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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

SERBIA

**DRAFT AMENDMENTS TO THE CONSTITUTION
OF THE REPUBLIC OF SERBIA**

Amendments I through XXIX to the Constitution of Serbia

Amendments I through XXIX are an integral part of the Constitution of the Republic of Serbia, which shall enter into force on the day of promulgation by the National Assembly.

A Constitutional Act shall be passed to implement the Amendments I through XXIX of the Constitution.

AMENDMENT I***Competences***

The National Assembly shall:

1. adopt and amend the Constitution,
2. decide on changes concerning the borders of the Republic of Serbia,
3. call for the Republic referendum,
4. ratify international contracts when the obligation of their ratification is stipulated by the Law,
5. decide on war and peace and declare state of war and emergency,
6. supervise the work of security services,
7. enact laws and other general acts within the competence of the Republic of Serbia,
8. give previous approval for the Statute of the autonomous province,
9. adopt defense strategy,
10. adopt development plan and spatial plan,
11. adopt the Budget and financial statement of the Republic of Serbia, upon the proposal of the Government,
12. grant amnesty for criminal offenses.

Within its election rights, the National Assembly shall:

1. elect the Government, supervise its work and decide on expiry of the term of office of the Government and ministers,
2. appoint and dismiss judges of the Constitutional Court,
3. *appoint and dismiss five members of the High Judicial Council, five members of the High Prosecutorial Council, the Supreme Public Prosecutor of Serbia and public prosecutors,*
4. appoint and dismiss the Governor of the National Bank of Serbia and supervise his/her work,
5. appoint and dismiss the Ombudsman and supervise his/her work,
6. appoint and dismiss other officials stipulated by the Law.

The National Assembly shall also perform other functions stipulated by the Constitution and the law.

The present Amendment shall supersede Article 99 of the Constitution of the Republic of Serbia.

AMENDMENT II***Method of decision making in the National Assembly***

The National Assembly shall adopt decisions by a majority vote of deputies at the session where a majority of deputies are present.

By means of a majority vote of all deputies, the National Assembly shall:

1. grant amnesty for criminal offenses,
2. declare and call off the state of emergency,
3. order measures of departure from human and minority rights in the state of war and emergency,

4. enact the Law by which the Republic of Serbia delegates particular issues falling within its competence to autonomous provinces and local self-government units,
5. give previous approval for the Statute of the autonomous province,
6. decide on the Rules of Procedure pertaining to its work,
7. cancel immunities of deputies, the President of the Republic, members of the Government and the Ombudsman,
8. adopt the Budget and financial statement,
9. elect members of the Government and decide on the end of the term of office of the Government and ministers,
10. decide on response to interpellation,
11. elect judges of the Constitutional Court and decide on their dismissal and end of their term of office,
12. elect the Supreme Public Prosecutor of Serbia and public prosecutors and decide on cessation of their term of office,
13. elect and dismiss the Governor of the National Bank of Serbia, Governors' Council and the Ombudsman,
14. also perform other election competences of the National Assembly.

By means of a majority vote of all deputies, the National Assembly shall decide on laws which regulate:

1. referendum and peoples initiative,
2. enjoying of individual and collective rights of members of national minorities,
3. development and spatial plan,
4. public debt,
5. territories of autonomous provinces and local self-government units,
6. conclusion and ratification of international treaties,
7. other issues stipulated by the Constitution.

By means of a three-fifths majority vote of all deputies, the National Assembly shall elect the five members of the High Judicial Council and the five members of the High Prosecutorial Council, and if they are not all elected in such manner, the remaining members shall be elected in the next ten days by means of five-ninths majority vote of all deputies, which is also required for their dismissal.

The present Amendment shall supersede Article 105 of the Constitution of the Republic of Serbia.

AMENDMENT III
7. Courts
Judiciary principles

Judicial power shall belong to the courts, as autonomous and independent state authorities.

Judicial power shall be unique on the territory of the Republic of Serbia.

Court decisions shall be passed in the name of the people.

A court decision may only be reviewed by legally authorized court in the proceedings prescribed by law.

The hearing before the court shall be public and may be restricted only in accordance with the Constitution and the law.

The court shall sit in a panel, unless prescribed by the law that the court shall be presided by a single judge.

Lay judges and judicial assistants may also take part in the trial, pursuant to the law.

