

**THE OPINION AND SUGGESTIONS OF THE HIGH JUDICIAL
COUNCIL TO THE WORKING DRAFT OF THE MINISTRY OF
JUSTICE AMENDMENTS TO THE
CONSTITUTION OF THE REPUBLIC OF SERBIA**

The High Judicial Council, as an authority which is, pursuant to the Constitution of the Republic of Serbia, autonomous and independent and guarantees autonomy and independence of courts and judges, has on its sessions held on 25 January 2018 (the Announcement was issued at this session) and on 13 February 2018, considered the Working Draft of the Ministry of Justice amendments to the Constitution of the Republic of Serbia and adopted the document "The Opinion and Suggestions of the High Judicial Council to the Ministry of Justice Amendments to the Constitution of the Republic of Serbia", presented to the judges, court staff and the public, same as the initiator of constitutional amendments and international entities participating in this process.

**THE OPINION AND SUGGESTIONS OF GENERAL, PRINCIPAL AND
PROCEDURAL CHARACTER**

On 22 January 2018, the Ministry of Justice of the Republic of Serbia has published on their website the Working Draft of the Ministry of Justice Amendments to the Constitution of the Republic of Serbia and a special document of the subtitle "With the rationale (sentences of the Venice Commission)". The introductory remarks of this document state the following: "In accordance with obligations assumed by the Republic of Serbia by adopting the Action Plan for Chapter 23, Ministry of Justice elaborated the Working Draft of the Amendments to the Constitution of the Republic of Serbia (hereinafter referred to as: the Working Draft). In the elaboration of the Working Draft, the Ministry was guided primarily by the standards defined in its abundant practice by the Venice Commission, same as by the written reports received during the consultative process implemented by the Ministry of Justice and Office for Cooperation with Civil Society of the Republic of Serbia, in the period July- November 2017. The Working Draft was compiled in cooperation with the Council of Europe expert, Mr James Hamilton. ...Working Draft represents a starting basis for the public debate on the amendments to the Constitution of the Republic of Serbia, planned for February and March 2018, whereafter the text of the amendments is to be forwarded to the Venice Commission for opinion."

The High Judicial Council is, naturally, familiar with the obligations assumed by our state under the Action Plan for Chapter 23, and especially in relation to preparation of the working draft of the amendments to the constitutional framework for the judiciary and expert discussion which should have been organised in 2017. Moreover, according to the said Action Plan, the Ministry of Justice is the authority to initiate this task. We are thankful for the role to be played in this process by the esteemed legal experts from the Venice Commission, by means of their Opinion. At the same time, we are convinced that the initial standpoint and accountability of all entities participating in amending Constitution, starting from initiating and implementing new constitutional solutions, implies that judicial system and judicial power within it is to be regulated and improved for the sake of our citizens and in line with the needs in this respect, identified and determined by the competent authorities and bodies of the Republic of Serbia, especially from the justice sector, prior to passing the Action Plan for Chapter 23, based on the internationally recognised democratic standards.

Instead of representing the elaboration of guidelines contained in the National Judicial Reform Strategy for the period 2013- 2018 (adopted on 1 July 2013 by the National Assembly of the Republic of Serbia), with all due respect of the opinion of the Working Group comprising university professors of constitutional law, found in the document *Legal Analysis of the Constitutional Framework on the Judiciary of the Republic of Serbia*, and the debate published in the Serbian judiciary at the end of 2016, by the proposed solutions Ministry of Justice manifested intention of downgrading the existing level of guarantees of independence and autonomy of the courts and public prosecutor's offices.

Specific, most important, issues from the said Legal Analysis of Constitutional Framework on the Judiciary of the Republic of Serbia, have neither been mentioned nor recognised, which is especially visible in the document: "WORKING DRAFT OF THE MINISTRY OF JUSTICE AMENDMENTS TO THE CONSTITUTION OF THE REPUBLIC OF SERBIA" with Rationales (recommendations of the Venice Commission)", where the reasons for proposal of specific amendments are being briefly and incompletely elaborated on, along with referring to specific Opinions of the Venice Commission. In reviewing the considered Amendment VI to Amendment XIII, we have realised that certain articles of the currently applicable Constitution of the Republic of Serbia are being cited, and their titles and content do not correspond to the titles and content of the amendments replacing them.

