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THE NEW DRAFT TEXT OF THE CONSTITUTIONAL AMENDMENTS DOES NOT EXCLUDE POLITICAL INFLUENCE ON THE JUDICIARY

The Ministry of Justice has, to a certain extent, harmonized the draft text of the constitutional amendments with the recommendations of the Venice Commission. However, it needs to be pointed out that it has been harmonized in accordance with minimum standards, while other, more advanced solutions have not been taken into account.

YUCOM voices its concern that the Ministry of Justice did not fully respect the solutions that the Venice Commission recommended in relation to the composition of the High Judicial Council, that is, representatives of the executive authorities, who can be elected to the High Judicial Council, have no right to vote within this body, which was designated as a guarantee of the independence of the judiciary.

The Venice Commission has issued a series of recommendations that improve the current position of the public prosecution, and recommendations regarding the responsibility of the Supreme Public Prosecutor are not fully met therefore it remains irresponsible for its instructions, in case that the Lower-ranking Public Prosecutors consider them as irregular. The composition of the High Council of Prosecutors does not provide a guarantee of excluding political influence on prosecution, moreover, the political influence is higher comparing to the previous one. As the Venice Commission has pointed out "It is important that the majority in the National Assembly do not dominate within the High Council of Prosecutors in a certain moment in order to give it credibility and gain public confidence in the system. To have five of the eleven members elected by the National Assembly in addition to the Minister of Justice and the Supreme Public Prosecutor of the Republic Serbia – also elected by the National Assembly – is a cause for concern." New solutions envisage six members elected by the National Assembly (including the Minister of Justice and the Supreme Public Prosecutor), while only 4 members of prosecutors' representatives are elected by their colleagues. The importance of their presence within this body is reduced through the decision-making process.

Finally, the possibility of terminating the mandate of all members of the High Judicial Council and the High Council of Prosecutors, if they do not make decisions within 60 days on a number of issues, is an additional pressure to the guarantees of the independence of the judiciary, which has been severely criticized by the Venice Commission.

As the aim of amending the Constitution was to exclude the political influence on the functioning of the judiciary, as it has been stipulated by the Action Plan for Chapter 23, with this decision the relevant ministry deviates from the declared policy of the Government of the Republic of Serbia.

