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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**DRAFT CONSTITUTION  
OF THE REPUBLIC OF SERBIA**

**Approved by the Government  
of the Republic of Serbia  
in June 2004**

Mindful of the state tradition of the Serbian people  
and the equality of all citizens and ethnic communities in Serbia,  
the citizens of Serbia shall

Hereby adopt

## **THE CONSTITUTION OF THE REPUBLIC OF SERBIA**

### **PART I – PRINCIPLES OF THE CONSTITUTION**

#### **The Republic of Serbia**

##### **Article 1**

The Republic of Serbia shall be a state of the Serbian people and of all the citizens living in it, based on the rule of law and social justice.

The Republic of Serbia shall be sovereign in all affairs it has not conferred on the State Union of Serbia and Montenegro.

#### **Bearer of Sovereignty**

##### **Article 2**

Sovereignty shall be vested in citizens. They shall exercise it through a referendum, people's initiative and their freely elected representatives.

No one shall take the sovereignty from the citizens, or establish power against their freely expressed will.

#### **The Rule of Law**

##### **Article 3**

The rule of law shall be the supreme value of the Constitution.

The rule of law shall be exercised in a free and direct election, through constitutional guarantees for human and minority rights, the separation of power, an independent judiciary and government's compliance with the Constitution and Law.

#### **Separation of Power**

##### **Article 4**

The organisation of government shall be based on the separation of power into legislative, executive and judicial.

The relationship between the three arms of power shall be based on checks and balances.

#### **Political parties**

##### **Article 5**

The role of political parties in the democratic shaping of the political will of citizens shall be guaranteed and recognised.

Political parties shall not exercise power directly, nor shall they subordinate it to themselves.

## **Prohibition of Conflict of Interest**

### **Article 6**

No one shall exercise a state or public function incompatible with his/her other offices, activities or private interests.

The existence of a conflict of interests and responsibility in solving it shall be defined by the Constitution and Law.

## **Coat of Arms, Flag and Anthem**

### **Article 7**

The Republic of Serbia shall have its own coat of arms, flag and anthem.

They shall be determined by an organic law.

## **Territory and Borders**

### **Article 8**

The Republic of Serbia shall have a single and indivisible territory.

The borders of the Republic of Serbia shall be inviolable. Any change to the borders of the Republic of Serbia shall be carried out under the same procedure as provided for amending the Constitution.

## **Capital City**

### **Article 9**

The capital city of the Republic of Serbia shall be Belgrade.

An organic law shall be passed on the City of Belgrade.

## **Language and Script**

### **Article 10**

In the Republic of Serbia, the Serbian language and the Cyrillic script shall be used officially.

National minorities shall have the right to the official use of their respective languages and scripts, in accordance with an organic law.

## **Secularity of State**

### **Article 11**

The Republic of Serbia shall be a secular state.

Religious communities shall be separate from the state.

No religion shall be established as a state or mandatory religion.

## **Provincial Autonomy and Local Self-Government**

### **Article 12**

State power shall be limited by the right of citizens to provincial autonomy and local self-government.

The right of citizens to provincial autonomy and local self-government shall be subject to the supervision of constitutionality and legality only.

## **Protection of Serb Nationals Abroad**

### **Article 13**

The Republic of Serbia shall protect the rights and interests of its citizens living abroad, and facilitate their ties with the homeland.

Parts of the Serbian people in other states shall enjoy special care and protection.

## **Protection of National Minorities**

### **Article 14**

The Republic of Serbia shall protect the position of national minorities.

The Republic of Serbia shall encourage their equality, which shall include positive discrimination, too.

## **International Relations**

### **Article 15**

The foreign policy of the Republic of Serbia shall rest on the generally recognised principles and rules of international law.

The Republic of Serbia can be a member of international organisations the membership of which does not require international subjectivity, maintain international relations, conclude international treaties and establish representative offices in other states in accordance with its sovereignty, as provided by the Constitution.

## **Position of Aliens**

### **Article 16**

Pursuant to international treaties, aliens shall enjoy in the Republic of Serbia all the rights guaranteed by the Constitution and Law, except for the rights only the citizens of the Republic of Serbia are entitled to under the Constitution and Law.

## **PART II - HUMAN AND MINORITY RIGHTS AND FREEDOMS**

### **1. Basic Principles**

#### **Direct Implementation of Rights Guaranteed by the Constitution**

### **Article 17**

Human and minority rights guaranteed by the Constitution shall be exercised directly.

Human and minority rights guaranteed by the generally accepted rules of international law and verified by international treaties, laws and other general enactments shall be guaranteed by the Constitution and, as such, exercised directly.

Provisions on human and minority rights shall be interpreted in such a way as to promote the values of a democratic society, in accordance with the applicable international guarantees for human and minority rights and the practice of international bodies supervising their implementation.

#### **Restrictions of Human and Minority Rights**

### **Article 18**

Human and minority rights guaranteed by the Constitution can be restricted by Law if such a restriction is permitted by the Constitution for the purpose provided for by the Constitution and to the extent

necessary for the constitutional purpose to be satisfied in a democratic society, without violating the essence of the guaranteed right.

In interpreting restrictions of human and minority rights, all state bodies, courts in particular, shall take into account the essence of the restricted right, the importance of the purpose of restriction, the nature and scope of restriction, the relationship between the restriction and its purpose and the possibility of fulfilling the purpose with a lesser restriction.

### **Prohibition of Discrimination**

#### **Article 19**

Everyone shall be equal before the Constitution and Law.

Everyone shall have the right to equal legal protection, without discrimination.

Any discrimination, direct or indirect, shall be prohibited, particularly if based on race, colour, sex, national origin, social origin, birth or a similar status, religion, political or other beliefs, property, culture, language, age, mental or physical disability.

### **Positive Discrimination**

#### **Article 20**

Special measures the Republic of Serbia can introduce in order to reach full and effective equality of persons or a group of persons who are in a genuine position of inequality shall not be considered discrimination.

Special measures shall be implemented temporarily, until their purpose is achieved.

### **Protection of Human and Minority Rights**

#### **Article 21**

The Republic of Serbia shall provide for effective judicial protection of human and minority rights guaranteed by the Constitution, which also involves the elimination of consequences of a human rights violation or denial.

Everyone shall have the right to address international bodies for the protection of rights guaranteed by ratified international treaties.

Decisions made by the international bodies shall be implemented by the Republic of Serbia, which shall also bear the expenses of their implementation.

## **2. Human Rights and Freedoms**

### **Dignity and Free Development of Personality**

#### **Article 22**

Human dignity shall be inviolable. Everyone shall be obliged to protect it.

Everyone shall have the right to a free development of personality, unless he/she violates the rights of others guaranteed by the Constitution.

### **Right to Life**

#### **Article 23**

Human life shall be inviolable. There shall be no death penalty in the Republic of Serbia.

The cloning of human beings shall be prohibited.

## **Inviolability of Physical and Mental Integrity**

### **Article 24**

Physical and mental integrity shall be inviolable.

No one shall be exposed to torture, inhuman or degrading treatment or punishment, nor shall anyone be subjected to medical or scientific experiments without his/her free consent.

## **Prohibition of slavery, servitude and forced labour**

### **Article 25**

No one shall be kept in slavery or servitude. Any form of trade in human beings shall be prohibited.

Forced labour shall be prohibited. Sexual or economic exploitation of a person in a disadvantaged position shall be considered forced labour.

Work or service required by Law from persons rendered a final court sentence or military staff, as well as work or service during a war or a state of emergency resulting from a threat to the survival of the Republic of Serbia, shall not be considered forced labour.

## **Right to Liberty and Security**

### **Article 26**

Everyone shall have the right to personal liberty and security. Deprivation of liberty shall be allowed only for the reasons and under the procedure prescribed by Law.

Everyone who has been deprived of liberty by a state body, shall be informed immediately in the language he/she understands about the reasons for deprivation of liberty and his/her rights. He/she shall also have the right to inform a person of his/her choosing about the deprivation of liberty. A person in detention shall be treated in a humane manner, with respect to his/her dignity.

Everyone who has been deprived of liberty shall have the right of appeal, and the court shall promptly review the lawfulness of the deprivation of liberty and order a release if the deprivation of liberty has been unlawful.

A sentence that involves a deprivation of liberty, either directly or indirectly, shall be pronounced only by court.

## **Additional Rights of Arrested Person**

### **Article 27**

A person who has been arrested shall be informed immediately that he/she has the right to remain silent and to refuse interrogation without the presence of a lawyer of his/her own choosing, or a lawyer to be assigned to him/her if he/she cannot afford one.

Everyone arrested without a court order shall be brought before a competent court without delay, within 48 hours at the latest. Otherwise, the arrested person shall be released.

## **Detention**

### **Article 28**

If there is a reasonable belief that a person has committed a criminal offence, he/she shall be detained only pursuant to a court ruling, if detention is necessary for the conduct of criminal proceedings.

The detention order in writing, together with a written rationale, shall be delivered to the detainee no later than 12 hours after he/she was detained. A court shall decide on an appeal against detention and deliver its ruling to the detainee within 48 hours.

## **Duration of Detention**

### **Article 29**

The court shall limit detention to the shortest period allowed. Detention ordered by a first-instance court may last no longer than three months during an investigation, and a higher court can extend the detention for another three months in accordance with Law. If charges have not been pressed within this period, the detainee shall be released.

After the charges have been pressed, the court shall reduce detention to the necessary minimum, in accordance with Law.

The detainee shall be granted pre-trial release as soon as the reasons for detention cease to exist.

## **Right to Fair Trial**

### **Article 30**

Everyone shall have the right to have his/her rights and obligations, suspicions and charges brought up against him/her discussed in public justly and within a reasonable deadline by an independent and impartial court already established by Law. Everyone shall have the right to free assistance of an interpreter if he/she cannot speak or understand the language used officially in the court, and to free interpreting assistance if he/she is blind, deaf or mute.

For the purpose of preserving a secret, protecting public order, morality, the interests of a minor and the privacy of participants in the proceedings, a trial may be closed to public, in part or in its entirety.

## **Special Rights of the Accused**

### **Article 31**

Everyone who has been accused of a criminal offence has the right to be informed promptly and in detail in a language that he/she understands of the nature and the cause of the charges and evidence collected. The accused shall also have the right to appoint a lawyer, with whom he shall have unimpeded communication, and to have enough time and proper conditions for preparing his/her defence. If the accused cannot afford a lawyer, he/she shall receive legal assistance ex officio, in accordance with Law.

The accused available to the court shall have the right to be tried in his/her presence, and cannot be sentenced if not given the opportunity to be heard and to defend him/herself. The accused can present evidence in his/her favour, question the witnesses of the Prosecution, and demand that the witnesses of the Defence be questioned under the same conditions as the Prosecution's witnesses, in his/her presence. The accused is not obliged to testify against him/herself or persons close to him/her, or to admit to being guilty.

A person suspected or accused of a criminal offence shall have the same rights as the defendant.

A person against whom criminal proceedings have been instituted for another punishable offence shall have all the rights granted to a person accused of a criminal offense in accordance with Law.

## **Legal Security in Criminal Law**

### **Article 32**

No one shall be punished for an act that a law or another regulation did not describe as a penal offence before it was committed. Sentences shall be determined under the legislation that was in force when the offence was committed, unless a law passed at a later date is more favourable for the offender. Criminal acts and criminal sanctions shall be defined by Law.

Everyone shall be presumed innocent of a crime until his/her guilt is established by a final court decision.

No one shall be prosecuted or punished for a criminal offence he/she has been sentenced for or acquitted of by a final court decision. No one shall be prosecuted or punished for a criminal offence if the charges against him/her have been dropped or the case dismissed, nor a sentence can be altered to the detriment of the defendant following an extraordinary legal remedy. Criminal proceedings instituted for another penal offence are subject to these same restrictions.

### **Right to Rehabilitation and Compensation**

#### **Article 33**

A person who has been arrested, detained or sentenced groundlessly and illegally for a criminal offense, has the right to seek rehabilitation and compensation from the Republic of Serbia.

