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OF THE COUNCIL OF EUROPE

(VENICE COMMISSION)

NORTH MACEDONIA

OPINION

ON THE DRAFT LAW ON THE JUDICIAL COUNCIL

Adopted by the Venice Commission
at its 143rd Plenary Session
(online, 13 – 14 June 2025)

on the basis of comments by

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Table of Contents

I. Introduction 3
II. Background and scope of the Opinion 3
III. Analysis 4
A. Procedural aspects 4
B. Substantive aspects 4
1. Follow-up to the 2019 Opinion 5
a. Decision-making process in the plenary of the Judicial Council 5
b. Disciplinary procedure 6
c. Recruitment of judges 6
d. Parameters of performance evaluation 7
2. Amendments on the elections to the Judicial Council and other crucial provisions relating to the independence and expertise of the Council members 7
IV. Conclusion 13

I. Introduction

1. By letter of 25 April 2025, Mr Igor Filkov, Minister of Justice of North Macedonia, requested an Opinion of the Venice Commission of the Council of Europe on the revised draft law on the Judicial Council of the Republic of North Macedonia (CDL-REF(2025)026, hereinafter "the revised draft law"). This Opinion includes an analysis of the follow-up to the Opinion of the Venice Commission on the draft Law on the Judicial Council adopted in March 2019.[1]

2. Mr Barrett, Mr Gaspar and Ms Kiener acted as rapporteurs for this opinion.

3. On 22 May 2025, a delegation of the Commission composed of M Barrett, Mr Gaspar and Ms Kiener, accompanied by Mr Garrone and Mr Rodríguez Pérez of the Secretariat of the Venice Commission, had online meetings with representatives of the Ministry of Justice of North Macedonia, the Judicial Council, the judiciary, academia as well as NGOs. The Commission is grateful to the authorities of North Macedonia for the excellent organisation of this visit.

4. This 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.

5. This opinion was drafted on the basis of comments by the rapporteurs and the results of the online meetings on 22 May 2025. Following its examination by the Sub-Commissions on the Judiciary, on the Rule of Law and on Latin America (12 June 2025, online) and an exchange of views with Ms Nikolina Mikeska Kostadinovska, Head of Unit, Ministry of Justice of North Macedonia, it was adopted by the Venice Commission at its 143rd Plenary Session (13-14 June 2025, online).

II. Background and scope of the Opinion

6. At its March 2019 Plenary Session, the Venice Commission adopted an Opinion on the draft law on the Judicial Council.[2]The law was then adopted on 16 May 2019 by the Parliamentary Assembly of North Macedonia and published on 22 May 2019 in the Official Gazette n° 102.

7. The recommendations in paragraph 65 of the 2019 Venice Commission opinion read as follows:

> 65. Despite this generally positive assessment, the Venice Commission considers that further improvements might be considered on the following matters:
>
> – The authorities are invited to assess whether the majorities/special majorities required in the Plenary of the Judicial Council (the JC) to take decisions on the appointment and promotion of judges, or on the disciplinary liability of judges and members of the JC are realistic. The decision-making process should be designed in such a way as to ensure that the Plenary of the JC would not find itself in the situations where it would be impossible or extremely difficult to take a decision;[3]
> – As regards the disciplinary procedure, the law should provide for a filtering mechanism for the complaints submitted against judges directly to the JC; the power to decide on the admissibility of the complaints might be given, instead of the Plenary of the JC, to a smaller body within the JC. The Appeal Council should have a final say on the appeal

[1] Venice Commission, CDL-AD(2019)008, North Macedonia – Opinion on the draft law on the Judicial Council.
[2] *Ibid.*
[3] This recommendation was made because the decision-making process within the Judicial Council required a very high majority, leaving little scope for recusal or other situations where some members might be unavailable; thus, it might prove impossible or extremely difficult to make a decision.

against a disciplinary sanction imposed by the JC, but, at the same time, the Appeal Council should act with deference to the JC, and should be able to annul decisions of the JC only in cases of gross errors in the application of procedural and substantive law;
- The procedure of recruitment of judges needs to be explained more clearly in the law. In particular, the law should specify what role the ranking of candidates established by the Academy for Judges and Public Prosecutors plays in the selection process, and how it affects the voting by the JC, and what is the place of any "integrity and psychological tests" which may be conducted by the JC in the selection process;
- The relative weight of the various parameters accounted for in the performance evaluation should be kept under constant revision. It is more appropriate to attribute the exact numerical values to those parameters in the regulations adopted by the JC, rather than in the law itself, in order to be able to change them if needed. The law should explain how the scores obtained in the performance evaluations affect the decisions of the Plenary of the JC concerning the promotion of the judges.

