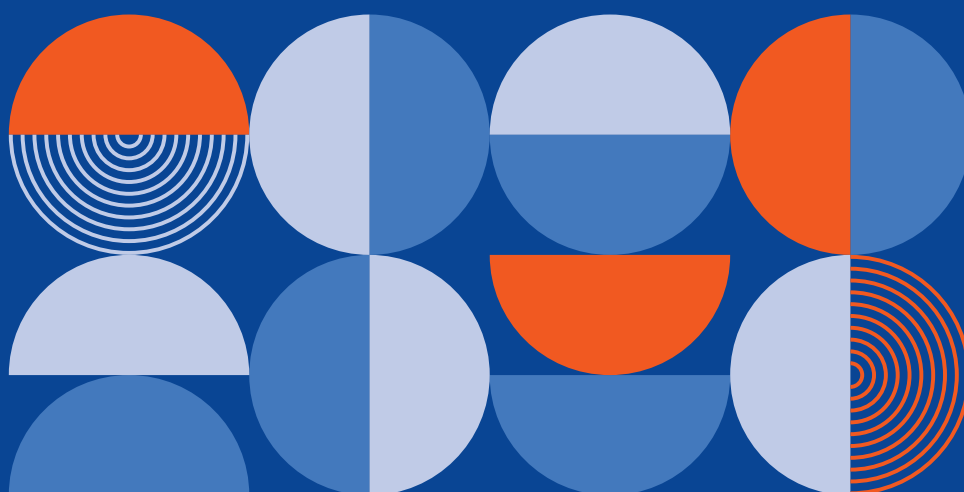


# SERBIAN STEPS TOWARDS EUROPEAN JUDICIARY

Reform of the constitutional and legal framework of  
the judiciary 2021–2023



## Authors:

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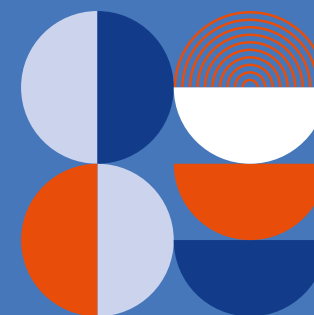
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The judiciary is considered the backbone of democratic societies all over the world. Today, in the 21st century, it is unlikely that any modern liberal-democratic constitutional state (which is what the Republic of Serbia is striving for strategically and systemically) will not have an independent, fair and efficient judicial system. However, the normative solutions provided for by the 2006 Constitution of Serbia, according to the vast majority of scientific evaluations, the Venice Commission reports, and the testimonies of Serbian judges and public prosecutors themselves, were far from optimal and clearly inconsistent with the European principles and standards. After almost a decade of unsuccessful attempts and failed drafts, in January 2023, the long-awaited change finally came to life. After the successful referendum and the promulgation of Constitutional amendments, and then the adoption of a whole set of judicial laws that make the constitutional provisions more specific, the Republic of Serbia improved and reshaped the position and role of the judiciary, especially the public prosecution, finally responding adequately to the basic requirement of the Constitution itself - adherence to European principles and values.





# THE 2006 CONSTITUTION - A EUROPEAN ORIENTATION WITH NON-EUROPEAN SOLUTIONS IN THE PART ON THE JUDICIARY

The 2006 Serbian Constitution established the country's political and strategic orientation from the very beginning, paving the way for the implementation of European principles and values. Paradoxically, the text of the Constitution itself is deficient in this sense, especially in the section on the judiciary.

## CONSTITUTION OF THE REPUBLIC OF SERBIA, ARTICLE 1.

The Republic of Serbia is the state of the Serbian people and all citizens who live in it, based on the rule of law and social justice, the principles of civil democracy, human and minority rights and freedoms, and adherence to European principles and values.

In an undeniably complex political-historical moment, the highest legal act was created in a non-transparent manner, without any public discussion or clear public insight into who wrote the constitutional act and what it contained. The Venice Commission, in its Opinion on the 2006 Constitution (CDL-AD(2007) 004), states that "the text was prepared very quickly", and that "a small group of party leaders and experts negotiated for a period of about two weeks in order to agree on a compromise text that was acceptable to all political parties".



The European Commission for Democracy through Law (Venice Commission) is an advisory body of the Council of Europe, which represents the highest authority for constitutional and legal issues, promulgation and the promotion of standards in the field of the rule of law. The Republic of Serbia is a member of both the Council of Europe and the Venice Commission, in which it has representatives.

