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ANALYSIS OF THE PROCESS OF ENACTING LAWS ON THE JUDICIARY TO COMPLY WITH THE ACT ON AMENDING THE CONSTITUTION OF THE REPUBLIC OF SERBIA

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Table of Contents

INTRODUCTION[1]

The analysis of the procedure for amending and enacting laws on the judiciary in order to comply with the *Act on Amending the Constitution of the Republic of Serbia*[2] was made by observing the process and considering all available data, primarily data published by the Ministry of Justice of the Republic of Serbia and other publicly available data, but also those obtained by the Judicial Research Centre (CEPRIS) – a member of the Working Group of the National Convention on the European Union for Chapter 23 (WG NCEU for Chapter 23).

The scope of this analysis is primarily the procedural aspect of the amendment and enactment of the laws on the judiciary, from the moment of the appointment of the Ministry of Justice's working groups for the preparation of draft laws on the judiciary. The analysis follows the dynamics and content of the work and the method of decision-making, with a special focus on whether and how the Ministry of Justice communicated this to the public.

In the analysis of the procedure for amending and enacting those laws, the process of public discussion and public hearings was considered (how many there were, who participated in them, if they were sufficiently open and inclusive, what the content and result of those discussions was), and the phase when the draft laws were sent to the Venice Commission (what it stated in its opinion and whether it was respected).

The analysis also includes the discussion of the draft bills in the National Assembly, in particular, whether there were any amendments, how many MPs voted for them, whether the deadlines were respected and, in general, an assessment of the duration and quality of the entire process.

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Article 2 para 1 of the *Constitutional Law for the Implementation of the Act on Amending the Constitution of the Republic of Serbia*[3] provides that the Law on

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1 The author expresses his gratitude to the lawyer Aleksandra Pravdić, associate of CEPRIS, and the lawyer Sofija Mandić, member of CEPRIS, for their knowledgeable and selfless cooperation and great contribution in the creation and design of this Analysis, as well as to his wife Magdalena Grahovac, who created the graphs and tables.

2 *The Act on Amending the Constitution of the Republic of Serbia*, which was adopted by the National Assembly of the Republic of Serbia on November 30, 2021, was confirmed in the national referendum held on January 16, 2022. *The Decision on Promulgation of the Act on Amending the Constitution of the Republic of Serbia* was adopted on February 9, 2022. and was published in the *Official Gazette of the RS 16/2022*.

3 *Official Gazette of the RS 115* of November 30, 2021, promulgated by the *Decision on the Promulgation of the Constitutional Law for the Implementation of the Act on Amending the*

Judges, the Law on the Organization of Courts, the Law on the Public Prosecutor's Office, the Law on the High Judical Council and the Law on the State Prosecutorial Council shall be harmonized with the Amendments within one year from entry into force of the Amendments. In para 2 of the same Article, it is established that the provisions of other laws shall be harmonized with the Amendments within two years.

After the verification of the *Act on Amending the Constitution* in the referendum held on January 16, 2022, the Ministry of Justice reacted with a statement on January 17 of the same year. It thanked the citizens of Serbia for the demonstrated political maturity and emphasized that immediately after the promulgation of the Act on Amending the Constitution, it would take the next steps. "The Ministry will be dedicated to the preparation of a set of laws, necessary for the implementation of the amendments to the Constitution and their introduction into the legislation of Serbia, primarily the Law on Judges, the Law on the Organization of Courts, the Law on the Public Prosecutor's Office, the Law on the High Judical Council and the Law on the High Prosecutorial Council."[4]

Previously, on January 16, 2022, on the occasion of the confirmation of the Act on Amending the Constitution of the Republic of Serbia, the Judges' Association of Serbia[5] reacted, and in their statement, among other things, pointed out: "This important first step is an incentive to continue the good experience of cooperation with the judiciary in the process of drafting the laws on the judiciary, which should further develop mechanisms to prevent the politicization of the judiciary and to strengthen the independence of the court and the autonomy of the prosecutor's office."

I. PREPARATION OF DRAFT TEXTS OF THE LAW ON JUDGES, THE LAW ON THE ORGANIZATION OF COURTS, THE LAW ON THE HIGH JUDICAL COUNCIL, THE LAW ON THE PUBLIC PROSECUTOR'S OFFICE AND THE LAW ON THE HIGH PROSECUTORIALCOUNCIL

The Working Group for drafting the Law on the Organization of Courts, the Law on Judges and the Law on the High Judical Council and the Working Group for drafting of the Law on the Public Prosecutor's Office and the Law on the High

Constitution of the Republic of Serbia published in the *Official Gazette of the RS 16* of February 9, 2022.

4 https://www.mpravde.gov.rs/sr/vest/35271/ministarka-pravde-maja-popovic-zahvaljuje-gradjanima-na-iskazanoj-politickoj-zrelosti.php.

5 https://www.sudije.rs/Item/Details/974.

Prosecutorial Council[6] were formed by the decisions of the Minister of Justice of April 15, 2022. The decisions were adopted pursuant to Article 23 para 8 of the Law on State Administration and the Rulebook on principles for internal organization and systematization of jobs in ministries, special organizations and the Government. No budgetary funds have been allocated for the activities of working groups. Professional and logistical support was provided by the joint project of the EU and the Council of Europe (CoE) "Support for Judicial Reforms in Serbia", which together with the Ministry of Justice performed administrative and technical tasks for the working groups.

The Working Group for drafting the Law on the Organization of Courts, the Law on Judges and the Law on the High Judical Council[7] (Working Group for "Court Laws") had 15 members, which ensured, according to the explanation of the decision, the representation of distinguished legal experts from the state administration (four members), the court (six members), representatives of the academic/scholarly community (three members - two university professors and one research associate from an institute) and attorneys-at-law (two members). The WG was chaired by Jovan Ćosić, assistant minister of justice.

The Working Group for drafting the Law on the Public Prosecutor's Office and the Law on the High Prosecutorial Council [8] (*Working Group for*

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6 Decisions on the appointment of members of the Ministry of Justice's working groups for drafting the laws on the judiciary are available at: https://mpravde.gov.rs/files/РЕШЕЊЕ О ОБРАЗОВАЊУ РАДНЕ ГРУПЕ - ЈАВНОТУЖИЛАЧКИ ЗАКОНИ.pdf, https://mpravde.gov.rs/files/РЕШЕЊЕ О ОБРАЗОВАЊУ РАДНЕ ГРУПЕ - СУДСКИ ЗАКОНИ.pdf

7 According to the decision and the meeting minutes, the Working Group was chaired by Jovan Ćosić, assistant minister of justice, and the members included: Vladimir Vinš, assistant minister of justice, Jelena Deretić, assistant minister of justice, Darko Radojičić, assistant director of the National Secretariat for Legislation, Zorana Delibašić, member of the High Judical Council, Žak Pavlović, member of the High Judical Council, Snežana Bjelogrlić, member of the High Judical Council and president of the Judges' Association of Serbia, Dragana Boljević, judge of the Supreme Court of Cassation and honorary president of the Judges' Association of Serbia, Katarina Manojlović Andrić, judge of the Supreme Court of Cassation, Marijana Nikolić Milosavljević, judge of the High Court in Belgrade, Prof Nikola Bodiroga, professor at the Faculty of Law, University of Belgrade, Prof. Zoran Lončar, professor at the Faculty of Law of the University of Novi Sad, Dr Miloš Stanić, research associate of the Institute for Comparative Law, Nataša Jovičić, an attorney-at-law in Belgrade and Gorica Vasić, an attorney-at-law in Belgrade (the meetings were also attended by representatives of the Council of Europe, Danko Runić and Darja Koturović , as well as Branko Nikolić, a legal expert).

8 According to the decision and the meeting minutes, the Working Group was chaired by Vladimir Vinš, assistant minister of justice, and the appointed members were: Jovan Ćosić, assistant minister of justice, Branislav Stojanović, assistant minister of justice, Dr Ranka Vujović, assistant director of the National Secretariat for Legislation , Branko Stamenković, deputy republic public prosecutor and member of the State Prosecutorial Council, Tanja Vukićević, deputy public prosecutor at the Higher Public Prosecutor's Office in Belgrade and member of the State Prosecutorial Council, Tamara Mirović, deputy republic public prosecutor, Dr Goran Ilić, deputy republic public prosecutor and member of the Presidency of the Association of

"Prosecutorial Laws") had 17 members, which ensured, according to the explanation of the decision on the appointment of the working group, the representation of distinguished legal experts from the state administration (five members), the public prosecutor's office (seven members), representatives of the academic/scholarly community (three members - two university professors and one research associate from an institute) and the attorneys-at-law (two members). The WG president was Vladimir Vinš, assistant minister of justice.

A brief analysis of the composition of those working groups shows that in both cases high-ranking officials of the executive power (assistant ministers of justice) were appointed to preside, as the only nominees, in both working groups. This, among else, demonstrates dominance of the executive over the judicial power even in the professional aspect of the work. No judge/prosecutor, nor a law professor, has been appointed either as a chairperson of the working groups or as a deputy chairperson.

On the other hand, undoubtedly, a significant number of judges and prosecutors comprised the working groups, however, they were mostly judges and prosecutors from the highest judicial and prosecutorial bodies or members of the High Judical Council the State Prosecutorial Council. Unfortunately, the fact that they were many did not mean that they reached a common position when the Ministry of Justice suspended the previously fully agreed opinion of the Working Group on "Court Laws" just before the publication of the draft texts of the court laws. The suggestions were not even proposed as alternative solutions. Also, it is obvious that two members of the management of Judges' Association of Serbia and the Association of Prosecutors of Serbia were appointed to the working groups. The Ministry of Justice used their appointment as an argument to reject presence of other professional organizations, that were not members of working groups, who would observe the work without the right to vote, arguing that it was sufficient that the representatives of Judges' Association of Serbia and the Association of Prosecutors of Serbia were present. Moreover, it is obvious that not only the professors and research associates, but also other members of the groups were from Belgrade and Novi Sad only.

Prosecutors of Serbia, Nataša Krivokapić, deputy public prosecutor at the Higher Public Prosecutor's Office in Belgrade referred to the Republic Public Prosecutor's Office, Tatjana Lagumdžija, deputy public prosecutor in the Higher Public Prosecutor's Office in Novi Sad, referred to the Republic Public Prosecutor's Office, Svetlana Nenadić, deputy public prosecutor in the First Basic Public Prosecutor's Office in Belgrade, referred to the War Crimes Prosecutor's Office and member of the Presidency of the Association of Prosecutors of Serbia, Prof Tatjana Bugarski, professor at the Faculty of Law, University of Novi Sad, Prof Dragutin Avramović, professor at the Faculty of Law of the University of Novi Sad, Dr Miroslav Đorđević, research associate at the Institute for Comparative Law, Mirko Stefanović, an attorney-at-law in Belgrade, Jakša Peković, an attorney-at-law in Belgrade, and Zlatko Petrović, senior adviser at the Ministry of Justice (the meetings were attended by representatives of the Council of Europe, Danko Runić and Darja Koturović, as well as Branko Nikolić, a legal expert).

The appointment of two attorneys-at-law to each of the working groups turned out to be a special problem because there had been no information nor communication with the Bar Association of Serbia (BAS), which therefore officially reacted with a statement, demanding that the appointed attorneys-at-law resign. That position was repeated on October 15, 2022, in the remarks on the court laws by the Administrative Board of the BAS.[9]

The decisions on the establishment and the members of the working groups became publicly available only following legal professional associations' insistence. Initially, other materials on the work of the working groups were not publicly available, neither the minutes of the sessions nor the proposals made by the groups, although the Minister of Justice in a conversation with the head of the mission of the Council of Europe in the Republic of Serbia, Tobias Flessenkemper, assessed that "the Ministry of Justice in a transparent and an inclusive manner implements the process of drafting a set of the laws on the judiciary."[10]

Thanks to the activities of the WG NCEU for Chapter 23, minutes of the meetings (which were not signed by the presidents of the working groups but were marked on each page with the mark of the Ministry of Justice, the European Union and the Council of Europe) were subsequently made available to the professional public.

On July 11, 2022, assistant minister of justice Branislav Stojanović submitted to the WG NCEU for Chapter 23 the minutes from the second, third and fourth meeting of the *Working Group for "Court Laws"* and the minutes from the second, third, fourth and fifth meeting of the *Working Group for "Prosecutorial Laws"*,

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9 Firstly, general objections were listed (the method of appointing working groups, secrecy of work, non-inclusion of BAS and other relevant associations in the activities of the working groups). As stated, the Ministry of Justice, in its technical mandate, published the news on May 6, 2022, on its website, that the Working Group for drafting the Law on the Organization of Courts, the Law on Judges and the Law on the High Judical Council, as well as the Working Group drafting the Law on Public Prosecutor's Office and the Law on the High Prosecutorial Council held the first meeting and started working. At the same text, it was announced that the members of the working groups, among others, were representatives of the attorneys-at-law. When BAS learned about this information, on May 11, 2022, they sent a letter to the Minister of Justice in which, first of all, they referred to the agreement reached at earlier meetings to include representatives of attorneys-at-law in the work of those working groups, and invited the Minister of Justice to comply with the agreement and to appoint representatives of attorneys-at-law in the working groups. They, then, asked who the attorneys-at-law were who were appointed members of the working groups, who nominated them and what the criteria were for their appointment, and pointed out that, given that they were not nominated by BAS, in the procedure prescribed by the BAS's acts, they could not represent the bar, but only themselves, that is, they could participate only in their own capacity. The Minister of Justice never responded to that letter, except for a statement that "it is her discretion to appoint whoever she wants to the working groups". (BAS website: www.aks.org.rs and https://www.pravniportal.com/primedbe-aks-na-radne-verzije-sudskih-zakona).

10 https://www.mpravde.gov.rs/sr/vest/37166/popovic-i-flesenkemper-o-novom-setu-pravosudnih-zakona-.php.

noting that "the minutes were kept starting with the 2nd meeting of both working groups, considering that the methodology and dynamics of work were being agreed at the first meetings" and that the Ministry of Justice would also submit the minutes from the other meetings in the following period.

The minutes of the fifth, sixth and seventh meetings of the *Working Group on "Court Laws"* and the minutes of the sixth, seventh and eighth meetings of the *Working Group on "Prosecutorial Laws"*, both as joint minutes of all the listed meetings, were submitted to the WG NCEU for Chapter 23, on September 2, 2022. This followed an official response of assistant minister of justice Branislav Stojanović to the request by members of the WG NCEU for Chapter 23 to be present as observers at the working groups' meetings, which read:

"*Regarding the participation of CSOs in the work of working groups for drafting a set of judicial regulations, I refer once again to the position of the Ministry of Justice on this matter. Namely, when establishing the working groups, it was considered that professional associations, which are members of the Convention on the EU, should be part of the working groups and therefore directly involved in the work of the working groups.*

The Ministry of Justice aims to make the work on the set of judicial regulations fully inclusive and transparent. Therefore, at the round table, which exclusively dealt with future work on the set of judicial regulations, the future work was discussed with CSOs, which was an opportunity for the organizations to express their views and propose solutions. This is not an exception and the meetings with CSOs will be organized in the future with the same topic, and the topic is drafting the set of judicial regulations.

Hence, the Ministry of Justice will continue to inform the WG of NCEU for Chapter 23 about the progress of the work, by submitting minutes of the working groups meetings, and after the completion of the draft texts, we will organise a meeting to discuss the draft versions and proposed solutions by working groups. As mentioned earlier, the position of the Ministry of Justice is that it will continuously communicate with CSOs, as defined at the very beginning of the process, and inform them in a timely manner about the dynamics of the work process.

Regarding other activities, we will inform the WG NCEU for Chapter 23 in the following period."

The truth is that the members of the WG NCEU for Chapter 23 were not admitted as observers in the working groups, although they requested it and that the meeting minutes of both working groups were delivered to them with a significant delay. So, it was possible for the professional public to learn about the contents of those minutes, which are now used for *ex post* analysis and history, but the members of the WG NCEU for Chapter 23 were deprived of timely information about the work and possible contribution to the process that was constantly announced and

presented to the general and foreign public as completely open, inclusive and transparent.

The Working Group for "Court Laws" had a total of seven meetings, organized by the joint project of the EU and the Council of Europe "Support to the Judiciary in Serbia". No record of formal start of the work of the working group is available, although the Ministry of Justice, in its technical mandate, published information on the website on May 6, 2022, that the working groups for drafting five aforementioned laws on the judiciary began their work by holding their first meetings.

The minutes of the second meeting of the *Working Group for "Court Laws"*, held on May 13, 2022 in Belgrade, indicate that at the very beginning of the meeting *"Branko Nikolić informed the WG members about the Guidelines for the work of working groups for drafting the set of laws on the judiciary, which were adopted by a special working group of the Ministry of Justice, as well as about the recommendations of the Venice Commission's Emergency Opinion on the revised draft of amendments to the Constitutional provisions concerning the judiciary".* On the other hand, the President of the Working Group indicated that urgent work was required, bearing in mind the plan to submit the proposed amendments to all three laws to the Venice Commission by the end of the summer, and *"pointed out that there were no plans to amend the provisions regulating the jurisdiction and organization of the courts".*

That second meeting of the *Working Group for "Court Laws"* was significant as we could learn in more detail who the participants were and what their positions were, and thus learn more about the way of their work and the decision-making. Prof. Lončar proposed that the agenda of the group's work should be set, that the original plan to meet every other week in Belgrade should be altered, and the legal issues pertaining to necessary amendments should firstly be methodologically identified. Judge Boljević proposed that significant problematic issues should be identified in order to obtain appropriate comparative legal analyses if needed. Assistant minister of justice Deretić and judges Bjelogrlić and Manojlović Andrić also took part in the discussion. Judge Manojlović Andrić pointed out that the employment status of judges is problematic and asked prof. Lončar for his opinion, and Judge Boljević suggested that the Ministry of Justice prepare norms and positions concerning court staff, which was accepted by the assistant minister. The president of the working group, Jovan Ćosić, suggested that, in relation to those issues, necessary amendments should be made to the Law on the Organization of Courts, which would be valid until enactment of a special law to regulate the status and position of court staff. Prof. Lončar proposed that the law should stipulate that the issue would be regulated by a separate law and potentially define the deadline for its enactment. He also said that the issue may be regulated by the Law on the Organization of Courts as *lex specialis*.

