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STANDING POINTS FOR ADOPTING THE LAW ON ORGANIZATION COURTS

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STANDING POINTS FOR ADOPTING THE LAW ON ORGANIZATION COURTS

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STANDING POINT FOR ADOPTING THE LAW ON ORGANIZATION OF COURTS

Adopted constitutional amendments pertaining to the judicial branch of government imposed the obligation of the state to change and harmonize the norms that comprise the Law on Organization of Courts. The starting points for the amendments were shaped by the experts of the Judicial Research Centre (CEPRIS), considering the current constitutional regulation of the judiciary, as well as the ratio of the adopted constitutional amendments, which implies the elimination of the undue influence of the other two branches of government on the judiciary, and especially the political view, which was expressed and adopted in the process of amending the constitutional provisions, and which claimed "that the Constitution is not so important, it is only the basis for the law". That is why it is the duty of the state to protect the independence of the judiciary in the legal text, which must be both functional and financial.

The methodological approach was determined by following the existing systematization of still valid Law on Organization of Courts, by listing the key issues that must be regulated by a new law, with concrete proposals and explanations. It was considered which changes were necessary due to the adopted constitutional amendments, the recommendations of the Venice Commission, which were given in the process of amending the Constitution[1], theoretical position, recommendations of the Committee of Ministers of the Council of Europe[2], opinions of the Consultative Council of European Judges[3] and, most

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1 In particular, Opinion of the Venice Commission on the Constitution adopted on March 17-18, 2007, Opinion of the Venice Commission on the Draft Amendments of June 25, 2018; Opinion of the Venice Commission on Draft Amendments of October 18, 2021 and Urgent Opinion of the Venice Commission of November 24, 2021

2 In particular, Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe to Member States on judges: independence, efficiency and responsibilities adopted on November 17, 2010 and Recommendation No. R (94)12 of the Committee of Ministers on the independence, efficiency and role of judges adopted on October 13, 1994.

3 In particular, Opinion no. 15(2012) on specialization of judges, Opinion no. 17(2014) on evaluation of judges' work, the quality of justice and respect for judicial independence, Opinion no. 18(2015) on the position of the judiciary and its relation with the other powers of state in a modern democracy, Opinion no. 19(2016) on the role of court presidents, Opinion

importantly, the degree of real needs and possibilities of the courts to change the national judiciary.

Principles

In the Chapter One of the current Law, and in the adopted amendments, the position of the judicial power is not explicitly determined. There was a constant dilemma whether the holders of that branch of government were the courts or the judges. The Constitution determined the position of the legislative and executive powers, the President of the state, and the amendments regulated the position of the Prosecutor's Office, but the position of the judicial power was still not defined. Therefore, the first Article of the Law should determine the position of the judicial power, by emphasizing, as the most important, the principles of autonomy and independence of the courts in the performance of their activities and point out that the most important role of the courts is to ensure the rule of law and to determine how the judicial power should accomplish that task and what the important determinants of the position of the judicial power are.

The proposed content of this Article was taken from the Model Amendments to the Constitution prepared by CEPRIS:

> *„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.*
>
> *Court decisions shall be rendered in the name of the people.“*

When the judicial power is concerned, the existing Article 1, paragraph 2, must be harmonized with Amendment VI, and Article 3, para 3, must be harmonized with Amendment IV, para 4.

Based on the unclear wording of Article 5, para 1, it is concluded that there are no reasons for the possible exclusion, that is, the disqualification of a judge from acting in the assigned case, which is why that Article must be amended. The proposal is to supplement para 1 to include:

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no. 20(2017) on the role of courts with respect to uniform application of the law and Opinion no. 22(2019) on the role of judicial assistants.

„except when provided by law“ and that para 1 becomes para 2, and para 2 becomes para 1.

