Open Parliament Newsletter

PARLIAMENTARY INSIDER

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O vama se radi.

CRTA:

#ЕУ ЗА ТЕБЕ

Schweizerische Eidgenossenschaft
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Swiss Agency for Development and Cooperation SDC

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THE OPEN PARLIAMENT INITIATIVE

The Open Parliament Initiative has been monitoring the work of the Serbian Parliament every day since 2012. The Open Parliament collects and publishes data on the Parliament's work and results and deals with the analysis of various processes from the perspective of transparency, accountability and participation. The main goal of the Open Parliament Initiative is to increase transparency and accountability of the work of the Parliament, to inform the citizens about the work of the Parliament and to establish regular communication between citizens and their elected representatives. Our work is based on the values contained in the international Declaration on Parliamentary Openness, and the Open Parliament took part in the development of this initiative. Since January 2018, the Open Parliament team has increased the focus of this initiative's activities on democratism and accountability in the conduct of MPs and the work of the institution.

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Saving the best for last

Miša Bojović
Senior Researcher, Open Parliament

August was a month of break for the otherwise very active legislature of the National Assembly. Several extraordinary sittings were held in September, followed by intensive activities of committees and meetings of MPs with representatives of the international community, and the beginning of the regular autumn session in October. After the President of Serbia, who is also the president of the political party that has a significant majority of MPs in the National Assembly (as many as 97%, in a coalition with partners), made a fixed term for the work of parliament immediately after its constitution, to only a year and a half, this short-lived parliamentary legislature has been bequeathed to several key changes.

This nearly one-party parliament is the result of a boycott of parliamentary elections by opposition parties. In order to overcome the political crisis caused by this situation, two inter-party dialogues were held in parallel under the auspices of the Speaker of the Assembly. One with the representatives of the opposition, who accepted to negotiate with the representatives of the authorities on better election conditions, and the other with the opposition parties, that demanded the mediation of the European Union. During the autumn session, both processes ended with an agreement between the participants and the adoption, just before the end of December, of the first amendments to the law governing the work of the media, as a consequence of these agreements.

The process of amending the Constitution in the part referring to the independence of the judiciary, after several years of delay, began during the spring session and resulted in the swift adoption of the Act amending the Constitution after only six months. The working group formed by the Committee on Constitutional and Legislative Issues, which included individual representatives of professional associations, had two months to draft the Act amending the Constitution. The proposal was presented to the public at the beginning of September, at four public hearings organised by the Assembly, after which it was adopted by the Assembly on the last day of November. On the same day, the Speaker of the Assembly called a referendum to confirm this Act, which will be held on January 16th, 2022. It took only a month and a half for the public to get acquainted with the importance of changes to the Constitution and changes in the judiciary.

Five days before the adoption of the Act amending the Constitution, a new Law on Referendum and People's Initiative was adopted in order to be harmonised with the provisions of the existing Law on Referendum, which were amended in 2006. Amendments to the Law were primarily made in order to abolish the referendum threshold, however, a number of other significant changes were proposed by the same Law. Amendments to the Law on Expropriation were adopted in the same period. Although the experts pointed out their shortcomings, both of these acts were adopted, which resulted in citizens' protests. Two weeks later, the Assembly adopted amendments to the Law on Referendum and People's Initiative, and withdrew the Law on Amendments to the Law on Expropriation from the procedure after the President refused to sign it, although it had no legal rights to do so.

During the autumn session, several important laws were adopted in a way to be harmonised with international obligations, namely amendments to the Law on Prevention of Corruption, which had been amended twice since its adoption in May 2019; in order to comply with GRECO recommendations, the

Law on Amendments to the Law on Free Access to Information of Public Importance was adopted, which process began five years ago. During that period, two working groups were formed to amend the Law, three documents were drafted and two rounds of public consultations were organised. These amendments and the new Law on the Protector of Citizens are an obligation envisaged by the Action Plan for Chapter 23 in the process of accession to the European Union, so that these areas could be harmonised with international standards. Both of these laws were adopted by the Assembly on November 3rd.

After a decade of delay, the Code of Conduct for MPs was adopted at the end of 2020, and its amendments were adopted in September 2021 in the same way the very Code was passed – overnight – without public involvement and by urgent procedure. At the same time, the MPs who adopted it do not stop abusing the rostrum to deal with political dissidents. Out of the two novelties introduced by the amendments, one refers to the elaboration of the idea of the Ethics Commission, which was also established by urgent procedure, without discussion, eleven months after the adoption of the Code. The second novelty is that the warned MP will be fined by a 10 percent reduction in their salary, while the fine for a public warning will amount to 50 percent of the salary.

The twelfth parliamentary legislature is characterised by high-intensity activities. 130 sitting days, 38 regular sittings (compared to 13 during 2016-2017) and 14 extraordinary (compared to 3 during 2016-2017). Increased activity, however, does not mean more work on the quality of regulations. Parliamentary debates are used to deal with political dissidents. As many as 70 percent of the laws were adopted without amendments, and 40 percent of the committee sittings lasted less than 10 minutes. Most of them unconditionally adopted the draft regulations submitted by the Government. A large number of public hearings were organised. For the first time in December, we had a public hearing at which the planned national budget for next year was presented. Nevertheless, it was a hearing that only the chosen and the invited ones were allowed to attend. The efficiency of the work of this legislature is based on the fulfilment of a form that is devoid of essence. According to the MPs, a good part of the most important regulations were adopted just to "tick" some of the "boxes" with international obligations. The quality of these regulations and the reasons why it was necessary to adopt them had been relegated to the background

2021 Month in Parliament SEPTEMBER

9. The Bill on Consumer Protection was adopted, the Vice Governor of the NBS was elected and a large number of international agreements were verified. The speech of the NBS Governor Jorgovanka Tabaković attracted the most attention. During the discussion, explaining the contribution of the President of Serbia to her successful work, she asked "Alexander, are these people worthy of you?"

15. On the same day, by urgent procedure, in Serbia and in Republika Srpska, the MPs adopted the Bill on Use of Language in Public Life and Protection and Preservation of Cyrillic Alphabet. The Law stipulates the mandatory use of the Serbian language and the Cyrillic alphabet for certain entities such as state bodies, educational institutions and companies with public capital, as well as penalties for those who fail to meet this obligation.

23. Amendments to the Decision on the adoption of the Code of Conduct for MPs were passed by urgent procedure. Among the adopted changes there are, inter alia, the introduction of the Ethics Commission and the obligation to publish its decisions on the website of the Assembly.

2021 Month in Parliament OCTOBER

5. The Second Regular Session of the National Assembly of the Republic of Serbia in 2021 began, as well as the second year of work of this legislature.

14. Ten judges were elected to judicial office for the first time, while seven candidates were challenged because, according to MPs, they did not meet "basic and fundamental security criteria" and were hence not elected.

26. The revision of the budget of the Republic of Serbia for 2021 was adopted, by urgent procedure.

27. By urgent procedure and without discussion, the Ethics Commission which will monitor the implementation of the Code of Conduct for MPs was elected. The members of the Ethics Commission were proposed at the sitting of the Committee on Administrative, Budgetary, Mandate and Immunity Issues that lasted 3 minutes and 57 seconds. A sitting of the Assembly at which the proposal woule be discussed was scheduled for the next day: The résumés of the candidates were published on the website of the National Assembly at the beginning of the sitting at which they were elected, and the public was able to learn more about the candidates only after they were elected.

29. The Agreement on Improving the Conditions for Conducting Elections, which was created within the framework of inter–party dialogue without foreign mediation, was signed in the National Assembly of the Republic of Serbia.

2021 Month in Parliament NOVEMBER

3. The MPs voted on a new Law on the Protector of Citizens and amendments to the Law on Free Access to Information of Public Importance.

9. A public hearing was held on the topic of presenting the budget for 2022 and the Final Account of the budget for 2020. This is the first time that the public in the Assembly has been given the opportunity to ask questions about the state budget.

23. The Law on the Budget of the Republic of Serbia for 2022 was adopted. This year, the Bill on the Budget arrived in the Assembly within the legally prescribed deadline.

25. Despite harsh public reactions, the Law on Referendum and People's Initiative was adopted, which, inter alia, abolishes the threshold, which means that the decision from the referendum is valid and binding if the majority of voters voted for it.

26. Amendments to the Law on Expropriation were adopted, which also provoked negative reactions in the public.

30. The Act amending the Constitution of the Republic of Serbia was adopted. On the same day, the Speaker of the National Assembly of the Republic of Serbia called a referendum to confirm the Act amending the Constitution of the Republic of Serbia. The referendum will be held on January 16th, 2022.