This opinion criticises the part of the Constitution that relates to the organisation of the judiciary in particular, stating that "The Constitutional Law on the Implementation of the Constitution provides for the re-appointment of all current judges after the entry into force of this Constitution", and then lists a number of objections, from the name of the highest court ("Supreme Court of Cassation"), jeopardizing the independence of the judicial office by relativising its permanence due to the three-year trial term for which judges are initially elected, the election of judges by the National Assembly, the composition of the High Judicial Council. Almost by a mirror principle, solutions regarding the position of public prosecutors were also criticised, pointing out in particular the multiple possibilities for the politicisation of their work. In the conclusion of its Opinion, the Venice Commission cites the excessive role of parliament in appointing the judiciary as a "fundamental concern", states that "there is a serious danger that political parties will control the judiciary", and that "it will be necessary to amend the corresponding provisions of the Constitution".

## EXCERPTS OF THE VENICE COMMISSION OPINION ON THE PROVISIONS OF THE 2006 CONSTITUTION IN THE PART ON THE JUDICIARY:

"The overall impression of the parliament's excessive influence on the judiciary is still present"

"The principle of the judges' appointment by the National Assembly is maintained. The Venice Commission is still not convinced that this is a good solution"

"Judicial independence is the basic precondition of democratic constitutionalism and it is also absolutely necessary in order to ensure that the constitution is not just an empty piece of paper, but that it will be implemented in practice. However, the National Assembly appoints, directly or indirectly, all members of the High Judicial Council, which proposes the appointment of judges and, in addition, elects the judges. Combined with the general re-appointment of all judges after the entry into force of the Constitution, as provided by the Constitutional Law on the Implementation of the Constitution, there is a serious danger that political parties will control the judiciary."



Holders of judicial offices in Serbia, their professional associations, and the vast majority of representatives of science have been of the same opinion as the Venice Commission from the very beginning. Detailed scientific analyses have been written clearly stating that "the Constitution contains weaknesses that threatened the independence of the judiciary, which represents one of the fundamental principles of the rule of law" (Pejić, Petrov, Simović, Orlović). The bad situation in the Serbian judiciary is also the result of the so-called "judicial reform" of 2008 and 2009, which had only one goal, that is, to dismiss everyone and (re)appoint judges and deputy public prosecutors in Serbia. This questionably constitutional action disgusted the holders of judicial offices, whose status already did not correspond to the nature and importance of their profession. Not only did the constitutional and corresponding legal frameworks fail to provide satisfactory guarantees for the independence of the judiciary, but such a "reform" practically rendered meaningless the proclaimed permanence of the holders of judicial offices. After that, there were several attempts to initiate the procedure for the revision of the Constitution, but none of them substantially moved beyond the starting point. It took, as time will show, almost 14 years to reach a real consensus among politicians, legal practitioners and scientists, in order to start a thorough revision of the constitutional and then the legal provisions on the judiciary.

## INITIATING CHANGE AND TRANSPARENT AND CONSTRUCTIVE DIALOGUE

A turning point in the approach to the fundamental reform of the legal framework of the judiciary came in mid-2021 when high-ranking government officials undertook significant efforts to bring together representatives of judicial professional associations, as well as scholars, and finally launched a long and complex process of constitutional revision, this time with a clear idea of the results to be achieved: the implementation of European standards and the depoliticisation of the judiciary, while listening to the needs and thoughts of holders of judicial offices, as well as representatives of science.



**Ana Brnabić, Prime Minister:**

“We have to strengthen the rule of law in Serbia... Progress in the area of the rule of law should lead to citizens feeling that everyone is equal before the law, that justice is fast and attainable, that the judiciary is independent and responsible and much more efficient.”

7 June 2021

**Maja Popović, Minister of Justice:**

“Amendments to the Constitution in the domain of the judiciary are one of the most important activities in the Action Plan for Chapter 23. When you have a country where there is legal certainty, foreign investors also come, which means a significant opening of new jobs for citizens and, therefore, a rise in their standard of living.”