It would be clearer and more efficient if the provision reads:

„Judges shall be assigned cases according to predetermined rules.“

The principle of transparency is not properly regulated by the Law. It is reflected only in the trial, which is not a sufficient determination. The permanent lack of public trust in the judiciary and poor communication with the media show the need that the judicial system acknowledges the importance and role of the media and provide them with objective reporting. The development of democracy implies that citizens receive proper information about the work of the judiciary. It is important to create a legal framework that ensures that the judicial system is opened and that, therefore, citizens are familiar with its work, function and importance, which would make court proceedings more transparent, within the limits of constitutional and legal permissions. It would be necessary to supplement the content of this principle and establish:

„Hearings before the court and publication of court decisions shall be public and may be restricted in accordance with the Constitution and the law.

The public shall be regularly informed about the work of the judicial system.“

The public should be informed as much as possible about the nature, competences, legal limitations and complexity of the judges' work, so that a system is created that would prevent mistakes in media reporting. Judges must supervise court spokespersons or other persons who are responsible for public relations in the courts when reporting on the cases these judges are in charge of.

It must be noted that neither the constitutional amendments, nor the Law, regulate the salaries and the financing of the judiciary, which are important criteria to safeguard its material independence. Therefore, the basic provisions of the Law should be supplemented with an article regulating the salaries of judges and the budget of the courts and the High Judicial Council. The specific proposal is for the article to read:

„Judges' salaries shall be determined by law and shall not be reduced, except in the case of a general reduction of salaries in the public sector due to economic crisis.

Courts and the High Judicial Council shall have their own budget.“

The prohibition of salary reductions for judges refers to the situation when salaries are reduced only for judges, and not to the reduction in salaries of judges as part of a general reduction of salaries in the public sector due to economic crisis (the Court of the European Union regulated such actions of the state in its decision on the reduction of salaries for judges in Portugal in 2018).

External organization of courts

Constitutional amendments have divided the courts into courts of general and special jurisdiction. This was done although the Venice Commission suggested that it was not a good solution, in particular due to the bad experience that the Republic of Serbia had with the general re-election in 2010, following the legal change of the names of the courts, with the explanation that those were new types of courts. The Supreme Court is specifically mentioned, instead of former Supreme Court of Cassation. This is how the dilemma, which was resolved almost a century ago, whether the court would only have the cassation jurisdiction of the highest, cassation court, or whether it would be the supreme court with a clear authority to affirm, reverse and modify court decisions. Then, it was decided that it should be the Supreme Court. To avoid new abuses due to the positive change in the name of the highest court in the country and to ensure the real stability of the judicial function, the Constitutional Law provides that all judges, and also those of the Supreme Court, continue to perform their functions after the adoption of constitutional amendments. Therefore, in all provisions of the Law, the name of the highest court of the Republic of Serbia should be changed. The name is again Supreme Court.

In the classification of courts of special jurisdiction, the following courts are listed: commercial courts and the Commercial Appellate Court, misdemeanour courts and the Misdemeanour Appellate Court and the Administrative Court, which is national and based in Belgrade. The Administrative Court may have departments outside the headquarters, in accordance with the Law. Such a legal framework which envisages establishment of a specialized court of special jurisdiction for adjudicating, not only on a very large number of cases, but also on very diverse ones, is not adequate even with separate court departments. Court statistics show that for years every judge has been burdened with more than a thousand cases. The complexity and diversity of the matter that the judges must decide on also require additional specialization, which cannot be implemented within its framework. All this causes inefficiency and reduces quality of the work of the important court, which is essential for the functioning of a democratic state.

Many shortcomings have occurred due to the current organization of the administrative courts, which was increased, among else, by the constant

expansion of jurisdiction without a systematic monitoring of the need for staff, thus calling into question the achievement of the much-desired European standards, which were originally the reason to change our administrative procedure. Because of that chain reaction, the one-instance administrative procedure also emerged, upon which the realization of the right to a legal remedy - which is guaranteed by the Constitution of the Republic of Serbia - became questionable:

„Everyone shall have the right to an appeal or other legal remedy against any decision on his/her rights, obligations or lawful interests."

