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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
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(VENICE COMMISSION)

SERBIA

URGENT OPINION

ON

**THE 28 JANUARY 2026 AMENDMENTS TO LAWS GOVERNING THE
JUDICIARY AND THE PROSECUTION**

**Issued on 24 April 2026 pursuant to Article 14a
of the Venice Commission's Revised Rules of Procedure**

**Endorsed by the Venice Commission
at its 147th Plenary Session
(Venice, 12-13 June 2026)**

On the basis of comments by

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I. Introduction

1. By letter of 10 February 2026, Ms Ana Brnabić, President of the National Assembly of the Republic of Serbia, requested an urgent opinion of the Venice Commission of the Council of Europe on the amendments and additions to the Law on the Public Prosecutor's Office, the Law on the High Prosecutorial Council, the Law on the Organisation and Jurisdiction of State Authorities in the Fight against Cybercrime, the Law on Judges and the Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices (hereinafter collectively referred to as "the 28 January 2026 amendments") ([CDL-REF\(2026\)007](#)).

2. On 18 February 2026, the Bureau of the Venice Commission authorised the preparation of the Opinion through the urgent procedure, pursuant to Article 14a of the Commission's Revised Rules of Procedure.

3. Mr António Silva Henriques Gaspar, Mr Tuomas Ojanen, Mr Cesare Pinelli, and Mr Manuel Monteagudo Valdez, acted as rapporteurs for this opinion.

4. On 16-17 March 2026, a delegation composed of Mr Cesare Pinelli, Mr Tuomas Ojanen, Mr António Silva Henriques Gaspar, accompanied by Mr Taras Pashuk and Mr Salvador Luz, from the Secretariat of the Venice Commission, visited Belgrade and held meetings with President of the National Assembly, the Minister of Justice, Members of Parliament, and representatives of the High Prosecutorial Council, the High Judicial Council, the Supreme Public Prosecutor's Office, the Special Department for the Suppression of High-Tech Crime, and the Public Prosecutor's Office for Organised Crime. It also met with civil society organisations, professional associations of judges and prosecutors, as well as representatives of the European Union Delegation to Serbia and other international partners. The Commission is grateful to the Serbian authorities and the Council of Europe Office in Serbia for the excellent organisation of this visit.

5. This urgent opinion was prepared in reliance on the English translation of the amended laws. The translation may not accurately reflect the original version on all points.

6. This urgent opinion was drafted on the basis of comments by the rapporteurs as well as the results of the meetings held on 16-17 March 2026. In line with paragraph 10 of the Venice Commission's Protocol on the Preparation of Urgent Opinions ([CDL-AD\(2018\)019](#)), the draft Urgent Opinion was transmitted to the Serbian authorities on 17 April 2026 for comments. The Urgent Opinion was subsequently issued on 24 April 2026, pursuant to Article 14a of the Venice Commission's Revised Rules of Procedure. Following an exchange of views with Ms Brnabić and Mr Vujić, it was endorsed by the Venice Commission at its 147th Plenary Session (Venice, 12-13 June 2026).

II. Background information on the legislative process

7. In 2021, a comprehensive judicial reform process culminated in draft constitutional amendments which were analysed by the Venice Commission in two opinions.¹ These constitutional amendments were adopted at a referendum in January 2022 and promulgated by the National Assembly in February 2022. The reform process was further implemented through a legislative package comprising five draft laws concerning the judiciary and the prosecution service. These draft laws were assessed by the Venice Commission in three opinions issued in 2022² and were later adopted in 2023.

¹ Venice Commission, [CDL-AD\(2021\)032](#), Serbia – Opinion on the Draft Constitutional Amendments on the Judiciary and Draft Constitutional Law for the implementation of the constitutional amendments; [CDL-AD\(2021\)048](#), Serbia – Urgent Opinion on the Revised Draft Constitutional Amendments on the Judiciary.

² Venice Commission, [CDL-AD\(2022\)030](#), Serbia - Opinion on Three Draft Laws Implementing the Constitutional Amendments on the Judiciary; [CDL-AD\(2022\)042](#), Serbia – Opinion on Two Draft Laws Implementing the Constitutional Amendments on the Prosecution Service; [CDL-AD\(2022\)043](#) Serbia – Follow-Up Opinion to the Opinion on Three Draft Laws Implementing the Constitutional Amendments on the Judiciary.

8. On 22 December 2025, Mr Uglješa Mrdić, a Member of Parliament of the Serbian Progressive Party ("SNS") and Chair of the Committee on Judiciary, Public Administration, and Local Self-Government, submitted a set of five draft laws through the urgent legislative procedure. These draft laws were aimed at amending (i) the Law on the Public Prosecutor's Office, (ii) the Law on the High Prosecutorial Council, (iii) the Law on Organisation and Jurisdiction of Government Authorities for Suppression of Cybercrime, (iv) the Law on Judges and (v) the Law on Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices.

9. The Explanatory Reports accompanying the amending laws state that the overarching aim of the reform was to enhance the efficiency of the prosecution service and the judiciary.³ Each Report further recommends that the amending laws be adopted under the urgent legislative procedure, arguing that failure to do so could have adverse consequences for the functioning of state authorities, the prosecution service and the courts.⁴

10. The draft laws became publicly accessible on the website of the National Assembly on 22 December 2025. However, no public consultations with national institutional stakeholders or civil society took place beforehand.⁵

11. On 15 January 2026, the High Judicial Council (hereinafter, "the HJC") issued a public statement requesting the withdrawal of the draft law amending the Law on Seats and Territorial Jurisdiction of Courts and Public Prosecutor's Offices and the draft law amending the Law on Judges. The HJC noted that it had not been asked for an opinion on the proposed changes⁶ and highlighted that "changes in the organisation and number of courts cannot be made without a comprehensive analysis of the causes of the workload of existing courts, and such an analysis is missing".⁷

12. On 19 January 2026, the Public Prosecutor's Office for Organised Crime (hereinafter, "the TOK") issued a public statement⁸ concerning the draft amendments to the Law on the Public Prosecutor's Office, namely the termination of all temporary assignments by 9 March 2026. In that statement, the TOK stated, amongst other things, the following:

"As a reminder, the Decision on the Number of Public Prosecutors (...) prescribes that the Public Prosecutor's Office for Organized Crime shall have 25 public prosecutors in addition to the Chief Public Prosecutor. Despite this, this office has never been fully staffed in accordance with the prescribed maximum. Currently, 20 public prosecutors hold office in the [TOK], of whom as many as 11 are temporarily assigned in accordance with the current Law on Public Prosecution.

The proposed amendment would significantly reduce the operational capacity and functional capability of the [TOK], as it would be deprived of a substantial number of experienced public prosecutors, effectively resulting in a forced and instantaneous reduction in staff. This would directly diminish its efficiency and effectiveness to a level that jeopardizes lawful and effective action in the most sensitive and exceptionally complex cases of transnational organized crime and high-level corruption, which are already in various stages of proceedings (...).

³ The Explanatory Reports are accessible at [CDL-REF\(2026\)009](#).

⁴ According to Article 167 of the [Rules of Procedure of the National Assembly](#), "[o]nly a law regulating issues and relations which arose under unforeseeable circumstances, where the non-adoption of such a law by urgent procedure could cause detrimental consequences for human lives and health, the country's security and the work of institutions and organisations, as well as for the purpose of fulfilment of international obligations and harmonisation of legislation with the European Union *Acquis*, may be adopted by urgent procedure".

⁵ This fact was acknowledged by the majority of the interlocutors during the country visit.

⁶ As per Article 17(25) of the [Law on the High Judicial Council](#).

⁷ Statement by the High Judicial Council on the Amendment of the Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices and on the Amendment of the Law on Judges, 15/01/2026, accessible at the [website of the High Judicial Council](#).

⁸ [Statement of the Collegium of the Public Prosecutor's Office for Organised Crime](#), 19/01/2026.

The proposed amendment does not contain any realistic transitional mechanism or impact analysis; instead, it arbitrarily and without any systemic justification interferes with the existing work organization and personnel structure of the [TOK], ignoring the fact that the institute of temporary assignment has been the only effective mechanism for overcoming the chronic personnel deficit.”

13. On 22 January 2026, the High Prosecutorial Council (hereinafter, “the HPC”) issued a public statement⁹ which included the following considerations:

“A joint debate is currently underway in the National Assembly, which includes the discussion of proposals for amendments to the set of judicial laws, adopted after the constitutional reform in 2022. As it concerns the laws that most directly deal with the Council itself, its competencies, as well as the Public Prosecutor's Office in general, we believe, first of all, that the absence of any consultation with the Council violated the provision of Article 17, paragraph 1, item 26 of the Law on the [HPC] (...).

Apart from the need to consult the Council, the very nature of these laws, which are systemic and highly sensitive, is such that it requires a broad social consensus, especially in professional circles. Unlike in 2023, when a set of judicial laws was adopted in a transparent and broadly inclusive process, with the active participation of representatives of the profession, but also the general public, a whole series of public hearings and active consultation with the Venice Commission, this time all of the above was absolutely absent (...).

What is clear is that the entire process cannot and must not be carried out in this way, and that the proposed changes, in the opinion of the [HPC], should be withdrawn from the procedure by the National Assembly (...).”