The result of the discussion in which, according to the available minutes of the working group meeting, only three out of six judges actively participated, two out of four state officials, one professor out of three representatives of the academic community and none of the attorneys-in-law, shows that only the chairman of the working group, his colleague from the Ministry, representatives of the professional association of judges, one professor of law and one judge of the Supreme Court were active when controversial issues were discussed, while most members of the working group were passive.[11]

Thus, we conclude that an issue, for example, of the status and position of court staff, was not regulated in the Draft version of the Law on the Organization of

[11] "The good news is that representatives of the court, the attorneys-in-law and the academic community make up the majority of the working group (11/15 members). However, a majority members of the working group are inactive. Despite this, the executive power will in the future attribute responsibility for all potentially bad legal solutions to that majority. The responsibility of the judicial-academic group is only partially justified, not only because of inactivity, but also because of the decision-making method to which the members of the working group agreed. It has two main problematic directions. The first one refers to the fact that it is not clear from the minutes whether the working group makes proposals by consensus, by majority vote (there are no signs indicating that there was a vote at all) or if each proposal presented is considered an adopted proposal. It can be assumed, from the minutes, that the latter approach was accepted (though not explicitly). It brings us to another problem. It refers to the way of submitting proposals for amendments to the legal text. The working group for the most important issues offers alternative solutions that do not even contain brief explanations (why one alternative, or another would be good; how many members of the working group stand behind one or the other possibility). This is particularly evident in the minutes from the last meeting, where all the presented proposals were combined, and most of them were determined alternatively. This enables the Ministry of Justice, and the Government as the initiator of legal changes, to propose those legal changes to the National Assembly, based on the principle of free choice (take what you like most at the moment), that is essentially the position of the Ministry and the Government, and not necessarily the result of a broader agreement of the working group - even if the agreement, if not by a consensus, was measured by a simple majority of its members' votes.
When it comes to agreeing to the model of proposing alternative solutions, it is especially problematic when two alternative models have opposite basis and outcomes. As we have no information about the reasons for proposing the opposing solutions, as well as about the support they received, the Government of Serbia will in the future - that is quite certain - refer to the majority expert composition of the working group, creating legal solutions suitable for the executive power.
This can be seen in the Minutes from the 6th and 7th meeting of the Working Group (page 1), where it is stated that 'the Ministry of Justice will carry out legal and technical redaction of the texts and that, as *an authorized initiator, it will decide regarding the issues for which the working groups proposed alternative solutions due to disagreement'*.
Let us remind that the Constitution of Serbia was amended to reduce the influence of the executive power on the court and the prosecutor's office, and this goal was defined by the Proposal to Amand the Constitution, which was adopted by a two-thirds majority in the National Assembly. That is, the Constitution was amended to abolish the so-called free choice model for the Government and the Assembly, which - as we can see - despite all, fully persists." Sofija Mandić, "Švedski sto za novu vladu" [Free choice for the new government], September 8, 2022, Peščanik.net, https://pescanik.net/za-novu-vladu-svedski-sto/.

Courts, and in the enacted Law in Article 95 it was specified as initially proposed by the president of that working group: “The provisions of this Law governing the position of the court staff shall apply until entry into force of a special law governing the position of court staff.” Proposals by Prof. Lončar that the issue should be resolved fully by the Law on the Organization of Courts or at least that the enactment of the new law was postponed, were not accepted even though supported by representatives of the judiciary and even though, in the meantime, the *Analysis of the Employment Status of Judges, Judicial Associates and Court Staff the Legal System of Serbia*[12] was prepared, where the proposals were recommended, which was emphasized several times during consultations and public discussions.

The third meeting of the Working Group for "Court Laws" was held on June 10-12, 2022, in Vršac. "The Ministry of Justice, supported by Council of Europe’s experts, prepared technical changes to the existing text of the Law on the Organization of Courts and submitted it to the members of the working group before the meeting. Also, before the meeting, judge Katarina Manojlović Andrić submitted her proposed changes." For the next meeting, it was agreed that the Ministry of Justice prepare a proposal for changes to the provisions on the delimitation of competences between the Ministry of Justice and the High Judical Council pertaining to: the matters of court administration, the supervision of the work of the courts and the consequences of the supervision and the adoption of the Court's Rules of Procedure.

At the fourth meeting of the *Working Group for "Court Laws",* held on June 23-25, 2022, in Vrdnik, the discussion on the Law on Judges continued and several alternative solutions were determined on increasing the coefficient for calculating the salaries of judges of different ranks and court types. The following information from that meeting is distinctive: *"Due to the short time between the two meetings, the Ministry did not have time to prepare a proposal for amendments to the provisions on the delimitation of competences between the Ministry and the HJC pertaining to: the matters of court administration, supervision of the work of the courts and the consequences of the supervision, as well as pertaining to the adoption of the Court's Rules of Procedure, it was agreed that this should be done by the next meeting.”*

According to the minutes of the fifth meeting of the *Working Group for "Court Laws",* held on July 2-4, 2022, in Vrdnik, on that occasion, amendments to the Law on Judges and the Law on the High Judical Council pertaining to the evaluation of the work of judges were discussed. Amendments were prepared and presented to

[12] Dr Ana Knežević Bojović, senior research associate, Institute for Comparative Law, https://vss.sud.rs/sites/default/files/attachments/АНАЛИЗА РАДНОПРАВНОГ ПОЛОЖАЈА СУДИЈА, СУДИЈСКИХ САРАДНИКА И ЗАПОСЛЕНИХ У ПРАВОСУЂУ У ПРАВНОМ СИСТЕМУ СРБИЈЕ.pdf

the Working Group by Judge Boljević on behalf of the Judges' Association of Serbia.

Based on the minutes from the sixth and seventh meetings of the *Working Group for "Court Laws"*, which were held on July 13-15 in Arandjelovac and on July 19-21, 2022, in Belgrade, amendments to the Law on Judges, amendments The Law on the High Judical Council and amendments to the Law on the Organization of Courts were discussed. Some alternative proposals by the Judges' Association of Serbia were also noted. The minutes read the following: *"According to the plan that also applies to the working group for 'prosecutorial laws', these are the concluding meetings of the working group, which completed the first draft of the laws, as it has been its task.*

The further plan implies that during August, the Ministry of Justice will carry out a legal and technical redaction of the texts, to standardize the provisions concerning the institutes, terms or procedures (especially in the laws regulating the councils), and to decide, as an authorized initiator, on the issues the working groups proposed alternative solutions due to disagreements. The edited texts will be discussed at the meetings of both working groups, which will take place at the end of August."

According to the minutes of the second, third, fourth, fifth, sixth, seventh and eighth meetings of the *Working Group on "Prosecutorial Laws",* the meetings were held in continuity, following the meetings of the *Working Group on "Court Laws":* in Belgrade on May 27, in Vršac on June 3-5, in Vrdnik on June 13-15, in Belgrade on June 20, in Novi Sad on July 6-8, in Vršac on June 16-18 July, in Vrdnik on July 22-24, 2022, all organized by the joint EU and CoE project "Support to Judicial Reforms in Serbia".

The work of the *Working Group for "Prosecutorial Laws"* was also marked by the fact that at the second meeting, CoE expert Branko Nikolić introduced the Guidelines for the working group to the members, which were created by the working group of the Ministry of Justice with the support of the joint project of the EU and the CoE. The minutes of the meetings show that then valid laws were the basis of the work and that after each article was discussed, changes were agreed upon and submitted to all members of the working group, to be accepted at the next meeting with minor changes. From these data, it is difficult to conclude whether and which members of the working group spoke frequently and participated in the discussion, and whether the decisions were "agreed" or made in another way. Having reviewed the minutes from all meetings, we see that the only recorded individual discussion at the second meeting was Goran Ilić's proposal to regulate the relations between the prosecutor's office and the police in the new laws, which is particularly important due to the prosecutor's investigation, and that the Ministry of Justice first make technical changes to the to the text of the current law in terms of harmonization with the Amendments to the Constitution so that the working group continues to work on that text.

The minutes of the sixth, seventh and eighth meeting of the *Working Group for "Prosecutorial Laws"*, also read: *"According to the plan that also applies to the working group for 'court laws', these are the concluding meetings of the working group, which completed the first draft of the laws, which has been its task.*

The further plan implies that during August, the Ministry of Justice will carry out a legal and technical redaction of the texts, to standardize the provisions concerning the institutes, terms or procedures (especially in the laws regulating the councils), and to decide, as an authorized initiator, on the issues the working groups proposed alternative solutions due to disagreements. The edited texts will be discussed at the meetings of both working groups, which will take place at the end of August."

WG NCEU for Chapter 23 has never received the minutes of the working group meetings of August 2022. The announcement of those meetings was noted in the minutes of the sixth and seventh meeting of the *Working Group for "Court Laws"* and in the minutes of the sixth, seventh and eighth meeting of the *Working Group for "Prosecutorial Laws"*. The documents written by members of the *Working Group for "Court Laws"* - judges Dragana Boljević and Snežana Bjelogrlić, that will be discussed later, confirm that the meetings took place. The document, as well as the announcements in the minutes of previous meetings indicate that the meetings of the *Working Group for "Court Laws"* took place also on August 29-31, 2022, and that the Ministry of Justice had already made certain changes to the harmonized draft texts of the court laws, but that another meeting of the working group took place on September 5, 2022. We have no written material about the meeting.

Subsequently, the Ministry of Justice autonomously made changes to the draft versions of the court laws that had been delivered to the members of the Working Group on September 9 as final versions before publication, with an invitation to submit comments until September 12 at 9 a.m. Further, the changes were published on September 13, 2022. There is no publicly available written record of all this, except for the mentioned written statements of the judges, which were published on the website of the Ministry of Justice as part of the public discussion.[13]

In conclusion, if there had been no written reaction by the mentioned two judges - members of the *Working Group for "Court Laws",* the interested public would not have been at all aware of the presented - extremely delicate and worrisome issue of creation of the first draft versions of the laws on the judiciary.

Similarly, if there had been no public reaction - the statement of the BAS of May 11, which reiterated its views in the opinion of the BAS Administrative Board of

13 https://www.mpravde.gov.rs/sr/sekcija/53/radne-verzije-propisa.php

October 15, 2022, the public would not have had information about the disputed issues on the selection of members of the working groups from among reputable attorneys-in-law. The Minister of Justice, who was the recipient of the BAS's criticism, sent no official response to the BAS, but only stated that it was her "discretionary right to appoint whoever she wanted to the working groups" (she repeated that in her response to the president of the BAS at the round table in Belgrade on September 27, 2022). That proves that the arguments presented in public by the members of the Administrative Board of the BAS are convincing, and that the Minister of Justice did not fully adhere to all the provisions of the Law on State Administration (especially Article 77) and the Resolution of the National Assembly on Legislative Policy (Official Gazette of the RS 55 of June 25, 2013) which, among other things, stipulate that "one of the goals is to ensure complete transparency and openness during the entire legislative process, while respecting the principle of the publicity."

Thus, at the beginning of September 2022, the first working versions of the "set of laws on the judiciary" were completed. The NCEU Working Group for Chapter 23 was informed about this on September 13, 2022, by assistant minister of justice Branislav Stojanović. They were sent working versions of the laws, with a note that the Ministry of Justice had published them on its website and at https://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php and with an invitation to CSOs to the round table on September 23, 2022, where those texts would be discussed.

Finally, based on all the available information, it could be said that inclusiveness and transparency in the process of drafting the laws on the judiciary were not satisfactory, although the Ministry of Justice, which was working under a technical mandate in that period, claimed that the maximum possible extent of inclusiveness and transparency were achieved. The position and participation of the judicial branch of government in those activities was below the level achieved by the adoption and implementation of the National Strategy for Judicial Reform for the period 2013-2018. At the time, the working group for drafting the analysis of the constitutional framework was headed by the President of the Supreme Court and the High Judical Council, and it consisted of 12 members, of which only the State Secretary in the Ministry of Justice was from the executive branch, and the working group for drafting the analysis consisted of four professors of constitutional law. Only one representative of the professional association of judges and one representative of the professional association of public prosecutors were appointed from the judiciary to the working group for the Draft of the Act on Amendments to the Constitution. That trend, depending on a subject matter and with an undeniable increase in the number of members of working groups from among the judiciary, continued in the process of drafting laws on the judiciary.

However, thanks to the activities of the civil sector, primarily the NCEU's Working Group for Chapter 23, but also the joint project of the CoE and the EU "Support to Judicial Reforms in Serbia", the insufficient transparency of the work

on drafting court and prosecutorial laws has been somewhat overcome *post festum*, in the sense that basic information on the method of work, controversial issues and especially significant differences between the views of the *Working Group for "Court Laws"* and the Ministry of Justice were subsequently obtained.

During the drafting of those laws, the Ministry of Justice rejected that interested participants who were not members of the working groups, observe the work. Only later, closer to the finalisation of the work, did the materials - minutes of the working groups' meetings become available to the public, following a request by the civil sector.

Based on the statement of the Ministry of Justice of May 6, 2022, we learned that the working groups had started working by having their first meetings held. As in the same phase of work when the Act on Amendments to the Constitution was drafted, representatives of the two oldest and most numerous professional associations of judges and prosecutors (Judges' Association of Serbia and Prosecutor Association of Serbia) were also included in the working groups, by the discretion of the Minister of Justice, which was basically constructive, although it was not good that the representatives of other professional associations, or NGOs, did not have that opportunity.

This fact, together with the intense but monopolistic cooperation and communication of the Ministry of Justice with the Venice Commission during the process, unfortunately, became a strong excuse that in the consultative process and public discussion, an essential discussion of the proposed draft laws and its corresponding summary or the valorisation of the results - were absent. It was a brutal step by the executive-political power, and the political majority in the legislative branch continued to treat in the same way the proposals for the new laws on the judiciary. Many well-founded and thoroughly explained proposals by participants in that process were not analysed and considered in the final discussion as required by relevant regulations and decisions but were ignored and rejected in 90-95% of cases.

Several essential conditions were missing as to achieve inclusiveness and transparency of the process of drafting the new laws, primarily related to the working groups of the Ministry of Justice. This refers to the publicity of work and openness to all interested subjects, especially to reasoned proposals, analyses, research and documents recently created by or requested for that occasion from judicial authorities and their professional associations and NGO sector. Also, it refers to the presence, at least in the capacity of observers, of some of the CSOs - members of the WG NCEU for Chapter 23 that requested the observer's status, such as CEPRIS, JUKOM or Transparency Serbia. In that case, other issues from the meeting minutes that may cause confusion would have been clarified sooner and in a more comprehensive manner. For example, the presentation of the experts of the CoE at the second meeting of both working groups raised the question of what the guidelines for the working groups adopted by the "special working group of the Ministry of Justice" represent. Given the provisions of the Law on State Administration and the positions of the Resolution of the

National Assembly on Legislative Policy, the question is what kind of working group within the Ministry of Justice that was and what kind of guidelines those were, if the group was not formed in accordance with law and if information about its work were not available to the public.

II. CONSULTATIONS ON THE WORKING VERSIONS OF THE LAWS ON THE JUDICIARY STARTED WITH THE COMMENTS OF TWO JUDGES ON THE MOST IMPORTANT DEVIATIONS OF THE PUBLISHED DRAFT VERSIONS OF THE LAWS ON THE JUDICIARY FROM THE VERSIONS DETERMINED AT THE WORKING GROUP

On September 13, 2022, the Ministry of Justice published the working versions of five laws on the judiciary (Law on Judges, Law on the Organization of Courts, Law on the Public Prosecutor's Office, Law on the High Judical Council and Law on the High Prosecutorial Council).[14]

At the round table on September 23, 2022, in an open consultative process on the draft texts, which was organized for the members of the WG NCEU for Chapter 23, it was disclosed that the working versions of the laws on the judiciary had already been sent to the Venice Commission and that their opinion was expected in mid-October. During that period, civil society organizations were sending their objections, proposals and suggestions to the Ministry of Justice electronically and individually, but also collectively, including the members of the WG NCEU for Chapter 23.[15]

At the round table meeting with representatives of the WG NCEU for Chapter 23, the participants received two papers, which specified other activities of the CoE and EU joint project "Support to Judicial Reforms in Serbia" for the period July-August 2022, which referred to preparation of draft texts of the new laws on the judiciary. The first is the *Assessment Report on the Compliance of the Working Versions of Draft of Law on the Organization of Courts, the Law on Judges and the Law on the Court High with the Standards of the Council of Europe and the EU*, by Nina Betetto, CoE consultant, published in August 2022. The second is the *Assessment Report on the Compliance of the Working Version of Draft Law on the Public Prosecutor's Office and the Law on the High Prosecutorial Council with the Standards of the Council of Europe and the EU*, by MirjanaVisentin, CoE consultant, also published in August 2022.

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14 The Ministry of Justice published those texts on September 13, 2022, on their current website, https://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php.