### **Right to Equal Protection of Rights and Legal Remedy**

#### **Article 34**

The holders of public authority, the bodies of an autonomous province and local self-government units shall enjoy equal protection of rights before courts and other state organs.

Everyone shall have the right to appeal or other legal remedy against a decision on his/her right, obligation or legally based interest.

### **Right to Legal Status**

#### **Article 35**

Everyone shall have legal status.

A citizen of the Republic of Serbia shall come of age when he/she turns 18.

Everyone shall have the right to choose freely and use his/her personal name and the names of his/her children.

### **Right to Citizenship**

#### **Article 36**

Citizenship of the Republic of Serbia shall be acquired and terminated in accordance with Law.

A citizen of the Republic of Serbia shall not be expelled from the country, deprived of citizenship or the right to change it. A citizen of the Republic of Serbia shall be extradited only if the Republic of Serbia's international obligations require so.

A child born in the Republic of Serbia shall have the right to citizenship of the Republic if it does not have another one.

### **Freedom of Movement**

#### **Article 37**

Everyone shall have the right to move freely and reside in the Republic of Serbia, leave it and return to it.

The freedom of movement and residence, along with the right to leave the Republic of Serbia, can be restricted by Law, in order to carry out criminal proceedings, protect public order, prevent the spreading of contagious diseases or defend the Republic of Serbia.

The entry and residence in the Republic of Serbia of an alien shall be governed by Law. An alien can be expelled from the country only on the basis of a decision issued by a competent body and under the procedure prescribed by Law, but not to a country where he/she might be prosecuted because of his/her race, religion, nationality, affiliation with a certain social group and political opinion, or where his/her constitutional rights might be violated seriously.



## **Inviolability of Home**

### **Article 38**

The home shall be inviolable.

Without a written court order, no one shall enter a dwelling or other premises against the will of the tenants and carry out a search. The tenants shall have the right to be present during the search, either in person or through their representatives, and together with two majors as witnesses. If the tenant or his/her representative are absent, the search shall be allowed in the presence of two witnesses of age.

Without a court order, an entry into a dwelling or other premises, and, exceptionally, a search without witnesses, shall be allowed if so required to apprehend the perpetrator of a criminal offence, or to eliminate an immediate and serious threat to human lives and property, in a manner provided for by Law.

## **Privacy of Mail and Other Means of Communication**

### **Article 39**

Privacy of mail and other means of communication shall be inviolable.

Exceptions from the rule shall be allowed temporarily and on the basis of a court order only, if they are necessary for the purposes of criminal proceedings, or for the defence of the Republic of Serbia, in a manner prescribed by Law.

## **Protection of Personal Data**

### **Article 40**

Protection of personal data shall be guaranteed. The manner in which personal data are collected, stored, processed and used shall be governed by Law.

The use of personal data for purposes other than those for which they were collected shall be prohibited and punishable.

Everyone shall have the right to be notified about personal information collected, as well as the right to court protection if the information has been abused.

## **Freedom of thought, conscience and religion**

### **Article 41**

The freedom of thought, conscience, belief and religion shall be guaranteed, along with the right to maintain one's own belief or religion or to change them on one's own accord. No one shall be obliged to reveal his/her religious and other beliefs.

Everyone is free to express his/her religion in private or in public, individually or together with others.

The freedom of expressing a religion or a belief may be restricted by Law, if this is necessary for the protection of health, other people's rights or public safety.

Parents and legal guardians shall be recognised the right to shape the religious and moral character of their children in accordance with their own beliefs.

## **Religious Communities**

### **Article 42**

Religious communities shall be equal and free to structure independently their internal organisation and religious affairs, and to perform religious rites publicly.

They can establish religious schools, social and charity institutions, and run them in accordance with Law.

## **Conscientious Objection**

### **Article 43**

A person shall not be obliged to fulfill military or other obligations that involve use of weaponry if it is against his/her religion or belief.

A conscientious objector might be called to perform a corresponding civil service in accordance with Law.

## **Freedom of Thought and Expression**

### **Article 44**

The freedom of thought and expression shall be guaranteed. This also includes the right to seek, receive and spread information and ideas orally, in writing, by visual images or in any other way.

The freedom of expression can be restricted by Law if it is necessary for the protection of rights and reputations of others, the preservation of the authority and impartiality of courts, public health and the security of the Republic of Serbia.

Everyone shall have the right to access to information in possession of state bodies, in accordance with Law.

## **Freedom of Expression of National Affiliation**

### **Article 45**

The expression of national affiliation shall be free.

No one shall be obliged to declare his/her national affiliation.

## **Promotion of Respect for Differences**

### **Article 46**

By introducing measures in the domains of education, culture and public information, the Republic of Serbia shall promote the understanding and recognition of and respect to differences arising from different ethnic, cultural, linguistic or religious identities of its citizens.

## **Prohibition of Incitement to Racial, Ethnic and Religious Hatred**

### **Article 47**

Causing and inciting racial, national, religious and other inequality, or racial, national, religious and other hatred or animosity shall be prohibited and punishable.

## **Freedom of Media**

### **Article 48**

Everyone shall be free to set up newspapers and other media outlets without prior approval. Television and radio stations shall be established in accordance with Law.

There shall be no censorship in the Republic of Serbia. A competent court can stop the media distribution of information and ideas only to prevent war-mongering propaganda, incitement to direct violence, advocacy of racial, ethnic and religious hatred that calls for discrimination, animosity or violence.

The right to have an untrue, incomplete or wrongly interpreted piece of information that has violated someone's right or interest corrected, and the right to respond to a published piece of information shall be governed by Law.

## **Right to Information**

### **Article 49**

Everyone shall have the right to accurate, complete and timely information about issues of public concern, and media are obliged to respect this right.

State bodies and public authority holders shall not be obliged to provide public access only to information that has been declared a state or official secret.

## **Election Right**

### **Article 50**

Every citizen who has reached the age of majority and acquired general legal capacity shall have the right to vote and be elected. The citizens of Republic of Serbia who happen to be abroad or reside in a foreign country shall have the right to vote in a referendum, in an election for the People's Assembly and a vote for the President of the Republic.

The election right shall be universal and equal for all, elections shall be free and direct, and the voting process secret and personal.

If the composition of an assembly has been changed irregularly or has not been changed, contrary to the legislation in force, the nominator of a candidate for the People's Assembly, the Assembly of an autonomous province or a municipal assembly represented in the assembly on the day it was inaugurated shall have the right to appeal to a court, and the nominator of a candidate for the People's Assembly shall have the right to appeal to the Constitutional Court .

## **Right to Participation in the Conduct of Public Affairs**

### **Article 51**

Citizens shall have the right to participate in the conduct of public affairs, and to take public offices on equal terms.

Citizens shall participate in trials as side judges, in accordance with Law.

## **Freedom of Assembly**

### **Article 52**

A peaceful assembly shall be free. Assembling in closed spaces shall not require any prior approval or registration.

Rallies and protests held in the open require a prior application to a competent state body specified by Law.

The freedom of assembly may be restricted by Law if it is necessary for the protection of public health, morals, the rights of others or the security of the Republic of Serbia.

## **Freedom of Association**

### **Article 53**

The freedom of association and the right not to be a member of any association shall be guaranteed. Associations shall be established without a prior approval, by an entry into the register kept by a competent body appointed by Law. Secret and paramilitary associations shall be prohibited.

The Constitutional Court can ban an association if its actions are aimed at a violent overturn of the constitutional system, annulment of guaranteed human or minority rights, or instigation of racial, ethnic or religious hatred.

Justices of the Constitutional Court, the Ombudsman, judges, public prosecutors and members of the police and the Army of the State Union of Serbia and Montenegro shall not be members of political parties.

### **Right to Petition**

#### **Article 54**

Everyone, alone or together with other people, shall have the right to submit petitions and other proposals to state bodies, public authority holders, the bodies of autonomous provinces and local self-government units, and receive an answer from them whenever he/she may seek it.

No one shall suffer harmful consequences for exercising this right.

### **Right to Asylum**

#### **Article 55**

A foreign national who reasonably fears prosecution on the grounds of race, colour, sex, language, religion, ethnicity, affiliation with a group, or political beliefs shall have the right to asylum in the Republic of Serbia.

The procedure governing the granting of asylum shall be defined by Law.

### **Right to Property**

#### **Article 56**

The right to property shall be guaranteed. In acquiring and exercising the right to property, its social role and environmental protection shall be taken into account.

The right to property can be revoked or restricted only in public interest defined by Law, with a compensation that shall not be lower than the market value of the property.

The use of property can be restricted by Law.

### **Right to Inheritance**

#### **Article 57**

The right to inheritance shall be guaranteed in accordance with Law.

The right to inheritance shall not be excluded or restricted for a failure to fulfill public obligations.

### **Right to Work**

#### **Article 58**

The right to work shall be guaranteed in accordance with Law. The Republic of Serbia shall create conditions in which everyone can earn a living from his/her work.

Everyone shall have the right to a free choice of work. Everyone shall have equal access to all jobs.

Employment rights shall be governed by Law and collective contracts. Everyone shall at least have the right to respect for his personality at work, just, safe and healthy working conditions, necessary job safety protection, limited working hours, daily and weekly rest periods, paid holidays, fair remuneration, professional training and legal protection in case his/her employment has terminated. No one shall renounce these rights.

Young people, women and disabled persons shall enjoy special on-the-job protection and special working conditions..

## **Right to Strike**

### **Article 59**

Employees shall have the right to strike, in accordance with Law and a collective contract. The right to strike may be limited by Law, in accordance with the nature and type of work.

## **Right to Marriage and Equality of Husband and Wife**

### **Article 60**

The right to marriage shall be guaranteed. An entry into marriage shall be based on a consent a man and a woman shall give freely before a competent state body. The entry into marriage, duration and dissolution of it, shall be based on the equality of the spouses.

## **Freedom to Decide to Have Children**

### **Article 61**

A decision to have children shall be free. The Republic of Serbia shall encourage and help parents to decide to have children.

## **The Rights of the Child**

### **Article 62**

Children shall enjoy human rights in accordance with their age and maturity. Every child shall have the right to a name, an entry into the Register of Births, the right to learn about its origin and preserve its identity. Children shall be protected against mental, physical, economic and any other exploitation and abuse. A special law shall be passed on this matter. Children born out of wedlock shall have the same rights and duties as those born in wedlock.

## **The Rights of Parents**

### **Article 63**

It is the right and the duty of parents to support, bring up and educate their children, in which they are equal. One or both parents can be deprived of all of these rights, or some of them, only by a court order, issued in the best interest of a child and in accordance with Law.

## **Special protection of family, mother and child**

### **Article 64**

The family, mothers and children shall enjoy the protection of the Republic of Serbia. Mothers shall be given special support and protection before and after the childbirth. The Republic of Serbia shall offer special support to children deprived of parental care, and those with mental or physical disabilities. Children under 15 years of age shall not be employed, nor shall children under 18 take any job detrimental to their health or morality.

## **Right to Legal Assistance**

### **Article 65**

Everyone shall be guaranteed the right to legal assistance in accordance with Law.

Legal assistance shall be offered by legal profession, as an independent and autonomous service, and legal aid services established in local self-government units in accordance with Law.

Law shall decide when legal assistance is to be offered free of charge.

## **Health Protection**

### **Article 66**

Everyone shall have the right to the protection of physical and mental health.

Children, pregnant women and the elderly shall have the right to health protection financed from public funds, unless they have materialised this right on some other grounds.

Health protection shall be governed by Law. The establishment of private and special health funds shall be allowed.

The Republic of Serbia shall support the development of health culture and physical education.

## **Social Protection**

### **Article 67**

Everyone residing in the Republic of Serbia shall enjoy the right to health protection. The right of employees and their families to social security and insurance shall be governed by Law.

Insurance for temporary unemployment shall be covered from public funds. Invalids, war veterans and the victims of war shall enjoy special protection.

