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

**SERBIA**

**REVISED DRAFT ACT**  
**REGARDING AMENDMENTS**  
**TO THE CONSTITUTION**

Committee on Constitutional Affairs and Legislation, at its 68th session held on October 26, 2021, approved the text of the Draft of Act regarding amendments of Constitution of the Republic of Serbia, as follows:

### **AMENDMENT I**

The present Amendment shall supersede Article 4 of the Constitution of the Republic of Serbia

#### Article 4

The legal system is unitary.

The organization of power rests on the division of power into legislative, executive and judicial.

The relation among the three branches of power shall be based on checks and balances.

The judicial power is independent.

### **AMENDMENT II**

The present Amendment shall supersede Article 99 Para 2 Item 3 of the Constitution of the Republic of Serbia

“3. appoint four members of the High Judicial Council, four members of the High Prosecutorial Council and appoint the Supreme Public Prosecutor and decide on the termination of his or her term of office,”

### **AMENDMENT III**

The present Amendment shall delete Article 105 Para 2 Items 12 and 13 and add Para 4 in Article 105 of the Constitution of the Republic of Serbia

The words: “12. elect the president of the Supreme Court of Cassation, presidents of the courts, the Republic Public Prosecutor and public prosecutors and decide on termination of their term of office,

13. elect judges and deputy public prosecutors, in accordance with the Constitution” shall be deleted.

A new Paragraph 4 is added to read as follows:

The National Assembly shall elect four members of the High Judicial Council and four members of the High Prosecutorial Council by means of a two-thirds majority vote of all deputies and elect the Supreme Public Prosecutor and decide on the termination of his or her term of office by means of a three-fifths majority vote of all deputies.

### **AMENDMENT IV**

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

#### Judiciary principles

#### Article 142

Judicial power shall belong to the courts which are independent.

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

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

A court decision may only be reviewed by legally authorized court in the proceedings prescribed by the law, and by the Constitutional Court in the proceedings upon constitutional complaint.

A passed sentence may be fully or partially revoked without a court decision, by amnesty or presidential pardon.

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

It may be provided by the law that apart from the judges the lay judges may also take part in a trial.

#### **AMENDMENT V**

The present Amendment shall amend the heading of Article 143 and supersede Article 143 of the Constitution of the Republic of Serbia

##### Organization of courts

###### Article 143

Establishing, abolishing, the types of courts, jurisdiction, territory and seats of courts, composition of a court and court proceedings shall be regulated by the law.

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

Courts-martial, provisional courts or extraordinary courts shall not be established.

#### **AMENDMENT VI**

The present Amendment shall amend the heading of Article 144 and supersede Article 144 of the Constitution of the Republic of Serbia

##### Independence of judges

###### Article 144

A judge shall be independent and shall rule in accordance with the Constitution, ratified international treaties, laws, generally accepted principles of international law and bylaws, adopted in line with law.

Improper influence on a judge while performing judicial function is prohibited.

#### **AMENDMENT VII**

The present Amendment shall amend the heading of Article 145 and supersede Article 145 of the Constitution of the Republic of Serbia

##### Conditions for election of judges

###### Article 145

Conditions for election of judges and conditions for election and the term of office of lay judges shall be regulated by the law.

#### **AMENDMENT VIII**

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

## Permanent Tenure of Judicial Office

### Article 146

A judge shall have a permanent tenure.

Tenure of judicial office shall be permanent and shall last from the moment of the election until the retirement.

Prior to the retirement, a judge's tenure of office shall cease at personal request, in case of permanent loss of ability to exercise judicial function, in case of termination of citizenship of the Republic of Serbia or in a case of dismissal.

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

The High Judicial Council shall pass a decision on termination of a judge's tenure of office.

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

## AMENDMENT IX

The present Amendment shall amend the heading of Article 147 and supersede Article 147 of the Constitution of the Republic of Serbia

### Non-transferability of judges

#### Article 147

A judge shall have the right to perform judicial function in the court to which he/she was elected, and may be permanently relocated or temporarily transferred to another court only with his/her own consent, except in cases provided for by the Constitution.

In case of dissolution of the court, a judge may be relocated to another court which assumed the jurisdiction of the dissolved court.

In case of revocation of the substantial part of the jurisdiction of the court to which he/she was elected, a judge may exceptionally, without his/her consent, be permanently relocated or temporarily transferred to another court of the same degree which assumed the substantial part of jurisdiction, in accordance with the law.