15 https://www.mpravde.gov.rs/files/Збирни коментар Радне групе НКЕУ за П23 на нацрте правосудних закона (21102022).pdf

The introductions of the publications indicate that they were produced within the framework of the joint project of the EU and CoE "Support to Judicial Reforms in Serbia". Consultant Nina Betetto from Slovenia was asked, on July 26, 2022, to evaluate the "Draft Law on Judges, the Draft Law on the Organization of Courts and the Draft Law on the High Judical Council, prepared by the working group of the Ministry of Justice, in relation to relevant standards of CoE and the EU, and to summarize the findings in a draft report", and submit the texts in Serbian. A similar request was sent to consultant Mirjana Visentin in an unofficial translation on August 12, 2022, pertaining to the "draft prosecutorial laws".

Undoubtedly, professional expertise by foreign authorities during the preparation of draft legal texts, in principle, contributed to a higher quality and better legislative solutions, assuming that the involved experts also engaged local professionals in a similar way.

However, now the following questions are being raised: is it justified that the working versions of "court" and "prosecutorial" laws are called drafts in the communication of the Ministry of Justice with the mentioned experts (as the experts used that term in their papers)? Were the working versions of the law that contain all the agreed legal solutions, and all the alternatives delivered to the experts and why were not those "draft laws" delivered to the Venice Commission (if not as a document, then at least as working material)? And finally, were the members of the working groups for drafting court and prosecutorial laws familiar with the content of those reports?

In September 2022, the following publications raised the greatest interest of the professional public: Deviations from the Working Version of the Law on Judges from the Proposal of the Working Group – Commentaries, Deviations from the Working Versions of the Law on the Organization of Courts from the Proposal of the Working Group - Commentaries and Deviations from the Working Versions of the Law on the High Judical Council from the Proposal of the Working Group - Commentaries. Judges Dragana Boljević and Snežana Bjelogrlić, members of the Working Group for "Court Laws", published their comments on the major deviations of the published working versions of the laws from the texts determined by the working group. They pointed out that the working group confirmed their proposals at all meetings with representatives of the Ministry of Justice, "acknowledging the reasons why the Ministry of Justice did not accept the proposals on improving the financial position of judges and why, in August, the Ministry introduced other solutions, different from those proposed by the working group".[16]

[16] https://www.mpravde.gov.rs/files/2022 09 15 Zakon o sudijama Dragana Boljević i Snežana Bjelogrlić.pdf,
https://mpravde.gov.rs/files/2022 09 15 Zakon o uređenju sudova Dragana Boljević i Snežana Bjelogrlić.pdf,
https://mpravde.gov.rs/files/2022 09 15 Zakon o VSS Dragana Boljević i Snežana Bjelogrlić.pdf.

Thus, the publicly available comments of the two members of the *Working Group for "Court Laws",* which no one has publicly contested, show that the Ministry of Justice, on the pretext of technical preparation of the text, not only eliminated agreed alternative solutions, but also changed numerous fully agreed proposals - legal solutions of the expert working group that they formed, in all three working texts of the laws and without the consent of the members of that working group. Namely, in those documents, they state that the Ministry of Justice, already at the meeting on 29-31 August, made certain changes to the agreed texts of the working versions of court laws, which only needed technical editing.

The commentary of the judges is particularly concerning, and it reads: "The most important proposals for the laws were formulated by the Working Group at the meeting on July 21-23, 2022 (the last meeting before the summer break), with the obligation of the Ministry of Justice to do technical editing of the texts by the next, final meeting, on August 29-31. The Working Group confirmed the proposals referred to in this text, again at the meeting with representatives of the Ministry of Justice on September 5, acknowledging the reasons why the Ministry of Justice introduced the solutions different from those proposed by the working group".

That raises many questions, among others, how come that not all members of the working group have reacted as to preserve the authenticity and integrity of their proposals and whether it has been discussed by the highest judicial authorities.

How come that, besides the two judges, the remaining four out of six judges from the 15-member working group or the prosecutors from the group for prosecutorial laws (seven out of 17 members of the working group, and many systemic solutions were the same for the courts and prosecutor's offices) had no identical or similar remarks, that is, or any other members of the working group if they had previously agreed with the first version of the working texts?

If the *Working Group for "Court Laws"* fully agreed on many proposals, for example on improving the financial position of judges, how come that nothing remained in the published texts, not even as an alternative?

Regarding the presented facts, several more procedural questions may be asked: why there is no mention of these activities in the minutes of the meetings of the working groups, nor any information from the Opinion of the Venice Commission of October 24, 2022, on the draft "court laws", that in July both working groups had online communication with the rapporteurs of the Venice Commission.

The government's answer to some of the questions was given by the Minister of Justice on September 27, 2022, at a round table meeting in Belgrade as part of the consultation process: *"I was in favour of increasing the salaries of judges and prosecutors, but after consultation with the Minister of Finance, we gave up on that. Due to the difficult international situation and when the budget is bleeding, it is not the moment to increase the salaries of judges and prosecutors, however, we will*

work on it." The attending representatives of the highest judicial authorities did not react, nor did they include the topic in their agenda...

That round table meeting was typical considering the organization and implementation of the consultation phase. Those gatherings, although organized within the project "Support to Judicial Reforms in Serbia", after the formal introduction, were chaired by a working presidency consisting exclusively of officials of the Ministry of Justice. After the opening presentation by the Minister of Justice, the president of the *Working Group for "Court Laws",* Jovan Ćosić, spoke for about an hour. When the moderator of the meeting, assistant minister of justice, invited the representatives of the working group to speak, the president of the Bar Association of Serbia spoke up, and replied to the Minister that she had allegedly referred to the attorneys-in-law who were members of the working groups for drafting texts of the laws on the judiciary, as to the representatives of the bar. The president of the BAS said that the organization was not even informed about their appointment and that there was no communication with them, so in a statement they requested the appointed attorneys-at-law to resign. The Minister of Justice opposed those allegations, saying that the president of the BAS did not carefully listen to the presentation nor read the decision and that this was untrue because it was her discretionary right to appoint eminent lawyers to the working groups.

Then, at that final roundtable discussion, the members of the working group, judges Dragana Boljević and Katarina Manojlović Andrić spoke (40 min. and 15 min, respectively) about the texts of the new court laws. Previously, similar roundtable discussions took place in Novi Sad, Niš and Kragujevac, to which, together with the members of the working groups, the presidents of the courts, all the judges of the appellate courts, representatives of the prosecutor's offices and the bar from relevant areas were invited, as well as representatives of local self-governments and law schools. Only in the last hour of the final roundtable meeting, several participants spoke as it was their only opportunity to present their views and proposals (judge Ivana Josifović, president of the Board of the Association of Judges and Prosecutors and judge Mirjana Martić on behalf of the Association of Magistrate Court Judges, spoke for about 40 min.). There was practically no time for any individual discussion by judges who were not representatives of the meeting organizers or associations. After the lunch break, the afternoon session was devoted to presentations on the draft texts of the prosecutorial laws and was marked by polemical speeches by public prosecutor of the Higher Public Prosecutor's Office in Belgrade. All, including individual short presentations, was concluded by the assertion that the Ministry of Justice may be contacted electronically with proposals and suggestions for amendments to the working versions of the laws on the judiciary.

At the roundtable meetings organized on that occasion, the main discussion topics were proposals to improve the financial position of the judges and prosecutors and related questionable issues about the jurisdiction and procedural rules. Many

meeting participants were disappointed with the information by the Minister of Justice at the beginning of the round table.

After the so-called consultative process, which was mostly reduced to roundtable meetings in the seats of the appellate courts, where mostly representatives of the Ministry of Justice and working groups[17] spoke, a break followed. It turned out that online communication with the rapporteurs of the Venice Commission, the plenary session of the Commission and the adoption of their Opinion were awaited.

III. ON COOPERATION WITH THE VENICE COMMISSION AND WHETHER THE RECOMMENDATIONS HAVE BEEN ACCEPTED

In the process of preparing the enactment of five court and prosecutorial laws in 2022, the *European Commission for Democracy through Law* (Venice Commission, abbreviated VC) issued three opinions, as follows: *Opinion on three draft laws implementing the constitutional amendments on Judiciary CDL-AD (2022)030 No. 1088/2022* of October 24, 2022 (adopted at 132nd Plenary session)[18], *Opinion on two draft laws implementing the constitutional amendments on the prosecution service CDL-AD (2022)042 No. 1106/2022* of December 19, 2022 (adopted at 133the Plenary session)[19] and *Follow-up Opinion on three revised draft Laws implementing the constitutional amendments on the Judiciary of Serbia CDL-AD (2022)03O – Opinion No. 1112/2022 CDL-AD (2022)043* of December 19, 2022 (adopted at 133the Plenary session)[20].

On the website of the Ministry of Justice, in November 2022, the *Court laws harmonized with the opinion of the Venice Commission - working texts of November 15, 2022*, were published without any other information or explanation. In those

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17 The *Report on the public discussion* of the Ministry of Justice reads: "It was also said that the Ministry published working versions of the law in a timely manner, as well as that during the process of drafting the laws, it organized the presentation of the working versions of laws on the judiciary to the professional public at the seats of the appellate courts in Niš on September 20, 2022, in Kragujevac on September 21, 2022, in Novi Sad on September 26, 2022 and in Belgrade on September 27, 2022. The presentation was also organized for members of the National Convention on the European Union in Belgrade on September 23, 2022, as well as within the framework of the consultations on criminal law on Zlatibor on September 22, 2022".

18 Available in English and French at https://www.venice.coe.int/webforms/–documents/?pdf=CDL-AD(2022)030-e, and in an unofficial Serbian translation at https://mpravde.gov.rs/files/Мишљење на судске законе - октобар 2022. године.pdf

19 Available in English at: https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)042-e, and in an unofficial Serbian translation at: https://mpravde.gov.rs/sekcija/53/-radne-verzije-propisa.php.

20 Available in English at: https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)043-e, and in an unofficial Serbian translation at: https://mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php.

texts, little has been changed compared to the original versions of the laws. For example, the Court's Rules of Procedure would in the future be jointly adopted and monitored by the Ministry of Justice and the High Judical Council, and the original legal solution sent to the Venice Commission stipulated that the Court's Rules of Procedure would be adopted by the Ministry of Justice with a prior opinion of the court. In the courts where an excess workload is over 10% or where there is a large influx of cases, the High Judical Council may grant judges a salary incentive of 10% to 50%, which was a small improvement compared to the previous legal solutions (judges of the Supreme Court of Cassation had 30%).

On the other hand, on October 5, 2022, the Ministry of Justice published on its website that they organised online meetings (September 29 and 30) with the rapporteurs of the Venice Commission, where the working texts of court laws were presented. According to that report, the meetings were attended by representatives of the Ministry of Justice, members of the High Judical Council, judges of the Supreme Court of Cassation, representatives of the Judges' Association of Serbia, university professors of law, associates of academic institutes and MPs from the ruling and opposition parties. The rapporteurs of the Venice Commission were informed about the activities and results of the work of the working group, the criteria for the selection of the members and other issues related to the transparency and inclusiveness of the procedure.

On the website of the Ministry of Justice, on October 21, 2022, a text with the following title was published, along with a video statement by the Minister of Justice: "Positive opinion of the Venice Commission on the new set of laws on the judiciary".[21] In that news, which was transmitted by the public service broadcaster, all electronic media with national coverage and many other media, it was stated that the Minister of Justice Maja Popović participated in the work of the 132nd Plenary session of the Venice Commission, where the opinion was issued on the working texts of the Law on the Organization of Courts, the Law on Judges and the Law on the High Judical Council.

"The adopted positive opinion indicates that the laws on the judiciary, together with the constitutional amendments, recently confirmed in the referendum by the citizens of Serbia, have potentially significant positive changes in the Serbian judiciary and that the working texts of the laws are well structured, clearly written and cover all essential points.

The Venice Commission praised the Ministry of Justice for the significant efforts made in drafting the laws on the judiciary, as well as for the inclusiveness and transparency of the law-making process and stressed that it should continue the law-making process in the same spirit, while ensuring public consultations in the coming months that will precede the voting on the laws in the National Assembly. In its opinion, the Venice Commission made recommendations that the Ministry of

21 https://www.mpravde.gov.rs/sr/vest/37669/pozitivno-misljenje-venecijanske-komisije-o-novom-setu-sudskih-zakona.php

Justice consider in detail and include in the bills those recommendations that are in the best interest of the rule of law in the Republic of Serbia".

Among the professional public, especially among those organizations and individuals who expressed the views that, in general, and from the beginning, the domestic public has not been adequately included and respected in the process of preparation and public discussion of the laws on the judiciary, especially since the working versions of the new laws were published at the beginning of September, there is an opinion, among other things, that officials of the Ministry of Justice have been sending draft texts to the Venice Commission, especially those parts that could cause division in professional and academic circles, and then publicly announced positive opinions of the Commission on the proposed. And indeed, the insistence that they already have had a positive opinion of the Venice Commission as an expert-consultative body of the Council of Europe, while constantly emphasizing that the Commission praised the transparency and inclusiveness of the process (and it was about the phase of preparing the law and encouraging "the authorities of the Republic to continue in the same spirit of inclusivity and transparency and ensure appropriate public consultations in the coming months, before the parliamentary vote on the laws"), while the Serbian judiciary continued to discuss the working versions of the laws on the judiciary that were in the consultation and harmonization phase, rendered meaningless, to a certain extent, the real purpose of the consultative process, the public discussion and, at the very end, the debate in the National Assembly.

Revised working versions were published by the Ministry of Justice on its website with the indication that the laws "are in line with the opinion of the Venice Commission - draft texts of November 15, 2022", however, they did not publish the opinions of the Venice Commission on the laws. When the Ministry of Justice, just before the start of the public discussion that lasted from December 12, 2022 to January 15, 2023, published the Opinion of the Venice Commission of October 2022 on its website, it turned out that their claims were not utterly true.

Namely, the *Opinion of the Venice Commission CDL-AD (2022)030 no. 1088/2022* of October 24, 2022[22] shows that it was drafted based on the comments of the rapporteurs, the results of the online meetings of September 29 and 30, 2022, and the written comments submitted to the Venice Commission by the Ministry of Justice of October 17, 2022, and that the draft opinion was adopted at the 132nd plenary session, after it had been agreed at the subcommittee session of October 20 and discussed with the Minister of Justice.

It unequivocally states, in the "Analysis" part, that the Venice Commission is aware that the draft laws were not identical to those agreed upon by the working group,

[22] It was initially published on the website of the Judges' Association of Serbia: https://www.sudije.rs/Dokumenta/Objave/2022%2010%2024%20VK%20mi%C5%A1ljenje%20o%20sudskim%20zakonima,%20prevod.pdf, while the Ministry of Justice published the translation on its website in December.

but "the final responsibility for that phase of the procedure, considered internal until September 2022, is of the Ministry of Justice and the Minister of Justice, who will defend those regulations before the National Assembly". Therefore, if we are to be objective, that serious remark should be considered together with the wish of the Venice Commission, expressed in the aforementioned opinion, to "continue the process in the same spirit of inclusivity and transparency".[23]

As for the content, that opinion already contained serious remarks and suggestions to the Draft Law on the Organization of Courts (for example, that the Ministry of Justice retained some important powers and that the line between the administrative and the substantive in court proceedings is not always visible, that they were amazed by the wide scope of jurisdiction of the presidents of courts, the system of complaints, etc.), the Draft Law on Judges (e.g., Article 5 guarantees adequate salaries for judges, but it does not include guarantees to implement the principle, the outdated system of disciplinary responsibility of judges, the composition of commissions for evaluating the work of judges, etc.) and the Draft Law on High Judical Council (e.g., to provide better mechanisms so that the non-judicial members of the High Judical Council do not make a politically homogeneous non-judicial component, and to review the required condition for a quorum to hold a session and the extremely demanding qualified majority for decision-making, the termination of the mandate of a member of the High Judical Council and the budgetary autonomy of the High Judicial Council, as the Venice Commission had previously advocated those should be determined at the constitutional level).[24]

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23 *Opinion of the Venice Commission CDL-AD (2022)030 no. 1088/2022* of October 24, 2022 as in footnote 21

24 The ministry does not mention critical remarks. However, they are written down in detail in the Opinion of the Venice Commission no. 1088/2022 and represent a major part of the document. In the introduction (Background, par. 6–11), the Commission announced that it would focus on suggestions, given the volume of the submitted material and the short deadline to provide the opinion. Even though the purpose of the opinion itself is to present suggestions and criticism, the Ministry claims that the opinion is positive - an interesting way of reading the text and misleading the public.

The Commission points out two main problematic areas of the draft texts of the Law on the Organization of Courts, the Law on Judges and the Law on the High Judical Council. The first is retention of significant influence of the Ministry of Justice over the court system (paras 17–24), and the second concerns the strict hierarchy of the court system (paras 25–28). That hierarchy is reflected in the broad competences of court presidents within their own court, but also in relation to hierarchically lower courts... Apart from the influence of the president and the ministry, it was assessed that the proposed quorum for decision-making in the High Judical Council is too high (eight votes), considering that it may block the work of that body (paras 87–92). Hence, if the proposed solution remains, HJC sessions could not take place without representatives of the National Assembly (so-called distinguished lawyers).

The Commission also concluded that the proposed definition of unlawful influence on judges is too broad, because the influence of political authorities on court proceedings and legitimate criticism of the work of the judiciary by civil society or citizens, are considered the same (para

Although in the subsequent versions of the draft laws published by the Ministry of Justice on its website on December 16, 2022, in the news section, entitled "New praise for Serbia in the process of drafting laws on the judiciary" (on the Opinion of the Venice Commission of the 133rd plenary session)[25] there were certain minor developments, in particular in the content of the Draft Law on the Public Prosecutor's Office and the Draft Law on the High Prosecutorial Council, this did not significantly influence rather high interest and expectations from the ongoing public hearing, but it rather delayed its beginning, especially since it was planned during the New Year and Christmas holidays.

