JUDICIAL RESEARCH CENTRE

MODEL AMENDMENTS I TO XXXVI TO THE CONSTITUTION OF THE REPUBLIC OF SERBIA AND

MODEL CONSTITUTIONAL LAW ON AMENDMENTS TO THE CONSTITUTION OF THE REPUBLIC OF SERBIA

WITH

EXPLANATION

Belgrade, September 2021

TABLE OF CONTENTS

INTRODUCTORY REMARKS

The Judicial Research Centre (CEPRIS) formed a Working Group to draft a model act on amending the Constitution. The CEPRIS was guided by the intent to contribute to adopting constitutional amendments of high quality in the proceedings of amending the Constitution initiated by the Government of the Republic of Serbia on December 12, 2020. In CEPRIS' view, the amendments should provide the judiciary in the Republic of Serbia with guarantees of independence afforded in modern constitutional democracies, in accordance with the rule of law and international standards. The amendments should also raise the Public Prosecutor's Office to the rank of not only an autonomous but also an independent body.

In the period from July 24 to September 10, 2021, the Working Group drafted two models of act on amending the Constitution, considering that the current Constitution of the Republic of Serbia does not define its form, namely - *Model Amendments I to XXXVI to the Constitution* of *the Republic of Serbia* and *Model Constitutional Law on Amendments to the Constitution of the Republic of Serbia*, with the aim of presenting them to the public for discussion, and to the competent committee of the National Assembly for consideration in the process of drafting an act amending the Constitution, which is in progress.

The Working Group members are as follows:

1. **Violeta Beširević** (working group coordinator)**,** Professor, Union University Law School Belgrade;
2. **Vida Petrović-Škero,** retired judge and former president of the Supreme Court of Cassation;
3. **Savo Đurđić,** LLM, Judge of the Appellate Court in Novi Sad and former member of the High Judicial Council;
4. **Radovan Lazić,** Deputy Public Prosecutor in the Prosecutor's Office for War Crimes and former member of the State Prosecutorial Council;
5. **Predrag Milovanović,** Deputy Public Prosecutor in the Second Basic Public Prosecutor's Office in Belgrade and Elected Member of the State Prosecutorial Council;
6. **Marijana Pajvančić**, Professor (retired), University of Novi Sad Law School;
7. **Tanasije Marinković,** Professor, University of Belgrade Law School;
8. **Rodoljub Šabić,** LLM**,** attorney-at-law, Belgrade, former Commissioner for Information of Public Importance and Personal Data Protection in the Republic of Serbia;
9. **Vladimir Beljanski,** attorney-at-law, Novi Sad, the President of the Bar Association of Vojvodina;
10. **Teodora Miljojković,** L.L.M., S.J.D student at the Central European University in Vienna (working group secretary).

MODEL AMENDMENTS I TO XXXVI TO THE CONSTITUTION OF THE REPUBLIC OF SERBIA

These amendments shall form an integral part of the Constitution of the Republic of Serbia and enter into force on the day of their promulgation in the National Assembly.

A constitutional law shall be enacted to implement Amendments I to XXXVI to the Constitution of the Republic of Serbia.

AMENDMENT I

1. In the Republic of Serbia government shall be organized into the legislative, executive and judicial branch on the basis of the separation of powers principle.
   The relation of the three branches of government shall be regulated by the Constitution.
   The competences of all governmental bodies shall be determined and limited by the Constitution and the law, in accordance with the rule of law.
   No governmental body shall usurp power assigned by the Constitution to another branch of government.
2. The amendment shall replace Article 4 of the Constitution of the Republic of Serbia.

AMENDMENT II

1. The words "3. appoint the President of the Supreme Court of Cassation, presidents of courts, Republic Public Prosecutor, public prosecutors, judges and deputy public prosecutors, in accordance with the Constitution" shall be deleted.
   Previous sub-paragraphs 4, 5 and 6 shall become sub-paragraphs 3, 4 and 5.
2. The amendment shall delete Art. 99 paragraph 2, sub-paragraph 3 and the previous sub-paragraph 4, 5 and 6 shall become sub-paragraphs 3, 4 and 5.

AMENDMENT III

1. 12. elect two prominent lawyers to the High Judicial Council,
   13. elect two prominent lawyers to the High Prosecutorial Council,
   7. courts, High Judicial Council, public prosecutors and High Prosecutorial Council,
   Previous sub-paragraph 7 of paragraph 3 shall become sub-paragraph 8.
2. The amendment shall replace Article 105, paragraph 2, sub-paragraph 12 and 13 and paragraph 3, sub-paragraph 7. In paragraph 3, the previous sub-paragraph 7 shall become sub-paragraph 8.

AMENDMENT IV

1. **Status of judicial power**
   Judicial power shall be vested in courts. Courts shall be autonomous and independent.
   Judicial power shall ensure the rule of law through competent application of legal norms in an impartial, fair and efficient manner.
   Judicial power shall be unitary in the territory of the Republic of Serbia.
2. The amendment shall replace the title of Article 142 and Article 142 of the Constitution of the Republic of Serbia.

AMENDMENT V

1. **Judiciary principles**

Courts shall adjudicate pursuant to the Constitution, generally accepted rules and principals of international law, ratified international treaties and case-law of international bodies which supervise the application of the international standards of human rights, laws and other general acts, as provided by law.

The court shall adjudicate in the chamber. It may be established by law that a single judge shall adjudicate in certain matters.

It may be established by law that lay judges shall also take part in a trial.

Hearing before a court and pronunciation of court decisions shall be public and may be limited only in accordance with the Constitution and the law.

Court decisions shall be rendered in the name of the Republic of Serbia.

Court decisions may be reviewed only by a court determined by the Constitution and the law in proceedings provided by law, as well as by the Constitutional Court in the proceedings on a constitutional appeal.

Cases shall be allocated to judges according to pre-established rules, which can be waived only in cases provided by law.

Salaries of judges shall be determined by law and cannot be reduced.

The courts and the High Judicial Council shall have their own budget.

2. The amendment shall replace the title of Article 143 and Article 143 of the Constitution of the Republic of Serbia.

AMENDMENT VI

1. **Types and organization of courts**

Judicial power in the Republic of Serbia shall be vested in courts of general and special jurisdiction.

The courts of general jurisdiction shall be the basic courts, the higher courts and the appellate courts.

The types of courts of special jurisdiction shall be regulated by law.

The Supreme Court shall be the highest court in the Republic of Serbia.

The seat of the Supreme Court shall be in Belgrade.

The Supreme Court shall ensure harmonization of case-law and the uniform application of law through its judicial practice.

The establishment, organization, jurisdiction, structure and composition of courts shall be regulated by law, in accordance with the Constitution.

Establishment of courts martial or extraordinary courts shall be prohibited.

2. The amendment shall replace the title of Article 144 and Article 144 of the Constitution of the Republic of Serbia.

AMENDMENT VII

1. **Independence of judges**

A judge shall be independent in performing the judicial function and shall adjudicate pursuant to the Constitution, generally accepted rules and principles of international law, ratified international treaties and case-law of international bodies which supervise

the application of the international standards of human rights, laws and other general acts, as provided by law.

Any influence on a judge in the exercise of the judicial office shall be prohibited.

2. The amendment shall replace the title of Article 145 and Article 145 of the Constitution of the Republic of Serbia.

AMENDMENT VIII

1. Tenure of judicial office shall be permanent and shall last from the moment of the election until the conditions for termination of judicial office are fulfilled.
2. The amendment shall replace Article 146 of the Constitution of the Republic of Serbia.

AMENDMENT IX

1. **Requirements for the election of judges**

The High Judicial Council shall elect judges of courts of general and special jurisdiction, in accordance with the Constitution and law.

A citizen of the Republic of Serbia who meets the general conditions for employment in state bodies, who has graduated from a school of law, passed the bar exam, has work experience required for a certain court and who is professional, qualified and worthy of a judicial function may be elected a judge.

Requirements for the election and mandate of lay judges shall be provided by law.

2. The amendment shall replace the title of Article 147 and Article 147 in the Constitution of the Republic of Serbia.

AMENDMENT X

1. A judge's tenure of office shall be terminated at his/her personal request, due to permanent loss of working capacity to perform the judicial function, the occurrence of the conditions prescribed by law, loss of citizenship of the Republic of Serbia or due to dismissal.

A judge shall be dismissed if he/she is convicted of a criminal offense to at least six months of imprisonment or if it is determined in the disciplinary proceedings that he/she has committed a serious disciplinary offense which, pursuant to assessment of the High Judicial Council, seriously damages the reputation of judicial office or public confidence in the courts.

A judge may be dismissed due to incompetence if, in a significant number of cases, pursuant to assessment of the High Judicial Council, he/she does not meet the benchmarks of satisfactory performance.

A judge shall have the right to appeal to the Constitutional Court against the decision of the High Judicial Council pertaining to the termination of office.

2. The amendment shall replace Article 148 of the Constitution of the Republic of Serbia.

AMENDMENT XI

1. **Non-transferability of a judge**

A judge shall perform the judicial function in the court for which he/she has been elected and only with his/her consent can be transferred or assigned to another court.

In case of revocation of the court or a predominant part of the jurisdiction of the court where he/she has been elected, the judge may, exceptionally, without their consent, be

permanently transferred or assigned to another court of the same type and instance or another instance, with guaranteed salary he/she has been entitled to in the court from which he/she is transferred, if it is more favourable to him/her.

The predominant part of the court's jurisdiction shall be revoked if the required number of judges in the court is reduced due to a change of the subject matter jurisdiction or the establishment of a new court.

2. The amendment shall replace the title of Article 149 and Article 149 of the Constitution of the Republic of Serbia.

AMENDMENT XII

1. **Immunity**

A judge and a lay judge shall not be held liable for an opinion expressed or a vote cast in the process of rendering a court decision unless he/she commits the criminal offense of violation of law by a judge.

A judge shall not be deprived of liberty in the proceedings instituted for a criminal offense committed in the exercise of judicial office without the approval of the High Judicial Council.

2. The amendment shall replace the title of Article 150 and Article 150 of the Constitution of the Republic of Serbia.

AMENDMENT XIII

1. **Incompatibility of judicial function**

The law shall stipulate which functions, jobs or private interests are incompatible with the judicial function, the function of the president of the court and the lay judge.

2. The amendment shall replace the title of Article 151 and Article 151 of the Constitution of the Republic of Serbia.

AMENDMENT XIV

1. **Right to freedom of association and public activity**

Judges shall have the right to freedom of association in professional and expert associations and to perform public activities to improve the judicial profession and protect the autonomy and independence of courts and judges.

2. The amendment shall replace the title of Article 152 and Article 152 of the Constitution of the Republic of Serbia.

AMENDMENT XV

1. **President of the Supreme Court and presidents of courts**

The President of the Supreme Court shall be elected by the High Judicial Council, after obtaining the opinion of the General Session of the Supreme Court.

The President of the Supreme Court shall be elected for a term of five years, and may not be re-elected.

The presidents of the courts shall be elected by the High Judicial Council for a term of five years, and may not be re-elected.

The office of the President of the Supreme Court and the presidents of the courts shall terminate before the expiration of the term for which they have been elected on personal request, upon the occurrence of the conditions prescribed by law or due to dismissal for reasons prescribed by law for dismissal of the president of the court.

The decision on the termination of the office of the president of the court shall be made by the High Judicial Council, in accordance with law.
The president of the court shall have the right to appeal to the Constitutional Court against the decision of the High Judicial Council pertaining to termination of office.

3. By the amendment the title of Article 152a and Article 152a shall be added to the Constitution of the Republic of Serbia.

AMENDMENT XVI

1. The High Judicial Council is an autonomous and independent body that ensures and guarantees the autonomy and independence of courts and judges.
The High Judicial Council shall consist of the President of the Supreme Court, seven judges and three prominent lawyers. Seven judges shall be elected by judges, taking into account the proportionate representation of the courts. Two prominent lawyers shall be elected by the National Assembly from among four candidates with at least fifteen years of work experience in the legal profession, who are nominated by a competent committee of the National Assembly by means of a two-thirds majority vote. One prominent lawyer shall be elected by all law schools from among law professors with a tenure. The election of members of the High Judicial Council shall be regulated by law.

The presidents of courts shall not be elected members of the High Judicial Council.

Members of the High Judicial Council shall not be members of political parties.

2. The amendment shall replace Article 153 of the Constitution of the Republic of Serbia.

AMENDMENT XVII

1. Mandate of members of the High Judicial Council

The term of office of the members of the High Judicial Council shall be five years, except for the President of the Supreme Court.
The same person shall not be re-elected to the High Judicial Council.
A member of the High Judicial Council shall have his/her term of office terminated before the expiration of the term for which he/she has been elected upon personal request or if he/she is convicted of a criminal offense and sentenced to imprisonment.
The term of office of a member who is a judge shall also end with the termination of the judicial function, and of a member who is not a judge, also, if he/she permanently loses the ability to perform the function of a member of the High Judicial Council.
The decision on the termination of the mandate of the members of the High Judicial Council shall be made by the High Judicial Council.
An appeal against the decision referred to in paragraph 4 of this Article may be lodged to the Constitutional Court.

2. The amendment shall replace the title of Article 154 and Article 154 of the Constitution of the Republic of Serbia.

AMENDMENT XVIII

1. **Immunity of members of the High Judicial Council**
   A member of the High Judicial Council shall not be held liable for an opinion expressed in the proceedings before the High Judicial Council and for a vote cast in the decision-making proceedings before the High Judicial Council, unless he/she commits a criminal offense in connection with performing the function of a member of the High Judicial Council.
   A member of the High Judicial Council shall not be deprived of liberty without the approval of the High Judicial Council in the proceedings instituted on suspicion of having committed a criminal offense in connection with the performance of the function of a member of the High Judicial Council.
2. The amendment shall replace the title of Article 155 and Article 155 of the Constitution of the Republic of Serbia.

AMENDMENT XIX

1. **President of the High Judicial Council**
   The High Judicial Council shall have a president.
   The President shall be elected from among the judges who are members of the High Judicial Council.
   The President of the Supreme Court shall not be the President of the High Judicial Council.
2. By the amendment the title of Article 155a and Article 155a shall be added to the Constitution of the Republic of Serbia.

AMENDMENT XX

1. **Jurisdiction of the High Judicial Council**

High Judicial Council shall:

1. safeguard the autonomy and independence of judges,
2. determine the required number of judges and lay judges,
3. elect the President of the Supreme Court, presidents of courts, judges and lay judges and decide on the termination of their office,
4. appoint and dismiss members of disciplinary bodies,
5. rule on the legal remedy pertaining to the election of judges due to violation of the rules of procedure,
6. decide on the transfer and assignment of judges,
7. decide on immunity and incompatibility of performing other services with the judicial function,
8. rule on appeals lodged against decisions of the disciplinary commission,
9. have the right to propose laws and give opinions on draft laws and laws in force related to the status of judges and functioning of the courts,
10. propose budget funds for the functioning of the High Judiciary Council and courts and autonomously administer those funds,
11. adopt the Code of Judicial Ethics and elects the Judicial Ethics Committee,
12. adopts the Court Rules of Procedure upon previously obtained opinion of the competent ministry,

13. adopt criteria for the selection and promotion of judges,
14. evaluate the work of judges and court presidents,
15. consider semi-annual and annual reports on the work of courts,
16. submit an annual report on the work of the courts to the National Assembly and the Government,
17. decide on other issues related to the status of judges, court presidents and lay judges,
18. perform other duties specified by the Constitution and the law.

2. By the amendment the title of Article 155b and Article 155b shall be added to the Constitution of the Republic of Serbia.

AMENDMENT XXI

1. **Work and decision-making of the High Judicial Council**
The work of the High Judicial Council shall be open to the public. Exclusion of the public shall be possible only in accordance with the Constitution and the law.
The High Judicial Council shall decide by a majority vote of its members at a session attended by a majority of its members.
The High Judicial Council shall decide by a majority vote of all members on the election of the President of the High Judicial Council, the President of the Supreme Court, the presidents of courts and judges, on transfer and dismissal of judges.
The High Judicial Council shall have a duty to give reasons for its decisions and make them public.
The High Judicial Council shall adopt decisions on the election and termination of office of judges, court presidents, lay judges, on transfer and assignment of judges, appointment and dismissal of members of disciplinary bodies in a procedure stipulated by law and on the basis of criteria determined in accordance with the law.
An appeal may be lodged to the Constitutional Court against the decision of the High Judicial Council referred to in paragraph 5 of this Article in a case provided by law.
2. By the amendment the title of Article 155v and Article 155v shall be added to the Constitution of the Republic of Serbia.

AMENDMENT XXII

1. **Status, jurisdiction, establishment, and organization of public prosecutor's offices**
The public prosecutor’s office is an autonomous and independent state body that prosecutes perpetrators of criminal and other punishable offenses and performs other competencies that protect public interest determined by law. The public prosecutor's office shall manage the criminal police, in accordance with the law.
The public prosecutor's office shall perform its function pursuant to the Constitution, generally accepted rules and principles of international law, ratified international treaties and case-law of international bodies which supervise the application of the international standards of human rights, laws and other general acts, as provided by law.
No one outside the public prosecutor's office shall influence the performance of the public prosecutor’s function.
The establishment, organization, jurisdiction, structure and composition of the public prosecutor's office shall be regulated by law.
2. The amendment shall replace the title of Article 156 and Article 156 of the Constitution of the Republic of Serbia.