8. In substance, the recommendations in the 2019 Venice Commission Opinion refer to *four key points:* a) the decision-making process in the plenary of the Judicial Council; b) the disciplinary procedure; c) the procedure for recruitment of judges, and d) the relative weight of the various parameters of the performance evaluation.[4]

9. The revised draft law contains an extensive number of amendments (almost each of the 107 provisions has been amended), which are not limited to the issues identified by the Venice Commission in its previous opinion. In the short time available, the Venice Commission will not carry out a comprehensive review of the revised draft law but will first focus on the implementation of its previous recommendations, ("follow-up to the 2019 Opinion"). It will then identify certain additional issues arising from the new amendments relating to the elections to the Judicial Council and to the independence and expertise of the Council members. The absence of comments on other provisions of the Law should not be seen as tacit approval of these provisions.

III. Analysis

A. Procedural aspects

10. The Venice Commission has noted the extent of the public and expert consultation which took place in the elaboration of the new draft law. In particular, the Venice Commission welcomes that the working group which prepared the revised draft law included representatives from relevant judicial institutions, professors, and civil society experts. These consultation processes appear to comply with the expectations of international bodies The Commission expresses its confidence that they will contribute to strengthening trust in the development of legislation.

B. Substantive aspects

11. Before addressing more specific issues, the Venice Commission would like to remark that the revised draft law on the Judicial Council generally presents a very complex structure. While rightly dealing with essential matters at legislative level, it also includes details – for example concerning the criteria and procedure for monitoring and assessment of the work of judges and court presidents, see Articles 76ff – most of which could be addressed at the level of (Judicial Council) regulations, thus making it more difficult to identify the main elements of the law.

[4] See also Venice Commission, CDL-PI(2023)029, Information on the follow-up to North Macedonia - Opinion on the Draft Law on the Judicial Council (CDL-AD(2019)008), according to which the present legislation had followed a number of recommendations of the Venice Commission.

1. Follow-up to the 2019 Opinion

a. Decision-making process in the plenary of the Judicial Council

12. In the 2019 opinion, the Venice Commission noted that the decision-making process in the plenary of the JC required a very high majority for decisions on the appointment and promotion of judges (eight votes out of the 13 members with a voting right), or on the disciplinary liability of judges and members of the JC (two-third majority). This means that in some situations, the decision may be impossible or extremely difficult to make, for instance in cases of recusal.[5]

13. The Council shall consist of 15 members, eight of which elected by the judges from among their ranks and five by the Assembly of the Republic, and the remaining two being *ex officio* members with no right to vote (Article 6).

14. The revised draft law still *requires a majority of eight votes* out of the 13 members with a voting right in the following cases – whatever the number of members participating in the vote, it uses the following formulations:

- All votes concerning the status of the JC President, Article 8.
- Votes regarding temporary removal from exercising the function of member of the JC, Article 32.
- Rules of Procedures, Article 44
- Selection of the president of a court, Article 51
- Procedure for deciding upon a draft decision on pronouncing a dismissal as disciplinary measure, Article 69 (3); according to Article 69 (1) and (4) stopping the disciplinary procedure or pronouncing less serious disciplinary measures needs seven votes
- Deciding on the Commission of Rapporteurs' report, Article 70 (where the number is raised from seven to eight votes)
- Proposition of judges of the Constitutional Court of the Republic of Macedonia, Article 98
- Report on operation, Article 100

15. The revised draft *reduces* the number of 8 votes (or the requirement of a majority vote) to seven votes for:

- Votes regarding the status from the office of judges and lay judges, Article 45, 47
- Decision to withdraw the immunity of a judge and to decide upon a request for detention of a judge, Article 99

16. The Venice Commission is of the view that Article 49 regarding the selection of a judge should be clarified: Whereas paragraph one requires attendance of at least eight judges, the candidate needs "most votes, but not fewer that eight votes" to be selected as a judge – in case there are only 8 members with voting rights present, this means unanimity. If this is indeed the intention of the legislator (and not just an error), the provision would open the door to deadlock and manipulation.