Finally, the Ministry of Justice's website published on December 26, 2022, the *Opinion of the Venice Commission No. 1112/2022 CDL-AD (2022) 043*, which was, in fact, a continuation of the previously mentioned Opinion no. CDL-AD(2022)030 of October 2022, after which those three laws (on the judiciary) were revised and the Ministry of Justice requested a subsequent opinion on them in a letter dated November 15, 2022. The subsequent opinion was adopted at the 133rd Plenary session of the Venice Commission (Venice, December 16-17, 2022). At the beginning of the Opinion, the Venice Commission emphasizes that it had to be prepared in a very short period and that the rapporteurs had to assess not only the amendments to the mentioned three draft laws, which were quite extensive and complex, but also the amendments to the revised versions of the three draft laws, proposed by the Ministry of Justice in written comments, as well as their explanations of some provisions of the revised draft laws.

The introductory part of that subsequent Venice Commission Opinion reads: " However, the Commission also stressed a need for a change in the legal culture

29). The Venice Commission appealed that the prohibition of judges "to act politically in another way" should be more precisely defined, because in its current form in the draft text of the law, it may prevent judges from speaking publicly or even voting in elections (para 44). Sofija Mandić, "Duh sa terase" ["A ghost from the balcony"], Peščanik.net, November 10, 2022, https://pescanik.net/duh-sa-terase/

25 It is stated in the news: "The Venice Commission, at the 133rd plenary session, adopted a positive opinion on the submitted Draft Law on Public Prosecutor's Office and Draft Law on the High Prosecutorial Council. The rapporteurs' assessment is that the Constitutional amendments and the accompanying set of laws will contribute to an exceptional degree of improvement of the judiciary in Serbia. This result and the second positive opinion on Serbia are the result of a constructive dialogue, which the Ministry of Justice has had with the Venice Commission both before and after the draft opinion was issued. The example of Serbia in this process has been recognized for its particular efficiency in corresponding with the Venice Commission, which the rapporteurs especially emphasized. The explanation of the proposed solutions, which the Ministry offered in detail, was consequently reflected in the positive opinion. The Ministry of Justice continues its agenda and roundtable discussions will start next week as part of the public hearing, which will last until January 15". (https://www.mpravde.gov.rs/sr/vest/38292/nove-pohvale-za-srbiju-u-procesu-izrade-nacrta-pravosudnih-zakona.php). Only after this news was published, on December 16, 2022, the Ministry of Justice's website published an invitation for the public hearing on the draft laws on the judiciary. Until December 15, only the versions of the laws dated November 15, 2022, were available on that website.

within the judiciary to supplement these positive changes." Here, the Venice Commission indicates that the new Article 95 of the Law on the Organization of Courts contains a norm by which the provisions regulating the position of court staff are applied until the entry into force of a special law regulating that issue. The Commission reminds the Serbian authorities of the importance of budgetary autonomy of the judiciary for its proper functioning and independence and expects that the special law will be enacted without delay.

Other key recommendations are: the judicial administration tasks of the Ministry should be better delimited in order not to encroach on the autonomy of the courts and not to overlap with the tasks of court presidents; the specific supervisory powers of the Ministry of Justice remained too broadly defined; the authorities should consider a joint adoption of the Rules of Procedure by the High Judical Council and the Ministry of Justice; the power of the Ministry to issue "criteria for determining the number of court staff" and to give "consent to the rulebook on the internal organisation and systematisation of jobs in the court" should be restricted; the powers of court presidents should be described with more precision, especially the "supervision" function of the president of the higher court, and the concept of "undue influence" should not include the legitimate behaviour of the participants in the proceedings or the legitimate use of freedom of speech, including criticism and else.

Finally, we must point out that many of the mentioned issues were not resolved in the process of enactment the so called " set of laws on the judiciary". The most illustrative example is the question of the status, financial position and rights of judges (or public prosecutors) and all employees of the judiciary, despite the efforts and surprise expressed in the Opinion of the Venice Commission on the laws on the judiciary. Namely, the Ministry of Justice withdrew the proposal-consent, acknowledged and supported by the Venice Commission recommending that "*the basis for the calculation and payment of the judge's salary cannot be less than the average net salary of an employee in the Republic of Serbia according to the last published data of the authority responsible for statistical affairs before the approval of the budget proposal for the next year"*. However, the Ministry of Justice informed the Venice Commission that this provision would be reformulated after consultations with the Ministry of Finance, to read: *"the basis for the calculation and payment of the judge's salary shall be determined by the Budget law"*.

Thus, the issues of financial status and rights of judges/prosecutors remained unresolved, despite frequent mention in the public discussion and great criticism by the opposition at the National Assembly sessions, including the budget for judiciary, with minor improvements in the procedure for securing budget funds for the work of the High Judical Council.

IV. PUBLIC HEARING ON DRAFT LAWS ON JUDICIRY

IV 1. FORMAL PART OF THE PUBLIC HEARING

Pursuant to Article 41 para 3 of the Rules of Procedure of the Government (Official Gazette of the RS 61/06 - revised text, 69/08, 88/09, 33/10, 69/10, 20/11, 37/11, 30/13, 76/14 and 8/19 - other regulation), at the proposal of the Ministry of Justice, the Committee for the Legal System and State Bodies of the Government made conclusions on conducting a public hearing on the Draft Law on the Organization of Courts, the Draft Law on Judges, the Draft Law on the High Judical Council, the Draft Law on the Public Prosecutor's Office and the Draft Law on the High Prosecutorial Council, in the period from December 12, 2022 to January 15, 2023.

Within the public hearing, the Ministry of Justice supported by the EU and CoE project "Support to Judicial Reforms in Serbia", organized roundtable discussions in Niš on December 21, 2022, in Kragujevac on December 23, 2022, in Novi Sad on December 26, 2022, and in Belgrade on December 27, 2022. In addition to the roundtable meetings, a meeting with civil society representatives was organized in Belgrade on January 10, 2023. However, those interested in participating in the hearing were not informed until December 22, at what time and exactly where the discussions would take place, as it was not in the public invitation, and the hearings were already taking place on December 21 in Niš and December 23 in Kragujevac.

The official report states that at each of the hearings, the representatives of the Ministry of Justice, who participated in the work of the working groups, presented the most important draft laws. In practice, those were long and usual oral presentations by the presidents of the working groups, and at certain gatherings, such as the roundtable discussion in Belgrade, the Minister of Justice also addressed the attendees. "Also, some members of the working groups expressed their views on certain solutions. The representatives of the Ministry invited the participants of the roundtable discussions and other interested members of the public to submit their proposals to the e-mail address of the Ministry. After these presentations, the attendees, mostly judges, public prosecutors and deputy public prosecutors, attorneys-at-law, representatives of the academic community and civil society, could ask questions, make proposals, remarks, suggestions or comments".

However, in the cited Report on the Public Hearing on the Draft Law on the Organization of Courts, the Draft Law on Judges, the Draft Law on the High Judical Council, the Draft Law on the Public Prosecutor's Office and the Draft Law on the High Prosecutorial Council (Report on the Public Hearing)[26] it is not mentioned that introductory presentations by representatives of the Ministry of Justice and

[26] https://mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php

presentations by members of working groups were very long, sometimes lasted for hours and very little time was left for the discussion of other participants. That was the case at the roundtable discussions on December 26 in Novi Sad and December 27, 2022 in Belgrade. In addition, the hearings took place close to the end of the year, during holidays, during working hours of the judiciary, and sometimes without timely and complete information.

The following quotation from the *Report on the Public Hearing* shows how the organizers of that hearing treated the objections and suggestions of a procedural nature that were presented during the hearing: "Remarks could be heard regarding the transparency of the process of drafting judicial laws, as well as regarding the untimely delivery of invitations and failure to determine the exact place and time of discussions within the framework of the public hearing. The representatives of the Ministry explained that the transparency and inclusiveness of the entire process was acclaimed by the Venice Commission, and that the Ministry sent timely invitations to civil society organizations as well as court presidents and public prosecutors and other interested parties to participate in the public hearing.

Many proposals, objections, suggestions or comments were submitted by e-mail or by post to the Ministry. The Ministry gave its reasoned written answers to all the submitted proposals, objections or comments. Proposals, objections or comments that could be heard during the public hearing mostly referred to the following proposed solutions". Then, the authors of the report listed five or six most principled objections to each of the draft laws on the judiciary. And that is the entire four-page-long report on the hearing on the five new laws on the judiciary.

IV 2. END OF THE PUBLIC HEARING AND A PROCEDURAL SCANDAL

Another major flaw (in addition to the one at the time of the first publication of draft versions of the laws on the judiciary that were not in agreement with the texts agreed by the *Working Group for "Court Laws",* when the public would not have known about it if the two judges, members of that working group, had not produced and published the mentioned documents, i.e. comments about the deviations), which could also be referred to as a procedural scandal, happened right after the end of the public hearing. The draft judicial laws were renamed "Bills" within 36 hours after the formal end of the public hearing (comments could have arrived by post, too), already on January 17, 2023, at the Government session and they entered the parliamentary procedure.

Therefore, the Ministry of Justice ended the hearing without an analysis and report on the public hearing, contrary to the Government's conclusion, and the Government accepted that. Only WG NCEU for Chapter 23 reacted: "Thus, the meaning of the public hearing, the five meetings held with the expert public, and more than 50 attachments with comments that were submitted to the Ministry of Justice and which are practically

impossible to consider within the period, are called into question".[27] They were concerned that "despite the fact that on the website of the Ministry of Justice there were 58 contributions received during the public hearing, the report on the public hearing has not been publicly available. The report should contain a ratio of accepted comments with explanations, so the question arises whether there was a real commitment to consider the submitted objections and proposals".

In addition, the WG NCEU for Chapter 23 pointed out that not only publicly available reports for each of the five laws were missing, but also the information on whether the opinions of the National Secretariat for Legislation, the Ministry of Finance, the Ministry of European Integration and the National Secretariat for Public Policies were obtained within the 36 hours. It was also necessary to obtain the opinion of the High Judical Council, the State Prosecutorial Council and the Anti-Corruption Agency.

Having monitored the websites of those institutions, we established that, for example, the High Judical Council issued the *Opinion of the HJC on draft laws on the judiciary* on January 16, 2023, and it was published on the website of that institution only in February, when the minutes of the sessions of the High Judical Council were published, too. During the public hearing, at the roundtable discussion in Belgrade on December 27, 2022, the assistant minister of justice and the chairman of the *Working Group for "Prosecutorial Laws",* Vladimir Vinš, asked by the civil sector representatives, unequivocally answered that the Ministry of Justice would not send the legal texts of the laws on the judiciary to the Government until the report and analysis of the public hearing were prepared and published (deadline 15 days). Quite the opposite happened.

When the four-page *Report on Public Hearing* was published on the website of the Ministry of Justice, three days after the adoption of the bill (January 20, 2023), towards the end of the working day, it turned out that it contained only a list of the 30 most frequently asked questions. Before the hearing began, the competent State Administration Committee of the Government made conclusions and requested reports for each individual draft law. Therefore, the evaluations of the submitted objections and proposals had to contain a general and detailed analyses for each law, as requested in the official comment form.

It is true that, as an attachment to that superficial report, an electronic document of over 220 pages was published - Responses to objections, proposals and suggestions to the draft laws on the judiciary that were submitted to the Ministry of Justice, which was published on the website of the Ministry of Justice as *Responses to remarks received during the public hearing.*[28] In addition to the general complaint that the document was

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27 https://yucom.org.rs/pravosudni-zakoni-u-skupstinskoj-proceduri-samo-36-sati-po-zavrsetku-javne-rasprave/

28 https://mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php

compiled and published three days after the Government defined the draft bills without prior analysis of the public discussion and without accepting justified proposals and suggestions for each draft law, it is also obvious that the reasons why certain proposals and objections related to any of the five draft laws were not accepted, were often very short only retelling the proposed solutions or explained with few arguments.

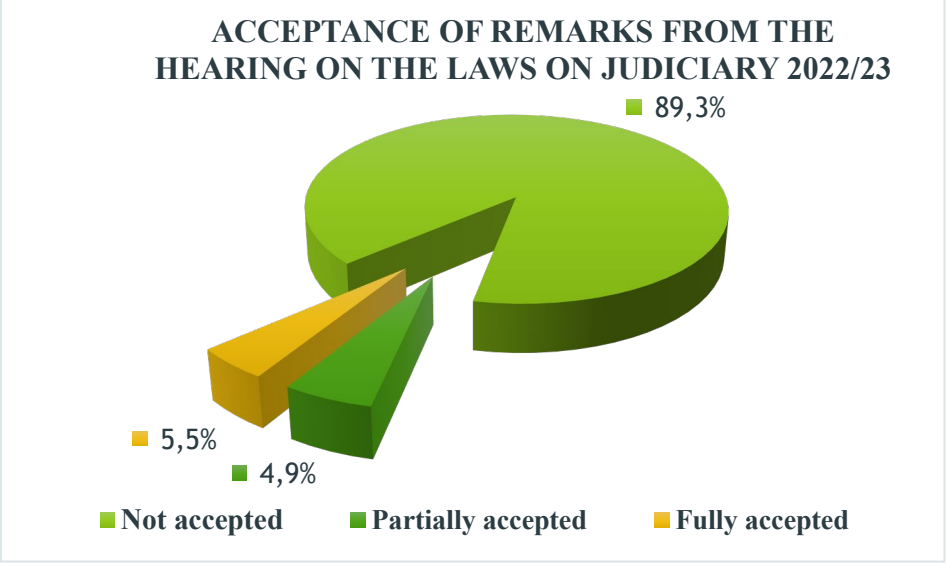
IV 3. ON THE ACCEPTANCE OF COMMENTS TO DRAFT LAWS ON THE JUDICIARY

The document *Responses to remarks received during the public hearing* shows very important facts for the final assessment of how successful, inclusive and transparent the consultations and public hearing on the laws on the judiciary were: out of a total of 345 objections and proposals to all draft laws, *308 (89.3%)* were not fully accepted, *17 (4.9%)* were partially accepted, while *20 (5.8%)* were accepted as a whole.

Table 1 Acceptance of remarks from the hearing on the laws on the judiciary

Not accepted	308
Partially accepted	17
Fully accepted	20
Total	**345**

Chart 1



A general comment on such a result of the acceptance of the participants' comments from the consultative and public discussion procedure is that a very small number of accepted proposals, including partially accepted ones (5.7%), is certainly

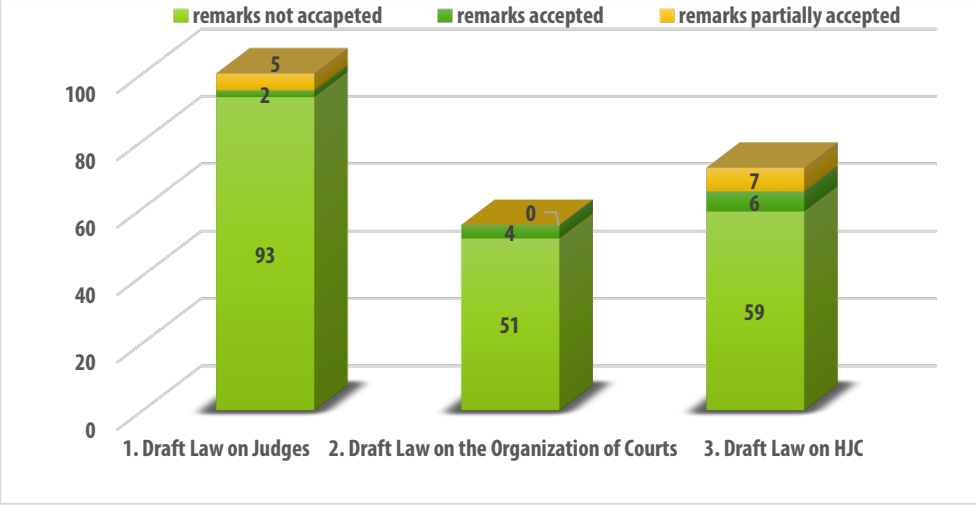
far from satisfactory. Especially given that these are basic laws, which, from the perspective of the professionals, should very objectively and precisely regulate the basic relations in the judicial branch of government, including the public prosecutor's office. We also consider the reputation of numerous proponents of amendments to the draft laws, who have been active in the field for a long time and who have been esteemed in many previous activities in the field of law and justice.

The data shown in Table 2 and Chart 2 refer to court laws. The analysis of the remarks submitted to the Ministry of Justice and presented in the electronic document *Responses to remarks received during the public hearing* shows the following result: out of 100 written remarks to the Draft Law on Judges, two were accepted, and five partially accepted; out of 55 remarks to the Draft Law on the Organization of Courts, four were accepted; and out of 72 remarks to the Draft Law on the High Judical Council, five were fully accepted, one remark principally accepted, and seven partially accepted.