AMENDMENT XXIII

1. **Supreme Public Prosecutor and heads of public prosecutor's offices**
   Each public prosecutor's office shall have its head.
   The Supreme Public Prosecutor's Office shall be headed by the Supreme Public Prosecutor.
   The Supreme Public Prosecutor's Office shall exercise the competence of the public prosecutor’s office within the rights and duties of the Republic of Serbia.
   The Supreme Public Prosecutor shall be elected by the High Prosecutorial Council, for a period of seven years, and may not be re-elected.
   Heads of public prosecutor's offices shall be elected by the High Prosecutorial Council, for a period of five years, and may not be re-elected.
   The Supreme Public Prosecutor and the heads of public prosecutor's offices shall be elected in a manner, under conditions and in the procedure that ensures integrity, competence, and autonomy in performing their function.
2. The amendment shall replace the title of Article 157 and Article 157 of the Constitution of the Republic of Serbia.

AMENDMENT XXIV

1. **Public prosecutors**
   The function of the public prosecutor's office shall be performed by the public prosecutor.
   The public prosecutor shall be elected by the High Prosecutorial Council.
   The term of the public prosecutor’s office shall be permanent.
   The public prosecutor shall be elected in a manner, under the conditions and in the procedure that ensures integrity, competence and autonomy in performing his/her function.
2. The amendment shall replace the title of Article 158 and Article 158 of the Constitution of the Republic of Serbia.

AMENDMENT XXV

1. **Accountability of public prosecutor’s offices**
   Public prosecutor’s offices shall be accountable to the Supreme Public Prosecutor's Office, and lower public prosecutor's offices to the immediately higher public prosecutor's office.
2. The amendment shall replace the title of Article 159 and Article 159 of the Constitution of the Republic of Serbia.

AMENDMENT XXVI

1. **Termination of office**
   A public prosecutor’s tenure shall be terminated upon personal request, due to permanent loss of working capacity to perform the public prosecutor's function, the occurrence of the conditions prescribed by law, loss of citizenship of the Republic of Serbia or a dismissal.

A public prosecutor shall be dismissed if he/she is convicted of a criminal offense to at least six months of imprisonment, or if in disciplinary proceedings it is established that he/she has committed a serious disciplinary offense which, pursuant to assessment of the High Prosecutorial Council, seriously damages the reputation of the public prosecutor's office or public confidence in the public prosecutor's office.

A public prosecutor shall be dismissed due to incompetence if, in a significant number of cases, pursuant to assessment of the High Prosecutorial Council, he/she does not meet the benchmarks of satisfactory performance.

A public prosecutor shall be dismissed in a manner, under conditions and in a procedure which do not endanger the autonomy and independence of the public prosecutor's office.

The function of the Supreme Public Prosecutor and a head of the public prosecutor's office shall terminate also upon the expiration of the period for which he/she has been elected, after which he/she shall continue to work as a public prosecutor.

The Supreme Public Prosecutor, a head of the public prosecutor's office and a public prosecutor shall have the right to appeal to the Constitutional Court against the decision of the High Prosecutorial Council pertaining to the termination of office.

2. The amendment shall replace the title of Article 160 and Article 160 of the Constitution of the Republic of Serbia.

AMENDMENT XXVII

1. **Immunity of public prosecutors**

The Supreme Public Prosecutor, a head of the public prosecutor's office and a public prosecutor shall not be held liable for an opinion expressed or a decision made in connection with the performance of the public prosecutor's office, unless they commit the criminal offense of violation of law by a public prosecutor. The proceedings for this crime shall not be instituted without the approval of the High Prosecutorial Council.

The Supreme Public Prosecutor, a head of the public prosecutor's office and a public prosecutor shall not be deprived of liberty without the approval of the High Prosecutorial Council in the proceedings instituted on suspicion of having committed a criminal offense in connection with the performance of office.

2. The amendment shall replace the title of Article 161 and Article 161 of the Constitution of the Republic of Serbia.

AMENDMENT XXVIII

1. **Incompatibility of the function**

The law shall regulate which functions, jobs or private interests are incompatible with the public prosecutor's function.

2. The amendment shall replace the title of Article 162 and Article 162 of the Constitution of the Republic of Serbia.

AMENDMENT XXIX

1. **Right to freedom of association and public activity**

Public prosecutors shall have the right to freedom of association in professional and expert associations and to perform public activities to improve the profession and protect the autonomy and independence of public prosecutors' offices, and the autonomy of public prosecutors.

2. The amendment shall replace the title of Article 163 and Article 163 of the Constitution of the Republic of Serbia.

AMENDMENT XXX

1. **Status, composition, and election of the High Prosecutorial Council**
The High Prosecutorial Council shall be an autonomous and independent body.
The High Prosecutorial Council shall consist of the Supreme Public Prosecutor, seven public prosecutors and three prominent lawyers. Seven public prosecutors shall be elected by all public prosecutors, taking into account the proportionate representation of different types of prosecutor's offices. Two prominent lawyers shall be elected by the National Assembly from among four candidates, with at least fifteen years of work experience in the legal profession, who are nominated by the competent committee of the National Assembly by means of a two-thirds majority vote. One prominent lawyer shall be elected by all law schools from among law professors with a tenure. The election of members of the High Prosecutorial Council shall be regulated by law.
The head of the public prosecutor's office shall not be a member of the High Prosecutorial Council.
Members of the High Prosecutorial Council shall not be members of political parties.
2. The amendment shall replace the title of Article 164 and Article 164 of the Constitution of the Republic of Serbia.

AMENDMENT XXXI

1. **Mandate of members of the High Prosecutorial Council**
The term of office of the members of the High Prosecutorial Council shall be five years, except for the Supreme Public Prosecutor.
The same person shall not be re-elected to the High Prosecutorial Council.
A member of the High Prosecutorial Council shall have his/her term of office terminated before the expiration of the term for which he/she has been elected upon personal request or if he/she is convicted of a criminal offense and sentenced to imprisonment. The term of office of a member who is a public prosecutor shall also end with the termination of the public prosecutor's function, and of a member who is not a public prosecutor, also if he/she permanently loses the ability to perform the function of a member of the High Prosecutorial Council.
The decision on the termination of the mandate of a member of the High Prosecutorial Council shall be made by the High Prosecutorial Council.
An appeal against the decision referred to in paragraph 4 of this Article may be lodged to the Constitutional Court.
2. The amendment shall replace the title of Article 165 and Article 165 of the Constitution of the Republic of Serbia.

AMENDMENT XXXII

1. **Immunity of members of the High Prosecutorial Council**
A member of the High Prosecutorial Council shall not be held liable for an opinion expressed in procedure before the High Prosecutorial Council and for a vote cast in the decision-making proceedings before the High Prosecutorial Council, unless he/she commits a criminal offense in connection with the function of a member of the High Prosecutorial Council.

A member of the High Prosecutorial Council shall not be deprived of liberty without the approval of the High Prosecutorial Council in the proceedings instituted for a criminal offense in connection to the performance of the function of a member of the High Prosecutorial Council.

2. By the amendment the title of Article 165a and Article 165a shall be added to the Constitution of the Republic of Serbia.

AMENDMENT XXXIII

1. **President of the High Prosecutorial Council**

The High Prosecutorial Council shall have a president.

The President shall be elected from among public prosecutors who are members of the High Prosecutorial Council.

The Supreme Public Prosecutor shall not be the President of the Supreme Prosecutorial Council.

2. By the amendment the title of Article 165b and Article 165b shall be added to the Constitution of the Republic of Serbia.

AMENDMENT XXXIV

1. **Jurisdiction of the High Prosecutorial Council**

High Prosecutorial Council shall:

1. safeguard the autonomy and independence of the public prosecutor's office,
2. safeguard the autonomy of the Supreme Public Prosecutor, heads of public prosecutor's offices and public prosecutors,
3. safeguard the respect of the prohibition of influencing the performance of the public prosecutor's function,
4. determine the required number of public prosecutors and public prosecutor's assistants,
5. elect the Supreme Public Prosecutor, heads of public prosecutor's offices and public prosecutors and decide on the termination of their offices,
6. appoint and dismiss members of disciplinary bodies,
7. rule on the legal remedy pertaining to the election of public prosecutors due to violation of the rules of procedure,
8. decide on the transfer and assignment of the public prosecutor,
9. decide on immunity and incompatibility of performing other services with the public prosecutor's function,
10. rule on appeals lodged against decisions of the disciplinary commission,
11. have the right to propose laws and give opinions on draft laws and laws in force related to the status of public prosecutors and the functioning of the prosecutor's office,
12. propose budget funds for the functioning of the High Prosecutorial Council and the Public Prosecutor's Office and autonomously administers these funds,
13. adopt the Code of Ethics of Public Prosecutors and elect the Ethics Committee of Public Prosecutors,
14. adopt the Prosecutor's Rules of Procedure upon previously obtained opinion of the competent ministry,
15. adopt criteria for the selection and promotion of public prosecutors,
16. evaluate the work of heads of public prosecutor's offices, public prosecutors and public prosecutor's assistants,
17. consider semi-annual and annual reports on the work of the public prosecutor's office,

18. submit an annual report on the work of public prosecutor's offices to the National Assembly and the Government,
19. decide on other issues related to the status of the Supreme Public Prosecutor, heads of public prosecutor's offices and public prosecutors,
20. perform other duties specified by the Constitution and the law.

2. By the amendment the title of Article 165v and Article 165v shall be added to the Constitution of the Republic of Serbia.

AMENDMENT XXXV

1. **Work and decision-making of the High Prosecutorial Council**

The work of the High Prosecutorial Council shall be open to the public. Exclusion of the public shall be possible only in accordance with the Constitution and the law.

The High Prosecutorial Council shall decide by a majority vote of its members at a session attended by a majority of its members.

The High Prosecutorial Council shall decide by a majority vote of all members on the election of the President of the High Prosecutorial Council, the Supreme Public Prosecutor, heads of public prosecutor's offices and public prosecutors, on transfer and dismissal of public prosecutors.

The High Prosecutorial Council shall have a duty to give reasons for its decisions and make them public.

The High Prosecutorial Council shall adopt decisions on the election and termination of functions of the Supreme Public Prosecutor, heads of public prosecutor's offices and public prosecutors, on transfer and assignment of public prosecutors, appointment and dismissal of members of disciplinary bodies in a procedure stipulated by law and upon criteria determined in accordance with the law.

An appeal may be lodged to the Constitutional Court against the decision of the High Prosecutorial Council referred to in paragraph 5 of this Article in a case provided by law.

2. By the amendment the title of Article 165g and Article 165g shall be added to the Constitution of the Republic of Serbia.

AMENDMENT XXXVI

1. Five judges of the Constitutional Court shall be elected by the National Assembly, five shall be appointed by the President of the Republic, and five by the General Session of the Supreme Court.

The National Assembly shall elect five judges of the Constitutional Court from among 10 candidates proposed by the President of the Republic, the President of the Republic shall appoint five judges of the Constitutional Court from among 10 candidates proposed by the National Assembly, and the General Session of the Supreme Court shall appoint five judges from among 10 candidates proposed by the High Judicial Council and the High Prosecutorial Council at the joint session.

2. The amendment shall replace Article 172 para. 2 and 3 of the Constitution of the Republic of Serbia.

MODEL CONSTITUTIONAL LAW ON AMENDMENTS TO THE CONSTITUTION OF THE REPUBLIC OF SERBIA

Article 1

Article 4 of the Constitution shall be amended as follows:

„ In the Republic of Serbia government shall be organized into the legislative, executive and judicial branch on the basis of the separation of powers principle.

The relation of the three branches of government shall be regulated by the Constitution.

The competences of all governmental bodies shall be determined and limited by the Constitution and the law, in accordance with the rule of law.

No governmental body shall usurp power assigned by the Constitution to another branch of government.“

Article 2

In Article 99, paragraph 2, sub-paragraph 3 of the Constitution, the words “3. appoint the President of the Supreme Court of Cassation, presidents of courts, Republic Public Prosecutor, public prosecutors, judges and deputy public prosecutors, in accordance with the Constitution” shall be deleted.

Previous sub-paragraphs 4, 5 and 6 shall become sub-paragraphs 3, 4 and 5.

Article 3

In Article 105, paragraph 2 of the Constitution, sub-paragraphs 12 and 13 shall be amended as follows:

„12. elect two prominent lawyers to the High Judicial Council,
13. elect two prominent lawyers to the High Prosecutorial Council“.

In paragraph 3, a new sub-paragraph 7 shall be added, and reads:

„7. courts, High Judicial Council, public prosecutors and High Prosecutorial Council,”.

Previous sub-paragraph 7 shall become sub-paragraph 8.

Article 4

In Part Five of the Constitution, Section 7 shall be amended as follows:

„Status of Judicial Power

Article 142

Judicial power shall be vested in courts. Courts shall be autonomous and independent.

Judicial power shall ensure the rule of law through competent application of legal norms in an impartial, fair and efficient manner.

Judicial power shall be unitary in the territory of the Republic of Serbia.

Judiciary principles

Article 143

Courts shall adjudicate pursuant to the Constitution, generally accepted rules and principals of international law, ratified international treaties and case-law of international bodies which supervise the application of the international standards of human rights, laws and other general acts, as provided by law.

The court shall adjudicate in the chamber. It may be established by law that a single judge shall adjudicate in certain matters.

It may be established by law that lay judges shall also take part in a trial.

Hearing before a court and pronunciation of court decisions shall be public and may be limited only in accordance with the Constitution and the law.

Court decisions shall be rendered in the name of the Republic of Serbia.

Court decisions may be reviewed only by a court determined by the Constitution and the law in proceedings provided by law, as well as by the Constitutional Court in the proceedings on a constitutional appeal.

Cases shall be allocated to judges according to pre-established rules, which can be waived only in cases provided by law.

Salaries of judges shall be determined by law and cannot be reduced.

The courts and the High Judicial Council shall have their own budget.

Types and organization of courts

Article 144

Judicial power in the Republic of Serbia shall be vested in courts of general and special jurisdiction.

The courts of general jurisdiction shall be the basic courts, the higher courts and the appellate courts.

The types of courts of special jurisdiction shall be regulated by law.

The Supreme Court shall be the highest court in the Republic of Serbia.

The seat of the Supreme Court shall be in Belgrade.

The Supreme Court shall ensure harmonization of case-law and the uniform application of law through its judicial practice.

The establishment, organization, jurisdiction, structure and composition of courts shall be regulated by law, in accordance with the Constitution.

Establishment of courts martial or extraordinary courts shall be prohibited.

Independence of judges

Article 145

A judge shall be independent in performing the judicial function and shall adjudicate pursuant to the Constitution, generally accepted rules and principles of international law, ratified international treaties and case-law of international bodies which supervise the

application of the international standards of human rights, laws and other general acts, as provided by law.

Any influence on a judge in the exercise of the judicial office shall be prohibited.

Permanent tenure of judicial office

Article 146.

Tenure of judicial office shall be permanent and shall last from the moment of the election until the conditions for termination of judicial office are fulfilled.

Requirements for the election of judges

Article 147

The High Judicial Council shall elect judges of courts of general and special jurisdiction, in accordance with the Constitution and law.

A citizen of the Republic of Serbia who meets the general conditions for employment in state bodies, who has graduated from a school of law, passed the bar exam, has work experience required for a certain court and who is professional, qualified and worthy of a judicial function may be elected a judge.

Requirements for the election and mandate of lay judges shall be provided by law.

Termination of a judge's tenure of office

Article 148

A judge's tenure of office shall be terminated at his/her personal request, due to permanent loss of working capacity to perform the judicial function, the occurrence of the conditions prescribed by law, loss of citizenship of the Republic of Serbia or due to dismissal.

A judge shall be dismissed if he/she is convicted of a criminal offense to at least six months of imprisonment or if it is determined in the disciplinary proceedings that he/she has committed a serious disciplinary offense which, pursuant to assessment of the High Judicial Council, seriously damages the reputation of judicial office or public confidence in the courts.

A judge may be dismissed due to incompetence if, in a significant number of cases, pursuant to assessment of the High Judicial Council, he/she does not meet the benchmarks of satisfactory performance.

A judge shall have the right to appeal to the Constitutional Court against the decision of the High Judicial Council pertaining to the termination of office.

Non-transferability of a judge

Article 149

A judge shall perform the judicial function in the court for which he/she has been elected and only with his/her consent can be transferred or assigned to another court.

In case of revocation of the court or a predominant part of the jurisdiction of the court where he/she has been elected, the judge may, exceptionally, without their consent, be permanently transferred or assigned to another court of the same type and instance or another instance, with guaranteed salary he/she has been entitled to in the court from which he/she is transferred, if it is more favourable to him/her.

The predominant part of the court's jurisdiction shall be revoked if the required number of judges in the court is reduced due to a change of the subject matter jurisdiction or the establishment of a new court.

Immunity

Article 150

A judge and a lay judge shall not be held liable for an opinion expressed or a vote cast in the process of rendering a court decision unless he/she commits the criminal offense of violation of law by a judge.

A judge shall not be deprived of liberty in the proceedings instituted for a criminal offense committed in the exercise of judicial office without the approval of the High Judicial Council.

Incompatibility of judicial function

Article 151

The law shall stipulate which functions, jobs or private interests are incompatible with the judicial function, the function of the president of the court and the lay judge.

Right to freedom of association and public activity

Article 152

Judges shall have the right to freedom of association in professional and expert associations and to perform public activities to improve the judicial profession and protect the autonomy and independence of courts and judges.

President of the Supreme Court and presidents of courts

Article 152a

The President of the Supreme Court shall be elected by the High Judicial Council, after obtaining the opinion of the General Session of the Supreme Court.

The President of the Supreme Court shall be elected for a term of five years, and may not be re-elected.

The presidents of the courts shall be elected by the High Judicial Council for a term of five years, and may not be re-elected.

The office of the President of the Supreme Court and the presidents of the courts shall terminate before the expiration of the term for which they have been elected on personal request, upon the occurrence of the conditions prescribed by law or due to dismissal for reasons prescribed by law for dismissal of the president of the court.