11 June 2021



The Serbian Government submitted to the National Assembly a Proposal to amend the Constitution of Serbia (in the part on the judiciary), which was adopted by the Parliament on 7 June 2021. Of the 213 deputies present, 207 voted for it, three were against, two abstained, and one did not vote. This time the process was transparent (as assessed later by the Venice Commission). On 23 June 2021, the Committee for Constitutional Affairs and Legislation of the National Assembly formed a Working Group with the aim of drafting the Act on Amendments to the Constitution of the Republic of Serbia. In addition to the representatives of the National Assembly, the Ministry of Justice and the Government of Serbia, representatives of professional associations (who were extremely dissatisfied with the previous attempts at constitutional revision), as well as professors and scientific associates (PhDs in constitutional law) were involved in the work of the Working Group. The total of 11 public hearings were held in Belgrade, Novi Sad, Niš and Kragujevac (7 before and 4 after the formation of the Working Group), where representatives of the profession and the general public had the opportunity to express their views on the proposed amendments and the future direction of the development of the Serbian judiciary.



### THE COMPOSITION OF THE WORKING GROUP FOR DRAFTING THE ACT ON THE AMENDMENT OF THE CONSTITUTION

**Jelena Žarić Kovačević**, President of the Committee for Constitutional Affairs and Legislation  
(Chairman of the Working Group)

**Vladan Petrov, PhD**, Full Professor at the Faculty of Law, Belgrade University, Judge of the Constitutional Court

**Bojan Milisavljević**, PhD, Full Professor at the Faculty of Law, Belgrade University

**Dragana Boljević**, Honorary President of the Judges' Association of Serbia

**Goran Ilić**, PhD, Deputy Republic Public Prosecutor

**Miloš Stanić**, PhD, research associate of the Institute of Comparative Law

**Miroslav Đorđević**, PhD, research associate of the Institute of Comparative Law

**Darko Radojčić**, Assistant Director of the Republic Secretariat for Legislation

**Jovan Ćosić**, Assistant Minister of Justice

**Vladimir Vinš**, Senior Advisor in the Ministry of Justice

**Branko Marinković**, Deputy Secretary General of the National Assembly

When drafting the Act on Amendments to the Constitution, the Working Group strove to comply with domestic legal tradition and respect and implement relevant European standards, with particular respect to the recommendations and opinions of the Venice Commission, the Consultative Council of European Judges (CCJE), the Consultative Council of European Prosecutors (CCPE), the Group of States Against Corruption (GRECO) and the European Commission for the Efficiency of Justice (CEPEJ). The work on the Amendments involved several meetings with the Venice Commission, which expressed satisfaction with the fact that the majority of its recommendations were being adopted in the final version of the text, concurrently pointing out the importance of subsequent legislation, as well as that the entire process was carried out in an inclusive and transparent manner. In accordance with the procedure prescribed by the Constitution, the final version of the text (Proposal of the Act on Amending the Constitution of Serbia) was adopted on 30 November 2021 in the National Assembly, then confirmed in the republican referendum on 16 January 2022, so that the text of the Constitutional Amendments would finally be promulgated on 9 February 2022.



## CHANGES FOR THE PURPOSE OF REMOVING OBSTACLES ON THE PATH TO THE EU, BUT ABOVE ALL FOR THE BENEFIT OF THE CITIZENS OF SERBIA

The amendments to the constitutional framework were undeniably, in accordance with the country's constitutional, political and strategic commitment, aimed at removing obstacles on Serbia's path to the European Union, but certainly the primary motive was the desire to create an adequate legal framework to strengthen the rule of law for the benefit of the citizens of Serbia and legal certainty. The basic features of the constitutional revision include: changing the way judicial office holders are appointed, fundamental reform of the way the judicial councils work (whose jurisdiction has now been significantly expanded), abolishing the monocratic system of public prosecution, strengthening the constitutional guarantees of the independence of the judiciary and the autonomy of the public prosecution, systematically reducing the possibility of the politicisation of the judiciary, strengthening the integrity and individual responsibility of public prosecutors.