One of the questions left without the answer of the initiator of constitutional amendments are the contestable positions on the constitutional principle regarding the division of power referred to in Article 4, paragraphs 3 and 4 of the Constitution of the Republic of Serbia ("The relationship of the three branches of power shall rest upon the balance and mutual control", paragraph 3 and "Judicial power shall be independent" paragraph 4) which are in mutual discord, but also some other issues which have to be taken into account, while surpassing the frameworks of normative-legal analysis. For example: the normative- legal analysis of constitutional framework on the judiciary may only be part of a broader analysis of the entire constitutional system; what should be considered in parallel are the systemic guarantees of judicial independence and rules on the accountability of political powers for creation of a social ambience where the judiciary is to act independently or in relation to setting forth the Judicial Academy as a mandatory requirement for the first election of judges and prosecutors, whereby the position of the Working Group was ignored according to which Judicial Academy should not become the constitutional category.

We hereby particularly emphasise that the proposed working draft of the Ministry of Justice amendments to the Constitution of the Republic of Serbia envisage passing the Constitutional Law implementing the Amendments I to XXIV to the Constitution of the Republic of Serbia entering into force on the day of their adoption. Given that judges and prosecutors have extremely bad experiences with interpretation

and implementation of the previous constitutional law, based on which the 2009 re-election was delivered, it was necessary to offer the working draft or the draft text of this document to the public together with the proposed constitutional amendments. In this chapter, the executive branch should state its position if the upcoming amendments to the Constitution based on their initiative, given that changing the name of the highest court is also being proposed, implies shortening the term of office and/or re-election of the judicial office holders.

The High Judicial Council has, in line with its competences, elaborated comments, proposals and suggestions in relation to the working draft of the Amendments I to XIV of the

Ministry of Justice to the Constitution of the Republic of Serbia, comprising the second part hereof.

THE OPINION AND SUGGESTIONS ON THE AMENDMENTS I- XIV OF THE
WORKING DRAFT OF THE MINISTRY OF JUSTICE AMENDMENTS TO THE
CONSTITUTION OF THE REPUBLIC OF SERBIA

An important portion of the working draft of the Ministry of Justice amendments to the Constitution of the Republic of Serbia contravenes the National Judicial Reform Strategy for the period 2013- 2018 (Part V, point 2) and Action Plan for Chapter 23 - envisaging the necessity to ensure the independence of the judicial office holders from political influence, and this could also challenge the constitutional principle of division of power.

The position of the High Judicial Council is that the multiple proposed positive solutions serving the function of strengthening independence and autonomy of courts and judges (like the exclusive jurisdiction of the HJC regarding the election and dismissal of judges and court presidents, abolishing the first election of judges to a probationary term of office of three years-members of the HJC based on the candidacy and voting of judges, etc.) entirely derogates from the other proposed amendments to the Constitution, and especially those referring to the HJC composition and manner of decision-making.

The proposed amendments to the Constitution (Amendment IX regarding the Amendments I, II, XI and XII) alter the composition and number of members of the High Judicial Council thus making this authority having ten members (instead of the present eleven, as an odd number being more convenient for decision-making and also being present in the practice of many countries having such authorities), five from the ranks of judges and five from the ranks of the pronounced jurists elected by the National Assembly). The number of the elected members of the High Judicial Council who are not judges and who are elected by the National Assembly upon the proposal of the Judicial Committee is being increased from two to five, whereas the number of the elective members of the High Judicial Council from the ranks of judges, directly elected by the judges, is being reduced from six to five. If this is supplemented by the fact that the president of the High Judicial Council is elected from the ranks of the Council members who are not judges, and that the decisions are to be passed by the votes of at least five members of the Council including the vote of the High Judicial Council President (the President has the so called "golden vote"), then it becomes clear that decisions can be made without a single vote of the High Judicial Council members from the ranks of the judges. With such a decision-making, it may occur that all on all important issues pertaining to the position of judges (election, dismissal, disciplinary accountability, material position, etc.) decision are being made by the High Judicial Council members who are not judges (prominent jurists elected by the National Assembly), all leading to the increased influence of the legislative power on the judiciary.