The decision on the termination of the office of the president of the court shall be made by the High Judicial Council, in accordance with law.

The president of the court shall have the right to appeal to the Constitutional Court against the decision of the High Judicial Council pertaining to termination of office.“

Article 5

In Part Five of the Constitution, Section 8 shall be amended as follows:

“*Status, composition and election of the High Judicial Council*

Article 153

The High Judicial Council is an autonomous and independent body that ensures and guarantees the autonomy and independence of courts and judges.

The High Judicial Council shall consist of the President of the Supreme Court, seven judges and three prominent lawyers. Seven judges shall be elected by judges, taking into account the proportionate representation of the courts. Two prominent lawyers shall be elected by the National Assembly from among four candidates with at least fifteen years of work experience in the legal profession, who are nominated by a competent committee of the National Assembly by means of a two-thirds majority vote. One prominent lawyer shall be elected by all law schools from among law professors with a tenure. The election of members of the High Judicial Council shall be regulated by law.

The presidents of courts shall not be elected members of the High Judicial Council.

Members of the High Judicial Council shall not be members of political parties.”

Mandate of members of the High Judicial Council

Article 154

The term of office of the members of the High Judicial Council shall be five years, except for the President of the Supreme Court.

The same person shall not be re-elected to the High Judicial Council.

A member of the High Judicial Council shall have his/her term of office terminated before the expiration of the term for which he/she has been elected upon personal request or if he/she is convicted of a criminal offense and sentenced to imprisonment. The term of office of a member who is a judge shall also end with the termination of the judicial function, and of a member who is not a judge, also, if he/she permanently loses the ability to perform the function of a member of the High Judicial Council.

The decision on the termination of the mandate of the members of the High Judicial Council shall be made by the High Judicial Council.

An appeal against the decision referred to in paragraph 4 of this Article may be lodged to the Constitutional Court.

Immunity of members of the High Judicial Council

Article 155

A member of the High Judicial Council shall not be held liable for an opinion expressed in the proceedings before the High Judicial Council and for a vote cast in the decision-making proceedings before the High Judicial Council, unless he/she commits a criminal offense in connection with performing the function of a member of the High Judicial Council.

A member of the High Judicial Council shall not be deprived of liberty without the approval of the High Judicial Council in the proceedings instituted on suspicion of having committed a criminal offense in connection with the performance of the function of a member of the High Judicial Council.

President of the High Judicial Council

Article 155a

The High Judicial Council shall have a president.

The President shall be elected from among the judges who are members of the High Judicial Council.

The President of the Supreme Court shall not be the President of the High Judicial Council.

Jurisdiction of the High Judicial Council

Article 155b

High Judicial Council shall:

1. safeguard the autonomy and independence of judges,
2. determine the required number of judges and lay judges,
3. elect the President of the Supreme Court, presidents of courts, judges and lay judges and decide on the termination of their office,
4. appoint and dismiss members of disciplinary bodies,
5. rule on the legal remedy pertaining to the election of judges due to violation of the rules of procedure,
6. decide on the transfer and assignment of judges,
7. decide on immunity and incompatibility of performing other services with the judicial function,
8. rule on appeals lodged against decisions of the disciplinary commission,
9. have the right to propose laws and give opinions on draft laws and laws in force related to the status of judges and functioning of the courts,
10. propose budget funds for the functioning of the High Judiciary Council and courts and autonomously administer those funds,
11. adopt the Code of Judicial Ethics and elects the Judicial Ethics Committee,
12. adopts the Court Rules of Procedure upon previously obtained opinion of the competent ministry,
13. adopt criteria for the selection and promotion of judges,
14. evaluate the work of judges and court presidents,
15. consider semi-annual and annual reports on the work of courts,

16. submit an annual report on the work of the courts to the National Assembly and the Government,
17. decide on other issues related to the status of judges, court presidents and lay judges,
18. perform other duties specified by the Constitution and the law.

Work and decision-making of the High Judicial Council

Article 155v

The work of the High Judicial Council shall be open to the public. Exclusion of the public shall be possible only in accordance with the Constitution and the law.

The High Judicial Council shall decide by a majority vote of its members at a session attended by a majority of its members.

The High Judicial Council shall decide by a majority vote of all members on the election of the President of the High Judicial Council, the President of the Supreme Court, the presidents of courts and judges, on transfer and dismissal of judges.

The High Judicial Council shall have a duty to give reasons for its decisions and make them public.

The High Judicial Council shall adopt decisions on the election and termination of office of judges, court presidents, lay judges, on transfer and assignment of judges, appointment and dismissal of members of disciplinary bodies in a procedure stipulated by law and on the basis of criteria determined in accordance with the law.

An appeal may be lodged to the Constitutional Court against the decision of the High Judicial Council referred to in paragraph 5 of this Article in a case provided by law."

Article 6

In Part Five of the Constitution, Section 9 shall be amended as follows:

"*Status, competence, establishment and organization of public prosecutor's offices*

Article 156

The public prosecutor's office is an autonomous and independent state body that prosecutes perpetrators of criminal and other punishable offenses and performs other competencies that protect public interest determined by law. The public prosecutor's office shall manage the criminal police, in accordance with the law.

The public prosecutor's office shall perform its function pursuant to the Constitution, generally accepted rules and principles of international law, ratified international treaties and case-law of international bodies which supervise the application of the international standards of human rights, laws and other general acts, as provided by law.

No one outside the public prosecutor's office shall influence the performance of the public prosecutor's function.

The establishment, organization, jurisdiction, structure and composition of the public prosecutor's office shall be regulated by law.

Supreme Public Prosecutor and heads of public prosecutor's offices

Article 157

Each public prosecutor's office shall have its head.

The Supreme Public Prosecutor's Office shall be headed by the Supreme Public Prosecutor.

The Supreme Public Prosecutor's Office shall exercise the competence of the public prosecutor's office within the rights and duties of the Republic of Serbia.

The Supreme Public Prosecutor shall be elected by the High Prosecutorial Council, for a period of seven years, and may not be re-elected.

Heads of public prosecutor's offices shall be elected by the High Prosecutorial Council, for a period of five years, and may not be re-elected.

The Supreme Public Prosecutor and the heads of public prosecutor's offices shall be elected in a manner, under conditions and in the procedure that ensures integrity, competence, and autonomy in performing their function.

Public prosecutors

Article 158

The function of the public prosecutor's office shall be performed by the public prosecutor.

The public prosecutor shall be elected by the High Prosecutorial Council.

The term of the public prosecutor’s office shall be permanent.

The public prosecutor shall be elected in a manner, under the conditions and in the procedure that ensures integrity, competence and autonomy in performing his/her function.

Accountability of public prosecutor’s offices

Article 159

Public prosecutor’s offices shall be accountable to the Supreme Public Prosecutor's Office, and lower public prosecutor's offices to the immediately higher public prosecutor's office.

Termination of office

Article 160.

A public prosecutor’s tenure shall be terminated upon personal request, due to permanent loss of working capacity to perform the public prosecutor's function, the occurrence of the conditions prescribed by law, loss of citizenship of the Republic of Serbia or a dismissal.

A public prosecutor shall be dismissed if he/she is convicted of a criminal offense to at least six months of imprisonment, or if in disciplinary proceedings it is established that he/she has committed a serious disciplinary offense which, pursuant to assessment of the High

Prosecutorial Council, seriously damages the reputation of the public prosecutor's office or public confidence in the public prosecutor’s office.

A public prosecutor shall be dismissed due to incompetence if, in a significant number of cases, pursuant to assessment of the High Prosecutorial Council, he/she does not meet the benchmarks of satisfactory performance.

A public prosecutor shall be dismissed in a manner, under conditions and in a procedure which do not endanger the autonomy and independence of the public prosecutor's office.

The function of the Supreme Public Prosecutor and a head of the public prosecutor's office shall terminate also upon the expiration of the period for which he/she has been elected, after which he/she shall continue to work as a public prosecutor.

The Supreme Public Prosecutor, a head of the public prosecutor's office and a public prosecutor shall have the right to appeal to the Constitutional Court against the decision of the High Prosecutorial Council pertaining to the termination of office.

Immunity of public prosecutors

Article 161

The Supreme Public Prosecutor, a head of the public prosecutor's office and a public prosecutor shall not be held liable for an opinion expressed or a decision made in connection with the performance of the public prosecutor's office, unless they commit the criminal offense of violation of law by a public prosecutor. The proceedings for this crime shall not be instituted without the approval of the High Prosecutorial Council.

The Supreme Public Prosecutor, a head of the public prosecutor's office and a public prosecutor shall not be deprived of liberty without the approval of the High Prosecutorial Council in the proceedings instituted on suspicion of having committed a criminal offense in connection with the performance of office.

Incompatibility of the function

Article 162

The law shall regulate which functions, jobs or private interests are incompatible with the public prosecutor's function.

Right to freedom of association and public activity

Article 163

Public prosecutors shall have the right to freedom of association in professional and expert associations and to perform public activities to improve the profession and protect the autonomy and independence of public prosecutors’ offices, and the autonomy of public prosecutors.

Status, composition and election of the High Prosecutorial Council

Article 164

The High Prosecutorial Council shall be an autonomous and independent body.

The High Prosecutorial Council shall consist of the Supreme Public Prosecutor, seven public prosecutors and three prominent lawyers. Seven public prosecutors shall be elected by all public prosecutors, taking into account the proportionate representation of different types of prosecutor's offices. Two prominent lawyers shall be elected by the National Assembly from among four candidates, with at least fifteen years of work experience in the legal profession, who are nominated by the competent committee of the National Assembly by means of a two-thirds majority vote. One prominent lawyer shall be elected by all law schools from among law professors with a tenure. The election of members of the High Prosecutorial Council shall be regulated by law.

The head of the public prosecutor's office shall not be a member of the High Prosecutorial Council.

Mandate of members of the High Prosecutorial Council

Article 165

The term of office of the members of the High Prosecutorial Council shall be five years, except for the Supreme Public Prosecutor.

The same person shall not be re-elected to the High Prosecutorial Council.

A member of the High Prosecutorial Council shall have his/her term of office terminated before the expiration of the term for which he/she has been elected upon personal request or if he/she is convicted of a criminal offense and sentenced to imprisonment. The term of office of a member who is a public prosecutor shall also end with the termination of the public prosecutor's function, and of a member who is not a public prosecutor, also if he/she permanently loses the ability to perform the function of a member of the High Prosecutorial Council.

The decision on the termination of the mandate of a member of the High Prosecutorial Council shall be made by the High Prosecutorial Council.

An appeal against the decision referred to in paragraph 4 of this Article may be lodged to the Constitutional Court.

Immunity of members of the High Prosecutorial Council

Article 165a

A member of the High Prosecutorial Council shall not be held liable for an opinion expressed in procedure before the High Prosecutorial Council and for a vote cast in the decision-making proceedings before the High Prosecutorial Council, unless he/she commits a criminal offense in connection with the function of a member of the High Prosecutorial Council.

A member of the High Prosecutorial Council shall not be deprived of liberty without the approval of the High Prosecutorial Council in the proceedings instituted for a criminal offense in connection to the performance of the function of a member of the High Prosecutorial Council.

President of the High Prosecutorial Council

Article 165b

The High Prosecutorial Council shall have a president.
The President shall be elected from among public prosecutors who are members of the High Prosecutorial Council.
The Supreme Public Prosecutor shall not be the President of the Supreme Prosecutorial Council.

Jurisdiction of the High Prosecutorial Council

Article 165v

High Prosecutorial Council shall:
1. safeguard the autonomy and independence of the public prosecutor's office,
2. safeguard the autonomy of the Supreme Public Prosecutor, heads of public prosecutor's offices and public prosecutors,
3. safeguard the respect of the prohibition of influencing the performance of the public prosecutor's function,
4. determine the required number of public prosecutors and public prosecutor's assistants,
5. elect the Supreme Public Prosecutor, heads of public prosecutor's offices and public prosecutors and decide on the termination of their offices,
6. appoint and dismiss members of disciplinary bodies,
7. rule on the legal remedy pertaining to the election of public prosecutors due to violation of the rules of procedure,
8. decide on the transfer and assignment of the public prosecutor,
9. decide on immunity and incompatibility of performing other services with the public prosecutor's function,
10. rule on appeals lodged against decisions of the disciplinary commission,
11. have the right to propose laws and give opinions on draft laws and laws in force related to the status of public prosecutors and the functioning of the prosecutor's office,
12. propose budget funds for the functioning of the High Prosecutorial Council and the public prosecutor's office and autonomously administers these funds,
13. adopt the Code of Ethics of Public Prosecutors and elect the Ethics Committee of Public Prosecutors,
14. adopt the Prosecutor's Rules of Procedure upon previously obtained opinion of the competent ministry,
15. adopt criteria for the selection and promotion of public prosecutors,
16. evaluate the work of heads of public prosecutor's offices, public prosecutors and public prosecutor's assistants,
17. consider semi-annual and annual reports on the work of the public prosecutor's office,
18. submit an annual report on the work of public prosecutor's offices to the National Assembly and the Government,
19. decide on other issues related to the status of the Supreme Public Prosecutor, heads of public prosecutor's offices and public prosecutors,
20. perform other duties specified by the Constitution and the law.

Work and decision-making of the High Prosecutorial Council

Article 165g

The work of the High Prosecutorial Council shall be open to the public. Exclusion of the public shall be possible only in accordance with the Constitution and the law.

The High Prosecutorial Council shall decide by a majority vote of its members at a session attended by a majority of its members.

The High Prosecutorial Council shall decide by a majority vote of all members on the election of the President of the High Prosecutorial Council, the Supreme Public Prosecutor, heads of public prosecutor's offices and public prosecutors, on transfer and dismissal of public prosecutors.

The High Prosecutorial Council shall have a duty to give reasons for its decisions and make them public.

The High Prosecutorial Council shall adopt decisions on the election and termination of functions of the Supreme Public Prosecutor, heads of public prosecutor's offices and public prosecutors, on transfer and assignment of public prosecutors, appointment and dismissal of members of disciplinary bodies in a procedure stipulated by law and upon criteria determined in accordance with the law.

An appeal may be lodged to the Constitutional Court against the decision of the High Prosecutorial Council referred to in paragraph 5 of this Article in a case provided by law."

Article 7

In Article 172 of the Constitution, paragraphs 2 and 3 shall be amended as follows:

"Five judges of the Constitutional Court shall be elected by the National Assembly, five shall be appointed by the President of the Republic, and five by the General Session of the Supreme Court.

The National Assembly shall elect five judges of the Constitutional Court from among 10 candidates proposed by the President of the Republic, the President of the Republic shall appoint five judges of the Constitutional Court from among 10 candidates proposed by the National Assembly, and the General Session of the Supreme Court shall appoint five judges from among 10 candidates proposed by the High Judicial Council and the High Prosecutorial Council at the joint session."

Article 8

This constitutional law shall enter into force on the day of its promulgation in the National Assembly.

EXPLANATION

I. CONSTITUTIONAL BASIS

Pursuant to Article 203, paragraph 1 of the Constitution of the Republic of Serbia (hereinafter: the Constitution), the Government of the Republic of Serbia submitted the Proposal to amend the Constitution to the National Assembly on December 12, 2020. At the session held on June 7, 2021, the National Assembly adopted the Proposal for amending the Constitution.

Pursuant to Article 203, paragraph 5 of the Constitution, which stipulates that an act on amending the Constitution shall be drafted and considered, a Model Amendments to the Constitution has been drafted, as well as a Model Constitutional Law on Amendments to the Constitution (as an alternative form of amending the Constitution).

II. REASONS FOR PROPOSING CONSTITUTIONAL AMENDMENTS

Certain provisions of the Constitution related to judiciary and the accompanying Constitutional Law for the Implementation of the Constitution have been criticized by the professionals and general public since the moment of their adoption. The need for their amendment has been confirmed in time, both because of their general incompatibility with the fundamental principles on which constitutional democracies operate and the level of the rule of law achieved, as well as because of the process of European integration.

The Government of the Republic of Serbia has proposed to amend the provisions of Article 4 of the Constitution and the provisions of the Constitution relating to courts and public prosecutor's offices, that is Articles 142-165 of the Constitution, as well as to consequently amend the provisions of Article 99 of the Constitution (Competences of the National Assembly), Article 105 of the Constitution (Method of decision-making in the National Assembly) and the provisions of Article 172 of the Constitution (Election and appointment of the Constitutional Court justices).

The Model Amendments include amendments to the above-listed provisions, as well as some additional amendments supplementing constitutional provisions relating to courts and the public prosecutor's office. The model Constitutional Law on Amendments to the Constitution contains identical solutions, only the form proposing their adoption is different.

The reasons why amendments to the Constitution are proposed are of a substantial and formal nature.

In essence, the solutions contained in the Model Amendments to the Constitution are based on the public interest of all citizens of Serbia to have legal disputes adjudicated by independent and impartial courts, as well as for judicial protection of human and minority rights to be entrusted to such courts. Considering that the Constitution stipulates that democracy and the rule of law are among the basic values on which the Republic of Serbia is founded, and that in constitutional democracies the principle of separation of powers implies that the judicial power must be independent of the legislative and the executive branches of government, the proposed amendments will eliminate the possibility of political influence of legislative and executive bodies on the judicial power, because the valid constitutional solutions do not prevent such

influence. Although the notion of an independent judiciary can be interpreted in several ways, in principle, the independence of the judiciary implies the achievement of two basic goals: that only judges can adjudicate; and that when adjudicating, a judge is bound only by the Constitution, the law and other sources of laws established by the Constitution. The Model Amendments ensure the achievement of these goals.

