



APPOINTMENT AND PROMOTION OF JUDGES AND PROSECUTORS IN MONTENEGRO (2016-2019)

Human Rights Action

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The project “Analysis of the appointment of judges and prosecutors in Montenegro” is implemented by the Human Rights Action within the framework of a larger project entitled “Judicial Reform: Upgrading CSOs’ capacities to contribute to the integrity of judiciary” financed by the European Union and implemented by the Centre for Monitoring and Research (CeMI), in cooperation with the Centre for Democracy and Human Rights (CEDEM) and the NGO Network for Affirmation of European Integration Processes (MAEIP).

Introduction

In this report, covering the 1 January 2016 - 1 June 2019 period, the NGO Human Rights Action (HRA) closely analysed the procedures for the appointment and promotion of judges and state prosecutors in Montenegro since the introduction of the reformed judicial appointment system on 1 January 2016.

In its 2019 Montenegro Progress Report, the European Commission emphasised that the results of the reforms regarding the Judicial Council and Prosecutorial Council remain limited. "The transparency of the two Councils' work needs to improve tangibly, especially by publishing fully reasoned decisions on promotions and appointments... Members of both Councils need to improve their professional capacities, dedicate more time and show full commitment to performing their functions."¹

This report does not include an analysis of the impugned decisions on the appointment of the presidents of Basic Courts in Kotor, Bar, Plav and Rožaje of 3 June 2019, because those decisions had not become final by the end of the reporting period in June 2019. The Judicial Council decided to re-elect the presidents of several courts, although they had previously served at least twice as presidents of the same courts (presidents of courts in Rožaje and Kotor as many as five and seven times), and the Act on the Judicial Council and Judges, which entered into force on 1 January 2016, had prescribed that "[N]o-one may be elected president of the same court more than twice." (Article 42(1)). The legality of nominations of the court presidents for new mandates was disputed by HRA and ten other non-government organisations,² as well as prominent lawyers.³ The Council went ahead with the reappointments, having taken the view that taking into account the previous mandates could have been possible only if it had been explicitly prescribed by law, and that otherwise it would have presented an unauthorized retroactive application of the law.⁴

The report was produced in the framework of the project "Analysis of the appointment of judges and prosecutors in Montenegro" implemented by HRA within the framework of a larger project entitled "Judicial Reform: Upgrading CSO's capacities to contribute to the integrity of judiciary" financed by the European Union and implemented by the Centre for Monitoring and Research (CeMI), in cooperation with the Centre for Democracy and Human Rights (CEDEM) and the NGO Network for Affirmation of European Integration Processes (MAEIP).

HRA has been monitoring and analyzing the work of the Judicial and Prosecutorial Council since 2006 and has published the following publications: Report on Realisation of the Judicial Reform Strategy for 2014-2018 in the period 2014-2016 (together with CeMI), Report on Realisation of the Judicial Reform Strategy 2007-2012 (together with CeMI), Establishing Accountability for Breach of Judicial Ethics in Montenegro - Operation of the Commission on the Code of Judicial Ethics 2011-2016,

¹ European Commission, Montenegro Progress Report, Brussels, 2019, page 16: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-montenegro-report.pdf>

² Appeal sent by 11 NGOs: <http://www.hracion.org/2019/06/03/19471/?lang=en>

³ For example, see Vesna Rakić Vodinelić, Ph.D.: <http://www.hracion.org/2019/06/24/19-6-2019-appointment-of-court-presidents-and-application-of-the-constitution-and-the-law-on-the-judicial-council-and-judges-of-montenegro/?lang=en>

⁴ See press release of the Judicial Council from 3 June 2019 (in Montenegrin): <http://sudovi.me/sscg/saopstenja-za-javnost/saopstenje-za-javnost-6466>, and as of 30 May 2019: <https://sudovi.me/sscg/saopstenja-za-javnost/odgovori-na-novinarska-pitanja-6463>

Judicial Council of Montenegro Operation Analysis 2008-2013, Assessment of the Reform of Appointment of Judges in Montenegro 2007-2008.