17. It follows that the requirement of eight votes is upheld in most cases, and the recommendation of the Venice Commission was thus not followed and has to be reiterated. Also, it is not always clear why the number is set on eight or seven votes, respectively. Moreover, a majority of seven votes still appears very high. While in practice the Council may have been able to operate with these numbers, this might not always be the case in the future, namely if a high number of

[5] Venice Commission, CDL-AD(2019)008, North Macedonia – Opinion on the draft law on the Judicial Council.

members are unavailable at the same time. In the view of the Venice Commission, it is "important to ensure that lay members, while remaining in the minority compared to judicial members, nevertheless have a meaningful impact on the decision-making process. One possible solution is to design rules governing quorum and decision-making majorities promoting inclusiveness of lay members […] As for voting majorities, it may be prudent to establish that PEC's decisions require the support of representatives from both judicial and lay members".[6]

b. Disciplinary procedure

18. With regard to the disciplinary procedure, the Commission recommended the implementation of a *filtering mechanism for complaints against judges* submitted directly to the Judicial Council. It was suggested that this smaller body be established within the JC. The Appeal Council should have the final say on any appeal against a disciplinary sanction imposed by the JC. However, it should act with deference to the JC and be able to annul decisions made by the JC only in cases of gross errors in the application of procedural and substantive law.[7]

19. Article 34-a establishes a Disciplinary Committee, consisting of four judges from the four appellate courts and one judge from the Supreme court, which will have the authority to impose sanctions on members of the Council, as well as to supervise proceedings. Article 36 (1), which previously conferred this power on the Judicial Council, has been deleted. The establishment of the Disciplinary Committee seems to be appropriate, since it ensures the separation of the investigation and decision-making roles.[8]

20. Article 62 of the revised draft law provides that a request to initiate proceedings for the responsibility of a judge or president of a court may be submitted *only after all effective legal remedies have been exhausted*, except in cases of manifest intent, wilful omission, or gross negligence. *Reasoned requests* to initiate proceedings for the responsibility of a judge or president of a court may be submitted by a member of the Judicial Council, a court president, the General Session of the Supreme Court, or a person who will demonstrate a legal interest (§ 1). This provision does not go against international standards.

21. In addition, the provision on the *Commission of Rapporteurs* (Article 63) has been amended. The Commission shall reject a request not only on formal reasons (§ 4), but also if it is "*manifestly unfounded"* § 5). The definition for this – "if it refers to facts that have already been reviewed by a higher court in a legal remedy procedure or could have been subject to such review but were not raised through a legal remedy" – may be too complex and rigid and fail to cover all unfounded situations. The Venice Commission recommends making the notion of "manifestly unfounded requests" less restrictive while not too vague.

c. Recruitment of judges

22. As regards the procedure of recruitment of judges, the Venice Commission recommended that the *role of the ranking of candidates by the Academy for Judges and Public Prosecutors be made clearer*.

23. The relevant provision has now been amended: according to Article 47 § 3, the Council shall select as judge *the highest-ranked candidate* in accordance with the criteria referred to in paragraph (1) of this Article. However, the meaning and function of Article 47 § 4, allowing exceptions to this rule, is unclear: the Venice Commission *recommends* deleting this provision.

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[6] Venice Commission and Directorate General of Human Rights and the Rule of Law of the Council of Europe, CDL-AD(2024)031, Joint Opinion on the draft amendments to the Judicial Code of Armenia (regarding evaluation of judges), para. 26, and references.
[7] Venice Commission, CDL-AD(2019)008, North Macedonia – Opinion on the draft law on the Judicial Council, paras 19ff.
[8] CDL-AD(2023)027, para. 50, and references.

d. Parameters of performance evaluation

24. The Venice Commission recommended that the relative weight of *various parameters of the performance evaluation* should be kept under review.

25. The draft does not provide for substantive amendments in this respect. Although the authorities explained to the Venice Commission that there are no problems in practice, the recommendation for close monitoring of how this system works therefore *remains*.

2. Amendments on the elections to the Judicial Council and other crucial provisions relating to the independence and expertise of the Council members

26. The Law on the Judicial Council has undergone thorough amendments, addressing issues not dealt with in the 2019 Opinion. As already said, the Opinion will not comment on all the revised provisions in detail but will focus on the most important issues.

27. Article 3 makes it clear that members of the Judicial Council must not be members of a political party or carry out any party activity. While such a limitation is quite normal for judges, it is something of a limitation on the range of available non-judicial persons. However, the restriction is a valid choice if the non-judicial members are full time and remunerated, and taking into account that decisions made by the Judicial Council might from time to time give rise to political controversy.[9] The Venice Commission understands that the exclusion of membership of a political party or participation in any party activity refers only to the *elected* members of the JC, as the Minister of Justice, who is an *ex officio* member, most probably has a political background; the Commission *recommends* clarifying this point.