The present Amendment shall supersede Article 142 of the Constitution of the Republic of Serbia.

AMENDMENT IV
Organization of courts

Courts shall be established and dissolved by the law.

The types of courts, jurisdiction, territory of courts and court proceedings shall be regulated by law.

Provisional courts, courts-martial or emergency courts shall not be established.

The present Amendment shall supersede Article 143 of the Constitution of the Republic of Serbia.

AMENDMENT V
Independence of judges

A judge shall be independent and shall perform his/her duties in accordance with the Constitution, ratified international treaties, laws and other general acts.

Any influence on a judge while performing his/her judicial function is prohibited.

The method to ensure uniform application of laws by the courts shall be regulated by law.

The present Amendment shall supersede Article 144 of the Constitution of the Republic of Serbia.

AMENDMENT VI
Conditions for election of judges

General and special conditions for the election of judges, presidents of courts and lay judges shall be regulated by law.

A person elected for a judge for the first time in the legally specified courts with exclusively first-instance jurisdiction may be elected only if he or she has completed one of the forms of legally stipulated training in a judicial training institution.

The present Amendment shall supersede Article 145 of the Constitution of the Republic of Serbia.

AMENDMENT VII
Permanent Tenure of Office

A judicial tenure shall be permanent and shall last from the moment of the appointment until the retirement.

A judge's tenure of office shall cease, prior to the retirement, at personal request, in case of permanent disability for judicial function or in case of dismissal.

A judge shall be dismissed if he/she has been convicted for a criminal offense with at least six months of imprisonment or for a criminal offence that renders him/her unworthy for the judicial function, if he/she performs the judicial function incompetently, or if he/she has committed a serious disciplinary offense.

A judge and a president of the court shall have the right to lodge an appeal with the Constitutional Court against the decision of the High Judicial Council on cessation of judicial function, which shall exclude the right to lodge a Constitutional appeal.

The present Amendment shall supersede Article 146 of the Constitution of the Republic of Serbia.

AMENDMENT VIII
Non-transferability of Judge

A judge shall have the right to perform his/her judicial function in the court to which he/she was elected, and may be relocated to another court only by his/her own consent.

Regardless, in case of revocation of the court or the substantial part of the jurisdiction of the court to which he/she was elected, a judge may be relocated to another court, without his/her consent, in accordance with the law.

The present Amendment shall supersede Article 147 of the Constitution of the Republic of Serbia.

AMENDMENT IX
Immunity and Incompatibility

A judge and a lay judge cannot be held accountable for an opinion expressed within the court proceedings or voting in the process of passing a court decision, unless they commit a criminal offense of violation of law by a judge, public prosecutor or his deputy.

A judge may not be deprived of liberty in the legal proceedings initiated against him/her for a criminal offense committed while performing judicial function without the approval of the High Judicial Council.

A judge and a court president shall be prohibited to engage in political actions, while other functions, activities or private interests which are incompatible with the judicial function shall be stipulated by the law.

The present Amendment shall supersede Article 148 of the Constitution of the Republic of Serbia.

AMENDMENT X
The Supreme Court of Serbia

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

The Supreme Court of Serbia shall ensure uniform application of the law by the courts.

The present Amendment shall supersede Article 149 of the Constitution of the Republic of Serbia.

AMENDMENT XI

President of the Supreme Court and Presidents of Courts

The president of the Supreme Court of Serbia shall be appointed by the High Judicial Council, upon obtaining opinion of the general session of the Supreme Court of Serbia, for a five-year term.

The same person cannot be appointed more than once as President of the Supreme Court of Serbia.

The High Judicial Council shall elect presidents of other courts for a five-year term.

The present Amendment shall supersede Article 150 of the Constitution of the Republic of Serbia.

AMENDMENT XII

*High Judicial Council**Jurisdiction of the High Judicial Council*

The High Judicial Council is an autonomous and independent state body that ensures the autonomy and independence of the courts and judges and court presidents by deciding on the issues of the status of judges, presidents of courts and lay judges determined under the Constitution and the law.

The High Judicial Council shall appoint and dismiss the President of the Supreme Court of Serbia and the presidents of other courts; appoint judges and lay judges and decide on the cessation of their office; collect statistical data relevant to the work of judges; evaluate the performance of judges, presidents of courts and judicial assistants; decide on the transfer and temporary relocation of judges; appoint and dismiss the members of the disciplinary bodies; determine the number of judges and lay judges; propose the amount of funds required for the work of the High Judicial Council and the work of courts in matters within its competence and autonomously disposes of these funds, and shall decide on other issues related to the status of judges, presidents of courts and lay judges provided by law.