The result is clear: our administrative judiciary is not organized properly. With the establishment of the Administrative Court, the desired and planned reform of the administrative procedure could not be successfully completed. On the contrary, it seems that, a decade later, we are closer to its beginning than to its end.[4]

Clearly, it is necessary to establish more administrative courts of first instance and one administrative appellate court. The experts, the president and judges of the Administrative Court believe that four first-instance courts should be established, in Belgrade, Novi Sad, Niš and Kragujevac, with the adequate number of judges. The reform of these courts must be dual and implemented jointly. Again, it is necessary to determine exactly what the subject of the administrative procedure will be and, based on that, determine the required number of courts and judges. New courts without the adequate number of judges will not contribute to the effectiveness or efficiency of the court proceedings, in which a very important and diverse judicial protection of citizens is carried out. It is obvious that the state avoids regulating this issue by the amendments to the Law, which is not in line with the public needs, even though the state currently fails to provide the right to a fair trial to the parties in the proceedings before the Administrative Court in all segments. The current organization of such courts also points to possible corruption, given that it is not possible to solve problems within a reasonable time for citizens and government bodies, who pass administrative acts the legality of which is to be determined.

A realistic solution would be to make a legal amendment to Articles 11-15 of the Law on Organization of Courts. For the revision to be acceptable, with a positive effect on the establishment of new courts and the start of their work, enough time period should be allowed, vacatio legis, of minimum two years, in

4 Ratko S. Radošević, Reforma upravnog spora: novi pokušaji – stari problemi [Administrative Procedure Reform: New Attempts – Old Problems], *Zbornik radova Pravnog fakulteta u Novom Sadu* 3/2020, 1105.

which an expert discussion would be held among representatives of the courts, academia and the executive power on the regulation of the jurisdiction of those special courts and the determination of the necessary number of judges, interns, professional associates and advisors, and court staff who will be able to effectively perform court duties within their competence. The problem would not be solved even if the administrative division were re-established in the Supreme Court as a second instance. The highest court in Serbia would once again become an appellate court. An excessive number of cases would also require many judges in the Supreme Court. All of this would result in a worse performance of the highest court's basic competence on deciding on extraordinary legal remedies and unified court practice. The entire court system would be vulnerable again. In the Supreme Court, there is a specialized administrative council which decides on extraordinary legal remedies against the decisions of the Administrative Court and its departments. The Appellate Administrative Court, which would have jurisdiction on the territory of the entire Republic, would be a national court, like the Commercial Appellate and the Misdemeanour Appellate Court, whose basic jurisdiction would be to decide on appeals against first-instance decisions of administrative courts. Now the parties do not have the right to appeal the judgments of the administrative court, and practice shows that this remedy should be reintroduced in administrative procedures. One-instance in this matter is desirable but, given the situation in the courts and the needs of the citizens, this would be an appropriate solution for the future, if at the same time an adequate training of the necessary personnel for the administrative judiciary began.

The advantage of having one first-instance administrative court is the easier formation and standardization of court practice. The disadvantage, which is also a weakness of the current system, and relatively poorly resolved, is that justice is not decentralized. Departments of the Administrative Court are not the solution to that problem. Departments represent fictitious judicial decentralization because, in fact, claims are filed at the address of the headquarters of the Administrative Court in Belgrade, and then, they are distributed to departments outside Belgrade according to the place of residence or the seat of the plaintiff. Although it is not significant for the issue of establishing one or more first-instance administrative courts, court departments should always be avoided as a solution. Not only do they not represent true decentralization, but they can fundamentally endanger the irremovability of judges, which is guaranteed by Article 150 of the Constitution of Serbia. A judge who has been elected to a court of national level, based in Belgrade, can in practice be transferred to a department more than two hundred kilometres away from the seat of the court. This could, theoretically, be a leverage of influence on the judge, and the guarantee of irremovability of judges is precisely aimed at preventing such a thing.