Some of the specific constitutional solutions that achieve the stated goals are: guaranteeing the permanence of the judge's office (the abolition of trial terms with constitutionally prescribed reasons for early termination of office); judges, the president of the Supreme Court (instead of the former "Supreme Court of Cassation") and the presidents of courts are now appointed by the High Judicial Council; the role of public prosecution is now performed by the Supreme Public Prosecutor, Chief Public Prosecutors and Public Prosecutors (deputies have been abolished); the Supreme Public Prosecutor is still elected by the Parliament, but the Chief Public Prosecutors and Public Prosecutors are now appointed by the High Prosecutorial Council; it is stipulated that a lower chief public prosecutor or a public prosecutor who considers that a mandatory instruction (received by a higher prosecutor) is illegal or unfounded has the right to object; the composition of the judicial councils was rearranged in such a way that now in both councils (of 11 members each), the majority is made up of representatives of the profession, i.e. six judges elected by their peers and the president of the Supreme Court in the High Judicial Council and five public prosecutors () elected by the public prosecutors and the Supreme Public Prosecutor in the case of High Prosecutorial Council, while maintaining the legitimacy of sovereign citizens through the participation of four members each appointed by the National Assembly from among the ranks of prominent lawyers.



The constitutional revision was necessary, but only the first step in the process of reforming the legal framework of the Serbian judiciary. The new constitutional solutions had to be further specified in the next phase with adequate legal norms, which is why the Ministry of Justice formed Working Groups on 15 April 2022, to draft a set of judicial and prosecutorial laws. This demanding task got valuable professional and logistical support through the joint project of the Council of Europe and the European Union "Support for the implementation of judicial reform in Serbia". The goal was to bring the legal regulations into line with the amended constitutional regulation of the judiciary, within the one-year period stipulated by the Constitutional Law on the implementation of the Act on Amendments to the Constitution of the Republic of Serbia. After many months of very intensive work and a series of consultations with the Venice Commission, the laws were finalised in early 2023. As a part of the public consultation process, the Ministry of Justice, the Council of Europe and the European Union organized two cycles of round tables in Belgrade, Novi Sad, Niš, and Kragujevac, as well as two meetings with the National Convention for the European Union. The new judicial and prosecutorial laws were adopted by the National Assembly on 9 February 2023. The European Union and the Council of Europe welcomed the adoption of the new laws.



**Emanuele Giaufret**  
Ambassador of the European Union to Serbia:

"I wish to acknowledge the commitment of Minister Popovic to carry out this reform. If implemented in a proper way, reforms will bring benefit to the citizens and economic operators. We call on the entire judicial system to accept changes that should bring greater independence to judges and prosecutors."

**Tobias Flessenkemper**  
Head of the Office of the Council of Europe in Serbia:

"The way in which the judiciary's independence and autonomy is being redefined, shows that constitutional and legislative reform is possible to move towards Council of Europe standards. I want to pay tribute to the leadership of Minister Popovic and her team for advancing the judicial reform to this stage, enabling a potential for change which citizens are expecting."



# JUDICIAL LAWS

In order to harmonise the judicial laws, special attention was paid to the obligations of the Republic of Serbia in the process of joining the European Union, which primarily relate to strengthening the rule of law by establishing and strengthening the independence of the judiciary, in accordance with the European standards. In order to realise that goal, close cooperation with the Venice Commission was established. The judiciary represents a special branch of government, and its independence is already foreseen in Article 4 of the Constitution, in the section on the division of powers ("the judiciary is independent"). The legal solutions further only specify and elaborate the constitutional provisions.



**"The independence of judges is a prerequisite for the rule of law and an essential guarantee of a fair trial."**

Opinion of the Consultative Council of European Judges No. 1 (2001) on standards related to the independence of judges and the permanency of the judicial office

## LAW ON JUDGES

Judicial office is permanent and lasts continuously from appointment until the end of the working life, and it can only end earlier in cases prescribed by the Constitution and the Law on Judges. The news is that the decision on removal from judicial office is made by the High Judicial Council. A judge has the right to lodge an appeal with the Constitutional Court against the decision on removal. The judge has the right to complaint and protection against undue influence. The most important change regarding the appointment of judges is that the appointment of judges has been completely removed from the jurisdiction of the National Assembly. The High Judicial Council conducts the appointment procedure and appoints all judges to a permanent position, because the three-year mandate for persons appointed for the first time is abolished. The judge appointment procedure is public. A special novelty is the possibility that a candidate can appeal to the Constitutional Court against the decision on appointment to the judicial office. Court presidents are appointed by the High Judicial Council, and no longer by the National Assembly, for five years without the possibility of re-appointment as presidents of the same court. The novelty is that the entire procedure for the appointment of lay judges is carried out exclusively by the High Judicial Council, while the Ministry of Justice is no longer competent to nominate lay judges. When appointing judges and lay judges, account is taken of the national composition of the population, the appropriate representation of members of national minorities and knowledge of the language of the national minority that is in official use in the court. The law establishes a list of disciplinary offences, with their division into serious and minor offences. The High Judicial Council shall appoint the members of disciplinary bodies from among the judges. Against the decision of the Disciplinary Commission, the disciplinary prosecutor and the judge against whom disciplinary proceedings are being conducted may file an appeal with the High Judicial Council.

