comes to the basic provisions, the draft Amendments to the Law on Judicial Council and Judges, apart from the amendment of terminology in Article 1, also amends the provisions of Article 5.

Article 2 of the Law Proposal amends Article 5 to prescribe that the judges shall exercise their right to a salary and other work-related and work-based rights in accordance with the law and other regulations governing the rights and duties of public sector employees.

II. JUDICIAL COUNCIL

Article 3 amends Article 9, paragraph 3 of the applicable law so that the Conference of Judges, apart from the president of the Commission for Monitoring the Implementation of the Code of Ethics for Judges, shall also appoint and dismiss his deputy and the members of this Commission and their deputies.

Article 4 of the Law Proposal deletes the provision of Article 11 of the applicable law which regulates the composition and the work of the Commission for the Code of Ethics for Judges so that these provisions are now regulated by a separate chapter VIa in the draft law. THE CODE OF ETHICS AND DECIDING ON THE RIGHTS AND OBLIGATIONS OF JUDGES.

Article 5 of the Law Proposal introduces the provisions on the prevention of conflict of interest for the members of the Judicial Council from among the judges, with the aim to prevent the political influence on the Council and improve its independence and autonomy guaranteed by the Constitution. This proposal satisfies the long-standing recommendations for the strengthening of independence of the Judicial Council given by the CoE Group of States against Corruption (GRECO) and the European Network of Councils for the Judiciary (ENCJ). Furthermore, the latest opinion of the Consultative Council of European Judges from November

2021 points out that the future members, regardless of whether they are judges or not, should be appointed based on their abilities, experiences, understanding of judicial life and culture of independence and should not be politically active or members of the executive or legislative power. This ensures the guarantees of independence and impartiality of the members of the Judicial Council at least at the level of those that are already ensured for the members of the Prosecutorial Council, the Council of the Radio and Television of Montenegro, the Council of the Agency for the Prevention of Corruption or the Agency for Electronic Media.

Article 6 amends Article 13 of the applicable law so that the president and the members of the Election Commission have their deputies.

Article 7 supplements Article 14 of the applicable law so that the proposal of the candidate for the appointment of the Judicial Council members from among the judges is established by the Conference of Judges in the manner and according to the procedure for the establishment of a proposal of candidates for Judicial Council members from among the judges of basic courts and misdemeanour courts with at least five years of work experience as judges.

Article 8 amends and supplements the law to adjust the terminology from Article 15 of the applicable law to the proposed amendments of Article 14.

Article 9 amends Articles 16, 16a and 16b of the applicable law and prescribes in more detail the conditions and procedures for the election of the Judicial Council members from among the prominent lawyers.

Modelled after the conditions for the election of judges of the Constitutional Court prescribed by the Constitution, it has been proposed that a person who has at least 40 years of age and 15 years of work experience in legal affairs and enjoys personal and professional reputation, has not been convicted for criminal offences that render judges unworthy of performing duties of judicial office in accordance with this Law may be appointed as a member of the Judicial Council from among the prominent lawyers. Furthermore, the provisions have been added aimed at prevention of conflict of interest and political influences during the election of the Judicial Council members from among the prominent lawyers. As a novelty compared to the applicable legal solutions, a deadline for the competent working body of the Parliament of Montenegro to issue a public call for the appointment of a member of the Judicial Council from among the prominent lawyers is also prescribed, which must be at least four months before the expiry of the term of office of the members of the Judicial Council. If the proposal for election contains fewer candidates than the number of candidates to be elected, the election procedure shall be repeated for the number of members that were not proposed by the competent working body of the Parliament. In such a case, the competent working body of the Parliament shall announce a new public call without delay, until the full composition of the members of the Judicial Council is elected from among the prominent lawyers.

In order to prevent the blocking of the work of the Judicial Council in cases when new members from among the prominent lawyers are not elected upon the expiry of the term of office, Article 10 proposes that the president and the members of the Judicial Council from among the prominent lawyers, whose term of office ends after the expiration of the term for which they were elected, shall continue to perform their duties until the election and announcement of new members of the Judicial Council from among the prominent lawyers, for a period not longer than two years. The performance of this duty shall not constitute the re-election of the members of the Judicial Council. The new Article 16c prescribes that the president of the Judicial Council shall be elected at the first session, after the announcement of the composition of the Judicial Council, and if the office of the president of the Judicial Council ends before the term of office of the Judicial Council expires, the president shall be appointed at the earliest forthcoming session. The Judicial Council may decide for the president of the Judicial Council to perform his/her duties in a professional capacity.