A judge who is transferred or relocated to another court may retain the salary he/she had in the court from which he/she was permanently relocated or temporarily transferred, if it is more favourable for him/her.

The revocation of the substantial part of the jurisdiction of the court shall exist when the necessary number of judges in the court is decreased due to the change of court's jurisdiction, or the establishment of a new court, or in other situations provided for by law.

A judge shall have the right to lodge an appeal with the Constitutional Court against the decision on his or her permanent relocation or temporary transfer, which shall exclude the right to lodge a Constitutional complaint.

## AMENDMENT X

The present Amendment shall amend the heading of Article 148 and supersede Article 148 of the Constitution of the Republic of Serbia

### Immunity and Incompatibility

Article 148

A judge cannot be held accountable for an opinion expressed within the court proceedings or voting in the process of passing a court decision, unless he/she commits the criminal offense of violation of law by a judge or public prosecutor. A judge shall 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.

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

A judge shall be prohibited to engage in political actions.

**AMENDMENT XI**

The present Amendment shall amend the heading of Article 149 and supersede Article 149 of the Constitution of the Republic of Serbia

President of the Supreme Court and Presidents of Courts

Article 149

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

The same person cannot be elected more than once as a President of the Supreme Court.

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

**AMENDMENT XII**

The present Amendment shall amend the heading of Article 150 and supersede Article 150 of the Constitution of the Republic of Serbia

High Judicial Council

Jurisdiction of the High Judicial Council

Article 150

The High Judicial Council is an independent body which shall provide for and guarantee independence of courts and judges, presidents of courts and lay judges.

The High Judicial Council shall elect judges and lay judges and decide on the cessation of their tenure, elect the president of the Supreme court and presidents of other courts and decide on the cessation of their tenure, decide on the transfer and temporary relocation of judges, determine the necessary number of judges and lay judges, decide on other issues related to the status of judges, presidents of courts and lay judges and perform other functions provided for by the Constitution and law.

**AMENDMENT XIII**

The present Amendment shall amend the heading of Article 151 and supersede Article 151 of the Constitution of the Republic of Serbia

Composition of the High Judicial Council

Article 151

The High Judicial Council shall have 11 members: six judges elected by the judges, president of the Supreme court and four prominent lawyers elected by the National Assembly.

Election of the members of the High Judicial Council from among the judges shall be stipulated by the law.

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

The National Assembly shall elect members of the High Judicial Council among prominent lawyers with at least 10 years of experience in legal practice, among 8 candidates proposed by the competent committee of the National Assembly, after having conducted public competition, by a two-thirds majority vote of all deputies, pursuant to the law.

If the National Assembly has not elected all the four members within deadline stipulated by the law, the remaining members upon the expiry of the deadline stipulated by the law shall be elected from among the candidates who meet the criteria for election, by a commission comprised of the President of the National Assembly, the President of the Constitutional Court, the President of the Supreme Court, the Supreme Public Prosecutor and the Ombudsman, by majority vote.

Presidents of courts shall not be elected for members of the High Judicial Council.

A member of the High Judicial Council elected by the National Assembly shall be honorable of the function.

Member of the High Judicial Council elected by the National Assembly may not be a member of political party.

Other conditions for election and incompatibility with the function of the member of the High Judicial Council elected by the National Assembly shall be defined by the law.

#### **AMENDMENT XIV**

The present Amendment shall delete the name of the Section 8 and the heading of the Section 8 and shall amend the heading of Article 152 and supersede Article 152 of the Constitution of the Republic of Serbia

The term of office of members of the High Judicial Council and president and vice president of the High Judicial Council

#### **Article 152**

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

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

The High Judicial Council shall have a president and a vice president. The president of the High Judicial Council shall be elected from among members of the High Judicial Council who are judges and the vice president from among members who are elected by the National Assembly for the period of five years. The President of the Supreme Court shall not be elected for the President of the High Judicial Council.

Before the expiry of the period to which he or she is elected, the term of office of a member of the High Judicial Council shall cease upon personal request, or if he or she is convicted of a criminal offense to at least six months of imprisonment. The term of office of a member who is a judge shall cease in case of the termination of his/her judicial function and the term of office of a member who is not a judge shall also cease in case of permanent loss of ability to exercise the function of a member of the High Judicial Council.