In relation to the status of the prosecutor's office, the Model Amendments elevate the public prosecutor's office to the rank of an independent and not only an autonomous body, as provided by the valid constitutional solutions. This essential change is the result of the central role, which the recently introduced system of prosecutorial investigation has assigned to public prosecutors in the Republic of Serbia, as well as the role of prosecutors in simplified forms of the proceedings related to criminal matters. Having in mind such a status of the prosecutor's office, the interest of the citizens of Serbia is that investigations in the criminal proceedings are conducted not only by autonomous, but also by independent public prosecutors, which valid constitutional solutions do not support.

In the formal sense, Serbia has adopted strategic documents and committed to amend the Constitution related to the judiciary, by adopting the National Judicial Strategy Reform (especially that for 2013-2018 and 2019-2024) and the Action Plan for Chapter 23 in the negotiation process for accession to the European Union. The Action Plan for Chapter 23 explicitly states that “lack of independence of judges and excessive political influence” has been recognized, and that the process of amending the Constitution will induce the change of the relevant legislation and allow the independence of the judiciary and consider "means to minimize the risk of political influence.” Therefore, the main reason for amending the Constitution, which is stated in that document, is the depoliticization and strengthening of the independence of the judiciary. The solutions contained in the Model Amendments (i.e. the Model Constitutional Law) achieve the goals set in the mentioned strategic documents and enable the Republic of Serbia to be unambiguously characterized as a democratic state in which the rule of law is respected, given that it is one of the conditions for any state to join the European Union.

The solutions contained in the Model Amendments are based on the international standards, opinions and positions of international organizations or bodies related to judiciary, listed in Appendix I, publicly available opinions of the domestic and international professional bodies on the Draft Amendments to the Constitution of the Republic of Serbia (of 2018), research, analysis and proposals of judicial bodies, professional associations, NGOs and law professors on necessary constitutional amendments related to judiciary.

III FORM OF CHANGING THE CONSTITUTION

The Constitution of the Republic of Serbia of 2006 does not determine the form of the act on amending the Constitution, nor is that form determined by the Rules of Procedure of the National Assembly. Following the Constitution of the Republic of Serbia of 1990, and therefore the constitutions of socialist Yugoslavia, the valid Constitution leaves it to the revising constitution-makers to choose an appropriate form of act to amend the constitution. Formal changes to the constitution are possible in the form of amendments to the constitution and the constitutional law on amendments to the constitution. Constitutional amendments are added at the end of the text of the constitution, so that the original provisions of the constitution can be compared at any time with the changes. The constitutional law on amendments to the constitution directly intervenes in the text of the constitution, by deleting, amending or

supplementing its provisions, in accordance with the usual technique (the "law on amendments to the law").

The technique of constitutional amendments is a characteristic of Anglo-Saxon constitutional culture (USA, Ireland, etc.), and the technique of the constitutional law on amendments to the constitution is closer to the continental-European constitutional-legal culture (France, Germany, Switzerland, Austria, Italy, Belgium, Poland, etc.). Most of the Yugoslav constitutions were also changed by amendments (of 1963, 1974 and 1992). This tradition was continued by North Macedonia and Montenegro, while Slovenia and Croatia changed their valid constitutions by constitutional law. Having in mind that both forms of changing the constitution have their historical and comparative legal justification - the Judicial Research Centre (CEPRIS) has offered to the competent committee of the National Assembly both models.

We would like to emphasize that the used technique of constitutional amendments is based on the current numbering of the Articles of the Constitution and that the numbering has not been changed in the Model. However, the proposed changes include a different systematization of constitutional provisions concerning the judiciary, so the content of new solutions does not always coincide with the current systematization. Therefore, in the Explanation of individual amendments, whenever necessary, it is stated not only which Article of the Constitution is amended, but also which valid constitutional provision regulates that matter.

Considering that the Model Constitutional Law on Amendments to the Constitution contains identical proposals as the Model Amendments (only the form of the changes is different), the Explanation of individual amendments also refers to the solutions contained in the Model Constitutional Law.

IV EXPLANATION OF INDIVIDUAL AMENDMENTS

AMENDMENT I – The subject of this amendment is Article 4 of the Constitution which regulates the **separation of powers**. The current provisions of Article 4 are deficient for two main reasons.

First, the provision on a unitary legal system, contained in paragraph 1 of Article 4, has been wrongly placed in the article of the Constitution which regulates the distribution of powers among different branches of government. The provision on a unitary legal system refers to the formal system of legal norms and not to the separation of state functions established to prevent the exercise of arbitrary power. It should be noted that the identical provision on a unitary legal system is repeated in Article 194 of the Constitution, which speaks of the hierarchy of legal acts, and therefore should be deleted as redundant and incorrectly systematized in Article 4.

Second, the broadly drafted provisions of paragraphs 3 and 4 of Article 4 are in reality not only misinterpreted, but are also used by the legislative and executive branches of government as a justification for interfering in the work of the judicial branch. The provision under paragraph 4 “judicial power shall be independent” indicates that in adjudication the court is bound only by law and other sources of law. In other words, this provision prohibits other state bodies, e.g. the Government, the National Assembly, or the President of the Republic, to control judicial power. Yet, in practice, the constitutional guarantee of judicial independence has been misinterpreted because it has been argued that paragraph 3 of Article 4 stipulates that the

relation between the three branches of government is based on balance and mutual control (it is more correct to talk about checks-and-balances rather than control), and that hence the influence of political institutions on judiciary is justified.

It should be emphasized that checks-and-balances prevent abuse of power. This is achieved through several constitutional mechanisms, such as the vote of no confidence in the government, the dissolution of the assembly, the "impeachment" of the president, the presidential veto on a bill, constitutional review, etc. Although judiciary affects the work of the legislative and executive bodies to a lesser degree, this does not mean that such influence does not exist: e.g. court decisions indicate to the legislator the need to amend or enact new laws or eliminate misapplication of regulations by the executive power, while judicial protection of human and minority rights provides protection against authoritarian governmental policy or measures. Therefore, from the perspective of constitutional theory, the provisions of paragraphs 3 and 4 are not in conflict, since all three branches of government are able to counterbalance each other by different mechanisms. On should have in mind, however, that the provision of paragraph 3 of Article 4 (“relation between three branches of power shall be based on balance and mutual control”) are of a textbook character and as such is not found in the constitutions of traditional democracies, such as, for example, Germany, France or Italy. Although in these countries the system of government is also based on checks-and-balances, the absence of an explicit constitutional provision has not caused any problems in its operation. Given that Article 4 provision on checks-and-balances has been used as a method for the politicization of the judiciary, and considering that the depoliticization of the judiciary is the main reason for constitutional amendments, in order to avoid any doubts in the distribution of powers between different branches of government, it is necessary to omit it from the constitutional text, and to transfer the guarantee of the independence of judicial power to the part of the Constitution that regulates the status of the judicial branch of government.

Starting from the fact that constitutional democracies, including the Republic of Serbia, are founded on the idea of protecting individual freedom, that the limited government is the most important mechanism for protecting that freedom, and that there is no limited government without the separation of powers, the solutions proposed in Amendment I: determine that the separation of powers is the basis for the government structure in the Republic of Serbia (paragraph 1); prohibit any change of the constitutionally established relationship between the three branches of government by law or other regulations in order to prevent disavowal of the constitutionally established checks-and-balances (paragraph 2); proclaim that the rule of law is a guarantee of limited government, and that in the exercise of their competencies the governmental bodies of all three branches of government are bound by the Constitution and the law (paragraph 3); prohibit the concentration of power in the hands of only one governmental body (paragraph 4).

AMENDMENT II - in Article 99, which regulates the **competence of the National Assembly** - the sub-paragraph 3 in paragraph 2 is deleted. The deleted provision prescribes that, within its electoral competences, the National Assembly appoints the President of the Supreme Court of Cassation, presidents of courts, the Republic Public Prosecutor, public prosecutors, judges and deputy public prosecutors. The provision is deleted because, in accordance with the depoliticization of the judiciary, the election of judges has been entrusted to the Supreme Judicial Council (hereinafter: the HJC, see Amendment XX), while the election of the Supreme Public Prosecutor and public prosecutors is entrusted to the Supreme Prosecutorial Council (hereinafter: HPC, see Amendment XXXIV). One should note that the solutions contained in the Model Amendments abolish the institution of Deputy Public Prosecutor.

AMENDMENT III – the subject of this amendment is Article 105, which regulates the **method of decision-making in the National Assembly**. The current sub-paragraphs 12 and 13 in paragraph 2 of this Article prescribe that the National Assembly elects the judges and prosecutors in cases prescribed by the Constitution by a majority vote of all deputies at the session at which majority of deputies are present.

Instead of the current solution, in accordance with the proposal in Amendment XVI, which regulates the composition of the HJC, and Amendment XXX, which regulates the composition of the HPC, it is proposed that by a majority vote of all deputies at the session at which majority of deputies are present, the National Assembly elects two prominent lawyers who are members of the Councils.

The amendment also supplements paragraph 3 of Article 105. This provision enlists laws for the adoption of which, an absolute majority vote is required. In defining which laws are adopted by an absolute majority, the Constitution-maker was guided by the importance of their subject matter. Currently, laws governing the referendum and the people's initiative, the rights of national minorities, development planning and spatial planning, public borrowing, territory of autonomous units and local self-governments, conclusion and ratification of international agreements (as well as some other laws if so prescribed by the Constitution), are adopted by an absolute majority.

The solution in the new sub-paragraph 7, which supplements paragraph 3 of Article 105, proposes that the laws regulating issues related to courts, the HJC, the public prosecutor's office and the HPC are also adopted by a majority vote of all deputies, i.e. by an absolute majority. The need that the laws pertaining to judiciary are adopted by a stricter majority than usual, is based on the need to preserve the autonomy and independence of both the courts and the public prosecutor's office. In particular, the adoption of laws governing the status, composition and operation of courts by an absolute majority provides the necessary degree of independence of judicial power from the executive branch, which tends to influence judicial performance, as well as the work of independent bodies responsible for the election of judges and public prosecutors. In addition, this prevents frequent changes of laws pertaining to the courts and the status of judges, thus contributing to the stability of the judicial branch of government.

AMENDMENT IV – This amendment establishes the **status of judicial power**. It replaces the title of Article 142 and Article 142 of the Constitution. The valid Constitution does not determine the status of the judicial power, nor does it regulate the vesting of judicial power. There has been a constant dilemma whether the judicial power is vested in courts or judges. The amendment resolves the controversial issue. In the same vein as the valid constitutional provision of Article 142, it confirms the principle of autonomy and independence of courts and the unity of the judicial power in the territory of the Republic of Serbia. In addition, the proposed solutions emphasize the role of courts in ensuring the rule of law. Expertise, impartiality, fairness, and efficiency are explicitly emphasized as important prerequisites for fulfilling this role.

AMENDMENT V – **Judiciary principles** – The content of this amendment refers to the issues regulated in Articles 142 and 145 of the Constitution. Formally, due to different systematization, the amendment replaces the title of Article 143 and Article 143 of the

Constitution. The current constitutional solutions are unsystematic, terminologically inconsistent with the Articles of the Constitution that regulate the same principles, and can therefore be interpreted differently (e.g., the principle of a public trial). There have been terminological inconsistencies in determining sources of international law. The valid Constitution has not regulated one of the key principles of judicial independence, financial independence of courts and judges. The constitutional solution that the court shall render a decision on behalf of the people is a relic of the time when such a solution was acceptable.

In its unaltered form, the amendment retains the fundamental constitutional principles that the court adjudicates in a chamber and that the hearing and the pronunciation of court decisions shall be open to the public. The constitutional solution that courts adjudicate pursuant to the Constitution, the law and ratified international treaties is supplemented by introducing generally accepted rules and principles of international law, and case-law of international bodies which supervise the application of the international standards of human rights, among bases for adjudication. In this way, the amendment confirms the sources of law affirmed in the Constitution itself and comparative law. The constitutional solution on the participation of lay judges in the trial, which according to the current Constitution, in principle, is a rule, the amendment treats in inversion. Accordingly, the amendment proposes that lay judges participate in the trial only in cases provided by law. Such a solution is more appropriate to the real situations the courts face, and which continuously require an increasing degree of expertise and specialization.

The constitutional solution according to which court decisions may be reviewed only by a court determined by law in the proceedings prescribed by law, is supplemented by a provision that the Constitutional Court may also review court decisions in the proceedings upon a constitutional appeal. This should remove the present dilemmas about the role of the Constitutional Court and the effects of its decisions. The purpose of the proposed provision is, *inter alia*, to emphasize that upon the constitutional review instituted by a constitutional appeal, the Constitutional Court can only render a decision declaring that a constitutionally guaranteed human right or freedom has been violated, which may be the basis for retrial. This means that the Constitutional Court cannot adjudicate individual cases on the merits of the dispute and annul court decisions on other grounds.

The new solution envisages that court decisions are rendered on behalf of the Republic of Serbia. It is based on the position that the current one, according to which decisions are rendered on behalf of the people, is appropriate to the system of unity of power and not separation of powers and that it is anachronistic and at odds with reality.

In order to affirm the judicial independence, and following the example of the Italian and German constitutions, the amendment raises the principle of "natural justice" to the level of constitutional principle, that is, a solution which stipulates that judges, only exceptionally and in accordance with the law, are assigned cases according to pre-established rules. The amendment also follows the US constitutional model of the prohibition of the reduction of judge’s salary. As early as 1787, the US Constitution drafters noticed that the reduction of judges' salaries could be a means of unduly influencing the courts, and therefore, they incorporated in the constitutional text that judges' salaries cannot be reduced while they are in office. Keeping this in mind, Amendment V proposes that: (a) judges' salaries are regulated by law (other regulations are excluded); and (b) the salaries cannot be reduced. This prohibition applies only to a situation in which salaries are reduced only for judges. Accordingly, it does not apply in a situation of a general reduction in salaries in the public sector due to the economic

crisis, as emphasized by the Court of Justice of the European Union in the decision regarding the reduction of judges' salaries in Portugal in 2018 (see Appendix I).

Finally, as a guarantee of judicial independence, it is envisaged that the courts and the HJC shall have their own budget.

AMENDMENT VI - Types and organization of courts. The amendment replaces the title of Article 144 and Article 144 of the Constitution. The valid Constitution has regulated only the most general division into courts of general and special jurisdiction. Only the Supreme Court of Cassation (hereinafter: SCC) was indicated as the highest. At the same time, a dilemma was opened on whether, as a supreme court, the Supreme Court of Cassation has the authority to confirm, revoke and reverse court decisions, or only as a cassation to revoke decisions. The Venice Commission also pointed out the issue. The absence of an explicit classification of courts in the constitutional text has given the possibility to change the name of the courts by law and re-elect judges, asserting that it is a general election. In order to avoid new abuses and ensure the permanent tenure of judicial office, it is necessary to make certain amendments.

The amendment for the most part (paragraphs 1, 4, 5, 7 and 8) retains the solutions already contained in Article 143 of the Constitution. In relation to those solutions, the only change is the name of the highest court in the Republic of Serbia. The new solutions determine that the courts of general jurisdiction are basic, higher and appellate, and that the types of courts of special jurisdiction shall be regulated by law. The role of the Supreme Court in harmonizing case-law and ensuring a uniform application of law is specifically defined. This clearly stipulates that the harmonization of case-law is the competence of the judicial branch of government, that it guarantees the independence of the judiciary, and that this independence would be jeopardized if other branches of government were entrusted with this role, as was once the intention of the Ministry of Justice. As to avoid the possibility of violating the principles of the rule of law and human rights in individual cases related to the characteristics of the defendant or a specific event, the amendment retains the current constitutional solution on the prohibition of the establishment of courts martial or extraordinary courts.

AMENDMENT VII - Independence of judges. The amendment replaces the title of Article 145 and Article 145 of the Constitution. The current constitutional solution on the independence of judges, under Article 149 of the Constitution, has raised the dilemma of whether judges adjudicate pursuant to all constitutionally accepted sources of international law or not. Therefore, the new solution specifies the sources of law to which the judge is bound in the performance of judicial office. In addition, the existing constitutional solution that guarantees the judge's independence by prohibiting any influence on the judge in the exercise of judicial office is retained. The prohibition excludes any external influence coming from other branches of government, political parties, or hierarchically higher courts.

AMENDMENT VIII – Permanent tenure of judicial office. The subject of the amendment is Article 146 of the Constitution. The current solution proclaims the general principle of permanent tenure of the judicial office as a guarantee of judicial independence. However, Article 146 has immediately deviated from this proclamation by setting a three-year probationary period for judges who are elected for the first time.

The amendment regulates the principle of permanent tenure of judicial office in a more consistent manner. It explicitly guarantees the stability of the judicial office from the moment

of election until the fulfilment of the conditions for its termination and, accordingly, eliminates the current solution. The position that judges cannot be elected for a probationary period or a limited term is unequivocally affirmed, thus eliminating the harmful effects of a strongly present and largely realistically based public perception that judges elected for a probationary period are not fully independent, i.e., that they adjudicate under a specific type of pressure.

AMENDMENT IX – Requirements for the election of judges. The amendment replaces the title of Article 147 and Article 147 of the Constitution. The valid Constitution in Article 147 only regulates the election of judges without setting conditions for their election. In addition, the solution that the National Assembly elects a judge for the probationary period has enabled an excessive role and undue influence of the National Assembly in the election of judges.

The amendment establishes the exclusive competence of the HJC to elect all judges of all courts. In accordance with the determination to completely eliminate the political influence on the election of judges, the role of other authorities, i.e., the National Assembly, in that procedure, is excluded. The amendment raises the general requirements for the election of judges (now established by the Law on Judges) to the constitutional level and leaves the regulation of specific conditions and the mandate and conditions for the election of lay judges to the legislator.