14. At an extraordinary session of the National Assembly, which lasted from 14 January 2026 to 28 January 2026, the amendments were debated in principle and in detail.¹⁰ On 28 January 2026, the amendments were adopted by the National Assembly and subsequently signed by President Aleksandar Vučić on 30 January 2026.¹¹ They were published in the Official Gazette of the Republic of Serbia on the same day.

15. On 6 March 2026, pursuant to Article 69(4) of the Law on the Public Prosecutor's Office, the HPC decided to renew the temporary assignments of seven of the eleven public prosecutors serving in the TOK.¹² The remaining four public prosecutors saw their temporary assignments terminated by 9 March 2026, by operation of law,¹³ and returned to their original posts.

III. The 28 January 2026 amendments

16. In her letter of 10 February 2026 to the Venice Commission, Ms Brnabić explained that following the adoption of the judicial laws in February 2023 “certain difficulties in their enforcement were identified, which became particularly evident during the practically several-month period of disrupted functioning, and at times, even blockage of work, of the High Prosecutorial Council over the past year”. As a result, “a significant number of holders of prosecutorial offices were not elected, and several public prosecution offices remained without

⁹ [Statement by the majority of members of the High Prosecutorial Council](#) regarding the proposal to amend the Law on Public Prosecution and the Law on the High Prosecutorial Council, 22/01/2026.

¹⁰ [Sixth Extraordinary Session of the National Assembly of the Republic of Serbia in 2025, 14th Legislature](#); According to Article 157(1) of the [Rules of Procedure of the National Assembly](#), a “debate in principle” must first take place in respect of any bill. Under Article 157(3), after the conclusion of the debate in principle, a “debate in detail” takes place.

¹¹ [Official Gazette of the RS, No. 9/2026, Date: 30 January 2026](#).

¹² This fact is detailed in Serbian news and was also relayed to the delegation of the Venice Commission during the country visit.

¹³ As per Article 12(4) of the Law on Amendments and Supplements to the Law on the Public Prosecutor's Office, accessible at [CDL-REF\(2026\)007](#).

heads of office". Against this background, the amendments in question are intended to ensure that "the public prosecution service is able to respond efficiently and responsibly both at the national and global level".

17. According to an explanatory document signed by Mr Mrdić and sent to the Venice Commission, the 28 January 2026 amendments "represent a further elaboration of the constitutional competences which, as in 2022, are regulated by statute, and are based on the experience derived from three years of practical implementation". In this context, the amendments "effect a redistribution of competences among various already existing autonomous and independent judicial bodies, thereby enhancing transparency in decision-making".

18. In brief, the key changes brought about by the 28 January 2026 amendments may be summarised as follows:

a) Law on the Public Prosecutor's Office

- i. The competence to decide on objections to hierarchical decisions has been transferred from the Commission of the HPC to the Chief Public Prosecutor of the immediately superior Public Prosecutor's Office (Articles 18-22).
- ii. The Supreme Public Prosecutor's Office is now required to obtain the prior consent of the Ministry of Justice for the performance of tasks pertaining to international cooperation of significance (Article 31(4)).
- iii. The competence to decide on objections to the annual work programme of a Public Prosecutor's Office is no longer vested in the High Prosecutorial Council, but in the Chief Public Prosecutor of the immediately superior Public Prosecutor's Office (Article 39(3)). If the latter fails to decide within 30 days, the objection is deemed dismissed (Article 39(7)).
- iv. If the position of a Chief Public Prosecutor becomes vacant, the HPC may appoint an acting Chief Public Prosecutor for a period of three years, with the possibility of reappointment (Article 41(2)); this alters the previous rule, which allowed only one year and did not permit the reappointment to the same position.
- v. Chief Public Prosecutors whose six-year term of office has expired may now be re-elected to the same position within the same Public Prosecutor's Office (Article 62(1)).
- vi. The competence to decide on the temporary assignment of prosecutors is attributed to the HPC (Article 69(4)). Before, it was vested in the Supreme Public Prosecutor.
- vii. Public prosecutors temporarily assigned to a Public Prosecutor's Office may be reassigned to the same office once the maximum three-year period expires. In addition, temporary assignment may now be made to a higher-level office (Article 69(1)).
- viii. All public prosecutors temporarily assigned to a Public Prosecutor's Office of special jurisdiction shall have their temporary assignments terminated by 9 March 2026 (Article 12(4) of the amending law).

b) Law on the High Prosecutorial Council

- i. The HPC Commission for deciding on objections to hierarchical decisions is abolished (Article 19(1)).

c) Law on Organisation and Jurisdiction of Government Authorities for Suppression of Cybercrime

- i. The Special Department for Cybercrime is managed by its Head, who is appointed by the Chief Public Prosecutor of the Higher Public Prosecutor's Office in Belgrade (Articles 5(1) and 5(2)). Previously, this special department was headed by a Special Public Prosecutor who was appointed by the Supreme Public Prosecutor.
- ii. The Head of the Special Department for Cybercrime is accountable to the Chief Public Prosecutor of the Higher Public Prosecutor's Office in Belgrade (Article 6(1)), who shall

issue a regulation on the organisation and operation of the special department (Article 6(2)). Previously, the head of this special department held the rank of Chief Public Prosecutor.

- iii. The Chief Public Prosecutor of the Higher Public Prosecutor's Office in Belgrade shall appoint the Head of Department within 30 days from the entry into force of the amendment (Article 7(1) of the amending law).

d) Law on Judges

- i. A court president elected for a five-year term of office may now be reappointed once after the expiry of the term (Article 77(1)).

e) Law on Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices.

- i. The Third Basic Court in Belgrade for the territory of the urban municipalities of Zemun, Novi Beograd and Surčin will be abolished, and two new courts are to be established:
 - i. The Third Basic Court in Belgrade for the territory of the urban municipality of Novi Beograd.
 - ii. The Fourth Basic Court in Belgrade for the territory of the urban municipalities of Zemun and Surčin (Article 3(6) and 3(6a)).
- ii. The Third Basic Public Prosecutor's Office in Belgrade for the territory of the urban municipalities of Zemun, Novi Beograd and Surčin is to be abolished, and two new offices will be established:
 - i. The Third Basic Public Prosecutor's Office in Belgrade for the territory of the urban municipality of Novi Beograd.
 - ii. The Fourth Basic Public Prosecutor's Office in Belgrade for the territory of the urban municipalities of Zemun and Surčin (Article 9 (6a)).
- iii. Until 1 July 2026, the High Judicial Council shall effect the permanent transfer of judges and lay judges to the new courts, and appoint acting presidents thereto (Article 5 of the amending law).
- iv. Until 1 July 2026, the High Prosecutorial Council shall adopt a decision regarding the continuation of the Chief Public Prosecutor and the public prosecutors in the two new Public Prosecutor's Offices which will have assumed the jurisdiction of the abolished Third Basic Public Prosecutor's Office in Belgrade and appoint acting Chief Public Prosecutors thereto (Article 6 of the amending law).

IV. Analysis

19. In its analysis of the 28 January 2026 amendments, the Venice Commission will focus on the most pertinent issues, notably those arising from the discussions with the stakeholders. The absence of comments on certain provisions should not be interpreted as constituting a tacit approval thereof.

A. The procedure for the adoption of the 28 January 2026 amendments

20. In its Updated Rule of Law Checklist, the Venice Commission has underlined that the quality of legislation depends largely on the quality of the legislative process, which must be efficient, transparent, accountable, inclusive and democratic. Legislative procedures should recognise the role of the opposition and allow for targeted and transparent consultations of stakeholders affected by the draft legislation as well as the civil society, think tanks and the general public,

when appropriate. Furthermore, the text of the draft legal act needs to be accessible and, when appropriate, accompanied by robust explanatory material and impact assessments.¹⁴

21. In addition, the Venice Commission has previously noted that the lack of proper deliberations is an intrinsic problem of any accelerated procedure. It has been particularly critical of the rushed adoption of laws governing key aspects of the legal order without proper consultation with the opposition, experts and civil society. It has further stressed that legislation introducing significant structural changes or addressing matters of major importance for society - such as criminal justice and the fight against corruption - requires proper scrutiny and a thorough impact assessment.¹⁵

22. The Venice Commission observes that, in the present case, the legislative amendments concerned the allocation of competences and the scope of hierarchical control within the public prosecution service, the circumstances in which provisional appointments and reappointments may be used in both the judiciary and the prosecution service, the regime on the temporary assignment of public prosecutors, and the organisation of the judicial and prosecution maps (see paragraph 18 above). These matters constitute key aspects of the judiciary and the public prosecution system. It is further observed that the amendments were adopted within a very short lapse of time (see paragraphs above 10 and 14 above), without official public consultations, and that the formal opinions of the HPC and HJC were not sought during the legislative process,¹⁶ although, according to domestic law, it appears that such bodies had the competence to provide opinions on legislative amendments pertaining to their functions and to the organisation of the public prosecution service and the judiciary.¹⁷

23. During the country visit, several interlocutors stated that the legislative process had not been supported by impact assessments and had not complied with the applicable procedural rules or with the general principles of public participation and expert assessment.