Departments (or the judge's daily engagements outside the seat of the court) may possibly be appropriate for courts competent on a smaller territory, but not for national level courts. If the government strives for true decentralization of the judiciary, which would give the opportunity for future judges of administrative courts to be outside Belgrade, then it should choose to have more first-instance administrative courts.[5]

It should be emphasized that mediation in administrative procedures and the development of alternative dispute resolution mechanisms can greatly improve the public awareness of their existence, the way they function and the expenses. An additional campaign that would accompany the reform of the administrative judiciary could help relieve the burden on such courts. A simple guide for citizens should also be provided. The court should join such a campaign. The number of pending cases could be reduced by better organization of work.

Due to disturbed family relations, large number of cases in the matter, seriousness and delicacy of family disputes pertaining to children, as well as increasing number of cases pertaining to labour law, it would be convenient to constitute courts of special jurisdiction for family relations and courts for labour disputes, and an appellate court for family relations and an appellate court for labour disputes. Judges would apply for those courts based on their preference, and they would not be assigned by the president of the court of general jurisdiction. That would ensure greater commitment to work and greater expertise and understanding of family and employment relations. The presidents of such courts would have to be chosen from among the judges who specialize in those types of disputes. They would organize the work of those courts in accordance with the needs of relevant family and employment relations. Special courts would be more effective in communicating with relevant institutions pertaining to specific disputes.

Departments for mediation would be organized in those courts, which would, on the one hand, ensure that mediation in such disputes is free, that it is done within a government body, which is very important for greater trust of the citizens. This would reduce burden of the courts, and the mediation would be popularized and introduced into the legal system due to results it would achieve. In the systematization of jobs, there would be room for psychologists, not only for lawyers, who would be involved in the work of the department for mediation.

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5 Dobrosav Milovanović, Vuk Cucić, Reforma upravnog sudstva [Reform of the administrative judiciary], *Pravni život* 10/2016, 153–155.

The question of the number of such first-instance courts would be resolved after a comprehensive public debate with necessary analysis, which is why it is necessary to enable sufficient *vacatio legis*.

Competences of the courts

Pertaining to the competences of appellate courts, it should be specified in more detail which activities are carried out and how, with the aim of harmonizing court practice. The current agreement of the appellate courts on the organization and timing of joint sessions in 2021-2025 should get a legal basis. Hence, Article 24, para 3 of the Law on Organization of Courts should be amended. It would be appropriate for the Law to stipulate the rules of procedure of the court practice department.

Competences of the Supreme Court

The decisions of the Supreme Court of Cassation on the unification of court practice, particularly regarding the large number of disputes between citizens and banks recently, and the problems arising from such decisions, clearly show that the legal text on the competencies of the highest court outside the trial must be made clearer. It is a common example of when the legislator has to react to eliminate unclear situations, due to which the courts lose their public authority.

The consequence of unequal court practice is the legal uncertainty of citizens because different decisions are made in equal legal situations. The court is obliged to provide the reasons why it made such a decision. If there are none, it can be assumed that the courts have different practices in the same situation. In the appellate proceedings, the second-instance court can provide reasons and correct any deficiencies in the justification of the first-instance decision. The Supreme Court, as a reviewer, is accountable for the arguments of the lower courts. It is common that citizens expect a dispute to be resolved by applying the relevant law. To explain a decision does not only mean that the decision contains a distinct part called the explanation. It must contain valid legal reasons, arguments for the established factual situation. A court decision is arbitrary without the explanation and with the impression that court practice is unequal. The aim of the European Convention on Human Rights is not that Article 6, which regulates the right to a fair trial, guarantees a fair outcome of the proceedings, but that the procedure that leads to the outcome of the proceedings is fair.

Given the increasing number of violations of this right, it is obvious that judges must have continuous training to be able to adequately apply the law and that one cannot insist on ensuring a reasonable deadline without respecting other

segments of the right to a fair trial. In addition, courts must adequately explain their decisions to citizens. The adequate explanation does not mean its volume, but whether valid arguments are presented to answer all the disputable issues presented by both sides.