Articles 6-11b: Composition of the Council

28. Article 6: The Minister of Justice is an *ex officio* member of the JC. The European Court of Human Rights considers that the presence of a member of the government in the Judicial Council, even if passive, is very problematic from the point of view of the separation of powers.[10] The Venice Commission has also taken a critical stance on such arrangement,[11] as has the GRECO.[12] The Venice Commission therefore *recommends* that the Minister of Justice should not be any more a member of the Judicial Council; it must be noted that in practice, according to the information obtained during the online meetings, Ministers of Justice have not taken part in the meetings of the Council for at least twelve years, so that the revision of the law would thus make it consistent with practice. It is noted that there remains a constitutional obstacle to that change. Article 43(2) includes a general limitation according to which the Minister and the President of the Supreme Court are assumed to be in the same position as all other members of the Judicial Council except in matters prescribed by this law. It would be suitable that the legislation be clearer as to what differences apply to those two members. A cross reference in Article 43(2) would help to clarify this issue.

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[9] Venice Commission and Directorate General of Human Rights and the Rule of Law of the Council of Europe, Armenia – Joint Opinion on the Concept Paper concerning the Reform of the Ethics and Disciplinary Commission of the General Assembly of Judges, CDL-AD(2023)045, para. 32; Montenegro - Opinion on the draft amendments to the Law on the Judicial Council and Judges, CDL-AD(2022)050,, para. 33.
[10] ECtHR, *Catană v. Republic of Moldova*, 43237/13, 21 May 2023, para. 75.
[11] See, for example, Venice Commission, CDL-AD(2024)041, Türkiye - Opinion on the Composition of the Council of Judges and Prosecutors and the Procedure for the Elections of its Members, paras 57-58; CDL-AD(2023)039, Bulgaria – Opinion on the draft amendments to the Constitution, paras 73-74; Montenegro - Opinion on the draft amendments to the Law on the Judicial Council and Judges, CDL-AD(2022)050, paras 17ff.:
[12] See, for example, Council of Europe, Group of States against Corruption (GRECO), Montenegro, Fourth Evaluation Round, *Corruption prevention in respect of members of parliament, judges and prosecutors,* Second Compliance Report, GrecoRC4(2019)27, 6 February 2020, §§ 20-27.

29. Article 8 on the JC President: Paragraph 3 states that the President must be a member with voting rights, *elected* by the Assembly. Consequently, the Minister of Justice and the President of the Supreme Court are not eligible to be President. Conversely, the lay members of the JC are eligible to hold the position of President of the JC. On 9 March 2023, the Constitutional Court of the Republic of North Macedonia found that the provision stipulating that the President of the Judicial Council is elected from among lay, not judicial, members of the Council elected by the Assembly of the Republic of North Macedonia (a provision that had been introduced in the law further to a Venice Commission recommendation),[13] creates a distinction between the two categories of members and runs counter to the principle of equality and violates the principle of the separation of powers. The new President and his Deputy, elected in May and June 2023, are both judges. The Venice Commission *recommends* that, in conformity with the decision of the Constitutional Court, the text of the law does not include any more the phrase "elected by the Assembly".

30. Article 8 also adds rules on the procedure for dismissal from the position of President of the Council and Deputy President - §§ 6 to 11. However, these rules do not refer to the grounds for dismissal: what are the facts or circumstances which justify such dismissal, and what is the level of severity must they reach? In the absence of specific provisions on the dismissal of the President in Article 34, and as confirmed in the online meetings, the rules for dismissal from the positions of President and Deputy President are the same as those for dismissal from the Council. Furthermore, the authorities argue that because the procedure for dismissal can only be initiated by a reasoned request submitted by at least four voting members of the Council, frivolous and ungrounded dismissals are prevented. Nevertheless, the Venice Commission *recommends* clarifying the grounds for dismissal.

31. Article 8 § 7 imposes the publicity of the procedure for dismissal from the position of President of the Council and Deputy President, which appears to refer to a public hearing or debate. Given the institutional nature of the JC, the risk of stakeholders taking an excessive account of the possible presence of media is greater than for other procedures and the consequences may be more serious for the institutions. There is no similar rule for the dismissal of other members of the Council. The Venice Commission has warned of this risk and affirmed the right of an evaluated person to request a closed session, whose refusal should be based on cogent reasons.[14] The Venice Commission *recommends* revising Article 8 § 7 in the sense.

32. Article 11 (Conditions for election from the ranks of judges) provides that the prerequisite of having served as a judge is extended from six years to ten years. While not going against international standards, 10 years' experience on the bench appears as limiting excessively the possibility to apply. The Commission suggests that consideration be given to reducing that number of years to 7.

33. Article 11-a (Eligibility criteria for election as a member of the Council by the Assembly): The requirements of Article 11-a §§ 1 and 2 appear as cumulative. The non-judicial members (university professors of law, attorneys-at-law, former judges of the Constitutional Court or of international courts, other distinguished legal professionals) have all a degree in law, which is in conformity with international standards.[15]

[13] Venice Commission, Opinion on the Laws on the Disciplinary Liability and Evaluation of Judges of "the former Yugoslav Republic of Macedonia", CDL-AD(2015)042, § 66, and references.
[14] Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe, Republic of Moldova - Joint opinion of the on the draft Law on the external assessment of Judges and Prosecutors, CDL-AD(2023)005, § 93.
[15] Venice Commission, CDL-AD(2014)026, Opinion on the seven amendments to the Constitution of "the Former Yugoslav Republic of Macedonia" concerning, in particular, the Judicial Council, the competence of the Constitutional Court and Special Financial Zones, para. 73, and references.