Article 11 of the Law Proposal, in order to eliminate the problems observed in practice in the procedures for the election of judges, defines more closely Article 17 of the applicable

law, stating that during the term of office in the Judicial Council, a member of the Judicial Council from among the judges cannot be elected or transferred to another court or elected as the president of the court, while a member of the Judicial Council from among the prominent lawyers cannot be elected as a judge or president of the court.

Article 12 of the Law Proposal foresees a limitation in terms of the re-election of the Judicial Council members, so that the same person may be elected as a member of the Judicial Council not more than two times.

Article 13 of the Law Proposal prescribes when the function of the president of the Judicial Council ends.

Article 14 of the Law Proposal amends Article 22, paragraph 2 of the applicable law, and prescribes the obligation of the Judicial Council to temporarily remove from duty a member of the Judicial Council from among the judges if a disciplinary procedure is initiated against such member for the most serious disciplinary offences, until the final conclusion of the disciplinary procedure. The applicable solution prescribes that the Judicial Council may temporarily remove a member of the Council from among the judges from duty if a disciplinary procedure is initiated against such member for a disciplinary offence, regardless of the gravity of the offence, and thus the new solution is being proposed to strengthen the legal certainty and prevent potential arbitrary actions in such cases.

Article 15 of the Law Proposal supplements and amends Article 23 of the applicable law by prescribing that the president of the Judicial Council shall not be entitled to compensation for his work in the Judicial Council (in the net amount of 120% of the average gross salary in Montenegro during the previous year), if he earns the salary as the president of the Judicial Council in accordance with the law governing the method for establishing and exercising the right to salary of employees in the public sector.

Article 16 of the Law Proposal supplements Article 24 with a new paragraph which foresees that at the request of at least three members of the Judicial Council, the President of the Judicial Council shall be obliged to convene a session with the proposed agenda, no later than within seven days from the date of submission of the request.

Article 17 amends Article 26, paragraph 3 of the applicable law to specify that the net remunerations for the work of the members of the commissions and the Commission for the Code of Ethics for Judges are calculated for the months in which such commissions have worked.

Article 18 of the Law Proposal supplements Article 27, paragraph 1, items 3, 11 and 14 of the applicable law and prescribes that the Judicial Council, apart from the competencies determined by the Constitution, coordinates the international cooperation within its jurisdiction, adopts the Rules of Procedure of the Judicial Council and other acts within its jurisdiction and gives opinions on draft regulations from the field of judiciary, as well as on draft regulations related to salaries, exercising the right to pension and other rights and obligations of judges.

Article 19 amends Article 30 of the applicable law and proposes the introduction of a deadline for the initiation of an administrative dispute against the decisions of the Judicial Council that affect the status of candidates for judges, judges and presidents of the courts, as well as the deadline by which the Administrative Court is obliged to make a decision due to the urgency of such procedures.

Article 20 proposes that the publicity of work of the Judicial Council should be excluded in certain cases, in particular while voting on decisions of the Judicial Council and Judicial Council bodies, as well as in the procedure to appraise the work and establish disciplinary liability of judges, unless so requested by a judge whose liability is being examined.

III. APPOINTMENT OF JUDGES AND COURT PRESIDENTS

When it comes to the appointment of judges and presidents of the courts, the Proposal of the Law on Judicial Council and Judges foresees several amendments of the previous legal solutions. The most important amendments relate to the following: the conditions and the manner of appointment of the president of the Supreme Court, the conditions and the manner of appointment of the judges of the Administrative, Commercial and high courts, adoption of the Plan of vacant positions for judges, the procedure for the appointment of judges of the basic courts, the rights and obligations of the candidates for judges and the duration of the initial training.

Article 21 of the Law Proposal amends the conditions for the appointment of the president of the Supreme Court. Thus, with the proposed amendments of Article 33 of the applicable law, the pool of potential candidates has been expanded in order to increase the number of potential candidates for the president of the Supreme Court, and therefore, apart from persons with at least 15 years of experience as a judge or state prosecutor, a person with at least 20 years of work experience as a lawyer, notary, professor of legal sciences or in other legal jobs may apply for the position of the president of the Supreme court. The amendment was modelled after the conditions for the appointment of the Supreme State Prosecutor.