Table 2: Acceptance of remarks from the hearing on the court laws

	Remarks	Accepted	Partially accepted	Not accepted
Draft Law on Judges	100	2	5	93
Draft Law on the Organization of Courts	55	4	0	51
Draft Law on the High Judical Council	72	6	7	59
Total	227	12	12	203

Chart 2: The chart of rejected, accepted and partially accepted remarks from the hearing on court laws



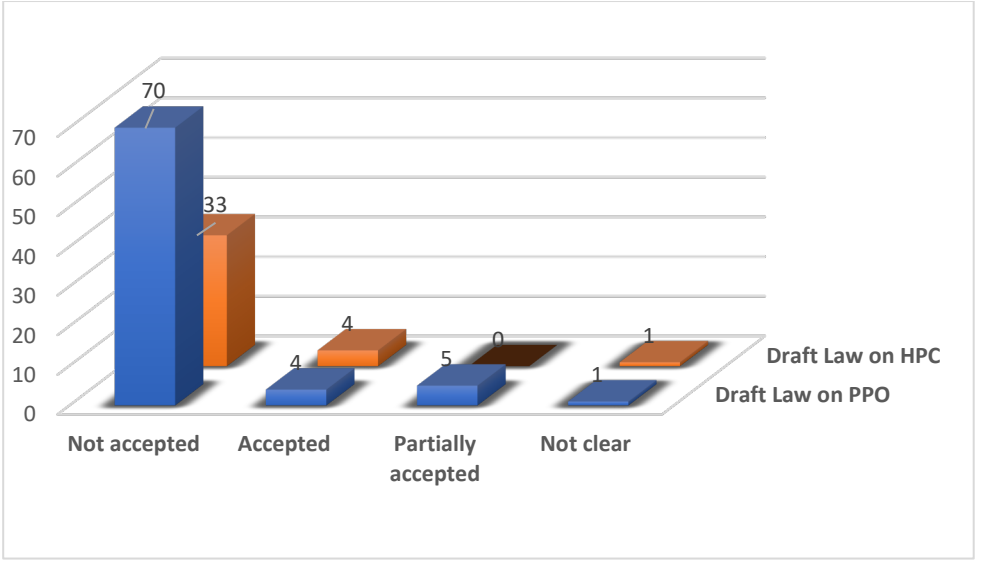
The analysis of remarks and suggestions related to the prosecutorial laws, which were submitted to the Ministry of Justice, shows the following result: out of a total of 80 written objections to the Draft Law on the Public Prosecutor's Office, four were accepted, five partially accepted, one proposal was incomprehensible, which means that 70 or 71 remarks were not accepted. Out of a total of 38 remarks and suggestions to the Draft Law on the High Prosecutorial Council, four were accepted, and one was not clear, which means that 34 proposals were not accepted. *The situation is shown in Table 3 and Chart 3.*

Out of a total of 118 proposals and suggestions on draft prosecutorial laws, only eight (6.8%) were accepted, five were partially accepted (4.2%), and two proposals were assessed as unclear (2.7%). This implies that the total acceptance of proposals and suggestions is not higher than 10% for both prosecutorial laws. This is certainly insufficient, especially since those draft laws, unlike the court ones, were sent only once to the Venice Commission for an opinion.

Table 3: Acceptance of remarks from the hearing on the prosecutorial laws

	Not accepted	Accepted	Partially accepted	Not clear
Draft Law on the Public Prosecutor's Office	70	4	5	1
Draft Law on High Prosecutorial Council	33	4	0	1
Total	103	8	5	2

Chart 3: The chart of rejected, accepted and partially accepted remarks from the hearing on prosecutorial laws



Interventions (remarks, proposals and suggestions) in the drafts laws on the judiciary that were proposed by civil organizations and associations during the consultations and public hearings were numerous and of different nature,[29] but in most cases simple, logical, mostly well-argued and justified. This especially applies to the proposals to delete from the provisions of the laws on the judiciary the wording that is unclear, imprecise or ambiguous, or to specify the provisions, but also to improve those related to the status and financial position, not only of judges and prosecutors, but also of all judicial staff and the judiciary in general.

Deeper reasons why in 89–95% of cases the proposals and suggestions related to the drafts of all considered laws were not accepted should be the subject of a separate analysis, and some of those will be mentioned in the concluding considerations.[30]

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29 To Illustrate, 16 proponents submitted 100 comments on the Draft Law on Judges, only two were accepted, and five partially: Alumni Club of the Judicial Academy (five proposals, one of which was partially accepted), Judicial Research Centre - CEPRIS (25 comments, one of which was accepted and four partially), Forum of Judges of Serbia (two proposals - not accepted), Bar Association of Serbia (seven proposals - not accepted), Association of Judges and Prosecutors of Serbia (one proposal - not accepted), Transparency Serbia (eight proposals - not accepted), P. Dimitrijević (five proposals - not accepted), Association of Judges of Misdemeanour Courts (10 proposals - not accepted), The Judges' Association of Serbia (nine proposals - not accepted), "*Ne Davimo Beograd*" (eight proposals - not accepted), Administrative Court (nine proposals - not accepted), Initiative for human rights, civil and legal relations (one proposal - not accepted), Autonomous Women's Centre (five proposals - not accepted), Union of Independent Trade Unions (four proposals - one accepted) and S. Golijanin (one proposal - not accepted). *Responses to remarks received during the public hearing*, https://mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php.

30 To illustrate the assessment of the procedures by the critical professional public, we offer a quote from Sofija Mandić's blog post: "Only one major issue remains unknown - why did the Judges' Association and the Association of Prosecutors, being the largest professional associations, accept to participate in the game in which the judiciary is an obvious loser? The High Judical Council and the State Prosecutors Council may be asked the same. At the most recent, urgent sessions on January 16, they endorsed the drafts of the 5 laws. These sessions were surprisingly well coordinated with the session of the Government where the draft laws were enacted. Finally, the answer is partially clear. Namely, on January 17th, not only the 5 laws on the judiciary entered the parliamentary procedure, but also additional 4, with no single day of public hearing (not even pretended). Those were amendments to the Law on the Constitutional Court, as well as amendments to the law regulating the work of state bodies in the prosecution of organized crime, cybercrime and war crimes.
Amendments to these laws will enable judges of the specialized departments of the High and Appellate Courts, in charge of trials in the above-mentioned areas, to be assigned to these positions until the new convocation of the High Judical Council and the High Prosecutorial Council, that is, according to the old rules, with the guarantee that they will keep the posts until the end of their mandate. For some, e.g. for the prosecutor for cybercrimes, the mandate has been extended (from 4 to 6 years). It is particularly interesting that the proposed amendments to the Law on the Constitutional Court envisage the possibility that a sitting judge or public prosecutor may be elected as a judge of the Constitutional Court". Sofija Mandić, "Mamac za

V. PARLIAMENTRY HEARING ON THE LAWS ON THE JUDICIARY

After the described serious procedural failures of the executive power in the process of preparing drafts and bills on the judiciary, the National Assembly announced that, as part of the preparation for the debate on January 26, 2023, it would organize a public hearing on the matter. If the conduct of the proponent of those laws (the Ministry of Justice) had been procedurally correct and trustworthy, the NGOs focusing on justice matters, who immediately refused to participate in the public hearing, would have probably agreed to attend. The Judicial Research Centre (CEPRIS) issued a public statement on January 24, 2023, and highlighted the following:

"We have informed the National Assembly that we will not participate in the public hearing due to the proponent's refusal to seriously consider our proposals, the high percentage of unjustified rejections of all proposals submitted during the public hearing, the drafting of proposals for the four laws that were not at all publicly considered and the suspicion that the public hearing would be a cover for undemocratic and unlawful actions of the Ministry of Justice and the Government of Serbia."[31]

In the parliamentary hearing on the laws on the judiciary, out of a total of 1,250 amendments, over a thousand opposition amendments were rejected. Only eight amendments were accepted, six proposed by the ruling majority and only two amendments by opposition deputies. The hearing, like the previous one in the National Assembly on the politics and standoffs in resolving the situation in Kosovo and Metohija, took place in an atmosphere of mutual accusations between the government and the opposition related to numerous scandals, corruption and abuse of institutions. Most of the amendments were the comments of the experts, which the Ministry of Justice did not consider in the most important instances - neither in drafting the laws, nor in the consultations, nor in the public hearing.

The Draft Law on the High Prosecutorial Council, the Draft Law on Judges, the Draft Law on the Organization of Courts, the Draft Law on the Public Prosecutor's Office and the Draft Law on the High Judical Council were discussed together with other agenda items (32 in total) at the First Extraordinary Session of the National Assembly – its 13th convocation. The opening presentation was made by Maja Popović, Minister of Justice. The plenary, general and joint discussion on all items of the agenda took place on February 4 and 5, 2023. The debate on the details began on February 7 on the Bill on the High Prosecutorial Council, and continued on February 8 on the Bill on Judges, the Bill on the Organization of

poslušne" ["A bait for the obedient"], Peščanik.net, January 20, 2023, https://pescanik.net/mamac-za-poslusne/.

31 https://www.cepris.org/reakcije/cepris-nece-ucestvovati-u-javnom-slusanju-o-pravosudnim-zakonima/

Courts, the Bill on the Public Prosecutor's Office and the Bill on the High Judical Council.

Apart from the high percentage of rejections of almost all amendments with no adequate explanation, the opposition also criticised the fact that the Ministry of Justice and the Government simultaneously sent four laws on the judiciary to the National Assembly with no public consideration whatsoever. Those were: the Bill on Amendments to the Law on the Constitutional Court, the Bill on Amendments to the Law on the Organization and Competencies of State Authorities for the Fight against Cybercrimes, the Bill on Amendments to the Law on the Organization and Competencies of State Authorities in War Crimes Proceedings and the Bill on Amendments to the Law on the Organization and Competencies of State Authorities in Suppression of Organized Crime and Corruption.[32]

To present the atmosphere, manner and results of the four-day work of the National Assembly (February 4, 5, 7 and 8, 2023) in the most direct way, we quote an excerpt from a blog post of the *Peščanik* portal:[33]

"In the parliamentary hearing on the laws on the judiciary, over a thousand opposition amendments were rejected. These were the comments of professionals that were deleted by the Ministry of Justice while drafting the law and rejected at the public hearing in 90-95% of cases.

There was no substantive discussion on the disputed issues of judicial reform, so the discussion on the proposed amendments mostly ended with brief answers by the Minister of Justice, who seemed to have read them from a ministry's document "Answers to comments received during the public hearing". In the end, with the votes of the parliamentary majority, and after four days of joint discussion on 30 different laws and other acts, on the day of the formal deadline - February 9, the MPs enacted the Law on Judges, the Law on the Organization of Courts, the Law on the High Judical Council, the Law on the Public Prosecutor's Office and the Law on the High Prosecutorial Council.

The expert public emphasised, during the public hearing in 2021, the lack of transparency and inclusivity of the process of drafting and enactment of the Act on Amendments to the Constitution and related to the campaign and the results of the referendum on the confirmation of the Act. It was expected, among other things, based on the statement of the Judges' Association of Serbia on this process, that the noted deficiencies from the process of enacting the Act on Amendments to the

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32 http://www.parlament.gov.rs/Prvo_vanredno_zasedanje_Narodne_skup%C5%A1tine_Repu–blike_Srbije_u_ Trinaestom_sazivu.46457.941.html

33 Savo Đurđić, „Kako su doneti pravosudni zakoni – čas anatomije" ["How the laws on the judiciary were passed - an anatomy lesson"], Peščanik.net, February 16, 2023, https://pescanik.net/kako-su-doneti-pravosudni-zakoni-cas-anatomije/.

Constitution would be avoided during the enactment of the laws on the judiciary and that the new legal solutions would, in a way, improve the constitutional act.

In April 2022, when two working groups for drafting the court and prosecutorial laws were formed, the Minister of Justice emphasized, in the authored text, that the method of drafting judicial laws will be "an open, inclusive and public process, with many public hearings throughout Serbia and regular consultations with the Venice Commission from the beginning of the work of the groups". Then, she added: "We will apply this method of working groups because it was praised by the Venice Commission in the process of amending the Constitution. All these should contribute to a positive opinion by the Venice Commission on the set of the laws on the judiciary and confirm compliance of the laws with international standards".

And it is the "catch" that misleads the current Minister of Justice and many others who participate in the reforms of the judiciary. A couple of polite words in the opinion of the Venice Commission cannot make up for all the serious omissions made by the executive power in terms of publicity, transparency and inclusiveness in the law-making process. The government has a monopoly over these processes, even when it comes to the judicial branch of government, which has been especially clear since 2016 and the decision, agreed with the EU, to amend the Constitution in the part on the judiciary.

The silence of the public service broadcaster and media with national coverage on this debate has reduced its importance and quality. The only bright example is the TV N1. The media blackout of any public debates of different and critical opinions has been expanding from the TV to the press and portals since the campaign to confirm the Act on Amendments to the Constitution, even to the media that are considered independent. Discussions of equal participants on essential issues and proposals for judicial reform has from the very beginning been largely ignored, minimized and rendered meaningless. It was, as most debates in our society, primarily party-related, and not, as it should have been, appropriate for the third, professional branch of government, which required a partner and not a subordinate position in the discussion, at least until the bills entered the parliament. There were also attempts to single out certain persons or organizations that expressed critical views and label them as enemies of the changes."

Based on the non-certified shorthand notes of the National Assembly session of February 9, 2023, MPs voted from 11 a.m. to 2 p.m. on 32 unified agenda items. Numerous amendments submitted by opposition MPs were not accepted. Following the vote on amendments, the Bill on the High Prosecutorial Council was enacted by 151 votes of the 199 MPs present - 151 MPs voted for, 43 MPs against, and 5 MPs did not vote. During the vote on the Bill on Judges, 199 MPs were present, of which 149 - voted for, 43 - against, and 7 did not vote. A total of 198 MPs voted for the Bill on the Organization of Courts, of which 150 were for, 40 were against, and 10 did not vote. 151 deputies voted for the Bill on the Public Prosecutor's Office, 32

were against, 11 did not vote, out of a total of 194 MPs present. Finally, 148 MPs voted for the Bill on the High Judical Council, 35 were against, 1 abstained, and 7 did not vote, out of a total of 191 MPs.

Despite all the mentioned about the process of enacting the new laws on the judiciary, the laws in parts, and overall, have made progress in certain aspects, if compared to previous legal solutions, related to the harmonisation with the new provisions of the Act on Amendments to the Constitution.

The review of the obtained information imply that it was rather a result of the groundwork, persistence and communication of individual members of the working groups, above all those who were in the administrative boards of the professional associations, in cooperation with the rapporteurs of the Venice Commission and experts, than a team result of drafting the texts, official consultations, public hearings and debates at the National Assembly session.

VI. CONFERENCE ON JUDICIAL REFORMS "CONSTITUTIONAL AMENDMENTS, NEW LAWS, IMPLEMENTATION IN PRACTICE" OF FEBRUARY 21, 2023, AND ADDITIONAL 27.5 MILLION EURO OF EU BUDGET SUPPORT [34]

The conference on judicial reforms “Constitutional amendments, new laws, implementation in practice” took place on February 21, 2023[35] and was important for further work on the enactment of the remaining laws on the judiciary. At the conference, the new laws were assessed – the Law on Judges, the Law on the Organization of Courts, the Law on the Public Prosecutor’s Office, the Law on the High Judical Council and the Law on the High Prosecutorial. It was announced that the remaining laws on the judiciary that would have to be harmonized with the Amendments would be enacted in the following two years.[36]

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34 This chapter was written based on available official written and video materials from the Conference, as well as notes of the author who attended the Conference.

35 The meeting was organized by the Ministry of Justice, European Union as a co-funder, and the Council of Europe (CoE) as a “co-funder and implementer”, within the project "Support to Judicial Reform in Serbia", as a one-day meeting in the "Hyatt Regency" hotel in Belgrade. As the formal organisation of that event required, the appearance was very rich and showing. However, the planned great media importance and significance were largely marred by the absence of announced Prime Minister of the Republic of Serbia and the Republic Public Prosecutor.

36 Constitutional Law for the Implementation of the Act on Amendments to the Constitution of the Republic of Serbia, Official Gazette of the RS 115 of November 30, 2021, Article 2.

VI 1. INTRODUCTORY AND KEYNOTE SPEECHES AT THE JUDICIAL REFORM CONFERENCE

The chairman of the main session ("Introductory and keynote speeches"), whose presentation was attended by the media until the break, the head of the CoE Office in Belgrade, *Tobias Flessenkemper*, pointed out that the CoE advised the Ministry of Justice in the process and that they would continue to do so. He also said that transparency and inclusiveness of the process were ensured.

Minister of Justice *Maja Popović* pointed out that we were witnessing major changes and that every citizen would be able to exercise their rights and obligations without additional influences. She pointed out that the high councils should assume their responsibility, so that the effects of the reform are realized. She thanked and confirmed she would continue to adhere to the standards of the EU, CoE, Venice Commission, as well as Greco, CEPEJ, CCJE, CCPE and added that the conference was dedicated to the scope of the reform, but also to non-legal challenges. This was a continued discussion in a process marked as transparent and inclusive, she said, and emphasised that we had a difficult job ahead and that about 20 acts needed to be enacted in a year.

Ambassador, head of the EU Delegation in Serbia, *Emanuele Giaufret*, began his presentation by saying that we recently celebrated a national holiday of the Republic of Serbia, the Statehood Day, and that it was where the roots of the development of a European Serbia were. He assessed that the cooperation with the Venice Commission and the participatory process were key. He stated that the rule of law was a fundamental value of the EU and a pillar of European integration and emphasized the following key changes:

1. The parliament will not elect judicial officials, and prominent lawyers are elected by a qualified two-third majority.
2. The judiciary will have budgetary autonomy.
3. Other laws must also be passed, such as the Law on the Judicial Academy and the Law on the Seats and Territorial Jurisdiction of Courts and Public Prosecutor's Offices, etc.
4. The legislative changes must be matched with better working conditions. The speed of these changes depends on fundamental issues, like the fight against crime and corruption and how well Serbia fulfils other conditions from the EU Report. Giaufret also pointed out that the *EU allocated 27.5 million euro as budgetary support* and that this was directly related to constitutional changes, concluding that the rule of law was key to joining the EU.