34. The required length of the experience in legal professions is 15 years, except for university professors – or also lecturers? - for which it is seven years of scientific teaching. This difference does not appear as justified, and the requirement of 15 years' experience seems excessive. The Venice Commission *recommends* reconsidering the requirements of duration of professional experience for all members of the Judicial Council, with a view to uniformising them.

35. Article 11-b (procedure for election of members of the Council *by the Assembly)*: There are two versions of the draft: one with 17 paragraphs and one with 18, both equally complex. While the last word belongs to the Assembly, a preliminary procedure involves a Working Group including representatives from the Association of Judges, of the Bar Association and of civil society organisations; and in the second version, a university professor of law. One main difference between the first and the second version is that, in the first one, the Working includes two MPs out of five members and, in the second one, two out of seven.

36. The Venice Commission reminds that, when lay members are elected by parliaments this should be done with the broadest consensus, in principle by a qualified majority vote which involves the opposition, following an open and transparent competition. Effective anti-deadlock mechanisms should be provided. Moreover, to reduce the risk of politicisation in the election of lay members by the parliament, a properly organised selection procedure should be conducted. Such a procedure should meet three cumulative conditions:

1) true pluralism in the selection body;
2) broad support for nominated candidates across the political spectrum; and
3) preventing the majority in the Assembly from circumventing or sabotaging the selection procedure.[16]

37. The Venice Commission also underlines that, while it belongs to the authorities to choose the election procedure, the legislation should ensure that election is based on the merits.

- Articles 12-27-a: Election of the judicial members

38. The process of election of the *judicial members* (see in particular Articles 12, 13, 14 and 22) is elaborately expressed and comprehensive. The level of detail appears to be coherent but there is always a danger that such an extreme level of detail will leave gaps with little flexibility as to how those gaps can be addressed. The Commission recalls that the election of judges to councils of the judiciary aims to guarantee the presence of persons benefiting of internal experience and knowledge in the governance of the judiciary, with a strong culture of independence and impartiality, balancing the composition with lay members, non-judges, appointed in accordance with democratic legitimacy, conferred namely (but not only) by Parliaments. The judicial component, through judges elected by their peers, must be balanced and must correspond to at least half of the Council's members, in order not to go against international standards.[17]

[16] Venice Commission, CDL-AD(2025)015, Kosovo – Opinion on the Law on the Judicial Council and the draft law implementing and supplementing it, para. 37, and references. Both proposals for Article 11-b do not go against Amendment XXVIII of the Constitution, which states that "[t]hree members of the Council are elected by the Assembly of the Republic of Macedonia with majority votes of the total number of MPs, and with majority votes from the total number of MP's who belong to the communities that are not majority in the Republic of Macedonia. Two members of the Council are proposed by the President of the Republic of Macedonia and are elected by the Assembly of the Republic of Macedonia, and one of them shall belong to the communities that are not majority in the Republic of Macedonia".

[17] Committee of Ministers of the Council of Europe, Recommendation CM/Rec(2010)12 on the independence, efficiency and responsibilities of judges, para. 27. See also Venice Commission, CDL-AD(2010)004, Report on the Independence of the Judicial System Part I: The Independence of Judges, para. 32; Venice Commission, CDL-AD(2015)022, Bulgaria - Opinion on the draft Act to amend and supplement the Constitution (in the field of the Judiciary) of the Republic of Bulgaria, para. 39; Venice Commission, CDL-AD(2017)018, Bulgaria - Opinion on the Judicial System Act, para. 14; Venice Commission, CDL-AD(2019)031, Bulgaria – Opinion on draft amendments to the Criminal Procedure Code and the Judicial System Act, concerning criminal investigations against top magistrates, para. 69; Venice Commission, CDL-AD(2020)035, Bulgaria – Urgent Interim Opinion on the draft new Constitution, para. 44; 21 Venice Commission, CDL-AD(2021)032, Serbia – Opinion on the draft Constitutional

39. Election by peers presupposes freedom of candidacy to be able to have freedom of choice. For candidatures to be free, candidates cannot be subject to restrictions or filtering, and the admissibility criteria must be general and abstract, formal and equal, and not based on substantive assessments or dependent on disproportionate assumptions or procedures. The present version of Article 12 § 2 provided for the following requirements: biographical data on the vocational and professional development, as well as a certificate of the candidate's experience as a judge. The draft includes a motivation letter, the final performance evaluation issued by the Council, and a certificate on any imposed disciplinary measures. These requirements are useful for informing the Council about the candidates and do not seem to be excessive and thus to go against international standards.