The Supreme Court's primary role is to resolve conflicts in court practice and to ensure equal and uniform application of law, as well as to monitor the development of law in court practice. The creation of rights in abstracto in the form of binding interpretative statements or general opinions adopted at plenary sessions of the Supreme Court, while accepting that they can have a positive impact on the uniformity of court practice and legal certainty, raises concerns about a proper role of the judiciary in the system of separation of powers. If the Supreme Court is above certain cases, this may be in conflict with the principle of independence of the courts, and it may also be considered that by taking some principled positions, the judicial power encroaches on the legislative. When the court decides to deviate from the previous court practice, it should make this clear in its judgment. It should follow from the explanation that the judge knows that the existing practice on this issue is different and should thoroughly explain why the previously accepted position was not applied. Therefore, an appropriate system of reporting on the court practice of the Supreme Courts and appellate courts is particularly important. Therefore, Art. 31 para 1 should be amended to read:

> *„The Supreme Court shall use its **court practice** to ensure uniform judicial application of law and equality of parties in court proceedings...“*

It would be most appropriate to devote one separate article of the Law to ensuring the uniform application of law in court practice.

Opinion of the Consultative Council of Judges no. 20(2017) on the role of courts with respect to uniform application of the law concludes that it is most important that the highest court has mechanisms to resolve the inconsistencies of that court. Such a solution exists in Article 43, paras 2 and 3 of the Law on Organization of Courts, which stipulates that a department session should be convened if there are incompatibilities between individual chambers in the application of regulations or if one chamber departs from a legal opinion adopted by its case law or a legal opinion accepted by all chambers. Then, the legal opinion adopted at the session of the department is binding for all chambers within the department. Obviously, an effective mechanism is in place, and it must not be abused. A legal opinion is issued which is binding only for all chambers in the Supreme Court department and which must be adequately justified, as well as the court decision of the Supreme Court in which the

change in the court's position must be explained. The uniform application of law ensures equality before the law and legal certainty in a country with the rule of law. Given the already rich practice of the European Court of Human Rights that relates to our country, it is necessary that those judgments are also regularly published on a special website of the Supreme Court. To regularly perform this obligation, the implementation should be monitored by the President of the Court or the person whom s/he authorises. The uniform application of law also strengthens the public's perception of fairness and justice. Therefore, Article 33 should be supplemented by paras 3 and 4, which read:

„All judgments of the European Court of Human Rights versus the Republic of Serbia shall be published on the website of the Supreme Court.

The President of the Supreme Court shall monitor the implementation of those obligations of the Court."

Internal organization of courts

It is more appropriate that the High Judicial Council decides on a judge's objection to the annual schedule, as it is a direct recipient of the objection. The same should apply when an objection is submitted by a judge of the Supreme Court. The prescribed deadlines should not be changed because decisions must be made urgently considering the need to organize work in the court. In this context, Article 34, paras 3 and 4 should be amended.

Court administration

The principle of separation of powers is per se a guarantee of the independence of the judiciary. All courts within the judiciary must not go beyond the limits of the legal area for the exercise of judicial power. The Ministry of Justice must not influence the administration of courts through the presidents of the courts and the judicial inspectorate. Parliamentary committees or established commissions of inquiry should not interfere with investigations or trials. To achieve this, it is necessary to delineate the competences of the Ministry of Justice and the High Judicial Council, also related to the work of the judicial administration, the supervision of the work of the courts, the obligations established following the supervision and the adoption of the court rules of procedure.