The very name of the authority- the High Judicial Council, implies this is the highest body of courts and judges, and given that the judges should not be represented by someone who has been elected by another branch of power- legislative, in such a composition, the High Judicial Council can not guarantee independence and autonomy of courts and judges. The proposed solutions jeopardise the rule of law as the fundamental principle of the Constitution, exercised by the division of power and independence of the judicial power (Articles 3 and 4 of the Constitution of the Republic of Serbia). Those contravene European standards implied in the Opinion No. 10 (2007) of the Consultative Council of European Judges and recommendations of the Council of Europe GRECO Committee (2015).

The term "prominent jurist" is highly unspecified and depends exclusively on the person making the assessment, and as such it leaves the wide possibilities for abuse. The Constitution has to clearly define the ranks from which the members of the High Judicial Councils not being judges are to be elected.

The High Judicial Council is the highest authority of the judicial power, deciding on all issues concerning the position of courts and judges, and ensuring the autonomy and independence of courts and judges. As such, the role of the High Judicial Council defined in the Constitution specifies its composition where the majority has to be comprised by judges directly elected by the judges they are representing. The High Judicial Council should have 11 members, of which 7 judges directly elected by their peers. The remaining 4 members of the Council may be elected by the National Assembly, two from the ranks of the law school university professors proposed by the academic community, and two proposed by the judicial committee, following the public call. Only in such a composition, the High Judicial Council may address its constitutional position and guarantee autonomy and independence of the courts and judges.

Due to all this, in respect to the composition, manner of electing the members and manner of operation of the HJC we hereby make the following suggestions:

Modification of the Amendments I, paragraph 2, point 3, so as to the word "five" members of the High Judicial Council to be replaced by the "four" members of the High Judicial Council,

Modification of the Amendment II, paragraph 4, so as to replace the word "five" in the second row by the word "four",

Modification of paragraph 1, Amendment IX so as for the High Judicial Council to have 11 members: 7 (seven) members elected by the judges and 4 graduate jurists elected by the National Assembly, of which 2 (two) from the ranks of the law school university professors proposed by the academic community, and two proposed by the judicial committee, following the public call.

In the first row of paragraph 2 of the Amendment IX, instead of the word "five", there should be "four".

Modification of paragraph 2, of the Amendment IX so as to read "The President of the High Judicial Council shall be elected among the Council members from the ranks of the judges".

Modification of paragraph 1, of the Amendment XII so as to read "The High Judicial Council shall make decisions by votes of at least 6 (six) members of the Council".

In the Amendment III the term "The Principle on the Courts" instead of the expression from the valid Constitution- "The Judicial Principles" has been used. We consider the term "Judicial Principles" more adequate and appropriate, especially since this Amendment refers not only to the courts, but to the judicial power, judicial decisions, judges and lay judges.

We hereby stress the importance of the remark referring to paragraph 1 of this Amendment envisaging that: "The judicial power shall belong to courts as autonomous and independent state authorities". The position of the HJC is that this definition should exclude the attribute "state". The applicable Constitution does not label the courts as state authorities, therefore we do not see the reason for the courts, as implementers of the judicial power, to be exclusively labelled as "state authorities". Judicial power is and should be one of the branches of power and the principle of independence presuming freedom from any unallowed influence imposes for the Constitution to establish institutional and normative frameworks for the ambience in which the court and judges shall be liberated from meddling of the state, other institutions or private persons in the tasks under the jurisdiction of the court.

The principles of the judiciary have to be more precisely and systemically defined, so as to list at the beginning of the section (in several articles) the fundamental constitutional guarantees (institutional and personal) regulating the position of court and judges, and not to have them scattered across the entire section. In our opinion, the proposed amendments to the Constitution reflected in the Amendments III, IV and V, have not only failed to successfully elaborate the listed guidelines of constitutional subject matter experts, but the proposed solutions are, by many parameters, below the quality of the currently applicable provisions of the Constitution of the Republic of Serbia.

In addition to this, omitted was the division to the courts of general and special jurisdiction, as defined in the applicable Constitution, while having in mind that the Council of Europe in its recommendations to the constitutional solutions of the date had suggested further elaboration of the constitutional division of courts done in this way.