40. Article 13 provides that a Commission composed of three members of the JC shall prepare candidate lists out of the duly submitted candidacies of the candidates fulfilling the requirements of the law. The Venice Commission understands that this body has no right to make a selection of the candidacies but has just to put together the list of candidates fulfilling the requirements of the law.

41. According to Article 25 (2) elections shall be considered successful if more than half of the registered voters for that electoral unit have voted. The draft law however remains silent on the procedure if *less than half of the registered voters have participated* in the vote. This should be clarified.

42. Article 27-a sets out the *appeals procedure* against the decisions in Articles 11-a, 17, 26, and 27. It remains however unclear who has the right to challenge the JC's decision in some of these procedures, particularly those under Article 17, and whether this is regulated in Article 72. The Venice Commission *recommends* addressing the standing for appeals against decisions of the Judicial Council in the law.

- Article 31-35, Procedure for Termination of the Term of Office and Accountability of Members of the Council.

43. The list of Article 31 on the termination of the term of office of a JC member seems *incomplete*. It is not clear what the position is in relation to casual vacancies. In Article 31 it is unclear whether a casual vacancy arises when a judicial member passes judicial retirement age or resigns as a judge during his or her term of office. The Venice Commission *recommends* addressing this issue.

44. The disciplinary regime for Council members is set out in Article 34 in terms that, in general, are in conformity with international standards. Setting limits for the exercise of disciplinary action (to be initiated by at least 10 judges or two members) constitutes a filter to prevent abuse of the right to complain. The Commission has previously held that "A complaints mechanism for individuals should exist for cases where the judge has misbehaved, but such a complaint should not directly result in initiating dismissal proceedings of the judge".[18] The definition of offences in § 1 is provided for in reasonable terms. Sanctions (§§ 2 and 3) can be considered adequate from the point of view of proportionality.

Amendments on the Judiciary and draft Constitutional Law for the Implementation of the Constitutional Amendments, para. 64; Venice Commission, CDL-AD(2022)030, Serbia – Opinion on three draft laws implementing the constitutional amendments on Judiciary, para. 71; Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe, CDL-AD(2023)015, France – Joint opinion of the Venice Commission on the Superior Council of Magistracy and the status of the judiciary as regards nominations, mutations, promotions and disciplinary procedures, paras. 23-25. See also the case-law of the European Court of Human Rights (ECtHR), and in particular, ECtHR, Grzęda v. Poland [GC], application no. 43572/18, 15 March 2022, para. 305.

[18] Venice Commission, CDL-AD(2013)005, Opinion on the draft amendments to the law on the judiciary of Serbia, para. 68.

45. According to Article 42, a member of the Council during his or her term of office *and one year after the termination of the term* of office *may not be elected* as a judge, a judge in a higher court or a president of a court or judge of the Constitutional Court of the Republic of North Macedonia. During the online meetings, it was made clear that this refers only to the election of lay members to the position of a judge or to the promotion of judges, and that judges who leave the Council can take their former position back. This is in conformity with international standards.[19]

- Articles 47-59, Selection of judges and lay members.

46. Article 47, selection of judges in a basic court: all the interviews for the judicial vacancies will be held in public, and the candidates will receive (a maximum of 10) points for their performance. The access regime to, and the function of, the Academy for Judges, and the value of the graduation of the Academy in the procedure for selecting and appointing a judge to a court (Article 47 § 1) is not sufficiently described. Depending on the manner in which these interviews are conducted, there is a possibility that they may have a discouraging effect on potential candidates. While publicity is a valid policy choice depending on the strength of the culture of transparency in the country, the matter should be kept under review lest the extent of the publicity might discourage applicants. The Venice Commission therefore *recommends* reviewing regularly and diligently the implementation of Article 47.

47. Concerning Article 47 § 7, it does not seem logical that a judge who has already graduated and is in office, and who requests a permanent assignment to another court, can only be appointed to the court he intends to if a candidate from the Academy did not apply. The Venice Commission *recommends* revising this provision.

48. It may be a matter of translation but the provisions in Article 48 on "criteria for the election of a judge of a higher court" require each member to orally elaborate their decision on selection while at the same time the Council's decision must be reasoned in an individualised and comparable. It is clear that this requires each member to declare their decision but not absolutely clear whether each member has to give their individual reasoning. While these provisions are valuable for enhancing responsibility and accountability, they may be harsh on unsuccessful applicants. The Venice Commission *recommends* keeping under review the effect of these provisions in practice.