## LAW ON THE ORGANISATION OF COURTS

Special rules regarding the prohibition of undue influence on the court have been standardised. Specifically, undue influence on the judge in the exercise of the judicial office is prohibited, in order to preserve the authority and impartiality of the court, especially any form of threat and coercion towards the judge, the use of public position, media and public speaking, which influence the course and outcome of the court proceedings. Any other form of improper influence on the court shall also be forbidden, as well as pressure on the participants in a court proceeding. Article 55 defines the powers of the president of the immediately higher court more clearly, with a negative determination regarding issues that cannot be considered suitable for exercising the right of supervision in this sense. It should be noted that the powers of the president of the immediately higher court refer exclusively to the control of the affairs of the judicial administration, with a prohibition of interfering with the work of the judges of the supervised lower court in specific court cases. The Ministry of Justice no longer has the authority to supervise the financial and material operations of the High Judicial Council. It is envisaged that the scope and structure of the budget funds for the work of the courts will be proposed by the High Judicial Council and the ministry responsible for the judiciary. The oversight of budgetary funds earmarked for court operations shall be conducted by the High Judicial Council and the Ministry responsible for the judiciary, as well as the Ministry responsible for finance.

"One of the possible ways in which the judiciary can actively participate in the drafting of the budget would be to assign an independent body responsible for the administration of the judiciary - in countries where such a body exists - with a coordinating role in connection with the preparation of requests for court funding."

Opinion of the Consultative Council of European Judges No. 2 (2001) on the financing and management of courts with reference to judicial efficiency and Article 6 of the European Convention on Human Rights



## LAW ON THE HIGH JUDICIAL COUNCIL

As for the position, composition and method of appointing members of the High Judicial Council, it still consists of eleven members. The novelty is that six judges are now appointed by judges, while four prominent lawyers are appointed by the National Assembly. The President of the Supreme Court is also a member of the Council. Court presidents cannot be appointed to the High Judicial Council. The reason for the mixed composition of the Council lies in the fact that the Venice Commission, and not only that, has been insisting for years on finding an appropriate balance in the composition of the judicial council, in order to create a special unity arising from the cooperation of judicial and “non-judicial” membership aimed at creating an environment in which judiciary will serve the society.

“The Judicial Council aims to protect both the independence of the judicial system and the independence of individual judges. The existence of independent and impartial courts is a structural requirement of a state based on the rule of law.”

Opinion of the Consultative Council of European Judges No. 10 (2007) on the Judicial Council in the Service of Society

Article 2 of the law stipulates that the Council is an independent state body that ensures and guarantees the independence of the court, the judge, the president of the court and the lay judge. The Venice Commission previously recommended that the provisions of the Law on the High Judicial Council must contain provisions on its budgetary autonomy. In accordance with this, it is foreseen that funds for work and functioning will be provided in the budget of the Republic of Serbia, at the proposal of the Council. The new responsibilities of the Council are to conduct a public competition and appoint judges and lay judges, appoint the president and vice-president of the Council, appoint acting presidents of the Supreme Court and presidents of other courts, appoint the president of the Supreme Court and presidents of other courts and decide on the termination of the office of the president of the Supreme Court and the presidents of other courts. The sessions of the Council are public, though the Council may decide that a session shall be closed to the public, in accordance with the Constitution, the law and the act of the Council.

The law stipulates that the decision of the Council is made by a majority vote of all members. Exceptionally, the decision on the appointment of the president and vice president of the Council, the decision on the appointment of the president of the Supreme Court and the president of other courts, the decision on the dismissal of the president of the Supreme Court and the president of other courts, and the decision

on the dismissal of a judge are made by the Council with a majority of eight votes. Such a solution creates a middle ground between the principle of efficiency in work and the principle of involvement in work and non-judicial members of the Council. The decision is made by public vote and must be reasoned, unless otherwise stipulated by law.