The suggestions:

The Constitution has to define the types of courts, which is why we are suggesting to, instead of the proposed paragraph 1, keep the existing solution referred to in Article 143, paragraph 1 of the valid Constitution, and to add in this part of the working draft of the Constitution, i.e. systematise differently the following provisions:

Judicial power is unique in the territory of the Republic of Serbia;

- Judicial power shall belong to courts;
- Judicial power shall be autonomous and independent;

We consider that the systematised part on the Judicial Principles is the place for the provision that:

"The courts shall adjudicate pursuant to the Constitution, international treaties and other applicable sources of law" instead of the contestable formulation in the proposed Amendment IV, paragraph 1.

We consider the second paragraph of Article 143 of the applicable Constitution: "Establishing, organisation, jurisdiction, system and structure of courts shall be regulated by the law", to be more adequate than the proposed formulation in paragraph 3 of Amendment III ("The courts shall be established and abolished by law. The law shall regulate the types, jurisdiction, areas and proceedings before the courts").

Paragraph 5 states that court decisions are passed in the name of the people, and in case law this refers to judgements, therefore one should consider specifying this paragraph, to read as follows for example:

"Hearing before the court shall be public and judgements shall be pronounced publicly, in the name of the people" (alternatively: on behalf of the Republic of Serbia). The proposed paragraph 7 would be more accurate and complete from the aspect of the profession if the word "limit" would be followed by the words "or exclude", due to the fact that pursuant to the provisions of certain laws, for the criminal legal area for instance, judges have the option to entirely exclude the public in the proceedings. The two listed paragraphs could be merged into one article, which could be entitled "Publicity of court hearings and rulings".

Paragraph 6 should undergo language editing corrections given that the expression used was "envisaged court" instead of the current expression "competent court", whereas the expression "in the certain proceedings" should be replaced by the expression "regulated proceedings", as a more precise one from the legal and linguistic point of view. Finally, if paragraph 9 of the same Amendment states that lay judges may take part in a trial, this is not "in accordance with" but "in the manner" set forth in the law, which is a more adequate expression for the text of the Constitution.

Suggestions in relation to Amendment IV:

Instead of the contestable formulation proposed in Amendment IV, paragraph 1, a new formulation has already been proposed in part of suggestions relating to Amendment III ("The Courts shall adjudicate pursuant to the Constitution, laws, international treaties and other sources of law").

The part of the same paragraph relating to harmonisation of case law by law should be deleted since not all theoretical and practical implications of entering such a provision in the Constitution have been considered, e.g. whether case law would in this way become the source of law.

Instead of this paragraph, another paragraph with different content could be embedded as follows: "Any influence on the judge in performing their judicial office shall be prohibited." Here it should be considered whether to enter in the Constitution paragraph from Article 6 of the Law on Organisation of Courts "any influence on the courts and participants in the proceedings shall be prohibited".

Suggestions regarding the proposal contained in paragraph 2 of Amendment IV:

The current Constitution does not lay down the conditions for election to judicial office, but this is rather regulated by the law.

This Amendment, in an unclear and inconsistent manner, sets forth only one of the conditions for election (without listing additional conditions to be met by such a candidate) and only for a specific group (not even type) of courts.

We consider the Constitution should not contain election conditions, therefore this paragraph should be deleted.

If the Constitution is to lay down conditions, then all general conditions should be listed first (citizenship, law school degree, bar exam passed?...).

In case of defining the conditions, we consider that completed special training at the judicial training institution should not be a mandatory condition for election to judicial

office in courts of first-instance jurisdiction. Such a solution contravenes point 17 of Kyiv recommendations on the judicial independence, recommending that access to

judicial profession should be given "not only to young jurists with special training but also to jurists having significant experience gained working in the legal profession".

In case this training is defined as a condition, then the training institution has to be defined as part of the judicial power in the Constitution (with all guarantees of independence) and it needs to be independent from the executive (point 19 of the Kyiv recommendations).

The Constitution should envisage as a competence of the High Judicial Council (currently Amendment VIII) that the High Judicial Council shall regulate the procedure and criteria for recruitment of candidates for training, same as for the election of judges elected for the first time to a judicial office.