Persons suffering physical or mental impairments shall be given assistance from public funds, in order to render them capable of work and help them join social life, while the weak, the helpless, the unprovided-for and those unable to work shall receive this same assistance to cover their basic needs.

Private social insurance funds shall be established in accordance with Law.

## **Pension Insurance**

### **Article 68**

Pension insurance shall be governed by Law.

The Republic of Serbia shall take care of economic welfare of pensioners.

## **Right to Education**

### **Article 69**

Everyone shall have the right to education.

Primary education shall be compulsory and free of charge. Secondary education shall be free of charge.

All citizens shall have equal access to higher education. To successful and talented students whose financial status is weak, the Republic of Serbia shall offer free-of-charge higher education in accordance with Law.

The establishment of schools and universities shall be governed by Law.

## **Autonomy of Universities**

### **Article 70**

The autonomy of universities, institutions of higher education and scientific institutions shall be guaranteed.

They shall make independent decisions on their organisation and work in accordance with Law.

### **Freedom of scientific and artistic creation**

#### **Article 71**

Scientific and artistic creation shall be free.

Authors of scientific and artistic works shall be guaranteed moral and material rights in accordance with Law.

The Republic of Serbia shall encourage and support the development of science, culture and arts.

### **Healthy Environment**

#### **Article 72**

Everyone shall have the right to a healthy environment, and timely and complete information on its condition.

Everyone, the Republic of Serbia and the autonomous province in particular, shall be responsible for environmental protection.

Everyone shall be obliged to preserve and improve the environment.

## **3. The Rights of National Minorities**

### **Basic Provision**

#### **Article 73**

Members of national minorities shall be guaranteed special, individual or collective rights, apart from the rights guaranteed to all citizens by this Constitution. They shall exercise their individual rights individually, and their collective rights together with others.

The collective rights allow members of national minorities to participate in the decision-making process directly or through their representatives, or to make independent decisions on certain matters related to their own culture, education, public information and the official use of language and script, in accordance with an organic law.

In order to exercise their right to autonomy in culture, education, public information and the official use of language and script, members of national minorities may elect their national councils, in accordance with an organic law.

### **Prohibition of Discrimination Against National Minorities**

#### **Article 74**

Members of national minorities shall be guaranteed equality before Law and equal access to court protection.

Any discrimination based on affiliation with an ethnic minority shall be prohibited.

### **Positive Discrimination**

#### **Article 75**

Special temporary measures that the Republic of Serbia can introduce to economic, social, cultural and political walks of life in order to reach full and effective equality between national minorities and the majority shall not be considered discrimination if they are aimed at eliminating extremely unfavourable living conditions that affect the minorities.

## **Equality in Conduct of Public Affairs**

### **Article 76**

Members of national minorities shall enjoy the right to participate in the conduct of public affairs and take public offices under the same terms as other citizens.

The employment structure in state bodies, public services, the bodies of an autonomous province and local self-government units shall take into account the ethnic structure of the local population and representation of national minorities.

## **Prohibition of Forced Assimilation**

### **Article 77**

Forced assimilation of national minorities shall be prohibited.

An organic law shall protect national minorities against any action aimed at their forced assimilation.

## **Right to Specific Identity**

### **Article 78**

Members of a national minority shall have the right to express, preserve, foster, develop and express public their national, ethnic, cultural and religious identity. They shall also have the right to use their symbols in public places, along with their respective languages and scripts. In areas inhabited by substantial numbers of persons belonging to a national minority, state bodies, public authority holders, the bodies of autonomous provinces and local self-government units shall carry out all proceedings in their language; National minorities shall have the right to education in their own language in state institutions and the institutions of autonomous provinces. They shall also have the right to establish private educational institutions and to use their first names and surnames in their own language. Wherever national minorities compose a considerable population, they shall have the right to display traditional local names, street names and other topographical indications in the minority language. They shall have the right to complete, timely and objective information in their own languages, including the right to express, receive, send and exchange information and ideas. National minorities shall have the right to establish their own media.

An organic law shall govern in detail the materialisation of these rights.

Autonomous provinces can provide additional rights for minorities by provincial laws.

## **Right to Association and Cooperation with Compatriots**

### **Article 79**

Members of national minorities can establish educational and cultural associations financed on a voluntary basis.

The Republic of Serbia shall recognise the special role of these associations in exercising the rights of national minorities.

Members of national minorities shall have the right to maintain without interference ties and cooperation with their compatriots outside the Republic of Serbia.



## PART III - ECONOMIC SYSTEM AND PUBLIC FINANCE

### 1. Economic System

#### Basic principles

##### Article 80

The economic system of the Republic of Serbia shall be based on a market economy, free competition and enterprise, equality between private and state property and cooperation between social partners.

The Republic of Serbia shall be a single economic entity with a single market for goods, labour, capital and services, and a single structure of economic activity.

Activities performed in the national market economy shall be moderated by a social policy. Negotiations and the conclusion of collective contracts between trade-union representatives and employees shall be governed by Law.

#### Freedom of Entrepreneurship

##### Article 81

Entrepreneurship shall be free.

Entrepreneurship may be restricted by Law to protect human dignity, public health, the environment and the security of the Republic of Serbia.

#### Position on the Market

##### Article 82

Everyone shall enjoy an equal legal position on the market. Monopolistic behaviour shall be prohibited.

The rights acquired by capital investment shall not be reduced.

Aliens shall enjoy the same rights on the market as those specified for domestic persons.

#### Property Rights of Aliens

##### Article 83

Aliens shall acquire property under the conditions specified by Law.

They shall acquire land ownership through inheritance or for the purpose of carrying out an economic activity, always on the condition of reciprocity.

#### State Property

##### Article 84

State property shall include natural resources, the property that Law has specified as property of general interest, and property used by the bodies of the Republic of Serbia. Natural resources shall be used under the conditions and in a way proscribed by a special law.

The property of autonomous provinces and local self-government units shall be governed by an organic law.

Aliens can be granted concessions for the use of natural resources, property of general interest and other rights specified by Law.

## **Land**

### **Article 85**

Law shall define specifically the conditions for land use.  
Agricultural land shall enjoy special protection.

## **Preservation of Heritage**

### **Article 86**

Everyone shall be obliged to preserve natural rarities, scientific, cultural and historic heritage as property of general interest, in accordance with Law.  
Special responsibility for this shall rest with the Republic of Serbia and autonomous provinces.

## **Consumer Protection**

### **Article 87**

The Republic of Serbia shall protect consumers.  
Any action targeted against the health, security and privacy of consumers, as well as any dishonorable action on the market, shall be prohibited.

## **Transfer of Public Authority and Public Services**

### **Article 88**

Certain public powers may be transferred by Law to enterprises, institutions, other bodies, organisations and individuals.  
Law shall define the activities for which public services and public agencies shall be established, and specify their structure and operations.  
Public services and agencies shall be established by the Republic of Serbia, autonomous provinces and local self-government units.

## **2. Public Finance**

### **Revenue of the Republic of Serbia, Taxes and Other Levies**

#### **Article 89**

The Republic of Serbia shall finance its competence from public revenue.  
Taxes, levies and other budget resources shall be defined by Law only.  
The duty to pay taxes and other levies shall be universal and based on the taxpayer's income bracket.

## **Budget**

### **Article 90**

The Republic of Serbia, autonomous provinces and local self-government units shall have budgets showing all their revenue and expenditure.  
The Budget of the Republic of Serbia shall be adopted in the form of law, at the proposal of the Government. It shall not introduce any revenue or expenditure other than that already established by Law.  
The budget for the succeeding fiscal year shall be adopted by December 31 of the current year. Otherwise, temporary financing shall be introduced in accordance with Law.  
Budgetary control at all levels shall be exercised by the Accounting Court.

## **Public Debt**

### **Article 91**

The Republic of Serbia, autonomous provinces and local self-government units shall be allowed to borrow.

The borrowing conditions and procedure shall be specified by Law.

## **Harmonisation of Development**

### **Article 92**

The Republic of Serbia shall make sure that the development of different areas in the Republic is harmonised.

The Republic of Serbia shall pass a relevant law.

## **National Bank of Serbia**

### **Article 93**

The National Bank of Serbia is the central bank of the Republic of Serbia. The National Bank of Serbia shall be independent and subject to the supervision of the People's Assembly, to which it shall answer, too.

The National Bank of Serbia shall be run by a governor, who shall be elected to a six-year term in office by the People's Assembly, at the proposal of the President of the Republic.

A special law shall be passed on the National Bank of Serbia.

## **Accounting Court**

### **Article 94**

The Accounting Court shall be an independent and autonomous judicial body that shall supervise all the budgets in the Republic of Serbia and the management of state property, the property of autonomous provinces and local self-government units. The Court shall also audit their accounts and perform other activities specified by the Constitution and Law.

The People's Assembly shall not discuss a draft annual budget account before it obtains the opinion of the Accounting Court.

The organisation and work of the Accounting Court shall be governed by Law.

## **PART IV - THE ORGANISATION OF GOVERNMENT**

### **1. People's Assembly**

#### **Jurisdiction**

### **Article 95**

The People's Assembly shall be the exponent of constitution-making and legislative power in the Republic of Serbia.

The People's Assembly shall adopt and amend the Constitution, decide on a change to the borders of the Republic of Serbia, call a referendum, ratify international treaties when Law requires the ratification, declare and lift a state of emergency.

The People's Assembly shall decide on amending the Constitutional Charter of Serbia and Montenegro, propose laws to the Parliament of Serbia and Montenegro, give prior consent to the decisions of the Parliament of Serbia and Montenegro if so required by the Constitutional Charter, and give a suggested

estimate of annual revenue and expenditure covering the operation of the State Union of Serbia and Montenegro.

The People's Assembly shall pass laws and other general enactments falling within the jurisdiction of the Republic of Serbia, a development plan, a spatial plan, the budget and annual financial report of the Republic of Serbia, grant amnesty for criminal offenses, elect the Government, supervise its work, decide on the termination of terms in office of the Government and ministers, elect and dismiss the governor of the National Bank of Serbia and the Ombudsman and supervise their work, elect judges and public prosecutors and decide on the termination of their duties, elect five justices of the Constitutional Court, supervise state security services, establish expert services for activities within its competence and perform other activities provided for by the Constitution and Law.

### **Composition of People's Assembly**

#### **Article 96**

The People's Assembly shall consist of 250 deputies, elected in a direct vote, by secret ballot, according to a proportional representation system.

The deputies shall be elected in the Republic of Serbia as a single election unit.

### **Election of Deputies and Establishment of People's Assembly**

#### **Article 97**

The election for the People's Assembly shall be called by the President of the Republic 90 days before the term in office of the Assembly expires, and the vote shall be completed in the next 60 days. The President of the Republic shall schedule the first session of the People's Assembly, which shall take place no later than 20 days after new deputies have been elected.

The People's Assembly shall verify their terms in office at the first session. An appeal to the Constitutional Court may be filed against the verification decision.

The People's Assembly shall be deemed established when the terms in office of two-thirds of deputies have been verified. The inauguration of the People's Assembly terminates the tenure of the previous assembly.

### **Position of Deputies**

#### **Article 98**

Deputies are elected to four-year terms in office, beginning on the date the People's Assembly is inaugurated. If a term in office expires during a state of emergency or war, it shall be extended for three months after the reasons for the extension cease to exist.

A deputy shall not be a member of the assembly of an autonomous province, or an official in the executive or judicial arms of power.

A deputy shall dispose of his/her term of office. A deputy whose term in office has been terminated before the term he was elected to expired, shall have the right to appeal to the Constitutional Court.

An organic law shall stipulate the election, termination of terms in office and position of deputies.

### **Immunity**

#### **Article 99**

A deputy shall not be called to account in criminal proceedings for an opinion expressed or a vote cast in the People's Assembly, its committees or other working groups.

A deputy who invokes his/her immunity shall not be detained, or be subject to criminal or other proceedings against him/her, or pronounced a prison sentence without the approval of the People's

Assembly. Yet a deputy caught in the act of committing a criminal offence carrying a penalty of more than five years of imprisonment can be detained without the approval of the People's Assembly.