In the report, we tried to use the terms in the female grammatical gender, in accordance with the instructions from the Register of Occupations and Academic Titles of Women of the Ministry of Human and Minority Rights - Department for Gender Equality⁵. However, for the sake of efficiency, these terms are not used consistently, so "judges", "state prosecutors", "eminent lawyers", "members of the Council", etc. equally apply to all persons performing the functions mentioned above.

⁵ The Register of Occupations and Academic Titles of Women is available (in Montenegrin) at: http://www.minmanj.gov.me/organizacija/rodno_senzitivni_jezik/133725/Publikacija-Registar-zanimanja-i-titula-zena.html

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

JUDICIAL APPOINTMENTS AND PROMOTIONS

I. Composition of the Judicial Council

I.1. Montenegro did not ensure that the Judicial Council is a truly independent body. Recommendations on strengthening of independence of the Judicial Council given by the Group of States against Corruption (*Groupe d'États contre la corruption* - GRECO) of the Council of Europe, the European Network of Councils for the Judiciary (ENJC), the Human Rights Action (HRA) and Centre for Monitoring (CeMI) have not been implemented. The Justice Minister is still a member of the Judicial Council and the independence and impartiality criteria for the appointment of four eminent lawyers to the Council have not been laid down. The level of safeguards against undue political influence on the Judicial Council is much lower than the one applicable to the Councils of the Anti-Corruption Agency, the Public Service Broadcaster Radio and Television of Montenegro (RTCG) or the Electronic Media Agency.

I.2. In practice, following the 2013 reform of the Constitution of Montenegro, two former senior party officials, Mladen Vukčević and Dobrica Šljivančanin were appointed to the Judicial Council; the former was appointed its president. Both used to be MPs, while Vukčević had also been a Minister and a Deputy Prime Minister. Another appointed member of the Judicial Council, Vesna Simović Zvicer, had also served as a deputy minister. According to the explicit recommendation of the ENJC, both men, as former MPs and members of the government, should not be part of the Judicial Council. Vukčević and Šljivančanin would not have fulfilled the condition for membership of the Council of the Agency for the Prevention of Corruption, under which the candidates may not have performed political functions at least ten years prior to appointment. However, as the Law on Judicial Council and Judges does not prescribe any criteria for appointment preventing political influence, there have been no legal obstacles to their appointment to the Judicial Council.

I.3. The terms in office of Judicial Council members from amongst the ranks of eminent lawyers were extended in March 2018 due to the opposition parties' boycott of the Assembly and the parliament's inability to elect the new members, although such a possibility has not been envisaged by the Constitution, or, initially, by the law. The Act on the Judicial Council and Judges was then amended to allow the extension of their terms in office, without limitation, and the Venice Commission supported the amendment with a view to ensuring the continuous work of the Council. Although the Assembly Committee endorsed a list of eight candidates back on 21 December 2018, they have not been voted on until June 2019, without explanation. When the Assembly finally voted on the candidates, on 20 June 2019, none of them won enough votes to be elected to the Council.

II. Implementation of Judicial Vacancy Plans

II.1. The Judicial Council has continued its non-transparent policy of appointing judges in disregard of the judicial vacancy plans, despite the explicit provision in the law stipulating the filling of judicial vacancies in accordance with the nationwide plan. Individuals have been appointed judges notwithstanding the plans since 2016, when the first plan was drawn up. Such an approach precludes the realisation of the goal of planning – a nationwide judicial appointment system and monitoring of the reasons for new judicial appointments.

III. Judicial Mobility

III.1. Headway was made in 2017 in explaining the decisions on permanent judicial assignments compared to 2016 and it could be concluded that the Judicial Council's 2017 decision to appoint two judges was merit-based. In 2018, only one judge applied for and was assigned voluntarily to another court.