Therefore, it is necessary to determine as precisely as possible the tasks that, apart from statistics, are performed by the court administration, and the content of Article 51, para 1, should be supplemented by listing that the court administration is also engaged in:

> *„filing records on the work of the court and judges; activities related to the functioning of the information system; tasks of informing the public about court work and information of public importance; communication with other courts, institutions, legal entities and civil organizations; tasks related to exercising the rights and obligations of judges and court staff; adoption of general and specific acts related to the employment relations and other general acts regulating the work of the court; organization of professional development and training of judges and court staff; management of court buildings assigned for the court's use; activities of collecting court fees and other activities related to the internal organization and operation of the court determined by law or a general act."*

The role and activity of the president of the court should involve the representation of the court and judges and ensuring the effective functioning of the court, which also means ensuring and improving the way of providing services to citizens, as well as performing the functions that are within his/her competence according to the Constitution and the Law. The president must always be the protector of the independence and impartiality of the judges and the concentration of his/her functions must be avoided. Presidents have the obligation to give advice to competent institutions on the type of training needed by judges, associates, and court staff of the relevant court. The president of the court is responsible for communication with the public and has a fundamental role in realizing the right of citizens to get necessary information about the functioning of the court, as well as the right to a fair trial, the right to privacy and respect of family life of all participants in the proceedings. Judges must not be exposed to pressure by the president of the court when adjudicating and making court decisions. Presidents in courts with a smaller number of judges continue to adjudicate in the cases assigned to them according to the case allocation rule that applies to all judges. They are authorized to monitor the duration of court proceedings and to take actions in accordance with the law, to speed up court proceedings when necessary. Presidents are responsible for managing the work of the court, and therefore also for organizing the court staff. The presidents of the courts can employ, especially in larger courts, "managers of the court" to whom they delegate part of their authority, especially in infrastructure management. The work of the president is evaluated in a similar way as the work of judges, so he/she

must have guarantees of independence. The president can delegate certain tasks to deputies. There may be a few deputies in a court.

To make the work of the president more effective, Article 52, para 1, should be supplemented by the following sentence:

„The president shall exercise his/her rights and obligations in accordance with the Constitution and the Law and take care of the implementation of the Court Rules of Procedure.“

Article 54, para 3, should be supplemented by the following sentence:

„Based on the received report, if irregularities are found in the work of the administration of the lower court, the president shall take measures within his/her competence to eliminate them.“

The provision of Article 55, para 1, should be supplemented by the obligation of the president to report on the measures taken following a complaint *"notify the judge to whom the complaint refers“.*

„Failure to act within the time limit shall represent negligence by the president of the court.“

„The court administration shall submit the record on reasonable complaints for each judge to the High Judicial Council to be included in the personal file of the judge at the end of the year.“

Article 57, para 3, should be amended and it could read:

„The criteria for determining the number of court staff shall be determined by the High Judicial Council together with the opinion of the Minister responsible for judicial affairs.“

The current legislation stipulates that the criteria for determining the number of court employees shall be determined by the Minister responsible for judicial affairs. In practice, it turned out that such a solution was neither effective nor efficient. Due to frequent changes in the scope of work on the territory of the court, for which an increase of the court staff or filling of vacancies were requested, decisions were not made in an adequate manner. Occasionally there has been a sudden and large increase in the number of cases. Cases can be relatively easily transferred from one court to another, which at the given moment does not have such a large workload, but the right of parties is to have the proceedings in a relatively close place. The issues whether the increase in the workload in the court is permanent or temporary and how to determine the criteria

for defining the necessary number of court personnel for the court to operate within reasonable deadlines, are easier to solve within a judicial body whose composition allows for a better identification of problems and quick and appropriate solutions. As the determination of standards interfere with budgetary issues, it is understandable that the Minister of Justice must give his/her opinion on the proposed standards before they are adopted.

