

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

CCJE-BU(2022)4

Strasbourg, 20 December 2022

**CONSULTATIVE COUNCIL OF EUROPEAN JUDGES
(CCJE)**

**Opinion of the CCJE Bureau
following a request by the Association of Judges of Montenegro
concerning the situation with regard to the retirement of judges**

INTRODUCTION

The President and Bureau of the Consultative Council of European Judges (CCJE) received a request from the Association of Judges of Montenegro dated 2 December 2022 explaining in detail the situation in regard to the retirement of judges.

The Association, as it is stated in the letter, calls on the CCJE “to take actions within [its] competence or the competence of the institutions that [it] represents, in order to, without delay, stop the negative practice of the controversial and baseless sending of Montenegrin judges to retirement, which is the consequence of the disputed interpretation of the evidently unconstitutional provisions of the Montenegrin Law on Pension and Disability Insurance”.

The core of the problem lies in the fact that the Judicial Council removes judges from their judicial duty when they reach the formal requirements for retirement regardless of their age, even though the Law on the Judicial Council and Judges calls in its Article 5 for the application of laws which regulate labour rights. Those Laws prescribe that the age for retirement is 66 years of age.

The Constitution of Republic of Montenegro provides that judges shall be dismissed from their judicial duty when they reach the required age for retirement.

Taking into account that in Montenegro the Judicial Council follows a different practice, the CCJE Bureau issues this

OPINION

The Bureau of the Consultative Council of European Judges (CCJE) expresses its concerns about the recently adopted amendments to the Montenegrin Law on Pension and Disability Insurance which significantly lowered the pension age for judges. The Law also stipulates different retirement ages dependent on gender and years of service.

The CCJE Bureau observes that non-discrimination and gender equality is a core value in Europe. It is especially important within the judiciary. Any discrimination within the judiciary may result in an infringement of the independence of a judge and the judiciary as a whole.

The CCJE Bureau reminds the Montenegrin authorities that direct or indirect discrimination on various grounds including gender is subject to prohibitions. In particular, this is prohibited according to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Protocol 12, Article 1). The European Association of Judges (EAJ) stressed that the amendments of the Montenegrin Law on Pension and Disability Insurance discriminate against female judges and do not reflect European values.

Moreover, lowering the mandatory retirement age is in conflict with the security of tenure of office of judges, which is a central element of European standards on independence of judges and judiciary. The Court of Justice of the European Union found in the case of *Commission v. Poland (C-619/18)* that lowering the mandatory retirement age of judges violates the obligation under the Treaty on European Union (Article 19 (1), para 2).

The CCJE Bureau particularly emphasises that the tenure of judges is a crucial guarantee of independence of judiciary and individual judges which cannot be infringed by any means or for any reason. A practice which departs from this principle conflicts with this principle.

The CCJE Bureau also points out that legislative and executive powers should refrain from pressuring the judicial power in any way or form. Judicial power should remain independent which is a cornerstone of the rule of law. Other powers of the State must recognise the legitimate constitutional function of the judiciary (as it was mentioned in the Opinion No. 18 (2015) of the CCJE, para 43).

Last but not least, it must be stressed that it is a task of a Council for the Judiciary to defend the independence of the judiciary and independent judges (as stressed in the Opinion No. 24 (2021) of the CCJE, para 19).