III.2. However, in 2017, the Judicial Council took into account an additional criterion – length of service – in its decision, albeit unnecessarily, as the candidates already had different performance results; length of service should be used only as a supplementary criterion when the candidates' performance results are equal. In one case, it applied additional criteria selectively, to only two out of six candidates, rating them also on “the complexity of cases” they had tried and “reference to European Court of Human Rights case-law”, although these criteria have not been laid down. Although these circumstances have not crucially affected the appointment decision, arbitrary and selective application of criteria does not contribute to trust in the Council.

III.3. Judges have continued to express interest in working in Podgorica, rather than in Bijelo Polje or some coastal municipalities. New incentives have not been adopted yet although the Judicial Council concluded back in early 2017 that the 2016 Incentives for Permanent Voluntary Judicial Assignments did not suffice to encourage judges to apply for the vacancies.

IV. Application of the Nationwide Judicial Appointment System

IV.1. Judicial vacancies were advertised five times publicly and eight times internally from 2016, when the nationwide judicial office appointment system was introduced, until 1 June 2019, when this report was finalised.

IV. 2. A total of 19 candidates for judges were appointed, 13 to Basic Courts and six to Misdemeanour Courts. All of them had scored the most points on the written tests and interviews. As of 1 June 2019, seven of them took office, while the rest were still attending initial training.

IV.3. In June 2018, the Judicial Council adopted a decision on the appointment of 10 candidates for judges to the Basic Courts. The decision is not final because an administrative dispute has been launched against it. However, the Judicial Council has not deferred the assumption of office by any of the judges pending a decision on the dispute. Three of the appointed judges are already trying cases. The Administrative Court did not rule on the lawsuit, filed back in July 2018, by 24 June 2019 (when this Report was completed), although it has in the meantime ruled on lawsuits lodged much later. The lawsuit includes serious allegations of the illegal actions of the Judicial Council members during the testing and interviews (conflict of interest of three members

regarding three applicants and breach of procedure in several instances). In the event the Administrative Court upholds the claims and revokes the impugned decision, the question arises how its decision will be implemented in practice. If the appointment of judges who have started working is voided, the decisions they have delivered must also be voided, all of which can incur harm to a considerable number of people. In such circumstances, the Council's decision not to defer the assumption of office by judges appointed in the impugned procedure pending the completion of the administrative dispute appears irresponsible. This case also indicates that an administrative dispute is not an effective legal remedy against a judicial appointment decision.

IV.4. It may not be concluded for now that the uncertainties surrounding the judges' future places of work and the mandatory 18-month initial training in Podgorica introduced by the new judicial appointment system have discouraged individuals from running for judicial office, as the judiciary had presumed.

IV.5. The application of the regulations to the appointment of Administrative and Commercial Court judges remains to be analysed, given that the judges have been assigned to vacancies in these courts voluntarily, in internal procedures, rather than in accordance with the new public nationwide appointment system.

V. Interviews of Applicants for Judgeship /Judges Applying for Promotion

V.1. The Judicial Council amended the Interview Guidelines in October 2018. The last interviews of Basic Court judicial applicants were conducted in June 2018. Grave irregularities that occurred during these interviews are alleged in the lawsuit pending before the Administrative Court (two Council members, judges, did not recuse themselves either from interviews or the decision-making although three applicants had been their advisers for several years; the Council did not ask all the applicants the same questions as stipulated by the Interview Guidelines and the duration of their interviews ranged from four to 15 minutes).

