



Weekly Briefing

Serbia political briefing:
Elections for the Republic Public Prosecutor in Serbia
Ivona Ladjevac

China-CEE Institute

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

Elections for the Republic Public Prosecutor in Serbia

Abstract

The position of the Republic Public Prosecutor is the most important position in the Public Prosecutor's Office of the Republic of Serbia. According to the Constitution of the Republic of Serbia, the public prosecutor's office is an independent state authority which is in charge of the prosecution of perpetrators of criminal offences and other punishable acts and which undertakes measures for the protection of constitutionality and legality. The Republic Public Prosecutor is elected by the National Assembly at the Government's proposal and upon obtaining the opinion of the competent committee of the National Assembly. The Republic Public Prosecutor is elected to a term in office of 6 years and may be re-elected.

Legal experts on the elections

The mandate of the current Republic Public Prosecutor of the Republic of Serbia, Ms. Zagorka Dolovac, expires on December 31st 2021, while the deadline for submitting the candidacy expired at midnight on May 28. On June 4th, the State Prosecutors' Council announced that it had received four applications from potential candidates, of which one candidate had withdrawn its candidacy "at own request". Few days later, Commission for determining the timeliness and completeness of submitted applications announced that one application was rejected as late received, two as incomplete while as the only application that meets the conditions for candidacy was of the one submitted by the current Republic Public Prosecutor, Ms. Dolovac. This evident lack of candidates was not welcomed at all.

The Deputy Appellate Public Prosecutor in Novi Sad, Mr. Radovan Lazić, commented for media that the position of the Republic Public Prosecutor is the most important position in the Public Prosecutor's Office of the Republic of Serbia and, therefore, it would be favorable if the election bodies have the opportunity to choose between several candidates.¹

The President of the Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, Ms. Lidija Komlen Nikolić, stated that the Association does not support the election

¹ "Zagorka Dolovac sve bliža trećem uzastopnom mandate", Udruženje javnih tužilaca i zamenika javnih tužilaca Srbije, 01/06/2021, <https://www.uts.org.rs/aktivnosti/vesti/1758-zagorka-dolovac-sve-bliza-trecem-uzastopnom-mandatu>, accessed on 30/06/2021.

process for the Republic Public Prosecutor, which, by its nature, is political.² She also emphasized that the one of the Association's mission is fighting to succeed in depoliticizing the judiciary.

According to her, the Association has been pointing out the political nature of the procedure for the election of the Republic Public Prosecutor for two decades. The remarks were made several times in public and in professional circles. The essence is in the depolitization of the election process and the judiciary as a whole, she explained.

Having in mind that the entire process is controlled by the State Council of Prosecutors, which is headed by the current Republic Public Prosecutor, who is also a candidate, one can easily understand to what extent the politics is involved, Ms. Komlen Nikolić pointed out.

After the end of the process, the State Prosecutors' Council forwards its proposal to the Government of the Republic of Serbia, which, if it adopts the proposal, forwards it to the Assembly. So, the Government is the first political filter that must be passed in the election process, before the proposal is forwarded to the Assembly, she explained.

When comes to the low interest of candidates for the election of the Republic Public Prosecutor, representatives of the Association of Judges and Prosecutors of Serbia emphasize two circumstances that could be part of the reason for it.

Traditionally, a relatively small number of candidates apply for this position, and some of the reasons should be sought in the specific responsibility for the functioning of the entire public prosecutor's system, the visibility of the function in the media, sharp criticism of the prosecutor's office in any case where the public is not completely satisfied, as well as a number of obligations regarding international cooperation and fulfillment of conditions for progress on the path to the European Union .

All this badly distances the Republic Public Prosecutor from the usual everyday life of other members of the public prosecutor's office, which is related to the courtroom and the handling of specific cases, which is not attractive to a certain number employed in judiciary.

Another potential reason is the Rulebook on Criteria and Criteria for Assessing the Expertise, Qualification and Dignity of Candidates in the Candidate Proposal Procedure, whose provisions make a clear distinction as to how the expertise and qualifications of a candidate

² "Zagorka Dolovac po meri politike", *Danas*, 02.06.2021, <https://www.danas.rs/drustvo/zagorka-dolovac-po-meri-politike/>, accessed on 30/06/2021.

who is already a Republic Public Prosecutor and candidate are evaluated for a new mandate, in relation to other candidates who are applying for this position for the first time.