The present Amendment shall supersede Article 151 of the Constitution of the Republic of Serbia.

AMENDMENT XIII

Composition of the High Judicial Council

The High Judicial Council shall be composed of ten members: five judges elected by the judges and five prominent lawyers elected by the National Assembly. A prominent lawyer shall be a law school graduate with a Bar exam who has at least ten years of working experience in the field of law falling within the competence of the High Judicial Council, who demonstrated professional work and enjoys personal reputation.

The National Assembly shall elect five members of the High Judicial Council upon the proposal of the competent parliamentary committee after having conducted a public competition, by a three-fifth majority vote of all deputies, and in case they are not all elected in this manner, the remaining members shall be elected within the next ten days by a five-ninth majority vote of all deputies. If all the members are not elected even in that manner, the remaining members shall be elected, after 15 days, from among the proposed candidates, by a commission comprised of the President of the National Assembly, the President of the Constitutional Court, the President of the Supreme Court of Serbia, the Supreme Public Prosecutor of Serbia and the Ombudsman, by majority vote.

The competent committee of the National Assembly shall propose twice as many candidates as the number of members elected.

The principle of equal representation of courts shall be taken into account in the process of election of judges as members of the High Judicial Council.

Presidents of courts may not be members of the High Judicial Council.

The present Amendment shall supersede Article 152 of the Constitution of the Republic of Serbia.

AMENDMENT XIV

Term of Office of Members of the High Judicial Council

Member of the High Judicial Council shall be elected to a five-year term of office.

The same person may not be reelected as member of the High Judicial Council.

The term of office of a member of the High Judicial Council shall cease for reasons prescribed by the Constitution and law and in the procedure prescribed by law.

The present Amendment shall supersede Article 153 of the Constitution of the Republic of Serbia.

AMENDMENT XV

President of the High Judicial Council

The High Judicial Council shall have a president.

The president of the High Judicial Council shall be elected from among members who are not judges.

The term of office of the president of the High Judicial Council is five years, or until the cessation of the term of office as the member of the High Judicial Council.

The present Amendment shall supersede Article 154 of the Constitution of the Republic of Serbia.

AMENDMENT XVI

Work and Decision-making of the High Judicial Council

The High Judicial Council may make decisions at a session where at least seven members of the High Judicial Council are present.

The decision shall be adopted by the votes of at least six members of the High Judicial Council.

In the case that the High Judicial Council does not make a decision in the matters in its jurisdiction prescribed by law, within 30 days from the day of the first decision making on that matter, the term of office of all members of the High Judicial Council shall cease.

The High Judicial Council shall publicly announce and explain its decisions, and make the decisions on the election and cessation of the tenure of office of judges, presidents of courts, and lay judges, decisions on the transfer and temporary relocation of judges, and decisions on the appointment and dismissal of members of disciplinary bodies on the basis of

the criteria determined in accordance with the law and under a legally prescribed procedure.

The present Amendment shall supersede Article 155 of the Constitution of the Republic of Serbia.

AMENDMENT XVII
Immunity of the members of the High Judicial Council

Members of the High Judicial Council cannot be held accountable for an opinion expressed or vote given in decision-making within the High Judicial Council, unless they have committed a criminal offense.

The members of the High Judicial Council cannot be deprived of liberty in the proceedings initiated against them for a criminal offense they have committed as members of the High Judicial Council without the approval of the High Judicial Council.

The present Amendment shall supersede Article 156 of the Constitution of the Republic of Serbia.

AMENDMENT XVIII
8. Public Prosecutor's Offices
Status

The Public Prosecutor's Office shall be an autonomous state body which shall prosecute the perpetrators of criminal offenses and other punishable actions and shall protect the constitutionality and legality, human rights and civil freedoms.

The Public Prosecutor's Office shall perform its function in accordance with the Constitution, ratified international treaties, laws and other general acts.

Any influence on Public Prosecutor's Office in an individual criminal prosecution case is prohibited.

The establishment, organization, and jurisdiction of the Public Prosecutor's Office shall be regulated by the law.

The Supreme Public Prosecutor's Office shall be the highest public prosecutor's office in the Republic of Serbia.

