

24 January 2018

On the occasion of the working text of the amendments to the Constitution of the Republic of Serbia, that the Ministry of Justice published on 22 January 2018, the Judges' Association of Serbia, Centre for Judicial Research and Belgrade Centre for Human Rights issue the following

STATEMENT

The State has, with the Action Plan for Chapter 23, committed to amending the Constitution in order to remove the political influence and strengthen the judges' independence and prosecutors' autonomy.

Dedicated to the values of the Rule of Law, seriously and responsibly approaching the professional analysis of the Constitution and proposals for its amendments even before the Ministry of Justice published the working text, the Judges' Association of Serbia, Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, Centre for Judicial Research, Association of Judicial and Prosecutorial Assistants, Association of Judicial Associates, Belgrade Centre for Human Rights and Lawyers' Committee for Human Rights – YUCOM had accepted to participate in the co-called consultations organised by the Ministry of Justice. After they had realised that the process was going in a wrong direction and that the executive branch intended to replace one set of bad solutions with another, not wanting to give the process legitimacy, the organisations withdrew from the process in October 2017.

The entirety of the judiciary and the majority of professional public share the positions of the Legal Analysis of the Constitutional Framework on the Judiciary drafted by the Working Group of the Commission for the judicial reform in September 2014. These positions differ from the proposed solutions of the Ministry of Justice.

The solutions proposed by the Ministry of Justice relocate the political influence from the National Assembly to:

- the institution for training in the judiciary (Judicial Academy) the judges are, contrary to the constitutions of other European countries and with no guarantees of independence, selected out of for the first time therefore "closing" the judiciary for anyone else other than trainees of the academy, thus disabling, for example, trained judicial and prosecutorial assistants, or professors and lawyers from becoming judges;
- the High Judicial Council which would no longer be in charge of granting independence of judges but instead, by its composition and the manner of selection

of its members, would represent an extended arm of the political power, since all of its decisions would practically depend on non-judicial members or members selected by the National Assembly.

The reduction of the existing Constitutional guarantees is particularly worrying:

- regarding the independence of judges, by omitting the provision prohibiting every political influence on a judge in performing their function and by providing the Minister of Justice with permission to initiate disciplinary proceedings and proceedings for dismissal of a judge;
- regarding the irremovability of judges, by enabling transferring of a judge without their consent in case of any type of “reorganisation of the judicial system”;
- regarding the incompatibility of the judicial function with other functions and jobs, the foundations of which are partly regulated by the amendments in a vaguely restrictive manner and are partly widely and unlimitedly “left” to the easily changeable regulation by laws.

Proposals by which the “case law” is being introduced as a source of law and its harmonisation in accordance to the law is being prescribed, allow for its imposing on judges, outside free judicial deliberation, for founding of judicial decisions on practice established by and with assessment of extrajudicial bodies (Certification Commission provided by the Action Plan), which represent retrograde solutions inappropriate for the legal order of the Republic of Serbia and that of democratic states.

Taking into account the proposed solutions, the Ministry of Justice has entirely disregarded numerous professional and reasoned suggestions of the professional public and created conditions to further deepen the political influence on Serbian judiciary.

In order that the discussion on the proposed amendments to the Constitution makes sense for development of the judiciary, it is necessary that the Government of the Republic of Serbia:

- determines a longer and more appropriate timeframe for the public discussion, to enable all relevant subjects, the Supreme Court of Cassation and other courts, the High Judicial Council, public prosecution offices and the State Prosecutorial Council, professors and attorneys to come out regarding the proposed solutions;
- expresses readiness to examine different solutions provided by the professional organisations, in line with legal *acquis* of the European Union;
- provides for a debate the working version of the Constitutional Law for implementation of the Constitution, without which it is impossible to perceive the real scope of the proposed changes.

Under these presumptions, the signatory organisations express readiness to continue the debate regarding the Constitutional changes, aware that they do not represent a mere condition for accession of Serbia to the European Union, but are primarily a starting point for creation of stable legal basis for functioning of the judiciary worthy of citizens’ trust.