24. Conversely, some members of the parliamentary majority emphasised that the draft amendments had been submitted to Parliament in mid-December and adopted at the end of January, remaining in the procedure for 22 days and being publicly available on the National Assembly's website throughout that period. While acknowledging that a public debate and consultations would have been desirable, they noted that no legal requirement for such steps exists when a bill is introduced by an individual MP. They further explained that, although the procedure was formally classified as urgent, in practice it resembled an ordinary procedure, given

¹⁴ Venice Commission, [CDL-AD\(2025\)002](#), the Updated Rule of Law Checklist, Benchmark II.A.6 on "Law-making procedures", § 34; [CDL-AD\(2023\)044](#), Georgia - Opinion on the Law on the Special Investigation Service and on the provisions of the Law on Personal Data Protection concerning the Personal Data Protection Service, §§ 28-30.

¹⁵ Venice Commission, [CDL-AD\(2023\)044](#), Georgia - Opinion on the Law on the Special Investigation Service and on the provisions of the Law on Personal Data Protection concerning the Personal Data Protection Service, § 31; [CDL-AD\(2019\)014](#), Romania – Opinion on Emergency Ordinances GEO No. 7 and GEO No. 12 amending the Laws of Justice, §§ 9-11; [CDL-AD\(2018\)021](#), Romania - Opinion on draft amendments to the Criminal Code and the Criminal Procedure Code, § 39; [CDL-AD\(2018\)017](#) Romania - Opinion on draft amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organisation, and Law No. 317/2004 on the Superior Council for Magistracy, §§ 32-34.

¹⁶ This fact was acknowledged by most interlocutors during the country visit. The High Judicial Council issued a [public statement on the amendments on 15/01/2026](#) and the High Prosecutorial Council issued a [public statement on the amendments on 22/01/2026](#).

¹⁷ According to Article 17(25) of the [Law on the High Judicial Council](#), it is the competence of the Council to "provide an opinion on amendments or additions to existing laws, or on the enactment of new laws which regulate the status of a judge, the organisation and proceedings of the court, as well as other systemic laws which the court applies or which are of significance for the performance of the judicial function". According to Article 17(26) of the [Law on the High Prosecutorial Council](#), it is the competence of the Council to "provide an opinion on amendments or supplements to existing or the adoption of new laws that regulate the position of holders of the public prosecutor's office, the organization and conduct of the public prosecutor's office, as well as other systemic laws that the public prosecutor's office applies or are of importance for the performance of the public prosecutor's office."

the 22-day timeframe. By contrast, an urgent procedure may allow a bill to be adopted within 24 hours.¹⁸

25. Regardless of the formal qualification of the legislative procedure, the Venice Commission recalls that European standards of good law-making call for a meaningful debate, pluralistic participation, and consultation with national stakeholders, particularly where key institutions and systemic issues are at stake. In such circumstances, recourse to accelerated legislative procedures must be supported by compelling justification and exceptional circumstances - neither of which appear to have been present in this case. The Commission has consistently expressed concern about the use of urgent procedures for legislative proposals introduced by individual members of the parliamentary majority rather than by the Government, as such proposals are typically not subject to ordinary quality control or impact assessments and may circumvent established consultation processes.¹⁹

26. Indeed, in the present case, the Explanatory Reports do not include an impact assessment or a financial estimate of the costs associated with the proposed changes.²⁰ Such assessments would be particularly important in relation to the establishment of new courts and prosecution offices - as envisaged in the amendments to the Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices - since these may constitute financially significant reforms of the judicial system. It should also be noted that, under the Serbian Constitution, the National Assembly adopts the public budget, "at the proposal of the Government."²¹ Accordingly, legislative initiatives entailing significant financial implications should not be left solely to the discretion of the parliament. In addition, the absence of a financial assessment of the proposed reforms may place an undue pressure on the judiciary's budget, thereby potentially undermining both the integrity and the efficiency of its functioning.²²

27. No impact assessment or justification has been provided in particular regarding the termination of all temporary assignments of prosecutors to public prosecutor's offices of special jurisdiction.²³ This measure is susceptible to produce a substantial practical impact on the continuity of ongoing prosecutorial activities in the affected offices and therefore called for a detailed and reasoned justification. This practical impact is particularly significant in the case of the TOK which, as one of only two Public Prosecutor's Offices with special jurisdiction, is responsible for investigating cases of organised crime and high-level corruption, including offences involving senior public officials such as ministers, state secretaries, and directors of public companies and institutions. In this context, it should be noted that the automatic termination of all the temporary assignments in the TOK had the potential to affect more than half of the public prosecutors in post.

28. The Venice Commission takes due note of the fact that the draft amendments were publicly available on the National Assembly's website for 22 days and further observes that they were debated, in principle and in detail, during an extraordinary session which lasted for 14 days (see paragraph 14 above). Nevertheless, the Venice Commission notes that no compelling explanation has been provided by the Serbian authorities for the choice of urgent procedure or for the lack of public debates or consultation, especially after public calls for a thorough impact

¹⁸ Under Article 168(1) of the [Rules of Procedure of the National Assembly](#), a draft law proposed under the urgent procedure may be put on the agenda of a sitting of the National Assembly if it has been submitted no later than 24 hours before the scheduled beginning of the sitting.

¹⁹ Venice Commission, [CDL-AD\(2026\)001](#), Lithuania - Opinion on draft and adopted amendments to the Law on the Lithuanian National Radio and Television § 42; [CDL-AD\(2019\)015](#), Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: a checklist, § 75; [CDL-AD\(2018\)017](#) Romania - Opinion on amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organisation, and Law No. 317/2004 on the Superior Council for Magistracy, § 33.

²⁰ Under Article 162 of the [Rules of Procedure of the National Assembly](#), an amendment shall contain, *inter alia*, and if necessary, an assessment of its impact on the budgetary resources.

²¹ According to Article 99 (11) of the [Serbian Constitution](#).

²² Venice Commission, [CDL-AD\(2025\)002](#), the Updated Rule of Law Checklist, Benchmark F.1 on the "Independence and impartiality of the judiciary", § 110.

²³ Article 12(4) of the Law on Amendments and Supplements to the Law on the Public Prosecutor's Office, accessible at [CDL-REF\(2026\)007](#).

assessment and for consultation were made by the HJC, the HPC and the TOK. In view of the above considerations, the Venice Commission finds that the manner in which the amendments were examined and adopted - within a very short timeframe, without detailed impact assessments, and in the absence of meaningful pluralistic participation and consultation with national stakeholders - is not consistent with European standards of good law-making.

29. Against this background, the Venice Commission recommends that the principles of transparency, inclusiveness, and democratic debate be applied more systematically and more rigorously throughout the subsequent phases of this legislative process and of any future process.

B. The substance of the 28 January 2026 amendments

1. The amendments to the Law on the Public Prosecutor's Office

a. Preliminary considerations

30. The Venice Commission has previously observed that there is no common international standard on the organisation of the prosecution service. However, sufficient autonomy must be ensured to shield prosecutorial authorities from undue political influence.²⁴

31. Similarly, there is no common international standard on whether the prosecution service should be organised according to a hierarchical principle, or according to the principle of individual independence, or regulating the extent to which the hierarchical principle should apply. In systems based on hierarchical subordination, lower-ranking public prosecutors are bound by the directives, guidelines and instructions issued by their superiors. In fully hierarchical models, besides general instructions, case-by-case instructions may be allowed.²⁵ While a hierarchical model is fully acceptable, the power of the higher-ranking prosecutors to issue instructions in *specific cases* must be treated with particular caution.²⁶ Since this power may be abused, certain procedural safeguards must be put in place.²⁷

32. The Serbian Constitution and the Law on the Public Prosecutor's Office have established a hierarchical model for the prosecutorial system. The system is organised vertically, by functional and geographical principle (with basic public prosecutor's offices at the lower level, higher public prosecutor's offices and, above them, appellate public prosecutor's offices), and horizontally, on the basis of specialisation (with two public prosecutor's offices of special jurisdiction tasked with investigating war crimes and organised crime). The Supreme Public Prosecutor's Office sits at the top of the system.²⁸

²⁴ Venice Commission, [CDL-AD\(2025\)002](#), the Updated Rule of Law Checklist, Benchmark F.2 on the "Independence and Impartiality of other actors in the judicial process", § 113; [CDL-AD\(2025\)054](#), Republic of Moldova - Joint Opinion of the Venice Commission and the Directorate General Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law on the Prosecution Office for Anticorruption and Combatting Organised Crime, § 18. In the Serbian prosecutorial system, the autonomy of the individual prosecutor and of prosecutorial authorities as such is laid down in Articles 2, 5, 6 and 50 of the [Law on the Public Prosecutor's Office](#), in pursuance of Article 155 of the [Serbian Constitution](#).

²⁵ Venice Commission, [CDL-AD\(2022\)042](#), Serbia - Opinion on Two Draft Laws Implementing the Constitutional Amendments on the Prosecution Service §§ 93-94.

²⁶ Venice Commission, [CDL-AD\(2022\)042](#), Serbia - Opinion on Two Draft Laws Implementing the Constitutional Amendments on the Prosecution Service § 95.