Christophe Poirel, Human Rights Director of the General Directorate for Human Rights and Rule of Law of the Council of Europe, reminded that 20 years were marked since Serbia joined the CoE, and that it was no coincidence that the

EU and the CoE work together. The Serbian Constitution of 2006 laid down some important principles, but the opinion of the Venice Commission of 2007 noted some shortcomings in the election of judges and prosecutors. He praised the Minister of Justice because all that concerned the accession process. CoE helped until the latest opinion of the Venice Commission of December 2022. Poirel said that a long way had been gone, but the end was not reached and that hopefully that was the point to review what we had done and what awaited us. That would be the first step. He underlined the opinion of the Venice Commission that the amendments had to be accompanied by a change in the legal, as well as the political culture, so that the political power did not interfere with the judiciary. He pointed out the importance of the anticipated appointment of non-judicial council members and concluded that the final goal was that all citizens trusted the judiciary and the new councils were functional.

The president of the Supreme Court of Cassation, *Jasmina Vasović*, who was announced by the chairman Tobias Flessenkemper as a key actor of the reform, underlined that the judiciary got not the only, but a significant prerequisite of judicial independence, and that judicial representatives actively participated in drafting the laws, so the judiciary was assuming the key role, authority and trust it had been granted and through the persistency and consistency of the judiciary, the laws would have their purpose.

Branko Stamenković, the deputy republic public prosecutor and deputy president of the State Prosecutorial Council, was more specific than the other domestic presenters, and in the absence of the Republic Public Prosecutor, he said that the prosecutor's office carefully followed those processes and the fact that the laws were passed within the deadline testified to the great dedication in drafting and presentation of the acts, which, along with a new way of informing the public, would contribute to improving the bad reputation of our public prosecutor's office, which was more recognised abroad (EUROJUST) than at home. Stanković mentioned twice during his speech that the financial position and working conditions in the prosecutor's office should be improved.

VI 2. PANEL DISCUSSION "LAYING THE FOUNDATION FOR THE INDEPENDENCE OF THE JUDICIARY AND THE AUTONOMY OF THE PUBLIC PROSECUTOR'S OFFICE THROUGH THE LEGAL FRAMEWORK"

The first session of the panel discussion "Laying the foundations for the independence of the judiciary and the autonomy of the public prosecutor's office through the legal framework" began with a video clip, in which judges and prosecutors, participating members of the professional associations, expressed their (positive) opinion about the laws (judges M. Đorđević, M. Barbir, public prosecutors G. Jekić Bradajić and P. Milovanović).

Then, panellists *Jovan Ćosić* and *Vladimir Vinš*, assistant ministers of justice, spoke about the new court and prosecutorial laws. Thanks to a question asked by the moderator of the panel, journalist Zoran Stanojević of RTS's Informative-Political Editorial Office, assistant minister of justice Jovan Ćosić answered that the competences of the High Judical Council in relation to court administration and personnel would be discussed in detail in the new Law on Court Staff.

Zorana Delibašić, judge of the Supreme Court of Cassation and deputy president of the High Judical Council, spoke about inappropriate influences on the work of judges. She mentioned that, since this judges' right was introduced in April 2021, only one case of influence by representatives of the legislative authority was reported and that there were no reported cases of influences by representatives of the executive authority. She hoped that judges would become more informed about the possibility to address the High Judical Council for the protection.

Branko Stamenković, deputy republic public prosecutor and deputy president of the State Prosecutorial Council, continued his previous presentation and informed that in the Public Prosecutor's Office there were one or a couple of cases per year, when undue pressure was reported to the commissioner. He assessed it was not much, given that public prosecutor's offices received about half a million cases a year, of which about 350,000 were criminal, and that the work was done under the influence of political and other centres of power and the media. The new laws have increased public attention towards the public prosecutor's office and based on the new legal solutions, the prosecutors representing the indictment, and not only the Republic Public Prosecutor, should be more open to the public.

Dragana Boljević, judge of the Supreme Court of Cassation and honorary president of the Judges' Association of Serbia, was asked by the moderator whether she was completely satisfied with the amendments to the laws on the judiciary. The judge replied that these laws, together with the amendments to the Constitution, were much better than the previous ones and that she did not see any regression. In her presentation on the topic "Legal framework - the basis for improving the independence of the judiciary", she listed all the positive changes in the Law on Judges, and that the Law on the High Judical Council was changed the most by setting fairly high standards for the selection of members, both from among judges and from among prominent lawyers and others. She also pointed out two important things that should still be dealt with.

1. All employees in the judiciary should be under the auspices of the High Judical Council, as follows from the National Human Resources Strategy and is, therefore, left aside.
2. There should be both systemic and individual budgetary independence of the judiciary.

Apart from the positive change that is reflected in the fact that the High Judical Council proposes its budget to the National Assembly with prior consultations with

the Ministry of Finance, she also said that she was disappointed by the fact that the Parliament amended the law to include a provision that the budget of the High Judical Council would be respected if it remained within the limits of the previous budget. In any case, the overall financial position of judges and the judiciary must be improved.

Dr Goran Ilić, deputy republic public prosecutor and member of the Presidency of the Association of Public Prosecutors of Serbia, had an introductory presentation "Limitations of the hierarchical structure in the public prosecutor's office and how the power without responsibility of the former public prosecutors was suppressed". In the presentation he highlighted several steps in overcoming the above-mentioned hierarchical structure - there is no longer a hierarchy in matters of administration but in specific cases, the importance of the prosecutor's objection to the High Prosecutorial Council even against changing the matter in which the public prosecutor's office acts, the evaluation of prosecutors' performance is exclusively within the competence of the High Prosecutorial Council.

Mirjana Visentin, CoE expert, spoke online on the topic "Towards full compliance of the new court and prosecutorial laws with the latest European standards". She presented interesting experiences that, e.g. in some countries, professional associations had become alternative centres of power, that research in another country showed that the autonomy of the prosecutor's office was connected with media freedom, that a good indicator of success was also the level of protection of victims' rights, and asked whether in the case of corruption in the public sector - the state would be considered the injured party. Speaking about the conditions for the selection of Council members, she pointed out that it was necessary to review the sources of information about the candidates and whether it was possible to monitor the lifestyle of the candidates without violating their privacy rights.

When the moderator asked if there were any questions from the audience, Ilija Đukić from the Association of Judges' Assistants and Associates responded and asked when the Law on Court Staff would be enacted and the problems resolved. The answer was that those issues were not the subject of the discussion, but that they should be the matter of the new law, and the Minister of Justice would soon form a working group for drafting the law. Dragana Boljević said that we would achieve the division of powers only when the staff were also under the auspices of the High Judical Council and added: "We have now provided the mechanisms for a harvest, and whether there will be the harvest..."

From among the attending representatives of NGOs, a question was asked whether there was a possibility to increase the transparency, independence and publicity of the work of the judiciary, to which Branko Stamenković replied that it was necessary to do so.

Omer Hadžiomerović, a retired judge and president of the Ethics Committee of the High Judical Council, had an objection to the wording of Article 4 of the Law on Judges that the ethical principles of the judicial function were not prescribed by

the law but agreed by the High Judical Council. He mentioned that one article of the law stipulated that the Ethics Committee should conduct the proceedings, and in another that the High Judical Council should decide on it, and there was also a dilemma whether the decision made by the Committee constituted a disciplinary offense, because the criterion that someone had violated the Code "to a greater extent" should not be used to discipline judges. Ms Visentin, CoE expert, said that the role of the Ethics Committee was preventive and that it could really lead to unfounded pressure on a judge.

VI3. PANEL DISCUSSION "WHAT ELSE IS NEEDED? DEVELOPMENT OF NON-LEGISLATIVE MEASURES FOR STRENGTHENING THE INDEPENDENCE OF THE JUDICIARY AND THE AUTONOMY OF THE PUBLIC PROSECUTOR'S OFFICE"

The second session of the panel discussion on the topic "What else is needed? Development of non-legislative measures to strengthen the independence of the judiciary and the autonomy of the public prosecutor's office" began with a video with a speech of Prof. Vladan Petrov, judge of the Constitutional Court and member of the Venice Commission, who said that the most important thing was that the rule of law be accompanied by non-legislative measures. The High Judical Council and the High Prosecutorial Council should be independent bodies and the leaders in this new legal culture. He added that with the Act on Amendments to the Constitution and these laws, we were never further in the reform of the judiciary and that they were in accordance with the opinion of the Venice Commission. Attorney-at-law Milan Lazić, senior partner at the Karanović & Partners law firm, spoke via video-link that the judiciary should decide the same legal matter equally and that there should be a catalogue of judicial practice. Journalists M. Mlađenović and V. Cvijić spoke about the journalists' perspective of the judicial reform. They pointed out that people should be periodically explained, in terms they could understand, about the content of a judgment, but also that senior judicial authorities should inform if someone violated the presumption of innocence or law.

Then, the following panellists presented: Jelena Deretić, assistant minister of justice ("Human resources in the judiciary: creating conditions for positive selection"), Nenad Vujić, director of the Judicial Academy ("Training of judges and public prosecutors to strengthen the position of the judiciary"), Dr Katarina Golubović, president of the Lawyers' Committee for Human Rights - YUCOM ("Legal culture and the role of civil society: Is there a room for improvement?"), Dr Miroslav Đorđević, research associate of the Institute for Comparative Law ("Application of legal culture at law schools - improvement of formal education of future holders of judicial positions") and Dr Maria Mousmouti, CoE expert ("Changing legal culture: Experiences of CoE member states").

There was less discussion during that panel.

When asked by the moderator whether a new job organization could solve the staffing problems of the judiciary, *Jelena Deretić* replied that it should come at the end, that the staffing plan was brought by the Ministry of Justice approved by the Ministry of Finance and that "we are trying to get rid of procedural government limits, e.g. regulations on the prohibition of employment [in the public sector]. The only possibility is to pass a new law, with the support of the Ministry of Justice, CoE and the judiciary, that would regulate this matter in a different way".

In response to the moderator's question to *Nenad Vujić* about the staffing in our judiciary, the director of the Judicial Academy gave an abstract statement at the beginning, which was followed by the moderator's comment: "Are you the director of a judicial academy or a diplomat academy?" The director of the Judicial Academy ended his lengthy presentation saying that without knowledge and integrity, one cannot talk about independence. He assessed the readiness of the judiciary for reform with a grade of 8–9, and the expertise of the judiciary with a grade 10. When asked by the moderator whether the judiciary would be ready for the changes, *Dr Miroslav Đorđević* replied that judges and prosecutors should get financial compensation to have dignified lives, but that it is important that students are guided by well-guided steps right from their studies and in the long term, so that we would have healthy basis of the judiciary.

Dr Maria Mousmouti, CoE expert, in her speech, pointed out that awareness can often complement normative efforts, by building consensus, in order to create synergy. When asked by the moderator what the most important for a successful reform was: consensus, money or something else, the CoE expert replied that in France, the consensus was always the most important and that it had to be incorporated into the entire process and that everybody was aware, and when realising those goals that people could see that there was a goal, a law. She underlined that the leadership was also important, and that she had seen many reforms that stayed on paper.

Introductory presentation by *Katarina Golubović* was the most provocative. She began by praising the Minister of Justice, who adhered to her competence, without influencing the authority that should be independent. "All of us, not only lawyers, should stay within the limits of our competence". When asked by the moderator if people should think that it was worth getting involved, Golubović replied that the only way forwards was that the judiciary wins, when the trust is lost. Political cases are all those cases when citizens come into conflict with the government.[37]

[37] At the end of the panel, when asked by the moderator about an appropriate salary in the judiciary, the panellists answered: "these people are not primarily motivated by profit" (Miroslav Đorđević), "in our country there is an unacceptable difference in the salaries of employees in all courts of general and special jurisdiction, including misdemeanour courts, as well as public prosecutor's offices, as compared to the Constitutional Court, the Ombudsman, the Commissioner for Information of Public Importance. At the same time, EUR 4,000,000 is paid

VI 4. CONCLUDING REMARKS AT THE CONFERENCE

In the "Concluding Remarks" part (moderated by Dr Elena Jovanovska Brezoska, Head of Unit, South-East Europe, Directorate of Programme Co-ordination, CoE) Branislav Stojanović, assistant minister of justice, Dirk Lorenz, Head of Political Unit of EU Delegation, and Christophe Poirel, from the Human Rights Directorate of CoE presented. *Branislav Stojanović* said that various solutions were discussed related to prominent lawyers - members of the Council, that they should come from a certain place (institutions, position, opposition), but that it would be a mistake and that the Ministry of Justice believed that the proposed solution was good. He added that it was too early to predict if the citizens would assess the reform as successful, because 10-20 acts needed to be enacted, and when all is completed, the introduction of all this into practice, into life and in full capacity should follow. He pointed out that the High Judical Council, the High Prosecutorial Council and others, should contribute and that the CoE project started when the constitutional reform started, so one component was being done with the Judicial Academy.

Dirk Lorenz said that it was a successful first step in the reforms, he especially personally thanked the first panellist of the concluding part of the Conference, emphasizing that he wanted to thank all the actors, including those who had critical remarks and that this should be the spirit of the process. He pointed out that should the reforms be successful, they had to be accompanied by changes in the political and legal culture. He underlined that the EU made available 27 million euro of budgetary support and 3 million of current support, and that a next report on Serbia for 2022 would be commenced, which would determine the processes in Chapter 23, but also the media and the fight against corruption. He expressed his hope that there would be improvements in the following months.

Christophe Poirel said that the change in the judiciary would not be complete if it did not include the improvement of the financial situation. He pointed out that three things were important pertaining to the independence. The political officials needed to be restrained, and the judges and prosecutors should be capable and determined to fight for it. He assessed that an inclusive and participatory process would be crucial for future acts, and that it was too early, but at one point, an evaluation would be needed (not a review), because perfect changes did not exist.

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for violating the law because the trials were not completed within a reasonable time." (Zorana Delibašić), "About three average salaries realistically. Judges would share the fate of the society and that would be a strong anti-corruption measure, and in this way it would be ensured that judges do not depend on the other two branches of government." (Dragana Boljević) and "Judges should be rewarded as to be independent, so that they don't have those problems. Some countries have raised standards (Germany, Austria) so this can raise wages. When it comes to reforms, every judge must be aware of his role. All NGOs, councils, associations must be partners. It cannot be done otherwise. And measurability. Certainly, after two years to look back - tangible, verifiable arguments. We need to work on it and build on it. I wish you a lot of luck. It's a long way" (Maria Mousmouti).

VI 5. ESTIMATED CONTRIBUTION OF THE JUDICIAL REFORM CONFERENCE

The conference on judicial reform was a very similar event to other events within the project "Support to Judicial Reforms in Serbia" in the so-called crucial, final, or introductory moments, when one phase of the current reform ends and another begins.

The main reason, which from the beginning, limited the scope of the Conference with such an important topic is that the invitations were sent on February 10, 2023. That is, one day after (or more precisely: a night and a part of a day) the enactment of the laws on the judiciary, after a four-day discussion with 27 other acts in the National Assembly and on the last day of the legal deadline. That was a very short notice to collect information and prepare presentations for the Conference, because on February 15 and 16 there was a national holiday of the Republic of Serbia – The Statehood Day.

The prepared agenda and the panellists with a whole range of video and informative material indicate that the meeting was prepared in advance to confirm the success of that phase of the reform and support the next phase, and to allow just a little criticism to show the donors and funders from the EU that the whole process was very inclusive and transparent. This indirectly means that the organizers of the meeting expected or knew that the laws on the judiciary would be enacted in the framework approved by the Government without summarizing the results of the public hearing, just as the Act on Amendments to the Constitution was proposed and enacted without analysing and endorsing certain positions and criticisms presented at public hearings and in public discussion.

In the end, both the public debate and the multi-day debate in the National Assembly were conducted with extremely opposing positions and often ignoring the main topic and the reasoned debate. An example is a completely inappropriate attitude of the Ministry of Justice and the Government, and then the National Assembly, towards hundreds of amendments submitted by the experts and more than a thousand amendments by the opposition. It was not discussed at all at the Conference, so these issues were hidden in all the signs and actions of the participants, just as it was not discussed in the media either (except on N1 and on certain portals and websites). Participants of the Conference who are not from Serbia or who do not work in Serbia may not have been aware that.

Given all that, it may be estimated that the Conference was important for informing about the current state of affairs, declaring about further reform moves and obtaining a potentially very significant donation for the citizens of Serbia and the development of our judiciary. Eminent participants from the EU and CoE contributed more to the Conference than many domestic participants and panellists. The achieved cooperation should be preserved and developed in the best possible

way, and in the immediate future, the highest judicial authorities should participate as equal partners along with the Ministry of Justice.

VII. SPECIAL MEETING OF THE WORKING GROUP OF NCEU ON CHAPTER 23 - DISCUSSION ON TRANSITIONAL CRITERIA FOR CHAPTER 23

A special meeting of the Working Group of NCEU on Chapter 23 - Discussion on Transitional Criteria for Chapter 23 was held on October 26, 2023. That meeting was significant because it represented the last, so-called, exchange of opinions, while the executive power was still in its full mandate, because the President of the Republic had already announced that new, extraordinary, early national elections, along with provincial and local self-government elections would be held on December 17, 2023. That is why certain representatives of the NGO sector and professional associations who attended the meeting had the impression that the then government, before the announced elections, wanted to hear once again what NGOs and the professionals insisted on in that area, so that they could use it in the upcoming period in the election campaign and to present to the EU partners that NGOs and legal professionals were allegedly maximally involved in all the processes. On the other hand, it was a rare opportunity for the civil sector to directly communicate with competent representatives of the executive power to check or obtain necessary information that were not always easily accessible.

