






Weekly Briefing

Serbia Political briefing:
Legislation, judiciary and the rule of law as key autumn issue in
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IIPE

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Kiadó: Kína-KKE Intézet Nonprofit Kft.
Szerkesztésért felelős személy: Chen Xin
Kiadásért felelős személy: Huang Ping

 1052 Budapest Petőfi Sándor utca 11.
 +36 1 5858 690
 office@china-cee.eu
 china-cee.eu

Legislation, judiciary and the rule of law as key autumn issue in Serbia

Abstract

Legislative activity in the Parliament stands out for its long-term importance for the overall social life of Serb citizens. The final version of the Draft Amendments to the Constitutional Provisions on the Judiciary will be the subject of parliamentary consideration during the next month. We present different views of the proposed Amendments and the expected results of their adoption and implementation.

There was also a vivid legislative activity in the Serbian Parliament. For this opportunity, we want to list one legal issue that has been present for months already: the Draft Amendments to the Serbian Constitution in the field of Justice. The Government announced that the Draft would be submitted to the Parliament for adoption in November, followed by the referendum of Serbian citizens.

The subject of the Amendments has serious significance for achieving a clear division of power and the rule of law. For years, the international institutions and the European Union have repeated the same observations on the situation in our and neighboring countries, and they can be summarized as an inadequate level of the rule of law, which has the consequence of ineffective judiciary, a high degree of corruption and the existence of organized crime. This is probably why reforms are most commonly used in political speech.

The Ministry of Justice published the fourth and final version of the Draft Amendments on its website on November 15, 2018. According to the Ministry of Justice's statement, this version is aligned with the comments of the Venice Commission and the expert public. To do that, the activities of the Ministry of Justice on the revision of the Constitution began in May 2017. Since then several Draft Amendments versions have been made and several rounds of public consultations and debates have been held. As a rule, the arguments of the

Ministry of Justice and the professional public and professional legal associations were opposed. The main argument of the Ministry of Justice is that the proposed Amendments to the Constitution of Serbia bring the Serbian judiciary into line with European standards, while the arguments of legal experts have moved in the direction of proving that the proposed Amendments increase the influence of political parties on the judiciary in an apparent or disguised manner.

As this process was under the supervision of the Venice Commission, which gave its opinion on some versions of the Draft Amendments, it is advisable to consider the opinion on the latest version as well as the comments and observations of legal experts and legal associations. In its latest document: Opinion No. 921/2018 of October 22, 2018, Secretariat Memorandum on the compatibility of the draft Amendments to the Constitutional Provisions on the Judiciary as submitted by the Ministry of Justice of Serbia on 12 October 2018 (CDL-REF(2018)053) with the Venice Commission's Opinion on the draft Amendments to the Constitutional Provisions on the Judiciary (CDL-AD(2018)011) Taken note of by the Venice Commission at its 116th Plenary Session (Venice, 19-20 October 2018), we can find a detailed analysis of the last version of Draft Amendments:

- 1) Composition of the High Judicial Council and the role of the National Assembly. Of the ten members of the High Judicial Council, five elect judges, while the election of the remaining five is being held in the Parliament. Now, for the election of five members of the High Judicial Council in the Parliament, it is increased required majority from 3/5 to 2/3;

- 2) Composition of the High Prosecutorial Council and the role of the National Assembly. Of the ten members of the High Prosecutorial Council, four members are elected by the public prosecutors and deputy prosecutors, one place is reserved for the supreme public prosecutor and the Minister of Justice, four members are elected by the Parliament from the distinguished lawyers where it

was adopted the same solution by increasing the required majority from 3/5 to 2/3;

3) Dissolution of the High Judicial Council. The period of time for the dissolution of the High Judicial Council is increased from 30 to 60 days;

4) Dismissal for incompetence. The new formulation: “A judge may also be dismissed due to incompetence if, in a significant number of cases, he or she clearly does not meet the benchmarks of satisfactory performance prescribed by Law and evaluated by the High Judicial Council” is in line with the recommendation;

5) Method to ensure the uniform application of laws. Amendment on the independence of judges is in line with the recommendation as well as Amendment on the Supreme Court of Serbia: “The Supreme Court of Serbia shall ensure uniform application of the law by courts through its case law”;

6) Public Prosecutors and Deputy Public Prosecutors. Now public prosecutors are no longer accountable to the National Assembly and are elected by the High Prosecutorial Council.

Other recommendations by the Venice Commission: Relation between three branches of power shall be now based on checks and balances instead of balance and mutual control; The members of the High Judicial Council elected by the Parliament do not have passed the Bar exam and now prominent lawyers should have relevant working experience as defined by law, which was also applied on the composition of the High Prosecutorial Council; Autonomous status of the Judicial Academy; It is introduced the right for judges to appeal to the Supreme Court against the decision of relocation; The law shall define more precisely what political activities are incompatible with the function of a public prosecutor or deputy public prosecutor. The conclusion is unambiguous: “The recommendations formulated by the Venice Commission in its opinion CDL-AD(2018)011 were followed”.

Obviously, the Ministry of Justice finalized the latest Draft with minimum European standards in the field of judiciary. Certain observations by professional legal associations are included in the text. However, the legal profession continues to make numerous remarks and is not satisfied with this Draft Amendments, arguing that there are no substantial improvements in it and that all corrections are of a more cosmetic nature. To name the next advocate of such an opinion: Association of Public Prosecutors and Deputy Prosecutors of Serbia, Serbian Judicial Society, Lawyers' Committee for Human Rights (YUCOM), Justice Research Center and Belgrade Human Rights Center. Let's consider their main arguments. They point out that the depolitisation of the judiciary was a major motive for accessing the changes to the Constitution. Also, within the framework of the European integration process, i.e. the Action Plan for Chapter 23, Serbia has taken on the obligation to remove the political influence on the judiciary. According to them, this influence is not reduced but retained, which is best seen by the composition of the High Judicial Council and the High Prosecutorial Council: fewer members of these Councils are elected by judges and prosecutors and greater number by the political majority in the Parliament. In addition to other concrete remarks, on several occasions during the public debate, there was the existence of self-censorship in the work of judges and prosecutors. Such a phenomenon is understandable in the current social environment but does not contribute to an independent judiciary.

It is interesting to note that Dr Vojislav Koštunica, known as a hard legalist who once translated from English into Serbian famous *Federalist Papers (The Federalist: A Collection of Essays, Written in Favour of the New Constitution, as Agreed upon by the Federal Convention, September 17, 1787)*, did not have the effect that the Serbian Constitution (2006) adopted at a time when he was the Prime Minister be more long-lived than the current Amendments are not necessary.

What are the consequences of the described process of changing the Serbian Constitution? Will it lead to a reduction in systemic corruption and organized crime? This certainly will not reduce the damaging impact of politics on the overall social life in Serbia. Indeed, this is not the invention of current authority but a part of the long and bad tradition. The results are visible in everyday life. As in neighboring countries, a steady and growing outflow of labor is taking place, especially highly educated and young people. It seems that decades will pass until the overall social environment in Serbia becomes similar to developed democratic countries.

Conclusion

The ruling party and the political majority in the Parliament retain the dominant influence of the political and executive power over the judiciary. After all, as is the case in other areas of social life in Serbia. Obviously they believe in the correctness of such a policy and that they all work with the best intentions. It is also clear that the Draft Amendments are in line with the lowest European standards. It is a missed opportunity for them to be built with the highest possible realistic standards, which would provide the Constitution longer life and the Serbian citizens to have greater legal certainty.