### THE COMPOSITION OF THE WORKING GROUP FOR DRAFTING JUDICIAL LAWS

Jovan Ćosić, Assistant Minister of Justice (President)

Vladimir Vinš, Assistant Minister of Justice (Vice-President)

Jelena Deretić, Assistant Minister of Justice

Darko Radojčić, Assistant Director of the Republic Secretariat for Legislation

Zorana Delibašić, Member of the High Judicial Council

Žak Pavlović, Member of the High Judicial Council

Snežana Bjelogrić, Member of the High Judicial Council and President of the Judges' Association of Serbia

Dragana Boljević, Judge of the Supreme Court of Cassation and Honorary President of the Judges' Association of Serbia

Katarina Manojlović Andrić, Judge of the Supreme Court of Cassation

Marijana Nikolić Milosavljević, Judge of the High Court in Belgrade

Professor Nikola Bodiroga, PhD, Full Professor at the Faculty of Law in Belgrade

Professor Zoran Lončar, PhD, Full Professor at the Faculty of Law in Novi Sad

Miloš Stanić, PhD, research associate of the Institute of Comparative Law

Nataša Jovičić, Lawyer from Belgrade

Gorica Vasić, Lawyer from Belgrade



# PROSECUTORIAL LAWS

In order to implement the Amendment to the Constitution of Serbia, in addition to the judicial laws, it was necessary to pass new public prosecution laws: the Law on the Public Prosecutor's Office and the Law on the High Prosecutorial Council. The challenges faced by the Working Group tasked with drafting these laws were somewhat different compared to the judges' Working Group, because the position of the public prosecutor's office in Serbia has undergone major systemic reforms. For the first time since the Second World War, the monocratic system (the so-called "Soviet model" of the public prosecutor's office) was abolished and, as a result, all the former deputy public prosecutors themselves became holders of the public prosecutor's office.



## LAW ON THE PUBLIC PROSECUTOR'S OFFICE

The public prosecutor's office, under the new law, is performed by the Supreme Public Prosecutor, chief public prosecutors and public prosecutors. The Supreme Public Prosecutor and the chief public prosecutor have hierarchical authorities in the management of the public prosecutor's offices in relation to the actions of the lower chief public prosecutor and public prosecutor in a specific case (Article 4). In accordance with their hierarchical authorities, the chief public prosecutor is responsible for the work of the public prosecutor's office and reports to the supreme public prosecutor and directly to the high chief public prosecutor in accordance with the law (Article 15). The Supreme Public Prosecutor issues general mandatory instructions for actions of any chief public prosecutor aimed at achieving legality, efficiency and uniformity in the procedure (Article 16).

"Prosecutors should perform their office without any undue external influences, incentives, pressures, threats or interference, whether direct or indirect, from any environment or for any reason"

Opinion No. 11 (2016) of the Consultative Council of European Prosecutors on the quality and efficiency of prosecutors' work

The possibility of issuing mandatory instructions for work and action is retained, so the immediately higher chief public prosecutor may (as a rule in writing and with an explanation) issue mandatory instructions to a lower chief public prosecutor for proceeding in a specific case if there is doubt about the effectiveness or legality of their actions, or that of the directly lower public prosecutor (Article 17). In Article 18, however, the law provides an effective legal remedy available to the lower chief public prosecutor and the public prosecutor when they consider that the mandatory instruction is illegal or unfounded. They can file an objection with the High Prosecutorial Council, within three days and the decision on such an objection is made by the special Commission of five members elected by the High Prosecutorial Council from among public prosecutors to a period of 5 years, without the possibility of re-election (a member of the High Prosecution Council cannot be a member of this Commission). The logic of this solution is that it is a highly professional and specialised matter for which it is most objective and expedient that only colleagues - public prosecutors - decide on it.

Regarding the management of the administration in the Public Prosecutor's Office, the Supreme Public Prosecutor and the chief public prosecutor determine the organisation and work of the public prosecutor's office, decide on the rights based on the work of public prosecutors and on the labour relations of civil servants and officers in the public prosecutor's office, remove irregularities in the work of the public prosecutor's office, take care of the independence, reputation and efficiency of the public prosecutor's office, provide for the impartial allocation of cases to public prosecutors and perform other tasks for which they are authorised by law or other regulations. The Supreme Public Prosecutor and the chief public prosecutor head the administration in the public prosecutor's office and are responsible for the proper and timely work of the public prosecutor's office in accordance with the law and the Act on administration in the public prosecutor's office (Article 38). Supervision over the implementation of the act on administration in the public prosecutor's office is carried out by the High Prosecutorial Council and the Ministry responsible for the judiciary.