2021 Month in Parliament DECEMBER

2. The Report of the European Commission on the Republic of Serbia for 2021 was taken into consideration.

9. After the negative reaction of the public, followed by protests emanating from the adoption of the Law on Referendum and People's Initiative and amendments to the Law on Expropriation, the President of Serbia did not sign the Law on Amendments to the Law on Expropriation and returned it to the Assembly for reconsideration. After that, the Government withdrew it from the parliamentary procedure, although it has no legal right to do so. In addition, the Government prepared a proposal for amendments to the Law on Referendum and People's Initiative.

10. – Amendments to the Law on Referendum and People's Initiative were adopted unanimously and practically without any discussion, only fifteen days after its adoption. The amendments, inter alia, abolished the obligation to pay for the validation of signatures for the referendum and extended the validity of the decision from the referendum.

21. A motion for a resolution on police brutality against peaceful protesters in European Union countries entered the parliamentary procedure, with a proposal for adoption by urgent procedure. The proponents of the resolution are five MPs from the parliamentary group "Aleksandar Vučić – For Our Children".

29. The Assembly adopted the Bill on Amendments to the Law on Financial Support to Families with Children by urgent procedure, as well as four international agreements signed within the Open Balkans Initiative, and considered the regular annual reports of independent institutions for 2020 (Anti–Corruption Agency, Commissioner for the Protection of Equality, the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection).

PARLIAMENT IN NUMBERS

The statistical review of the work of the 12th convocation by December 31st, 2021.

COMPOSITION

97% belong to the ruling majority

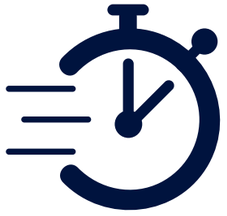
60% of MPs are in benches for the first time

LEGISLATIVE ACTIVITY

130 days of sittings

243 adopted laws

99% of adopted laws were proposed by the Government



URGENT PROCEDURE

9% of all laws (including new laws, amendments to laws and ratifications of international agreements) were adopted by urgent procedure.

8% of new laws and amendments were adopted by urgent procedure, with the exception of laws ratifying international agreements

OVERSIGHT ROLE

10 sittings were held on the last Thursday of the month, at which **parliamentary questions were asked**

As many as **22 public hearings were organised** – one in November, February and March, three in April, six in May, one in June and July, five in September, one in November and two in December. Public hearings were attended mainly by government officials, there were no awkward questions for the organisers, and the civil sector, when present, did not get too involved in discussions. Out of the 22 public hearings, seven were dedicated to amending the Constitution in the area of justice, and at the end of the year we had the first public hearing on the budget.

Since the beginning of the 12th convocation, **524 committee sittings** have been held, out of which 40% lasted less than ten minutes.

KEY NOVELTIES:

- After the Working Group, which includes representatives of professional associations, prepared a draft Act amending the Constitution of the Republic of Serbia, it was adopted by the required two–thirds majority (193 votes in favour and 3 against). On the same day, the Speaker of the National Assembly of the Republic of Serbia called a referendum to confirm the Act amending the Constitution of the Republic of Serbia, which will be held on January 16th, 2022

- In order to enable conducting of the referendum on the proposed amendments to the Constitution, it was necessary to adopt a new Law on Referendum and People's Initiative, since the previous one has been in force since 1994 and was last revised in 1998. The adoption of the new Law on Referendum has been awaited since 2006, when the amendments to the Constitution abolished the threshold at the local, provincial and republic level. The new Law on Referendum and People's Initiative was adopted five days before the adoption of the Act on Changing the Constitution, and its amendments were also adopted only fifteen days later, due to the sharp reaction of the public and street protests.

- The motive of street protests were, at the same time, adopted amendments to the Law on Expropriation, which provided for extremely short deadlines for expropriation and the possibility of declaring any commercial project a project of national interest and thus enable the application of the Law on Expropriation. Because of the reaction of the public, the President of the Republic did not sign this Law and returned it to the Assembly for a new decision, with the explanation that it was not in accordance with the Constitution. Even though the Assembly was supposed to decide upon the Law again, the Government withdrew it from the procedure although it has no legal right to do so.

- Last year's practice of reviewing the annual reports of independent institutions with a long delay continued. The reports of four independent institutions (Agency for Prevention of Corruption, Commissioner for Protection of Equality, Protector of Citizens and Commissioner for Information of Public Importance and Personal Data Protection) were considered at the last sitting of the year, although according to the Rules of Procedure, this should have been done during the spring session. Last year's practice of reviewing the European Commission's Progress Report on Serbia and adopting conclusions based on it also continued.

- Although it was different in previous years, the Government submitted the Bill on the Budget for 2022 to the National Assembly on time, which also considered it within the legal deadline. In addition, for the first time in the Assembly, a public hearing on the budget has been organised, but only representatives of invited organisations were allowed to attend it.

Analysis

Speeches in the National Assembly of the Republic of Serbia

Discourses on the executive and the opposition

Milena Manojlović
Policy Analyst, Open Parliament

Research methodology

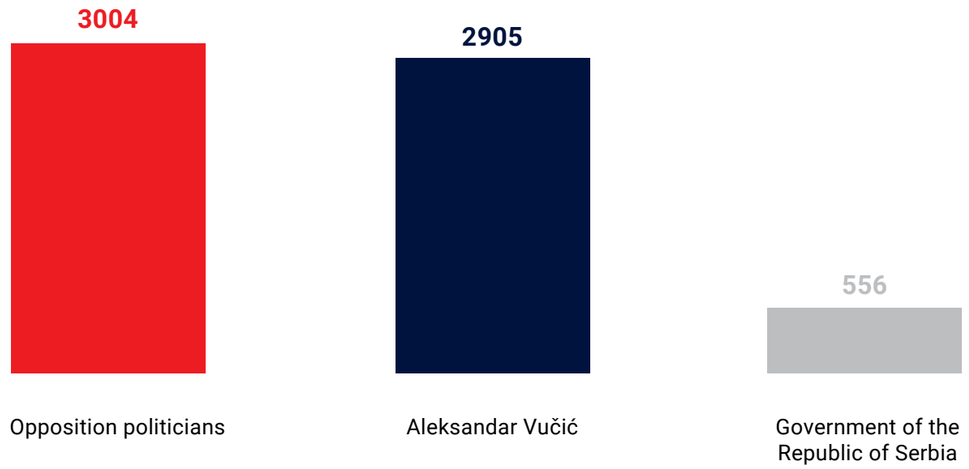
As an initiative dedicated to increasing the publicity of the work of the Parliament and informing the citizens about the work of the Assembly, the Open Parliament researched the way that MPs talk about the holders of executive power in the plenum – about the President, the Prime Minister and ministers – as well as about leaders and prominent politicians of opposition parties. The period from September to the end of 2021 was analysed, i.e. the last four months of the work of the National Assembly in the past year. The analysis covered a part of the extraordinary sittings and the entire ordinary autumn session held in this period. For that purpose, continuous monitoring of all speeches in the plenum of the National Assembly was conducted, as well as recording of each individual mention of the cited actors with an assessment of the tonality: whether the actors were spoken about in a positive, neutral or negative light. A total of 738 speeches were analysed, in which 6,465 individual mentions of the observed actors were recorded and evaluated.

Further analysis of the speeches sought to find out what kind of discourses about the most influential political actors are being created in the National Assembly. In that sense, the fact that the current legislature was formed after the elections that were boycotted by some opposition parties, and that as many as 97% of MPs belong to the ruling majority, seems to be crucial. In such circumstances, the plenary debates in the National Assembly have been largely reduced to just another channel for sending propaganda messages, often the same ones that previously appeared in the pro-government media. Informed and focused discussion of agenda items, asking questions and opening topics that are important to citizens, as well as efficient control of the executive branch are largely lacking.

Frequency of mention of actors

Insight into the representation of actors in the speeches of MPs, reveals, above all, a lot about the division of power and the idea that MPs have about their own role. Although the basic function of the National Assembly is to oversee and control the work of the Government of the Republic, the focus of parliamentary speeches is on the President of the Republic and opposition leaders..