²⁷ The Committee of Ministers' Recommendation [Rec\(2000\)19](#), on the role of public prosecution in the criminal justice system, states, *inter alia*, that "[a]ll public prosecutors enjoy the right to request that instructions addressed to him or her be put in writing" (point 10). In this regard, it is noted that Article 17(3) of the Law on the Public Prosecutor's Office provides that a mandatory instruction in a specific case must be reasoned and issued in writing.

²⁸ Articles 155-157 of the [Serbian Constitution](#) and Articles 13-17 of the [Law on the Public Prosecutor's Office](#). Venice Commission, [CDL-AD\(2022\)042](#), Serbia - Opinion on Two Draft Laws Implementing the Constitutional Amendments on the Prosecution Service § 92.

33. Article 157 of the Serbian Constitution lays down the fundamental framework governing both general mandatory instructions and those issued in specific cases.²⁹ At the infra-constitutional level, these provisions are further developed in Articles 16 to 22 of the Law on the Public Prosecutor's Office.³⁰ In particular, Articles 18 to 22 regulate a range of hierarchical mechanisms, including those relating to mandatory instructions, as well as decisions on substitution and devolution.³¹

b. The competence to decide on objections to hierarchical decisions

34. Under the 28 January 2026 amendments, the competence to decide on objections to instructions and to decisions on devolution and substitution is attributed to the Chief Public Prosecutor of the immediately higher-ranking Public Prosecutor's Office.³² Previously, this competence lay with a specialised Commission of the High Prosecutorial Council, composed of five members elected from among public prosecutors for a five-year term, without the possibility of reappointment.³³

35. According to the Explanatory Report, this previous mechanism was considered inadequate because it did not specify the hierarchical level within the public prosecution from which the members of the Commission were to be appointed. This apparently led to situations in which objections could be decided by prosecutors holding a lower hierarchical rank than that of the Chief Public Prosecutor who had issued the contested decision, thus undermining the established hierarchical order.³⁴ During the country visit, several interlocutors associated with the ruling majority emphasized that the hierarchical review of objections is in line with European standards and pointed that the abolished Commission did not work effectively and slowed down the work of prosecutors.

36. In contrast, other interlocutors emphasised that the Commission operated efficiently and had already developed a substantial body of case-law through its decisions. They further stressed that safeguarding the autonomy of prosecutors required the availability of an effective remedy to assess the legality of instructions. They argued that the Commission was composed exclusively of high-ranking prosecutors, namely from the appellate and supreme levels. Representatives of civil society organisations, for their part, noted that in politically or publicly sensitive cases, mandatory instructions often originate from higher levels of the hierarchy and that, in such context, the Commission enhanced impartiality.

37. The Venice Commission at the outset acknowledges the authorities' concern to ensure the efficiency of the system. Changes may therefore be called for. These changes should ensure

²⁹ Article 157(1) of the [Serbian Constitution](#) provides that the Supreme Public Prosecutor shall issue general mandatory instructions for the conduct of all Chief Public Prosecutors in order to achieve legality, efficiency and uniformity in the conduct of proceedings. Article 157(2) allows higher-ranking Chief Public Prosecutors to issue binding instructions to lower-ranking Chief Public Prosecutors on how to act in a specific case, if there is a doubt as to the efficiency and legality of their actions. Under Article 157(3), a Chief Public Prosecutor may issue a binding instruction to a public prosecutor regarding their work and conduct. Lastly, Article 157(5) establishes that if a lower-ranking Chief Public Prosecutor or a public prosecutor considers a mandatory instruction to be illegal or unfounded, they have the right to file an objection in accordance with the law.

³⁰ According to Article 17 of the [Law on the Public Prosecutor's Office](#), a higher-ranking chief public prosecutor may issue mandatory instructions to a lower-ranking chief public prosecutor on how to proceed in an individual case. Furthermore, a chief public prosecutor may issue mandatory instructions to a public prosecutor on specific actions and procedures to be followed in an individual case.

³¹ Article 18 of the [Law on the Public Prosecutor's Office](#) governs the procedure by which lower-ranking Chief Public Prosecutors and public prosecutors may object to instructions they consider illegal or unfounded. Article 20 regulates devolution, namely the procedure whereby a higher-ranking Public Prosecutor's Office assumes and carries out acts falling within the competence of a lower-ranking office. Article 21 regulates substitution, that is, the procedure by which a higher-ranking Chief Public Prosecutor authorises a lower-ranking Public Prosecutor's Office to act in matters within the jurisdiction of another lower-ranking office, where the latter is prevented from acting for legal or factual reasons.

³² Articles 18 and 22 of the [Law on the Public Prosecutor's Office](#).

³³ According to the former version of Article 22 of the [Law on the Public Prosecutor's Office](#) and to the former versions of Articles 17(7) and 19(1) of the [Law on the High Prosecutorial Council](#).

³⁴ [CDL-REF\(2026\)009](#), pp 3-4.

that the hierarchical influence over the prosecutors does not unduly limit their autonomy, while ensuring the effectiveness of the prosecution service.

38. The Commission has previously expressed the view that the question of whether an instruction is legal is a question of law and should thus be subject to a legal appeal if necessary. It has also stated that the review of binding instructions should be ensured by a court or by an independent collegial body, such as a prosecutorial council.³⁵ This is because a body external to the prosecutorial chain of command is better placed to deliver objective and transparent decisions, thereby reducing the risk of undue hierarchical pressure on the prosecutor lodging the objection and mitigating the risk that prosecutors may be discouraged from challenging unlawful or unfounded instructions. The non-hierarchical mechanism which had been introduced in Serbia was mindful of this risk.

39. The proposed change, to the contrary, does not directly address the concerns and risks outlined in the preceding paragraph. The Venice Commission underscores that an independent collegial body tasked with the non-hierarchical review of binding instructions and decisions should be provided with sufficient resources to ensure the efficiency of its decision-making, that its members should be selected through an open and transparent procedure based on objective criteria, and that the legislative framework should clearly define the eligibility and rank of its members. It is also essential to specify the applicable scope of review in order to safeguard the operational discretion of hierarchically superior prosecutors. Accordingly, only objections to manifestly unreasonable or unlawful instructions and decisions should fall within the body's mandate.³⁶

40. Against this background, the Venice Commission therefore recommends reverting to a non-hierarchical mechanism for reviewing objections against hierarchical decisions, namely reallocating the competence to decide on such objections to a commission of the HPC.

c. The competence to decide on objections to the annual work programme

41. Article 39 of the Law on the Public Prosecutor's Office regulates the procedure for approving the plan, work program, and annual schedule of work of a Public Prosecutor's Office. Under the recent amendments, the competence to decide on objections to the annual schedule of work has been transferred from the HPC to the Chief Public Prosecutor of the immediately higher-ranking office. If the latter fails to take a decision within 30 days, the objection is deemed to have been rejected.³⁷ Previously, such inaction resulted in the tacit acceptance of the objection. According to the Explanatory Report the proposed solution is in line with Article 15 of the Law on the Public Prosecutor's Office as it better safeguards the established hierarchical structure of the public prosecution service.³⁸

42. The Venice Commission considers that the HPC – a collegial body, external to the strict prosecutorial hierarchy and endowed with constitutional status³⁹ – was well placed to deliver objective and transparent decisions on objections lodged by public prosecutors against decisions on the annual work programme. Moreover, the provision whereby the failure of the competent Chief Public Prosecutor to decide on an objection within the prescribed time limit results in its tacit rejection effectively rewards inaction and may lead to objections being dismissed without any stated reasons.

³⁵ Venice Commission, [CDL-AD\(2010\)040](#), Report on European Standards as regards the Independence of the Judicial System: Part II – The Prosecution Service, §§ 59-60; [CDL-AD\(2025\)002](#), the Updated Rule of Law Checklist, Benchmark F.2 on "Independence and impartiality of other actors in the judicial process", footnote 145.

³⁶ Venice Commission, [CDL-AD\(2022\)042](#), Serbia – Opinion on Two Draft Laws Implementing the Constitutional Amendments on the Prosecution Service, § 100.

³⁷ Articles Article 39(3) and Article 39(7) of the [Law on the Public Prosecutor's Office](#).

³⁸ [CDL-REF\(2026\)009](#), p 4.

³⁹ According to Article 162(1) of the [Serbian Constitution](#), the "[HPC] shall be an independent state body that ensures and guarantees the independence of the Public Prosecutor's Office, the Supreme Public Prosecutor, Chief Public Prosecutors and Public Prosecutors."

43. Accordingly, the Venice Commission recommends reallocating this competence to the HPC. Furthermore, it is important that a failure to decide on an objection result in its tacit acceptance rather than in its tacit rejection.

d. The prior consent of the Ministry of Justice vis-à-vis international cooperation

44. Under the recent amendments, the Supreme Public Prosecutor's Office is now required to obtain the prior consent of the Ministry of Justice for the performance of "tasks pertaining to the international cooperation of significance for the public prosecutor's office."⁴⁰ According to the Explanatory Report, this change "is necessary because international cooperation may entail the assumption of international obligations that could have implications for the Republic of Serbia and its international position. Accordingly, such cooperation must be conducted with the consent of the ministry in charge of justice".⁴¹

45. During the country visit, the delegation was informed by the Ministry of Justice that this provision concerns the establishment of cooperation agreements and other operational arrangements between the Serbian Supreme Public Prosecutor's Office and its international counterparts. It was further noted that, in certain cases, the Ministry did not have prior knowledge of such agreements.