Article 22 of the Law Proposal improves the provisions of the law pertaining to proposal of the candidates for the president of the Supreme Court by the General Session of the Supreme Court, in the manner that increases the number of candidates among which the Judicial Council may elect the president of the Supreme Court. These amendments were modelled after the procedure for the election of judges of the European Court of Human Rights, governed by Article 22 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which foresees that “the judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party. Furthermore, the increase of the number of candidates in the proposal for the election of the president of the Supreme Court encourages the increase of the number of interested candidates applying for the position of the president of the Supreme Court, which in turn contributes to the promotion of democracy of this procedure. Therefore, it is recommended for the proposal for the election of the Supreme Court president to contain up to three candidates, instead of the previous solution which prescribed that the proposal should include one candidate. The General Session of the Supreme Court decides on the proposal for the election of the Supreme Court president by secret ballot, in such a way that not more than three candidates from the list may be circled. If the list specifies the names of three or less candidates, the proposal for the election of the Supreme Court president shall include the candidates from the list who got more than a half of the votes of the Supreme Court judges. If none of the registered candidates receives the required majority in the first vote, the vote shall be repeated among the candidates who received more than a quarter of the votes of the total number of judges of the Supreme Court. If none of the candidates receives the required majority in the repeated voting, the General Session of the Supreme Court shall declare that the proposal of the candidate for the President of the Supreme Court has not been determined and shall inform the Judicial Council thereabout. The explanation of the proposal specifies the number of votes received by each of the candidates individually and in which round of voting. It is particularly important to emphasize that the proposed amendments would result in the avoidance of potential “blocking of the system” for the election of the Supreme Court president, since according to the applicable provisions of the Law on Courts that regulate the procedure for proposing the candidates if none of the candidates receive the required majority of two thirds, the General Session of the Supreme Court shall declare that the proposal of the candidate for the President of the Supreme Court has not been determined and shall inform the Judicial Council

thereabout, which in such a situation is prevented from performing its duties guaranteed by the Constitution. In such a way, the proposed solutions contribute to a more thorough exercise of constitutional competences of the Judicial Council, as an independent and autonomous body that ensures the independence and autonomy of courts and judges and appoints and dismisses the president of the Supreme Court, as well as to a more efficient fulfilment of interim benchmarks in the field of judiciary in terms of the appointments to the key functions in judiciary. In this respect, in parallel to the amendments to this Law, the amendments to the Law on Courts would also be proposed to eliminate the provisions of the law that pertain to the voting for the candidates for the Supreme Court president.

In accordance with the proposed amendment, the purpose of Article 23 of Law Proposal is to perform legal and technical adaptation of Article 36 of the applicable law.

Article 24 of the Law Proposal adds a new Article 36a that introduces the acting president of the Supreme Court in case of expiry of the term of office, termination of function of the Supreme Court president, his resignation or dismissal. This eliminates the legal vacuum in the applicable law to ensure unhindered functioning of the Supreme Court.

Article 25 of the Law Proposal amends the conditions for the judges of the Commercial and Administrative court in Article 38 of the applicable law. Thus, a person may be elected as a judge of the Commercial Court who, after passing the bar exam, has worked for at least five years as an advisor in a court or state prosecutor's office, or at least five years as a lawyer, notary or professor of legal sciences, or at least six years in other legal jobs. A person may be elected as a judge of the Administrative Court who, after passing the bar exam, has worked for at least six years as an advisor in a court or state prosecutor's office, or at least six years as a lawyer, notary or professor of legal sciences, or at least eight years in other legal jobs. Furthermore, the conditions for the appointment of judges of the high courts have also been amended, and thus a person who has worked as a judge, i.e. state prosecutor for at least six years may be elected as a judge of this court.

Article 26 of the Law Proposal adjusts the terminology in Article 39 of the applicable law. In addition, the amended solution prescribes that a judge or a state prosecutor with 12 years of work experience in legal matters, of which a minimum of eight years as a judge or prosecutor, may be elected as the president of the Administrative Court –

Article 27 of the Law Proposal amends Article 40 of the applicable law and prescribes a deadline within which the Judicial Council has to announce the vacancy for the position of the court president, in the same way as is prescribed for the Supreme Court president in Article 34 of the law.

