

***Ministry of Justice's Working Version of the Draft Amendments to the  
Constitution***

*Amendments I through XXIV to the Constitution of Serbia*

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

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

AMENDMENT I

*Purview*

The National Assembly shall:

1. Pass and amend the Constitution;
2. Decide on changing the borders of the Republic of Serbia;
3. Call for a republic referendum;
4. Ratify international agreements when required under the law;
5. Decide on war and peace and declare a state of war or state of emergency;
6. Supervise the work of security services;
7. Pass laws and other general acts from the purview of the Republic of Serbia;
8. Give preliminary consent to the status of an autonomous province;
9. Adopt a defense strategy;
10. Adopt development and urban planning documents;
11. Adopts the budget and annual statement of the RS, following the proposal of the government;
12. Grant amnesty.

Within their electoral rights, the National Assembly shall:

1. Elect the government, supervise their work and decide on the termination of office of the government and ministers;
2. Elect and dismiss the judges of the Constitutional Court;
3. Elect and dismiss the Supreme Public Prosecutor of Serbia, five members of the High Judicial Council and five members of the High Prosecutorial Council;
4. Elect and dismiss the governor of the national Bank of Serbia and supervise his/her work;
5. Elect and dismiss the Protector of Citizens and supervise his/her work;
6. Elect and dismiss other public officials in accordance with the law.

The National Assembly shall perform other tasks determined by the Constitution and the law.

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

## AMENDMENT II

### *Decision-making in the National Assembly*

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

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

1. Grant amnesty for criminal offences;
2. Declare and lift emergency state;
3. Prescribe measures for derogation from human and minority rights in the state of war or emergency;
4. Pass laws under which the Republic of Serbia delegates certain tasks from its purview to autonomous provinces and local self-government units;
5. Give preliminary consent to the Statute of an autonomous province;
6. Decide on the Rules of Procedure of the NA;
7. Lift immunity of the deputies, President of the Republic, members of the government and the Protector of Citizens;
8. Adopt the budget and annual statement;
9. Elect members of the government and decide on termination of office of the government and ministers;
10. Decide on giving an answer to interpellation;
11. Elect judges of the Constitutional Court and decide on their dismissal and end of the term of office;
12. Elect and dismiss the Governor of the National Bank of Serbia, the Board of Governors, and the Protector of Citizens;
13. Perform other electoral duties of the NA.

A majority of votes of all deputies is required where the National Assembly decides on the laws governing the following:

1. Referendums and people's initiatives;
2. Enjoying of individual and collective rights of members of national minorities;
3. Development and urban planning;
4. Public borrowing;
5. Territory of autonomous provinces and local self-government units;
6. Conclusion and ratification of international agreements;
7. Other issues determined under the Constitution.

With a three-fifth majority of all deputies the National Assembly shall elect the five members of the High Judicial Council, the High Prosecutorial Council and the Supreme Public Prosecutor of Serbia. If they are not elected in this manner, they shall be elected by a five-ninth majority of all deputies within the next ten days, which is also necessary for their dismissal.

The present Amendment shall supersede article 105 of the Constitution of the RS.

### AMENDMENT III

#### **7. Courts**

##### *Principles on Courts*

Judicial power is vested with the courts as autonomous and independent state bodies.

Judicial power is uniform in the territory of the RS.

Courts are established and dissolved by the law. The law shall also provide for the types, jurisdiction, territory of courts, and the procedure before the court.

It is forbidden to establish court-marshal, interim or extraordinary courts.

Court decisions are passed in the name of the people.

Only a court determined by the law may review a court decision within a legally determined deadline.

Hearing before the court is public, and the public may be excluded only in accordance with the Constitution and the law.

The court sits as a panel, unless it is provided by the law that a judge sits alone.

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

The present Amendment shall supersede article 142 of the Constitution of the RS.

### AMENDMENT IV

##### *Independence, Tenure and Non-transferability of Judges*

A judge is independent and shall adjudicate pursuant to the Constitution, ratified international agreements, laws and other general acts. Harmonization of case law is determined by the law.