46. In contrast, other interlocutors noted that the language of the provision in question was overly broad, raising doubts as to whether it could extend to matters of international mutual legal assistance. They argued that, under a broad interpretation, the Ministry of Justice might be seen as being required to authorise the direct exchange of sensitive information between prosecutorial authorities. Nonetheless, the representatives of the Supreme Public Prosecutor's Offices acknowledged that a higher level of cooperation with the Ministry of Justice could be achieved through a memorandum of understanding establishing a general duty to notify the Ministry of new operational agreements and setting out clear terms for policy alignment.

47. The Venice Commission is of the opinion that the prompt and direct exchange of information and operational coordination between public prosecutors' offices of different countries is essential for effectively combating transnational criminal activity and organised crime. In this context, the Committee of Ministers of the Council of Europe has recommended that, notwithstanding the role of other authorities in matters of international judicial cooperation, direct contacts between public prosecutors of different countries should be promoted, either within the framework of existing international agreements or, where such agreements do not exist, on the basis of operational arrangements.⁴²

48. While it is not uncommon for the Ministry of Justice of a country to have competences in the field of international criminal cooperation, the Venice Commission considers that the language of the provision in question is too vague and open-ended to provide the required degree of precision and certainty. While the Commission acknowledges that the Ministry of Justice has a legitimate interest in being informed of relevant cooperation and operational agreements concluded by the Supreme Public Prosecutor's Office with its international counterparts, within the framework of existing mutual legal assistance treaties, it finds that the provision is not narrowly tailored to that legitimate aim. Instead, it may be interpreted in a manner that could undermine the operational autonomy and efficiency of the prosecution service. Moreover, it should be borne in mind that Prosecutor General's Offices and equivalent institutions may participate in international networks or consultative groups that facilitate the exchange of best practices, thereby enhancing capacity-building and professional development. Such engagement typically requires the active and autonomous involvement of professionals from different jurisdictions and does not give rise to any international commitments for States.

⁴⁰ Article 31(4) of the [Law on the Public Prosecutor's Office](#).

⁴¹ [CDL-REF\(2026\)009](#), p 4.

⁴² Recommendation of the Committee of Ministers, [REC\(2000\)19](#) - The Role of Public Prosecution in the Criminal Justice System, 6 October 2000, §§ 37-38.

49. The Venice Commission further notes that several interlocutors pointed out that enhanced cooperation between the Supreme Public Prosecutor's Office and the Ministry of Justice regarding international cooperation activities could also be achieved through a memorandum of understanding between the two institutions.

50. In light of these considerations, the Venice Commission recommends amending the new competence of the Ministry of Justice in granting consent for international cooperation tasks conducted by the Supreme Public Prosecutor's Office. Instead of requiring prior consent, the law should specify the conditions under which the Supreme Public Prosecutor's Office has a duty to notify the Ministry of Justice of cooperation agreements it plans to enter into with international counterparts within the framework of existing treaties on mutual legal assistance.

e. The wider reliance on provisional appointments and reappointments

51. Under the 28 January 2026 amendments, if the position of a Chief Public Prosecutor becomes vacant, the HPC may appoint an acting Chief Public Prosecutor for a period of up to three years, with the possibility of reappointment.⁴³ Under the former version of the law, such provisional appointments were limited to one year and could not be renewed. Similarly, under the recent amendments, Chief Public Prosecutors whose six-year term of office has expired may be re-elected⁴⁴ to the same position within the same Public Prosecutor's Office.⁴⁵ Previously, the re-election of Chief Public Prosecutors was not possible.

52. According to the Explanatory Report, "the solution is proposed in order to prevent the blockage of the work of the Public Prosecution, particularly in smaller public prosecutions with a limited number of public prosecutors".⁴⁶

53. During the country visit, several interlocutors associated with the ruling majority stated that provisional appointments and reappointments are aimed at promoting stability in positions and at preventing blockages of work. According to certain accounts, in certain cases, there are no candidates available to fill permanent vacant positions, and thus provisional appointments are made necessary. Conversely, other interlocutors suggested that a more frequent use of provisional appointments may make prosecutors more susceptible to external influence, particularly where the renewal of such appointments is at stake.

54. It is observed that, if interpreted literally, the wording of the provisions in question suggests that the provisional appointment of acting Chief Public Prosecutors may be renewed indefinitely, and that Chief Public Prosecutors may be repeatedly reappointed to the same Public Prosecutor's Office. While the extension of provisional appointments and successive regular reappointments may be regarded as a practical response to a shortage of eligible candidates for permanent positions, the Venice Commission is concerned that such an approach risks entrenching leadership positions within the prosecution service. This would run counter to the principle of rotational leadership, based on fixed terms of office for Chief Public Prosecutors, as reflected in Article 80(2) of the Law on the Public Prosecutor's Office.

55. Furthermore, the expansion of provisional appointments may effectively lead to a circumvention of the system of regular appointments which implies public competitions, transparency, merit-based selection and equal access to key prosecutorial positions. In addition, reliance on renewable provisional mandates may further increase the dependence of these key officeholders on the appointing authority. In this context, prosecutors seeking reappointment

⁴³ Article 41(2) of the [Law on the Public Prosecutor's Office](#).

⁴⁴ It should be noted the "elections" regime set out in Articles 80-98 of the [Law on the Public Prosecutor's Office](#) corresponds, in substance, to the public competition procedures for permanent appointments within the prosecution service.

⁴⁵ Article 62(1) of the [Law on the Public Prosecutor's Office](#).

⁴⁶ [CDL-REF\(2026\)009](#), p 4.

could be incentivised to act in a manner aimed at securing its favour, or at least be perceived as doing so,⁴⁷ which would undermine their functional autonomy.

56. Given the above considerations - and while acknowledging the challenges faced by the authorities in filling permanent positions - the Venice Commission considers that the exceptional nature of provisional appointments was better safeguarded under the previous version of the law, which limited such appointments to a maximum period of one year, without the possibility of renewal, and precluded the reappointment of Chief Public Prosecutors to the same office. Accordingly, the Venice Commission recommends amending the legal framework with a view to (i) limiting provisional appointments of Chief Public Prosecutors to a single, non-renewable term of no more than one year, and (ii) excluding the possibility of reappointing Chief Public Prosecutors to the same office after the expiry of the initial term.

f. The regime of temporary assignments

57. Article 69 of the Law on the Public Prosecutor's Office sets out the rules applicable to the temporary assignments of public prosecutors to other prosecution offices. Under the new version of Article 69(1), public prosecutors may, with their written consent, be temporarily assigned to other public prosecutor's office of the same, of a higher, or of a lower level, for a maximum period of three years, with the possibility of reassignment to that same office. Previously, public prosecutors could not be assigned to a higher-level public prosecutor's office and could not be reassigned to the same office once the three-year period had expired.

58. Furthermore, pursuant to the new version of Article 69(4), the competence to decide on temporary assignments is transferred from the Supreme Public Prosecutor to the HPC. According to the Explanatory Report, with the aim of "ensuring more efficient functioning of the Public Prosecution and better management of its human resources, the possibility of repeated secondment of a public prosecutor to another Public Prosecution for a period of up to three years is proposed. Given that this concerns a status-related matter affecting the position of public prosecutors, it is proposed that the decision on secondment be made by the High Prosecutorial Council, rather than by the Prosecutor General, as this is more appropriate in view of the competences of these two authorities."⁴⁸

59. Lastly, pursuant to Article 12(4) of the law amending the Law on the Public Prosecutor's Office, all public prosecutors temporarily assigned to a public prosecutor's office of special jurisdiction shall have such temporary assignments terminated by 9 March 2026.⁴⁹

- *As regards the extension of the use of temporary assignments*

60. Under the recent amendments, public prosecutors may now be repeatedly temporarily assigned to the same public prosecutor's office once the initial three-year term expires. Furthermore, the current change allows for temporary assignments to higher-level positions, accompanied by increased remuneration.

61. The Venice Commission has previously acknowledged that the possibility of a temporary assignment is a necessary managerial tool for any organisation. However, it has also expressed concern that this possibility may be used not solely as a temporary and exceptional solution, but rather as a standard instrument to address systematic institutional shortcomings. In the Commission's view, temporary assignments are not the proper way to solve such structural

⁴⁷ Compare Venice Commission, [CDL-AD\(2010\)040](#), Report on European Standards as regards the Independence of the Judicial System: Part II – The Prosecution Service, § 37.

⁴⁸ [CDL-REF\(2026\)009](#), p 4.