Article 28 of the Law Proposal adds a new paragraph to Article 41 of the applicable law to regulate the situation pertaining to the appointment of candidates as the court presidents in cases when two candidates have the same number of points both for the interview and the appraisal of work. In such a case, the priority is given to the candidate with more years of service in the court or the state prosecutor's office.

Article 29 of the Law Proposal introduces a limitation for the appointment of the president of the court in Article 42 of the applicable law, so that the same person may be elected as the president of the court of same jurisdiction not more than two times. The changes in the law do not affect the number of terms of office.

Article 30 of the Law Proposal adjusts the terminology in Article 43 of the applicable law.

Article 31 supplements Article 44 so that, when making the assessment of the need to fill in the positions of judges, the Judicial Council shall particularly take into account the expected vacancies that may be foreseen based on the workload of courts and influx of cases in the previous three years, the expansion of judicial competences, the expected termination of judicial office, the decision on the number of judges and the number of judicial vacancies in the past three years.

Articles 32 and 44 of the Law Proposal amend the Articles 45 and 56 of the applicable law to specify that the announcement for voluntary transfer from one basic court to another,

i.e. from one misdemeanour court to another shall be published at the website. If the judicial vacancies are not filled based on the announcement for filling of vacant positions, such vacancies shall be filled from among the candidates for judges, in accordance with Article 55 of this Law. In addition, Article 45 is supplemented so that the Judicial Council, in accordance with the Plan of vacant positions publishes a public announcement for the positions of candidates for judges in basic courts.

By virtue of Articles 33, 34, 35, 39 and 44 of the Law Proposal, the term “judge” in Articles 46, 47, 48, 52 and 56 of the applicable law is replaced by the term “candidate for a judge”, given the fact that the persons elected for a judge for the first time are previously elected for candidates for judges of the basic court or misdemeanour court.

In addition, a significant amendment was also made in Article 48 of the applicable law, in the part pertaining to the written test, so that the candidates appraised at the bar exam have the right to take the test if they want to, in which case the candidate is appraised by the score achieved in the written test.

Article 36 prescribes a norm according to which a candidate who uses illegal means, i.e. written or technical aids during a test, should be removed from the test, and the Judicial Council is granted the right, at the proposal of the Testing Commission, to make a decision to ban such candidate from accessing the written test for a period of two years from the date of the violation.

Article 37 prescribes an amendment to Article 49, paragraph 1 in the form of reduction of the lower limit for the achieved number of points made by candidates for judges in the written test, i.e. the bar exam, from 60 to 55 points, so that the candidate who got 55 points in the written test would be qualified for an interview with the Judicial Council. Paragraph 5 of the same Article proposes that the person who scores less than 10 points at the interview may not be included in the ranking list of candidates for judges, instead of the existing 15 points prescribed by the applicable law.

By virtue of Articles 38, 46 and 54 of the Law Proposal, the term “prepare”, i.e. the term “preparation” in Articles 50, 58 and 71 of the applicable law are replaced by the terms “determine”, i.e. “determination”.

Article 39 of the Law Proposal amends Article 52 of the applicable law and prescribes that the Judicial Council shall assign the candidates for judges to initial training, i.e. the judges to the court in which they were elected after the decision in the administrative dispute becomes final.

Furthermore, the amendments of Article 54 in Article 40 propose a shorter duration of initial training for the candidates for judges, 12 months instead of previously prescribed 18 months.

Article 41 of the Law Proposal, in its new Article 54a, prescribes that the candidate for a judge with unsatisfactory score after the initial training shall have his employment terminated by force of law, on the date when the decision on appraisal becomes final and enforceable.

Due to certain problems occurring in practice during the assignment of the candidates for judges, it is being proposed to supplement the Article 55 of the applicable law with Article 42 so that the candidates who remained unassigned may acquire a right of priority selection compared to candidates who completed the initial training after them.

Article 43 of the Law Proposal adds a new Article 55a which determines the stimulation for candidates who move outside their place of residence. Namely, it is prescribed that a judge who, in accordance with Article 55 of this law, has been elected to a court that is more than 50 km away from his place of residence, i.e. habitual residence, has the right to an official apartment or to reimbursement of rent, transportation expenses, as well as the right to reimbursement of expenses for separate life from the family, if the judge or a member of his family household does not own, co-own or jointly own an apartment, i.e. a residential facility on the territory of the court to which the judge was elected. This right shall be decided upon by the Judicial Council, while the funds would be provided from the budget of the court to which the candidate was assigned.

