

Belgrade, 12 September 2018

With regard to the third version, this time in a form entitled *Draft Amendments to the Constitution of the Republic of Serbia (for public debate)*, that the Ministry of Justice published on its website in late afternoon of the 11 September 2018, without a Constitutional Law for implementation of the Amendments and without a call for public debate, the Judges' Association of Serbia is publishing the following

#### STATEMENT

The Ministry of Justice, with this version of the Constitutional amendments also, does not withdraw from its intention to subject the judiciary to the executive and legislative powers, alongside widening the possibilities of political influence on the judiciary.

Despite the criticisms of the entire professional public, both domestic: the most eminent experts from the fields of constitutional law, theory of state and law, and judicial-organisational law, the highest judicial institutions (Supreme Court of Cassation, High Judicial Council, State Prosecutorial Council, Courts of Appeal in Belgrade and Kragujevac and other courts), predominant part of the Bar as well as authentic professional associations of judges and prosecutors and civic associations advocating for Human Rights for years; and international: Consultative Council of European Judges, Consultative Council of European Prosecutors, International and European associations of judges and numerous, including conceptual, suggestions of the Venice Commission, the Ministry of Justice did not essentially amend the hitherto concept of the constitutional changes pertaining to the judiciary, which puts this branch of power in subordinate and controlled position, by:

- Proposing a concept of the separation of powers that enables the executive and legislative to limit the judiciary, for which reason the position that the judicial power is independent remains a mere proclamation;
- Omitting once again to define the content of the judicial power;
- Leaving out important guarantees: material, both that of the courts (judicial budget), and of judges (salaries that correspond to the dignity and difficulty of the judicial function as well as pensions similar to salaries); but also freedom of expression and gathering of judges in associations;
- Including a possibility of an extrajudicial review of every judicial decision by the Constitutional Court, otherwise not a part of the judicial system;
- Violating the guarantee of non-transferability by widening the situations in which a judge, without their consent, may be relocated to a different court, including permanently (not only in a situation of a change or reduction of jurisdiction but also for the reason of decreasing the number of judges), and transferred to another court temporarily (which may last for years), all without any limitation and without a possibility of a legal remedy for the judge in question;

- Putting judges in an unequal position to all the rest of the citizens by means of denying a right to legal remedy against decisions regarding: disciplinary punishments, evaluation of work, relocation transfer, etc (with the exception of dismissal, not to the court, but to the Constitutional Court);
- Limiting free judges' deliberation in interpreting the law in every single factual context by imposing an obligation to the judges to *take into consideration harmonised case law* despite the previously prescribed obligation for judges to adjudicate based on the Constitution, Law and ratified international treaties;
- Raising to the constitutional level and envisaging as one of requirements to be appointed judge – one of methods of training of a judge – in the Judicial Academy, while not providing guarantees of its independence;
- Depriving the State of the precious contribution of the judicial and prosecutorial assistants, through depriving them of the possibility to become judges and public prosecutors;
- Enabling another reappointment process of the judges and public prosecutors, as well as mass “rearrangement” of judges, by the effect of the provided provisions by which:
  - only Justices of the Supreme Court of Cassation and Deputy Republic Public Prosecutors (alongside staff working in these institutions), continue performing their functions in the Supreme Court of Serbia and Republic Public Prosecution Office, according to the Draft Constitutional Law;
  - all judicial laws regulating court and prosecutors' offices network, status of judges, public prosecutors and their deputies, High Judicial Council and High Prosecutorial Council, Judicial Academy are to be amended, as provided by the Draft Constitutional Law;
  - there will not be a legal remedy available against decisions of relocation and transfer to another court;
- Increasing political influence on the High Judicial Council by the manner of providing its:
  - position (unlike the current Constitution, the Council does not secure, but only guarantees the independence of courts and judges)
  - jurisdiction (the Council will not manage the judicial system, but only status of judges; will not take over the whole judicial budget, but only its part)
  - composition (still enabling that half of the Council to be *an interconnected group of like-minded people under the influence of the ruling majority*), while the notion of a prominent lawyer as a member of the Council from the ranks of non-judicial corpus is reduced to a lawyer with ten year long (undetermined) experience of work that falls under scope of legal profession relevant for the competence of the High Judicial Council and a discretionary criteria that the person has proven themselves with their professional work as well as that they enjoy personal reputation;

- procedure of selecting their members (in case the majority of 3/5 is not obtained, the five member committee is to decide on selection; three members of this committee are appointed by the National Assembly); and most of all
- reasons and manner of dismissal of its members.

The proposed solutions degrade the judicial power, as one of three branches of power in the system of the separation of powers, while the judicial independence is reduced to such extent that the judges are lowered to civil servants which should adjudicate from one case to another, sometimes based on the Constitution and Law, and sometimes based on the judicial precedents, but always for fear of dismissal, as well as of relocation, transfer, disciplinary punishments, all with no right to legal protection in general judicial proceedings.

This degradation of judges and the judiciary means that the citizens' right to a fair trial, which means that the impartial and independent court decides on their rights after considering all relevant aspects of their case has been weakened. The Judges' Association of Serbia will, in the upcoming days, study the proposed solutions more thoroughly and address the public.

The Judges' Association of Serbia calls upon:

- The entire professional public to unite around the general interest of preserving the principle of the separation of powers, independence of the judiciary and Rule of Law and to clearly express its position regarding the Constitutional amendments that, both regarding their creation and content of the proposed solutions, diminish the attained level of the Rule of Law;
- The Government of the Republic of Serbia to organise a substantial and wide public debate on the Draft Amendments to the Constitution of Serbia alongside on the Constitutional Law for its implementation in order to hear arguments and rational and applicable proposals, in line with tradition and possibilities of the Serbian State and European standards, to accept them and include them in the Draft Amendments to the Constitution of the Republic of Serbia, which should represent long-lasting social contract of Serbian citizens;
- National Assembly to, upon receipt of the Draft to:
  - adopt a decision on approach to amending the Constitution
  - enable its competent committee to form a working group for drafting a proposal of the act on amending the Constitution and include in its composition the most prominent professors of the constitutional law, representatives of the judicial institutions, authentic professional and non-governmental associations, and further on, before it adopts the proposal of the act on amending the Constitution and proposal of the Constitutional Law to
  - initiate a wide public debate in the National Assembly, but also within the judicial institutions and wide public, since public hearings, provided by the Rules of Procedure of the National Assembly, would not be enough nor would represent a true debate, and only after that to
  - send the draft act on amending the Constitution to the Committee of the National Assembly for Constitutional and Legal Matters, for the purpose of debate and adoption, and only after that the National Assembly should reach a decision.