

Pursuant to Article 203 paragraph 9 of the Constitution of the Republic of Serbia and Article 42 paragraph 1 of the Law on Referendum and People's Initiative ("Official Gazette of the RS" No. 111/21 и 119/21), at its Tenth Special Sitting within the Twelfth term of office, held on 9 February 2022, the National Assembly of the Republic of Serbia passed the following

DECISION

PROMULGATING THE ACT AMENDING THE CONSTITUTION OF THE REPUBLIC OF SERBIA

I

This is to promulgate the Act Amending the Constitution of the Republic of Serbia adopted by the National Assembly of the Republic of Serbia at its Eight Special Sitting during the Twelfth term of office, held on 30 November 2021, and approved at the national referendum held on 16 January 2022.

II

This Decision shall be published in the "Official Gazette of the Republic of Serbia".

RS No. 9

In Belgrade, 9 February 2022

NATIONAL ASSEMBLY OF THE REPUBLIC OF SERBIA

SPEAKER

Ivica Dačić

ACT AMENDING THE CONSTITUTION OF THE REPUBLIC OF SERBIA

AMENDMENT I

Article 4 of the Constitution of the Republic of Serbia shall be replaced by this amendment:

Article 4

The legal order is unitary.

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

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

The judicial power shall be independent.

AMENDMENT II

Article 99 para. 2 Item 3 of the Constitution of the Republic of Serbia shall be replaced by this amendment:

“3. Elect four members of the High Judicial Council, four members of the High Prosecutorial Council and elect the Prosecutor General and decide on the termination of their tenure,”

AMENDMENT III

With this amendment, Article 105 para. 2 Items 12 and 13 shall be deleted and in Article 105 of the Constitution of the Republic of Serbia, para. 4 shall be added.

The following words: “12. Elect the President of the Supreme Court of Cassation, presidents of courts, the Republic Public Prosecutor and public prosecutors and decide on termination of their tenure, 13. Elect judges and deputy public prosecutors, in accordance with the Constitution” shall be deleted.

New paragraph 4 shall be added, worded 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 MPs and shall elect the Prosecutor General and decide on the termination of their tenure by means of a three-fifths majority vote of all MPs.”

AMENDMENT IV

Article 142 of the Constitution of the Republic of Serbia shall be replaced by this amendment:

Judiciary principles

Article 142

Judicial power shall belong to courts as independent authorities.

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

Court decisions shall be passed in the name of people.

A court decision may only be reviewed by a competent court in the proceedings prescribed by law, and by the Constitutional Court in the proceedings upon constitutional appeals.

By pardon or amnesty, a sentence imposed may be remitted in whole or in part without a court decision.

Court proceedings shall be public, and the public may be excluded in accordance with the Constitution.

The law may prescribe that lay judges sit alongside professional judges.

AMENDMENT V

The heading of Article 143 and the wording of Article 143 of the Constitution of the Republic of Serbia shall be replaced by this amendment.

Organization of courts

Article 143

The establishment, abolition, types, jurisdiction, territorial jurisdiction, and seats of courts, as well as the composition of courts and procedure before the courts, shall be regulated by law.

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

The establishment of summary, temporary, or ad hoc courts shall be prohibited.

AMENDMENT VI

The heading of Article 144 and the wording of Article 144 of the Constitution of the Republic of Serbia shall be replaced by this amendment.

Independence of judges

Article 144

A judge shall be independent and shall adjudicate in accordance with the Constitution, ratified international treaties, generally recognised rules of international law and other general legal instruments, adopted in line with the law.

Any undue influence on a judge while performing the duties of judicial office shall be prohibited.

AMENDMENT VII

The heading of Article 145 and the wording of Article 145 of the Constitution of the Republic of Serbia shall be replaced by this amendment.

Conditions for election of judges

Article 145

The conditions for the election of judges, as well as the conditions for the election and term of office of lay judges, shall be regulated by law.

AMENDMENT VIII

Article 146 of the Constitution of the Republic of Serbia shall be replaced by this amendment.

Permanent tenure of judicial office

Article 146

A judge shall have permanent tenure.

Tenure of judicial office shall last from the moment of the election until the retirement of the judge.

Judicial office shall cease before retirement if the judge so requests, if the judge permanently loses the capacity to perform judicial functions, if the judge's citizenship of the Republic of Serbia ceases, or if the judge is dismissed.