Given the fact that Article 57 does not clearly specify how the tests of misdemeanour judges are being appraised, Article 45 of the Law Proposal specifies that the appraisal shall be carried out by awarding a certain number of points for the form of the decision, the application of law and the rationale of the decision, so that the maximum of 80 points may be scored.

Articles 47 and 48 of the Law Proposal adjust the terminology in Articles 60 and 61 of the applicable law to the proposed amendments of the Articles of the law that pertain to the appointment of judges of misdemeanour courts, i.e. of the Administrative and Commercial court.

Article 49 of the Law Proposal amends Article 62 of the applicable law so that the written testing of persons whose applications for judges of the Administrative Court or Commercial Court were timely and complete shall include the drafting of a decision from the jurisdiction of the Administrative Court or the Commercial Court. Assessment of the written test shall be carried out by awarding a certain number of points for the form of the decision, the application of law and the rationale of the decision, so that the maximum of 80 points may be scored.

Article 50 of the Law Proposal amends Article 63 of the applicable law and prescribes the manner of preparation of the ranking list of candidates for the judge of an Administrative Court, i.e. a Commercial Court, and specifies that such list is prepared based on the assessment of the written test or the bar exam and the interview with the candidate.

Articles 51, 52 and 53 of the Law Proposal recommend the introduction of a new Article 63a and amendments to Articles 64 and 65 of the applicable law, which pertain to the appointment of judges of the Administrative or Commercial court, due to the lack of precision of the norms relating to the status of the candidates who are already judges in some other court, but who are to be appointed as judges of the Administrative or Commercial court. Thus, it was proposed that a person who has applied for a judge of the Administrative Court or the Commercial Court, and who already performs the function of a judge in another court, should not be selected as a candidate for the judge of the Administrative Court or the Commercial Court, but as a judge, and instead of the initial training, such person should only undergo continuous training, as the judges who change their field of judicial work or advance in their carrier , while a person who is not a judge shall become a candidate for a judge of the Administrative Court or the Commercial Court and shall be referred to initial training. The Judicial Council, according to the order in the ranking list, makes a decision on the appointment of a judge, i.e. the candidate for a judge of an Administrative or Commercial Court. If a candidate from among the judges is elected according to the order in the ranking list, the Judicial Council shall make a decision on his/her election as a judge immediately after determining the ranking list. The decision on the appointment of judges for the candidates assigned to initial training shall be adopted after a successfully completed initial training.

Article 56 of the Law Proposal amends Article 79 of the applicable law to specify that the judges shall take an oath no later than within 15 days from the date when the decision on the appointment becomes final and enforceable.

IV. ASSIGNMENT AND TRANSFER OF JUDGES

Article 57 of the Law Proposal specifies the norm from Article 85 which refers to the transfer to another court without the consent of the judge in case of court reorganization.

Article 58 of the Law Proposal specifies the norms from Article 86 of the applicable law that pertain to permanent voluntary transfer of judges. Namely, the judges who wish to be permanently transferred to another court of the same jurisdiction and of the same or lower degree and who have a performance evaluation in accordance with this law have the right to apply for permanent voluntary transfer. The Judicial Council determines the list of candidates, especially taking into account the results of the appraisal of judge's work in accordance with this law, the length of the judge's service at the said function, place of residence and family circumstances of the judge, as well as the needs of the court in which the judge performs

his/her judicial function and of the court to which he/she is assigned. Based on the list of candidates, the Judicial Council makes a decision on the transfer of a judge to another court.

In order to resolve the problems occurring in practice while ensuring the missing number of judges in smaller courts, Article 59 of the Law Proposal adds a new Article 86a to introduce certain incentive measures for voluntary transfer of judges to a court that is more than 50 km away from their place of residence, i.e. domicile. In such a case, a judge who, in accordance with Article 86 of this law, has been transferred to a court that is more than 50 km away from his place of residence, i.e. habitual residence, has the right to an official apartment or to reimbursement of rent, transportation expenses, as well as the right to reimbursement of expenses for separate life from the family, if the judge or a member of his family household does not own, co-own or jointly own an apartment, i.e. a residential facility on the territory of the court to which the judge was transferred. The Judicial Council decides about this entitlement, while the funds for this entitlement shall be provided from the budget of the court to which the judge is transferred.