If a deputy decides against invoking parliamentary immunity, the People's Assembly shall still have the right to do so.

### **Speaker and Deputy Speaker of People's Assembly; Rules of Procedure**

#### **Article 100**

The People's Assembly shall elect by a majority of votes cast by all deputies a Speaker and one or more his/her deputies to four-year terms.

The Speaker shall represent the People's Assembly, convene assembly sessions, chair them and perform other activities provided for by the Rules of Procedure.

The Rules of Procedure of the People's Assembly shall define its internal structure and work. The Rules of Procedure shall be endorsed by a majority of votes of all deputies.

### **Committees of the People's Assembly**

#### **Article 101**

The People's Assembly shall have committees as its working bodies.

The People's Assembly can establish an inquiry committee to discuss an issue of public concern. Its decisions shall not be binding for courts, nor shall they have any effect on court decisions.

Candidates for premier and ministers shall be presented before a special committee of the People's Assembly, and shall answer the questions posed by the committee members.

### **Decision-Making Process**

#### **Article 102**

The People's Assembly shall decide by a majority of votes in a session attended by the majority of deputies.

The majority of votes of all deputies shall be required when the People's Assembly decides on the issues relevant to the powers of the State Union of Serbia and Montenegro, grants amnesty for criminal offenses, declares and lifts a state of emergency, proscribes measures for derogations from human and minority rights in a war or a state of emergency, ratifies international treaties when Law calls for ratification, withdraws immunity from deputies, the President of the Republic, government members and the Ombudsman, adopts the budget and the annual financial report, elects government members and decides on the termination of offices of the Government and ministers, elects and dismisses the governor of the National Bank of Serbia and the Ombudsman, elects judges and public prosecutors and decides on termination of their duties, elects five justices of the Constitutional Court and exercises other electoral competences of the People's Assembly, and passes organic laws.

Organic laws shall govern the coat of arms, flag and anthem of the Republic of Serbia, a referendum and people's initiative, individual and collective rights of national minorities, a development plan, a spatial plan, public borrowing, local self-government, the territory of autonomous provinces and local self-government units, elections for the Parliament of Serbia and Montenegro, the election, termination of term in office and position of state officials, the conclusion and ratification of international treaties, a state of emergency, the work of state bodies, proceedings before courts and other state bodies and other issues specified by the Constitution.

## **Sessions**

### **Article 103**

The People's Assembly shall convene two times a year. The first regular session shall last from March 1 to July 1, and the second regular session from September 1 to December 31.

The People's Assembly shall convene in extraordinary session at the request of no less than one-quarter of deputies or the Government, with an agenda prepared in advance.

The People's Assembly shall meet without being convened if a state of emergency or a war has been declared.

## **Right to Propose Laws and Emergency Procedure**

### **Article 104**

A draft law can be submitted by every deputy, the Government, the assembly of an autonomous province and no fewer than 30,000 voters.

The Ombudsman and the National Bank of Serbia shall have the right to propose laws falling within their competence.

A decision that a law be passed in emergency procedure can be made by a majority of votes of all deputies.

## **Referendum**

### **Article 105**

At the request of a majority of all deputies, or no less than 100,000 voters, the People's Assembly shall call a referendum on a matter falling within its jurisdiction.

A referendum decision shall be binding, having been made by a majority of voters who actually cast a ballot, if the majority of the Republic of Serbia electorate went to the polls.

Obligations arising from international treaties, laws related to rights and freedoms, tax or other financial laws, the introduction of a state of emergency, amnesty and the termination of a government term shall not be subject of the referendum.

A referendum shall be called when the Constitutional Court finds out that the subject of the referendum is in conformity with the Constitution.

## **Dissolution of People's Assembly**

### **Article 106**

At a substantiated government proposal, the President of the Republic can dissolve the People's Assembly. The Government cannot propose the dissolution of the People's Assembly if a motion of censure has been tabled or it has asked for a vote of confidence.

It shall be the duty of the President of the Republic to dissolve the People's Assembly in the cases specified by the Constitution.

Together with the dissolution of the People's Assembly, the President of the Republic shall schedule a vote for deputies, which shall be completed within 60 days at the latest.

After the dissolution, the People's Assembly shall perform the ongoing or unpostponable activities specified by an organic law. The declaration of war or a state of emergency shall renew its full competence.

The People's Assembly shall not be dissolved during a state of emergency or war.

## **2. President of the Republic**

### **Powers**

### **Article 107**

The President of the Republic shall demonstrate the state unity of the Republic of Serbia..

The President of the Republic shall represent the Republic of Serbia at home and abroad, appoint state officials as provided by the Constitution, nominate a candidate for the post of premier and other state officials as provided by the Constitution, grant pardons, confer decorations and perform other activities defined by the Constitution.

The President of the Republic shall establish professional services to conduct affairs falling within his/her competence.

### **Promulgation of Laws**

#### **Article 108**

The President of the Republic shall promulgate a law by ordinance within 15 days of its adoption by the People's Assembly, or within seven days if the law was adopted under emergency procedure, or send it back for a repeated vote in the People's Assembly, with an explanation in writing.

The President of the Republic shall be obliged to promulgate a law re-adopted by the National Assembly.

If the President of the Republic fails to issue a promulgation ordinance, the Speaker shall do so.

### **Election**

#### **Article 109**

The President of the Republic shall be elected in a direct vote by secret ballot.

The presidential election shall be called by the Speaker 90 days before the President's term in office expires, and the vote shall be completed in the next 60 days.

A candidate who wins a majority of votes of voters who actually cast a ballot shall be elected President of the Republic. If no candidate is elected, the two candidates who have obtained most votes in the first round shall enter a second round, held within 14 days after the first round.

The candidate who wins most of the vote in the second round shall be elected President of the Republic.

### **Term of Office**

#### **Article 110**

The President of the Republic shall be elected to a five-year term in office, which shall commence on the day he takes an oath before the People's Assembly. If the presidential term expires during a state of emergency or war, it shall be extended by three months after the reasons for the extension cease to exist.

The same person may be elected President of the Republic no more than twice. The President of the Republic may not engage in any other public or professional function or activity.

The presidential term of office shall terminate by expiration, resignation, recall or a ruling by the Constitutional Court that has found him guilty of a criminal offence committed in the capacity of the President of the Republic.

The President of the Republic offers his/her resignation to the Speaker.

### **Recall**

#### **Article 111**

The President of the Republic shall be recalled for a violation of the Constitution, by a Constitutional Court decision. At the proposal of no fewer than 63 deputies, the People's Assembly shall institute the procedure for the recall of the President, which requires the votes of at least 150 deputies.

Under the Constitution, the term in office of the President of the Republic shall terminate by a ruling of the Constitutional Court, which has found out that there is a reason for the recall of the President.

### **Criminal Responsibility**

#### **Article 112**

The President of the Republic shall account before the Constitutional Court for a criminal offence committed in the capacity of the President.

The People's Assembly shall press charges before the Constitutional Court, which requires the votes of no less than 150 deputies. Pursuant to the Constitution, the term of office of the President of the Republic shall terminate when the Constitutional Court renders a verdict of guilty.

For other criminal offenses, the President of the Republic shall answer in court. The President enjoys the same immunity as a deputy. The People's Assembly shall decide about the immunity.

### **Takeover of Presidential Duties**

#### **Article 113**

If the President of the Republic is temporarily prevented from discharging his/her duties, they shall be assumed by the Speaker.

If the term of office of the President of the Republic ceases prior to the expiry of his/her election period, the duties of the President of the Republic shall be performed by the Speaker until the term in office of a new President begins.

The Speaker shall perform only the presidential duties specified by an organic law. The Speaker shall be obliged to dissolve the People's Assembly if it fails to elect a new government after a no-confidence motion was accepted, and to schedule a vote for deputies at the same time, which is to be completed no later than 60 days after they have been scheduled.

## **3. Government**

### **Powers**

#### **Article 114**

Executive power shall be vested in the Government of the Republic of Serbia.

The Government shall define and conduct politics, execute laws and other general enactments of the People's Assembly, endorse decrees and other general enactments necessary for the enforcement of laws, submit to the People's Assembly laws and other general enactments and gives an opinion on them when they are submitted by another proponent, establish professional services for the conduct of activities falling within its jurisdiction and performs other activities specified by the Constitution and Law.

The Government shall account to the People's Assembly for the policy of the Republic of Serbia, situation in all areas falling within the competence of the Republic of Serbia under the principle of the separation of power, the implementation of laws, regulations and other general enactments of the People's Assembly and the work of state administration.

If the People's Assembly is unable to convene, the Government shall declare and lift a state of emergency, and issue decrees specifying measures that allow for derogation from human and minority rights during a state of emergency or war.

An organic law on the Government shall be passed. The Government shall endorse its Rules of Procedure.

### **Premier and Ministers**



### **Article 115**

The Government shall be composed of a Premier and ministers.

The Premier shall run and direct the work of the Government, take care that its political activities are harmonised, coordinate the work of government members and represent the Government.

For their work and the situation in their respective fields of responsibility, the ministers shall account to the Premier, the Government and the People's Assembly.

### **Prohibition of Conflict of Interest**

#### **Article 116**

A member of the Government shall not be a member of the Parliament of Serbia and Montenegro, the People's Assembly, the assembly of an autonomous province and the assembly of a local self-government unit, nor shall he/she be a member of the Council of Ministers of Serbia and Montenegro or the Executive Council of an autonomous province.

An organic law shall specify other offices, duties or private interests incompatible with the position of a government member.

### **Election of Premier and Ministers**

#### **Article 117**

The President of the Republic shall nominate a candidate for Premier from a political party or a coalition that has the majority of parliamentary seats after elections, within 20 days of the inauguration of the People's Assembly.

A candidate for Premier shall present a government programme before the People's Assembly and nominate ministers within 15 days.

If the new government is not elected within 45 days after the inauguration of the People's Assembly, the government election procedure shall be repeated within the next 30 days. If the Government is not elected in the repeated procedure either, the President of the Republic shall dissolve the People's Assembly.

### **Commencement and Termination of Terms in Office of Government and Ministers**

#### **Article 118**

The term of office of the Government shall commence when it takes an oath before the People's Assembly.

The Government's term shall end by the beginning of the term of a new Government if it was voted no-confidence or a vote of confidence in the Government failed, if a motion of censure was accepted after interpellation, if the Premier's term in office expires, if the term of the People's Assembly expires or the People's Assembly is dissolved.

The Government whose term has expired shall perform activities specified by an organic law until the term of a new Government begins.

The term of office of a minister shall terminate by resignation, dismissal, if charges are pressed against him/her before the Constitutional Court, and if the term of the Government has expired. The Premier shall appoint the minister who shall replace the one whose mandate has terminated until a new minister's term begins.

### **Interpellation**

#### **Article 119**

No less than 42 deputies can interpellate in connection with the work of the Government or a minister. The Government shall answer to the interpellation within 20 days.

A debate in the People's Assembly shall follow. The People's Assembly can accept or refuse the Government's answer. If the People's Assembly accepts it, a vote shall take place on whether to move onto the agenda, and in the latter case, if the Government or the minister in question fail to resign, a motion of censure shall be tabled or a vote on the recall of the minister carried out. If the Government is voted no confidence, the provisions of the Constitution covering the election of the Government after the inauguration of the People's Assembly shall apply.

If the debate ends with a switch to the agenda, the signatories of interpellation cannot repeat the procedure in another three months.

### **Vote of No Confidence in Government**

#### **Article 120**

No less than 50 deputies can submit a motion of no confidence in the Government. No less than three and no more than five days must pass before the vote actually takes place.

A motion of censure shall be accepted if the majority of all deputies support it. The People's Assembly shall elect a new Government within the next 25 days, or vote confidence in the existing Government. If the People's Assembly fails to do either, the President of the Republic shall dissolve it.

If the no-confidence motion is defeated, the signatories of the motion of censure cannot submit a new one within six months.