A judge shall be dismissed if convicted of a criminal offence punishable by imprisonment of at least six months, or if, in disciplinary proceedings, it is established that the judge has committed a serious disciplinary offence which, in the assessment of the High Judicial Council, seriously damages the reputation of judicial office or public confidence in the courts.

The decision on the cessation of judicial office shall be taken by the High Judicial Council.

Judge shall have the right to lodge an appeal with the Constitutional Court against a decision of the High Prosecutorial Council on termination of judicial office, which excludes the right to constitutional appeal.

AMENDMENT IX

The heading of Article 147 and the wording of Article 147 of the Constitution of the Republic of Serbia shall be replaced by this amendment.

Non-transferability of judges

Article 147

A judge shall have the right to perform judicial functions in the court to which they were elected and may be permanently transferred or temporarily assigned to another court only with their consent, except in cases provided for by the Constitution.

In the event of the abolition of a court, the judge shall be transferred to the court that assumes the jurisdiction of the abolished court.

In the event of abolition of the predominant part of a court's jurisdiction, a judge may exceptionally be permanently transferred or temporarily assigned to another same-instance court that has assumed the predominant part of the jurisdiction without their consent.

A judge who has been permanently transferred or temporarily assigned to another court shall have the right to retain the salary they received in the court from which they were transferred or assigned, if such salary is more favourable.

A court shall be deemed to have lost the predominant part of its jurisdiction if, as a result of a change in the actual jurisdiction of the court, the establishment of a new court, or another case prescribed by law, the required number of judges in the court has been reduced.

Judge shall have the right to lodge an appeal with the Constitutional Court against the decision on permanent transfer or temporary assignment, which excludes the right to constitutional appeal.

AMENDMENT X

The heading of Article 148 and the wording of Article 148 of the Constitution of the Republic of Serbia shall be replaced by this amendment.

Immunity and Incompatibility

Article 148

A judge shall not be held accountable for opinions expressed in connection with the performance of judicial functions or for voting in the court decision-making process, except where they commit a criminal offence of breach of law by a judge or public prosecutor.

A judge may not be deprived of liberty without the approval of the High Judicial Council in proceedings initiated for a criminal offence committed in the performance of judicial functions.

The law shall regulate which functions, duties, or private interests are incompatible with the office of judge and lay judge.

Political activity by judges shall be prohibited.

AMENDMENT XI

The heading of Article 149 and the wording of Article 149 of the Constitution of the Republic of Serbia shall be replaced by this amendment.

President of the Supreme Court and Presidents of Courts

Article 149

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

The same person may not be elected more than once as President of the Supreme Court.

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

AMENDMENT XII

The heading of Article 150 and the wording of Article 150 of the Constitution of the Republic of Serbia shall be replaced by this amendment.

High Judicial Council

Competences of the High Judicial Council

Article 150

The High Judicial Council shall be an independent public authority which shall ensure and guarantee the independence of courts, judges, presidents of courts, and lay judges.

The High Judicial Council shall elect judges and lay judges and decide on the termination of their office, elect the President of the Supreme Court and presidents of other courts and decide on the termination of their office, decide on the transfer and assignment of judges, determine the required number of judges and lay judges, decide on other matters concerning the status of judges, presidents of courts, and lay judges, and shall perform other duties prescribed by the Constitution and law.

AMENDMENT XIII

The heading of Article 151 and the wording of Article 151 of the Constitution of the Republic of Serbia shall be replaced by this amendment.

Composition of the High Judicial Council

Article 151

The High Judicial Council shall consist of eleven members: six judges elected by judges, four distinguished legal professionals elected by the National Assembly, and the President of the Supreme Court.

Election of the members of the High Judicial Council from the rank of judges shall be regulated by law.

In electing judges to the High Judicial Council, account shall be taken of the broadest possible representation of judges.

The National Assembly shall elect members of the High Judicial Council from among distinguished legal professionals with at least ten years of experience in the legal profession, from among eight candidates nominated by the competent committee of the National Assembly following a public competition, by a two-thirds majority vote of all MPs, in accordance with the law.

If the National Assembly fails to elect all four members within the time limit prescribed by law, the remaining members shall be elected after the expiry of the legally prescribed deadline by a commission composed of the Speaker of the National Assembly, the President of the Constitutional Court, the President of the Supreme Court, the Supreme Public Prosecutor, and the Ombudsperson by majority vote from among all candidates who meet the conditions for election.

Presidents of courts shall not be eligible for election to the High Judicial Council.

A member of the High Judicial Council elected by the National Assembly must be worthy of the office.