⁴⁹ Article 12(4) of the amending law stated that such temporary assignments should be terminated "within 30 days from the entry into force of this Law". This means that all public prosecutors seconded to the TOK would be sent back to their public prosecution offices of origin within 30 days after 7 February 2026, i.e., by 9 March 2026.

issues. Structural shortcomings should instead be addressed through regular appointments and the filling of vacancies, a competence that lies with the HPC.⁵⁰

62. The Venice Commission shares the concerns expressed by several stakeholders that such assignments may, in practice, operate as a parallel system of promotion, potentially favouring certain prosecutors while circumventing standard competitive procedures based on objective and merit-based criteria. The repeated and structural use of this regime may thus create undue insecurity for the prosecutors concerned, entail a risk of arbitrary application, and potentially give rise to various forms of pressure.⁵¹

63. In light of the risks outlined above, the Venice Commission recommends removing the possibility of renewing temporary assignments and limiting such assignments to prosecutorial positions of the same level. Within such a framework, recourse to these assignments would more clearly appear as strictly exceptional and would be less likely to be used as a routine management tool to circumvent regular appointment procedures.

- *As regards the transfer of competence on temporary assignments to the HPC*

64. The Venice Commission considers that the transfer of the competence to decide on temporary assignments from the Supreme Public Prosecutor to the HPC to be an acceptable solution, consistent with the role of the HPC in the domestic institutional framework. As indicated above, the HPC is a collegial body, external to the strict prosecutorial hierarchy and endowed with constitutional status and is therefore better placed to deliver objective and transparent management decisions regarding the allocation of prosecutorial staff, including those in response to circumstantial shortages or inefficiencies.

65. At the same time, the delegation was also informed of a prolonged blockage in the Council's work, stemming from difficulties in reaching the required qualified majority for the adoption of decisions.⁵² This situation has reportedly led to the repeated use of temporary assignments, as no consensus can be reached on regular appointments. Given the central role of the HPC in filling such vacancies, the Venice Commission urges the Council and the competent authorities to do their utmost to ensure that the necessary appointments to vacant prosecutorial positions are carried out, thereby ensuring regular, stable and secure appointments in the public prosecution service. However, should the HPC continue to be unable to adopt timely decisions on the temporary allocation of prosecutorial staff due to continued blockage, it is recommended that this managerial competence be attributed to the Supreme Public Prosecutor.

- *As regards the blanket termination of temporary assignments*

66. Regarding the termination of all temporary assignments in the offices of special jurisdiction by a set date, the parliamentary majority referred to the absence of any structured exchange of information with the prosecution offices, in particular the TOK, regarding their activities and results, which, in their view, gave rise to legitimate concerns in Parliament as to the overall efficiency of these bodies and the performance of individual prosecutors seconded to those offices.

67. The Venice Commission recalls that states are under a positive obligation to ensure that their criminal systems are effective in combating serious crime,⁵³ and that international standards

⁵⁰ Venice Commission, [CDL-AD\(2022\)042](#), Serbia - Opinion on Two Draft Laws Implementing the Constitutional Amendments on the Prosecution Service §§ 105-107.

⁵¹ *Ibid.*

⁵² According to Article 20(1) of the [Law on the High Prosecutorial Council](#), a qualified majority of 8 out of 11 votes is required for the adoption of decisions.

⁵³ Venice Commission, [CDL-AD\(2018\)021](#), Romania - Opinion on draft amendments to the Criminal Code and the Criminal Procedure Code, § 31.

require the establishment of institutional specialisation in the fight against corruption.⁵⁴ The Commission has previously stated that organisational changes in the prosecution service should be carried out in such a manner as to not cause any problems regarding the administration of justice and the treatment of prosecutors who were initially in charge. It is crucial that the principle of autonomy of individual prosecutors always be respected.⁵⁵ The Commission has further emphasised that in countries where an effective specialised structure with a proven track record already exists, it seems difficult to justify the exclusion of prosecutors from the remit of such structures, especially in a manner that may dissipate resources and entail the allocation of non-specialised prosecutors to investigate corruption offences.⁵⁶

68. In light of the above considerations, the Venice Commission finds it very concerning that a provision⁵⁷ in the law amending the Law on the Public Prosecutor's Office – introduced only at the last stage of the legislative process, during the parliamentary debate⁵⁸ - provides for the blanket termination of all temporary assignments to the prosecution offices of special jurisdiction, with effect from 9 March 2026. This measure has affected the TOK in particular, with the risk of disrupting ongoing criminal investigations and judicial proceedings, given the volume and technical complexity of the cases handled by this special office. The Venice Commission was informed that, although understaffed, the TOK has been performing efficiently, with a conviction rate of 85,1% in criminal proceedings.⁵⁹

69. The Venice Commission was further informed that on 6 March 2026, the HPC decided to renew the temporary assignments of seven out of the eleven prosecutors serving at TOK, thereby averting the legal effects that would otherwise have taken place by 9 March 2026 in respect of those seven prosecutors. However, the temporary assignments of the remaining four came to an end. The representatives of the TOK informed the delegation that, following the departure of these four prosecutors, several major criminal cases had been jeopardised, with inevitable serious delays in investigative proceedings and potential postponements of court hearings.

70. The Venice Commission is of the view that, rather than resorting to a blanket termination of these temporary assignments, further assessments should have been carried out. Such assessments should have examined, at the domestic level, among other things: the current performance of the TOK and the Public Prosecutor's Office for War Crimes; the financial resources required to enhance their efficiency; the logistical risks associated with the terminations; and whether the proposed measure was justified in light of these findings.⁶⁰ It is further noted that, despite the HPC's decision of 6 March 2026, the TOK considers the impact on ongoing investigations to remain significant.

⁵⁴ Venice Commission, [CDL-AD\(2014\)041](#), Montenegro - Interim Opinion on the Draft Law on Special State Prosecutor's Office of Montenegro, § 17.

⁵⁵ *Mutatis mutandis*, Venice Commission, [CDL-AD\(2022\)003](#) - Romania - Opinion on the draft law on the dismantling of the section for investigating criminal offences within the judiciary, § 35; [CDL-AD\(2021\)019](#) - Romania - Opinion on the draft law on the dismantling of the section for investigating criminal offences within the judiciary §§ 37, 42.

⁵⁶ Venice Commission, [CDL-AD\(2025\)054](#) - Republic of Moldova - Joint Opinion of the Venice Commission and the Directorate General Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law on the Prosecution Office for Anticorruption and Combatting Organised Crime, § 39; Venice Commission, [CDL-AD\(2022\)003](#) - Romania - Opinion on the draft law on the dismantling of the section for investigating criminal offences within the judiciary, § 18.

⁵⁷ During the country visit, the delegation was informed by several interlocutors that Article 12(4) of the Law on Amendments and Supplements to the Law on the Public Prosecutor's Office (available at [CDL-REF\(2026\)007](#)) was not part of the initial draft amendments, having been included only at the last moment, when the draft amendments were being discussed in a parliamentary session.

⁵⁸ During the country visit, the delegation was informed by several interlocutors that Article 12(4) of the Law on Amendments and Supplements to the Law on the Public Prosecutor's Office (available at [CDL-REF\(2026\)007](#)) was not part of the initial draft amendments, having been included only at the last moment, when the draft amendments were being discussed in a parliamentary session.

⁵⁹ Following the meeting held with the delegation, representatives of the TOK sent a document outlining the performance metrics of this office. According to this document, the conviction rate is of 85,1% and criminal proceedings are currently ongoing against 1,112 individuals. Annual reports on the work of the TOK are available on the [website of the Supreme Public Prosecutor's Office](#), as a part of annual reports on work of the public prosecution service.

⁶⁰ Compare Venice Commission, [CDL-AD\(2025\)054](#) - Republic of Moldova - Joint Opinion of the Venice Commission and the Directorate General Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law on the Prosecution Office for Anticorruption and Combatting Organised Crime, § 62.

71. In addition, it should be noted that the prosecutors who had been temporarily assigned to prosecutor's offices of special jurisdiction enjoyed security of tenure for the duration of their assignment. Accordingly, any early termination of such assignments should have been based on the clearly defined grounds previously established by law. By contrast, the amending law in question directly interfered with their mandates without compelling reasons and safeguards, as noted above. In this respect, the Venice Commission has consistently held that the early termination or transfer of prosecutors benefiting from security of tenure must be accompanied by appropriate safeguards, including the obligation to provide reasons in individual cases and the availability of effective judicial review.⁶¹ No such safeguards appear to have been provided in the context of the implementation of these legislative arrangements.

72. Therefore, the Venice Commission considers that the provision imposing a blanket, date-certain termination of all temporary assignments – without any case-by-case assessment, transitional safeguards, or stated justification – failed to respect the security of tenure of the affected prosecutors.⁶² Accordingly, the public prosecutors whose temporary assignments were prematurely terminated as a result of Article 12(4) of the law amending the Law on the Public Prosecutor's Office should be reinstated until it is possible to replace them with regular prosecutors, with due respect for their procedural rights.

73. While the Venice Commission acknowledges the legitimate concern that successive temporary assignments could be misused as a means of exerting undue pressure on prosecutors, it recalls that structural or systematic reforms should be implemented gradually, with thorough assessments and proper scrutiny, and without jeopardising the performance of existing public prosecutor's offices or the continuity of ongoing criminal investigations. In this context, the Commission considers that the law should provide for a mechanism to ensure that the positions occupied by temporarily assigned prosecutors in the TOK can be filled by means of regular appointments. The Venice Commission thus recommends that such mechanisms be included in the law and that the authorities take all necessary steps to ensure that the current temporary assignments be gradually replaced by regular appointments.