### **Vote of Confidence in Government**

#### **Article 121**

The Government may ask for a vote of confidence before the People's Assembly. No less than three and no more than five days must pass before the vote actually takes place.

The Government is given a vote of confidence by the votes of all deputies.

If the People's Assembly fails to vote confidence in the Government, it shall elect a new Government in the next 30 days or give a vote of confidence in the existing Government. Otherwise, the President of the Republic shall dissolve the People's Assembly.

### **Recall of Ministers**

#### **Article 122**

The recall of a minister can be called for by no less than 36 deputies.

The Premier may propose the recall of a minister only if he/she nominates a candidate for the ministerial post at the same time.

The minister shall be dismissed by the majority of votes of all deputies.

The Government may link a vote on the recall of a minister with a vote of confidence in the Government.

### **Criminal Responsibility of Government Members**

#### **Article 123**

A member of the Government shall account before the Constitutional Court for a criminal offence he/she has committed in the capacity of a government member. The People's Assembly shall press charges before the Constitutional Court, by a majority of votes of all deputies. The term in office of the government member concerned shall terminate when the charges are brought against him/her.

A former government member shall answer before the Constitutional Court even if he/she was not accused of a criminal offence committed in the capacity of a government member during his/her term in office, in accordance with an organic law.

For other criminal offenses, a government member shall account for in court, enjoying the same immunity as a deputy. The People's Assembly shall decide on the immunity.

## **State Administration**

### **Article 124**

The state administration shall be independent, bound by the Constitution and Law and accountable to the Government.

An organic law shall define the duties of the state administration and the number of ministries. Other bodies and organisations of the state administration and their duties shall be regulated by the Government.

The Government shall proscribe the internal structure of ministries and other bodies and the organisation of the state administration.

The Government shall annul general enactments of state administration bodies that are contrary to Law or a general act it has endorsed.

## **4. Judiciary**

### **Basic Provisions**

#### **Article 125**

A judge shall be independent and subordinated to the Constitution and Law only. Judges shall pronounce verdicts in the name of the people.

Courts of law shall be established and abolished by an organic law. An organic law shall specify the territorial jurisdiction, types and competence of courts, along with proceedings to be carried out before them.

The establishment of court-martials, temporary or extraordinary courts shall be prohibited.

### **Permanence and Immovability of Judges**

#### **Article 126**

A judge shall be initially appointed to a five-year term, and to an unspecified period of time after that.

A judge shall not be transferred to another court against his/her will.

If, however, the court he/she has been assigned to is abolished, the judge might be transferred against his/her will to another court of same instance or approximately same status, by the decision of the High Judicial Council.

### **Appointment. Immunity. Conflict of Interest**

#### **Article 127**

Judges and presidents of courts shall be elected by the People's Assembly, at the proposal of the High Judicial Council. The President of the Supreme Court of Serbia shall be elected at the proposal of the President of the Republic, who has obtained the opinion of the general sitting of the Supreme Court of Serbia.

A judge shall enjoy the same immunity as a deputy. The High Judicial Council shall decide on the immunity.

An organic law shall specify functions, activities or private interests incompatible with the post of judge.

### **Termination of Office and Disciplinary Responsibility of a Judge**

#### **Article 128**

A judge's term in office shall terminate at his/her own request, when he/she meets conditions for retirement and by dismissal. The reasons for dismissal shall be defined by an organic law.

A judge shall reach the retirement age when he/she turns 67 or after 40 years of service. A judge shall be subject to no legal amendments that might either lower or increase the retirement age.

A judge shall account for a violation of the duties of a judge and reputation of judicial authorities.

The High Judicial Council shall make a first-instance decision on the disciplinary responsibility of a judge, and a special court organ shall act upon an appeal.

The People's Assembly shall decide on the termination of office of judges and presidents of courts.

## **Supreme Court of Serbia**

### **Article 129**

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

The Supreme Court of Serbia shall ensure the uniform implementation of laws by courts.

The Supreme Court of Serbia shall be headquartered in Belgrade.

## **5. The Office of the Public Prosecutor**

### **Jurisdiction and Hierarchy**

#### **Article 130**

The Office of the Public Prosecutor shall be an independent state body to prosecute the perpetrators of criminal and other penal offenses, which shall also apply legal remedies in order to protect constitutionality and legality.

Higher offices of public prosecutor shall be superior to lower ones. The Supreme Public Prosecution Service of Serbia is the highest-ranking prosecutor's office, and shall have primacy over other offices of public prosecutors.

Offices of public prosecutors shall be established and abolished by an organic law.

### **Public Prosecutors**

#### **Article 131**

The duties of the public prosecutor shall be discharged by one or more public prosecutors in the same Office of the Public Prosecutor. The Office of the Public Prosecutor shall be run by the Head of the Office appointed to a six-year term.

Initially, the Public Prosecutor shall be appointed to a five-year term, and then for an unspecified period. The Public Prosecutor can be transferred against his/her will to another office of the same or approximately the same status, only after his/her office has been closed by the decision of the High Judicial Council.

The Public Prosecutor can be assigned temporarily to another office against his/her will, upon a decision by the Supreme Public Prosecutor of Serbia, in accordance with Law.

The constitutional provisions related to conflict of interest and immunity of judges shall apply on the Public Prosecutor,.

### **Appointment and Termination of Term in Office of Public Prosecutor**

#### **Article 132**

Public prosecutors and heads of their offices shall be appointed by the People's Assembly, at the proposal of the High Judicial Council. The Supreme Public Prosecutor of Serbia shall be nominated by the President of the Republic, having obtained the opinion of the High Judicial Council.

The rules governing the termination of the term in office of a judge and the procedure in which the reasons for termination are established shall apply on public prosecutors.

## **6. High Judicial Council**

### **Powers and Composition**

#### **Article 133**

The High Judicial Council is an independent and autonomous judicial body that shall decide on the position of judges and public prosecutors as defined by the Constitution and Law.

The High Judicial Council shall be composed of 11 members – four judges, four public prosecutors, one lawyer and two positive law professors at the Law School of the Republic of Serbia.

Judges shall independently elect judges to the High Judicial Council from among permanent judges, and public prosecutors shall independently elect public prosecutors to the Council from among permanent public prosecutors. President of courts and heads of public prosecutors' offices shall not be appointed to the Council.

The law school professors shall be appointed to the Council by the President of the Republic, having selected one of four candidates nominated jointly by the deans of law schools in the Republic of Serbia. The lawyer shall be appointed to the Council by the Bar Association of Serbia.

### **Position of a Member of High Judicial Council**

#### **Article 134**

A member of the High Judicial Council shall be elected to a five-year term. No one shall be appointed to the Council twice.

As for conflict of interest, members of the High Judicial Council shall have the same position as judges. Judges and public prosecutors shall not be promoted until their terms in the Council expire.

An organic law shall specify the reasons for termination of a term in the High Judicial Council. The Constitutional Court shall decide on the reasons for the termination of a term in the High Judicial Council.

A member of the High Judicial Council shall enjoy the same immunity as a judge. The Constitutional Court shall decide on the immunity.

### **Decision-Making**

#### **Article 135**

If a decision of the High Judicial Council pertains solely to judges included in the Council, public prosecutors shall be excluded from its composition. Likewise, if a decision of the High Judicial Council pertains solely to prosecutors included in the Council, judges shall be excluded.

If a decision of the High Judicial Council pertains to an issue concerning judges and prosecutors alike, a judge and a prosecutor shall be excluded by draw, and the Minister of Justice and a prominent legal expert, who has already been elected by the People's Assembly, shall join the Council.

An organic law on the High Judicial Council shall be passed.

## **7. Ombudsman**

### **Powers**

#### **Article 136**

The Ombudsman shall be a state authority that monitors the work of state administration, the exercise of powers that the Republic of Serbia has transferred, and respect for human and minority rights guaranteed by the Constitution.

The Ombudsman shall submit to the People's Assembly an annual public report on the work of state administration, situation of human and minority rights and legal security in the Republic of Serbia.

The Ombudsman shall be authorised to institute proceedings for a review of constitutionality and legality of a law or other general enactment covering a matter that falls within the Ombudsman's jurisdiction, file a constitutional complaint and perform other activities specified by the Constitution and an organic law.

## **Position**

### **Article 137**

The Ombudsman shall be elected to a six-year term by the People's Assembly, at the proposal of the President of the Republic. The Ombudsman shall be elected from among legal experts specialised in the work of state administration and the protection of human and minority rights.

The Ombudsman shall enjoy the same immunity as a deputy. The People's Assembly shall decide about the immunity. As for conflict of interest, the Ombudsman shall be made equal to a constitutional court justice.

The organisation, election, termination of the term in office and position of the Ombudsman shall be specified by an organic law.

## **8. State of Emergency and State of War**

### **Declaration and Lifting of State of Emergency**

#### **Article 138**

A state of emergency shall be declared in the cases of an armed rebellion aimed at overthrowing the authorities of the Republic of Serbia, an act of armed violence threatening the security and property of citizens, natural, economic or technical catastrophes.

A decision to declare a state of emergency may cover the entire territory of the Republic of Serbia or part of it.

A state of emergency shall be declared and lifted by the People's Assembly, at the proposal of the Government, or by the Government if the People's Assembly is unable to convene.

### **Derogation from Human and Minority Rights in a State of Emergency**

#### **Article 139**

If a state of emergency has been declared and the survival of the Republic of Serbia threatened, the People's Assembly may prescribe measures that might constitute derogation from human and minority rights guaranteed by the Constitution, but only to the extent strictly required the given situation. The measures derogating from human rights shall not produce discrimination based on race, colour, sex, language, religion, ethnicity or social origin. These measures shall take 30 days, and may be renewed in 15-day intervals.

If the People's Assembly is unable to hold a session, the measures shall be prescribed by government ordinance. The Government shall submit the ordinance to the People's Assembly for approval, as soon as the Assembly is able to convene. Otherwise, the government ordinance shall cease to have effect when the first Assembly session after the proclamation of the state of emergency is brought to a close.

In any event, the derogation from human and minority rights shall expire the moment the state of emergency is no longer in effect.

## **State of War**

### **Article 140**

A state of war shall go into effect the moment it is declared by the Parliament of Serbia and Montenegro.

The People's Assembly, or the Government, if the People's Assembly is unable to hold a session, may prescribe measures which constitute a derogation from human and minority rights guaranteed by the Constitution, in the domains falling within the jurisdiction of the Republic of Serbia, under the same conditions as those allowing for such measures in a state of emergency. Their duration shall be adapted to the duration of measures imposed by the State Union of Serbia and Montenegro.

The People's Assembly shall give consent to the measures derogating from human and minority rights in the domains falling within the competence of the State Union of Serbia and Montenegro. If the Assembly is unable to convene, the Government shall give the consent required.

## **Rights Subject to Derogation in State of Emergency or State of War**

### **Article 141**

In a state of emergency, freedom of movement, inviolability of home, secrecy of letters and other means of communication, freedom of assembly, right to strike and right to asylum may be derogated from.

In a state of war, no derogation can be made in regard with the following rights and freedoms: prohibition of discrimination, right to dignity and free development of personality, right to life, inviolability of physical and mental integrity, prohibition of slavery, servitude and forced labour, right to freedom and security, right to a fair trial, legal security in criminal proceedings, right to equal access to legal protection and legal remedy, right to legal capacity, right to citizenship, freedom of thought, conscience and religion, freedom of expression of national affiliation, right to marriage and equality between spouses, the rights of the child, right to family planning, the rights of parents, the prohibition of discrimination against and forced assimilation of national minorities.

## PART V - TERRITORIAL ORGANISATION

### 1. Autonomous provincial Autonomy and Local Self-Government

#### Concept

##### Article 142

The citizens shall have the right to provincial autonomy and local self-government, exercised directly or through their freely elected representatives.

Autonomous provinces and local self-government units shall have the status of legal entities.

#### Division of Powers

##### Article 143

Local self-government units shall have competence in all the matters that serve citizens' needs of local importance, while autonomous provinces shall have competence in the matters of broader importance that are outside the competence of the Republic of Serbia.