The organizer of the meeting with the Working Group of NCEU for Chapter 23 was the Ministry of Justice.[38] The topic of the meeting was the discussion on the

[38] Assistant minister of justice, Branislav Stojanović made an introductory speech and was the main moderator of the meeting. However, Jovana Spremo, coordinator of the Working Group of NCEU for Chapter 23, and Bojana Selaković, NCEU coordinator also spoke. The presenters, for specific fields (judiciary, corruption and fundamental rights) were employees of the Ministry of Justice, and the participants in the discussion were: L. Komlen Nikolić from the Association of Prosecutors of Serbia, Đ. Pepa from the Association of Judges' Assistants, M. Dejanović from the Judges' Association of Serbia, V. Đuričić from the Forum of Judges, N. Nenadić from Transparency, Kristina Obrenović from Partner Serbia, Dr N. Stanković from NGO Niš, S. Đurđić from CEPRIS and representatives of NDNS and YUKOM. In the part of the discussion on basic rights, the representative of CEPRIS pointed out that, as a member of the Council for monitoring and improving the work of criminal procedure bodies and the execution of criminal sanctions against minors, he found that the area of crime against children and minors, according to the presenter's speech, was not included in the priority of transitional criteria for basic rights, not even after the tragic events at the beginning of May in Belgrade and its surroundings, and the months-long protests by citizens, when some short-term measures were adopted *ad hoc*. However, no one turned to professional bodies for their opinion, nor took into account the opinion of expert individuals and specialists who spoke in public, so that opportunity was also missed for the adoption of amendments to the Law on Juvenile Offenders and Criminal Protection of Juveniles, and there was no feedback on what was done after the public discussion regarding the *Draft Law on Amendments to the Law on Persons with Mental Disabilities.* Those

fulfilment of the transitional criteria in the Action Plan for Chapter 23. In the invitation to that round table meeting, the Ministry of Justice stated that the goal of the meeting was that the members of the Working Group express their opinion and give their view on the current process regarding the fulfilment of transitional criteria, and to additionally contribute with their comments to finally define the current situation in this matter, i.e. to give their contribution to the Report on the fulfilment of transitional criteria in accordance with the new methodology agreed with the European Commission.

Pertaining to the judiciary, the main topic of the discussion was the Judicial Academy, and after a rather categorical reply by the president of the Presidency of the Association of Prosecutors of Serbia, Lidija Komlen Nikolić, to the assistant minister of justice after his introductory speech, that the question remained whether the new Law on the Judicial Academy would determine the institution to be a single entry point (to the judiciary) because Brussels allegedly still insisted on that, but that was not the opinion of the Venice Commission. Most of the participants in the discussion insisted that in numerous opinions and analyses, the legal professionals and NGOs gave their unequivocal opinion that such a judicial academy could not possibly be that kind of institution, and that the preparations on that matter were delayed, with reference to the last scandal in the admissions exam for the candidates.[39] An isolated opinion could also be heard (Forum of Judges) that in the future, in the working group for drafting the law, "advocates of the positions of Brussels and advocates of the opinions of the Venice Commission" should inevitably be included.

It is interesting and important what the Ministry of Justice, at that meeting, presented as a priority and "critical" for transitional criteria for Chapter 23 in the field of justice:

- to give the impression that the Republic of Serbia adequately monitors and considers all these issues together with the civil society and takes their views into account;

topics did not receive appropriate treatment and evaluation in the Draft Report on the Implementation of the Revised Action Plan for Chapter 23 for the 2nd quarter of 2023, especially bearing in mind certain factual inaccuracies, the obsoleteness of certain benchmarks and instruments from the initial Action Program of 2016 and significantly different reports of institutions about certain points (High Judical Council, High Prosecutorial Council, Government, National Assembly, Ministry of Justice). That is especially the case when the extensive constitutional and legal reform of the judiciary is faced with the judicial reality dominated by numerous scandals and negative phenomena, insufficient transparency and publicity of work, so it was pointed out that even at that stage of the procedure there was a delay in the preparation of the remaining two and other judicial laws, as well as other obligations that were not only related to the adoption of by-laws in the High Judical Council and the High Prosecutorial Council.

39 https://nova.rs/emisije/skandal-ili-greska-na-pravosudnoj-akademiji-direktor-pojasnio-sta-stoji-iza-spornog-snimka/

- to start from the National Strategy for Judiciary Development for the period 2020–2025, emphasizing constitutional changes and new laws on the judiciary;
- to underline the IT sector in the judiciary, which should enable all bodies and information to be connected;
- the area of war crime trials and related connections in the region must not be omitted;
- an entire chapter on expertise and education in the judiciary is devoted to the Judicial Academy;
- the issue of resolving old cases (the representative of CEPRIS pointed out in the discussion that it was equally important to open the issue of why there were no results in politically sensitive cases and cases of high corruption);
- completion of the normative framework - the laws, but also by-laws by May 10, 2024 (the discussion showed that the laws had to be enacted by February 2024 and that was significantly delayed, but no conclusions were reached);
- the judiciary, in terms of autonomy/independence, staff, status, careers, development, etc. (the representative of CEPRIS pointed out that in the public discussion 90–95% of the proposals of NGOs and the professionals were not accepted without proper argumentation and that the judiciary did not even receive the support that the Venice Commission expressed in its opinions regarding the financial position of judges and prosecutors, so that the salaries of judicial authorities and employees were not even linked to the increase in average salaries in Serbia).

VIII. ACTIVITIES OF THE MINISTRY OF JUSTICE AND OTHER ACTORS IN DRAFTING AND ENACTING THE REMAINING LAWS ON THE JUDICIARY IN THE PERIOD OF THE GOVERNMENT'S TECHNICAL MANDATE, TOO

The Minister of Justice in the Government with a technical mandate, in her address to the public on January 29, 2024, on the occasion of a meeting with representatives of the World Bank, pointed out that the Republic of Serbia was continuously working on improving the normative framework for the independent work of the judiciary and greater autonomy of the public prosecutor's office. She emphasized that the main goal of the upcoming activities in the field of judicial reform was to achieve expansion of the practical scope of the new laws and that the

Ministry of Justice would continue to support the High Judical Council and the High Prosecutorial Council in the implementation of the new normative framework.[40]

Based on that statement of the Minister of Justice, we may conclude that the focus of the work of the Ministry of Justice in 2024 was not the drafting and enactment of the remaining laws on the judiciary, which were not even mentioned in the news on the website of the Ministry of Justice about that internal meeting, while, on the other hand, the implementation of the five new laws was limited to expansion of their practical scope, in which the Ministry of Justice would support the High Judical Council and the High Prosecutorial Council. No information was provided on the other laws on the judiciary, such as, for example, the one on the Judicial Academy, which had to be passed by February 9, 2024, in accordance with the provisions of Article 2 para 2 of the Constitutional Law on the Implementation of the Act on Amendments to the Constitution, and whether all necessary by-laws had been passed within the Serbian judiciary, especially in the High Judical Council and the High Prosecutorial Council.

Due to a lack of official information on the harmonization of "other" laws with the Amendments, already during the summer of 2023, CEPRIS directly addressed assistant minister of justice Branislav Stojanović several times with a request to provide the necessary information about the drafting and enactment of the remaining laws on the judiciary. CEPRIS did not receive any response to those requests, and resent them in January and February 2024, but again did not receive any response.

Given that by February 13, 2024, no response was received to any of the requests to the competent assistant minister of justice, CEPRIS turned to the Ministry of Justice on that day with the following request to exercise the right to access information of public importance:

“Considering that on February 9, the two-year period expired when, pertaining to the provisions of Article 2 of the Constitutional Law for the implementation of the Act on Amendments to the Constitution, it was necessary to harmonize the 'provisions of other laws' with Amendments I to XXIX of the Constitution, in order to monitor and analyse these processes, please provide the following information:

1. which specific laws are involved;
2. whether working groups for amending those laws are planned or have already formed;
3. if the working groups for the drafting those laws have already been formed, when that happened, what their composition is, what the deadlines for action are and whether it is envisaged that observers may participate;
4. whether expert consultations and public discussion are envisaged in the preparation of the draft laws and in what way;

40 https://mpravde.gov.rs/vest/42007/sa-predstavnicima-svetske-banke-o-nastavku-saradnje.php

5. why those laws have not been passed within the stipulated period, and whether an alternative period is foreseen and which;
6. whether in the drafting and passing of these laws, the assistance and participation of partners and EU partners and domestic entities is foreseen, if so, which ones and in what way, and
7. whether these activities will take place within the framework of the EU and CoE project 'Support of Judicial Reforms in Serbia', and if so, whether it is foreseen to seek the opinion of the Venice Commission and in what terms".

On February 27, 2024, the Ministry of Justice informed CEPRIS about the following, through an authorized person for handling the request for free access to information of public importance:

"Upon the request for information of public importance, we inform you that the essential harmonization of the substantive provisions of law with the Amendments to the Constitution of the RS has been carried out within the framework of earlier legislative activities.

The remaining harmonization is of a terminological nature and refers to the harmonization of terms contained in the Amendments to the Constitution of the RS. So far, the terminological harmonization has been carried out in the following laws:

- Law on the Constitutional Court (Official Gazette of the RS, no. 109/2007, 99/2011, 18/2013 – CC decision 103/2015, 40/2015 - other laws, 10/2023 and 92/2023);
- Law on the Organization and Competencies of State Authorities in Suppression of Organized Crime, Terrorism and Corruption (Official Gazette of the RS, No. 94/2016, 87/2018 - other laws and 10/2023);
- Law on the Organization and Competences of State Authorities in Suppression of Cybercrimes (Official Gazette of RS, No. 61/2005, 104/2009 10/2023 and 10/2023 - other law);
- Law on the Organization and Competencies of State Authorities in War Crimes Proceedings (Official Gazette of the RS, No. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011 - other law, 6/ 2015 and 10/2023).

Harmonization of the following laws will also need to be done:

- Criminal Procedure Code (Official Gazette of RS, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 – CC decision and 62/2021 – CC decision) ;
- Criminal Code (Official Gazette of the RS, No. 85/2005, 88/2005 – corr., 107/2005 – corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/ 2016 and 35/2019);

- Law on Juvenile Criminal Offenders (Official Gazette of RS, No. 85/2005);
- Law on the Judicial Academy (Official Gazette of the RS, no. 104/2009, 32/2014 – CC decision and 106/2015).
- Terminological harmonization concerns the names of courts and other bodies, for example, changing the name 'Supreme Court of Cassation' to 'Supreme Court'. Harmonization will be carried out in the following period, as soon as possible, considering that the Government has been in a technical mandate for a long time".

In the letter, the Ministry of Justice also notes:

"In order to harmonize the law with the Amendments to the Constitution of the Republic of Serbia, which, as stated, are of a legal-technical nature, working groups are not necessary, given the nature of the amendments and the fact that they are small-scale. On the other hand, amendments to the Criminal Code and the Criminal Procedure Code are underway and the terminological harmonization of these laws with the Amendments to the Constitution of the Republic of Serbia will be carried out, together with other essential amendments to these codes, by working groups comprising experts in the field of criminal law such as university professors of law, representatives of courts, public prosecutor's offices, attorneys-at-law, police and the Ministry of Justice. Given that the work of these working groups is in the final phase, and if technical and other conditions permit, participation of observers is possible.

Public hearing and expert consultations are carried out in cases of substantial amendments to a law, or laws that significantly change the regulation of a matter. When it comes to terminological harmonization, or changes of a legal-technical nature, a public hearing and expert consultations are not foreseen.

In the case of changes of this nature, cooperation and assistance of partners, European Union bodies and domestic entities, as well as consultations with the Venice Commission, are not envisaged, since these actions have already been taken when amending the regulations in order to harmonize them with the Amendments to the Constitution of the Republic of Serbia that were endorsed in one year in accordance with the provision prescribed by the Constitutional Law for the implementation of the Act on Amendments to the Constitution of the Republic of Serbia. The Venice Commission previously expressed a positive position in relation to the legislative solutions of these regulations and does not have the authority to participate in amendments of this type.

However, we inform you that the Law on the Judicial Academy is in the process of consultations with the European Commission and the Venice Commission regarding the position of the Judicial Academy in the judicial system of the Republic of Serbia. After the consultations, the Ministry of Justice will form

the working group for enacting the new Law on the Judicial Academy, and then, the terminological alignment will be carried out in this law as well".

In the response to the request for free access to information of public importance, the Ministry of Justice made it easier to understand the indisputable fact that in the period from February 9, 2023 to February 9, 2024, only the terminological harmonization of the four mentioned laws was carried out as amendments of a legal-technical nature[41], and that it was not a harmonization of the 20 legal acts with the Amendments to the Constitution of the Republic of Serbia, as assistant minister of justice Branislav Stojanović pointed out at the Judicial Reform Conference, entitled "Constitutional Amendments, New Laws, Implementation in Practice". They probably meant certain by-laws, too.

When it comes to the laws, we may assume that, when it is said in Article 2 para 2 of the Constitutional Law for the Implementation of the Act on Amendments to the Constitution of Serbia "The provisions of other laws shall be harmonized with the Amendments within two years", it was certainly not meant only terminological harmonization, although it is understood, but that this was not the only goal and scope of the first five enacted laws on the judiciary, nor of other laws.

Rather, it is a matter of a decision of the political, executive and legislative authorities, and perhaps an implicit consent of the judicial authorities, so that, after the enactment of the first group of laws, no changes are made that could cause a wider debate, with a possible confrontation of different positions in public. For example, the law governing the seat and territorial jurisdiction of courts and prosecutor's offices was previously mentioned as one of those laws, but the Ministry of Justice's response has not mentioned it even in the context of terminological harmonization. The new Law on Court Staff announced during the public hearing has not been mentioned.

When it comes to the implementation of previously agreed reform issues, such as, for example, the reform of the administrative judiciary and the establishment of a two-instance system, the project on which the Ministry of Justice and the judiciary have been working for years with the GIZ organization, the response to the submitted request does not mention amendments to those laws either. However, this problem, as a prominent reform issue in the sphere of the judiciary, has existed for a long time and, among other things, it was a matter of the National Strategy for the Reform of the Judiciary for the period from 2013 to 2018[42], the Strategy for the

41 The Law on the Constitutional Court, the Law on the Organization and Competencies of State Bodies in the Suppression of Organized Crime, Terrorism and Corruption, the Law on the Organization and Competencies of State Bodies in the Suppression of Cybercrimes, and the Law on the Organization and Competencies of State Bodies in War Crimes Proceedings.

42 https://mpravde.gov.rs/tekst/22598/nacionalna-strategija-reforme-pravosudja.php

Development of the Judiciary for the period 2020–2025[43] and the Revised Action Plan for Chapter 23.[44] The last mentioned document envisages that in the first half of 2022, the Law on Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices and the Law on the Judicial Academy will be enacted. This issue certainly goes beyond terminological harmonization, and it was expected that, as well as in further changes to the laws and by-laws, judicial authorities and bodies participate and give their contributions.

On the other hand, in the response by the Ministry of Justice, the issue of amendments to the Criminal Code and the Criminal Procedure Code has been mentioned. It has been an open question for a long time and the work of expert working groups for drafting these laws is nothing new, and we know that the matter was mentioned and regulated in the Action Plan for Chapter 23 and the Revised Action Plan for Chapter 23 of July 2020. Hence, to allow observers to participate in the final phase of that process "if technical and other conditions permit", is certainly not enough to convince us of an indisputable will to ensure full democratic procedure, inclusiveness and transparency in all stages of the drafting and enactment of the new laws.

Until the information was received, following the request for free access to information of public importance, the professional public had been certain that within the specified period of two years, among other laws on the judiciary, the new Law on the Judicial Academy should have been prepared and adopted. Representatives of the Ministry of Justice spoke about this on several occasions, including at the Conference on Judicial Reforms, emphasizing that this area had been a special aspect of the reform from the beginning of the constitutional changes and that the Revised Action Plan for Chapter 23 was to be enacted in the first half in 2022.

That is why the information from the meeting of the representatives of the Working Group of NCEU for Chapter 23 and the Ministry of Justice, held in October 2023, and current information about the work on drafting the Law on the Judicial Academy are contradictory, but also worrying. First, it was said, at the time when the working text of the law should have been completed (according to the deadline stipulated by the Constitutional Law), that the law would not be considered, with a remark by assistant minister of justice Branislav Stojanović that there were allegedly different views on the issue in Brussels and in the Venice Commission in terms of whether the Judicial Academy would be a single entry point.

Strong reactions of representatives of professional associations and the civil sector followed at that meeting. Based on the mentioned response of the Ministry of Justice to the request for free access to information of public importance, we have

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43 https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/vlada/strategija/2020/-101/1/reg

44 https://mpravde.gov.rs/files/Revidirani%20AP23%202207.pdf

learnt that the Law on the Judicial Academy "is in the process of consultations with the European Commission and the Venice Commission regarding the position of the Judicial Academy in the judicial system of the Republic of Serbia".

At the same time, the Ministry of Justice did not say who and how prepared the material for that bill that was sent to the European and Venice Commission, who decided to send the draft for the consultations, and why the public was not informed about it, even after the news that the Minister of Justice met the Director of the Judicial Academy on February 26, 2024.[45] In the mentioned response, it is only said that the Ministry of Justice will, only after the consultations, form a working group for drafting the new Law on the Judicial Academy "and then, the terminological harmonization of this law, too, will be carried out ".