A judge in the courts with exclusively first-instance jurisdiction may only be a person who has completed special training in a judicial training institution established by the law.

The function of judge shall last from appointment as a judge till the retirement age.

Judgeship shall end earlier only upon personal request, in case of permanent disability for judicial function, or in case of dismissal.

A judge shall be dismissed if they are sentenced to prison, or in case of committing a crime that renders them unworthy of judgeship; if they incompetently perform judicial function, or in case of disciplinary measure of termination of judgeship.

A judge and/or president of the court may file a complaint to the Constitutional Court against a decision on termination of judgeship, which rules out the right to constitutional complaint.

A judge may not be transferred to another court without their consent, except in the case of reorganization of courts and under a decision of the High Judicial Council.

The present Amendment supersedes article 143 of the constitution of the RS.

#### AMENDMENT V

##### *Immunity and Incompatibility*

A judge and lay judge cannot be held accountable for an opinion expressed in the proceedings and/or for a vote given in pronouncing a court decision, unless they commit a criminal offence.

A judge may not be deprived of liberty in the proceedings against him/her for a criminal offense committed in performing judgeship, without the approval of the High Judicial Council.

The function of a judge and/or president of the court is incompatible with other public or private function, a legally defined activity or job, or political commitment.

The present Amendment shall supersede article 144 of the Constitution of the RS.

#### AMENDMENT VI

##### *The Supreme Court of Serbia*

The highest court in the Republic of Serbia is the Supreme Court of Serbia.

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

The present Amendment shall supersede article 145 of the Constitution of the RS.

## AMENDMENT VII

### *President of the Supreme Court and Presidents of Courts*

The High Judicial Council shall elect the President of the Supreme Court upon obtaining the opinion of the General Session of the SC, to a term of office of five years.

The same person cannot be reelected as President of the SC.

The High Judicial Council shall elect presidents of other courts to a term of office of five years.

The present Amendment shall supersede article 146 of the Constitution of the RS.

## AMENDMENT VIII

### *High Judicial Council*

#### *Purview of the High Judicial Council*

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

The High Judicial Council shall elect and dismiss the president of the Supreme Court of Serbia and presidents of other courts; elect judges and lay judges and decide on their dismissal; collect statistical data relevant to the work of judges; evaluate the performance of judges and presidents of courts; decide on the transfer and interim assignment of judges; appoint and dismiss members of disciplinary organs; determine the number of judges and lay judges; proposes to the government the resources required for the operation of the courts in matters from its purview, and decide on other issues related to the status of judges, presidents of courts and lay judges provided by the law.

The minister in charge of the judiciary may also initiate the disciplinary procedure for the dismissal of a judge or president of the court.

The present Amendment shall supersede article 147 of the Constitution of the RS.

## AMENDMENT IX

### *The Composition of the High Judicial Council*

The High Judicial Council shall be composed of ten members of whom five judges elected by judges and five renowned lawyers elected by the National Assembly.

The National Assembly shall elect five members of the High Judicial Council upon the proposal of the competent parliamentary committee after having conducted a public competition, by a three-fifth vote of all deputies. In case they are not all elected in this manner, the remaining deputies shall be elected within the next ten days by a five-ninth vote of all deputies, or otherwise the election procedure is repeated after fifteen days, for the number of members who have not been elected.

The requirement of equal representation of courts shall be taken into account in electing the judges into the High Judicial Council.

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

The present Amendment shall supersede article 148 of the Constitution of the RS.

#### AMENDMENT X

##### *Term of Office of Members of the High Judicial Council*

Members of the HJC are elected to a five-year term of office.

The same person may not be reelected as member of the HJC.

The term of office of a member of the HJC shall terminate for reasons determined under the law and under a legally prescribed procedure.

The present Amendment shall supersede article 149 of the Constitution of the RS.

#### AMENDMENT XI

##### *President of the High Judicial Council*

The High Judicial Council shall have a president.

The president of the HJC is elected from among members who are not judges.

The term of office of the president is five years.

The present Amendment shall supersede article 150 of the Constitution of the RS.