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

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

AMENDMENT XIV

The heading of Article 152 and the wording of Article 152 of the Constitution of the Republic of Serbia shall be replaced by this amendment.

Term of office of High Judicial Council's members and the 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.

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 the members elected by the National Assembly, each to a five-year term. The President of the Supreme Court may not be elected as President of the High Judicial Council.

A High Judicial Council member's term shall cease before expiry if the member requests so, or if they are convicted of a criminal offence and sentenced to imprisonment of at least six months. A member who is a judge shall cease to hold office upon termination of judicial office. A member who is not a judge shall cease to hold office if they permanently lose the capacity to perform the duties of a member of the High Judicial Council.

The decision on termination of a member's term of office shall be taken by the High Judicial Council. An appeal against such a decision shall lie with the Constitutional Court, which shall exclude the right to constitutional appeal.

AMENDMENT XV

This amendment shall delete the label and the heading of the Section 8 and shall replace the heading of Article 153 and the wording of Article 153 of the Constitution of the Republic of Serbia.

Legal remedy against decisions of the High Judicial Council

Article 153

An appeal may be lodged with the Constitutional Court against a High Judicial Council's decision, in cases prescribed by the Constitution and law. The lodging of such an appeal shall exclude the right to file a constitutional appeal.

AMENDMENT XVI

The heading of Article 154 and the wording of Article 154 of the Constitution of the Republic of Serbia shall be replaced by this amendment.

Immunity of Members of the High Judicial Council

Article 154

Members of the High Judicial Council shall not be held accountable for opinions expressed in connection with the performance of their duties as members of the High Judicial Council, nor for voting in the decision-making process of the High Judicial Council.

Members of the High Judicial Council may not be deprived of liberty without the approval of the High Judicial Council in proceedings initiated for a criminal offence committed in their capacity as members of the High Judicial Council.

AMENDMENT XVII

This Amendment shall add the label for Section 8, above 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 Prosecution Offices

Position

Article 155

The Public Prosecution Office shall be a uniform and autonomous public authority which shall prosecute perpetrators of criminal and other punishable offences and shall exercise other functions to protect the public interest, as prescribed by law.

The Public Prosecution Office shall exercise its functions on the basis of the Constitution, ratified international treaties, laws, generally recognised rules of international law, and other general legal instruments adopted in accordance with the law.

No person outside the Public Prosecution Office shall be allowed to influence the Public Prosecution Office, or holders of prosecutorial office, in their actions or decisions in individual cases.

The establishment, abolition, organisation, and jurisdiction of the Public Prosecution Office shall be regulated by law.

The highest public prosecution authority in the Republic of Serbia shall be the General Public Prosecution, headed by the Prosecutor General.

The functions of the Public Prosecution Office shall be performed by the Prosecutor General, chief public prosecutors, and public prosecutors.

In managing the Public Prosecution Offices, the Prosecutor General and chief public prosecutors shall have hierarchical powers with respect to the conduct of subordinate chief public prosecutors and public prosecutors in individual cases.

Hierarchical powers and legal remedies against their exercise shall be further regulated by law.

AMENDMENT XVIII

This amendment shall delete the label and the heading of the Section 9 and shall replace the heading of Article 156 and the wording of Article 156 of the Constitution of the Republic of Serbia

Accountability**Article 156**

The Prosecutor General shall be accountable for the work of the Public Prosecution Office and for their own work to the National Assembly. The Prosecutor General shall not be accountable to the National Assembly for actions taken in individual cases.

Chief public prosecutors shall be accountable for the work of their respective Public Prosecution Offices and for their own work to the Prosecutor General and to their immediate superior chief public prosecutor, in accordance with the law.

Public prosecutors shall be accountable for their work to the chief public prosecutors, in accordance with the law.

AMENDMENT XIX

The heading of Article 157 and the wording of Article 157 of the Constitution of the Republic of Serbia shall be replaced by this amendment.

**Mandatory Instructions for the Conduct of Chief Public Prosecutors
and Public Prosecutors****Article 157**

The Prosecutor General shall issue general mandatory instructions for the conduct of all chief public prosecutors in order to ensure legality, effectiveness, and uniformity in proceedings.

The immediate superior chief public prosecutor may issue a mandatory instruction to a subordinate chief public prosecutor regarding the conduct in an individual case if there is suspicion concerning the efficiency or legality of their conduct. The Prosecutor General may issue such an instruction to any chief public prosecutor.

A chief public prosecutor may issue a mandatory instruction to a public prosecutor concerning their work and conduct.

