

REASONS FOR ADOPTING CONSTITUTIONAL AMENDMENTS

1. Political and strategic reasons (EU membership as Serbia's foreign policy priority)

- **Stabilisation and Association Agreement** emphasises the importance of harmonisation with EU law in the field of judiciary
- **The EU Negotiating Framework for Serbia** underlines the necessity to implement key reforms in the area of rule of law, including the judicial reform
- **The Screening Report on Chapter 23** indicated that Serbia should consider amending its Constitution in the area of judiciary, bearing in mind the recommendations of the Venice Commission and European standards
- **Judiciary and fundamental rights** are emphasised as key conditions for accession to the EU in the new methodology within the **first cluster (Fundamentals)**

2. Constitutional reasons (weakness of the current Constitution in the area of judiciary)

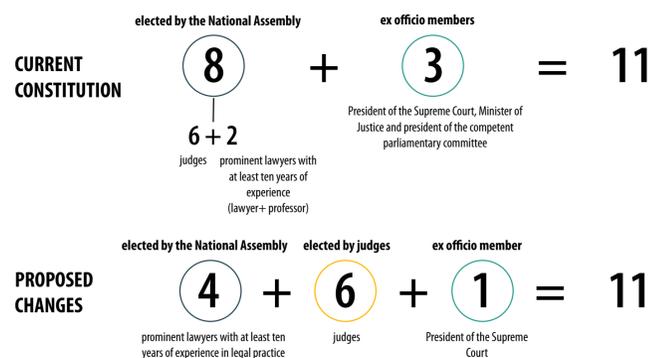
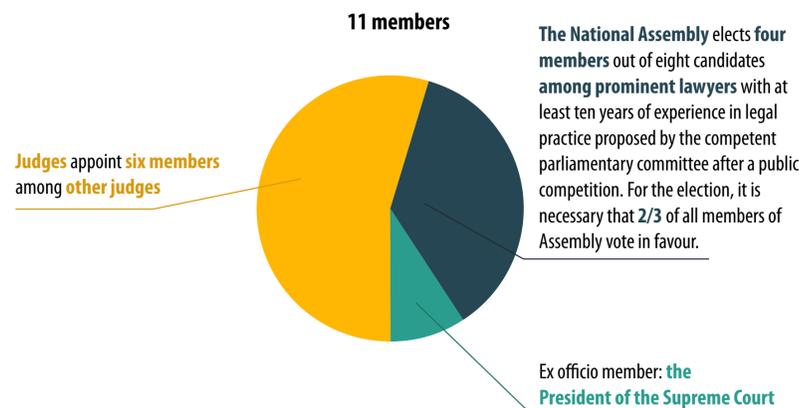
- Excessive influence of the **National Assembly** on the election and dismissal of judges and public prosecutors
- Presence of the **Executive branch** in the appointment of judicial officials in justice through the membership of the Minister of Justice in the High Judicial Council and the State Council of Prosecutors and the right of the Government to propose the election and dismissal of the Republic Public Prosecutor and other public prosecutors
- Existence of **probationary period** of judges and deputy public prosecutors once they are first appointed
- Lack of constitutionally defined ground for termination judicial and public prosecutorial functions and reasons for dismissal
- Inconsistency of the Constitutional text in the area of judiciary

WHAT REMAINS CONTROVERSIAL?*

- **The Supreme Public Prosecutor** and the **Minister of Justice** remain ex officio members in the High Prosecution Council
- The number of public prosecutors has been reduced to **less than 50%** of the High Prosecution Council; most members of the MPC will be **politically appointed**.
- **Conditions for election** of judges and public prosecutors will not be regulated by the Constitution
- Provisions on **budget autonomy** of the HJC and the HPC are missing
- There is a danger that the anti-deadlock mechanism, the **Commission**, that is meant to be an exception will become the rule and allow politicised appointments of members of the HJC and the HPC
- The opportunity was missed to reform the **Constitutional Court**