An organic law shall specify whether an issue is of provincial, republican or local importance.

#### Transfer of Power

##### Article 144

The Republic of Serbia may transfer by organic law the enforcement of laws and other general enactments falling within its competence to autonomous provinces and local self-government units. An autonomous province may transfer by its law the enforcement of its laws and other general enactments to a local self-government unit.

The funds for exercising the transferred duties shall be ensured by the Republic of Serbia or the autonomous province, depending on which one of them transferred the given duties.

An organic law shall govern the rights and obligations of autonomous provinces and self-government units and the powers of the Republic of Serbia and autonomous provinces in the supervision of the exercise of transferred powers.

#### Right to Independent Organisation of Bodies

##### Article 145

Autonomous provinces and local self-government units shall independently, by their respective statutes, govern the organisation and powers of their bodies and public services, in accordance with local circumstances and needs.

In doing so, they shall be bound by the Constitution and an organic law.

#### Assembly of Autonomous Province and Local Self-Government Unit

##### Article 146

The Assembly shall be the supreme body in every autonomous province and in every local self-government unit.

The assemblies of autonomous provinces and local self-governments shall be unicameral.

The assembly of an autonomous province shall be composed of deputies, and the assembly of a local self-government of councilmen(women). They shall be elected to four-year terms in a direct vote by secret ballot. Their numbers shall be specified by the statute of an autonomous province, i.e. self-government unit.

Deputies and councilmen shall enjoy the court protection of their terms in office.



Ethnically mixed autonomous provinces and local self-government units shall allow for proportional representation of national minorities in the assemblies, in accordance with an organic law.

## **Cooperation Between Autonomous Provinces and Local Self-Government Units**

### **Article 147**

Autonomous provinces shall cooperate with corresponding territorial units in foreign countries with respect to the territorial integrity and legal order of the Republic of Serbia.

Local self-government units shall cooperate with corresponding territorial communities in foreign countries under the same conditions.

## **2. Autonomous Provinces**

### **Concept, Establishment and Territory of Autonomous Provinces**

#### **Article 148**

Autonomous provinces shall be autonomous territorial communities established by the Constitution, in which citizens exercise their right to provincial autonomy.

The Republic of Serbia shall have the Autonomous Province of Vojvodina and the Autonomous Province of Kosovo and Metohija. The position of the Autonomous Province of Kosovo and Metohija shall be defined by a special law, which shall be passed by a two-third majority vote.

New autonomous provinces can be established, and the existing ones abolished or integrated in the procedure prescribed for constitutional amendments.

An organic law shall define the territory of the autonomous provinces and the conditions under which their boundaries can be changed.

### **Independent Powers of Autonomous Provinces**

#### **Article 149**

Autonomous provinces shall be independent in governing the matters of provincial importance in the following spheres – spatial planning, development plans, agriculture, cattle breeding, forestry, hunting, fishing, tourism, catering industry, spas and sanatoriums, industry and handicrafts, education and culture, health and social care, environmental protection, road networks, waterways and railway transportation and the maintenance of roads, bridges, waterworks, museums and libraries.

Autonomous provinces shall manage provincial property, identify sources of income, adopt their own budgets and annual financial reports, in accordance with an organic law.

Autonomous provinces shall exercise their independent powers by passing provincial laws and general and individual enactments necessary for their enforcement.

### **Expansion of Powers of Autonomous Province**

#### **Article 150**

By a two-third majority vote, the people's Assembly can decide to transfer legislative powers of the Republic of Serbia to all or some autonomous provinces, or to pass basic laws on these matters only, and allow the autonomous provinces to develop them further.

An act to expand provincial powers shall not be passed under emergency procedure, nor can the President of the Republic return it to the People's Assembly for a repeated vote.

## **Financial Autonomy of Autonomous Provinces**

### **Article 151**

Autonomous provinces shall have original revenue to finance their independent fields of competence.

An organic law shall specify the size and type of autonomous provincial revenue.

An organic law shall specify the participation of autonomous provinces in part of the Republic of Serbia's revenue.

## **Statutes and Bodies of Autonomous Provinces**

### **Article 152**

The statute shall be the supreme legal act of an autonomous province. The statute of an autonomous province shall go into force when ratified by an organic law passed by the People's Assembly.

The autonomous province shall have the assembly, the executive council, administrative bodies, public services and the Ombudsman, and can also establish other bodies and services.

## **Assembly and Executive Council of Autonomous Province**

### **Article 153**

The Assembly of an autonomous province shall adopt the statute and provincial laws, and perform other activities as provided for by Law and the Statute.

The Executive Council shall be the executive body of the provincial assembly, which also elects the Council to a four-year term. The Statute shall determine the number of members of the Council.

The Executive Council shall be run by the President of the Executive Council, elected by the provincial assembly. The President of the Executive Council shall represent the autonomous province.

## **Supervision of Bodies of Autonomous Province**

### **Article 154**

The Government can institute before the Constitutional Court proceedings for a review of constitutionality or legality of a provincial law, before it goes into effect. The review proceedings before the Constitutional Court shall postpone the going into force of the given provincial law.

The Government shall be obliged to suspend a general enactment adopted by the Executive Council or another autonomous provincial body if it is not in conformity with the Constitution or Law, and to institute proceedings for a constitutional/legal review within five days.

## **Dissolution of Provincial Assembly**

### **Article 155**

The Government can file a proposal to the Constitutional Court to dissolve the Assembly of an autonomous province if the Assembly or the Executive Council of the province have committed a blatant violation of the Constitution or Law, or threatened the integrity of the legal order of the Republic of Serbia.

A Constitutional Court ruling in favor of the dissolution of the provincial assembly shall also terminate the term of the Executive Council.

The President of the Republic shall call a vote for a new provincial assembly, which shall be completed within 60 days of the date on which the Constitutional Court ruling went into force.

A seven-member council shall discharge the duties of the Assembly and the Executive Council until the inauguration of a new provincial assembly. The President of the Republic shall appoint the Council as to reflect the political and ethnic composition of the dissolved provincial assembly. The Council can perform only the ongoing or unpostponable duties specified by an organic law.

## **Protection of Provincial Autonomy**

### **Article 156**

A provincial body specified by the Statute shall have the right to appeal to the Constitutional Court if an individual act or action, whoever may have performed it, has hindered the competence of the autonomous province.

A provincial body specified by the Statute may institute proceedings for a review of constitutionality or legality of a law or other general enactment of the Republic or Serbia or a general enactment of a local self-government unit violating the right to provincial autonomy.

## **3. Local Self-Government**

### **Basic Provisions**

#### **Article 157**

Municipalities, cities and the City of Belgrade shall be local self-government units.

In these local self-government units the citizens shall exercise their right to local self-government by participating directly in local affairs through local citizens' meetings, referenda, people's initiatives and other forms of direct decision-making, or through their freely elected representatives.

Local self-government units shall be funded from original revenues and the budget of the Republic of Serbia, in accordance with an organic law.

### **Position of Self-Government Units**

#### **Article 158**

Municipalities shall be established and abolished by organic law. An organic law shall also specify the territory of a municipality. A local referendum shall precede the change of a municipal territory or the abolition of a municipality.

A city shall be established by organic law, after a referendum. The independent powers of a city are the same as municipal independent powers, but a city may be transferred broader authority than that conferred on a municipality.

The statute of a city shall define city municipalities and the affairs falling within the competence of the city that have been transferred to them. The Republic of Serbia and autonomous provinces shall not transfer the affairs falling within their competence to a city municipality.

As the capital city of the Republic of Serbia, the City of Belgrade shall enjoy a special position and broader independent and transferred powers than other cities and municipalities.

In all other matters, the constitutional provisions pertaining to municipalities shall pertain to cities and the City of Belgrade.

### **Independent Municipal Powers**

#### **Article 159**

A municipality shall be independent in governing urban planning, housing, local waterworks and sewage system, waste areas, heating, roads, streets, public transportation, construction lots, sanitation, cemeteries and open markets, the construction and equipping of school buildings, the construction and maintenance of sports facilities, local health-care and social institutions, a development plan, a spatial plan, tourism, catering, trade, handicrafts and environmental protection of local importance, and shall perform other activities specified by organic law. A municipality shall run independently the municipal property.

A municipality shall exercise its independent powers by passing general enactments and other general and individual enactments to enforce its general enactments.

The exercise of municipal independent powers shall be governed in detail by an organic law.

### **Municipal Statute and Bodies**

#### **Article 160**

The Statute shall be the supreme legal act of a municipality. It shall be adopted by a municipal assembly. Apart from the assembly, a municipality shall have an executive board, president of the municipality, administrative organs and public services.

The municipal assembly shall pass general enactments falling within its jurisdiction, adopt a budget and an annual financial report, a development plan and a spatial plan. The municipal assembly shall also hold a municipal referendum, and perform other duties specified by an organic law and the Statute.

The Executive Board shall be an executive body of the municipal assembly, which shall also elect it to a four-year term. The municipal assembly shall also elect president of the municipality to a four-year term of office. He/she shall represent the municipality and chair sessions of the municipal assembly and executive board.

A municipality can establish other bodies and services of municipal importance.

### **Supervision of Assembly Work**

#### **Article 161**

The Government shall be obliged to suspend a municipal general enactment, which is not in conformity with the Constitution or Law, and institute proceedings for a review of its constitutionality or legality within five days.

Under the conditions specified by an organic law, the Government can dissolve a municipal assembly. The dissolution of a municipal assembly entails the termination of the terms in office of the executive board and the president of the municipality. Every member of the municipal assembly shall have the right to appeal against the decision on the dissolution of a municipal assembly.

Simultaneously with dissolving the municipal assembly, the Government shall appoint a council to run the municipality. The composition of the Council shall reflect the political and ethnic composition of the dissolved municipal assembly. The Council shall perform only the ongoing or unpostponable activities as specified by an organic law.

The Premier shall call an election for a new assembly, and it shall be completed within 90 days of the dissolution of the municipal assembly.

### **Protection of Local Self-Government**

#### **Article 162**

A body specified by the municipal statute may initiate proceedings for a review of constitutionality or legality of a law or other general enactment of the Republic of Serbia or an autonomous province that violates the right to local self-government.

A body specified by the municipal statute shall have the right to file an appeal to the Constitutional Court if an individual act or action hinders municipal competence.

## **PART VI - CONSTITUTIONALITY AND LEGALITY**

### **Hierarchy of Domestic and International General Legal Acts**

#### **Article 163**

The Republic of Serbia shall have a single legal system.

The Constitution shall be the supreme legal act of the Republic of Serbia. All laws and other general enactments passed in the Republic of Serbia shall be in conformity with the Constitution.

Ratified international treaties and generally accepted rules of international law shall be part of the legal system of the Republic of Serbia. In terms of legal effect, they are placed immediately after the Constitution, and shall have primacy over all laws and other general enactments passed in the Republic of Serbia.

### **Hierarchy of Domestic General Legal Acts**

#### **Article 164**

All laws shall be in conformity with organic laws. General bylaws of the Republic of Serbia, general enactments of public authority holders, political parties, trade unions, citizens' associations and collective contracts shall be in conformity with Law.

Statutes, provincial laws and all other general enactments of autonomous provinces and local self-government units shall be in conformity with Law.

All general enactments of autonomous provinces and local self-government units shall be in conformity with their statutes.

### **Publishing of Laws**

#### **Article 165**

Laws, provincial laws and all other general enactments shall be published before their coming into effect.

The Constitution, laws and general by-laws of the Republic of Serbia, as well as provincial statutes and laws, shall be published in the Official Gazette of the Republic of Serbia.

Laws, provincial laws and other general enactments shall come into effect no earlier than eight days after they are published. If there is a particularly justified reason, they may go into force sooner.

### **Prohibition of Retroactive Effect of Laws**

#### **Article 166**

Laws, provincial laws and all other general enactments shall not have retroactive effect.

Exceptionally, certain provisions of the Republic of Serbia legislation and provincial laws may have retroactive effect, if a general interest defined in the passage of a law requires so.