The law specifies which tasks are supervised by the High Prosecutorial Council, which are supervised by the ministry responsible for the judiciary, and which tasks are jointly supervised by these two bodies (Article 46). The law foresees the permanence of the public prosecutor's office and regulates in detail the appointment of chief public prosecutors and public prosecutors (as well as the method of determining the candidate for the Supreme Public Prosecutor, who is proposed to the National Assembly by the High Prosecutorial Council), as well as the reasons for the termination of



the public prosecutor's office and legal remedies against the decision to terminate office, ways to evaluate work. Finally, the often criticised practice of too frequent and too long referrals of public prosecutors to another public prosecutor's office (when personnel problems in some prosecutor's offices were solved without an official competition) is now regulated by law: the public prosecutor can, with their written consent, be temporarily referred to another public prosecutor's office of the same or immediately lower level for a maximum of three years, without the possibility of re-referral to the same public prosecutor's office (Article 69).

## LAW ON THE HIGH PROSECUTORIAL COUNCIL

The Law on the High Prosecutorial Council stipulates that this body is "an independent state authority that ensures and guarantees the independence of the public prosecutor's office, the supreme public prosecutor, chief public prosecutor and public prosecutor" (Article 2). The Council has 11 members and includes: five public prosecutors appointed by the holders of the public prosecutor's offices, four prominent lawyers appointed by the National Assembly by a two-thirds majority, the supreme public prosecutor and the minister responsible for the judiciary, as ex-officio members. Except for ex-officio members, the mandate of a council member lasts for 5 years and an elective member of the Council cannot be re-appointed to that position. The President of the Council (who represents this body, convenes and presides over sessions, coordinates work, takes care of the implementation of acts) is appointed by the Council itself from among the elective members of the Council from among public prosecutors for five years, while for the same term, the Vice President of the Council is appointed from among the elective members of the Council appointed by the National Assembly (Articles 8 and 9).

"Where there are prosecutorial councils, they should include prosecutors of all levels, but also other stakeholders, such as attorneys and lawyers from the academic community. If the members of such a council are appointed by the assembly, this should preferably be done by a qualified majority."

Venice Commission, Report on European Standards in Judicial Independence  
- Part II: Prosecution; CDL-AD(2010)040

The wide range of competencies of the Council is stipulated by the Law (Article 17), and the means for the work and functioning of the Council (which it disposes of independently) are provided in the budget of the Republic of Serbia, at the proposal of the Council itself. The government cannot, without the consent of the Council, suspend, delay or restrict the execution of the Council's budget (Article 3). In addition to regulating the competencies in detail, the Law also regulates the conditions for the appointment of members from the ranks of public prosecutors, as well as those appointed by the National Assembly, reasons for the removal of a member from office, termination of office, employment rights. Regarding the way of working and decision-making, it is foreseen that the sessions of the Council are public (there is the possibility of them being closed to the public in certain cases) and they are convened by the President of the Council in the cases provided by the Rules of Procedure of the Council or at the proposal of at least three members of the Council. Decisions of the Council are made by a majority of eight votes (and, as a rule, they are reasoned). Exceptionally, the decision in the procedure for determining disciplinary responsibility, on the removal or termination of the office of an elective member of the Council, on the determination of the proposal for the termination of the office of the Supreme Public Prosecutor, or on the exemption or removal of the Supreme Public Prosecutor, is made by the Council by a majority of seven votes.

