

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 on 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

Competences

The National Assembly shall:

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

Within its election rights, the National Assembly shall :

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

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

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

AMENDMENT II

Method of decision making in the National Assembly

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

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

1. grant amnesty for criminal offenses,
2. declare and call off the state of emergency,
3. order measures of departure from human and minority rights in the state of war and emergency,
4. enact the Law by which the Republic of Serbia delegates particular issues falling within its competence to autonomous provinces and local self-government units,
5. give previous approval for the Statute of the autonomous province,
6. decide on the Rules of Procedure pertaining to its work,
7. cancel immunities of deputies, the President of the Republic, members of the Government and Civic Defender,
8. adopt the Budget and financial statement,
9. elect members of the Government and decide on the end of the term of office of the Government and ministers,
10. decide on response to interpellation,
11. elect judges of the Constitutional Court and decide on their dismissal and end of their term of office,
12. elect and dismiss the Governor of the National Bank of Serbia, Governors' Council and Civic Defender,
13. also perform other election competences of the National Assembly .

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

1. referendum and national initiative,
2. enjoying of individual and collective rights of members of national minorities,
3. development and spatial plan,
4. public debt,
5. territories of autonomous provinces and local self-government units,

6. conclusion and ratification of international contracts,
7. other issues stipulated by the Constitution.

By means of a three-fifths majority vote of all deputies, the National Assembly shall elect the five members of the High Judicial Council, the five members of the High Prosecutorial Council and the Supreme Public Prosecutor of Serbia. If a three-fifths majority is not achieved within next 10 days another election shall be held requiring a five-ninths majority vote of all deputies. A five-ninth majority vote of all deputies is also required for the dismissal of the five members of the High Judicial Council, the five members of the High Prosecutorial Council and the Supreme Public Prosecutor of Serbia.

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

AMENDMENT III

7. Courts

Judiciary principles

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

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

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

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

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

A court decision may only be reviewed by an authorised court in a legal proceedings prescribed by the law.

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

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

Lay judges 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 , Permanent Tenure of Office and Non-transferability of Judge

A judge shall be independent and shall perform his/her duties in accordance with the Constitution, ratified international contracts, law and other general acts. The uniformity of the jurisprudence shall be regulated by law.

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

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

A judicial tenure of office shall terminate earlier upon personal request, in case of permanent disability for judicial function or in case of dismissal.

A judge shall be dismissed if he/she has been sentenced of imprisonment for a criminal offense; if he/she has been convicted for an act that renders him/her unworthy for the judicial function; if he/she incompetently performs the judicial function, or in case of imposing a disciplinary measure of termination of judicial function.

A judge and a president of the court shall have the right to lodge an appeal against a decision relieving him/her of duty with the Constitutional Court. The lodged appeal shall exclude the right to lodge a Constitutional appeal.

A judge may not be transferred to another court without their consent, except in cases of reorganization of the judicial system by a decision of High Judicial Council.

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

AMENDMENT V

Immunity and Incompatibility

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

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

A function of a judge or court president is incompatible with other public or private function, a legally defined activity or job, or political activities.

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

AMENDMENT VI

The Supreme Court of Serbia

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

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

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

AMENDMENT VII

President of the Supreme Court and Presidents of Courts

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

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

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

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

AMENDMENT VIII

High Judicial Council

Jurisdiction of the High Judicial Council

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

The High Judicial Council shall appoint and dismiss the President of the Supreme Court of Serbia as well as presidents of other courts; appoint judges and lay judges and decide on the termination of their tenure ; collect statistical data relevant to the work of judges ; evaluate

the performance of judges and presidents of courts; decide on the transfer and temporary relocation of judges; appoint and dismiss the members of the disciplinary bodies ; determine the number of judges and lay judges ; propose to the Government the amount of funds required for the work of courts in matters within its competence, and shall decide on other issues related to the status of judges, presidents of courts and lay judges provided by law.

Disciplinary proceedings and the procedure for the dismissal of a judge and a president of the court may also be initiated by the minister in charge of the judiciary.