BREAKING DOWN SERBIA'S 2022 CONSTITUTIONAL AMENDMENTS

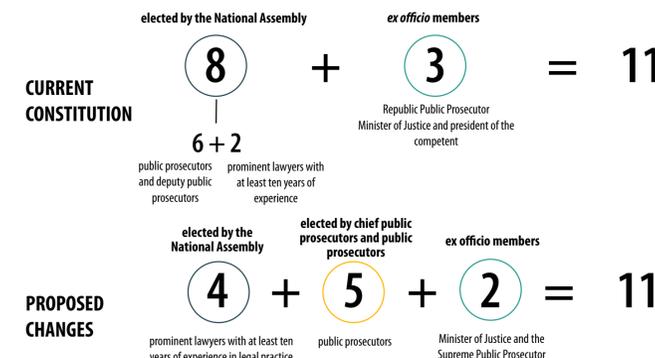
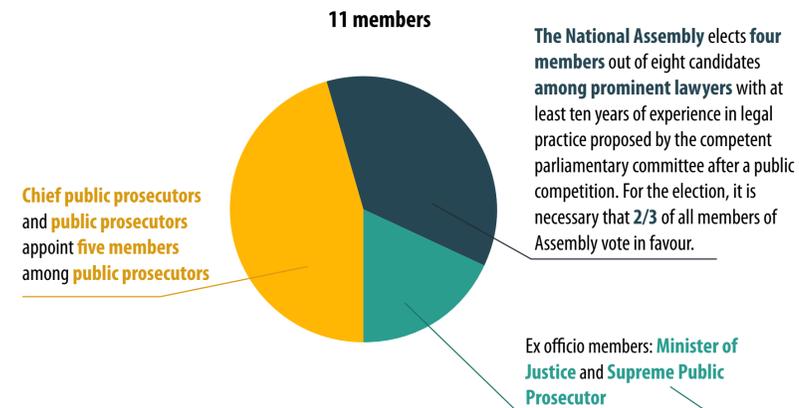
High Judicial Council



WHAT THE HIGH JUDICIAL COUNCIL (HJC) WILL DO?

- Ensures and guarantees independence of courts, judges, court presidents, and lay judges
- Appoints judges and lay judges, the President of the Supreme Court (after obtaining an opinion of the general session of the Supreme Court), and court presidents, decides on the termination of their function and the transfer and referral of judges
- Determines required number of judges and lay judges
- Decides on other issues of the position of judges, court presidents, and lay judges

High Prosecutorial Council



WHAT THE HIGH PROSECUTORIAL COUNCIL (HPC) WILL DO?

- Ensures and guarantees autonomy of the Public Prosecutors Office, the Supreme Public Prosecutor, chief public prosecutors, and public prosecutors
- Proposes to the National Assembly the election and termination of the function of the Supreme Public Prosecutor
- Appoints the acting Supreme Public Prosecutor, elects chief public prosecutors and public prosecutors, and decides on the termination of their function
- Decides on other issues of the position of the Supreme Public Prosecutor, chief public prosecutors, and public prosecutors

If the members of the HJC and the HPC as well as the Supreme Public Prosecutor are not elected by the National Assembly, they will be elected among the proposed candidates by the Commission consisting of:



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Sources:

Opinion of the Venice Commission: <https://bit.ly/3s93ZiC>
Constitutional Amendments: <https://bit.ly/33qwE8h>
Constitution of the Republic of Serbia: <https://bit.ly/31YH7qV>
Constitutional Law for the Implementation of the Constitutional Amendments: <https://bit.ly/3yt0BQu>
The Screening Report on Chapter 23: <https://bit.ly/3ETeoSZ>

CHANGE IN TERMINOLOGY

Supreme Court of Cassation	➤	Supreme Court
President of the Supreme Court of Cassation	➤	President of the Supreme Court
State Prosecutorial Council	➤	High Prosecutorial Council
Republic Public Prosecutor's Office	➤	Supreme Public Prosecutor's Office
Republic Public Prosecutor	➤	Supreme Public Prosecutor
Public Prosecutor	➤	Chief Public Prosecutor
Deputy Public Prosecutor	➤	Public Prosecutor

The President of the Supreme Court of Cassation, court presidents, the Republic Public Prosecutor and public prosecutors elected prior to the constitutional changes will continue to hold the office until the expiration of their mandate and may be re-elected.

Judges and deputy public prosecutors who are elected on probationary period prior to the constitutional changes are considered as elected to a permanent position on the day of entry into force of constitutional changes.

The person is elected by the National Assembly on the proposal of the High Prosecutorial Council after a public competition with the 3/5 of the votes of all members of the Assembly.

KEY CHANGES

- The **Government** is excluded from the procedure of proposing the Supreme Public Prosecutor and other public prosecutors
- The Supreme Public Prosecutor, as well as members of the HJC and the HPC, are limited to **one term**, without the possibility of re-election
- The **probationary (three-year) period** of judges and public officials is abolished
- The **High Judicial Council** is the only body with the authority to appoint judges, court presidents, and the President of the Supreme Court
- The **High Prosecutorial Council** is the only body with the authority to appoint chief public prosecutors and public prosecutors, as well as to decide on their dismissal
- Terms pertaining to the **termination** of the term of office of judges and public prosecutors, as well as the **dismissal** of judges and prosecutors, are constitutionally regulated
- The **Chair of competent Parliamentary Committee** is excluded from the membership of the High Judicial Council and the High Prosecutorial Council
- The **Minister of Justice** is excluded from the membership of the **High Judicial Council**
- The number of members of the HJC and the HPC **elected** by the National Assembly is reduced

* Recommendations of the Venice Commission that have not been adopted