2. The amendments to the Law on Organisation and Jurisdiction of Government Authorities for Suppression of Cybercrime

74. Under the 28 January 2026 amendments, the institutional status of the Special Department for Cybercrime was clarified. It was confirmed that the department is not a public prosecutor's office of special jurisdiction, but rather a specialised department within the Higher Public Prosecutor's Office in Belgrade. According to the Explanatory Report, this amendment "more precisely defines the status of this Department, since in this specific case, it is a department of the Higher Public Prosecution Office in Belgrade, rather than a special public prosecution office." Thus, it was deemed "necessary to amend this Law in order to resolve problems (...) which have arisen due to the imprecision of applicable legal provisions."⁶³

75. With this aim, the Head of the Special Department is now appointed by the Chief Public Prosecutor of the Higher Public Prosecutor's Office in Belgrade.⁶⁴ Previously, the department was led by a Special Public Prosecutor appointed by the Supreme Public Prosecutor. The amendments also establish that the Head of the Special Department for Cybercrime is accountable to the Chief Public Prosecutor of the Higher Public Prosecutor's Office in Belgrade,

⁶¹ Compare, Venice Commission, [CDL-AD\(2024\)034](#), Poland – Opinion on the Draft Amendments to the Law on the Public Prosecutor's Office, § 90, and [CDL-AD\(2013\)025](#), Ukraine – Joint Opinion on the Draft Law on the Public Prosecutor's Office, § 149.

⁶² Compare, Venice Commission, [CDL-AD\(2021\)012](#), Montenegro - Opinion on the draft amendments to the Law on the State Prosecution Service and the draft law on the Prosecutor's Office for organised crime and corruption § 28-29, 58.

⁶³ [CDL-REF\(2026\)009](#), p. 7.

⁶⁴ Articles 5(1) and 5(2) of the [Law on the Organisation and Jurisdiction of State Authorities for the Suppression of Cybercrime](#).

who is now responsible for issuing regulations on the organization and operation of the department.⁶⁵ Under the previous regulation, the department's head held the rank of Chief Public Prosecutor and there were no provisions specifying accountability to the Chief Public Prosecutor of the Higher Public Prosecutor's Office in Belgrade. Following the entry into force of these amendments, the Chief Public Prosecutor of the Higher Public Prosecutor's Office in Belgrade has appointed a new Head of the Special Department.⁶⁶

76. During the country visit, certain stakeholders welcomed the recent legislative clarification, as the previous framework was ambiguous. Others pointed to the inconsistency of placing the Special Department for Cybercrime, which has nationwide jurisdiction, under the authority of the Higher Public Prosecutor's Office in Belgrade, with a limited territorial jurisdiction.

77. The Venice Commission has previously recognised the advantages of the recourse to specialised prosecutors for the investigation of particularly complex or technical offenses, as is the case of cybercrime.⁶⁷ While the choice of organisational models for combating cybercrime ultimately falls within the policy discretion of each State, the Commission considers that the establishment of specialised departments with a degree of operational autonomy offers clear benefits. The offences in question are highly specialised and are more effectively investigated and prosecuted by dedicated, trained personnel. Provided that specialised prosecutors remain subject to appropriate judicial control, such systems present significant advantages and raise no general concerns.⁶⁸ However, the key requirements for a proper and effective exercise of functions by specialised prosecution bodies include an adequate level of structural and operational autonomy, involving legal and institutional arrangements to prevent political or other influence, accountability and transparency; specialised and trained personnel, and adequate resources and powers.⁶⁹

78. Against this background – and while acknowledging the authorities' legitimate objective of ensuring a clear, precise, and foreseeable legal framework – the Venice Commission considers that the direct management of, and hierarchical subordination to, the Higher Public Prosecutor's Office in Belgrade does not appear to be suited to ensuring the degree of structural and operational autonomy required by the Special Department for Cybercrime, given the technical and specialised complexity of its work. Moreover, the Commission finds it suboptimal, from an organisational point of view, that a special department with nationwide jurisdiction is hierarchically subordinate and accountable to a Higher Public Prosecutor's Office with a limited municipal jurisdiction.⁷⁰

79. In light of the above, the Venice Commission recommends that greater structural and operational autonomy be granted to the Special Department for Cybercrime, in line with the technical complexity of its mandate and the national character of its jurisdiction. The Commission notes that such enhanced autonomy could be achieved through various means. For example, this Special Department could be integrated into the Supreme Public Prosecutor's Office, a

⁶⁵ Articles 6(1) and 6(2) of the [Law on the Organisation and Jurisdiction of State Authorities for the Suppression of Cybercrime](#).

⁶⁶ In accordance with Article 7(1) of the [Law on the Organisation and Jurisdiction of State Authorities for the Suppression of Cybercrime](#).

⁶⁷ Venice Commission, [CDL-AD\(2018\)017](#), Romania – Opinion on Amendments to Law No.303/2004 on the State of Judges and Prosecutors, Law No. 304/2004 on Judicial Organisation, and Law No. 317/2004 on the Superior Council for Magistracy, § 89.

⁶⁸ Compare Venice Commission, [CDL-AD\(2014\)041](#), Interim Opinion on the Draft Law on Special State Prosecutor's Office of Montenegro, §§ 17, 18 and 23.

⁶⁹ Compare Venice Commission, [CDL-AD\(2014\)041](#), Interim Opinion on the Draft Law on Special State Prosecutor's Office of Montenegro, § 18.

⁷⁰ At the international level, it is observed that cybercrime units are generally placed inside structures with a national or federal character, such as a General Directorate of the Police, a National Bureau of Investigation, an Organised Crime Department or the Federal Police. See, in this regard, [Specialised cybercrime units - Good practice study](#), EU/COE Joint Project on Regional Cooperation against Cybercrime, 9 November 2011, p. 9; [Cybercrime strategies, procedural powers and specialised institutions in the Eastern Partnership region - State of play](#), C-PROC Discussion Paper, 23 June 2017, p. 39.

structure with nationwide jurisdiction.⁷¹ Alternatively, it could be granted the status of a public prosecutor's office of special jurisdiction.⁷²

3. The amendments to the Law on Judges

80. Under the recent amendments, the five-year term of office of court presidents may now be renewed once.⁷³ Prior to this amendment, reappointment to the same court was not possible. According to the corresponding Explanatory Report “[t]he proposed solution is grounded in the need to ensure continuity in the exercise of one of the most significant managerial functions within the judicial system. The president of a court is not merely the formal head of the court but exercises extensive competences of key importance for the court's internal functioning.(...) Accordingly, the introduction of the possibility of one additional term ensures better institutional stability, consistency and accountability in the performance of the function of court president, while maintaining the control role of the High Judicial Council in deciding on re-election.”⁷⁴

81. During the country visit, the delegation was informed by the Minister of Justice that approximately 42% of courts in Serbia are located in small towns, where the number of judges is very limited, and sometimes as few as two. Given that, in such circumstances, there have been cases where no candidates are available for the position of court president, it was considered necessary to allow for the possibility of re-election.

82. Under Articles 74 and 76 of the Law on Judges, a court president is responsible for managing and organising the court's work, while also performing judicial duties. The Venice Commission has previously observed that, within the Serbian judicial system, court presidents have broad competences.⁷⁵ As noted in paragraph 54 above, this raises concerns that such an approach may lead to an excessive concentration of managerial authority in the hands of certain judges over extended periods, potentially resulting in the crystallisation or entrenchment of leadership positions within the judiciary. While acknowledging the practical challenges faced by the authorities in filling leadership positions within the judiciary, the Venice Commission reiterates that the preferable approach would be to provide as a rule for non-renewable fixed terms of office for court presidents, in order to prevent an undue concentration of power in the same individuals.

83. However, in light of the issue mentioned in paragraph 79 above, the Venice Commission considers that a narrowly tailored exception could be provided for courts in small towns with a limited number of judges, where the renewal of the mandate of court presidents could be permitted. This would ensure that reappointment remains clearly the exception rather than the general rule. Nonetheless, even in such cases, it would be advisable, in the long term, to consider introducing certain limitations to avoid the entrenchment of leadership positions in small jurisdictions.

4. The amendments to the Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices

84. Under the 28 January 2026 amendments, the Third Basic Court in Belgrade for the territory of the urban municipalities of Zemun, Novi Beograd and Surčin is to be abolished, and two new courts are to be established: the Third Basic Court in Belgrade for the territory of the urban

⁷¹ According to Articles 3 and 13(3) of the [Law on the Public Prosecutor's Office](#), the Supreme Public Prosecutor's Office is established for the territory of the Republic of Serbia, as the highest public prosecution authority in the country.

⁷² According to Article 13(2) of the [Law on the Public Prosecutor's Office](#), additional public prosecutor's office of special jurisdiction – besides the TOK and the Public Prosecutor's Office for War Crimes - may be established by law.

⁷³ Article 77(1) of the [Law on Judges](#).

⁷⁴ [CDL-REF\(2026\)009](#), pp. 9-10.