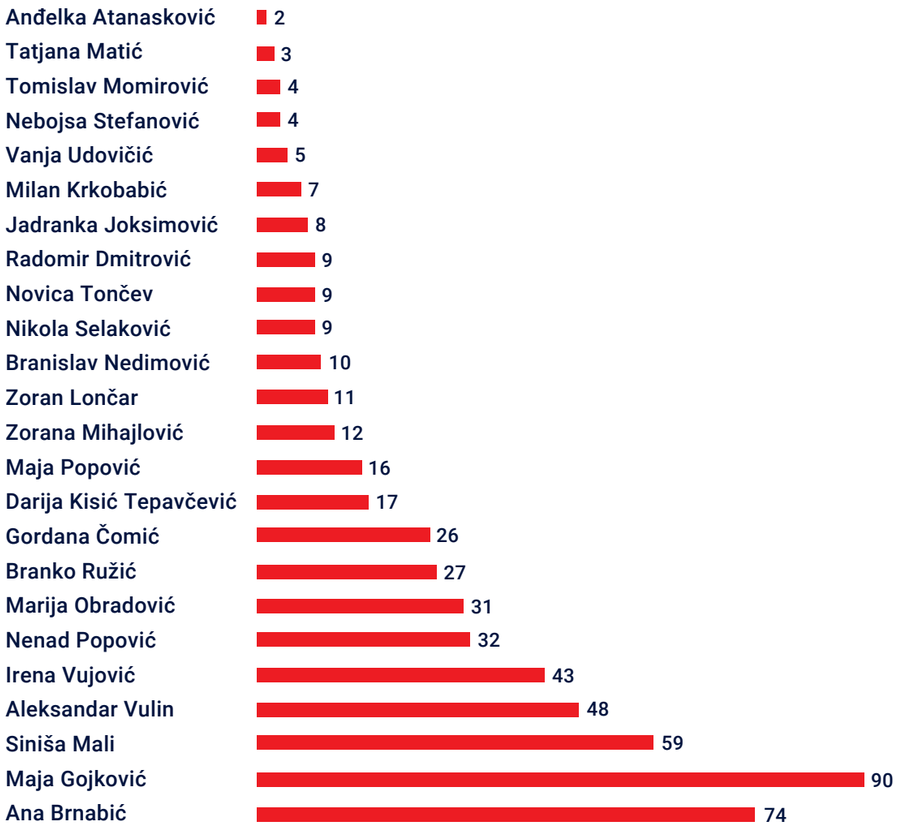
Chart 1: Representation of political actors



By far the most frequently mentioned actor with 45% (2905 times) is the President of the Republic, who is also the President of the strongest parliamentary party (the Serbian Progressive Party), Aleksandar Vučić (Chart 1).

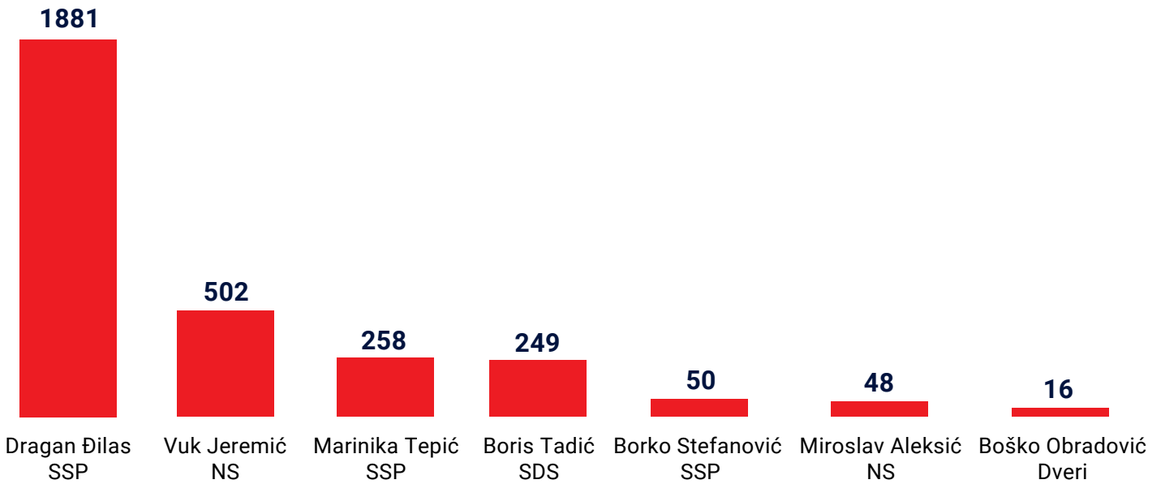
The Prime Minister of the Republic and all her ministers were mentioned in only nine percent (556 times) of the total mention of all actors included in the research. The Prime Minister, who according to the Constitution is also the holder of the most influential political function in this country, was mentioned by the MPs only 74 times. In addition to the President of the Republic, as many as four opposition politicians and one minister were mentioned more often in the Assembly than Ana Brnabić (Chart 2).

Chart 2: Representation of members of the Government of Serbia



The number of mentions indicates that the current legislature was focused on the opposition during the last four months of 2021. Thus, 46 percent of the total representation of all actors goes to seven opposition politicians, who were mentioned as many as 3,004 times.

Chart 3: Representation of opposition politicians

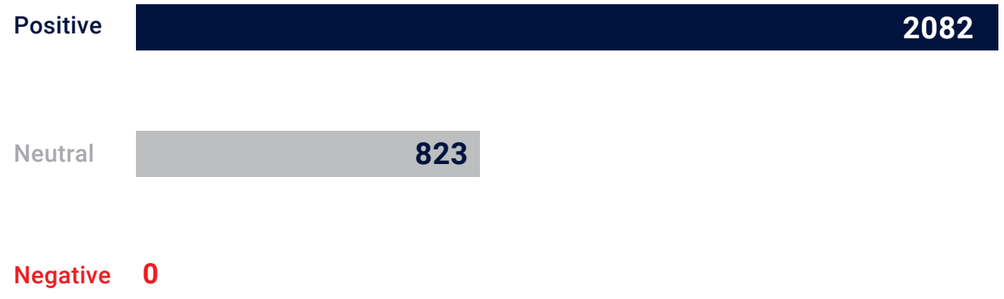


As can be seen in Chart 3, when it comes to opposition politicians, the president of the Party of Freedom and Justice, Dragan Đilas, was most often mentioned, as many as 1,881 times. Hence, Đilas is in second place in terms of individual mentions in the National Assembly, after the President of the Republic.

Discourse on the President of the Republic

The tonality of the mention of the cited actors reveals the full extent to which the plenary debate in the National Assembly was abused and staged for the purpose of party interests.

Chart 4: Tonality of mentioning the President of the Republic



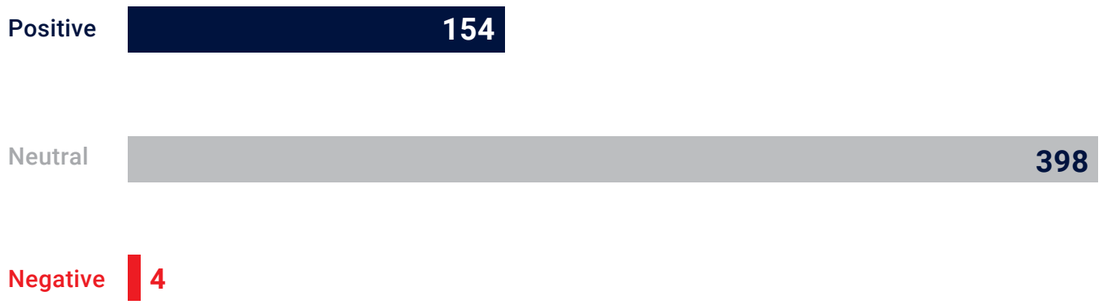
The President of the Republic is most often mentioned in a positive tonality, in 72 percent (as many as 2,082) of his total mentions, while the remaining 28 percent are neutral mentions. In the observed period, no mention of President Vučić in a negative tonality was recorded (Chart 4).

While the neutral tonality is most often associated with the mention of the parliamentary group whose name includes the name of the President, as well as the valuatively indistinct mentions of Aleksandar Vučić as President of the Republic, positive mentions serve to carefully build a cult of personality. Thus, in the plenum of the National Assembly, Vučić is responsible for every success of the ruling majority, which is usually presented in the media beforehand. In that context, the constitutional powers of the President and the Government have become completely irrelevant to the MPs. Along with the merits, the MPs of the ruling majority carefully perpetuate other narratives present in the media about President Vučić, such as the one about constant threats and attacks on him and his family members, or about personal good relations he built with certain foreign statesmen and the like. In that sense, the plenary debate, while neglecting the agenda and basic functions of the Assembly, is often reduced to a stage serving for several hours of additional repetition of messages about the President and from the President, which were previously communicated to voters at a press conference or during guest appearance.

Discourses on the Government of the Republic of Serbia

In addition to the general neglect, i.e. little attention paid to the discussion of the efforts of the Prime Minister and individual ministers, the research indicates that the Government was mostly talked about in a neutral tonality. Positive tonality was recognised in 28 percent of mentions, and only one percent of negative mentions was recorded (Chart 5).