#### AMENDMENT XII

##### *Work and Decision-making of the High Judicial Council*

The High Judicial Council takes decisions by the votes of at least six members of the Council or the votes of minimum five members of the Council including the vote of the president of the HJC, at a session where at least seven members of the Council are present.

The High Judicial Council shall publicly announce and explain their decisions, and shall found decisions on the election and termination of office of judges, presidents of courts, lay judges; decisions on the transfer and interim assignment of judges, and decisions on the appointment and dismissal of members of disciplinary bodies on the criteria determined in accordance with the law and under a legally prescribed procedure.

The present Amendment shall supersede article 151 of the Constitution of the RS.

### AMENDMENT XIII

#### *Immunity of Members of the High Judicial Council*

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

The members cannot be deprived of liberty in the proceedings against a criminal offence they have committed as members of the HJC, without the approval of the Council.

The present Amendment shall supersede article 152 of the Constitution of the RS.

### AMENDMENT XIV

#### **8. Public Prosecution Offices**

##### *Status*

The public prosecution is an independent state organ which prosecutes perpetrators of criminal and other punishable acts and protects the constitutionality and legality, human rights, and civil freedoms.

The public prosecution shall perform their duty pursuant to the Constitution, ratified international agreements, laws, and other general acts.

The establishment, organization, and jurisdiction of the public prosecution service are regulated by the law.

The highest public prosecution office in the Republic of Serbia is the Supreme Public Prosecution of Serbia.

The Supreme Public Prosecutor of Serbia shall exercise the jurisdiction of the public prosecution within the rights and obligations of the Republic of Serbia.

The present Amendment shall supersede article 153 of the Constitution of the RS.

#### AMENDMENT XV

##### *Responsibility*

The Supreme Public Prosecutor of Serbia manages the Supreme Public Prosecution of Serbia, and s/he is responsible to the National Assembly both for the work of the Prosecution and his/her own work.

Public prosecutors in other public prosecution offices are responsible for the work of the prosecution office and their own work to the Supreme Public Prosecutor, and public prosecutors of lower-instance prosecution offices also to the public prosecutors in immediately higher prosecution offices.

Deputy public prosecutors are responsible to the public prosecutor.

The present Amendment shall supersede article 154 of the Constitution of the RS.

#### AMENDMENT XVI

##### *Public Prosecutors and Deputy Public Prosecutors*

A public prosecutor shall carry out the function of public prosecution.

A deputy public prosecutor shall substitute a public prosecutor in performing prosecutorial function and shall act upon instruction from the public prosecutor.

The present Amendment shall supersede article 155 of the Constitution of the RS.

#### AMENDMENT XVII

##### *Election of the Supreme Public Prosecutor of Serbia and Public Prosecutors*

The National Assembly shall elect the Supreme Public Prosecutor to a term of office of five years, upon the proposal of the High Prosecutorial Council, after having conducted a public competition, by a three-fifth vote of all deputies. In case s/he is not elected in this manner, s/he shall be elected within the next ten days by a five-ninths vote of all deputies, or otherwise the entire election procedure shall be repeated after 15 days.

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

The High Prosecutorial Council elects public prosecutors to a five-year term of office.

The Supreme Public Prosecutor of Serbia and public prosecutors who are relieved of duty shall carry on as a deputy prosecutor in the public prosecution office which they managed.

The Supreme Public Prosecutor of Serbia and public prosecutors may file an appeal to the Constitutional Court against the decision on dismissal, which rules out the possibility of constitutional appeal.

The present Amendment shall supersede article 156 of the Constitution of the RS.

### AMENDMENT XVIII

#### *Life Tenure, Transfer and Interim Assignment of Deputy Public Prosecutors*

The function of deputy public prosecutor lasts from the appointment till the retirement age.

The function may end earlier only if a deputy public prosecutor requests so, in case s/he becomes permanently disabled to perform the function, or in case of dismissal.

A deputy prosecutor in prosecution offices of lowest instance may only be a person who has completed special training in a judicial training institution established by the law.

A deputy prosecutor shall be dismissed if they are sentenced to prison, or in case of committing a crime that renders them unworthy of prosecutorial function; if they incompetently perform prosecutorial function, or in case of imposing a disciplinary measure of termination of prosecutorial function.