V. APPRAISAL OF JUDGES

The amendments of the provisions of the law pertaining to the appraisal of judges were proposed by the Judicial Council to resolve the problems occurring in the implementation of the existing appraisal system.

Article 60 proposes an amendment of Article 87 of the applicable law to introduce amendments in relation to the period and goal of the appraisal procedure. It was proposed that the appraisal period, instead of three years as prescribed so far, should last for five years, with appropriate exceptions in which the judges' work would be evaluated even before the expiry of this period. Namely, exceptions relate to the cases when: 1) a judge who has been elected for the first time is appraised, in which case he is appraised after three years from taking office; 2) the judge's work is appraised as unsatisfactory, in which case the appraisal of the judge's work shall be carried out after the expiration of one year from the date of finality of the decision determining that score, and 3) the judge applies to the announcement for advancement to the higher instance court or for the president of a court, and does not have a performance appraisal score or more than three years have passed from the last appraisal score. Scores awarded to judges within their performance appraisal shall be excellent, good, satisfactory and unsatisfactory.

Furthermore, Article 61 of the Law Proposal amends the existing criteria for the appraisal of work of the judges from Article 89 and proposes to appraise the following criteria while appraising the work of a judge: effectiveness of judge's work, general abilities and professional activities.

Given the fact that new criteria have been proposed, the determination of new adequate sub-criteria for their appraisal was also proposed. Namely, Article 62 of the Law Proposal amends Article 90 and prescribes that the effectiveness of judge's work shall be appraised based on the following sub-criteria: quantity of work, quality of work and quality of rationales of decisions. The quantity of work is appraised based on the number of completed cases based on which the work of a judge would be graded as unsatisfactory if his work results are below 80% of the number of completed cases stipulated by the Framework Criteria for determining the required number of judges, unless the judge provides justified reasons. The quality of work is evaluated based on the ratio of abolished decisions of the judge being evaluated and the average number of abolished decisions in a certain type of case at the level of the competent courts and based on the number of open hearings or hearings by the second instance court. The quality of rationale shall be appraised for its clarity, conciseness and comprehensiveness of provided reasons. Appraisal of the quality of work is regulated in detail by special rules for the appraisal adopted by the Judicial Council.

In relation to the above, Article 63 of the Law Proposal amends Article 91 of the applicable law and prescribes that the general abilities and professional activities shall be appraised based on the following sub-criteria: communication skills; ability to adapt to changed circumstances and participation in various professional activities. Communication skills shall be appraised based on the respect shown for the parties, colleagues, and the court staff, while performing the judicial office. Ability to adapt to changing circumstances shall be appraised based on the ability to adapt to structural and organizational changes in the court in which the judge performs his judicial office, to changes in laws and procedural rules, as well as to new technologies and work rules. Participation in various professional activities shall be appraised based on the participation of the judge in training and other professional activities.

Taking into account the proposed amendments to the appraisal criteria and sub-criteria, Article 64 proposes certain amendments in relation to the sources of appraisal that relate to the appraisal of judge's work by reviewing the following: 1) five legally concluded cases in which the decisions were revoked, which are chosen by the method of random sampling; 2) statistical report on the work of the judge, which contains data on the work of the judge, data from the records on judges and data on violations of the Code of Ethics and disciplinary liability; 3) data on training and other professional activities of judges; and 4) judge's report.

Article 65 of the Law Proposal amends Article 93 of the applicable law by prescribing that the cases reviewed in the appraisal shall be selected from among adjudicated cases from the period for which the appraisal is conducted, and in addition to the cases that the judge dealt with in the court in which he performs his judicial office, the cases that the judge dealt with in courts to which he was assigned shall also be taken into account.