## THE COMPOSITION OF THE WORKING GROUP FOR DRAFTING PROSECUTORIAL LAWS

**Vladimir Vinš**, Assistant Minister of Justice (President)

**Jovan Ćosić**, Assistant Minister of Justice (Vice-President)

**Branislav Stojanović**, Assistant Minister of Justice

**Ranka Vujović**, PhD, Assistant Director of the Republic Secretariat for Legislation

**Branko Stamenković**, Deputy Republic Public Prosecutor and member of the State Prosecutorial Council

**Tanja Vukićević**, Deputy Republic Public Prosecutor in the Higher Public Prosecutor's Office in Belgrade and member of the State Prosecutorial Council

**Tamara Mirović**, PhD, Deputy Republic Public Prosecutor

**Goran Ilić**, PhD, Deputy Republic Public Prosecutor and member of the Presidency of the Association of Prosecutors of Serbia

**Nataša Krivokapić**, Deputy Public Prosecutor in the Higher Public Prosecutor's Office in Belgrade, referred to the Republic Public Prosecutor's Office

**Tatjana Lagumdžija**, Deputy Public Prosecutor in the First Basic Public Prosecutor's Office in Novi Sad, referred to the Republic Public Prosecutor's Office

**Svetlana Nenadić**, PhD, Deputy Public Prosecutor in the First Basic Public Prosecutor's Office in Belgrade, referred to the War Crimes Prosecutor's Office and member of the presidency of the Association of Prosecutors of Serbia

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## NEXT STEPS

Changing the constitutional and legal framework of the judiciary and implementing European standards is an important step to strengthen the rule of law. Now, however, it is equally important to strengthen awareness of the new responsibilities of the holders of judicial offices, as well as the general development of political and democratic culture. Judiciary and public prosecution certainly interact with the rest of society and exert influence, but they themselves are subject to different influences. The new constitutional and legal framework provides a sound basis for strengthening individual responsibility and the systemic protection of the institution of an independent and autonomous judiciary. In addition to the need to pass a series of by-laws, in order to complete the reformed legal framework of the judiciary, it is necessary to systematically work to strengthen the legal culture within the judiciary, which requires a complex approach that includes (but is not limited to) improving the financial position of the holders of judicial offices, strengthening higher legal education (especially in its practical form), the development of efficient and regular forms of the continuous education of judicial staff, the professional and logistical strengthening of the capacity of judicial councils that now have far greater competencies and responsibilities, spreading awareness of the independence of the judiciary and the autonomy of the public prosecutor's offices in the media and the general socio-political climate. The Republic of Serbia has taken significant steps on the path to reaching the standards of the European judiciary, but systematic, continuous efforts for improvements must continue.





# IMPORTANT DATES ON SERBIA'S PATH TO EUROPEAN JUDICIARY

- **8 NOVEMBER 2006** Proclamation of the Constitution of the Republic of Serbia
- **19 MARCH 2007** Opinion of the Venice Commission on the Constitution of Serbia
- **29 APRIL 2008** Signing of the Stabilisation and Association Agreement
- **1 JULY 2013** Adoption of the National Judicial Reform Strategy for the 2013-2018 period
- **1 SEPTEMBER 2013** Entry into force of the Stabilisation and Association Agreement
- **27 APRIL 2016** Adoption of the Chapter 23 Action Plan
- **10 JULY 2020** Adoption of the Judiciary Development Strategy for the 2020-2025 period
- **10 JULY 2020** Revision of the Chapter 23 Action Plan
- **4 DECEMBER 2020** The government has submitted to the National Assembly a proposal to amend the Constitution of Serbia
- **7 JUNE 2021** Adoption of the proposal to amend the Constitution of Serbia
- **23 JUNE 2021** Establishment of the Working Group for drafting the act on the amendment of the Constitution of Serbia
- **24 NOVEMBER 2021** Opinion of the Venice Commission on the Constitutional amendments
- **30 NOVEMBER 2021** Adoption of the proposal to amend the Constitution of Serbia
- **16 JANUARY 2022** Confirmation of the Act on the Amendment of the Constitution in the republic referendum
- **9 FEBRUARY 2022** Proclamation of the Constitutional amendments in the National Assembly
- **15 APRIL 2022** Establishment of working groups for drafting a set of judicial laws
- **12 SEPTEMBER 2022** Publication of the first drafts of judicial and prosecutorial laws and the start of public consultations
- **24 OCTOBER 2022** Opinion of the Venice Commission on the set of judicial laws
- **12 DECEMBER 2022** Beginning of the public debate on the set of judicial laws
- **19 DECEMBER 2022** Opinion of the Venice Commission on the set of public prosecutorial laws
- **17 JANUARY 2023** Adoption of the proposed judicial and prosecutorial laws by the Government
- **9 FEBRUARY 2023** Adoption of a set of judicial laws in the National Assembly



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