A deputy public prosecutor may file a complaint to the Constitutional Court against a decision on termination of function, which rules out the right to constitutional complaint.

A deputy public prosecutor may be transferred or temporarily assigned to another prosecution office without their consent, under a decision of the Supreme Public Prosecutor in accordance with the law.

The present Amendment supersedes article 157 of the Constitution of the RS.

### AMENDMENT XIX

#### *Immunity and Incompatibility*

A public prosecutor and/or deputy prosecutor cannot be held accountable for an opinion expressed or a decision made in performing prosecutorial function, unless they have committed a criminal offence.

The function of a public prosecutor and deputy prosecutor is incompatible with other public or private function, a legally defined activity or job, or political commitment.

The present Amendment shall supersede article 158 of the Constitution of the RS.

## AMENDMENT XX

### *High Prosecutorial Council*

#### *Purview*

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

The High Prosecutorial Council shall elect and dismiss public prosecutors; elect deputy public prosecutors and decide on their dismissal; propose to the National Assembly to elect or dismiss the Supreme Public Prosecutor; evaluate the performance of public prosecutors and deputy prosecutors; appoint and dismiss members of disciplinary bodies; submit to the National Assembly the annual report on the work of the public prosecution; propose to the government the resources required for the operation of the public prosecution in matters from its purview, and decide on other issues related to the status of the Supreme Public Prosecutor, public prosecutors, and deputy prosecutors provided by the law.

The present Amendment shall supersede article 159 of the Constitution of the RS.

## AMENDMENT XXI

### *Composition of the High Prosecutorial Council*

The High Prosecutorial Council has eleven members: four deputy public prosecutors who are elected by public prosecutors and deputy prosecutors; five renowned lawyers who are elected by the National Assembly, the Supreme Public Prosecutor, and the minister in charge of the judiciary.

The National Assembly shall elect five members of the HPC upon the proposal of the competent parliamentary committee after conducting a public competition, by a three-fifth vote of all deputies. In case they are not all elected in this manner, the remaining members shall be elected within the next ten days by a five-ninth vote of all deputies, or otherwise the election procedure is repeated for the number of missing members.

The requirement of equal representation of public prosecution offices shall be taken into account in electing deputy prosecutors into the High Prosecutorial Council.

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

The present Amendment shall supersede article 160 of the Constitution of the RS.

#### AMENDMENT XXII

##### *Term of Office of Members of the High Prosecutorial Council and President of the HPC*

The term of office of a member of the HPC is five years.

The same person may not be reelected into the HPC.

The term of office of an elected member of the HPC shall cease for reasons determined by the law and under a legally prescribed procedure.

The Supreme Public Prosecutor is *ex officio* President of the HPC.

The present Amendment shall supersede article 161 of the Constitution of the RS.

#### AMENDMENT XXIII

##### *Work and Decision-making of the High Prosecutorial Council*

The High Prosecutorial Council shall take decisions by the votes of at least six members of the Council in a session with at least eight members present.

The High Prosecutorial Council shall publicly announce and explain their decisions, and shall found their decisions on the election and termination of office of public prosecutors and deputy prosecutors; decisions on proposal to elect or dismiss the Supreme Public Prosecutor, and decisions on the appointment and dismissal of members of disciplinary bodies, on the criteria determined in accordance with the law and under a legally prescribed procedure.

The minister in charge of the judiciary and the Supreme Public Prosecutor of Serbia may initiate disciplinary proceedings and proceedings for dismissal against public prosecutors and deputy prosecutors, but cannot take part in the disciplinary procedure or dismissal procedure if they have initiated the same.

The present Amendment shall supersede article 162 of the Constitution of the RS.

#### AMENDMENT XXIV

##### *Immunity of Members of the High Prosecutorial Council*

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

The members cannot be deprived of liberty in the proceedings against a criminal offence they have committed as members of the HPC, without the approval of the Council.

The present Amendment shall supersede article 163 and revoke articles 164 and 165 of the Constitution of the RS.