V.2. During the project period, the interviews were conducted at two sessions. The public was precluded from attending the session held on 19 April 2019, at which the applicants for some of the highest judicial offices were interviewed, notably for the offices of President of the Montenegrin Appeals Court and of the Podgorica and Bijelo Polje Higher Courts, as well as for a judgeship in the Supreme Court and for judgeships in the Misdemeanour Courts. The Judicial Council issued a press release announcing the session on the day it was held. At the session held on 30 May 2019, the Judicial Council interviewed the only candidate for the office of Commercial Court President and the only candidates running for the offices of President of the Basic Courts in Bar, Plav and Rožaje. On that day, it also interviewed candidates bidding for the same offices notably, two candidates for the office of the Kotor Basic Court President and two candidates running for the office of Podgorica Basic Court President. The Council continued with its inequitable treatment of the candidates who applied for the same positions: they were not asked the same questions, contrary to the Rules of Procedure of the Judicial Council. The Council also failed to comply with the Interview Guidelines, requiring of the interview panel to ask specific questions. As a result, the Council could not have established a sound basis for assessing the candidates against all the criteria that were eventually evaluated on the basis of such interviews.

V.3. Furthermore, the work programmes of the candidates had not been published; nor were they outlined in greater detail in the decisions on the appointment of the court presidents. The Council rejected HRA's request to access the candidates' programs following the appointments. The

public has been deprived of information on the candidates' proposals of how to improve the work of the courts in the next five years, which were decisive for their appointment. Therefore, their appointments were not transparent.

VI. Judicial Promotions

VI.1. As of 1 June 2019, nine judges were promoted under the new system, which has been in place since 2016. Three Court Presidents (of the Bijelo Polje and Podgorica Basic Courts and the Montenegrin Appeals Court) were also appointed in this period.

VI.2. The Judicial Council did not publish an explanation of how it had applied one of the two criteria for appraising judicial performance - the one regarding their professional knowledge - to any of the promoted candidates. It remains unknown whether the Council had applied two of the four sub-criteria for appraising professional knowledge with respect to most candidates – “preparation for trial” and “ability to plan and effectively implement procedural actions and trial skills”. Given that the decisions on the judicial appraisals are not published, the decisions on judicial promotions are the only documents providing the public with insight in their appraisals. The contents of the reasoning of these decisions are important not only for the transparency of the Judicial Council’s work, but also for building trust in the way this body decides on judicial careers.

VI.3. The subjective assessments of the Judicial Council, i.e. its assessments of the interviews of the judges applying for promotion, have turned out to be crucial for the promotion of the judges under the new system. HRA and CeMI were right to warn that the Judicial Council’s assessments of the interviews would be decisive and that the assessments of judicial performance would be of secondary importance, although the latter constitute a much more objective criterion.

VI.4. As per grading, HRA and CeMI had promptly, back in 2017, warned that the rules on grading were illogical and rife with grave shortcomings that could lead to unfair results. These rules, however, have remained unchanged.

VI.5. No system has been laid down for awarding points to candidates running for the office of court president, who have not been appraised in their capacity of judge or prosecutor (e.g. because they were lawyers in the meantime), precluding their objective assessment against competing judges and prosecutors.

PROSECUTORIAL APPOINTMENTS AND PROMOTIONS

I. Composition of the Prosecutorial Council

I.1. The composition of the Prosecutorial Council still lacks sufficient guarantees of independence and impartiality. Prosecutors and eminent lawyers with close family ties with the current or former senior party or government officials are still eligible for appointment to the Prosecutorial Council. There are no restrictions on the political engagement of members appointed from amongst the ranks of eminent lawyers. The guarantees of independence and impartiality (conflict of interest rules) applicable to the Anti-Corruption Agency, RTCG and Electronic Media Agency Councils do not apply to the Prosecutorial Council.

I.2. A prosecutor, who is the wife of a senior government official and brother of the former Justice Minister, was appointed member of the first Prosecutorial Council, which was constituted after the 2013 constitutional reform. A former representative of the Social-Democratic Party (SDP) in the State Election Commission was appointed Council member from amongst the ranks of eminent lawyers. The Supreme State Prosecutor, an ex officio member of the Prosecutorial Council, is married to an MP in the Montenegrin Assembly. They would be ineligible for appointment to e.g. the RTCG Council or the Electronic Media Agency Council, but they are eligible, and, indeed, have been appointed to the Prosecutorial Council, because conflict of interest rules have not been laid down for the latter.