Furthermore, amendments have been proposed for the manner of determining the appraisal of judge's work and thus Article 66 of the Law Proposal amends Article 97 of the applicable law to specify that the judge shall get the appraisal score excellent if his work is appraised as excellent according to the sub-criteria pertaining to the quality of work, quantity of work, quality of rationale of decisions and communication skills are appraised as excellent, and if the other sub-criteria are appraised at least as good. A judge shall get the appraisal score Good if his work is appraised as Good according to the sub-criteria relating to the quality of work, quantity of work, quality of rationale of decisions and communication skills. A judge shall get the appraisal score Satisfactory if his work is appraised as satisfactory according to the sub-criteria relating to the quality of work, quantity of work, quality of rationale of decisions and communication skills. A judge shall get the appraisal score Unsatisfactory if, according to one of the sub-criteria relating to quality and quantity of work, the work was appraised as unsatisfactory, or if, according to two out of four remaining sub-criteria, the work of the judge got the appraisal score Unsatisfactory, unless the judge has provided valid reasons for a different score

Article 67 of the Law Proposal removes the provision of Article 99, paragraph 3 of the applicable law according to which a judge whose performance is appraised as excellent and does not get promoted to a higher court within one year from the date his performance was appraised as excellent shall be entitled to a salary in the amount of the salary of the president of the court in which he performs his judicial office, until he is appointed to a higher court or until his performance is appraised with a score lower than excellent. New paragraph 3 specifies that the data on the procedure and the results of the appraisal of the judge are protected in accordance with the law governing the protection of personal data.

Furthermore, the provisions pertaining to the goal and procedure for the appraisal of court presidents are also specified. It has been proposed that the president of the court shall be appraised both as a judge and as a president of the court. The president of the court shall be appraised as a judge by applying the provisions of this Law on the Appraisal of Judges. The president of the court shall be appraised as a president of the court when he/she applies for the position of the president of the court. The president of the court is appraised as the

president of the court with the appraisal score Successful and Unsatisfactory, against adequate criteria for such appraisal. Namely, the president of the court shall be appraised based on his organizational abilities related to the allocation of work and provision of conditions for regular and timely completion of tasks in the court or related to the success rate in implementation of the work programme.

VI. INCOMPATIBILITY AND TERMINATION OF JUDICIAL OFFICE

Article 69 of the Law Proposal amends Article 103 of the applicable law so that, when the competent court or the competent state prosecutor's office concludes that there are reasons for a judge to be deprived of his liberty due to a criminal offence committed in the exercise of his judicial office, such body shall be obliged to immediately request the approval from the Judicial Council. The Judicial Council shall make the decision referred to in paragraph 1 of this Article within 24 hours from the receipt of the request. Notwithstanding the provisions of paragraph 2 of this Article, if deprivation of liberty is sought against a judge due to the criminal offence of organized crime, high corruption or money laundering under the jurisdiction of the Special Department of the High Court in Podgorica or the jurisdiction of the Special State Prosecutor's Office, committed in performing the function of a judge, the Judicial Council renders a decision from paragraph 1 of this Article within 6 hours from the time of receipt of the request. This provision complies with the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Article 70 of the Law Proposal amends Article 105 of the applicable law to specify that an administrative dispute may be initiated against the decision on the termination of office. If an administrative dispute is initiated against the decision on the termination of a judge's office, the Judicial Council may elect a new judge to replace the judge whose function has been terminated when the decision on the termination of the function becomes final.

Article 71 of the Law Proposal standardizes and systematizes the provisions pertaining to the Code of Ethics and deciding on the rights and obligation of judges within a separate chapter. Thus, the new Article 105a specifies what is regulated by the Code of Ethics for Judges. Article 107b improves the provisions of the applicable law that pertain to the composition and competences of the Commission for the Code of Ethics for Judges. Therefore, it has been proposed that the Commission for the Code of Ethics for Judges should have a president and two members, who shall have their deputies. The President and his deputy are elected from among the members of the Judicial Council who are not judges, while two members and their deputies are elected by the Conference of Judges, on the proposal of the sessions of judges of all courts which includes two candidates. The purpose of introducing the deputy is to overcome the problem occurring in situations when there is a need for a recusal of a president or some of the members of the Commission. Conditions for appointment are provided, so that a member of the Commission for the Code of Ethics may be appointed from among the judges who have served as a judge for at least 5 years, have not been disciplined and have not violated the Code of Ethics for judges. Inter alia, the conditions for dismissal are also prescribed, according to which the members of the Commission and their deputies are dismissed if they are sanctioned for their discipline or if they violate the Code of Ethics for Judges. In its work, the Commission makes decisions, gives opinions and guidelines, in accordance with the Rules of Procedure for the work and decision-making of the Commission for the Code of Ethics for judges. Article 107v prescribes in detail who may address the Commission for the Code of Ethics for judges, how the Commission acts on the submitted initiatives and introduces the right to legal remedy against the Commission. The purpose of these amendments is to improve the quality of work of the Commission for the Code of Ethics for judges and the balance of results achieved in determining the ethical and disciplinary liability.