49. Article 49, decision on the selection of a judge: According to paragraph (4), The Council shall be obliged "~~to inform every candidate about~~ deliver the decision on selection of a judge to each candidate ~~in writing~~." It is unclear why the term "in writing" was deleted, as the decision must be communicated in written form, as it must be reasoned, individualised and comparable (see paragraph 7) and as the candidate who is not selected has the right to appeal (see paragraph 9). According to Article 49(6) each member has to explain in public his or her decision as to whether the candidate can be selected or not selected. There may be compelling reasons for an open discussion on a candidate's merits, and for the Council members to elaborate on their decisions. Due to the personal nature of these discussions, the Venice Commission *recommends* that they are not held in public but in closed session.

50. Article 51-a on the *right to appeal* is welcome. There is however a strong risk that the timelines to take decisions will not be respected. Article 51(5) sets the limits of the "jurisdiction" *(rectius*, of cognition) of the court: the legality of the procedure and of the decision of the Council (fulfilment of the legal requirements); there is therefore no assessment of the merits of the decision. This is acceptable since, in procedures for comparative assessment of personal qualities and skills, the

[19] The Venice Commission already recommended cooling-off periods: Armenia – Joint Opinion on the Concept Paper concerning the Reform of the Ethics and Disciplinary Commission of the General Assembly of Judges, CDL-AD(2023)045, para. 32; Montenegro - Opinion on the draft amendments to the Law on the Judicial Council and Judges, CDL-AD(2022)050, para. 33.

discretion of the assessing authority on technical and scientific skills is not compatible with (substantial) judicial reassessment. The Venice Commission *recommends* however to make it clear that the cognition of the court should include the prohibition of misuse or abuse of power, a fundamental element of the Rule of Law.[20]

- Articles 60-72, Disciplinary regime for judges

51. The *disciplinary regime* for judges is regulated in Articles 60 to 72, in a detailed (although complex) manner in terms of procedures, but sparse in terms of substance (definition and typicality of disciplinary infractions and sanctions).The only reference to this question is to be found in Article 60, which mentions the penalty of dismissal and two general clauses ("serious disciplinary violations prescribed by law" and "unprofessional and in bad faith exercise of the judicial office") to define the disciplinary infractions to be sanctioned with this penalty. The scope of this provision is not clear. To clarify the issue, the Venice Commission *recommends* making a cross-reference to other rules on the status and rights and duties of judges that provide for the definition of disciplinary infractions and the respective sanctioning regime.

52. Concerning the procedural part of the disciplinary regime: the provisions are detailed and the legislative will in building a process with guarantees is present (articles 60-71). These provisions deal with the rules for initiating the procedure, the seriousness of the case, the invocation of legitimate interest in the complaint, the duty and responsibility to present evidence. They also address the establishment of the disciplinary bodies and the internal division of powers between the Commission of Rapporteurs and the Council,) the hearing before the Council as well as the procedure for adopting the decision.); Practice will tell if such complexity stifles (good) intention.

53. Article 72 (in two versions) provides for the right to appeal. In Alternative 1, the appeal would be filed to a Special Appeals Council, which would have the power to confirm or annul the decision of the Judicial Council. The draft does not specify the composition and the nature (judicial or administrative) of this Special Appeals Council, nor the manner of appointment of its members, their term of office or responsibilities. Alternative 2 provides for an appeal to two levels of administrative courts against the dismissal decision: first to the Administrative Court and then to the High Administrative Court.

54. Alternative 2 of Article 72 can be considered as a legitimate choice, even if the administrative judges, like all judges apart from those of the Constitutional Court, are not fully independent from the JC.

55. In the absence of more precise provisions on the Special Appeals Council, the Venice Commission cannot assess version 1. At any rate, this provision should be clarified. The Venice Commission *recommends* addressing in detail the composition of this Council, as well as the manner of appointment of its members, their term of office, and responsibilities. It reminds that, in a series of judgments related to the operation of a judicial council in North Macedonia ("The former Yugoslav Republic of Macedonia" at the time of the judgments), the European Court of Human Rights made it clear that when deciding on disciplinary matters resulting in the dismissal of a judge, a judicial council had to meet the conditions foreseen by Article 6 of the ECHR.[21] Every system in accordance with these conditions would be acceptable.

[20] Venice Commission, Rule of Law checklist, CDL-AD(2016)007, II.C.