Chart 5: Tonality of mentioning of the Government of the Republic of Serbia



The four negative mentions of the ministers refer to three speeches given by the MPs who do not belong to the ruling majority. In the first, the Minister in charge of education, Branko Ružić, was criticised for ordering the school year to begin with the intonation of the national anthem of the Republic of Serbia. The Minister of Culture Maja Gojković, was praised for her work, but also animadverted for supporting, as a "high official of the SNS", the decision of the Government of Serbia to allocate insufficient funds for culture. The Minister for European Integration, Jadranka Joksimović, was reprimanded for treating the MPs and the Assembly, together with the representatives of the "Brussels civil sector and especially the EU representatives", in a "humiliating way". At the same time, support was provided to the Speaker of the National Assembly Ivica Dačić, who, according to an independent MP, opposed such an attitude at the session of the National Convention on the EU held at the end of December.

Discourses on opposition representatives

In addition to representation, the way in which the representatives of the opposition were discussed in the Assembly fully confirms the conclusion that plenary debates are abused for the purpose of circumscribed party interests, i.e. placing propaganda messages to voters.

Chart 6: Tonality of mentioning of the opposition representatives

Negative tonality makes up 94 percent (2826 times) of the total recorded mentions of the opposition actors, while the remaining six percent (178 times) can be assessed as neutral (Chart 6). However, it is important to note that "criticism" of the opposition representatives often cannot be considered a speech that is in line with the codes and ethical standards that bind MPs. They are reduced to insults and belittling of the observed seven actors, but also of other opposition politicians and public figures who express any criticism at the expense of the ruling majority. By far the most common target of criticism, but also of attacks inappropriate for the Assembly (or any public sphere), which are continuously repeated at every session, is Dragan Đilas. During the observed period, the leader of the Party of Freedom and Justice was mentioned as many as 1,785 times in a negative tone, i.e. in 95% of the cases of his total mentions.

There is a widespread practice in which negative campaigns, which were first started by the President of the Republic in the pro-government media, spill over into plenary sittings, with complete disregard for the agenda and topics that were supposed to be discussed. The case of Zdravko Ponoš is illustrative. On October 31st, 2021, he was recognised in the media for the first time as a potential joint candidate of the opposition in the upcoming presidential elections. The next two days were followed by the reactions of the current President of the Republic, who, in his statements to the media, increasingly attacked his possible opponent.

At the same time, Zdravko Ponoš became the subject of a coordinated attack by several MPs at the sitting of the National Assembly held on November 2nd. Thus, at the National Assembly, in the week in which the Bill on the Protector of Citizens was – or at least should have been – debated, the MPs dealt with the opposition's candidate, jointly repeating the claims made by the President of the Republic. At that sitting, as well as at the one held the next day, November 3rd, 2021, Zdravko Ponoš was mentioned 72 times in a negative tonality. In the same days, Ponoš was on the front pages of pro-government daily newspapers, which is another indicator of mutual harmonisation and coordination between media appearances of the President of the Republic, plenary speeches of MPs, and reporting by pro-government daily newspapers and television.

Similar mechanisms have been observed in the earlier period. Thus, in March 2021, during the parliamentary sittings, the MPs spoke intensively about the "Mauritius" affair, in which Dragan Đilas was the main target. Here, too, the initial information came from the President of the Republic[1] just like it was the case with Ponoš in November.

1 [1] Open Parliament, "Analysis of Narratives on Socio-Political Actors in the National Assembly", July 2021, https://crta.rs/wp-content/uploads/2021/07/Analiza-narativa-o-drustveno-politickim-akterima-u-Narodnoj-skupstini-Srbije_jul-2021.godine.pdf

Conclusion

The Open Parliament's research on discourses on political actors, which are created and maintained through plenary speeches in the National Assembly, indicates the essential dysfunction of the 12th legislature. As a matter of fact, while other indicators, such as the use of urgent procedure in the adoption of laws, can be easily adjusted so that, at least on paper, the functioning of the Parliament seems more or less normal, it is much more difficult to simulate normalcy when it comes to plenary debate.

Monitoring and analysis of plenary debates first reveal a distinct illogicality, because the focus of the MPs is put on the President of the Republic, and not on the work of the Government, although oversight of the Government is the basis of the control function of the Parliament. Therefore, if the institutions functioned in accordance with the Constitution and laws, the mention of the President of the Republic in the Parliament should be sporadic, because the oversight over the work of the President, who is also directly elected by the citizens, does not fall within the competence of the Parliament. Nevertheless, the fact that the President of the Republic is also the President of the largest political party leads to the circumstance that his presence in the Parliament is so great that his name features even in the name of the largest parliamentary group. The fact that the president of the state, Aleksandar Vučić, is the most influential political figure has led to a significant distortion of the Serbian political system, in which the function of the Prime Minister and the Government as such is reduced to servicing decisions made by one person. The current Parliament has contributed to the relocation and centralisation of power, often normalising practices that should not occur, and marginalising the Assembly itself. At the same time, the plenum served to continuously build a cult of personality. The control function of the Parliament has been reduced to a pure form, just as the role of the Government is in practice limited by the dominant position of the President of the Republic, who occupies on a daily basis a space that significantly exceeds his powers.

Such gross and long-term neglect of the roles and competencies of the basic institutions of the political system – the President of the Republic, the Government and the National Assembly, has further eased another important anomaly that becomes evident when discourses in plenary debates are investigated. The Assembly has largely become a channel for sending party propaganda messages, often in a way that undermines the dignity of this institution. The huge representation shows the extent to which the focus of MPs in the observed period was on discrediting opposition representatives, and if necessary, other critical voices who dare to publicly voice objections to the work of institutions or state officials. The clear synchronicity in targeting these personalities, where pro-government media, other state officials and plenary debates become additional channels for repeating the messages of the President of the Republic, indicates systematicness. Institutional capacities are being systematically misused for party purposes, leading to the collapse of those same institutions. The Assembly is losing its reputation and the trust of the citizens, as indicated in the research performed by the CRTA[2]. The focused debate, which would lead to the adoption of better legal solutions, was thus inexistent in the 12th legislature and gave way to the current media campaigns of the ruling majority.

This research was conducted within the scope of the project "Open Parliament - Bridging the Gap between Citizens and the Parliament" financially supported by the Embassy of the Federal Republic of Germany in Belgrade. The results of this research are the sole responsibility of CRTA and may in no way be taken to reflect the views of the Embassy of the Federal Republic of Germany in Belgrade.

2 Research: "Attitudes of Serbian citizens on participation in democratic processes in 2020", March 2021, https://crta.rs/istrazivanje-stavovi-gradjana-srbije-o-ucescu-u-demokratskim-procesima-2020-godine/

Analysis

Speeches in the National Assembly of the Republic of Serbia

Discourses on the EU and foreign countries

Milena Manojlović

Policy Analyst, Open Parliament

Research methodology

The Open Parliament, as an initiative dedicated to increasing the publicity of the work of the Parliament and informing the citizens about the work of the Assembly, researched the way the MPs talk about the most important foreign actors in Serbian political life – European Union (EU), United States, Russia, China and Turkey. The period from September to the end of 2021 was analysed, i.e. the last four months of the work of the National Assembly in the past year. The analysis covered a part of the extraordinary sittings and the entire ordinary autumn session held in this period. For that purpose, continuous monitoring of all speeches in the plenum of the National Assembly was conducted, as well as recording of each individual mention of the cited actors with an assessment of the tonality: whether the actors were spoken about in a positive, neutral or negative light. A total of 741 speeches were held in the plenum, i.e. 999 cases of recording and assessing the tonality of mentioning the most important foreign actors.