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 their peers and five prominent 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, otherwise the election procedure is repeated after fifteen days, for the number of members who have not been elected.

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

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

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

AMENDMENT X

Term of Office of Members of the High Judicial Council

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

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

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

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 High Judicial Council shall be elected 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 shall adopt 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 High Judicial Council, at a session where at least seven members of the Council are present.

The High Judicial Council shall publicly announce and explain their decisions. The decisions on the election and termination of office of judges, presidents of courts, lay judges, decisions on the transfer and temporary relocation of judges, and decisions on the appointment and dismissal of members of disciplinary bodies shall be based 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 the members of the High Judicial Council

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

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

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

AMENDMENT XIV

8. Public Prosecutor's Offices

Status

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

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

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

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

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

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

AMENDMENT XV

Responsibility

The Supreme Public Prosecutor of Serbia shall manage the Supreme Public Prosecutor's Office. He/she shall be responsible to the National Assembly, both for the work of the public prosecution and his/her own work.

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

Deputy public prosecutors are responsible 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 perform the prosecution function.

A deputy public prosecutor shall substitute a public prosecutor in performing prosecution 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 of Serbia to a five-year term of office, upon the proposal of the High Prosecutorial Council, after having conducted a public competition, by a three-fifth vote of all deputies. If a three-fifths majority is not achieved, s/he shall be elected within the next ten days by a five-ninths vote of all deputies, otherwise the entire election procedure shall be repeated after fifteen days.

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

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

In the case of their dismissal, the Supreme Public Prosecutor of Serbia and public prosecutors shall retain the position of deputy public prosecutor in the public prosecutor's office which they managed prior to the dismissal.

The Supreme Public Prosecutor of Serbia and public prosecutors shall have the right to lodge an appeal against a decision relieving him/her of duty with the Constitutional Court. The lodged appeal shall exclude the right to lodge a Constitutional appeal.

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

AMENDMENT XVIII

Life Tenure, Transfer and Temporary Relocation of Deputy Public Prosecutors

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

A tenure of deputy public prosecutor shall terminate earlier upon personal request, in case of permanent disability for prosecutorial function or in case of dismissal.

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

A deputy prosecutor shall be dismissed if he/she has been sentenced of imprisonment for a criminal offense; if he/she has been convicted for an act that renders him/her unworthy for the prosecutorial function; if he/she incompetently performs prosecutorial function, or in case of imposing a disciplinary measure of termination of prosecutorial function.

A deputy public prosecutor shall have the right to lodge an appeal against a decision relieving him/her of duty with the Constitutional Court. The lodged appeal shall exclude the right to lodge a Constitutional appeal.

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

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 activities.

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

AMENDMENT XX

High Prosecutorial Council

Jurisdiction of the High Prosecutorial Council

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

The High Prosecutorial Council shall appoint and dismiss public prosecutors; appoint deputy public prosecutors and decide on the termination of their tenure; propose the appointment and dismissal of the Supreme Public Prosecutor of Serbia to the National Assembly; evaluate the performance of public prosecutors and deputy prosecutors; appoint and dismiss the members of the disciplinary bodies ; submit the annual report on the work of the public prosecution to the National Assembly ; propose to the Government the amount of funds required for the work of public prosecutor's offices in matters within its competence and shall decide on other issues related to the status of the Supreme Public Prosecutor of Serbia, 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 shall have eleven members: four deputy public prosecutors elected by public prosecutors and deputy prosecutors, five prominent lawyers elected by the National Assembly, the Supreme Public Prosecutor of Serbia and the minister in charge of the judiciary.

The National Assembly shall elect five members of the High Prosecutorial Council upon the proposal of the competent parliamentary committee after conducting a public competition, by a three-fifth 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, otherwise the election procedure is repeated after fifteen days for the number of members who have not been elected.

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

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

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

AMENDMENT XXII

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

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

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

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

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

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 adopt 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. The 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 of Serbia and decisions on the appointment and dismissal of members of disciplinary bodies shall be based 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 expressed 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 them for a criminal offense they have committed as members of the High Prosecutorial Council 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.