Another contestable issue is whether compulsory training needs to be envisaged for the "first-instance jurisdiction courts" or it would be better to define this for the candidate being elected to the judicial office for the first time.

Moreover, in case such a solution is adopted, transition period would need to be defined.

In relation to paragraph 3, we compliment the fact that there would be no limitation of the term of office of three years for a judge being elected to a judicial office for the first time.

However we consider that the permanent character of the judicial office needs to be explicitly guaranteed, therefore this paragraph should read as follows: "judicial office shall be permanent and last from when one has been elected a judge to their retirement".

In relation to reasons for termination of judicial office prior to retirement age, our position is that instead of the proposed paragraphs 4 and 5 this should read as follows: "a judge shall be dismissed from the judicial office:

- if they ask for it themselves;
- if they permanently lose the capacity to perform their office;
- if convicted of a crime and sentenced to imprisonment over 6 months or of a punishable offense making them unworthy of the judicial office;
- if pursuant to the law, due to committed severe disciplinary offence, so is decided by the HJC.

We consider that unprofessional performance of judicial office should not be the reason for dismissal of a judge defined in the Constitution.

Such a formulation is imprecise, and not in accordance with international documents (Recommendation no. VI of the Council of Europe GRECO Committee of 18 October 2017) envisaging that evaluation of judicial performance should be aimed at improving their work and career advancement, and not sanctioning. Sanctions for many forms of unprofessional performance of judicial office (delaying the proceedings, untimely drafting of decisions, etc.) have been envisaged in the disciplinary procedure, with the more severe disciplinary offences already being envisaged as the reason for dismissal.

Our rationale why we consider why the terms termination of judicial office and dismissal should not be used implies that fact that judicial office is never terminated automatically, i.e. ex lege but by the decision of the HJC. This entails from the proposed HJC activities (Amendment VIII, paragraph 2) where one of the listed competences

says that the HJC "shall elect judges and lay judges and decide on the termination of their office". The use of the term "decide" implies that the HJC assesses the fulfillment of conditions or better said existence of reasons, and if those are met, dismisses the judge from the office entrusted to them by their election. This is why it would be better to use for all cases the term "dismissal", and define in the law different procedures depending on the reason for dismissal.

Pursuant to the proposed amendment of paragraphs 4 and 5 of Amendment IV, the formulation in Amendment VIII, paragraph 2 "shall elect the judges and lay judges and decide on the termination of their office" should be replaced by the formulation "shall elect and dismiss judges and lay judges".

Paragraph 7 of Amendment IV repeals (amends) well defined constitutional guarantees on non-transferability of judges, contained in Article 150 of the Constitution. Re-arrangement is not a legal term, thus it does not define in a clear and precise manner the cases in which a judge may be transferred without their own consent. This is why we propose to keep the current solution that a judge may be transferred without consent only in cases of revocation of the court or the substantial part of part of jurisdiction of the court where the judge is performing their office.

Amendment IV is lacking the paragraph which would read as follows: "A judge shall be entitled to salary in accordance with the dignity of the judicial office, which guarantees their independence".

Suggestions in relation to Amendment V:

Paragraph 1 of this Amendment envisages that the judge and lay judge can not be held accountable for an opinion given in the court proceedings and voting in pronouncing a court decision except in cases when they have committed a crime.

Our suggestion is to, in paragraph 1 of this Amendment after the words "commit a crime", add the words "violation of the law by the judge".

For paragraph 2 we propose the word order to be replaced, so as to read: "in the proceedings initiated due to the criminal offence committed in performing judicial office, the judge may be deprived of liberty only following the approval of the HJC".

Paragraph 3 is contravening the UN Basic Principle of Independence of the Judiciary and European Charter on the Statute for Judges.

Therefore we propose to amend it so as to read: "The judge shall be prohibited from political action, and the law shall determine the offices or tasks that can not be linked with the judicial office".