One should note that the amendment does not include mandatory training in the Judicial Academy as a condition for the election of judges. The Judicial Academy is one of the newest institutions in Serbia. Its programs are still largely funded by donations. Given the degree of its development, the conditions provided for its functioning, there are still no compelling reasons that it becomes a constitutional category. Few European countries have regulated its functioning by the constitution. Bearing in mind that the Judicial Academy must be provided with economic independence as to enable quality and continuous training, an experiment cannot be allowed that, without the fulfilled necessary conditions for the independence of the institution, this becomes a fundamental condition for the election of both the judges and prosecutors. Otherwise, this "primary entry ticket" to the judiciary could become the basic way for an easy and effective political influence on the election of all members of the judiciary. As in most countries where judicial academies have been functioning for longer, the statutory regulation for the operation of the Academy is quite sufficient.

AMENDMENT X – Termination of a judge's tenure of office. The subject of the amendment is Article 148 of the Constitution. The current provision should regulate important issues for the status of judges, which is not the case to the necessary extent. Article 148 does not contain all the grounds for termination of judicial office, nor the reasons for dismissal as the most sensitive basis for termination of judicial office. A result is a constant pressure on judges and a room for abuse in the interpretation of legal standards. Non-election of judges to a permanent judicial position cannot be a basis for termination of office because judges cannot be elected on probation but only on a permanent term. Citizens do not have equal legal protection if someone’s case is adjudicated by a judge elected to a permanent position and someone’s case by a judge with a limited term of office. In addition, there is uncertainty regarding the status of a court decision rendered by a judge elected for a probationary period. The public perception is that the judges in such cases adjudicate under pressure. Finally, under the present solution, the right of a judge to file a constitutional appeal is unjustifiably excluded, as a right to appeal to the Constitutional Court and a constitutional appeal are different legal remedies with entirely different reasons for legal protection.

The amendment determines the grounds for the termination of a judge's office. It explicitly stipulates when and under what conditions the HJC shall dismiss a judge due to a serious disciplinary offense and, what is particularly important, when a judge can be dismissed for incompetence. Possibilities for arbitrary interpretations of legal standards, such as, e.g., "negligence" or "incompetence," are thereby significantly diminished. A judge must have the right to appeal against the decision of the HJC to terminate his/ her office. The current solution is retained pertaining to the jurisdiction of the Constitutional Court to decide on the appeal of judges in this matter, but the valid provision, under which the judge's appeal to the Constitutional Court excludes the right of a judge to file a constitutional appeal, is omitted.

AMENDMENT XI - Non-transferability of a judge. The subject of the amendment is Article 150 of the Constitution. The current solution allows transfer of judges without their consent, without determining to which courts and under what conditions such a transfer or assignment would be necessary. The imprecision of the provision creates a possibility of abuse and represents a kind of punishment. A logical question is whether such a transfer would increase or decrease the efficiency of the courts when it is well known that it takes a long time for a judge to become acquainted with new cases. The judicial system must function continuously with the required number of judges, who cannot be replaced in this way for long, but for a short period only, and in exceptional situations. The reasons and conditions for the transfer of a judge without consent are not specified. The financial position of the judge in such situations is not regulated either. In addition, it is necessary to use a more precise norm to reduce the possibility of transfer as a punitive measure against a judge and the abuse of the transferability.

The amendment supplements the current solution by an explicit indication of the type of court to which the judge may be transferred or assigned to, with a guaranteed salary he/she had if it is more favourable for him/her. Guarantees are provided that the transferred judge will have an appropriate or similar position and the same level of income in the event of transfer. The notion of revocation of the predominant part of the court's jurisdiction is also specified. The possibility for a judge to be transferred without his/ her consent is reduced. It is proposed that the HJC decides on permanent transfer or temporary assignment and that an appeal against this decision may be lodged to the Constitutional Court. It is, thus, secured that the judges who feel that their independence is threatened are provided with a legal remedy, and that the decision is examined by another independent body.

AMENDMENT XII – Immunity. The subject of the amendment is Article 151 of the Constitution. It regulates this matter relating to judges only and not relating to lay judges, although they have the same rights as professional judges, including the right to express an opinion and to cast a vote in the process of rendering a court decision.

The amendment stipulates that in addition to a judge, a lay judge cannot be held liable in a specific situation. Other changes refer to linguistic and nomotechnical corrections.

AMENDMENT XIII - Incompatibility of judicial function. The subject of the amendment is Article 152 of the Constitution. The amendment proposes the omission of the first paragraph of Article 152, as Article 55, paragraph 5 of the Constitution already establishes that judges cannot be members of political parties. As to the term "political activity", it is a broad term that cannot be defined as such. The possibility of a broad interpretation can be abused to the detriment of judicial independence because the notion of "political activities" can also involve a judge's publicly expressed opinion on a draft law.

The omission of the first paragraph of Article 152 does not affect the already existing second paragraph of this Article, which adequately regulates incompatibility of other functions, private interests, or services with the judicial function.

AMENDMENT XIV - Right to freedom of association and public activity. The valid Constitution does not guarantee the right of a judge to freedom of association and public activity. The lack of constitutional regulation on what is compatible and incompatible with the judicial function contradicts the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and many other international instruments that guarantee the right to freedom of association. The amendment, in accordance with international standards, regulates their right to freedom of association and public activity. Judges have the right to form associations of judges, associate, and join other organizations to defend their interests, promote professional education, and protect the independence of the judiciary. The types of associations, professional and expert, in which judges have the right to associate have been determined as well as the situations in which they have the right to public activity compatible with the judicial function. However, although judges should enjoy the right to freedom of association and the right to freedom of expression, both rights must be limited due to the specificity of their function and social responsibility. In exercising these rights, judges should preserve the dignity of the judicial profession, impartiality, and independence of the judiciary.

AMENDMENT XV - President of the Supreme Court and presidents of courts. The subject of the amendment is Article 144 of the Constitution. Except for the President of the SCC, the current Constitution does not regulate the status of court presidents by any specific provision. The current solution of Article 144 precludes the basic goal of the proposed amendments to the Constitution - depoliticization of the judiciary. The election of the president of the SCC and the president of all other courts is performed by the National Assembly, which also decides on their termination of office. It is generally accepted that elected court presidents are exponents of political institutions. The attitude of the National Assembly, which is inclined not to elect unanimously nominated candidates for the president, as well as not to explain such a stand, well illustrates this point. This creates the impression that the professional qualities and positive opinion of the HJC are not a sufficient reason for deciding on the election of a proposed candidate for the president. The election is not made until the proposals are in line with the political will of the parliamentary majority. The current solution enables political influence on the judiciary and continuously increases citizens' distrust in its independence.

The amendment proposes that the HJC decides on the election and dismissal of all court presidents, even the highest. Given its composition proposed in the Model Amendments, possible political influence will be reduced, and the main decision-makers will be the judges proposing the candidates and the majority of judges in the HJC who elects them. The responsibility of the HJC will thus, be strengthened. It has been proposed that all court presidents are elected for a period of five years and may not be re-elected. Such a solution shall prevent that very important functions in the judicial system, in several terms, are performed by the same person. It is also precisely determined when the function of the president of the court may end before the expiration of the term for which he/she was elected. Against these decisions of the HJC, the right to appeal to the Constitutional Court is envisaged.

AMENDMENT XVI - Status, composition, and election of the High Judicial Council (HJC). The subject of the amendment is Article 153 of the Constitution. According to the

current solution, the High Judicial Council is an independent and autonomous body, which should ensure and guarantee the independence and autonomy of courts and judges. It has 11 members, including the President of the Supreme Court of Cassation, the Minister of Justice and the president of the competent committee of the National Assembly, as members *ex officio,* and eight elected members (six judges with permanent judicial tenure, one from the autonomous provinces, and two eminent and prominent lawyers with at least 15 years of professional experience - one attorney-at-law and one law professor) elected by the National Assembly. The main weakness of this solution is reflected in the fact that all members of the HJC, directly or indirectly, are elected by the National Assembly, which in some cases, allows multiple political influences on the HJC. Thus, for example, it is possible for the President of the parliamentary Committee on the Judiciary, as a member *ex officio,* to vote three times for the election of a judge - as a member of HJC, as the President of the Committee, and finally as an MP.

The amendment eliminates this problem and increases the independence and autonomy of the HJC. The election and composition of the HJC stand in line with the constitutional principles on the rule of law, separation of powers, and independence of the judiciary. The HJC shall have 11 members, but, in accordance with the required depoliticization of the judiciary, the President of the Judiciary Committee of the National Assembly and the Minister of Justice are excluded from the HJC. It is also proposed to explicitly exclude a representative of the Bar Association from the HJC, keeping in mind that the representatives of the public prosecutor's offices are not represented in the HJC either. Besides, traditionally, attorneys at law are the most represented legal profession among which MPs choose prominent lawyers, so their election to the HJC is not entirely excluded.

The new solution proposes that the members of the HJC from among the judges (seven of them) are elected by their peers and not by the National Assembly. The number of proposed members from among the judges is determined according to the views of the relevant international bodies, which require that the majority of the HJC is composed of judges, as well as that there should be representatives of all types of courts in the HJC. In addition to judges, it has been proposed that the HJC include a prominent lawyer elected by all law schools from among law professors with a tenure. The proposed solutions also ensure the participation of the National Assembly in the election of the members of the HJC. It is proposed that the National Assembly elects two prominent lawyers from among four candidates with at least 15 years of experience in the legal profession, nominated by the competent committee of the National Assembly by means of a two-thirds majority vote. The requirement that a two-thirds majority nominates two candidates for election to the HJC from among prominent lawyers ensures political pluralism in decision-making. This means that the political minority will be able to participate in selecting candidates for the members of HJC, thus strengthening the democratic legitimacy of the HJC's decisions. In order to ensure the necessary depoliticization of the judiciary, in addition to the existing solution that members of HJC cannot be presidents of courts, it has been proposed that members of HJC cannot be members of political parties.

The proposed balanced and pluralistic composition of the HJC indicates that the principle of judicial independence is respected. One should note that although it has been repeatedly stated that there is no single model of a judicial council, the Venice Commission has taken an explicit position that in any composition of judicial councils, it must be considered that the protection of the independence of judges, which is achieved through their isolation from pressure from other branches of government, is the main reason for the existence of the councils. It has also stressed that the basic rule is that a large part of the judicial council should be composed of

members of the judiciary, i.e., that the judiciary elects a significant or majority of the members of the judicial council. The goal of the Model Amendments is not only to adopt the stances of the Venice Commission in the process of joining the EU but primarily to prevent the emergence of corporatism, conflicts of interest, trade-in-interests, and concentration of power within the HJC.

AMENDMENT XVII - Mandate of members of the High Judicial Council. The amendment replaces the title and Article 154 of the Constitution. This issue is now partially regulated by paragraph 6 of Article 153 of the Constitution - by the provision that the tenure of office of a member of HJC lasts five years, except for the members appointed *ex officio*. The proposed new solutions further develop the existing solution. Namely, the issue of the mandate of members of the HJC is related to the issue of its establishment, legality, and independence. Concerning the President of the Supreme Court, the duration of his/her tenure in the HJC is related to the duration of his/her function of the president, given that the president of that court is an *ex officio* member of the HJC. Concerning other members, it is proposed that the same person may not be re-elected to the HJC, as well as that the term of office of the HJC member expires before the expiration of the term for which he/she has been elected, on personal request or if he/she has been sentenced to imprisonment. In addition, it is proposed that the term of office of a member who is a judge terminates with the termination of his /her judicial function. The term of office of a member who is not a judge shall also end if he/she permanently loses the ability to perform the function of a member of the HJC. The decision on the termination of office of a member of the HJC is made by the HJC, and an appeal against this decision to the Constitutional Court is granted.

The reason for such detailed regulation in the Constitution is the importance of that issue for the legitimacy of the HJC, autonomy, and independence of its members, especially when it comes to the termination of office of a member of the HJC before his/her mandate expires.

AMENDMENT XVIII - Immunity of members of the High Judicial Council. The amendment replaces the title of Article 155 and Article 155 of the Constitution. This issue is not regulated by a specific article of the current Constitution, but by a very short provision under paragraph 7 of Article 153 of the Constitution, according to which a member of the HJC enjoys immunity as a judge. The current constitutional solution does not sufficiently protect the members of the HJC, nor is it precise enough to cover the various cases that have occurred in reality.

The amendment precisely determines the scope of the immunity of members of the HJC by emphasizing that he/she will not be held accountable for the opinion expressed nor for a vote cast in the decision-making procedure before the HJC unless he/she commits a criminal offense in connection with the performance of the function of the member of the HJC. In addition, it is provided that a member of the HJC may not be deprived of liberty without the approval of the HJC in the proceedings initiated on a suspicion that he/she has committed a criminal offense in connection with the performance of the function of the member of the HJC. These solutions overcome dilemmas, different formulations, and interpretations of legal norms on this matter, including the one on dismissal.

AMENDMENT XIX - President of the High Judicial Council. The amendment supplements the Constitution. At present, this issue is not regulated by the Constitution but by the Law on High Judicial Council. To strengthen the independence of the judicial branch of government, the issue of electing the president of the Supreme Judicial Council should become a

constitutional matter. In this regard, it is proposed that the HJC has its own president elected from among the judges – members of the HJC, and pointed out that the President of the Supreme Court cannot be the President of the HJC. Although in some countries of the so-called emerging democracies and some EU Member States, the judicial council is chaired by a member of the HJC who is not a judge, starting from the current practice, it is proposed that it should be a judge (i.e., the current statutory solution remains), but with deaccumulation of functions to prevent the concentration of power in the hands of one person. According to the amendment, the deaccumulation of functions refers to the President of the Supreme Court, who cannot be the President of the HJC.

AMENDMENT XX – Jurisdiction of the High Judicial Council. The subject of the amendment is the HJC jurisdiction, which is currently regulated by Article 154 of the Constitution. Considering the definition of the HJC under Article 153 paragraph 1 of the Constitution, it can be concluded that the jurisdiction of the HJC is not adequately determined in the valid Constitution. In addition, the Law on the High Judicial Council, the Law on Judges, and the Law on Organization of Courts also partially regulate the jurisdiction of the HJC. Some problems have appeared in the division of jurisdiction between the HJC and the Ministry of Justice, e.g., regarding the transfer of jurisdictions of the Ministry of Justice to the HJC in relation to financing expenses for the work of courts and judges.

Having in mind the aforementioned problems and fundamental goals of constitutional amendments, it is necessary to omit the constitutional solution according to which the election to the judicial position for a probationary period, as well as the election of the president of the court and the president of the highest court in RS is performed by the National Assembly. According to the amendment, all judges, lay judges, and presidents of all courts shall be elected by the HJC. This will stop the possibility of the legislative branch from influencing the judicial branch. According to the definition of the HJC under Amendment XVI, it is envisaged that the HJC safeguards the autonomy and independence of judges. The HJC shall also be responsible for resolving the status of judges, it is entrusted with the selection and dismissal of members of disciplinary bodies, and it shall decide on appeals filed against decisions of the disciplinary commission. New competencies have also been proposed: the HJC, thus, proposes budget funds for its work, as well as for the work of courts, and autonomously administers these funds (court budget); adopts the rules of procedure of the courts; concerning the laws related to the status of judges and the work of the courts, it has the right to give its opinion and the right to propose those laws. An important novelty is that the HJC rules on a legal remedy for the election of judges due to violations of procedural rules, as well as on immunity and incompatibility of performing other functions, given that there has often been a dilemma whose jurisdiction it is. Finally, the existing wording in Article 154 of the Constitution, according to which the HJC shall "perform other duties specified by the Law", has been improved to read: "perform other duties specified by the Constitution and the law."

AMENDMENT XXI – Work and decision-making of the High Judicial Council. The amendment supplements the Constitution. It establishes the obligation that the work of the HJC is open to the public, while restrictions are possible only in accordance with the Constitution and the law. This obligation is of key importance for the realization of the HJC's constitutional role and its jurisdiction. How decision-making is accomplished is of special importance for reducing the possibility of politicization and abuse, particularly concerning decisions on the transfer and dismissal of judges. The amendment proposes that the HJC decides by a majority vote of all the members on the election of the President of the HJC, the President of the Supreme Court, the presidents of courts and judges, and on the transfer and dismissal of judges.

In other cases, the HJC shall decide by a majority vote of the members at a session attended by a majority of its members. Against the decisions of the HJC on the election and termination of office of a judge, court president, and lay judge, transfer and assignment of judges, appointment and dismissal of members of disciplinary bodies, the appeal may be lodged to the Constitutional Court in a case provided by law. Finally, the solutions envisaged in the amendment contribute to strengthening the legitimacy of the decisions of the HJC, which in reality have often been called into question.

AMENDMENT XXII - **Status, jurisdiction, establishment, and organization of public prosecutor's offices.** The amendment replaces the title of Article 156 and Article 156 of the Constitution. The existing constitutional solutions that regulate the aforementioned issues are contained in Articles 156 and 157 of the Constitution. These provisions designate the public prosecutor's office as an autonomous body without guarantees of independence in relation to the legislative and executive branches of government. At present, mechanisms that would eliminate political influence in the work of the prosecutor's office are not constitutionally envisaged. Autonomy does not provide sufficient protection from political influence, especially in "emerging democracies" without a long tradition of the rule of law. Hence, the relevant bodies of the Council of Europe, such as the Venice Commission and the Consultative Council of European Prosecutors, have recommended guaranteeing not only the autonomy but also the independence of the prosecutor’s office. The European Court of Human Rights has also held that the lack of independence of the prosecutor’s offices has negative effects, especially in the pre-trial phase when evidence is gathered. Given that in Serbia, the competences of the public prosecutor's office have been extended in the investigation, the need for independence of the prosecutor's office is compelling because the public prosecutor's office has taken over part of the jurisdiction that significantly affects human rights. The Amendment raises the public prosecutor's office to the level of an independent body. In addition, as a special guarantee of independence, the ban on influencing the performance of the public prosecutor's office is established.