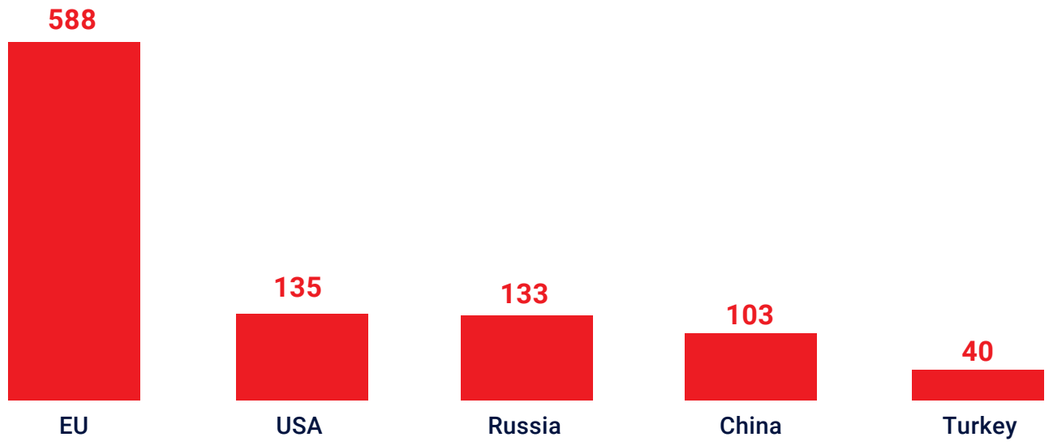
Further analysis of the discourse sought to find out how, through the analysed speeches, foreign policy patterns are reproduced. Given that the 12th legislature of the National Assembly is characterised by a pronounced lack of pluralism and that as many as 97 percent of MPs belong to the ruling coalition, it can be argued that discourses in the National Assembly are in fact discourses of the ruling majority. This is especially important in the Serbian context, because the entire parliamentary debate was largely misused for the purpose of addressing voters. This practice, which causes great damage to the legislative function and the quality and direction of the debate in the plenum, has led to the Assembly being significantly reduced to yet another channel for political marketing. In this light, the discourses on foreign actors in the National Assembly are based on messages sent by the ruling majority to their constituents, with a greater "degree of freedom" than the representatives of the Government and the President, who are more obliged to adhere more strictly to the principles of official foreign policy in their statements.

Frequency of mention of actors

First and foremost, when it comes to the frequency of mentions (Chart 1), the EU is by far the most frequently mentioned foreign actor, referred to in a total of 588 speeches. These results do not come as a surprise or aberrance from the previous Open Parliament research. In addition to the fact that EU accession is, officially, an important goal of the current government, the EU is Serbia's largest trading partner and the National Assembly itself has a central role in adopting the EU acquis. It is important to emphasise that the mention of the EU included all its institutions, but this number does not include individual mentions of the EU member states.

The difference in the number of speeches in which the United States and Russia were mentioned is negligible, so it can be concluded that Washington and Moscow received the same "amount of attention" in the National Assembly. China, with a slight lag, was in the fourth place and was mentioned in a total of 103 speeches. The frequency of mentioning Turkey as a regional power lags significantly behind Brussels and the permanent members of the UN Security Council.

Chart 1: Foreign actors - number of speeches in which they are mentioned

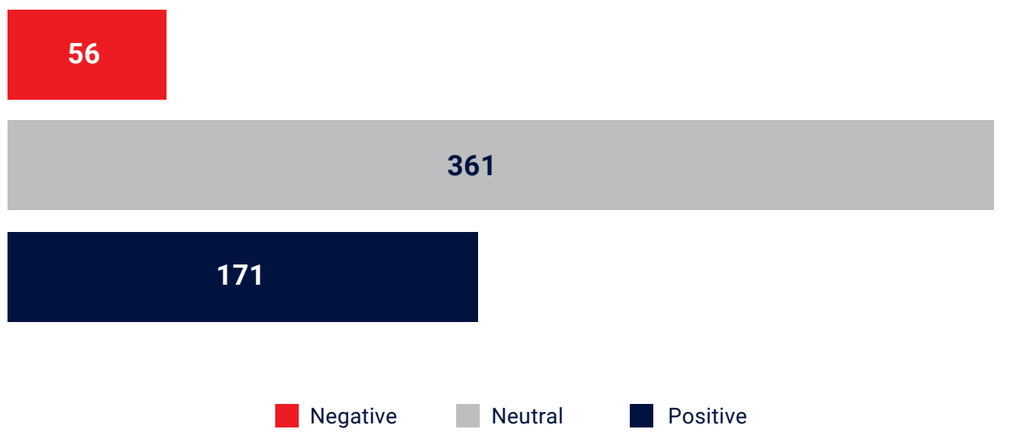


Discourse on the EU

While the frequency of mentioning indicates the presence of the topic, i.e. the amount of attention paid to each actor in the speeches held in the Assembly, only the analysis of the tonality and context in which the actor was mentioned gives a more complete picture (Chart 2).

The EU was predominantly mentioned in a neutral tone (61 percent), then in a positive tone (29 percent), while in 10 percent of speeches in which the EU was mentioned, it was done in a negative context.

Chart 2: Tonality of mentioning of the EU



What is particularly interesting in the case of the EU is that it is not possible to make a complete correlation between speeches marked with a negative tone and Euroscepticism. As a matter of fact, the MPs (and other speakers in the National Assembly, primarily government representatives) do not question the very European integration of Serbia even when they criticise Brussels: "Today, it is not good to talk about how Europe has no alternative only for this government. Europe is all around us. God is high, Russia is far away, and Europe is all around us." Ambivalence towards the topic of European integration is obvious – although clearly articulated opposition to the EU accession is largely absent, even with a negative tone, it is still extremely important to demonstrate a lack of enthusiasm and deviate from the policies of the previous majority. This is probably a consequence of the assessment of the extent to which (more precisely in what way and under what conditions) the current majority electorate supports Serbia's European integration, but also disagreements within the EU itself when it comes to the accession of Western Balkan countries.

Speeches in which the EU was mentioned in a negative tone concerned the activities of the European Parliament, especially the MPs who were involved in moderating the inter-party dialogue on election conditions (up until the last stages of the dialogue) or in any way criticised certain moves of Serbian officials. Moreover, when the European Parliament and some MPs were "accused" of directly supporting the opposition, the EU was negatively discussed in the context of supporting Kosovo's independence, i.e. of support or lack of ability of Brussels to influence the behaviour of the authorities in Priština.They also criticised the circumstances under which Serbia would access the EU as "being completely different from those that applied to some others who were about to become EU members in the meantime". Another criticism is that Brussels is guided by double standards when it comes to Serbia's relations with Russia and China. The sentiment is reflected in the words of one member of the ruling majority: "You know, when EU countries need gas, then it is a question of gas, and when Serbia needs gas, then it is a bad influence of the Russian Federation. Similar conclusions were reached when it comes to Chinese investments. According to some MPs, Brussels looks more favourably upon these investments when they are realised in countries that are already members of the EU.

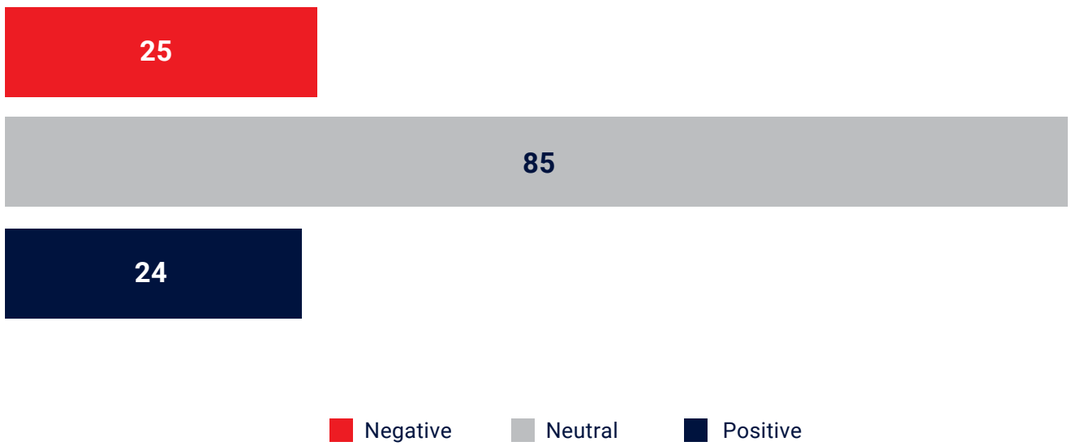
Discourse on the United States

The United States was mentioned in 135 speeches in the National Assembly. Expectedly, most of these mentions were in a neutral tone (64 percent). However, unlike the EU, where the positive tone significantly outweighed the negative one, the percentage of negative and positive mentions of Washington is equal. With 18 percent of speeches dominated by a negative context, when the number of total mentions is ignored, the United States is a foreign actor that is most often the "target of criticism" in the Assembly (Chart 3).

However, a more careful analysis of the negative tonality of speeches points to a few significant findings that need to be taken into account before reaching final conclusions. In point of facts, a significant part of these speeches refers to the legacy of bilateral relations, and to the role that MPs attribute to the United States in the civil war in the SFRY, the bombing, as well as the October 5 changes. When MPs and other speakers in the National Assembly have a negative view of current US policy, criticism is usually partial – directed at one part of the establishment (individual political party or administration), Albanian, Kosovo, Bosniak and other lobbyists and congressmen they influenced, and the like. It seems that it is important to create the impression that within the United States there are currents that are not in our favour, but that there are also "our" factions that are more inclined to recognise and respect the interest of Serbia. The United States as a whole is not perceived and presented as hostile, even in critical speeches.