The decision on the termination of the term of office of a member of the High Judicial Council shall be made by the High Judicial Council. An appeal against the decision shall be allowed to the Constitutional Court, which excludes the right to a constitutional complaint.

#### **AMENDMENT XV**

The present Amendment shall amend the heading of Article 153 and supersede Article 153 of the Constitution of the Republic of Serbia

Legal remedy against the decision of the High Judicial Council

Article 153

An appeal may be lodged with the Constitutional Court against a decision of the High Judicial Council, in cases stipulated by the Constitution and the law. The lodged appeal to the Constitutional Court shall exclude the right to lodge a Constitutional complaint.

**AMENDMENT XVI**

The present Amendment shall delete the name of the Section 9 and the heading of the Section 9 and shall amend the heading of Article 154 and supersede Article 154 of the Constitution of the Republic of Serbia

Immunity of the members of the High Judicial Council

Article 154

Members of the High Judicial Council cannot be held accountable for an opinion expressed in regard to performing the duties of a member of the High Judicial Council and for voting during decision-making within the High Judicial Council.

The members of the High Judicial Council shall not 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.

**AMENDMENT XVII**

The present Amendment shall add the name for Section 8, above the Article 155, and the new heading of the Section 8 and shall amend the heading of Article 155 and supersede Article 155 of the Constitution of the Republic of Serbia

8. Public Prosecutor's Offices

Status

Article 155

The Public Prosecutor's Office shall be unitary and an autonomous state body which shall prosecute the perpetrators of criminal offenses and other punishable actions and perform other tasks to protect public interest as prescribed by law.

The Public Prosecutor's Office shall perform its function in accordance with the Constitution, ratified international treaties, laws, generally accepted principles of international law and bylaws adopted in line with the law.

Any influence on Public Prosecutor's Office and holders of public prosecutorial function in an individual criminal prosecution case is prohibited.

Establishing, organisation and jurisdiction of Public Prosecutor's Office shall be specified by the law.

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

The function of the public prosecutor's office shall be performed by the Supreme Public Prosecutor, Chief Public Prosecutors and public prosecutors.

The Supreme Public Prosecutor and Chief Public Prosecutor shall have hierarchical powers over the lower Chief Public Prosecutors and public prosecutors in regard to their acting in a concrete case.

Hierarchical powers and legal remedies against them shall be stipulated in detail by law.

**AMENDMENT XVIII**

The present Amendment shall amend the heading of Article 156 and supersede Article 156 of the Constitution of the Republic of Serbia  
Responsibility

Article 156

The Supreme Public Prosecutor shall be responsible to the National Assembly for the work of the public prosecution and his/her own work. The Supreme Public Prosecutor shall not be responsible to the National Assembly for acting in an individual case.

The Chief Public Prosecutor shall be responsible for the work of the public prosecution's office and his/her own work to the Supreme Public Prosecutor, and to the immediately higher Chief Public Prosecutor, in line with the law.

Public prosecutors shall be responsible for their work to the Chief Public Prosecutor, in line with the law.

**AMENDMENT XIX**

The present Amendment shall amend the heading of Article 157 and supersede Article 157 of the Constitution of the Republic of Serbia

Mandatory instructions for acting of the Chief Public Prosecutor and public prosecutors

Article 157

The Supreme Public Prosecutor shall issue general mandatory instructions for acting of all Chief Public Prosecutors in order to achieve legality, effectiveness and uniformity in performance.

An immediately higher Chief Public Prosecutor may issue a mandatory instruction for acting in a particular case to the lower Chief Public Prosecutor, if there is doubt about the efficiency and legality of his or her acting. The Supreme Public Prosecutor may issue such instructions to any Chief Public Prosecutor.

The Chief Public Prosecutor may issue mandatory instructions for work and acting to the public prosecutors.

The Chief Public Prosecutor and public prosecutors shall act according to mandatory instructions.

A lower Chief Public Prosecutor who considers that the mandatory instruction is unlawful or ill-founded shall have the right to complain, according to the law.

**AMENDMENT XX**

The present Amendment shall amend the heading of Article 158 and supersede Article 158 of the Constitution of the Republic of Serbia

Election and termination of term of office of the Supreme Public Prosecutor  
and the Chief Public Prosecutor

Article 158

The Supreme Public Prosecutor shall be elected by the National Assembly to a six-year term of office, upon the proposal of the High Prosecutorial Council, after having conducted a public competition, by majority vote of three fifths of all deputies, in line with the law.