However, even independence alone is not enough for the successful performance of the public prosecutor's function. The public prosecutor's office needs efficient mechanisms for gathering evidence and effective exercise of its authority. To achieve these tasks, it needs to have effective control over the criminal police. The mere proclamation of the leading role of the public prosecutor in the pre-investigation proceedings in the Criminal Procedure Code proved to be insufficient. Therefore, it is necessary that the guarantees of effective control by the public prosecutor's office over the agencies, whose work impacts the results of the public prosecutor's office (i.e., criminal police), are raised to the constitutional level. Similar solutions have been adopted in other European countries such as Italy and Spain.

The existing Article 156, paragraph 2 of the Constitution does not mention the generally accepted rules and principles of international law as a source of law in the work of the public prosecutor's office, which is inconsistent with the provisions of Article 16, Article 18, Article 142 paragraph 2, and Article 194 paragraph 4 of the Constitution. As the Constitution stipulates that the generally accepted rules and principles of international law are an integral part of the legal order of the Republic of Serbia and that they are applied directly, they must bind the public prosecutor's office in performing their function as well. Otherwise, the Republic of Serbia would renounce part of its own legal order in criminal proceedings. Therefore, the amendment introduces the generally accepted rules and principles of international law as binding for the public prosecutor's office.

AMENDMENT XXIII – Supreme Public Prosecutor and heads of public prosecutor's offices. The amendment replaces the title of Article 157 and Article 157 of the Constitution. The subject matter of this amendment is partially regulated in Article 158 of the Constitution, which regulates the status of the Republic Public Prosecutor.

The amendment changes the title of the highest public prosecutor in the Republic of Serbia by introducing the name of the Supreme Public Prosecutor, i.e., the Supreme Public Prosecutor's Office. Hence, the titles of public prosecutor's offices are harmonized with the titles of the courts before which they act, as is currently the case at all levels except the republic. The amendment also regulates the status, competence, election, and duration of the mandate of the Supreme Public Prosecutor. The novelty is introducing the heads of public prosecutor's offices due to the abolition of the monocratic system of organizing the public prosecutor's office (see the explanation of Amendment XXIII). According to the amendment, the Supreme Public Prosecutor is no longer elected by the National Assembly on the Government's proposal and upon the opinion of the competent committee of the National Assembly. His/her election is transferred to the HPC. This is because the independence of the public prosecutor's office (Amendment XXII) certainly implies the independence of the Supreme Public Prosecutor, and he/she cannot be truly independent if his/her election depends on the National Assembly and the Government. Such an election would retain political influence on the Supreme Public Prosecutor to an unlawful extent and through him/her on all public prosecutor's offices, as well as on all public prosecutors.

In order to prevent a large concentration of power in the hands of one person for a longer period, the amendment provides that the Supreme Public Prosecutor cannot be re-elected. Hence, the status of the Supreme Public Prosecutor is also harmonized with the status of the President of the Supreme Court (now the SCC), which also, according to the valid Constitution, can have only one mandate. As this solution limits the election of the Supreme Public Prosecutor to only one term, the duration of the mandate of the Supreme Public Prosecutor has been increased to seven years to enable him/her to realize the administration tasks and programs.

As the amendments abandon the monocratic principle of organizing the public prosecutor's office, it is proposed that several public prosecutors could perform the function of the public prosecutor in the public prosecutor's office. The administration and management of the public prosecutor's office are entrusted to the head of the public prosecutor's office. In order to prevent political influence, the election of heads of public prosecutor's offices is transferred from the Government and the National Assembly to the HPC.

AMENDMENT XXIV – **Public prosecutors**. The amendment replaces the title of Article 158 and Article 158 of the Constitution. According to the valid Constitution, the public prosecutor's office is a body with a monocratic organization. The essence of the monocratic principle is that the prosecutor is the holder-owner of all authorities, while the deputy prosecutors are the holders of some kind of "general prosecutor's power of attorney." In other words, they are representatives of the public prosecutor with delegated procedural and other powers. The excessive hierarchy and centralization provided by the current constitutional provisions and the Law on Public Prosecution are not needed for the prosecution office to perform the function in the criminal proceedings effectively. It is the result of a persistent implementation of the Soviet model of prosecution. The principles of centralism and hierarchy set in this way push back internal possibilities, turning public prosecutors and deputies into ordinary civil servants.

The amendment abandons the monocratic principle of organizing the public prosecutor's office, according to which there is only one public prosecutor in the public prosecutor's office who administers and manages the public prosecutor's office. According to the Amendment, the function of the public prosecution is performed by the public prosecutor, and the deputies of the public prosecutor, as holders of the public prosecutor's function, are abolished. The permanent function of the public prosecutor is also guaranteed.

The provision regarding the election of public prosecutors is also provided. The amendment proposes, and it should be regulated in detail by law, that the public prosecutor's office is managed by the head of the public prosecutor's office. In such an organized prosecutor's office, the head of the public prosecutor's office manages the work, represents the prosecutor's office, and has certain hierarchical powers, but he/she is not the only holder of the prosecutor's function. The proposed new model (to remind, now it is a collective body with a strict hierarchy) would imply that the head is elected from among the public prosecutors. This means that, after the termination of the mandate of the head, for which he/she was appointed, he/she continues the duty as a public prosecutor in the prosecutor's office from which he/she was elected. As this amendment transforms the former deputy public prosecutors into public prosecutors, the solutions regarding the permanence of the function and the method of election of public prosecutors mirror the current solutions pertaining to deputy public prosecutors. Finally, the first election of a person to public prosecutor’s office by the National Assembly is also abolished to prevent political influence.

AMENDMENT XXV – Accountability of public prosecutor’s offices. The amendment replaces Article 159 of the Constitution. This issue is now regulated by Article 160 of the Constitution. According to the current constitutional solution, the Republic Public Prosecutor and public prosecutors are accountable for their work to the National Assembly, which implies the political accountability of public prosecutors. By guaranteeing the independence of the public prosecutor's office (see Amendment XXII), this type of accountability is abolished.

In addition, by abandoning the monocratic principle of organization of the public prosecutor's office, the amendments regulate the accountability of public prosecutor's offices as bodies. Even so, the hierarchical accountability of lower public prosecutor's offices to higher public prosecutor's offices is retained, as well as the accountability of all public prosecutor's offices to the Supreme Public Prosecutor's Office.

AMENDMENT XXVI – Termination of office. The amendment replaces the title and Article 160 of the Constitution. The existing solutions (Article 161 of the Constitution) should regulate important issues for the status of public prosecutors, which is not the case. They do not contain all the foundations for termination of office, nor the reasons for dismissal, which results in constant pressure on the holders of the public prosecutor's office and leaves the possibility of abuse in the interpretation.

The amendment raises to the constitutional level the permanent loss of working ability and loss of citizenship of the Republic of Serbia as the reasons for the termination of office. It harmonizes the provisions on termination of office of the public prosecutor, the Supreme Public Prosecutor, and the heads of public prosecutors with the provisions on their election. The novelty is that the appeal lodged with the Constitutional Court no longer excludes the right to file a constitutional appeal, which reinforces the status of public prosecutors.

AMENDMENT XXVII - Immunity of public prosecutors. The amendment replaces the title of Article 161 and Article 161 of the Constitution. According to the valid constitutional

solution, immunity exists for an expressed opinion in the performance of the prosecutorial function. This amendment also expands public prosecutors' immunity to the decision made in connection with the performance of the prosecutorial function, which covers a broader range of activities of the public prosecutor's office. The criminal offense of violation of the law by the public prosecutor is not covered by substantive legal immunity. However, procedural immunity in the criminal proceedings has been established in relation to this offense, as the proceedings for the criminal offense cannot be initiated without the approval of the HPC. Another novelty is envisaged: to reduce the political influence, the National Assembly (its competent committee) will no longer give consent for the deprivation of liberty of the public prosecutor, but it will be done by the HPC.

AMENDMENT XXVIII - Incompatibility of the function. The amendment replaces the title of Article 162 and Article 162 of the Constitution. Under Article 163 of the Constitution, the law should regulate the incompatibility of functions, jobs, or private interests with the public prosecutor's function. This provision remains valid. The provision prohibiting political activity is omitted. The term "political activity" can be widely interpreted and is, therefore, a matter of abuse. The Venice Commission stressed that not any involvement of public prosecutors in political matters should be prohibited but that the activities that could jeopardize impartiality should be avoided. The provision on the incompatibility of the prosecutorial function is fully harmonized with the provision on the incompatibility of the judicial function (see the explanation of Amendment XIII).

AMENDMENT XXIX - Freedom of association and public activity. The amendment supplements the Constitution by establishing the right to freedom of association and public activity of public prosecutors. This matter is not mentioned in the valid Constitution, so the amendment raises these rights to the constitutional level for the first time. The right to freedom of association is a fundamental human right. As to public prosecutors, it can be limited only for preserving the principle of impartiality. The systematization requires that this matter is included in Article 163 of the Constitution, which is therefore amended, as well as the very title of Article 163 of the Constitution.

AMENDMENT XXX – Status, composition, and election of the High Prosecutorial Council. The amendment replaces the title of Article 164 and Article 164 of the Constitution. The amendment changes the title of the prosecutorial council, so instead of the title "State Prosecutors Council" (hereinafter: SPC), the title "High Prosecutorial Council" is introduced. As Model Amendments do not consider the monocratic principle of organizing the public prosecutor's office and establishing the public prosecutor's office as a collective body, it is more appropriate to refer to the "prosecutor's office" than to the "prosecutors" in the title. As it is indisputable that the prosecutorial council is a state body, the word "state" is not only redundant but also may refer to an executive body, which the prosecutorial council is not, especially since the public prosecutor's office represents public interests, which are not necessarily the interests of the executive power. To remind, the HJC is also defined as an autonomous and independent body (see Amendment XVI).

Given the constitutional role of the HPC, as well as the new constitutional status of public prosecutor's offices and public prosecutors that gives them independence, it is envisaged that this Council is composed on the meritorious principle, in the same way as the HJC (see the explanation of Amendment XVI). The envisaged composition of the Council is also in line with the views of the European Court of Human Rights that the public prosecutor's office, not only should be *de facto* free from political influence, but it is also necessary for it to leave the impression of independence, i.e., to be perceived as independent from political influence.

Therefore, it is proposed that the Minister of Justice and other political figures cannot be part of the Council.

Finally, the amendment stipulates that the heads of public prosecutor's offices cannot be members of the HPC for the same reasons that court presidents cannot be members of the HJC (see the explanation of Amendment XVI).

AMENDMENT XXXI – Mandate of members of the High Prosecutorial Council. The amendment replaces the title of Article 165 and Article 165 of the Constitution. It regulates in more detail the mandate of members of the High Prosecution Council than it is presently envisaged in Article 164 paragraph 5 of the Constitution (it contains only a provision on the term of office). The amendment does not change the length of the mandate but regulates the termination of the function before the expiration of the mandate, the decision on the termination of the mandate, and establishes the prohibition of re-election to the HPC. These issues are regulated in the same way as in the case of the mandate of members of the HJC (see the explanation of Amendment XVII).

AMENDEMENT XXXII - Immunity of members of the High Prosecutorial Council. The Constitution is supplemented by Article 165a. The immunity of members of the HPC has been regulated in more detail than it has been done by the current solution in Article 164 of the Constitution. The immunity of members of the HPC is regulated identically as the immunity of members of the HJC (see the explanation of Amendment XVIII).

AMENDMENT XXXIII – President of the High Prosecutorial Council. To regulate the status of the President of the HPC and his/her election, the Constitution is supplemented by Article 165b. The current Constitution leaves these issues to the legislator. However, the status of the President of the HPC is, by its nature, a constitutional and not a statutory matter. In addition, the current statutory solution is deficient. Namely, the legislator provided in Article 6 paragraph 1 of the Law on the State Prosecutorial Council that the Republic Public Prosecutor is the President of the SPC. The justification that the Republic Public Prosecutor (according to Model Amendments - the Supreme Public Prosecutor) should be the President of the Prosecutorial Council *ex officio* is disputable. The elected members of the future HPC from among public prosecutors have more legitimacy than the members *ex officio,* given that they are elected in direct elections, by their peers, within the public prosecutor's organization. As the HPC is the highest body that guarantees the independence of the public prosecutors, it should be chaired by an elected member from among public prosecutors, and not by the Supreme Public Prosecutor who is a member *ex officio* and who is elected by the HPC.

AMENDEMENT XXXIV – Jurisdiction of the High Prosecutorial Council. The amendment supplements the Constitution with the new Article 165v. It amends the content of the valid Article 165 of the Constitution. It is noticeable that the Constitution summarizes the jurisdiction of the SPC, leaving it to the legislator to regulate this issue in more detail by law. Given the status and the constitutional role of the HPC, it is necessary to regulate the jurisdiction of the HPC in more detail in the Constitution. The deficiency of the current constitutional solution is evident: the SPC proposes to the National Assembly candidates for the first election as a deputy public prosecutor. The probationary period for deputy public prosecutors in the office is problematic from the point of view of their autonomy. The probationary period, during which they should show their abilities and expertise, may provoke the expectation that they also show a certain degree of loyalty, cooperation, and obedience, which jeopardizes their autonomy and accountability. In reality, this mechanism enables the selection of loyal persons, who are expected to show loyalty during the probationary period, and thus justify their previous and subsequent election.

The amendment specifies the competences of the Prosecutorial Council. They are largely in line with the competences of the Judicial Council proposed in the Model Amendments, as it is a tendency in international documents dealing with this matter. The reasons for the harmonized jurisdictions of the judicial councils, of course with certain differences due to the specifics of the prosecutorial and judicial organization, are primarily in the noticeable trend of insisting on the independence of the prosecution. The Consultative Council of European Prosecutors rightly notes that an independent prosecutor's office is a precondition for the independence of the court.

AMENDMENT XXXV – Work and decision-making of the High Prosecutorial Council. The Constitution is supplemented by Article 165g. The current Constitution has not specifically regulated issues related to the work and decision-making of the HPC but left the issue to the legislator. The Law on the State Prosecutorial Council and the Rules of Procedure of the State Prosecutorial Council deal with this matter. However, the work of the HPC, including the process of decision-making, needs to be regulated by the Constitution, given the extended jurisdiction of the HPC envisaged by the Model Amendments. The Constitution must regulate the issue of a simple and absolute majority by which decisions are made in the HPC. Constitutionalizing these provisions is essential to avoid manipulations on the statutory level, especially about the issue of the required majority in the decision-making process.

AMENDMENT XXXVI – Composition of the Constitutional Court. Election and appointment of the Constitutional Court judges. Paragraphs 2 and 3 of Article 172 of the Constitution are amended due to the proposed new title of the highest court in the Republic of Serbia, in Amendment VI, and the new title of the body electing public prosecutors in Amendment XXX, as these bodies participate in nominating candidates for the appointment of judges of the Constitutional Court. The changes are formal, not substantive.

Appendix 1: SOURCES OF INTERNATIONAL STANDARDS OBSERVED AND APPLIED IN MODEL AMENDMENTS TO THE CONSTITUTION OF THE REPUBLIC OF SERBIA AND MODEL CONSTITUTIONAL LAW ON AMENDMENTS TO THE CONSTITUTION OF THE REPUBLIC OF SERBIA

I International declarations, charters and resolutions

1. Montreal Universal Declaration on the Independence of Justice (1983)
2. The Universal Charter of the Judge of the International Association of Judges (1999, as revised in 2017).
3. Magna Carta of Judges (Fundamental Principles) of the CCJE (2010).
4. European Norms and Principles Concerning Prosecutors (Rome Charter) of the CCPE (2014).
5. Council of Europe, European Charter on the Statute for Judges of 08-10 December 1998, DAJ/DOC (98) 23.
6. Dublin Declaration setting Minimum Standards for the selection and appointment of judges of the ENCJ (2012).
7. Resolution of Bucharest on Transparency and Access to Justice of the ENCJ (2009).
8. The Bangalore Principles of Judicial Conduct, adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices at The Hague, 2002.
9. Bordeaux Declaration – joint Opinion No. 12 (2009) of the Consultative Council of European Judges (CCJE) and Opinion No. 3 (2009) of the Consultative Council of European Prosecutors (CCPE) to the attention of the Committee of Ministers of the Council of Europe on Relations between judges and prosecutors in a democratic society.

II European Commission for Democracy through Law (Venice Commission)

1. CDL-AD(2007)004 - Opinion No. 406/2006 on the Constitution of Serbia adopted by the Commission at its 70th plenary session (Venice, 16-17 March 2007).
2. CDL-AD(2013)006 – Opinion No. 709/2012 on the Draft Amendments to the Law on the Public Prosecution of Serbia adopted by the Venice Commission at its 94th Plenary Session (Venice, 8-9 March 2013).
3. CDL-JD (2007)001rev - Judicial Appointments adopted by the Venice Commission Sub-Commission on the Judiciary (Venice, 14 March 2007).
4. CDL-JD(2008)002 - European standards on the independence of the judiciary - a systematic overview (Strasbourg, 3 October 2008).
5. CDL-AD(2010)004 - Report on the Independence of the Judicial System Part I: The Independence of Judges adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010).
6. CDL-AD (2010)040 - Report on European standards as regards the independence of the judicial system: part II - the prosecution service adopted by the Venice Commission at its 85th plenary session (Venice, 17-18 December 2010).
7. CDL-AD(2016)007 - Rule of Law Checklist adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016).
8. CDL-REF(2018)015 - Opinion No. 921/2018 on Draft amendments to the Constitution of the Republic of Serbia.
9. Opinion on the regulatory concept of the Constitution of the Republic of Hungary adopted at the Commission's 25th Plenary Meeting, Venice, 24 - 25 November 1995.
10. CDL-AD(2017)013 - Opinion No. 876/2017 adopted by the Venice Commission at its 111th Plenary Session (Venice, 16-17 June 2017).
11. CDL-AD(2015)005 - Joint Opinion on the draft Law on the Prosecution Service of the Republic of Moldova, adopted by the Venice Commission at its 102nd Plenary Session (Venice, 20-21 March 2015).