Judicial administration

The judicial administration tasks are performed by the High Judicial Council and the Ministry responsible for the judiciary. It is necessary to determine as precisely as possible what tasks are performed by each of these bodies to consistently implement the principle of separation of powers and create conditions to protect the independence of the judiciary. The proposal is to amend Article 70, paras 3 and 4 of the Law so that they read:

> *„The judicial administration-related duties performed by the High Judicial Council are: safeguarding the autonomy and independence of judges; determining the required number of judges and lay judges; electing the president of the Supreme Court, court presidents, judges and lay judges and deciding on the termination of their office; appointing and dismissing members of disciplinary bodies; deciding on the legal remedy for the selection of judges due to the violation of procedural rules; deciding on the transfer and assignment of judges; deciding on immunity and the incompatibility of performing other tasks with the function of a judge; deciding on appeals filed against the decisions of the disciplinary commission; right to introduce bills and give opinions on the bills and current laws related to the status of judges and the work of courts; proposing budget funds for the work of the High Judicial Council and courts and spending those funds independently; supervising the use of budget funds and the financial and material operations of the courts; adopting the Code of Ethics of Judges and electing the Ethics Committee of Judges; introducing the Court Rules of Procedure based on the previously obtained opinion of the competent ministry; adopting criteria for the selection and promotion of judges; evaluating the work of judges and court presidents; keeping personal files of judges, lay judges and court staff; establishing general guidelines for the internal organization of courts; determining the criteria for defining the required number of court*

personnel; issuing instructions for compiling reports on the work of the courts; reviewing six-month and annual reports on the work of the courts; approving the Rulebook on the internal organization and systematization of jobs in the court; supervising the activities related to adjudication on cases within the prescribed deadlines and deciding on complaints and petitions; submitting an annual report on the work of the courts to the National Assembly and the Government; deciding on the education programs of the Judicial Academy; deciding on other issues pertaining to the position of judges, presidents of courts and lay judges; performing other tasks specified by the Constitution and the Law."

„The judicial administration-related duties performed by the Ministry responsible for the judiciary are: monitoring the work of the courts in terms of compliance with the provisions of the Court Rules of Procedure." There are no other proposals to amend this paragraph.

The content of the personal record should be supplemented with data on the trainings attended by the judge and on established complaints about the work of the judge (Article 73, para 1 of the Law).

Court Rules of Procedure regulate the internal organization and work of the court. In practice, the authors of that act were mostly judges who were responsible for the administration and persons who worked in the administration of the courts. It is not logical that this act, which regulates the rules of functioning of the courts, is passed by the Minister. Given the jurisdiction of the High Judicial Council, the Council should adopt it, but given the competences of the Ministry responsible for the judiciary, it would be effective to obtain the opinion of that Ministry before adopting the act. Such a solution also ensures the separation of powers - that all three branches provide public services and that none of them acts in their own interest but in the interest of the people. Therefore, such a solution is proposed as more adequate for the general interests of the judiciary and the beneficiaries of its services, citizens.

The provision of Article 74, which regulates the Court Rules of Procedure, its content and who the author is, should be amended in para 2 to read:

„High Judiciary Council shall adopt the Court Rules of Procedure following an opinion of the Minister responsible for justice."

Article 75 should be amended to read:

„The implementation of the Court Rules of Procedure shall be monitored by the High Judicial Council and the Ministry responsible for justice.“

In the proposed amendment to Article 76, it should be stated that the record of the performed supervision is also submitted to the High Judicial Council. When the reasons for possible deficiencies and omissions as a result of the supervision are determined, a procedure can be initiated against the responsible persons in accordance with the law.

Transitional and final provisions

The timeframe in which the law can be effectively applied should be carefully assessed in the provisions of this Chapter, especially in the case of establishing new first-instance courts and the Administrative Appellate Court, first-instance family and labour courts, and the Family and Labour Appellate Court.

The provisions should determine that the status and position of court staff are regulated by a special law or that this matter is regulated by amendments to the existing general law within a certain period.

At this point, it is necessary to determine the timeframe for the adoption of all by-laws as foreseen by the relevant Law, which should not be longer than six months.

Successful implementation of the future Law will largely depend on the transparency of its adoption, the number and quality of public discussions where, apart from the judiciary, the wider legal public must participate.

Considering the number of due changes as a result of constitutional amendments and the changes made to the Law several times, it would be more advisable to adopt a new Law on Organization of Courts.