### **Legality of Administration**

#### **Article 167**

Individual acts and actions by state organs, public authority holders, the bodies of autonomous provinces and local self-government bodies shall be based on Law.

The legality of final individual enactments to decide on a right, an obligation or an interest based on Law shall be subject to reconsideration in court in administrative proceedings if in the given case no other court protection has been provided for.

### **Right to Compensation**

#### **Article 168**

Everyone shall have the right to compensation for material or non-material damage he/she has suffered through illegal or irregular work of a state body, a public authority holder, an autonomous provincial body or a local self-government body.

Law shall specify the conditions under which the damaged party shall have the right to ask for compensation directly from a person that has caused the damage.

### **Language of Proceedings**

#### **Article 169**

Unfamiliarity with the language used in the proceedings shall not be an impediment for the exercise of anyone's rights.

Everyone shall have the right to use his/her own language in the proceedings that shall decide on his/her right, obligation or interest based on Law, and to have the proceedings translated into his/her own language or the language he/she understands.

## **PART VII - CONSTITUTIONAL COURT**

### **Role**

#### **Article 170**

The Constitutional Court shall be an independent and autonomous court organ to protect constitutionality and legality and human and minority rights. The decisions of the Constitutional Court shall not be subject to appeal, they shall be effective and universally binding.

Constitutional Court rulings shall be implemented by the Government, in a manner specified by the Constitutional Court.

The Constitutional Court shall be headquartered in Belgrade.

### **Jurisdiction**

#### **Article 171**

The Constitutional Court shall decide on the conformity of laws and other general enactments with the Constitution, generally accepted rules of international law, ratified international treaties and organic laws, the conformity of other general enactments with Law, the conformity of provincial laws and general enactments of autonomous provinces and local self-government units with their status, and the conformity of general enactments of public authority holders, political parties, trade unions, citizens' associations and collective contracts with the Constitution and Law.

The Constitutional Court shall rule on a conflict of jurisdiction between courts and other state bodies, between republican bodies and the bodies of autonomous provinces and local self-government units, between autonomous provincial bodies and the bodies of local self-government units, between the bodies of different autonomous provinces or different local self-government units, election disputes in which the jurisdiction of courts has not been specified by Law, and perform other activities laid down by the Constitution.

### **Review of Constitutionality and Legality**

#### **Article 172**

Proceedings for a review of constitutionality and legality shall be instituted by state bodies or no fewer than 36 deputies. Legal and physical persons may initiate the proceedings if they feel that their rights or interests have been violated by a law or another general enactment.

Everyone shall have the right to an initiative for a constitutional and legal review.

A law or another general enactment in breach of the Constitution or Law shall cease to have effect on the day the Constitutional Court ruling is published in the Official Gazette.

Until a final decision is made, and under the conditions specified by Law, the Constitutional Court may suspend the implementation of an individual act or action carried out on the basis of a law or another general act whose constitutionality or legality the Court has been assessing.

### **Preliminary Constitutional Review**

#### **Article 173**

At the request of no less than one-third of deputies, the Constitutional Court shall review the constitutionality of a draft law or Rules of Procedure within seven days.

If the Constitutional Court finds a draft law unconstitutional, a constitutional review shall be instituted immediately after the passage of the law, unless the draft law has been withdrawn or harmonised with the Constitutional Court ruling. If the law is adopted before the Constitutional Court decides on its constitutionality, the proceedings before the Constitutional Court shall be transformed into a constitutional review of the law. The same rule applies on a constitutional review of Rules of Procedure. While a constitutional review is in progress, the deadline within which the President of Republic is obliged to issue a decree on the proclamation of a law shall be suspended. The law the unconstitutionality of which has been ascertained by the Constitutional Court shall not be proclaimed.

### **Constitutional Appeal**

#### **Article 174**

Having exhausted all regular legal remedies, everyone can appeal to the Constitutional Court against an individual act or action that has violated or denied a human or minority right guaranteed by the Constitution.

The Constitution and Law shall specify who can lodge a constitutional appeal against a violation or denial of someone else's right.

### **Composition of Constitutional Court. Election and Appointment of Justices of Constitutional Court**

#### **Article 175**

The Constitutional Court shall consist of 15 justices elected and appointed to nine-year terms.

Five justices of the Constitutional Court shall be elected by the People's Assembly, five shall be appointed by the President of the Republic and another five by the general sitting of the Supreme Court of Serbia. The People's Assembly shall elect five justices of the Constitutional Court from among 10 candidates nominated by the President of the Republic, and the President of the Republic shall appoint five justices of the Constitutional Court, having selected them from 10 candidates nominated by the People's Assembly.

A justice of the Constitutional Court shall be appointed and elected from among prominent graduates in law not below 40 years of age, and with 20 years' professional experience. No justice of the Constitutional Court shall be elected or appointed twice.

Justices shall elect the President of the Constitutional Court to a three-year term of office by secret ballot.

### **Conflict of Interest. Immunity**

#### **Article 176**

A justice of the Constitutional Court shall not hold any other public or professional office, or engage in any professional activity other than a tenure at a Law School in the Republic of Serbia. Law shall specify other public and private interests incompatible with the post of a Constitutional Court justice.

A justice of the Constitutional Court shall enjoy the same immunity as a deputy. The Constitutional Court shall decide on the immunity.

### **Termination of Terms in Office of Constitutional Court Judge**

#### **Article 177**

The term in office of a Constitutional Court justice shall cease by expiration of the term to which he/she has been elected, at his/her request, when he/she reaches 67 years of age or after 40 years of service, and by removal from office. A justice of the Constitutional Court shall not be subject to legal amendments that either shorten or extend his/her active life.

A justice of the Constitutional Court shall be removed from office if he/she violates the prohibition of conflict of interest, because of permanent incapacity to exercise his/her functions, if he/she is sentenced to a prison term or for a penal offence that makes him unworthy of the position of a Constitutional Court justice, or if he/she makes serious omissions while exercising his/her duties.

The Constitutional Court shall decide on the termination of term in office of a Constitutional Court justice.

### **Decision-Making in the Constitutional Court. Law on Constitutional Court**

#### **Article 178**

The Constitutional Court shall rule by a majority of vote cast by all justices of the Constitutional Court. However, a decision by the Constitutional Court to institute independently a constitutional or legal review requires the votes of all justices of the Constitutional Court.

The organisation of the Constitutional Court, proceedings before the Constitutional Court and deadlines within which the Constitutional Court shall render verdicts, legal effect of Constitutional Court rulings, the election and appointment, the termination of terms in office and position of Constitutional Court judges shall be specify by an organic law.

The Constitutional Court shall adopt Rules of Procedure to govern its work.

## **PART VIII - AMENDMENTS TO THE CONSTITUTION**

### **Proposal for Amending the Constitution**

#### **Article 179**

A proposal to amend the Constitution shall be submitted by no fewer than 50 deputies, the President of the Republic, the Government, and at least 150,000 voters.

The People's Assembly shall decide upon a proposal to amend the Constitution.

### **Adoption of Amendments to the Constitution**

#### **Article 180**

An amendment to the Constitution shall be adopted by a two-third majority vote of deputies.

If the majority requirement is not fulfilled, the Constitution shall not be amended for another 12 months.

### **Possibility of Referendum**

#### **Article 181**

At the request of a majority of all deputies or 150,000 voters, if it was not the voters that submitted a proposal for amending the Constitution, the adopted constitutional amendment shall be subject to a referendum vote.



In this case, the constitutional amendment shall be adopted by the votes of a majority of voters who actually cast a ballot, if the majority of the electorate of the Republic of Serbia participated in the referendum.

### **Prohibition of Amendments to the Constitution**

#### **Article 182**

The Constitution shall not be amended during a state of emergency or a state of war.

### **Constitutional Law**

#### **Article 183**

A special constitutional law shall be adopted for the implementation of a constitutional amendment.

## Explanation of the Draft Constitution of the Republic of Serbia

### **I - CONSTITUTIONAL GROUNDS**

The People's Assembly passed on March 30, 2004 a Decision to embark upon drafting a new constitution of the Republic of Serbia, published in the Official Gazette of the Republic of Serbia No. 35/04. According to the Decision, the process of drafting the constitution will commence (Item 1 of the Decision), and the Committee on Constitutional Affairs of the People's Assembly has been asked to prepare a proposal for the promulgation of a new constitution and draft a new constitution (Item 2 of the Decision).

The Government of the Republic of Serbia is entitled to submit to the People's Assembly a proposal for amending the Constitution (Article 132, Paragraph 1 of the Constitution of the Republic of Serbia), which also allows it to submit to the People's Assembly the Draft Constitution of the Republic of Serbia. This Draft Constitution, pursuant to the Decision referred to under Paragraph 1, is the only possible, evenly balanced review of new constitutional solutions in Serbia, which the Committee on Constitutional Affairs can use as a proceeding point for drafting a new constitution.

### **II - REASONS FOR THE ADOPTION OF A NEW CONSTITUTION**

The current Constitution of the Republic of Serbia was promulgated by a one-party parliament in 1990, while the former Socialist Federal Republic of Yugoslavia (SFRY) was still in existence, and Serbia one of its federal units. Even at the time of its promulgation, the new constitution failed to create viable conditions for a comprehensive democratisation of Serbia. Despite a series of flaws, the 1990 Constitution is still in force – nearly four years after profound changes in Serbia and the then Yugoslavia. There is no doubt that the existing Constitution is the most serious institutional obstacle to a full democratic transformation of Serbia. Moreover, Serbia is no longer a member republic of the Federal Republic Yugoslavia, but a member of the State Union of Serbia and Montenegro obliged to harmonise its Constitution with the Constitutional Charter of Serbia and Montenegro.

### **III - EXPLANATION OF BASIC SOLUTIONS SET OUT IN THE DRAFT CONSTITUTION OF THE REPUBLIC OF SERBIA**

1. Principles. The Republic of Serbia is a state of the Serbian people and all its citizens, based on the rule of law and social justice, sovereign in exercising all its powers, except for those it has conferred to the State Union of Serbia and Montenegro. (This rule governs the powers of Serbia as a state). This is a most generic and nonspecific definition, which places an emphasis on the special historic role of the Serbian people in creating the state, by no means at the expense of neglecting the historic and contemporary role of other peoples in Serbia. For all power in Serbia is vested in citizens, as a political abstraction that excludes any ethnic element. Following the liberal French constitutional tradition, no one is allowed to take the power from the citizens. The supreme value of the Constitution is the rule of law, which, apart from the positivistic principle (mutual conformity of legal acts), also contains the value postulates (free elections, constitutional guarantees for human and minority rights, an independent judiciary, separation of power, and compliance of the authorities with the Constitution and law), which are made more specific in the text of the draft constitution. Power is separated into legislative, executive and judicial, primacy given to none of them. Instead, their relationship is based on checks and balances. A multi-party system is guaranteed, and the role of political parties in modern democracies strongly accentuated. A clear drift from a party state is illustrated best in the

provision banning political parties from exercising power directly or subordinating it to their own interests. A ban on exercising a state or public function incompatible with other functions, affairs or private interests has been developed into a principle (prohibition of conflict of interest). Serbia is the guarantor of the rights and development of national minorities (which also includes the principle of positive discrimination).

2. Human and Minority Rights and Freedoms. This is the most extensive part of the draft. Human and minority rights guaranteed by the Constitution are exercised directly, which also goes for the rights contained in the generally accepted rules of international law, ratified international treaties, laws and other general enactments (they enjoy the same treatment as the rights guaranteed by the Constitution). Discrimination is prohibited and positive discrimination defined. Effective court protection of human and minority rights has been guaranteed, along with the right to address international bodies whenever a right violated or denied has been guaranteed by ratified international treaties.