Suggestions in relation to election and term of office of the court presidents:

The High Judicial Council considers that better solution than the one proposed in Amendment VII is to enable one person to be elected the president of the Supreme Court in the Republic of Serbia twice. Namely, we consider the Constitution of the Republic of Serbia to represent a logical and consolidated whole. Article 116 of the currently applicable Constitution enables the president of the Republic

to run for office twice. The High Judicial Council is of the opinion that the same right should be granted to the judge enjoying the highest respect and trust of their peers in the entire judiciary and the Supreme Court in the Republic of Serbia. Our view is that the term of office of the president of the Supreme Court of Serbia should be 4 years with the possibility of re-election one more time. Having in mind that the solution proposed in this way which is in line with the recently amended Law on Judges, we hereby propose to supplement Amendment VII to include presidents of other courts and to allow them to be elected to a 4-year term of office and to be elected twice.

Suggestions in relation to Amendment X:

In accordance with the solutions we have proposed for the presidents of courts, we consider the members of the High Judicial Council may be allowed to run for an additional term of office. We think that the term of office of the HJC members should be four years with the possibility of re-election. Hereby we especially emphasise that this solution was accepted in all countries in the region.

Suggestions in relation to Amendment VIII:

Paragraph 1 of Amendment VIII defines the High Judicial Council as an independent and autonomous "state" authority which guarantees autonomy and independence of the courts. A careful analysis does not make it difficult to identify several changes in relation to the applicable Constitution:

The High Judicial Council is defined as a state authority which, in the opinion of the HJC is weakening of the independence capacity of this authority. The valid Constitution did not specify the nature of power held by the HJC, given that it can not be claimed for sure whether this is a judicial authority or the authority of public power. We are not clear what the idea of the proponent was in defining the HJC as a "state authority", nor did the proponent propose the explanation for this.

The High Judicial Council, as the highest authority of judicial power, should not be labelled as a "state authority" given that the HJC must be different compared to other classical public administration authorities or Constitutional Court, as a specific state authority not being the part of the judiciary. According to this, the Constitution has to define the High Judicial Council as the highest authority of judicial power. Such a solution is contained in the constitutions of other EU countries. All this raises a justified question: Is in this way a possibility being made to change something in the character of this authority, e.g. that the HJC is a judicial- administrative authority in the narrow sense of the word.

Inter alia, the opinion of the HJC is that the word "shall vouch" is inadequate and should be replaced by the words from the applicable Constitution: "shall guarantee" and "ensure", especially since the word "vouch" is a synonym or a derivative. By using the words "ensure and guarantee" instead of the word "vouch" an incomparably higher level of independence and autonomy is being given to the courts and judges.

Having in mind previously said, same as the fact that modern theories imply judges under autonomy and independence of courts, we hereby suggest that after the word "courts" the word "judge" should be added. Judicial power is incomplete and unprotected if

both of its components are not being realised: institutional and personal, which have to be guaranteed and ensured by the Constitution.

The suggestion:

The conceptual determination of the High Judicial Council referred to in Article 153, paragraph 1 of the applicable Constitution is by all important parameters character of the authority it defines, versatility and precision, more adequate than the "definition" of this authority being proposed now, therefore it should be kept in the future text of the Constitution.

Amendment VIII, paragraph 2 - Jurisdiction of the High Judicial Council

If, without the necessary upgrade, the solutions proposed in the working draft of the Amendment VIII, paragraph 2 are endorsed, instead of extending jurisdiction of the High Judicial Council (HJC) as envisaged under the National Judicial Reform Strategy for the period 2013- 2018, Action Plan for Chapter 23, and the Law on Organisation of Courts ("Official Gazette of RS", no. 116/08, and 113/17 – deferred implementation for 1 January 2019), we will have in place derogation from the agreed positions and reduction in the HJC competences.

In paragraph 2 hereof speaking about the HJC jurisdiction, inter alia, the following formulation was proposed: "shall propose to the Government means for operation of courts in issues under its jurisdiction". Jurisdiction formulated in this way does not represent progress in strengthening HJC capacities. We consider that the HJC has to have its budget and that the proposed solution contravenes recommendations of the competent Council of Europe bodies. It is necessary for the HJC to set the level of funds needed for operation of courts, and not only propose to the Government the level of funds pertaining to its jurisdiction. We hereby suggest for the HJC, being a direct budget beneficiary, to determine the level of funds necessary for the operation of courts and judges.

