

Brussels,

Dear Minister Pakosta,

Let me first thank you for the constructive discussion we had in December 2024, during our meeting in the margins of the Justice and Home Affairs Council. It was a pleasure meeting you.

I understand that the Estonian Government is preparing a reform to strengthen the judicial independence by transferring powers from the Ministry of Justice and Digitalisation to a new Council for the Administration of Courts. This reform was examined in the 2024 Rule of Law Report, which recommended Estonia to “[c]ontinue the efforts to reform the Council for the Administration of Courts, taking into account European Standards on councils for the judiciary”.

I welcome your willingness and efforts to further strengthen the judicial independence of judges in Estonia by reforming the Council for the Administration of Courts and giving it more powers. Let me stress that the Commission is supporting self-governance of judges. Furthermore, to guide Member States when conducting such reforms, there is a set of European Standards regarding their composition and functioning¹. These standards are explicitly referred to in the Commission’s recommendation.

The Commission would be delighted to report positively on the follow-up by Estonia to this recommendation. However, I understand that the currently envisaged composition of the Council does not appear to take into account the aforementioned European Standards, as much as it foresees a minority of judges chosen by their peers² and up to three active deputies and minister with the right to vote. The combination of these two elements could result in a politicisation of the Council and expose judges and the judiciary as a whole to influence from the executive or the legislative powers. As we have seen in other Member States, both among EU and Council of Europe states, this risk of politicisation is not an abstract one. The relevant European standards precisely aim at mitigating this risk, based on the experiences made over many years.

Ms Liisa-Ly Pakosta
Ministry of Justice and Digital Affairs

¹ Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, paras. 26-29: “Not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary”. See also Venice Commission Opinion (CDL-AD(2020)035), para. 44, explaining that judges “elected by their peers” do not include the *ex officio* members of a Council. See also CCJE Opinion No. 24 (2021) on the evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems, p. 4, B. b): “prospective members, whether judges or not, [...] should not be active politicians or members of the executive or the legislature;”

² Five out of eleven members.

As the draft law is not yet tabled, it would be a very opportune moment to ensure that it takes into account the European Standards. The services of the Commission are at your disposal for further exchanges on this matter to further improve the composition of the Council.

Considering the sensitivity of such reform, you could furthermore consider consulting the European Network of Councils for the Judiciary and the Venice Commission.

I am looking forward to continuing our close cooperation on strengthening the rule of law in the Union.

Your sincerely,



Michael McGrath