

Comments to the proposed amendments to the Law on the State Judicial Council (SJC)

Thank you for the opportunity to participate in the e-Consultation on the amendments to the Law on the State Judicial Council.

Discretion and transparency in selecting judges

The proposed amendment would increase the discretion of the SJC in selecting judges by increasing the number of points the SJC can grant to a candidate based on the interview as well by increasing the permitted deviation of the score of the selected candidate from the candidate who had received the highest score. In the explanation, the Ministry stated that it proposed these amendments "to strengthen the role of the Council in the appointment procedure".

In conditions where the public has little trust in the judiciary, increasing the discretionary role of the SJC will not contribute to strengthening this trust. In addition, the Ministry did not explain why such a change is necessary.

We propose that the amendments increase the transparency in the process of electing judges with the following measures:

- a. The SJC should make all its interviews with the candidates for judicial positions permanently available to the public via video streaming.*
- b. The SJC should publish all documents considered in the process of selecting candidates for higher judicial positions, except those classified as confidential.*
- c. Before selecting candidates for higher judicial positions, the SJC should allow time within which the bar associations, prosecutors' offices, academic institutions, and civil society institutions could express an opinion on the candidates for higher judicial positions and publish received opinions on its website.*

Disciplinary measures against judges

2. In the proposed amendments, the Ministry proposes introducing disciplinary procedures against a judge "if in a court case the statute of limitations has expired without a justified reason due to failure to take procedural actions."

The statute of limitations affects court cases most often due to the cumulative effect of proceedings that were conducted by several judges. The proposed formulation will therefore not provide a reasonable basis to take disciplinary actions against all the responsible judges. We therefore suggest:

- a. To change the wording by adding the words "significantly contribute to breaching the statute of limitations."*
- b. To add a provision that in all cases terminated on the basis of the statute of limitations for criminal offenses punishable by more than 5 years, the president of the competent court must write a report on the causes of excessively long duration of court proceedings, assess whether there are grounds for disciplinary liability of judges. The report should be submitted to the President of the Supreme Court and the Minister, who on this basis may decide to open disciplinary proceedings. Once the experience*

has been gained, the application of this provision may be extended to all cases ended by the statute of limitations.

Transparency of disciplinary proceedings

3. The SJC decided that in all disciplinary proceedings against judges it will apply the procedural rules of criminal procedures, but at the same time, it stipulated, in its Rules of Procedure, that its sessions in these proceedings are to be closed to the public (unless the opposite is requested by the judge subject to the procedure). The SJC publishes only very brief information on disciplinary proceedings, and the SJC website does not contain systematic information on the proceedings initiated, the reasons for their initiation, the duration of these proceedings, and their outcomes.

To strengthen the transparency of disciplinary proceedings, we propose that the amendments introduce the obligation that all disciplinary proceedings, except in their earliest stages, be made public.

Next, we propose that the amendment oblige the SJC to provide detailed statistics and summaries of all decisions in disciplinary proceedings in the annual report.

Election of the SJC members

3. The proposed amendments do not address the serious deficit of democracy and transparency in the process of electing the SJC members. The current law allows up to 6 candidates on the list for 2 members from the Supreme Court, up to 15 candidates on each of the 3 lists from the ranks of county court judges, on which one member is elected, and 15 candidates on the list for candidates from specialized and courts of the first instance, from which of each one member is elected.

To enter the list, it is enough for the candidate to apply, without having to explain the reasons and goals of his candidacy. The law does not define how the list of candidates is determined if more candidates than the allowed number apply, but it stipulates that a relative majority in a single round of voting suffice for being elected. The second round of voting is conducted only if two candidates received the same number of votes.

In the 2015 elections, the candidates were determined by the group of courts, but judges from all courts voted for all the candidates. After the election, the Supreme court published the number of votes for each elected candidate. No elected candidate was supported by an absolute majority of judges, and one elected candidate received only 387 votes, out of a total of some 1,800 judges at the time. The candidate with the largest number of votes received less than half, only 678 votes. The Supreme Court did not publish the number of judges who went to the polls, nor how many candidates applied for each seat. It did not publish information on how the candidates were determined if more than the number allowed by law had applied.

After the amendments to the Law were approved in 2018, judges are allowed to vote only for the candidates from their group of courts. After the election, the Supreme court did not make information available to the public on how many candidates were in each group of courts, how the list of the candidates was determined if more candidates applied than allowed by law, how many judges voted in each constituency and how many votes had the elected candidates received. It published only the list of the elected candidates.

With a large number of allowed candidates and one round of voting, the elections can be won with a very small number of votes relative to the number of voters. Theoretically, with 15 candidates, a

candidate can win with only 7% of the votes. Such a system with a large number of candidates and the election based on the relative majority in a single round of voting easily favours affiliated groups that can get their candidate elected even if they received a very small number of the total votes. Moreover, the system gives judges in higher positions very disproportionate influence on the election of the SJC members: Some 40 judges of the Supreme Court elect two members of the SJC, while a thousand judges of municipal courts elect one.

In our opinion, the current system of electing the members of the most important institution of the judicial authority does not satisfy the basic principles of democracy and transparency. Therefore, we suggest the following:

- a. To increase the transparency in electing the SJC, it is necessary to introduce an obligation for each candidate to submit a statement on why he/she is running, together with his / her CV.
- b. As with the election for the higher judicial positions, the law should provide that the Supreme court should publish on its website all the documents submitted by the candidates for the SJC.
- c. The selection procedure should provide for the possibility for bar associations, academic institutions, and civil society organizations to provide their opinions on candidates. These should also be made public on the Supreme Court's website before each round of voting.
- d. A preferential voting system, or at least two rounds of voting, should be provided for elections in all the groups of courts.
- e. To make the elections more democratic, the amendments should reintroduce the voting system applied before the 2018 legislative changes, when all judges voted for candidates from all the groups of courts. This should be complemented with the introduction of a preferential or at least a two-round voting system.
- f. The Supreme Court should publish the documents in the election process from all the courts on its website.

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