The High Prosecutorial Council shall propose one candidate for the Supreme Public prosecutor to the National Assembly.

If the National Assembly has not elected the Supreme Public Prosecutor within the stipulated deadline, upon the expiry of the next ten days, the commission comprised of the President of the National Assembly, the President of the Constitutional Court, the President of

the Supreme Court, the Supreme Public Prosecutor and the Ombudsman, shall perform the election by majority vote, from among the candidates who meet the criteria for election.

The same person cannot be re-elected as the Supreme Public Prosecutor.

The Chief Public Prosecutor shall be elected by the High Prosecutors Council to a six-year term of office.

Prior to the termination of the term of office, the function of the Supreme Public Prosecutor and the Chief Public Prosecutor shall cease at personal request, if the public prosecutor's office is dissolved, in case of permanent loss of ability to exercise public prosecutorial function, in case of termination of citizenship of the Republic of Serbia or in a case of dismissal.

The Supreme Public Prosecutor and the Chief Public Prosecutor shall be dismissed if he/she is convicted of a criminal offense to at least six months of imprisonment or if some of the legally stipulated reasons for dismissal occurred.

The Chief Public Prosecutor shall have the right to lodge an appeal with the Constitutional Court against a decision of the High Prosecutorial Council on termination of the term of office, which shall exclude the right to lodge a Constitutional complaint.

In the case of termination of their term of office, the Supreme Public Prosecutor and the Chief Public Prosecutor shall retain the position of public prosecutor, in accordance with the law.

### **AMENDMENT XXI**

The present Amendment shall amend the heading of Article 159 and supersede Article 159 of the Constitution of the Republic of Serbia

Conditions for the election of the Chief Public Prosecutor and public prosecutor

#### **Article 159**

Conditions for the election of the Chief Public Prosecutor and public prosecutor are regulated by the law.

### **AMENDMENT XXII**

The present Amendment shall amend the heading of Article 160 and supersede Article 160 of the Constitution of the Republic of Serbia

Permanent Tenure of a Public Prosecutor

#### **Article 160**

The Tenure of a Public Prosecutor is permanent.

A public prosecutors' tenure shall cease, prior to the retirement, upon personal request, in case of permanent loss of ability to exercise the function of public prosecutor, in case of termination of citizenship of the Republic of Serbia or in a case of dismissal.

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

The decision on the termination of the term of office of a Public prosecutor shall be made by the High Prosecutorial Council.

Public prosecutor shall have the right to lodge an appeal with the Constitutional Court against a decision of the High Prosecutorial Council on termination of the term of office, which shall exclude the right to lodge a Constitutional complaint.

### **AMENDMENT XXIII**

The present Amendment shall amend the heading of Article 161 and supersede Article 161 of the Constitution of the Republic of Serbia

#### Immunity and incompatibility

##### Article 161

The Supreme Public Prosecutor, Chief Public Prosecutor and public prosecutor shall not be held accountable for an opinion expressed or a decision made in performing their function, unless they commit a criminal offense of violation of law by a judge or public prosecutor.

The Supreme Public Prosecutor, Chief Public Prosecutor and public prosecutor shall not be deprived of liberty in the legal proceedings initiated against him/her for a criminal offense committed while performing their function, without the approval of the High Prosecutorial Council.

The law shall stipulate which functions, activities or private interests are incompatible with the function of the Supreme Public Prosecutor, Chief Public Prosecutor and public prosecutor.

#### **AMENDMENT XXIV**

The present Amendment shall amend the heading of Article 162 and supersede Article 162 of the Constitution of the Republic of Serbia

#### High Prosecutorial Council

##### Jurisdiction of the High Prosecutorial Council

##### Article 162

The High Prosecutorial Council is an autonomous state body that shall guarantee the autonomy of the public prosecutors' offices, the Supreme Public Prosecutor, Chief Public Prosecutors and public prosecutors.

The High Prosecutorial Council shall propose to the National Assembly the election and dismissal of the Supreme Public Prosecutor, elect acting Supreme public prosecutor, Chief Public Prosecutors and public prosecutors and decide on the cessation of their term of office and on other issues concerning the status of the Supreme public prosecutor, Chief Public Prosecutors and public prosecutors and performs other duties within its remit of jurisdiction defined by the Constitution and law.