From the other hand, when comes to the electoral process, Ms. Komlen Nikolić points out that it is not unusual for a republic prosecutor or a supreme prosecutor to be elected in parliament, however, in the previous part of the process, she believes, the legal experts should be included.

In comparative practice, there are many examples where the head prosecutor is elected by representatives of the executive or the legislative power. As such, this position is arguably the most important in the prosecution organization. However, the process preceding that election must be depoliticized and based on objective criteria. The election of public prosecutors, as set by the current Constitution, indisputably creates the room for imposing a certain degree of political influence. This remark was also made timely by the European and international organizations. Also, what does not exist in comparative practice is that one person holds this position for 18 years! This is the case, because Ms. Dolovac was appointed as the Public Prosecutor in 2010.

For this very reason, the Association of Judges and Prosecutors of Serbia supported the amendments in the field of justice, which were given the green light by the Venice Commission, believing that the amendments to the Constitution represent a step in the right direction and further strengthen the judiciary.³ To remind, Venice Commission holds the position that amendments should limit the mandate, no longer than six years, and that the possibility of re-election should be banned.

About the Public prosecutor's authorities

By the virtue of elections, the elected Republic Prosecutor becomes the President of the State Council of Prosecutors, and also gains significant powers. The Law on the Public

³ “Serbia - Secretariat memorandum - Compatibility of the draft amendments to the Constitutional Provisions on the Judiciary of Serbia, taken note of by the Venice Commission at its 116th Plenary Session” (Venice, 19-20 October 2018), [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)023-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)023-e), accessed on 30/06/2021, and “Serbia - Opinion on the draft amendments to the constitutional provisions on the judiciary, adopted by the Venice Commission at its 115th Plenary Session” (Venice, 22-23 June 2018), [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)011-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)011-e), accessed on 30/06/2021.

Prosecutor's Office, among other things, states that every public prosecutor is subordinate to the Republic Prosecutor.⁴

A person in this position may issue mandatory instructions for action to any prosecutor in the country, as well as gain insight into each case.

In contrast to the obligatory instructions of other heads of the prosecutor's office, it is not possible to file an objection to the instructions of the Republic Prosecutor. The Republic Prosecutor also issues general obligatory instructions for the actions of all public prosecutors in order to achieve legality, efficiency and uniformity in actions.

Precisely because of these broad powers and the ability to influence the investigations themselves, the current Republic Prosecutor has been the subject of numerous criticisms in previous years. She was most often criticized for the passivity of the prosecution to investigate criminal acts for which there were indications that government representatives were involved. She was also criticized for the lack of reaction to the open pressure of the government representatives on the prosecution, but also for the public presentation of confidential data from the investigation. One of the often critics was also the one for her constant refusing to appear in public and in front of the media.

Conclusion

If Ms. Zagorka Dolovac is elected for a third term, she could spend a total of eighteen years in that position. However, the big question is whether that will be the case. Namely, at the beginning of July, the National Assembly should discuss the amendments to the Constitution in the field of justice, which, among other things, envisage a change in the article on the Republic Prosecutor. This change, and there are speculations that the plan to end the entire process of changes before the parliamentary and presidential elections, could mean a significant shortening of the mandate of the Public prosecutor. If a new, now supreme public prosecutor will be elected after the amendments to the Constitution, or if the current term will be left will depend mostly on the content of the Constitutional Law and accompanying judicial laws, which will have to be changed after the amendments to the Constitution.

⁴ "Zakon o javnom tužilaštvu" (The Law on the Public Prosecutor's Office), ("Sl. glasnik RS", br. 116/2008, 104/2009, 101/2010, 78/2011 - dr. zakon, 101/2011, 38/2012 - odluka US, 121/2012, 101/2013, 111/2014 - odluka US, 117/2014, 106/2015 i 63/2016 - odluka US), https://www.paragraf.rs/propisi/zakon_o_javnom_tuzilastvu.html, accessed on 30/06/2021.