As in the case of the EU, negative tones are especially present in situations where the actions of officials can be interpreted as criticism of the authorities in Serbia, and when it is associated with support for the opposition. Such was the case with the letter that 7 congressmen sent to the President of the USA in early November 2021: *"For the first time you have this coordination of tycoon and political elite here in Belgrade, temporary institutions in Priština, Albanian lobbyists in the USA, Bosniak lobbyists in the USA lobbyists in the United States. I am not saying this unknowingly. The protest staged in New York in front of the headquarters of the mission of the Republic of Serbia in the USA, i.e. in the UN, was organised by the Albanian lobby in America, the Bosniak lobby in America, the Montenegrin lobby in America. So, they all came together to say that Serbia has a malignant influence in this region."* Support for an independent Kosovo is, as in the case of the EU, another significant reason for occasional criticism of the United States.

Chart 3: Tonality of mentions of the USA



Discourse on the Russia

As can be deduced from Chart 4, the United States and Russia are equal in the amount of mentions, but not in tonality. In 55% of the speeches in which Russia was mentioned, this was done in a positive tone, while the remaining 45% of the speeches can be classified as neutral. In the last four months of 2021, Russia has not been mentioned in the Assembly in a negative context.

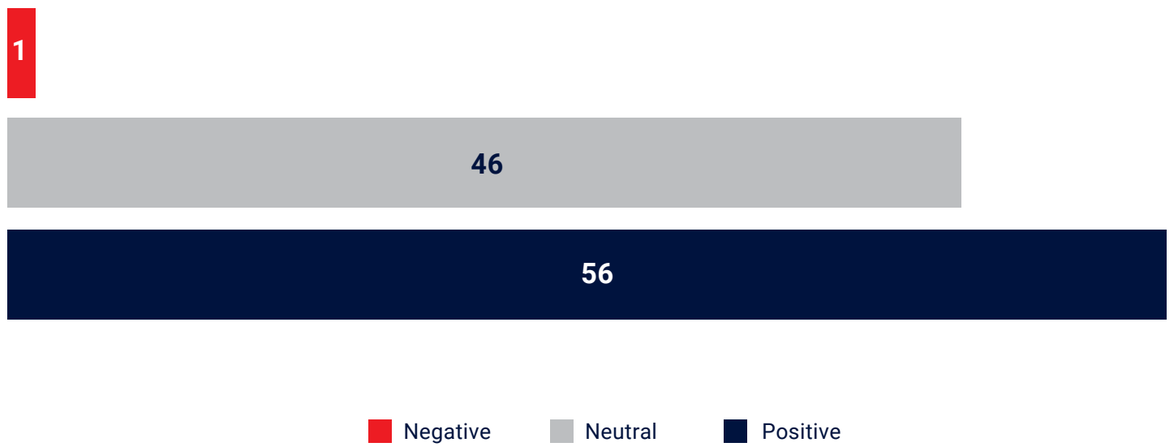
Interestingly, Russia is often portrayed positively with the parallel praise of the President of the Republic of Serbia, whose wise policy, for example, provided us a favourable price for gas. Praise heaped on Moscow actually means defending the policy of the ruling majority, that non only advocates EU integration, but also better relations with Russia and China: *"Here, you have seen, if you follow the media, the price of gas is at the highest possible level, globally. However, in Serbia, thanks to President Aleksandar Vučić, to everything he has done in the previous period, and because of the good cooperation we have with Russia and President Putin, we have this price of gas and the price of gas will not change It is important to mention that due to our good cooperation with both the East and the West, Serbia today is able to boast that we have as many as five vaccines at our disposal. If we had not cooperated well with both the East and the West in the previous period, we would not have these vaccines now."*

Chart 4: Tonality of mentions of Russia

Discourse on China

China is also predominantly mentioned in a positive context (54 percent), then neutral (45 percent), and in the analysed period only one speech of an MP was recorded, which can be characterised as negative: *"I personally also think that Chinese companies should be controlled, because of this thing with "Linglong" was a big scandal, for the simple reason that, no matter how much I respect the Chinese civilisation alternative, I know that capital, whatever it's called, is the same and needs to be controlled."*

Chart 5 Tonality of mentions of China

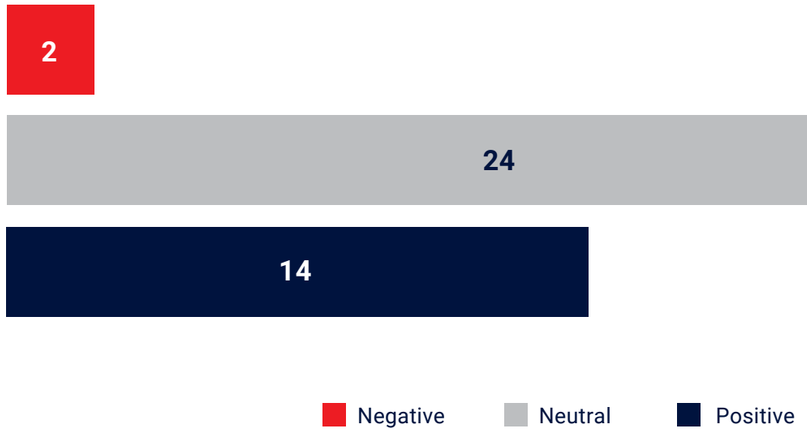


Similarly to Russia, China is presented as an important partner that has not been “forgotten”, although European integration is a strategic goal of Serbia. That is why the praise for China at the same time often praised the foreign policy orientation of the ruling majority. Furthermore, China was presented as a reliable economic partner and investor, and a friend that provided significant support in the fight against the Covid-19 pandemic.

Discourse on Turkey

Turkey was predominantly spoken about in the National Assembly of the Republic of Serbia in a neutral tone (60 percent), positive (35 percent), while the two speeches in which Turkey was mentioned can be characterised as negative.

Chart 6: Tonality of mentions of Turkey



Nonetheless, it convenes to note that these two speeches did not represent any criticism of Turkish policy towards Serbia. The first speech with a negative connotation was given in the National Assembly by the Speaker of the Cypriot Parliament, who addressed her Serbian colleagues, and the second referred to the pejorative comparison of the public enforcement officers with the period of “Turkish occupation” (meaning the Ottoman Empire). Therefore, it can be concluded that criticism of Turkey, as well as of Russia and China, was non-existent, i.e. that it is essentially negligible.

Conclusion

The Open Parliament research indicates that discourses on foreign forces, which are built through speeches in the plenum of the National Assembly, are mostly aimed at maintaining an official narrative through which the ruling majority communicates its foreign policy orientations to voters. Consequently, the EU integration officially remains Serbia’s strategic goal. Nevertheless, it is important to distance oneself from the previous enthusiasm, so that accession is now presented

more as a destiny, or inevitability. Brussels is not idealised and that is an understatement. And whenever criticism reaches official Belgrade, the discourse towards the EU becomes increasingly negative. Hence, the question remains whether the possible intensification of criticism could lead to a clearer turn towards Euroscepticism. The United States is not presented as an enemy of this regime, far from it. Nonetheless, the message is being sent to the voters that there are factions within this country that, as in previous times, do not understand the interests of Serbia. Russia and China are “friends”, but these relations are clearly based on mutual benefits. It is especially important to point out to the voters that these benefits are the result of the wise policy of the ruling majority, which, unlike the previous Serbian authorities, resisted pressure from the West to distance itself from these countries, and courageously continues to pursue its own interests. Turkey, although an outstanding regional power whose interests and official policies do not necessarily agree with Belgrade’s aspirations, is not actually recognised as such. Therefore, it is not the target of criticism in the way that the EU and the United States, when it comes to support for an independent Kosovo, The Assembly is not a place where citizens could be informed about the strategic foreign policy directions of Serbia through a focused dialogue in the plenum and in order to supervise the foreign policy led by the Government of the Republic. There is no significant opposition that could question, again through dialogue in the plenum, the expediency of these directions. Although conducting foreign policy is the responsibility of the Government, the MPs attribute all “merits and praise” to the President of the Republic, who, contrary to the Constitution, is also the president of the largest parliamentary party. Therefore, it is easy to imagine a scenario in which the direction of Serbia’s foreign policy would completely change, without provoking any questioning of the MPs in the Parliament. The dominant majority of MPs of the current convocation would then only adjust their speeches in order to build new discourses that would need to be sent to voters.

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Election of judges – Where is the balance between the legislative and the judiciary?

