

Ms Renata DESKOSKA
Minister of Justice
Skopje

Ref ► J.Dem.508 – GID/BA

Strasbourg, 19 December 2018

Dear Minister,

Thank you for sending us the updated version of the draft amendments to the Law on Courts (the English translation), with the most recent additions highlighted in the text. I understand that those amendments will be (or already are) submitted to Parliament for examination and approval.

We examined the proposed amendments in the Secretariat. Our preliminary analysis shows that nearly all of our recommendations were duly incorporated in the text.

Indeed, as always, some legal formulas may still be slightly improved (unless this is a matter of translation), but these issues are minor. Two remarks are called for in this respect; you may consider discussing them in Parliament.

Article 39 prohibits the lowering of the judge's salary in the case of a *temporary* transfer of this judge to a lower court. This is positive. However, there is no such prohibition in cases when a judge is transferred *permanently* to a lower court, following a major reorganisation or abolishment of his or her court (see Article 40). It would be preferable to guarantee that, in the case of a permanent transfer, the judge's salary remains the same. Even better, it would be preferable to avoid permanent transfer of a judge to a lower court altogether (see § 24 of the opinion CDL-AD(2018)033).

Second, as stated in our opinion (§ 38), the failure of a judge to withdraw from a case may be a ground for liability only if it is *manifest* and if the grounds for recusal are clearly defined in the law. Article 75 § 1 (4) now refers to the "manifest" character of this error, which is positive. As to the grounds for recusal, as was explained by the representative of the Ministry at the Plenary, they are defined in other legislation (in the criminal procedure code). This explanation is satisfactory, even though the Venice Commission did not examine the criminal procedure code.

I repeat that these are minor points. In the overall, the Secretariat of the Venice Commission considers that the proposed amendments are in line with the position of the Venice Commission expressed in our earlier opinions. The text of the Law on Courts is now much clearer, more internally coherent, and better reflects the European approach to the accountability of judges.

I understand that the Law on the Judicial Council (analysed in our opinion of October 2018) is also undergoing revision. The Venice Commission will be ready to provide an opinion on this law in 2019, if requested.

Dear Minister, I am very happy with the excellent collaboration between your Government and the Venice Commission.

Please accept my warmest wishes for the year 2019, looking forward to our future cooperation,

Yours faithfully,

A handwritten signature in black ink, appearing to read 'T. Markert', is written over a light blue rectangular background.

Thomas MARKERT
Director, Secretary of the Commission