Chief public prosecutors and public prosecutors shall comply with mandatory instructions.

A subordinate chief public prosecutor or public prosecutor who considers a mandatory instruction unlawful or unfounded shall have the right to object, in accordance with the law.

AMENDMENT XX

The heading of Article 158 and the wording of Article 158 of the Constitution of the Republic of Serbia shall be replaced by this amendment

**Election and Termination of Office of the Prosecutor General and
Chief Public Prosecutor****Article 158**

The Prosecutor General shall be elected by the National Assembly for a term of six years, upon the nomination of the High Prosecutorial Council following a public competition, by a vote of three-fifths of all Members of Parliament, in accordance with the law.

The High Prosecutorial Council shall nominate one candidate for the office of Prosecutor General to the National Assembly.

If the National Assembly fails to elect the Prosecutor General within the prescribed deadline, after the expiry of the next ten days, the Prosecutor General shall be elected, from among all candidates meeting the election criteria, by a commission composed of the Speaker of the National Assembly, the President of the Constitutional Court, the President of the Supreme Court, the Prosecutor General, and the Ombudsperson, by a majority vote.

The same person shall not be re-elected as Prosecutor General.

The Chief Public Prosecutor shall be elected by the High Prosecutorial Council for a term of six years.

Before the expiry of the term for which the Prosecutor General or Chief Public Prosecutor have been elected, their office shall terminate if they request so themselves, if the public prosecution office is abolished, if they permanently lose their capacity to perform the duties of the Prosecutor General or Chief Public Prosecutor, if they lose Serbian citizenship, or if they are dismissed.

The Prosecutor General and Chief Public Prosecutor shall be dismissed if convicted of a criminal offence punishable by imprisonment of at least six months or if any other grounds for dismissal prescribed by law occur.

The Chief Public Prosecutor shall have the right to appeal to the Constitutional Court against the decision of the High Prosecutorial Council on termination of office, which excludes the right to constitutional appeal.

The Prosecutor General and Chief Public Prosecutor whose office has terminated shall retain the position of public prosecutor in accordance with the law.

AMENDMENT XXI

The heading of Article 159 and the wording of Article 159 of the Constitution of the Republic of Serbia shall be replaced by this amendment

Conditions for the election of Chief Public Prosecutors and Public Prosecutors

Article 159

Conditions for the election of Chief Public Prosecutors and Public Prosecutors shall be regulated by law.

AMENDMENT XXII

The heading of Article 160 and the wording of Article 160 of the Constitution of the Republic of Serbia shall be replaced by this amendment

Permanent Tenure of the Public Prosecutor

Article 160

A public prosecutor shall have permanent tenure.

Before reaching the retirement age, the tenure of a public prosecutor shall terminate if they request it themselves, if they permanently lose the capacity to perform the duties of a public prosecutor, if they lose citizenship of the Republic of Serbia, or if they are dismissed

A public prosecutor shall be dismissed if convicted of a criminal offense punishable by imprisonment of at least six months, or if, in disciplinary proceedings, it is established that they committed a serious disciplinary offense which, according to

the assessment of the High Prosecutorial Council, seriously harms the reputation of the public prosecution or public confidence in the public prosecution.

The decision on the termination of a public prosecutor's tenure shall be made by the High Prosecutorial Council.

A public prosecutor shall have the right to appeal against the decision of the High Prosecutorial Council on termination of tenure to the Constitutional Court, which excludes the right to file a constitutional appeal.

AMENDMENT XXIII

The heading of Article 161 and the wording of Article 161 of the Constitution of the Republic of Serbia shall be replaced by this amendment

Immunity and Incompatibility

Article 161

The Prosecutor General, the Chief Public Prosecutor, and public prosecutors shall not be held accountable for opinions expressed or decisions made in connection with the performance of their functions, except if they commit the criminal offense of breach of law by a judge or public prosecutor.

The Prosecutor General, the Chief Public Prosecutor, and public prosecutors may not be deprived of liberty without the approval of the High Prosecutorial Council in proceedings initiated for a criminal offense committed in connection with the performance of their functions.

The law shall regulate which functions, duties, or private interests are incompatible with the office of the Prosecutor General, Chief Public Prosecutor, and public prosecutor.

AMENDMENT XXIV

The heading of Article 162 and the wording of Article 162 of the Constitution of the Republic of Serbia shall be replaced by this amendment

High Prosecutorial Council

Competence of the High Prosecutorial Council

Article 162

The High Prosecutorial Council shall be an autonomous public authority ensuring and guaranteeing autonomy of the Public Prosecution Office, the Prosecutor General, chief public prosecutors, and public prosecutors.