Miša Bojović
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During only one year of the 12th legislature, 220 judges were elected to the office for the first time. As a point of comparison, in the previous legislature, which reached its full four-year term, 485 judges were elected. Illustratively, in the current legislature, the candidacy of 24 judges was challenged, while in the previous four years, only five were challenged. All present MPs voted against the election of the challenged candidates. Most of the challenges passed without explanation. Only after almost a year, did it become clear from the statement of one MP that some kind of security checks of candidates are being performed. However, we still do not know what kind and by whom. The problem with this statement is that there are no legal preconditions for doing so.

It seems that the Parliament has never been more united in its decisions. Why is that so? One year before the end of the previous 11th legislature, the opposition started a boycott of the work of the Assembly. The stated reasons referred to the obstruction of the work of the Parliament by the ruling majority that submitted too many amendments to the regulations, which made it impossible for the opposition MPs to present their proposals from the rostrum. The boycott of the opposition, explained by poor election conditions, continued during the next elections for MPs. The twelfth legislature is characterised by the least pluralism in the last thirty years. Ninety-seven percent of MPs belong to the ruling majority. Out of 250 elected, only 7 are opposition MPs, out of which 6 belong to one minority party. The circumstances in which the candidacies for the position of judge are rejected, practically by a single party, the ruling one, are worrying. Although this legislature was elected in the elections, the question of its legitimacy is topical, since it did not ensure the representation of all relevant political options in society.

Silent challenges

All disputes over the election of judges to the first judicial office in the previous 11th and current 12th legislature came from the ranks of the MPs of the Serbian Progressive Party. According to the Rules of Procedure of the National Assembly, there is an obligation to reason every challenge to the candidacy. However, until October 14th, 2021, the citizens had not been presented with the reasons for challenging the previous candidacies. At the Second Sitting of the Second Regular Session, the MP Dejan Kesar stated that he challenged the candidacies of certain judges as they did not "meet basic and fundamental security criteria"[3]. The largest number of candidacies in the current, 12th legislature, was challenged by the chairperson of the Committee on Constitutional and Legislative Issues Jelena Žarić Kovačević – 17 (out of a total of 24), each time without explanation. The snowball effect was initiated by the MP Dejan Kesar, when he mentioned that judges are being challenged after the alleged security checks, explaining that in conversations with unnamed citizens, information was obtained supposing that candidates do not meet the conditions. On the same occasion, Dejan Kesar urged the High Judicial Council, the expert body that proposes candidates to the National Assembly by telling its members: "Be careful and do not interpret this as any form of pressure, but when defining certain proposals for decisions, look in a little more detail, in a slightly more concise way who the candidates are, what qualities they have and send such candidates to the National Assembly for decision-making." The statements of MPs from coalition parties testify that this is a political decision and that the decisions to challenge certain candidates for the first judicial office come from only one political party which is currently the strongest – SNS: "I don't know if there were enough explanations in previous cases, when the judges were challenged, because as far as I understand my colleague Dabić, these ones will not be challenged. We did not know in the SPS whether they would be challenged or not. We did not know. The arguments they gave could be either acceptable or unacceptable. They were acceptable for us and we voted that way" (Toma Fila, SPS, November 18th, 2021). None of the challenged candidates was elected.

According to the Rules of Procedure of the National Assembly, Article 201, paragraph 3, a Member of Parliament may challenge a proposal for the election of judges elected for the first office, whereby the challenge must be explicitly explained.[4] Only at the Sixth Sitting of the Second Regular Session, on November 18th, 2021, the requests of the professionals for explanation of the MPs' decisions and motives to challenge certain candidates were satisfied. The representative of the High Judicial Council, Snežana Bjelogrlić, demanded from the MPs to explain the decisions on challenging the candidacy of certain candidates: "When I said that I expected an explanation, [it was because I wanted us] to be able to discuss. You know, a judge needs to meet the requirements of qualifications, competence and worthiness, which we assess during the election procedure when we send proposals to the Parliament. When the MPs merely challenge [this proposal], we do not know the reason and when they say it is for security reasons, as they did last time, it is not clear to us what it is about, whether it means that a candidate is unworthy, considering that these candidates still apply for the competition and we do not know how to behave; we must hear an argument." Coalition partners reacted to this reasoned request: "You asked us to give an explanation if we challenge someone. Is it a critique of the work so far, or what? Because when my colleague Dabić issued a challenge last time, I agreed and that is a sufficient explanation" (Toma Fila, SPS, November 18th, 2021)," We have the right to challenge. Whether these will be called subjective or objective reasons, whether these reasons will be called security, we have the right, as the MPs who have been given sovereignty by the citizens of the Republic of Serbia, to challenge any candidate. Because we want the best people to work in the judiciary, the best to do justice and in that way the citizens have confidence in the judiciary and our legal order. "(Dejan Kesar, SNS, November 18th, 2021).

Although according to Article 147 of the 2006 Constitution, the role of the Assembly in the election of judges is limited to the election of judges elected for the first time, while after three years of office, their re-election for permanent judicial office is made by the High Judicial Council, the importance of this function is reflected in the fact that if a candidate does not pass the election in the Assembly, he/she cannot become a judge, even though he/she was recommended by a professional body that later re-elects him/her. Having in mind that the candidates who were "recommended" to the National Assembly for election have already passed the assessments of the expert commission, the reasons for their rejection in the institution, which includes political actors who make decisions, should be thoroughly explained. Otherwise, it could be assumed that challenging individual candidates on an unknown basis may have a political background, i.e. that future judges are elected on the principle of political acceptability, and will eventually return the favour by passing desirable court decisions.

3 https://link.crta.rs/transkript

4 https://link.crta.rs/poslovnik

Table 1. Election of judges to the first judicial office in the 12th legislature of the National Assembly

Date of decision	Elected	Challenged	MP who contested the election	Voting results	Remark
29. 12. 2021.	9	0		171 in favour	
15. 12. 2021.	25	0		185 in favour	
17. 11. 2021.	1	0		181 in favour	
14. 10. 2021.	10	7	Dejan Kesar 5 / Uglješa Mrdić 2	157 in favour	None of the challenged was elected
6. 5. 2021.	25	1	Jelena Žarić Kovačević 1	176 in favour	The challenged one was not elected
6. 5. 2021.	77	12	Jelena Žarić Kovačević 12	178 in favour	None of the challenged was elected
14. 4. 2021.	33	4	Jelena Žarić Kovačević 4	173 in favour	None of the challenged was elected
25. 3. 2021.	1	0		199 in favour	
4. 3. 2021.	31	0		167 in favour	
28. 1. 2021.	2	0		204 in favour	
28. 1. 2021.	0	0		206 in favour	

What are the legal prerequisites for a candidate for judge?

The Constitution from 2006, which is still in force, prescribes the permanence of the judicial tenure. Exceptionally, a person who is elected a judge for the first time shall be elected for the period of three years. The Constitution also stipulates that on proposal of the High Judicial Council, the National Assembly shall elect as a judge the person who is elected to the post of judge for the first time. [5] It is important to note that the majority of members of the High Judicial Council are currently elected by the Assembly, and decisions in the High Judicial Council are made by a majority vote of all members.[6]

When it comes to proposing candidates for the first judicial office, the High Judicial Council, in accordance with the provisions of the Law on Judges, announces the election of judges. After the completion of the applications, it conducts a procedure for each candidate individually, in which it determines their qualifications, competence and worthiness, and then conducts an exam for future judicial office holders. After that, it sets up the draft decision and sends it to the National Assembly and the competent Committee for Justice. A citizen of the Republic of Serbia who meets the general requirements for employment in state bodies, who is a law school graduate, who has passed the bar exam and who is deserving of judgeship may be elected a judge.[7] Qualification means possessing of theoretical and practical knowledge necessary for performing the judicial function. Competence means possessing of skills that enable efficient use of specific legal knowledge in dealing with cases. Worthiness means ethical characteristics that a judge should possess, and conduct in accordance with such characteristics. The criteria and standards for the assessment of qualification, competence and moral character are set by the High Judicial Council, pursuant to law.[8] The High Judicial Council shall obtain the information and opinions about the qualification, competence and moral character of a candidate. The information and opinions are obtained from

5 Articles 146 and 147 of the Constitution of the Republic of Serbia

6 Article 31 of the Rulebook of the High Judicial Council

7 Article 43 of the Law on Judges

8 Article 45 of the Law on Judges

bodies and organisations where the candidate worked in the legal profession, and in case of a candidate coming from a court, it is mandatory to obtain the opinion of the session of all judges of that court, as well as the opinion of the session of all judges of the immediately higher instance court. Before the election, a candidate has the right to view information and opinions.[9] Within the compulsory documents that a candidate for the first election of a judge to a judicial office must submit to the High Judicial Council, there is also a certificate of no criminal proceedings.[10]

