



12 November, 2021

Re: Letter of Concern

As President of the European Association of Judges (EAJ) I write to express its concerns about 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.

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

The EAJ reminds the Montenegrin authorities that direct or indirect discrimination on 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 art 1. The EAJ stresses out 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. 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 art 19(1) para 2 of the Treaty on European Union. The EAJ emphasizes that the tenure of judges is a crucial guarantee of independence of judiciary and individual judges which can not be infringed.

The EAJ therefore calls upon the Montenegrin authorities to reverse the amendments to the Montenegrin Law on Pension and Disability Insurance in question.

The EAJ also points out that branches of legislative and executive powers should refrain from pressuring the judicial power in any way or form. Judicial power should remain independent which is a corner stone of the rule of law. Other powers of the state must recognise the legitimate constitutional function of the judiciary (Consultative Council of European Judges (CCJE) Opinion No.18(2015) art 43). The EAJ stresses out that it is a task of a Council for the Judiciary to defend the independence of the judiciary and independent judges (CCJE Opinion No.24(2021) art 19) and this task cannot be understated.

Yours sincerely,

Duro Sessa
President of the European Association of Judges