[21] ECtHR, *Mitrinovski* v. "*The former Yugoslav Republic of Macedonia*", Application No. 6899/12, 30 April 2015; ECtHR, *Gerovska-Popčevska* v. "*The former Yugoslav Republic of Macedonia*", Application No. 48783/07, 7 January 2016; ECtHR, *Poposki and Duma* v. "*The former Yugoslav Republic of Macedonia*", Applications No. 69916/10 and 36531/11, 7 January 2016. See also *Suren Antonyan v. Armenia*, Application No. 20140/23, 23 January 2025, §§ 101ff. See for example Bulgaria – Opinion on the draft amendments to the Constitution, para. 52.

- Article 75 – 99, monitoring and assessment of judges.

56. The provisions for the monitoring and assessment of judges involves elaborate qualitative and also quantitative criteria with a specific marking scheme in the legislation. Such rigid provisions can be used as a form of excessive pressure on individual judges who might have no control over their workload. Implementing these provisions properly will require judges to dedicate a substantial amount of their time to administrative work. Furthermore, it should be noted that excessive reporting duties have the potential to put pressure on judges, as the workload of a court is sometimes difficult to predict and not within the judges' control. The scope of these provisions will have to be assessed on the basis of experience drawn from their implementation.

IV. Conclusion

57. By letter of 25 April 2025, Mr Igor Filkov, Minister of Justice of North Macedonia, requested an Opinion of the Venice Commission of the Council of Europe on the draft law on the Judicial Council of the Republic of North Macedonia. First, this Opinion focused on the implementation of its previous recommendations. It then identified certain additional issues arising from the new amendments relating to the elections to the Judicial Council and to the independence and expertise of the Council members

58. The present draft implements the recommendations of the 2019 Opinion related to the disciplinary procedure and the recruitment of judges and, partially, to the decision-making procedure.

59. The following recommendations of the 2019 Opinion still remain to be implemented:

A. Even if in some cases the minimal number of votes for taking a decision has been reduced from eight to seven votes, the authorities are invited to assess whether the majorities/special majorities required in the Plenary of the Judicial Council (the JC) to take decisions on the appointment and promotion of judges, or on the disciplinary liability of judges and members of the JC are realistic. The decision-making process should be designed in such a way as to ensure that the Plenary of the JC would not find itself in situations where it would be impossible or extremely difficult to take a decision. It should ensure that lay members, while remaining in the minority compared to judicial members, nevertheless have a meaningful impact on the decision-making process;
B. The relative weight of the various parameters accounted for in the performance evaluation should be kept under constant revision. It is more appropriate to attribute the exact numerical values to those parameters in the regulations adopted by the JC, rather than in the law itself, in order to be able to change them if needed. The law should explain how the scores obtained in the performance evaluations affect the decisions of the Plenary of the JC concerning the promotion of the judges.

60. Apart from that, the Venice Commission makes the following key recommendations:

A. Removing the Minister of Justice from the Judicial Council (Article 6 § 1)
B. Clarifying the procedure for election of members of the Council by the Assembly (Article 11-b), and ensuring that election is based on the merits;
C. Clarifying the grounds for dismissal of the members of the Council as well as of its President and Deputy President;
D. Reconsidering the requirements of duration of professional experience for all members of the Judicial Council, in the view of uniformising them;
E. Addressing the standing for appeals against decisions of the Judicial Council, when it is not dealt with in the present law;

F. Reviewing regularly and diligently the implementation of Article 47 and 48 on the selection of judges, as well as of the provisions on monitoring and assessment of judges (Articles 75ff);
G. Addressing in detail the composition of the Special Appeals Council, as well as the manner of appointment of its members, their term of office, and responsibilities (Article 72).

61. The Venice Commission also recommends:

A. In conformity with the decision of the Constitutional Court, ceasing to impose that the President of the Judicial Council be a lay member; the Venice Commission considers however that having a lay member as President would be suitable;
B. Addressing the case of vacancies arising when a judicial member passes judicial retirement age or resigns as a judge during his or her term of office (Article 31);
C. Not holding public debates on the selection of judges (Article 49) nor, when requested by the judge concerned, in disciplinary proceedings (Article 8 § 7);
D. Revising Article 47 § 7, so that a judge who has already graduated and is in office, and who requests a permanent assignment to another court, can be appointed to the court he intends to even if a candidate from the Academy has applied;
E. Making it clear that the cognition of the court dealing with appeals against non-appointment should include the prohibition of misuse or abuse of power (Article 51-a);
F. Concerning the disciplinary regime of judges (Articles 60ff), making a cross-reference to other rules on the status and rights and duties of judges that provide for the definition of disciplinary infractions and the respective sanctioning regime; making the notion of “manifestly unfounded requests” (Article 63 § 5) less restrictive while not too vague.

62. The Venice Commission remains at the disposal of the authorities of North Macedonia for further assistance in this matter.