I.3. In 2014 and 2015, the Prosecutorial Council launched the appointment of the heads of the state prosecution services and promotions of deputy state prosecutors to state prosecutor, without ever reviewing the work and actions of some of the reappointed prosecutors and their deputies in unsuccessful investigations of human rights violations and war crimes, which the European Commission itself criticised as ineffective in its Progress Reports.

I.4. With the exception of the Chairman, the terms in office of all the Prosecutorial Council members appointed after the constitutional reform expired in January 2018. The Council members from among prosecutorial ranks and the Justice Ministry representative were appointed promptly. The brother of a senior government official and of the Director of RTCG, whose resignation was demanded by opposition parties and some CSOs because of her pro-DPS bias, was appointed Council member from amongst the ranks of state prosecutors. The wife of the Minister of Foreign Affairs was appointed Council member from amongst the ranks of eminent lawyers. They, too, would not qualify for a seat on the RTCG or Electronic Media Agency Councils, but they are eligible for seats on the Prosecutorial Council because the conflict of interest rules have not been laid down for the latter.

II. Implementation of Prosecutorial Vacancy Plans

The Prosecutorial Council has for the most part adhered to the 2017-2019 Prosecutorial Vacancy Plan, albeit it deviated, without explanation, from it on two occasions – when it appointed two special prosecutors in March 2018 and when it appointed the head of the Basic State Prosecution Service in October 2018.

III. Prosecutorial Mobility

Prosecutors generally continued expressing interest in working in Podgorica in 2017 and 2018, but not for voluntary transfer to prosecution services in other cities. No assignment decisions were made in 2017. In 2018, a state prosecutor from the Bar Basic Prosecution Service was transferred to the Podgorica Basic Prosecution Service, but no-one applied for the other advertised vacancies.

IV. Application of the Nationwide Prosecutorial Appointment System

IV.1. Two decisions, on the appointment of four and eight candidates for prosecutors assigned to the Basic State Prosecution Services respectively, were adopted in 2017. All the successful candidates topped the ranking lists. The points they earned on the written tests were crucial for their rankings.

IV.2. One state prosecutor was appointed in 2018. She ranked first among the candidates and, again, the points she earned on the written test were crucial.

IV.3. After completing their initial training, the first four candidates were appointed state prosecutors in the Basic State Prosecution Services in 2018. The other nine candidates were attending initial training at the end of the reporting period.

V. Interviews of Prosecutors Applying for Promotion

The Prosecutorial Council continued with its practice of equitably treating the candidates it interviewed, in accordance with the Interview Guidelines.

VI. Prosecutorial Promotions

VI.1. The Prosecutorial Council did not render any decisions promoting prosecutors in 2017. Two prosecutors working in the Bijelo Polje Basic State Prosecution Service were promoted after they applied for two publicly advertised vacancies. The first candidate was simultaneously appointed state prosecutor in the Bijelo Polje Higher State Prosecution Service and the head of that Service. The other candidate was also appointed state prosecutor in the Bijelo Polje Higher State Prosecution Service.

VI.2. Although these two promoted prosecutors were the only applicants for the jobs, the decisions on their appointment were insufficiently reasoned. The Prosecutorial Council merely mentioned their final grades, without explaining how it had rated them against the specific sub-criteria and criteria prescribed by law. For the sake of comparison, the Judicial Council demonstrated greater transparency in explaining its decisions on judicial promotions, in which it elaborated the applicants' rating against the sub-criteria, albeit not fully.