#### **AMENDMENT XXV**

The present Amendment shall amend the heading of Article 163 and supersede Article 163 of the Constitution of the Republic of Serbia

#### Composition of the High Prosecutorial Council

##### Article 163

High Prosecutorial Council is comprised of 11 members: five public prosecutors elected by all Chief Public Prosecutors and public prosecutors, four prominent lawyers elected by the National Assembly, the Supreme Public Prosecutor and the Minister of Justice.

The Minister of Justice may not vote in a procedure for determining disciplinary responsibility of a public prosecutor.

Election of the members of the High Prosecutorial Council from among the prosecutors is stipulated by the law.

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

The National Assembly shall elect four members of the High Prosecutorial Council among prominent lawyers with at least ten years of experience in legal practice, among eight candidates proposed by the competent committee of the National Assembly, after having conducted public competition, by a two-thirds majority vote of all deputies, in line with the law.

If the National Assembly has not elected all the four members until the deadline stipulated by the law, the remaining members, upon the expiry of the deadline stipulated by the law, shall be elected from among the candidates who meet the criteria for election, by a commission comprised of the President of the National Assembly, the President of the Constitutional Court, the President of the Supreme Court, the Supreme Public Prosecutor and the Ombudsman, by majority vote.

Chief Public Prosecutors may not be elected to the High Prosecutorial Council.

A member of the High Prosecutorial Council elected by the National Assembly shall be honorable of the function.

Member of the High Prosecutorial Council elected by the National Assembly may not be a member of a political party.

Other conditions for election and incompatibility with the function of the member of the High Prosecutorial Council elected by the National Assembly shall be defined by the law.

#### **AMENDMENT XXVI**

The present Amendment shall amend the heading of Article 164 and supersede Article 164 of the Constitution of the Republic of Serbia

The term of office of members of the High Prosecutorial Council and president and vice president of the High Prosecutorial Council

#### **Article 164**

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

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

The High Prosecutorial Council shall have a president and a vice president. The president of the High Prosecutorial Council shall be elected from among members of the High Prosecutorial Council who are prosecutors and the vice president from among members who are elected by the National Assembly for the period of five years.

Before the expiry of the period to which he or she is elected, the term of office of a member of the High Prosecutorial Council shall cease upon personal request, or if he or she is convicted of a criminal offense to at least six months of imprisonment. The term of office of a member who is a public prosecutor shall cease in case of the termination of a public prosecutor's office and the term of office of a member who is not a public prosecutor shall also cease in case of permanent loss of ability to exercise the function of a member of the High Prosecutorial Council.

The decision on the termination of the term of office of a member of the High Prosecutorial Council shall be made by the High Prosecutorial Council. An appeal against the decision shall be allowed to the Constitutional Court, which excludes the right to a constitutional complaint.

#### **AMENDMENT XXVII**

The present Amendment shall amend the heading of Article 165 and Article 165 to the Constitution of the Republic of Serbia

Legal remedy against the decision of the High Prosecutorial Council

#### **Article 165**

An appeal may be lodged with the Constitutional Court against a decision of the High Prosecutorial Council, in cases stipulated by the Constitution and the law. The lodged appeal to the Constitutional Court shall exclude the right to lodge a Constitutional complaint.

### **AMENDMENT XXVIII**

The present Amendment shall add the heading  
of Article 165a and Article 165a to the Constitution of the Republic of Serbia

Immunity of Members of the High Prosecutorial Council

#### **Article 165a**

Members of the High Prosecutorial Council shall not be held accountable for an opinion expressed or vote given in decision-making within the High Prosecutorial Council.

The members of the High Prosecutorial Council shall not 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.

### **AMENDMENT XXIX**

The present Amendment shall supersede Article 172 Paras 2 and 3 of the Constitution of the  
Republic of Serbia

2) Five judges of the Constitutional Court shall be elected by the National Assembly, five shall be appointed by the President of the Republic, and five shall be elected at the general session of the Supreme Court.

3) The National Assembly shall elect five judges of the Constitutional Court from among ten candidates nominated by the President of the Republic, the President of the Republic shall appoint five judges of the Constitutional Court from among the ten candidates nominated by the National Assembly, and the General Session of the Supreme Court shall appoint five judges from among the ten candidates proposed by the High Judicial Council and the High Prosecutorial Council.