12. CDL-AD (2014)008 – Opinion No. 712/2013 on draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina adopted by the Venice Commission at its 98th Plenary Session (Venice, 21-22 March 2014).
13. CDL-AD (2008)019 – Opinion No. 473/2008 on the Draft Law on the Public Prosecutors' service of Moldova adopted by the Venice Commission at its 75th Plenary Session (Venice, 13-14 June 2008).
14. CDL-PI(2015)001 Compilation of Venice Commission opinions and reports concerning courts and judges (Strasbourg, 5 March 2015).

III **Recommendations of the Committee of Ministers of the Council of Europe to the Member States**

1. Council of Europe, Recommendation No. R (94) 12 of the Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges, 13 October 1994.
2. Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, 17 November 2010.
3. Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System, 6 October 2000).

IV **Consultative Council of European Judges (CCJE)**

1. CCJE Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges.
2. CCJE Opinion No. 3 (2002) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behavior and impartiality.
3. CCJE/BU(2018) 4 Opinion of the CCJE Bureau following a request by the Judges' Association of Serbia to assess the compatibility with European standards of the proposed amendments to the Constitution of the Republic of Serbia which will affect the organization of judicial power of 4 May 2018.
4. CCJE-BU(2018)9 - Opinion of the CCJE Bureau following a request by the Judges' Association of Serbia to assess the compatibility with European standards of the newly proposed amendments to the Constitution of the Republic of Serbia which will affect the organization of judicial power of 21 December 2018).

V **Consultative Council of European Prosecutors (CCPE)**

1. CCPE Opinion No. 13 (2018): Independence, accountability and ethics of prosecutors.
2. 2. CCPE Opinion No. 9 (2014) of the Consultative Council of European Prosecutors to the Committee of Ministers of the Council of Europe on European norms and principles concerning prosecutors (Rome Charter).

VI **Organization for Security and Cooperation in Europe (OSCE)**

1. Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia - Judicial Administration, Selection and Accountability (OSCE and MPI), 23-25 June 2010)

VII **Jurisprudence of the European Court of Human Rights**

1. *Reczkowicz v. Poland*, Judgment of 22 July 2021 (Application No.43447/19).
2. *Guðmundur Andri Ástráðsson v. Iceland*, Judgment of 12 March 2019 (Application no. 26374/18).
3. *Oleksandr Volkov v. Ukraine*, Judgment of 6 February 2018, (Application No. 21722/11).
4. *Baka v. Hungary*, of 23 June 2016 (Application no. 20261/12).
5. *Gerovska Popčevska v. the Former Yugoslav Republic of Macedonia*, Judgment of 7. January 2016,(Application No. 48783/07).
6. *Agrokompleks v. Ukraine*, Judgment of 6 October 2011 (Application No.23465/03).
7. *Vera Fernandes-Huidobro v. Spain*, Judgment of 6 January 2010, (Application No.74181/01).

8. *Kolevi v. Bulgaria*, Judgment of 5 November 2009 (Application No.1108/02).
9. *Salov v. Ukrain*, Judgment of 6 September 2005 (Application No.65518/01).
10. *Pabla Ky v. Finland*, Judgment of 22 June 2004 (Application No.47221/99.

VIII **Jurisprudence of the Court of Justice of the European Union**

1. C-510/19, *AZ v. Openbaar Ministerie and YU and ZV*, Judgment of 24 November 2020.
2. C-585/18, C-624/18 and C-625/18, *A.K. v. Krajowa Rada Sądownicta and CP and DO v. Sądnajwyższy*, Judgment of 19 November 2019.
3. C-619/18, *Commission v. Poland*, Judgment of 24 June 2019.
4. C-508/18 and C-82/19, *Minister for Justice and Equality v. OG and PI*, Judgment of 27 May 2019.
5. C-64/16, *Associação Sindical dos Juízes Portugueses v. Tribunal de Contas*, Judgment of 27 February 2018.

Appendix 2: PROPOSAL FOR FUTURE CONSTITUTIONAL ANEMDMENTS RELATED TO THE JUDICIARY

The current process of amending the Constitution, initiated by the Government of the Republic of Serbia, does not cover several issues important for the constitutional status of the judiciary, pertaining to the status of sources of international law in the legal system, as well as the relationship between courts and the Constitutional Court.

I SOURCES OF INTERNATIONAL LAW IN THE LEGAL SYSTEM (Articles 16.3, 17, 18, 75, 97.1, 167.2, 169, 194 of the Constitution)

The constitutional provisions on sources of international law which, in addition to the Constitution and the law, set the basis and limits for adjudication, remain open to different interpretations and legal uncertainty. This endangers the principle of legality, may lead to a conflict of international law and the Constitution, may be an obstacle and hinder the participation of the Republic of Serbia in European integration, including possible future accession to the European Union.

1. Opinion of the Venice Commission

The Venice Commission points to the status of sources of international law in the constitutional system of Serbia, emphasizing that "the provisions on the role of international law in the legal system are not unusual as such but require a prudent approach sensitive to international developments, as well as the introduction of a procedure for assessing the constitutionality of treaties before their entry into force", [1] and in connection with Articles 16.3, 18, 97.1, 167.2, 169, 194 of the Constitution, the Venice Commission gives specific suggestions.

Article 16.3 under which "ratified international treaties must be in accordance with the Constitution" raises important issues, in particular regarding the obligation to respect the Vienna Convention on the Law of Treaties. Under Article 27 of this Convention, a state party may not invoke the provisions of its domestic law to justify non-implementation of a treaty. If Article 16.3 in conjunction with Article 167.2 enables the Constitutional Court to deprive ratified international treaties of their internal legal force when they do not comply with the Constitution, then the Serbian State in order not to violate its international obligations deriving from ratified treaties, would either have to amend the Constitution – which will not always be possible in view of the complex procedure provided for in Article 203 – or denounce the treaty or withdraw from it, if the possibility to do so is provided for in the treaty itself or is in compliance with article 56 of the Vienna Convention on the Law of Treaties.

In the view of the Venice Commission "the Serbian authorities should try avoiding any conflicts between international law and the national Constitution." It is emphasised that "many established democracies, also give a higher rank to the national Constitution with respect to international treaties. This does, however, not mean that the Constitution is interpreted without having regard to international law. On the contrary, this means that the national authorities, including the Constitutional Court, interpret the Constitution in a manner designed to avoid conflicts between national and international rules."[2]

[1] Opinion of the Venice Commission No. 405/2006 CDL-AD(2007)004, adopted by the Commission at its 70th plenary session (Venice, 17-18 March 2007), points 16 to 19 and point 107).
[2] Ibid., point 17.

In its opinion pertaining to Part I - Basic Principles of Human Rights, Venice Commission [3] implicitly points to problems related to the interpretation of the provisions on human and minority rights, because "it suffers, however, from excessively complex drafting, which may lead to many issues of interpretation, which may lead to allowing excessive restrictions of fundamental rights" and states that "the courts, and in particular the Constitutional Court, will have to remain vigilant and ensure an interpretation in line with the democratic values set forth in the Constitution as well as the international standards to which it makes reference"; pertaining to Article 18.3 it emphasizes only that "from a legal point of view - the wording "to the benefit of promoting values of a democratic society" is rather general" and evaluates positively "that reference is also made to supervisory institutions ", with the interpretation and conclusion that "from a European perspective this means that above all the case law of the European Court of Human Rights is of highest significance for the interpretation of fundamental rights in the Constitution of Serbia".[4] The provision of Article 18.3 of the Constitution may also be criticized for being general and leaving wide scope for different interpretations in practice, especially when it comes to „ the practice of international institutions which supervise international standards of human rights implementation". This provision is particularly important for the judiciary, as it is the basis for the interpretation of constitutional provisions on human and minority rights.

Suggestions of the Venice Commission regarding the problem linked to "the international liability of the Serbian State" are that "it would be preferable by far to try avoiding these situations by providing for an a priori verification of the compliance of a treaty with the Constitution, before the treaty is ratified. The procedure for the 'assessment of the constitutionality of the law prior to its coming into force', provided for in Article 169 of the Constitution, could therefore be expanded to the assessment of the constitutionality of treaties prior to their ratification."[5]

In the context of the European integration process in which the Republic of Serbia participates, the Venice Commission points out and recommends that Article 97.1 of the Constitution, which stipulates that the Republic of Serbia regulates and ensures its international status and relations with other countries and international organizations, should "include in the future a provision explicitly authorising the transfer of certain powers of the organs of the Republic of Serbia to international or supranational organisations," and emphasises that it might be considered a possible legal basis for such transfers and advises that the provision should be explicit. [6]

The Venice Commission also points to terminological inconsistencies in the provisions pertaining to sources of international law (e.g. the provisions of Article 16 and the provisions of Article 194 of the Constitution) and warns that "such repetitions, especially if not identical, are undesirable since they risk opening delicate issues of interpretation."[7] In addition to the provision referred to by the Venice Commission, there are other provisions of the Constitution in which the terminology is inconsistent and confusing: generally accepted principles and rules of international law (Article 16.1); generally accepted rules of international law (Article 16.2, Article 18.2, Article 142.2; Article 167.1.1), ratified international treaties (Article 18.2); valid international standards of human and minority rights (Article 18.3); case-law of international

[3] Ibid., point 25.
[4] Ibid., point 26.
[5] Ibid., point 16.
[6] Ibid., point 18.
[7] Ibid., point 19.

institutions which supervise implementation of international standards of human rights (Article 18.3.); international treaties (Article 17 and Article 75).

2. Critical arguments by the domestic experts

Immediately after the adoption of the Constitution of the Republic of Serbia, and for many years during its implementation, constitutionalists, professional associations of judges and public prosecutors, as well as civil society organizations, in studies, scientific journals, research and analysis, made objections on constitutional solutions regarding: the status of sources of international law in the legal system of Serbia, the wide possibilities open for different interpretations of these constitutional provisions, which endangered the principle of legality, the necessity of including an integrative clause in the Constitution, and the uneven and confusing terminology on sources of international law. They have offered different proposals and recommendations for eliminating deficiencies in constitutional solutions.[8] These critics and proposals were also presented in the public debate held during 2018 on the Draft Amendments to the Constitution prepared by the Ministry of Justice.

II PUBLIC PRONUNCIATION OF JUDGEMENT

The Constitution regulates only the principle of public hearing before a court and its limitations,[9] and not the principle and obligation of public pronunciation of judgment, which is one of the important standards of the court proceedings.

III RELATION BETWEEN THE CONSTITUTIONAL COURT AND THE COURTS

The amendments to the Constitution do not cover the relation between the Constitutional Court and the courts. The influence of the Constitutional Court on the work of courts is direct and indirect. Indirect influence is exercised through the power of the Constitutional Court to decide on the protection of constitutionality and legality, because the effect of the Constitutional Court's decisions extends to the work of the courts. The direct influence is much more delicate, not only when it comes to the competences of the Constitutional Court and the competences of courts in deciding on the protection of human and minority rights, but also because of some other competences of the Constitutional Court (e.g. resolving conflicts of jurisdiction, the right of a court to initiate proceedings before the Constitutional Court, protection of the independence of courts and the independence of judges before the Constitutional Court, etc.). In reality, it has been shown that some issues are particularly sensitive to the status of the judiciary, such as deciding on judges' appeals against decisions of the HJC upon termination of office or dismissal of judges, regulating the jurisdiction of the Constitutional Court and the jurisdiction related to the assessment of constitutionality and legality, protection of human rights in the proceedings upon constitutional appeal, as well as resolving conflicts of jurisdiction.

[8] CEPRIS also participated in these activities. See: Beljanski, S. Pajvančić, M. Marinković, T. Valić Nedeljković, D. *Однос Уставног суда и судске власти – стање и перспективе*, Belgrade, 2019. Also see: Beljanski S., Pajvančić, M. (ed. Dajović D.), *Нормативна контрола уставности као основна (?) надлежност Уставног суда Србије* (2009 – 2019), Belgrade, 2021.

[9] Article 32.2 of the Constitution of the RS.

1. Jurisdiction of the Constitutional Court

1.1. Opinion of the Venice Commission

Pertaining to the jurisdiction of the Constitutional Court, the Venice Commission emphasizes the need to amend Article 167 of the Constitution and to include the jurisdiction of the Constitutional Court regarding a preventive (a priori) control of international treaties before their entry into force. It also points to the deficiencies of Article 167, as it states twice that the Court shall perform other duties stipulated by the Constitution, but the Commission does not comment in detail on the direction in which these changes should be made.

1.2. **Critical arguments by the domestic experts**

The manner in which the Constitution regulates the jurisdiction of the Constitutional Court raises the question of whether the jurisdiction of this Court may be regulated only by the Constitution or also by law. In the same Article of the Constitution, two different provisions, in terms of content and effect, regulate this issue. One is broader (Article 167.2.6) and it stipulates that the jurisdiction of the Constitutional Court may be regulated by both the Constitution and the law. The second is restrictive (Article 167.4) and it envisages that the jurisdiction of the Constitutional Court may only be regulated by the Constitution. The consequences of these contradictory norms are various. In reality, this can be a source of different interpretations, which is especially delicate when it comes to defining the jurisdiction of the Constitutional Court in relation to the constitutional protection of human rights in the procedure of a constitutional appeal,[10] and the review of court decisions by a court of higher instance, which is typical for judicial system in Serbia. In addition, the Constitutional Court could be in a position that, while assessing the constitutionality of the law governing the jurisdiction of the Constitutional Court, it influences the content of its own competences.[11]

Accordingly, in Article 167 of the Constitution, paragraph 4 should be deleted, and in Article 167.2.6, the words "and by law" should be deleted.

2. Normative control

Normative control as the primary jurisdiction of the Constitutional Court is increasingly suppressed and becomes a "secondary" jurisdiction of this court. The amount of cases related to normative control in the total number of cases is continuously decreasing. This trend has been ongoing for many years (15.53% in 2009 to 1.28% in 2019). In contrast to the trend of continuous increase in the total number of cases (from 5,177 in 2009 to 36,892 in 2019) this is not recorded in cases related to normative control. There is a large gap between the number of cases related to the protection of human rights (more than 90% in the total number of cases), in relation to the number of cases related to normative control (less than 2% in the total number of cases).

[10] Article 89, para 1 and 2 of the Law on the Constitutional Court prescribes that the Constitutional Court, in the procedure of deciding on a constitutional appeal, may annul an individual act, including a judgment as an individual act of the court, prohibit further performance of a certain action and order to eliminate harmful consequences of such an act within a certain period. In practice, this provision was a source of conflicting views.

[11] By amending the Law on the Constitutional Court, court decisions are exempted from the possibility of annulment in the procedure of deciding on a constitutional appeal. By the decision of 2/3 of the judges, the Constitutional Court then, on its own initiative, initiated the procedure of examining the constitutionality of this legal solution and in its decision determined its unconstitutionality. (Decision of the Constitutional Court in the case no. IUz-97/2012)

The number of initiatives for the assessment of normative control of general legal acts is increasing. There are significantly less proposals for the assessment of constitutionality that come from authorized bodies, and it should be borne in mind that the Constitutional Court rarely uses the right to initiate the procedure of normative control on its own initiative. The increase in the number of initiatives in which the constitutionality or legality of a general legal act is challenged is influenced by several factors: dynamics and scope of legislative activity; adoption of laws that are new in the legal system reflect on the status and rights of a wide range of citizens and bring changes that are difficult for citizens to accept [12]; frequent amendments to the law; a large number of accompanying regulations for the application of the law; the right of every natural or legal person to initiate a normative control procedure is widely guaranteed by the Constitution; the possibility to request normative control in relation to any general act[13]; procedural benefits such as no court fees, as well as the obligation to engage legal assistance etc.

The Constitutional Court has resolved the most cases of normative control by a conclusion to reject the initiative or by a decision not to accept or reject the initiative. On several occasions, the Constitutional Court also pointed to the increase in the number of "obviously unfounded initiatives, which do not meet the basic procedural prerequisites for conducting proceedings and decision-making, on the one hand, but also an increase in the number of cases in which numerous and complex constitutional issues are raised, and normative control extends to an increasing number of provisions of law and other general legal acts, on the other hand.“[14] All this reduces the efficiency of the Constitutional Court.

The Constitutional Court sees a way out of the situation in changing the “legal framework for the Court's actions, that is, the intervention of the constitution-maker and the legislator in the direction of relieving the Court of the growing number of cases in which there are no basic procedural preconditions for decision-making“, as well as abandoning, in future constitutional amendments, the initiative to initiate proceedings to review constitutionality and legality and reviewing the decision according to which every legal or natural person has the right to initiate proceedings to review constitutionality and legality.

Despite the fact that the Constitutional Court rejects the largest number of initiatives for the assessment of constitutionality or legality, the right to submit an initiative for the assessment of constitutionality and legality guaranteed by the Constitution to a wide range of persons and bodies should remain. The right to address all authorities as well as the right to submit initiatives and proposals is an individual right of citizens guaranteed by the Constitution. It is one of the democratic rights of citizens to participate in the exercising public authority and influence public authorities, and the right of the citizens pertaining to all public authorities including the Constitutional Court. The Constitutional Court’s case-law, which indicates that the number of initiatives is increasing, as well as the fact that the initiatives were most often the reason for initiating the procedure of normative control, shows that citizens use this right effectively.