RECOMMENDATIONS

Recommendations Regarding the Composition of the Judicial and Prosecutorial Councils

1. Amend Article 127(2(4)) of the Montenegrin Constitution to abolish the ex-officio membership of the Justice Minister and president of the Supreme Court in the Judicial Council.
2. Amend the Acts on the Judicial Council and the State Prosecutorial Council to guarantee independence and impartiality of the members of these two Councils, specifically: supplement them with all the criteria in the provisions on the prevention of conflicts of interest of Anti-Corruption Agency Council members (Art. 84 of the Anti-Corruption Act, *Official Journal of Montenegro* Nos. 53/2014 and 42/2017 – Constitutional Court Decision), the RTCG Council (Art. 26 of the Act on the Public Service Broadcaster Radio and Television of Montenegro, *Official Journal of Montenegro* Nos. 079/08 of 23 December 2008, 045/12 of 17 August 2012, 043/16 of 20 July 2016, 054/16 of 15 August 2016) and the Electronic Media Agency Council (Art. 17 of the Electronic Media Act, *Official Journal of the Republic of Montenegro* Nos. 46/2010, 40/2011 – other law, 53/2011, 6/2013, 55/2016 and 92/2017), as well as all the recommendations of the European Network of Judicial Councils in relation to the members of both councils appointed from among eminent lawyers. These recommendations expressly preclude the appointment of former MPs, members of the Government and retired judges or prosecutors to the councils.
3. Ensure that one eminent lawyer sitting on the Judicial Council and one eminent lawyer sitting on the Prosecutorial Council are appointed by non-government organisations with adequate experience in monitoring judicial reform in Montenegro.
4. Implement the GRECO recommendation on avoiding an over-concentration of powers in the same hands concerning the different functions to be performed by members of the Judicial Council.
5. Promptly resume the procedure of electing new Judicial Council members from amongst eminent lawyers.
6. Amend the Act on the State Prosecution Service to allow the extension of the terms in office of eminent lawyers sitting on the Prosecutorial Council in the event the Assembly does not elect all four new members (such a possibility is provided by the Act on the Judicial Council and Judges) and envisage that those whose terms in office are extended are drawn by lot.

II. Recommendations on Judicial and Prosecutorial Appointments and Promotions

7. The Judicial and Prosecutorial Councils should advertise vacancies in accordance with the judicial and prosecutorial vacancy plans. These plans should be updated regularly and explained, given that the law allows for their amendment if necessary. The judicial vacancy plans need to specify the precise dates when individual judges fulfil the age retirement

- requirements and when the terms in office of court presidents expire in the relevant period.
8. Review the need to lay down additional criteria for voluntary judicial assignments in the Judicial Council Rules of Procedure and apply them equitably to all applicants.
 9. Put in place incentives for permanent voluntary prosecutorial assignments and additional incentives for judicial transfers.
 10. Add the following questions to the Interview Guidelines, notably the part on “conflict resolution and understanding of the judge’s role in society”: “What is the extent of suitable judicial public engagement? Are judges allowed to publish texts or books, hold lectures, make statements to the media, participate in public debates, et al? What are the limits of judges’ public engagement?” and similar questions to gauge the degree of democratic culture in the judiciary.
 11. The Judicial Council should consistently apply the Interview Guidelines; it should ask all the candidates all the questions specified in the Guidelines, i.e. essentially ask them the same questions.
 12. The Judicial Council should promptly announce all its sessions to enable the interested public to attend them. It should reschedule sessions in case they are unable to announce them due to technical problems, with a view to increasing trust in the Judicial Council.
 13. Publish the proposed work programmes of candidates running for the office of court president before interviewing them and outline the programmes in greater detail in decisions on their appointment.
 14. Explain the decisions on judicial/prosecutorial promotions to clearly demonstrate the application of all criteria and sub-criteria and its results.
 15. Provide the judges with the possibility of challenging Judicial Council decisions by filing constitutional appeals, rather than by initiating administrative disputes, given that the latter are not an effective legal remedy in these cases. Lay down that the Constitutional Court shall review the legality and constitutionality of Judicial Council decisions urgently or within a short deadline.
 16. Specify the method of awarding points to candidates running for the office of court president who do not have appraisals of their judicial or prosecutorial performance (e.g. because they worked as lawyers).
 17. Conform the performance norms of court presidents to reality, to avoid situations in which some court presidents, such as the President of the Podgorica Higher Court, exceed their norm by over 1000%.
 18. Check and ensure the accuracy of the statistical data on court performance.