After this, concrete civic, political, economic, social and cultural rights have been set out. The list of rights is longer than the one offered in the Charter of Human and Minority Rights and Civil Liberties of the state union of Serbia and Montenegro. The draft includes some new economic, social and cultural rights (employment-related rights, children's special rights, the rights of parents, the right to legal assistance, special protection of children with physical or mental disabilities or children deprived of parental care, free secondary education and free access to universities for talented and successful students of weak financial status, and the like). The specter of minority rights is also broader than the one offered in the Charter of Human and Minority Rights and Civic Liberties – it includes the right to proportional representation of national minorities in the employment structure of state bodies, public services, provincial and local self-government bodies. The provinces are given an opportunity to provide additional rights for national minorities through their own laws. Proportional representation of national minorities has also been provided for the assemblies of provinces, municipalities and cities with ethnically mixed populations.

3. Economic and social order. It is based on a market economy, free competition, free entrepreneurship and cooperation between social partners. Serbia is a single economic area, which guarantees a single market and a free flow of labour, goods, capital and services. Economic activity is organised (governed) uniformly in the whole of Serbia. The social role of the state manifests itself in, inter alia, the obligation of the state to modify the effects of market principles by a social policy, to harmonise the development of all Serbian areas, protect consumers, safeguard historic and cultural heritage, etc. Private and state property will be equal. provinces and local self-government units have their own property.

4. Organisation of government. The People's Assembly represents constitution-making and legislative power in the Serbia. The Government is an operative segment of the Executive, and the President of the Republic is part of the executive branch of power that stabilises and balances relations between the other two arms of power. Judicial power belongs to courts.

The unicameral People's Assembly has 250 seats. Deputies are elected in a proportional election system. As a rule, the People's Assembly takes decisions by a so-called "quorum majority" (a majority of votes of deputies, on condition that a majority of deputies are present), or, when specified so, by a majority of votes of all deputies. The same requirements have been specified for the passage of organic laws.

The role of the President of the Republic is to maintain a balance between the three arms of power. Ultimately, the President of the Republic is an instrument to ensure consistent implementation of the separation of power. Such legal and political goals call for a direct election for President as the most compatible solution. A direct presidential vote will give the President the kind of legitimacy he/she needs for unhindered mediation between the three arms of state power and the competence to prevent predominance of any of them. These postulates provide a firm foothold for most of constitutions promulgated by countries in transition, in which citizens elect their presidents in a direct vote (Slovenia, Croatia, Macedonia, Bulgaria, Romania, Poland, Ukraine, Russia, etc.). A direct presidential election appears to be the best way to justify frequent comparative legal powers of a head of state (which the draft constitution has not abandoned either) to dissolve the parliament if there is a "conflict" between the parliament and the government (it is interesting that the President of the Republic, even though elected in the parliament, can dissolve the parliament in the Czech Republic, Slovakia, Hungary, Germany and Italy), and to place a suspensory veto on the laws adopted by the parliament (in the Czech Republic, Slovakia, Hungary and Italy, the president has the right to a suspensory veto, even though he/she is elected by the parliament).

The President of the Republic is authorised to decide whether he/she will dissolve the People's Assembly at the proposal of the Government. The President of the Republic can also dissolve the People's Assembly in another three cases specified by the Constitution. All the three, however, are about a constitutional obligation of the President of the Republic, not his/her discretionary power. In other words, the dissolution of the People's Assembly is an act by which the President confirms that certain facts, which are not difficult to verify, have happened. Unlike the situation in which the President dissolves the Assembly at the proposal of the Government, in such a case the President does not have the right to assess independently the need for maintaining or terminating the term of the parliament. The President of the Republic appoints five of 15 justices of the Constitutional Court (this solution has been taken over from Roman constitutional laws, and it insists on the separation of power), proposes to the People's Assembly the election of some state officials (the Ombudsman, the governor of the National Bank of Serbia, the President of the Supreme Court of Serbia etc.). The President of the Republic has the right to return to the People's Assembly a law it has already passed for a second vote, but also the obligation to promulgate it if it is voted in for the second time. The President of the Republic is dismissed over a violation of the Constitution by a Constitutional Court ruling, at the request of three-fifths of deputies.

The Government is the bearer of executive power in the Republic of Serbia. The Government is elected by the People's Assembly, to which it is accountable, too. In conformity with contemporary rationalised parliamentarism, the Government has the right to propose laws, to give an opinion on draft laws it has not proposed, and the like. If the People's Assembly is unable to hold a session, the Government declares a state of emergency (the declaration of a state of war falls within the jurisdiction of the state union of Serbia and Montenegro) and issues decrees allowing for derogation of human and minority rights. (The Government must submit its decrees to the People's Assembly for ratification as soon as the parliament is able to convene). After the inauguration of the People's Assembly, the Government is elected in two rounds, and the President of the Republic nominates a premier-designate. However, after the election of the Government following the inauguration of the parliament, the powers of the President of the Republic will become considerably weaker. The reason for this is the institute of constructive vote of no confidence in the Government, which was taken from the German constitutional law and adapted to local circumstances. The Government may be voted no confidence only if the People's Assembly elects a new government (all that within 25 days). If it fails to elect a new government or give a vote of confidence in the existing Government, the President of the

Republic dissolves the parliament. *Mutatis mutandis*, the same goes for a vote of confidence. After the “fall of a government,” it is the parliamentary majority, not the President of the Republic, that appoints a premier-designate as the new premier. The principle of a constructive motion of censure allows for the stability of the Government, but it also strengthens its position towards the parliament.

An important novelty is the constitutional standardisation of the High Judicial Council. The most important competence of the Council is to appoint judges and public prosecutors. Judges (when the Council appoints judges), that is, public prosecutors (when it appoints public prosecutors), makes up a 4:3 majority in the council, which allows for personnel-related independence of judiciary and the Office of Public Prosecutor from the legislative and executive arms of power. When the High Judicial Council decides on matters of mutual concern related to the position of judges and public prosecutors, one judge and one public prosecutor are excluded from the Council by draw, and the Minister of Justice and a member elected earlier by the People’s Assembly join the Council. (In the integral composition, the 8:3 ratio in favour of judges and public prosecutors goes down to 6:5).

5. Territorial organisation. Serbia is being decentralised, largely through provincial autonomy. A considerable part of the current state powers is transferred to the provinces. Their citizens, through directly or indirectly elected representative bodies, the Assembly or the Executive Council respectively, or even in a referendum, can decide on the matters of provincial importance (as well as the matters falling within the competence of the Republic of Serbia that have been transferred to them by organic law). The right to independent (originary) powers and the right to independent organisation of bodies that exercise those powers (within the Constitution and organic law) are the essential characteristics of provincial decentralisation. In modern European democracies, decentralisation is a democratic response to any possible separatist occurrence.

Serbia has two provinces: the Autonomous Province of Vojvodina and the Autonomous Province of Kosovo and Metohija. The peculiar position of Kosovo and Metohija called for a provision that allowed for a special law, passed by a two-third majority vote, which governs the position of Kosovo in a specific manner. In practice, it is only the Autonomous Province of Vojvodina that can carry out effective powers as provided by the new constitution. The constitution permits the establishment of new autonomous provinces, in the procedure identical to that governing constitutional changes. The federalisation of Serbia has been banned by a provision specifying that it is possible to establish a new autonomous province or abolish or merge the existing ones only in the process provided for amending the constitution. The boundaries of autonomous provinces have been defined by an organic law.

Independent provincial powers are governed by the Constitution, and specified in detail by organic laws. The provinces fund their independent fields of competence from their original income. Independent provincial powers may be expanded, exceeding those prescribed by the Constitution. There are two ways to do so. First, the state may pass only a framework, organic law on the matters that fall within the sole competence of the state, and allow some or all provinces to develop it further. Secondly, the state can transfer part of its legislative competence provided by the Constitution to all or some provinces. The People’s Assembly adopts an act to expand independent powers of the provinces by a two-third majority vote.

The participation of the provinces in exercising central powers is also reflected in the right of a provincial assembly to submit a draft law to the People’s Assembly. Moreover, the provinces have the right to appeal to the Constitutional Court against any enactment or action that might

hinder their competence, to institute proceedings before the Constitutional Court for a constitutional review of every general enactment of Serbia or a unit of territorial autonomy that violates the right of citizens to provincial autonomy, to protect their own competence by causing a conflict of jurisdiction with republic bodies before the Constitutional Court, etc.

The state possesses supervisory instruments to protect the unity of legal system and the equal position of all on the entire territory of Serbia. The strictest form of supervision is the dissolution of a provincial assembly (which also terminates the mandate of the corresponding provincial government). The Constitutional Court can do so at the proposal of the Government, but only if a provincial assembly or a provincial government committed a blatant violation of the Constitution or Law, or threatened the integrity of Serbia's legal system. The assembly is dissolved for unconstitutional or illegal actions by the Executive Council it has elected, but not for the so-called inappropriate decisions (when given action is constitutional and legal, but not in conformity with the principles of political opportunism). Provincial autonomy is protected in the dissolution of a provincial assembly, too. First, the President of the Republic appoints a seven-member council to discharge the duties of the provincial assembly and government until the election of a new assembly. The Council must mirror the political and ethnic composition of the previous provincial assembly; it can perform only the ongoing and unpostponable activities, and the President of the Republic is obliged to call a vote for the provincial assembly, which must be completed within 60 days of the date on which it was dissolved.

Local self-government is also a form of decentralisation. It is exercised in municipalities, cities and the City of Belgrade. The legal position of cities is governed with a view of the scope of their independent and transferred powers, and the position of city municipalities. The City of Belgrade is a special self-government unit, which has broader independent and transferred powers than other municipalities and cities. Apart from the Republic of Serbia, provinces can also confer part of their competence to their local self-government units. Independent powers of local self-government units are financed from their original income, as provided by organic law. Just like the provinces, local self-government units have the right to self-organisation within the Constitution and organic law. The principles of protection of local self-government are equal to the principles of protection of provincial autonomy. The reasons for dissolving a local self-government assembly are specified by an organic law (they must remain within the limits of supervision over constitutionality and legality, and cannot be based on political opportunism).

6. Constitutionality and legality and Constitutional Court. The Constitution tops the hierarchy of general legal acts in Serbia. In terms of legal effect, the Constitution is followed by ratified international treaties and generally accepted rules of international law – they come before all general legal enactments endorsed in Serbia, from organic laws, through by-laws, to provincial and local self-government acts.

Apart from its fundamental power to review the constitutionality and legality of general enactments, the Constitutional Court also decides whether there is a reason for the recall of the President of the Republic and establishes his/her criminal responsibility for an offence committed in the exercise of official presidential duties. Also, the Constitutional Court decides on the criminal responsibility of government members for criminal offences they have committed in that capacity, on the dismissal of government members for a violation of the Constitution and Law, on the dissolution of a provincial assembly and a preliminary (preventive) review of constitutionality and legality of provincial laws. This is just a number of powers resulting from the commitment to establishing a state based on the rule of law. The Constitutional Court is also authorised to carry out a preventive constitutional review of Serbian laws. The procedure for a preliminary constitutional review can be instituted by no less than one-

third of all deputies, or one-third of deputies elected in the provinces. A preventive constitutional review postpones for an unspecified period the deadline within which the President of the Republic is to promulgate the given law. A Constitutional Court ruling is binding for the President of the Republic, that is, the Speaker, inasmuch as they are unable to proclaim a law whose unconstitutionality has been ascertained by the Constitutional Court.

The Constitutional Court is composed of 15 justices elected or appointed to nine-year terms in office. Five justices of the Constitutional Court are elected by the People's Assembly, another five by the President of the Republic, and the last five by the Supreme Court of Serbia. This is where the system of mutual permeation of the three branches of power has been applied consistently.

7. Amending the Constitution. A proposal to amend the Constitution may be submitted by no less than one-fifth of all deputies, no fewer than 150,000 voters, the President of the Republic or the Government. The People's Assembly decides on the proposal. An amendment to the Constitution is adopted by a two-third majority of deputies. A referendum is possible, but not compulsory – it is held at the request of a majority of all deputies or 150,000 voters, if the voters have not proposed an amendment to the Constitution. The constitutional amendment, in the form in which it is adopted by the People's Assembly, is adopted in a referendum by a majority of voters who actually cast a ballot, if a majority of the Serbian electorate participated in the referendum.