The Supreme Public Prosecutor of Serbia shall perform the function of the public prosecution within the rights and duties of the Republic of Serbia.

The present Amendment shall supersede Article 157 of the Constitution of the Republic of Serbia.

AMENDMENT XIX
Responsibility

The Supreme Public Prosecutor of Serbia shall be responsible to the National Assembly for the work of the public prosecution and his/her own work.

Public prosecutors shall be responsible for the work of the public prosecution and their own work to the Supreme Public Prosecutor of Serbia and the National Assembly, and public prosecutors of lower-instance prosecutor's offices also to the public prosecutors in immediately higher prosecutor's offices.

Deputy public prosecutors are responsible for their work to the public prosecutor.

The present Amendment shall supersede Article 158 of the Constitution of the Republic of Serbia.

AMENDMENT XX
Public Prosecutors and Deputy Public Prosecutors

A Public Prosecutor shall perform the function of the Public Prosecutor's Office.

A Deputy Public Prosecutor shall stand in for the Public Prosecutor in performing the function of the Public Prosecutor's Office and shall be obliged to act upon instruction from the public prosecutor.

A Deputy Public Prosecutor shall have available legal remedy against the instructions of the public prosecutor.

Prosecutorial assistants may perform certain legally determined actions within the jurisdiction of the public prosecutor.

The present Amendment shall supersede Article 159 of the Constitution of the Republic of Serbia.

AMENDMENT XXI
Election of the Supreme Public Prosecutor of Serbia and Public Prosecutors

The National Assembly shall elect the Supreme Public Prosecutor of Serbia to a five-year term of office, upon the proposal of the High Prosecutorial Council, after having conducted a public competition.

The same person cannot be reelected as the Supreme Public Prosecutor of Serbia.

The National Assembly shall elect public prosecutors on the proposal of the High Prosecutorial Council to a five-year term of office.

In the case of cessation of their term of office, the Supreme Public Prosecutor of Serbia and public prosecutors shall retain the position of deputy public prosecutor, in accordance with the law.

The present Amendment shall supersede Article 160 of the Constitution of the Republic of Serbia.

AMENDMENT XXII
Conditions for election of public prosecutors and deputy public prosecutors

General and special conditions for the election of public prosecutors and deputy public prosecutors shall be regulated by law.

The person who is elected for the first time as deputy public prosecutor in the lowest public prosecutor's office may be elected only if he or she has completed one of the forms of legally stipulated training in a judicial training institution.

The present Amendment shall supersede Article 161 of the Constitution of the Republic of Serbia.

AMENDMENT XXIII
Life Tenure of Deputy Public Prosecutors

The function of deputy public prosecutor shall be permanent and shall last from the moment of the appointment until the retirement.

A deputy public prosecutors' tenure of office shall cease, prior to the retirement, upon personal request, in case of permanent disability for function of deputy public prosecutor or in case of dismissal.

A deputy prosecutor shall be dismissed if he/she has been convicted for a criminal offense to a sentence of imprisonment of at least six months or if he/she has been convicted for a criminal offence that renders him/her unworthy for the function of deputy public prosecutor; if he/she incompetently performs function of deputy public prosecutor, or in case of committing a serious a disciplinary offense.

A deputy public prosecutor shall have the right to lodge an appeal with the Constitutional Court against a decision of the High Prosecutorial Council on cessation of the tenure of office, which shall exclude the right to lodge a Constitutional appeal.

The present Amendment shall supersede Article 162 of the Constitution of the Republic of Serbia.

AMENDMENT XXIV
Immunity and Incompatibility

A public prosecutor and a deputy public prosecutor cannot be held accountable for an opinion expressed or a decision made in performing prosecutorial function, unless they have committed a criminal offense of violation of law by a judge, public prosecutor or his deputy.

A public prosecutor and a deputy public prosecutor may not be deprived of liberty in the legal proceedings initiated against him/her for a criminal offense committed while performing prosecutorial function without the approval of the High Prosecutorial Council.

A public prosecutor and a deputy public prosecutor shall be prohibited to engage in political actions, while other functions, activities or private interests which are incompatible with the prosecutorial function shall be stipulated by the law.

The present Amendment shall supersede Article 163 of the Constitution of the Republic of Serbia.