When it comes to the rights and obligations of judges, Article 107d prescribes that such rights and obligations are decided by the president of the court, where an appeal may be

lodged against such decision to the president of the immediately higher court, and against the decision of the president of the Supreme Court to the General Session of the Supreme Court. An administrative dispute may be initiated against the decision on appeal.

VII. DISCIPLINARY LIABILITY AND DISMISSAL

Article 72 of the Law Proposal amends Article 108 of the applicable law so that the provisions of the applicable Article are supplemented with new reasons why a judge may have disciplinary liability. The introduction of a new minor disciplinary offence has been proposed if a judge, without a justified reason, exceeds the legally prescribed deadline for making a decision in at least 10 cases within one year, and such exceeding is not longer than 30 days. Adequate amendments have been proposed for severe disciplinary offences by adding new and amending the existing situations in which a judge has disciplinary liability for severe disciplinary offences. Furthermore, a new most severe disciplinary offence committed by a judge is introduced if the judge, without a justified reason, exceeds the legally prescribed deadline for making a decision in at least 30 cases within one year, and such exceeding is not longer than 30 days, or without a justified reason, exceeds three times the legally prescribed deadline for making a decision in at least 10 cases. The provisions pertaining to the cases in which it is believed that the judge has performed his function unprofessionally and unconscientiously are also supplemented.

In addition, Article 73 of the Law Proposal amends the provisions regulating the disciplinary sanctions from Article 109 of the applicable law by prescribing that, in addition to a fine, a ban on career advancement may be imposed for serious disciplinary offences depending on the gravity of the disciplinary offence committed, unlike the previous solution according to which such ban was mandatory. In addition, it has been specified that the ban on advancement implies that a judge cannot be appointed to a higher instance court nor as the president of the court before the expiry of two years from the date of the finality of the decision by which the disciplinary sanction was imposed.

Article 74 of the Law Proposal supplements Article 110 of the applicable law so that the proposal for the determination of disciplinary liability, apart from others, may also be submitted by a member of a Judicial Council.

Article 75 of the Law Proposal supplements Article 112, paragraph 3 to specify that the disciplinary prosecutor and his deputy are appointed for a period of four years, while Article 76 of the Law Proposal amends Article 113 of the applicable law to specify that the refusal of the judge to take part in the investigation shall not prevent the execution and completion of the investigation.

Article 77 amends Article 118 of the applicable law and prescribes that the Supreme Court with the panel of five judges shall decide on the appeal against the decision on disciplinary liability, as opposed to the previous solution which prescribed a panel of three judges. Furthermore, the deadline for appeals is also specified.

Article 78 of the Law Proposal amends Article 119, paragraph 4 of the applicable law and prescribes the deadlines for the deletion of the disciplinary sanctions depending on the gravity of the disciplinary offence.

Article 79 specifies the provisions pertaining to the recusal from Article 120 of the applicable law, which determine that the disciplinary prosecutor, a member of the Disciplinary Council or a member of the Judicial Council, in relation to whom there are circumstances that raise doubts to their impartiality, may not participate in the proceedings.

Article 80 of the Law Proposal adds a new Article 125a which prescribes that the receipt, keeping records and handling of court documents in disciplinary proceedings shall be governed in more detail by the Rules of Procedure of the Judicial Council.

Article 81 of the Law Proposal adds a new reason for the dismissal of the court president if the president, without a justified reason, delays the procedure for enforcement of

criminal sanctions, as a result of which their enforcement is barred due to the statute of limitations.

VIII. RECORDS

Article 82 amends Article 130 of the applicable law to specify that the Judicial Council shall also keep records on the violations of the Code of Ethics for Judges and to delete item 12.

IX. TRANSITIONAL AND FINAL PROVISIONS

Article 83 of the Law Proposal prescribes its effective date.

V FUNDS REQUIRED FOR THE IMPLEMENTATION OF THIS LAW

For the implementation of this Law it is necessary to secure the funds in the amount of EUR 253,616.7 in the Budget of Montenegro.