The High Prosecutorial Council shall propose to the National Assembly the election and termination of tenure of the Prosecutor General, appoint the acting Prosecutor General, elect chief public prosecutors and public prosecutors, and shall decide on the termination of their tenure, decide on other matters concerning the status of the Prosecutor General, chief public prosecutors, and public prosecutors, and exercise other competences prescribed by the Constitution and law.

AMENDMENT XXV

The heading of Article 163 and the wording of Article 163 of the Constitution of the Republic of Serbia shall be replaced by this amendment

Composition of the High Prosecutorial Council

Article 163

The High Prosecutorial Council shall consist of eleven members: five public prosecutors elected by chief public prosecutors and public prosecutors, four prominent

legal professionals elected by the National Assembly, the Prosecutor General, and the Minister in charge of justice.

The minister in charge of the judiciary shall not vote in disciplinary proceedings for establishing the accountability of a public prosecutor.

The election of members of the High Prosecutorial Council from the rank of public prosecutors shall be regulated by law.

When electing public prosecutors to the High Prosecutorial Council, due consideration shall be given to the broadest possible representation of public prosecutors.

The National Assembly shall elect four members of the High Prosecutorial Council from among prominent legal professionals with at least ten years of professional legal experience, from a list of eight candidates nominated by the competent committee of the National Assembly, following a public competition, by a two-thirds majority vote of all MPs, in accordance with the law.

If the National Assembly fails to elect all four members within the period prescribed by law, the remaining members shall, after the expiration of that period, be elected from among all candidates who meet the requirements by a commission composed of the Speaker of the National Assembly, the President of the Constitutional Court, the President of the Supreme Court, the Prosecutor General, and the Ombudsperson, by majority vote.

A chief public prosecutor may not be elected to the High Prosecutorial Council.

A member of the High Prosecutorial Council elected by the National Assembly must be worthy of holding such office.

A 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 office of a member of the High Prosecutorial Council elected by the National Assembly shall be regulated by law.

AMENDMENT XXVI

The heading of Article 164 and the wording of Article 164 of the Constitution of the Republic of Serbia shall be replaced by this amendment

Term of Office of Members of the High Prosecutorial Council, and the
President and Vice-President of the High Prosecutorial Council

Article 164

A member of the High Prosecutorial Council shall be elected to a five-year term.

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 shall be elected by the High Prosecutorial Council from among the members who are public prosecutors, and the Vice-President from among the members elected by the National Assembly, to a five-year term.

Before the expiry of the term to which they have been elected, a member of the High Prosecutorial Council shall cease to hold office if they request so themselves or if they are convicted of a criminal offence and sentenced to imprisonment of at least six months. A member who is a public prosecutor shall cease to hold office in the High Prosecutorial Council upon termination of tenure as public prosecutor. A member who

is not a public prosecutor shall also cease to hold office if they permanently lose the capacity to perform the duties of a member of the High Prosecutorial Council.

The decision on the termination of office of a member of the High Prosecutorial Council shall be taken by the High Prosecutorial Council. An appeal against such decision may be lodged with the Constitutional Court, which excludes the right to file a constitutional appeal.

AMENDMENT XXVII

The heading of Article 165 and the wording of Article 165 of the Constitution of the Republic of Serbia shall be replaced by this amendment

Legal remedy against decisions of the High Prosecutorial Council

Article 165

An appeal against a decision of the High Prosecutorial Council may be lodged with the Constitutional Court in cases prescribed by the Constitution and the law. The lodging of such an appeal shall exclude the right to file a constitutional appeal.

AMENDMENT XXVIII

This 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 opinions expressed in connection with the performance of their duties as members of the High Prosecutorial Council, nor for voting in the decision-making process of the High Prosecutorial Council.

Members of the High Prosecutorial Council may not be deprived of liberty without the approval of the High Prosecutorial Council in proceedings initiated for criminal offences committed in their capacity as members of the High Prosecutorial Council.

AMENDMENT XXIX

Paragraphs 2 and 3 of Article 172 of the Constitution of the Republic of Serbia shall be replaced by this amendment.

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 appointed by the General Assembly of the Supreme Court.

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 ten candidates nominated by the National Assembly; and the General Assembly of the Supreme Court shall appoint five judges from among ten candidates jointly nominated at a joint session of the High Judicial Council and the High Prosecutorial Council.