A conclusion, after all the above information, many of which are contradictory, is that, based on the information presented at the meeting of representatives of the Ministry of Justice with representatives of the WG NCEU for Chapter 23, the basis for defining the position of the Judicial Academy in the judicial system of the Republic of Serbia was most likely set by a group of authors from the circle of associates of the Judicial Academy. Another conclusion is that, especially after proven cases of gross violation of the established democratic procedure during the approval of the first five laws on the judiciary, the judicial authorities, but also the entire civil sector with the WG NCEU for Chapter 23, must pay maximum attention and demand transparency and inclusiveness of that work.

We could say that such an approach and understanding of the issue of harmonization of laws with the Act on Amendments to the Constitution of the RS potentially reveals an intention of the executive-political authority to postpone for a long time, the amendment or enactment of the remaining laws on the judiciary after the amendment of the Constitution. This refers, for example, to enactment of the Law on the Seats and Territorial Jurisdiction of Courts and Public Prosecutor's Offices, but also to the issue of the status and financial position of judicial staff as part of the judicial branch of government, which is established as an obligation in the Law on the Organization of Courts, but also to other laws on the judiciary.

This means that the executive power, which is still the only one competent to sovereignly propose, prepare and organize public hearings on laws on the judiciary, which in our political and cultural environment represents a wrong systemic solution, should be monitored and made accountable and the public and interested institutions should be informed about it.

45 https://www.mpravde.gov.rs/sr/vest/42264/potrebna-veca-uloga-pravosudne-akademije-u-edukaciji-.php

CONCLUDING CONSIDERATIONS:

WHAT NEEDS TO BE DONE TO ENSURE THAT INSUFFICIENT RESPECT FOR THE PROFESSIONALS AND THE CIVIL SECTOR, ABUSE OF THE PROCESS OF DRAFTING AND ADOPTING LAWS ON JUDIOCIARY AND THE SILENCE ABOUT THEM - NEVER HAPPEN AGAIN

After the democratic changes on October 5, 2000, the European orientation prevailed in Serbian politics, which cleared the way for a modern Constitution. The then valid Constitution of the Republic of Serbia of 2006, adopted by all the then parliamentary parties, also contained provisions on the rule of law and the division of power into legislative, executive and judicial, in mutual balance and control. It is considered that that Constitution established a continuation of the first one, the Constitution of 1835 (passed on the day of the Presentation of Jesus in the Temple; present-day Statehood Day of Serbia), which was one of the most modern, democratic and liberal constitutions of the time.

National experts, scholars and all judicial bodies, following serious mistakes in the implementation of the reforms in 2009–2012, 2014, and 2016, accepted the initiative to amend the Constitution in the part on the judiciary. The reason was, first of all, the basic opinion of the Venice Commission on the Constitution of 2007 that "the main concerns with respect to the Constitution relate, on the one hand, to the fact that individual members of parliament are made subservient by Art. 102.2 to party leaderships and, on the other, to the excessive role of parliament in judicial appointments".[46] A state platform for the reform of the Constitution was missing as well as a simultaneous consideration of a systemic guarantee of judicial independence and rules on the accountability of political authorities for creating a social environment in which the judiciary would act independently.[47]

When the Ministry of Justice published its Draft Version of the Amendments to the Constitution at the beginning of 2018, the entire judiciary and the professionals declared that the text was poor. However, that was in vain. Since 2017, the Ministry of Justice has taken an unauthorized monopoly on the preparation of the Act on Amendments to the Constitution, and they proposed that act to the then National Assembly with no opposition parties only in 2021. In constant privileged contact with the Venice Commission, they succeeded, to a significant extent, in diluting, and in some

46 https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)004-srb, 22.

47 "Svedočanstvo pripreme za promenu Ustava od 2006. godine i struka" [Testimonies on the preparation for amending the Constitution in 2006 and professionals], Društvo sudija Srbije, Beograd, September 2018, 18, https://www.sudije.rs/Dokumenta/Publikacije/Društvo_sudija_-Srbije_-_Svedočanstvo.pdf

cases even obstructing, more significant changes advocated by the judiciary. This happened again when five new laws on the judiciary were being enacted.

These are the basic systemic reasons for the deep crisis of the judiciary, but they are not the only ones. Non-implementation and selective application of the Constitution and laws, media blackout, manipulation with cases of organized crime and corruption, political power and the influence of politics on personnel decisions at the senior judiciary level are also significant reasons why the results are not visible, despite the alleged "tectonic" reform in which the EU invested large amounts of money and efforts. It is of particular concern that the trust in the judiciary among citizens is weakening, instead of strengthening, and must be checked with constant surveys.

If our political power is still on the European path and if we, as a society, respect what is written in the basic principles of the Constitution – that the Republic of Serbia is based on the rule of law, including the principle of separation of powers into legislative, executive and judicial, whereby the judicial branch of government is independent – there should not be a problem to improve these principles in the systemic laws on the judiciary and to continue the practice of amending and passing new laws on the judiciary in a democratic way and with better results.

The main problems revealed by the entire process of drafting and enacting five judicial laws, in the conditions of unjustified monopoly of the Ministry of Justice are insufficient capacity and insufficient qualifications, but also the legal culture of those privileged to make key decisions and direct the entire process. The process is about fundamental changes in the judicial branch of government, which is independent in the system of civil parliamentary democracy, the rule of law and the separation of powers (from 2013 until 2016, the expert working body - the Commission for the Implementation of the National Strategy for Judicial Reform was headed by the President of the Supreme Court of Cassation and the High Judical Council, and the expert analyses for amendments to the Constitution were produced by teams of constitutional law professors).

Although the Ministry of Justice, being the only formally competent authority to propose laws on the judiciary, was supported by the entire arsenal of financial, professional and other support of the CoE and the EU, it did not resist the challenge to take advantage, from the very beginning of the work on amendments, i.e. the drafting of the new laws, to impose its influence and concept. The generous assistance of the CoE and the EU and the fact that the Venice Commission claimed, in its first opinion, that part of the process was inclusive and transparent, but in the sense that it should be continued in that spirit until the end of the process, were an excuse and a cover for procedural failures by the Ministry of Justice in the further course of that process. One may say - in the language of sports fans - in favour of the changes advocated for by the representatives of the executive power.

Hence, the first observation, or the recommendation, is that it should never be allowed again that one, essentially positive intention and undertaking, with positive external support and available human resources and institutions, turns into its

opposite in any element of the reform. If, under such conditions, one manages to manipulate a part of the process in a sophisticated manner, above all by manipulating final drafting of the working texts of the laws and ignores the results of the public debate on the laws, along with procedural scandals and irresponsibility in communication, this must be disclosed and - at the very least – not allowed again.

Based on the presented facts and circumstances, it should be pointed out that the appointment of judges and public prosecutors as experts in the working groups, of which two in each working group are also leaders or members of professional associations (Judges' Association of Serbia, or Association of Public Prosecutors of Serbia), did not imply (in the explanations of the decision on the appointment, where it was stated that the representation of distinguished legal experts from the state administration, the court, the prosecution, the academic community and the attorneys-at-law was secured) that they had an obligation to represent or even to inform any of their organisations in the judicial system. The analysis has shown that there is no evidence of this because judicial bodies, such as the High Judical Council and the High Prosecutorial Council, were involved in that process and spoke about it only during the online meeting with the rapporteurs of the Venice Commission at the end of September 2022 and on January 16, 2023 , when, the day after the public hearing, they were supposed to give an urgent opinion that the draft laws on the judiciary could be considered by the Government the very next day.

In those working groups, the composition of which was determined by discretion of the Minister of Justice, attorneys-at-lay were usually appointed as members. There were no consultations with the Bar Association of Serbia at all about the appointments, and in their work, they did not have any contacts with that organization, nor did the appointed attorneys-at-law resign as requested by the BAS. During the entire procedure, this issue remained disputed.

When some already agreed proposals went missing from the working versions of the "set of court laws", two judges, members of the working group, addressed the public with their comments, where they showed the difference between fully agreed solutions and the positions of professional association that were adopted as an alternative. They said that they would not mention the solutions in their documents related to the three laws, while the WG NCEU for Chapter 23, as a network of associations and NGOs, and the views of all their members, were not mentioned in the minutes of the working group meetings. WG NCEU for Chapter 23 reacted with a public statement when, at the end of the public hearing on the new laws on the judiciary, the Government adopted the bills without the Ministry of Justice having previously drawn up and published a report and analysis of the submitted proposals and suggestions from the public hearing, which had been its legal obligation according to the conclusion of the Government.

In such a complex and disjoint procedure, more could have been done in all the important stages of that procedure, but it seems that there were some unofficial limits, deep political divisions and obstructions that could not be exceeded. Total

concentration on the political reality, but also insufficient respect for all other legitimate participants in the process, enabled the Ministry of Justice to use all its resources to obtain an opinion from the Venice Commission, with the help of the CoE and the EU, that the draft laws met European standards and that the process of its adoption was inclusive and transparent.

At the same time, the organizers of the drafting of new laws, even when the profession pointed out two major procedural scandals, did not pay due attention and did not appreciate the efforts of numerous reviewers of the texts of the draft laws and bills. Some organizations submitted studies and alternative drafts of certain laws to the Ministry of Justice, and WG NCEU for Chapter 23 prepared and submitted a summary of all comments by members of that network. Representatives of the Ministry of Justice who organized and implemented the process did not treat other participants in the process as professional partners and equal participants. They did not consider the comments nor decided on them objectively enough, based on a comprehensive analysis and with participation of the most qualified experts and based on full respect for the democratic procedure. The entire related material, this analysis being a part of it, represents an excellent lesson that some stages of the procedure for the drafting and enactment of fundamental laws should not be implemented, despite favourable external conditions.

Hopefully, that has been convincingly shown in this analysis. Such an approach and manner of conducting the process of passing the new laws on the judiciary were enabled by the court/judicial authorities who made allowed that and who failed to make public statements and comments during the process, and who did not appear in public nor insisted that the new system solutions, having been formally advocated by them, remain in the draft laws.

This is how we came to an absurd situation that we only learned, in the most recent opinion of the Venice Commission on the draft laws that, e.g., the Venice Commission advocated for the solution that salaries in the judiciary were commensurate with the growth of the average salary in Serbia in the previous year, that the Ministry of Justice, which was in constant contact with the Venice Commission and at one point it accepted that solution, and abandoned the idea immediately before the public hearing and that, until the enactment of the laws, it kept rejecting all such proposals without proper explanation. At the same time, the government kept informing the citizens that our finances were excellent, and the Minister of Justice, after a conversation with the Minister of Finance, in September 2022, informed the judiciary that, because our budget is "bleeding", many proposals, previously fully agreed upon in the working groups, would be withdrawn from the draft texts of the new laws on the judiciary.

Therefore, in the final part of this analysis, we remind of and point out again the main goals of the current judicial reform: 1. improved independence of the judiciary and 2. harmonization with the acquis of the EU. These are the major goals of this reform, which was marked by extensive amendments of the Constitution in

the section on the judiciary, indicating that a deeper basis of that reform is contained in the application of all the principles of a modern democratic state.

The entire judicial reform program was presented at the Public hearing of professors on the occasion of the draft text of the Ministry of Justice's amendments to the Constitution of the RS, which took place on February 20, 2018 in Belgrade with the participation of 15 eminent experts in the field of constitutional law, theory of the state and legal theory, and judicial and organizational rights – Prof. Ratko Marković, Prof. Irena Pejić, Prof. Darko Simović, Prof. Olivera Vučić, Prof. Dragan Stojanović, Prof. Marijana Pajvančić, Prof. Jasminka Hasanbegović, Dr Bosa Nenadić, Prof. Tanasije Marinković, Prof. Vesna Rakić Vodinelić, Prof. Radmila Vasić, Prof. Zoran Ivošević, Prof. Marko Stanković, Prof. Violeta Beširević and academician Prof. Kosta Čavoški. Although of different generations and ideological and political opinions, they agreed the views on the judicial reform and published a joint document, entitled Key Views on the Draft Text of Amendments to the Constitution of the Republic of Serbia, along with their written presentations.[48]

For example, following are the basic positions on the division of power, which were not adequately considered, neither during the preparation and enactment of the Act on Amendments to the Constitution of the RS, nor during the enactment of the five laws on the judiciary:

1. *The draft text starts from the position that the executive and legislative powers will improve the judiciary by controlling the judicial power, which is justified by the legitimacy got from the citizens in political elections. Behind that lies the intention for the executive and legislative powers to dominate the judiciary. Metaphorically speaking, democracy is also when two wolves and a sheep vote on what will be served for lunch; for the citizens to be protected from such a voting outcome, an independent judiciary is necessary.*
2. *The principle of separation of powers is misunderstood, since the legislative and executive powers are based on political legitimacy stemming from the electoral will of the citizens, while the judicial power derives its legitimacy from the legal profession, professional education and type of work, the nature of which is such that the people cannot perform it, so therefore neither can their representatives (the Assembly, the Government, the President).*
3. *The organisation of state power based solely on the legitimacy that stems from the electoral will of citizens, leads to the unity of power, violates the principle of separation of powers, prevents the independence of the judiciary and establishes political accountability of the judiciary before the executive and the legislative power, and hence violates the concept of the rule of law.*

48 https://www.sudije.rs/images/2018_02_20_-_Kljucni_stavovi_profesora.pdf

4. *The rule of "checks and balances" applies between the legislative and the executive power; it does not refer to the judicial power, because this would undermine the independence of the judiciary, which would consequently leave the human rights of citizens without adequate protection.*
5. *It is being ignored that all the powers are formally determined by the Constitution, therefore in an equal way.*
6. *It is being ignored that the judicial power, precisely because of the guarantees of independence, is the most legally bounded and the most standardized power.*

It is completely wrong to conduct the entire process of drafting and enacting laws on the judiciary in such a way that, under any pretext, reasoned proposals, objections and suggestions of the professionals, experts, scholars and wider community are ignored in large numbers and percentages, because the changes are, indeed, made for the sake of the mentioned citizens. Especially, it is a pity that, due to such type of a public discussion, the questions of fundamental importance for the judiciary and its reform remained without complete answers and solutions.

These are primarily issues of insufficient rule of law and ineffective implementation of other principles of the Constitution. Without a realistic implementation of the separation of powers and judicial independence, clear definitions of the judicial branch of government, its organization, competences and responsibilities, different and critical opinions and participation of judges and prosecutors in public discussions on the most important judicial, legal, social and political topics, there will be no comprehensive judicial reform nor satisfactory results in practice.

Even a quick analysis of both the opinions of the Venice Commission on draft court laws and their opinion on draft prosecutorial laws does not confirm the repeated claims of the Ministry of Justice that these opinions have always been positive on all issues.

For example, it is not enough to mention in several instances in the Law on the High Judical Council that the sessions, the annual work report and the website, where abbreviated minutes from the sessions of that body are published belatedly, are public, for it to be a sufficient guarantee for the publicity and the transparency of the work of that body, as well as of the High Prosecutorial Council. On the contrary, it has been one of the main challenges, but also the main hope in the work of the Council since 2014/15, when the session became open to public.

The law should provide that “the Council sessions shall be video and audio recorded and broadcast in real time on the Council's website”; that when not specifically excluded, the conditions for the presence of the public and observers of the work of the Council and its bodies should be ensured; that the complete minutes and material of the session and decisions with explanations are published and updated in a timely manner on the Council's website; that regular and extraordinary media conferences are held; that a spokesperson is appointed, and that some other

less important issues and details are worked out in the Council's Rules of Procedure and its Communication Strategy.

Due to all the above, after the elections of December 17, 2023, and the constitution of the National Assembly, the issues of enacting the remaining judicial laws have not lost their significance. The work on these issues, which is currently slowed down because the executive power, the Government and the competent Ministry of Justice were operating in a technical mandate from November 1, 2023, to May 2, 2024, should be more focused, more responsible and more transparent.

The relevant obligations of all state bodies, including the executive ones such as the Ministry of Justice and the Government, are determined primarily by the Constitutional Law for the Implementation of the Act on Amendments to the Constitution and have not been suspended but only postponed until the new government was formed. The Minister of Justice, in her presentation at the Conference on Judicial Reform held on February 21, 2023, said, among other things, that in the following year, the enactment of about 20 new laws was due. Then, in the information received from the Ministry of Justice at the end of February 2024 we found out that the Ministry considered that to be a matter of terminological harmonization, that a specific inquiry was sent to the Venice Commission and Brussels only regarding the amendments to the Law on the Judicial Academy, for which a working group would subsequently be formed.

Regarding the obligation under Article 2 para 2 of the Constitutional Law for the Implementation of the Act on Amendments to the Constitution, that the provisions of other laws will be harmonized with the Amendments within two years, we must note that by the end of the constitutional deadline for the enactment, February 9, 2024, no new law on the judiciary was enacted nor amended.

Only then, it will be the time to amend and reform the legislative framework in various judicial areas, many of which are envisaged in the original but also in the Revised Action Plan for Chapter 23. Thus, there is a long delay related to amendments based on long-agreed positions, for example, in administrative justice and the adoption of the new Law on Administrative Court. All deadlines for amendments to the Criminal Code and the Criminal Procedure Code (there are two working groups working on those laws), and amendments to the Law on Juvenile Offenders and Criminal Protection of Juveniles have expired, and the situation is similar in many other judicial areas and procedures.

This is all the more reason that, in this and in the future processes of drafting new legal texts in those areas, official representatives of the judiciary, as representatives of the judicial branch of government, to begin with demand a partnership and equal relationship, and that professional organizations and associations, including the WG NCEU for Chapter 23 insist to get the status and role of observers, if they are not represented in the working group, and that the entire process from the beginning to the end is truly democratic, inclusive and transparent.