⁷⁵ Venice Commission, [CDL-AD\(2022\)030](#), Serbia - Opinion on Three Draft Laws Implementing the Constitutional Amendments on the Judiciary, §§ 26-27; [CDL-AD\(2022\)043](#), Serbia - Follow-up Opinion on three revised draft Laws implementing the Constitutional Amendments on the Judiciary of Serbia, § 16.

municipality of Novi Beograd and the Fourth Basic Court in Belgrade for the territory of the urban municipalities of Zemun and Surčin.⁷⁶

85. Likewise, the Third Basic Public Prosecutor's Office in Belgrade is also to be abolished and two new offices to be established: the Third Basic Public Prosecutor's Office in Belgrade for the territory of the urban municipality of Novi Beograd and the Fourth Basic Public Prosecutor's Office in Belgrade for the territory of the urban municipalities of Zemun and Surčin.

86. According to the final provisions of the amending law, until 1 July 2026, the HJC must effect the permanent transfer of judges and lay judges to the new basic courts, and appoint acting presidents thereto.⁷⁷ Similarly, until that date, the HPC must adopt a decision regarding the continuation of the Chief Public Prosecutor and the public prosecutors in the two new basic public prosecutor's offices which will have assumed the jurisdiction of the abolished Third Basic Public Prosecutor's Office in Belgrade, and appoint acting Chief Public Prosecutors thereto.⁷⁸

87. According to the Explanatory Report, these changes were deemed necessary to enhance the efficiency, accessibility and functionality of the judicial system and constitute a step towards alleviating the caseload burden of courts and public prosecutor's offices in Belgrade, particularly of the Third Basic Court in Belgrade, which is known to have an excessive workload. Furthermore, reference is also made to the anticipated increase in caseload in the territory of Surčin, as a consequence of the Expo 2027 project, given that a "rise in administrative disputes relating to building permits, expropriation and urban planning instruments" and "an increase in civil and non-contentious cases arising from rapid urbanisation and investment activities" are expected.⁷⁹

88. During the country visit, several stakeholders noted that, although the current Third Basic Court in Belgrade is indeed overburdened, it had not been demonstrated that the forthcoming Expo 2027 project will lead to an increase in litigation, this assumption remaining largely speculative. Concerns were also expressed that, as a result of the planned remapping, new court presidents and Chief Public Prosecutors will be appointed, requiring the incumbents to step down.

89. In this context, the Venice Commission notes at the outset that the establishment of new prosecution offices and courts entails significant logistical and organisational challenges, requiring considerable time and financial resources. Such challenges typically require an impact assessment that analyses and examines with particular scrutiny the root causes of the existing problems, as well the existence of possible alternative measures.⁸⁰ In abstract terms, it could, for instance, be argued that strengthening the resources of the existing Third Basic Court in Belgrade might constitute a more efficient option, both in terms of cost and time, than creating two new basic courts.⁸¹ Conversely, in light of the potential increase in litigation in the Surčin area linked to the Expo 2027 project, it may also be questioned whether the predominantly administrative and commercial nature of such cases could not be addressed by reinforcing the capacity of the local division of the Administrative Court or the territorially competent commercial court.

90. Against this background, the Venice Commission observes that amendments of this nature call for a detailed prior analysis of the key factors relevant to the judicial map, such as population size, caseload, travel time to the court, specialisation of judges, or economic sustainability.⁸² It further notes that, although the Explanatory Report states that "no funds from the Budget of the

⁷⁶ Articles 3(6) and 3(6a) of the [Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices](#).

⁷⁷ Articles 5 and 8 of the amending law, available at [CDL-REF\(2026\)007](#).

⁷⁸ Articles 6 and 8 of the amending law, available at [CDL-REF\(2026\)007](#).

⁷⁹ [CDL-REF\(2026\)009](#), pp. 11-13.

⁸⁰ [CDL-AD\(2023\)032](#), Republic of Moldova - Joint Opinion on the Draft Law on the Anti-Corruption Judicial System and on Amending Some Normative Acts, § 20-21.

⁸¹ Compare Venice Commission, [CDL-AD\(2023\)032](#), Republic of Moldova - Joint Opinion on the Draft Law on the Anti-Corruption Judicial System and on Amending Some Normative Acts, § 19.

⁸² CEPEJ, [CEPEJ\(2013\)7Rev1](#), Revised Guidelines on the Creation of Judicial Maps to Support Access to Justice within a Quality Judicial System, 6 December 2013.

Republic of Serbia are required for the implementation of this Law”,⁸³ it is difficult to reconcile this assertion with the typical and practical implications of establishing new courts and prosecution offices.

91. The Venice Commission further recalls that the HJC is the body best placed to design and propose changes to the court network. While the formal adoption of such changes may fall within the competence of Parliament, given their budgetary implications, the initiative should originate from the HJC and should be pursued through the ordinary legislative procedure.⁸⁴ In the present case, however, the HJC was not consulted, and the reorganisation of the judicial map was proposed by a single MP through the urgent legislative procedure. The Venice Commission therefore considers that it would have been appropriate for the HJC to have been formally consulted during the legislative process.

92. In light of the above considerations, the Venice Commission recommends suspending the implementation of the envisaged reorganisation of the judicial and prosecution maps until further studies and impact assessments are conducted on the basis of a thorough prior analysis of the key factors relevant to judicial reorganisation, including an examination of the root causes of the existing challenges and a careful assessment of possible alternative measures to address them.

V. Conclusion

93. At the request of Ms Ana Brnabić, President of the National Assembly of the Republic of Serbia, the Venice Commission has assessed the amendments made to the Law on the Public Prosecutor's Office, the Law on the High Prosecutorial Council, the Law on the Organisation and Jurisdiction of State Authorities in the Fight against Cybercrime, the Law on Judges and the Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices, all of which were adopted by the National Assembly on 28 January 2026.

94. According to the explanations provided to the Venice Commission, these amendments are aimed at enhancing the efficiency of both the judiciary and the public prosecution service and at improving clarity and systemic coherence within the relevant legal frameworks.

95. The amendments affect the allocation of competences and the scope of hierarchical control within the public prosecution service, broaden the circumstances in which provisional appointments and reappointments may be used in both the judiciary and the prosecution service, alter the regime on the temporary assignment of public prosecutors, and aim to introduce a remapping of certain basic courts and prosecution offices in Belgrade.

96. The Venice Commission considers that such changes in two areas of major importance for society - the judiciary and the public prosecution system - necessitated a meaningful public debate with a pluralistic participation, consultation with national stakeholders, and a thorough impact assessment. The Commission regrets to observe that none of these elements were present in the current case. It therefore recommends that, in the future, the principles of transparency, inclusiveness and democratic debate be applied consistently and rigorously throughout the legislative process.

97. With respect to the substance of the 28 January 2026 amendments, the Venice Commission acknowledges the importance of the objectives pursued by the authorities, namely enhancing the efficiency of both the judiciary and the public prosecution service, as well as improving the clarity and overall coherence of the relevant legal frameworks. The Commission further accepts the attribution of the competence to decide on the temporary assignments of public prosecutors to the High Prosecutorial Council, a constitutional body well placed to ensure objective and transparent decisions regarding the management and allocation of prosecutorial staff.

⁸³ [CDL-REF\(2026\)009](#), p. 13.

⁸⁴ Venice Commission, [CDL-AD\(2013\)034](#), Ukraine - Opinion on proposals amending the draft law on the amendments to the constitution to strengthen the independence of judges of Ukraine, §§13-14.

98. Nevertheless, the Venice Commission has identified several concerning shortcomings in the amendments under consideration which, viewed both individually and cumulatively, remove previously existing safeguards designed to protect prosecutorial autonomy. In this context, it makes the following key recommendations:

- 1) To revert to a non-hierarchical system for decisions on objections to mandatory instructions and to devolution and substitution decisions.
- 2) The competence to decide on objections to the annual work programme of a Public Prosecutor's Office should remain with the High Prosecutorial Council.
- 3) Rather than requiring prior consent, the law should specify the conditions under which the Supreme Public Prosecutor's Office has a duty to notify the Ministry of Justice of cooperation agreements it plans to enter into with international counterparts within the framework of existing treaties on mutual legal assistance.
- 4) The provisional appointments of Chief Public Prosecutors should be limited to one year, without the possibility of reappointment.
- 5) The possibility of reappointing Chief Public Prosecutors to the same office after the expiry of the initial term of office should be excluded.
- 6) The possibility of renewing temporary assignments should be removed, and such assignments should be limited to prosecutorial positions of the same level. Temporary assignments should remain exceptional.
- 7) The public prosecutors whose temporary assignments were prematurely terminated should be reinstated and a mechanism should be introduced to ensure that the positions occupied by temporarily assigned prosecutors in the TOK can be gradually filled by means of regular appointments.
- 8) Greater structural and operational autonomy should be granted to the Special Department for Cybercrime, in line with the technical complexity of its mandate and the national character of its jurisdiction.
- 9) The fixed terms of office of court presidents should be non-renewable as a rule, with the possibility of a renewable term in limited and exceptional circumstances.

99. The Venice Commission is further of the view that additional studies and impact assessments on the reorganisation of the judicial and prosecution maps should be conducted, based on a comprehensive prior analysis of the key factors, including an examination of the root causes of existing challenges and a careful evaluation of potential alternative measures to address them.

100. The Commission notes and welcomes the commitment of the Serbian authorities to take all necessary steps to address these recommendations and stands ready to provide further assistance in this matter, notably through the assessment of the future draft legislative amendments.