The manner of determining competences of the HJC in the proposed Amendment by listing (primarily that it shall elect and dismiss president of the Supreme Court of Serbia and presidents of other courts, elect judges and lay judges and decide on termination of their office), with the formulation referred to in paragraph 1 of the same Amendment implying that the HJC is realising its function by "deciding on other issues pertaining to the position of judges, court presidents, and lay judges defined by the Constitution and law", in our opinion, narrows down the possibility to, apart from the explicit jurisdictions listed in the Constitution, regulate this issue by law in a more meaningful and comprehensive manner.

We hereby point out that in such a situation, HJC can not successfully realise the function of the guarantor of the judicial autonomy and independence, if other important jurisdictions, besides the listed ones,

и have not been entrusted to it by the Constitution, given that it is contained in the Opinion no. 10 (2007) of the Consultative Council of European Judges.

The suggestion:

To extend the content of jurisdictions of the HJC stated in the Amendment VIII, paragraph 2, along with the jurisdictions mentioned in this text to: deciding on disciplinary accountability of judges in accordance with the law, education and professional development

of judges, judicial ethics, giving opinion on the draft laws and bylaws relating to courts and judges, and even the issues pertaining to protection of judges' reputation, international cooperation and public accountability.

The HJC does not deem it acceptable (**Amendment VIII, paragraph 3**) for the disciplinary procedure and the procedure for dismissal of judges and court presidents to be initiated by the minister in charge of justice. Such a right of the Ministry in charge of justice as the part of the executive power is not typical for the majority of democratic societies.

Therefore a positive step forward would be for the HJC to be the only authority to initiate disciplinary proceedings against a judge (Opinion of the Venice Commission CDL-AD – 2013/014). Our recommendation is for the minister in charge of justice not to be included at all in deciding on disciplinary proceedings against judges (Opinion of the Venice Commission CDL-INF – 1998/009).

Namely, according to the applicable legal provisions, disciplinary proceedings are initiated by the disciplinary prosecutor, whereas the dismissal proceedings are initiated by the High Judicial Council, however the initiative may be launched by any person, therefore also the minister in charge of justice, thereby their initiative would, in comparison to initiatives of other citizens, have a far greater weight.

Suggestions in relation to Amendment XIII:

Provisions on the immunity of the HJC members should be amended in the same way as in the part pertaining to the immunity of judges.

Our suggestion is to in paragraph 1 of this Amendment after the words "commit a crime" add the words "violation of the law by the judge".

We propose paragraph 2 to read as follows: "in the proceedings initiated due to the criminal offence committed in performing the office of a member of the High Judicial Council, the member of the High Judicial Council may be deprived of liberty only following the consent of the High Judicial Council".

It is necessary to once again salute the recommendations to exclude from the National Assembly decision-making the first election of judges, to exclude the probation, to exclude the election of the court presidents and members of the High Judicial Council. However, the composition, same as the manner of decision-making of the HJC is more than disputable and it represents a step back in relation to the achieved level of judicial independence in the Republic of Serbia.

Such a proposal allows the legislative and executive powers to predominantly decide on all rights relating to the courts and judges. The predominance of the legislative and executive power comes to the full effect especially in provisions contained in Amendments IX, XI and XII. The solution for the president of the HJC to be elected among the members not being judges, and granting them the so called "golden vote" contravenes the Opinion no. 10 (from 2007) of the Consultative Council of European Judges on the composition of judicial councils, whereby stating that if

the Council should have a mixed composition, then the majority should be made of judges and the president of the Council is to be elected from the ranks of judges.

Such a solution devolves the role and significance of judges in the highest judicial body, therefore, as stated in one of his interviews by the HJC president: "Judges would serve only to ensure the quorum", which is why the HJC would no longer be a guarantor of autonomy and independence of the courts and judges...

Having in mind the aforesaid, and especially the number and seriousness of the stated remarks, the High Judicial Council hereby concludes that the Working Draft of the Ministry of Justice Amendments to the Constitution of the Republic of Serbia, can not be taken as a starting point for a quality public debate. Therefore we propose for the offered text to be withdrawn from the public debate, to include in the drafting of the new initial proposal representatives of science (especially from the area of constitutional law), to have the new working drafts considered by the Commission implementing the National Judicial Reform Strategy, and only then organise a public debate, for which much more time has to be envisaged than it is currently the case.