[12] Review of the work of the Constitutional Court for 2013, p. 22, Review of the work of the Constitutional Court for 2014, pp. 2 and 26.
[13] For example, acts of companies, public services, chambers, funds, and other organizations and collective agreements. More in the Review of the work of the Constitutional Court for 2014, p. 3 and the Review of the work of the Constitutional Court for 2015, p. 22.
[14] Review of the work of the Constitutional Court for 2016 and for 2017.

3. Constitutional appeal

The jurisdiction of the Constitutional Court to decide on the protection of human rights is regulated by the Constitution, although this is not covered by Article 167 of the Constitution, which regulates the jurisdiction of the Constitutional Court. The Constitution also establishes a legal instrument (constitutional appeal) for the protection of human rights that can be used by persons whose rights have been violated. A constitutional appeal is an instrument used as a subsidiary legal remedy for the protection of human rights, i.e. the Constitution prescribes that a constitutional appeal may be lodged provided that other legal remedies for the protection of human rights have been exhausted or if other legal remedies for the protection of human rights are not provided. The constitutional norm is lapidary, so many issues related to this instrument, which was at the time of the adoption new in the constitutional system, are regulated by the Law on the Constitutional Court, the Rules of Procedure of the Constitutional Court and the Constitutional Court's position statements that the Constitutional Court has encountered problems in practice. Deciding on constitutional appeals becomes the dominant jurisdiction of the Constitutional Court. The number of constitutional appeals is continuously increasing, as is the number of unresolved constitutional appeals. For example, the total number of constitutional appeals in progress in 2017 was 25,846, which is as much as 97.02% of the total number of cases in progress. Out of that, 13,628 were unresolved cases from previous years, 12,118 were new cases while only 5,460 were resolved cases. For example, the increase in percentage of the number of unresolved constitutional appeals between 2016 and 2017 was as high as 30.48%.

In its Annual Report, the Constitutional Court has stressed that for a whole decade there has been a “trend to increase the degree of burden of the Constitutional Court with new cases”, that “the focus of proceedings is on constitutional appeals”, and that the expectations have not been met “that the inflow of constitutional appeals will decrease, as a consequence of legislative solutions according to which, from May 2014, the protection of the right to a trial within a reasonable time in ongoing proceedings is provided by courts of general and special jurisdiction.” Therefore the Constitutional Court concludes that “before the Constitutional Court, the decisions of courts of general and special jurisdiction made in the procedure regarding the specified constitutional right are increasingly being challenged, not because the protection was not provided, but because the applicants are not satisfied with the court's decision”.

Based on the aforementioned, and in order to eliminate legal gaps related to the constitutional appeal, Article 170 of the Constitution should be supplemented by a general provision which delegates to the legislator more detailed regulation of the constitutional appeal.

Appendix 3: ABOUT WORKING GROUP MEMBERS

VIOLETA BEŠIREVIĆ (working group coordinator) is a Professor of Constitutional Law and EU Law at Union University Law School Belgrade, a Research Associate at Democracy Institute of the Central European University in Budapest, and an Affiliate Professor at the University of Milano-Bicocca, Center for Law and Pluralism. Professor Beširević is an Editor-in-Chief of *Pravni Zapisi*, Union University Law School Review. She holds an L.L.M. and an S.J.D. in Comparative Constitutional Law from the Central European University, Budapest/Vienna, and B.A. from Belgrade University Law School. In 2012, professor Beširević was awarded a Fulbright stipend and held a postdoctoral position at NYU School of Law researching constitutional judiciary. Previously, she was a Research Coordinator at the CEU Center for Human Rights, Senior Diplomat (and Consul) in Hungary, Staff Attorney at Constitutional and Legal Policy Institute in Budapest, and Senior Legal Adviser at the Ministry of Justice of the former Yugoslavia. She was a visiting scholar at NYU Law School, George Washington University Law School, Brigham Young University Law School, and ASSER Institute in The Hague. Professor Beširević passed the Bar Exam and received a state license to practice law in 1989. She possesses advisory skills gained through an appointment to the Pardon Committee of the President of the Republic of Serbia (2008-2012), the *Amicus Curiae* before the Constitutional Court of Serbia, and a dispute resolution consultant in international investment arbitration facilitated by the Permanent Court of Arbitration in the Hague. She is a member of CEPRIS and serves as a member of the Board of Directors of the European Public Law Organization, the Board of Directors of Open Society Foundation in Belgrade, and the Board of Directors of NGO ASTRA. She has published extensively in Serbian and English language in the field of Constitutional Law, EU Constitutional Law, and Human Rights Law. Her recent publications include the edited volume *New Politics of Decisionism* (ed., Eleven Publishing, The Hague, 2019) and the article *Making Sense of the Political Question Doctrine: The Case of Kosovo, Review of Central and East European Law*, Vol.46, No.1, 2021, pp. 91-130.

VIDA PETROVIĆ ŠKERO is a retired judge and former president of the Supreme Court of Cassation. She is one of the founders and former president of CEPRIS. She is a member of the Press Council. She graduated from the Faculty of Law in Belgrade in 1974, after which she worked as an assistant judge at the Second Municipal Court in Belgrade. She passed the bar exam in 1977. She was elected a judge of the Second Municipal Court in Belgrade in 1978, where she became the head of the Civil Law Department (1992). She was dismissed from office in 2000 along with 13 other judges for her commitment to judicial independence, after which she worked as a lawyer in Belgrade. She was appointed president of the District Court in Belgrade in 2001, and in 2002 judge of the Supreme Court of Cassation (Civil Department). She was elected President of the Supreme Court of Cassation in 2005, where she worked until her retirement in 2014. In the course of her career, she participated in numerous trainings and educational courses for judges in the field of human rights and the case law of the European Court of Human Rights, organized by the Council of Europe, which made her a national coach in the field of human rights, with a focus on Articles 5, 6 and 8 of the European Convention on Human Rights. Since 2002, she has been appointed several times a member of the working groups for the drafting of the Law on Organization of Courts and the Civil Procedure Law. Vida Petrović-Škero is on the list of experts of the OSCE Mission, and in 2014 she was awarded the "OSCE Person of the Year" award, due to her commitment to the protection and preservation of judicial independence. She has published numerous expert articles in the field of judicial independence, court organization, constitutional, civil and family law.

SAVO ĐURĐIĆ is a judge of the Appellate Court in Novi Sad and a former member of the High Judicial Council. He holds LL.M degree. He was elected a judge of the District Court in Novi Sad at the end of 1992, a judge of the High Court in Novi Sad in 2010, and he has been a judge of the Appellate Court since November 2013. He was an advisor in the Provincial Institute for Public Administration and Deputy Provincial Secretary for Justice, Administration, Regulations and Rights of National Minorities. From 2016 to April 2021, Judge Đurđić served as an elected member of the High Judicial Council from among the judges. He has been a member of the Association of Judges of Serbia since its

establishment. Judge Đurđić's areas of work are criminal law and juvenile delinquency. He has published articles on criminal matters, juvenile delinquency, judicial-organizational and constitutional law, with active participation in professional and scientific conferences. He is the co-author of a research on juvenile delinquency. He is a member of the Council for Monitoring and Improving the Work of Juvenile Justice Bodies. At the round tables, and during the discussion on constitutional amendments regarding the judiciary in 2017 and 2018, as a member of the HJC, he was a participant, nominator and one of the authors of the positions adopted by this body in 2018. In this field, he has presented and published papers at international professional and scientific conferences, including *The role of the HJC in protecting judicial independence from inappropriate media pressures* (Institute of Criminological and Sociological Research, Palić, 2017), and *Independence of the judiciary and the constitutional principle of separation of powers - in the light of the proposed amendments to the RS Constitution on Justice* (Kopaonik School of Natural Law, 2020). He has published fifteen articles on the situation in the judiciary and in society regarding the proposed changes to the Constitution and the work of the HJC in the period 2018-2021 on the portal "Open Doors of Justice" and a dozen articles in daily and weekly press (*Danas, Vreme, Politika*).

RADOVAN LAZIĆ is a Deputy Prosecutor in the War Crimes Prosecutor's Office, President of the Steering Board of the Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, a member of the Steering Board of the Judicial Academy and a former member of the State Council of Prosecutors from among the public prosecutors and deputy public prosecutors. He is a member of the Board of Directors of CEPRIS. He graduated from the Faculty of Law in Belgrade in 1995, passed the bar exam in 1998, and in 2001 was elected municipal public prosecutor in Bačka Topola. He served as Deputy Appellate Public Prosecutor in Novi Sad between 2010 and 2015, and then as Deputy Public Prosecutor in the Higher Public Prosecutor's Office in Novi Sad until 2016. He was an elected member of the State Council of Prosecutors in the period 2016-2020. During his career, he has participated in numerous seminars and conferences in Serbia and abroad, and several times he was appointed a member of management boards, expert bodies and working groups of the Ministry of Justice, namely in the Subcommittee on Human Rights and Property-Legal Relations of the Federal Committee for Kosovo and Metohija, i.e. in the Department of Justice of the Coordination Centre for Kosovo and Metohija - Defence of offenders before International Panels of UNMIK Courts in Kosovo (2001). He has participated as a member of expert working groups in the drafting the Law on Public Prosecutor's Office and the Law on Seats and Territorial Jurisdiction Courts and Public Prosecutor's Offices (2012), the National Judicial Strategy Reform (2013), the Law on the High Judicial Council and the Law on Public Prosecution, Law on the State Council of Prosecutors (2013) etc. He was a member of the working group of the State Council of Prosecutors for drafting criteria and measures for assessing the expertise, qualifications and dignity of candidates being proposed and elected to the Public Prosecutor's Office (2014 and 2015). He is the author of many articles in the field of justice and criminal law.

PREDRAG MILOVANOVIĆ is the Deputy Public Prosecutor in the Second Basic Public Prosecutor's Office in Belgrade (since 2016) and an elected member of the State Council of Prosecutors. He graduated from the Faculty of Law in Belgrade in 2009, after which he volunteered at the Third Municipal Public Prosecutor's Office in Belgrade. He was employed as an intern in the First Basic Public Prosecutor's Office in Belgrade from 2011 to 2012, and as a senior assistant prosecutor in the Third Basic Public Prosecutor's Office in Belgrade from 2014 to 2016. During his career he has been a member of numerous committees and professional bodies including the Association of Assistants to Prosecutors and Judges (since 2016), he was the President of the Management Board of the Association of Assistants to Prosecutors and Judges (2012-2017), as well as a member of the working group for improving the position of judicial and prosecutorial assistants, formed by the Commission for the Implementation of the National Judicial Strategy Reform.

MARIJANA PAJVANČIĆ is a retired professor of Constitutional Law at the Faculty of Law, University of Novi Sad. She has written over 15 monographs and 300 scientific articles, published in Serbia and abroad, in the field of Constitutional Law, Electoral Law, Parliamentary Law, Gender Studies and Human Rights Protection. She is a member of CEPRIS, the Serbian Association for

Constitutional Law, the Committee for the Study of National Minorities and Human Rights at Serbian Academy of Science and Art, and the European Association for Electoral Law. She has been a visiting lecturer at a number of universities in the region of the former Yugoslavia, including the University of Banja Luka, the University of East Sarajevo and the Mediterranean University in Podgorica. She was engaged as a leading expert in drafting the Draft Law on Gender Equality (2005 and 2012) and the Law on Gender Equality (2021). She participated as a member of expert working groups in the drafting of the Constitution of the Republic of Serbia (2005), as well as many other legal acts, including the Draft Law on Same-Sex Unions (2021), the Law on Prohibition of Discrimination (2021), Law on the Protection of the Rights and Freedoms of National Minorities (1992), the Law on Elections to the Federal Assembly (1992), documents such as the first Action Plan for the Advancement of Women and Gender Equality (2008-2009), the National Action Plan for Gender Equality (2019), National Strategy for the Prevention of Violence against Women and Domestic Violence (2021) etc. She is the author of numerous articles published in Serbian and English in the field of Constitutional Law, Electoral Law and Parliamentary Law, including *Commentary on the Constitution of the Republic of Serbia* (2009) and article *Constitutional position of courts within the organization of government: normative framework - problems of normative and factual character, Gazette of the Bar Association of Vojvodina*, No.3-4, 2017, pp.173-189.

TANASIJE MARINKOVIĆ is a Professor of Constitutional Law at the University of Belgrade Faculty of Law. He received his Bachelor's Degree (1999) and his PhD (2009) from the University of Belgrade Faculty of Law, and his Master's Degree (2003) from the University Paris I Faculty of Law, with the thesis *Systems of Selection of Judges as a Guaranty of Judicial Independence.* He studied comparative constitutional law and international human rights law at other European institutions of higher education, as well: Institute of Federalism in Fribourg, International Institute of Human Rights Law in Strasbourg, Central European University in Budapest and University of Oxford. He has been teaching Constitutional Law at the University of Belgrade Faculty of Law since 2000, having occupied all positions from the assistantship to the full professorship. He taught, also, at the universities of Bordeaux, Saarbrücken and Palermo. As an expert of the Council of Europe he lectured on the application of the European Convention on Human Rights in numerous seminars for the judges and registry of the basic, higher and appellate courts, as well as of the Administrative Court and Supreme Court of Cassation in Serbia; and, as an expert of the OSCE he lectured on the anti-discrimination law in numerous seminars for the members of the Ministry of the Interior of the Republic of Serbia. He acted as *amicus curiae* in a number of cases and in different types of proceedings before the Constitutional Court of the Republic of Serbia. He is the Editor-in-Chief of the *New Archives for Legal and Social Sciences* of the University of Belgrade Faculty of Law. He was the editor of the legal editions of the Official Gazette of the Republic of Serbia. For many years he occupied the position of the Secretary General, and then of the President of the Serbian Association of Constitutional Law. He is a member of CEPRIS. His most recent books include *Treatise on the Right to Free Elections* (Dosije, 2019) and *Serbia* (Constitutional Law, Wolters Kluwer, 2019).

RODOLJUB ŠABIC is an attorney-at-law in Belgrade, former MP and Deputy Speaker of the National Assembly of the Republic of Serbia, former Minister of State Administration and Local Self-Government of the Government of Serbia, as well as former Commissioner for Information of Public Importance and Personal Data Protection in the Republic of Serbia. He graduated from the Faculty of Law, University of Belgrade, holds LL.M in Constitutional Law, and has passed the bar exam. He is a member of the Management Boards of the Belgrade Centre for Security Policy and the Renewables and Environmental Regulatory Institute. He was the head of a big law firm for several years. During his career, he was also the head of legal and general affairs in the Belgrade Trade Union Council, the chief of staff of the Federal Secretary for Justice and Public Administration and the Undersecretary in the Federal Secretariat for Legislation of SFR Yugoslavia. He was elected for two terms as the Commissioner for Information of Public Importance and Personal Data Protection in the Republic of Serbia. Since 2019, he has been an attorney-at-law again. He is the author of many texts published in scientific and professional journals, and in the daily press. He has won numerous recognitions and awards from the professional and general public, including: *Person of the Year in the Fight for Media Freedom* (OSCE Mission 2008), *Knight of the Profession (*League of Experts - LEX, 2010), *Person of*

the Year (OSCE Mission, 2011), *Award for Contribution to the Fight against Corruption* (EU Mission and Anti-Corruption Council 2011), *Award for Contribution to Europe* (European Movement in Serbia and International European Movement, 2013) and *April Award for the Development of Democratic Values and Respect for Human Rights* (City of Šabac, 2018).

VLADIMIR BELJANSKI is an attorney-at-law based in Novi Sad. He was a member of the Management Board of the Bar Association of Vojvodina from 2007 to 2014, and since then he has been a member of the Management Board of the Serbian Bar Association. A significant part of his professional engagement has been focused on defence in criminal proceedings related to business and economy, and he was a defence attorney in numerous proceedings for war crimes, organized crime and other serious crimes. He is a lecturer at the Academy of the Serbian Bar Association, and in the last 15 years he has participated as a lecturer in many of seminars, discussions and conferences in the field of criminal law and human rights law. He was an attorney in the first adjudicated case against Serbia at the European Court of Human Rights in Strasbourg. He completed specialist trainings on humanitarian law organized by the Swedish Bar Association, the International Bar Association, the International Criminal Tribunal for the Former Yugoslavia, the Ministry of Justice and the Humanitarian Law Centre, as well as a training on media law at Oxford University. He is the National Representative of Serbia in the International Association of Lawyers. Since 2017, he has been the President of the Bar Association of Vojvodina.

TEODORA MILJOJKOVIĆ (working group secretary) is a PhD student of comparative constitutional law at the Central European University, Department of Legal Studies, Vienna, a member of the Belgrade Legal Theory Group and an intern at the Democracy Institute in Budapest. She completed her undergraduate studies at the Faculty of Law in Belgrade in 2018, and her master's studies at the Central European University in Budapest in 2019 with the thesis *The Importance of the Constitutional Court in the Democratization Process - The Case of Slovenia, Croatia and Serbia*. In her doctoral thesis, she deals with comparative legal analysis of the issue of judicial reform from the perspective of the principles of the rule of law and judicial independence under the mentorship of professor and former judge of the European Court of Human Rights, *András Sajó*. In the course of her studies, she participated in the organization of numerous conferences and seminars under the auspices of the Belgrade Legal Theory Group and the Serbian Association for Legal and Social Philosophy. She has been engaged as an associate and deputy editor for the legal portals Jurist, ICON-International Journal of Constitutional Law, Review of Democracy. She is currently a member of the editorial board of the journal *Eudaimonia* and an assistant editor to the *Review of Democracy*. In 2020, she was appointed a teaching assistant to Professor András Sajó on the course *Rule of Law and Illiberal Democracies* at the Central European University in Vienna.