AMENDMENT XXV
*High Prosecutorial Council
Jurisdiction of the High Prosecutorial Council*

The High Prosecutorial Council is an autonomous state body that ensures the autonomy of the public prosecutors' offices, public prosecutors and deputy public prosecutors by deciding on the issues related to the status of public prosecutors and deputy public prosecutors, which are determined under the Constitution and the law.

The High Prosecutorial Council shall propose to the National Assembly the appointment and dismissal of the Supreme Public Prosecutor and public prosecutors; appoint deputy public prosecutors and decide on the cessation of their tenure of office; evaluate the performance of public prosecutors, deputy prosecutors and prosecutorial assistants; appoint and dismiss the members of the disciplinary bodies; submit the annual report on the work of the public prosecutors' offices to the National Assembly; propose the amount of funds required for the work of the High Prosecutorial Council and the work of public prosecutor's offices in matters within its competence and autonomously dispose of these funds and shall decide on other issues related to the status of the Supreme Public Prosecutor of Serbia, public prosecutors, and deputy public prosecutors provided by the law.

The present Amendment shall supersede Article 164 of the Constitution of the Republic of Serbia.

AMENDMENT XXVI
Composition of the High Prosecutorial Council

The High Prosecutorial Council shall have eleven members: four deputy public prosecutors elected by public prosecutors and deputy public prosecutors, five prominent lawyers elected by the National Assembly, the Supreme Public Prosecutor of Serbia and the minister in charge of the judiciary. A prominent lawyer shall be a law school graduate with a Bar exam who has at least ten years of working experience in the field of law falling within the competence of the High Prosecutorial Council, who demonstrated professional work and enjoys personal reputation.

The National Assembly shall elect five members of the High Prosecutorial Council upon the proposal of the competent parliamentary committee after conducting a public competition, by a three-fifth majority vote of all deputies and in case they are not all elected in this manner, the remaining members shall be elected within the next ten days by a five-ninth majority vote of all deputies. If all the members are not elected even in that manner, the remaining members shall be elected, after 15 days, from among the proposed candidates, by a commission comprised of the President of the National Assembly, the President of the Constitutional Court, the President of the Supreme Court of Serbia, the Supreme Public Prosecutor of Serbia and the Ombudsman, by majority vote.

The competent committee of the National Assembly shall propose twice as many candidates as the number of members elected.

The principle of equal representation of public prosecutors' offices shall be taken into account in the process of election of deputy public prosecutors as members of the High Prosecutorial Council.

Public prosecutors may not be members of the High Prosecutorial Council.

The present Amendment shall supersede Article 165 of the Constitution of the Republic of Serbia.

AMENDMENT XXVII
Term of Office of Members of the High Prosecutorial Council and President of the High Prosecutorial Council
Article 165a

Member of the High Prosecutorial Council shall be elected to a five-year term of office.

The same person may not be reelected as member of the High Prosecutorial Council.

The term of office of a member of the High Prosecutorial Council shall terminate for reasons and in the proceedings prescribed by law.

The Supreme Public Prosecutor of Serbia shall perform *ex officio* the function of the president of the High Prosecutorial Council.

AMENDMENT XXVIII
Work and Decision-making of the High Prosecutorial Council
Article 165b

The High Judicial Council may make decisions at a session where at least nine members of the High Prosecutorial Council are present.

The decision shall be made by the votes of at least six members of the High Prosecutorial Council.

The High Prosecutorial Council shall publicly announce and explain its decisions, and make the decisions on the proposal for election and cessation of the term of office of Supreme Public Prosecutor of Serbia and public prosecutors, on election and dismissal of deputy public prosecutors, and decisions on the appointment and dismissal of members of disciplinary bodies on the basis of the criteria determined in accordance with the law and under a legally prescribed procedure.

The minister in charge of the judiciary and the Supreme Public Prosecutor of Serbia may initiate disciplinary proceedings and proceedings against public prosecutors and deputy public prosecutors, but cannot decide in the disciplinary proceedings.

AMENDMENT XXIX
Immunity of Members of the High Prosecutorial Council
Article 165c

Members of the High Prosecutorial Council cannot be held accountable for an opinion expressed or vote given in decision-making within the High Prosecutorial Council, unless they have committed a criminal offense.

The members of the High Prosecutorial Council cannot be deprived of liberty in the proceedings initiated against them for a criminal offense they have committed as members of the High Prosecutorial Council without the approval of the High Prosecutorial Council.