The implementation of the following recommendations on judicial and prosecutorial promotions and appraisals, made in the *Report on the Implementation of the 2014-2018 Judicial Reform Strategy in the 2014-2016 Period* (published in April 2017), is still pending:

19. Amend Article 97 of the Act on the Judicial Council and Judges and Article 96 of the Act on the State Prosecution Service on judicial and prosecutorial appraisals which are illogical, incomplete and unfair, given that they, inter alia, allow for the promotion of judges and prosecutors whose performance has been appraised as unsatisfactory both in terms of quality and quantity, as well as the promotion of those found to have breached the Code of Ethics on a number of occasions and whose treatment of the parties to the proceedings, their peers and other staff has been found to be unsatisfactory.
20. Amend the law to ensure that the performance of Supreme Court judges and Supreme State Prosecution Service prosecutors, some of whom are eligible for promotion, is also appraised and ensure that they are also subject to appraisals (of their expertise, ethics, training needs) like all other judges and prosecutors.
21. Ensure that the performance of judges and prosecutors is assessed also vis-à-vis Constitutional Court and European Court of Human Rights decisions. If necessary, provide for an exception to three-year appraisals, in order to motivate judges and prosecutors to monitor and apply both ECtHR case-law and the case-law of the highest Montenegrin courts.
22. Re-examine the need to interview promotion applicants given the prescribed content of the interviews, at which they are questioned about their motivation, communication skills and other issues, all of which had been assessed when they ran for office the first time.
23. Given the number of upheld review motions (i.e. requests to expedite the proceedings), ensure that this number is not automatically calculated, but that account is taken of which judge had, by his/her (non-)actions, given rise to the submission of these review motions.
24. Rate the performance of state prosecutors also on the basis of the number of their motions on pre-trial detention or extension of pre-trial detention upheld and rejected by the court and on the basis of the number of upheld complaints on dismissed criminal reports.
25. Ensure that the reasons why criminal prosecution became time barred are reviewed in every case and that commissions review whether the relevant judges or prosecutors are accountable for the expiry of the statute of limitations, and, in case they are, that it impacts on their appraisals, promotions and dismissals.
26. Correct the obvious mistakes in the wording of the Regulations on Appraisals of Judges and under the “Advanced Professional Training” and “Participation in Various Professional Activities” sub-criteria. Align the rule on the appraisal of judges against these sub-criteria with the law or amend the law. Preclude unwarranted differences in appraising judges and prosecutors with respect to the acquisition of academic titles. Avoid assessments of circumstances beyond the candidates’ control, such as whether they were invited to participate in the work of a working group, lecture at a seminar or attend other non-mandatory trainings.
27. Amend the law and the Regulations on Appraisals of Judges and Court Presidents to ensure that all identified violations of the Code of Ethics are taken into account during reviews of their promotion applications and that these violations are assessed by their gravity, not automatically, as laid down in Article 20 of the Regulations. Amend this Article to preclude also the unclear and unfair equating of one decision finding a judge in violation

of the Code of Ethics with three Judicial Council's endorsements of complaints about a judge's work.

28. Lay down the method for appraising applicants for judgeships in the Administrative and Commercial Courts who belong to different categories, who had not been judges, as opposed to applicants who had been judges. As per the appointment of a Supreme Court judge, this problem can be circumvented by publishing a vacancy only for candidates who had not been judges or state prosecutors in the past.