In addition to the above criteria, no law or regulation mentions the security check of candidates for judges, nor is it clear what exactly it means and who can conduct it. Apart from the MPs who state that this is the basis for challenging the candidates, there are no legal solutions that support these statements. Such claims of the MPs are disputable from several points of view – who conducts checks of the candidates for the position of judge, according to which criteria, were these candidates informed about it and in what way did the MPs come into possession of this information? Security checks in the Republic of Serbia can be conducted by the police, the Security Information Agency and the Military Security Agency. Their work is regulated by adequate laws. Thus, Article 102 of the Police Law[11] details the list of persons over whom a police officer has the right to conduct security checks. The list does not include checking of candidates for judges for the first judicial office. Candidates for the first judicial office do not belong to the above-mentioned persons from Article 141 of the same law: middle-level managers and persons in positions and appointed persons, i.e. high-level and strategic level managers in the Ministry. Furthermore, the Rulebook on Police Powers[12] , in Articles 72-74, states that there must be a legal basis for conducting a security check and that the applicant must submit the consent of the person, before the start of the security check. The Law on Judges[13] does not provide either for such types of checking of candidates for the first judicial office. Undoubtedly, according to the MP, someone performed security checks on the candidates, however, what remains unclear is who did it and on what grounds. Even if such checks had been conducted, the candidates should have been informed about the reasons why they were not elected to the position to which they applied.[14]

The Constitution is changing – no Assembly in the election of judges

"I think that there is nothing disputable that the National Assembly, as the highest legislative body, discusses future candidates for judicial office and that we give our opinion on the proposed judges who come to us from the High Judicial Council, because as in previous debates, Dr. Aleksandar Martinovic said: We must not allow to return to the system of self-government in 2021, and then listen to the opinions and views of various organisations on how we should do our job, i.e., on how

9 Article 49 of the Law on Judges

10 Article 41 of the Rules of Procedure of the High Judicial Council

11 The Police Law ("Official Gazette of the Republic of Serbia", no. 6/2016, 24/2018 and 87/2018) https://www.paragraf.rs/propisi/zakon_o_policiji.html

12 The Rulebook on Police Powers ("Official Gazette of the Republic of Serbia", no. 41/2019) https://www.paragraf.rs/propisi/pravilnik-o-policijskim-ovlascenjima.html

13 The Law on Judges ("Official Gazette of the Republic of Serbia", no. 116/2008, 58/2009 – decision of the Constitutional Court, 104/2009, 101/2010, 8/2012 – decision of the Constitutional Court, 121/2012, 124/2012 - decision of the Constitutional Court, 101/2013, 111/2014 – decision of the Constitutional Court, 117/2014, 40/2015, 63/2015 – decision of the Constitutional Court, 106/2015, 63/2016 – decision of the Constitutional Court, 47/2017 and 76/2021) https://www.paragraf.rs/propisi/zakon_o_sudijama.html

14 "In democratic societies and states, after the security check, a citizen is informed and referred to the reason why his/her profile does not meet the criteria for work in a state body.", Security check – controversies in the work of security bodies (comparative legal and security approach) Zoran Dragišić, Dragan Manojlović and Vojislav Jović, University of Belgrade, Faculty of Security studies, 2018 https://rhinosec.fb.bg.ac.rs/bitstream/id/230/378.pdf

to be the bearers of one part of sovereignty that citizens gave us in the open and the democratic elections in June 2020. I truly think that it is good to hear the opinion of the MPs when we talk about the holders of judicial office." (Dejan Kesar, SNS, November 18th, 2021). Nevertheless, the removal of the MPs from the election of judges is the goal of the newly adopted amendments to the Constitution. On November 30th, 2021, the same National Assembly and the same MPs adopted the Act amending the Constitution with 193 votes in favour and three votes against. Constitutional changes are being adopted with the aim of greater independence of the judiciary, which is one of the requirements for harmonisation with European Union standards. None of the MPs, who emphasised the need that the National Assembly elects judges to the first judicial office, voted against these changes, although the adopted Act amending the Constitution excluded the National Assembly from the procedure of electing judges, which procedure is now fully left to the High Judicial Council.

The provisions of the Constitution of the Republic of Serbia that are still in force stipulate that the High Judicial Council consists of 11 members, three of whom are ex officio (Minister in charge of Justice, Chairperson of the competent Assembly Committee, President of the Supreme Court of Cassation), and eight are elected members. Elected members are elected by the National Assembly, namely two eminent and renowned attorneys with at least 15 years of experience in the profession (one from the ranks of attorneys, one professor of law) and six judges with a permanent judicial office. The Act amending the Constitution stipulates that the High Judicial Council will consist of 11 members – the members will be the President of the Supreme Court, six judges will be directly elected by judges, and four will be elected by the National Assembly on the proposal of competent committees.[15] So, instead of eight members of the High Judicial Council who were previously elected by the Assembly, there will be only four according to the newly adopted proposal. The aim of this solution is to ensure a balance between the representatives of the profession and the members elected by the legislative, in order to promote the independence of the profession. Moreover, instead of a majority vote of all MPs, the election of elected members of the High Judicial Council will require the vote of as many as two thirds of all MPs. If a two-thirds majority is not achieved for the election of candidates, within the deadline foreseen by law, the remaining members shall be elected by a commission consisting of the Speaker of the National Assembly, the President of the Constitutional Court, the President of the Supreme Court of Cassation, the Supreme Public Prosecutor and the Protector of Citizens.

Although the process of amending the Constitution in the field of justice began in 2016, it was intensified after the Government of the Republic of Serbia submitted a proposal to change the Constitution on December 4th, 2020. The proposal for change was presented to the National Assembly on June 7th, 2020, and it decided by a two-thirds majority to start the change. During the public hearings on the topic of changes to the Constitution, the ruling majority said that the changes to the Constitution were being made due to the requirements of the European Union within the mandatory conditions for EU accession, even though not all MPs were satisfied. However, a number of MPs, who did not want to give up the right to elect judges to the first judicial office, despite disagreements with the proposed solutions, actively participated in the process of amending the Constitution.

At the request of Serbia, on November 24th, 2021, the Venice Commission issued an urgent opinion on the Act amending the Constitution. The opinion states that although the revised constitutional amendments, if adopted, have the potential to bring significant positive changes to the Serbian judiciary, much will depend on their implementation and that the current constitutional reform is a necessary and important first step in the process, but it does not represent the end of this process. The Commission pointed out that, in addition to legal changes, a profound change in the political and legal culture that prevails in Serbia will be necessary in order for the effects of the constitutional amendments to become tangible. The Commission, inter alia, welcomed the

15 https://otvoreniparlament.rs/akt/4682

abolition of the competence of the National Assembly to elect presidents of courts and public prosecutors and decide on the termination of their office, as well as to elect judges and deputy public prosecutors.[16]

One step closer to European standards

What are the international standards regarding the election of judges and which solutions are considered to bring a greater degree of judicial independence? Is it still better for Serbia to have a current "transitional" solution where the Assembly elects candidates for the first judicial office for a period of three years while the re-election for life is made by a professional body – the High Judicial Council or the newly adopted Constitutional Decision according to which the High Judicial Council makes a one-time election to a life-time office? The United Nations standards in this regard go in the direction of making the process of appointing judges more transparent by introducing, formally or informally, different forms of participation of actors professionally qualified to evaluate candidates. Such an organisation of the process is considered to better guarantee non-partisan and professionally qualified selection than entrusting the election of judges to the legislative or the executive branch. It also insists that the election should be supported by sufficient information on all candidates regarding their professional qualifications to ensure that the election is not purely politically motivated.[17]

A similar standpoint is assumed in the study "Recruitment and appointment of judges and justices in Europe and the US: law and legal culture" which states that in a significant number of European countries, the executive or the legislative branches play an important and decisive role in appointing judges. These are mostly old democracies in Europe, in which the government (or President), sometimes in combination with Parliament, formally decides on the appointment of judges. But in these countries, there is a tradition or legal culture not to make appointments based on political criteria, but rather on objective criteria – on merit. Frequently courts or other judicial bodies in these countries make decisive recommendations for judicial appointments. These days, in many European Countries a judicial council plays an important role in selecting and appointing judges. There are only a few countries (such as Switzerland) in Europe where (mostly lower courts) judges are appointed by the courts themselves. In most European countries, constitutional guarantees against political influence over the appointment of judges are relatively weak. The most important is the development of a legal culture that respects the independence of the judiciary. In addition, special protection measures related to the legal status of judges (for life, without dismissal of judges by the executive or the legislative branch) and special protection measures against external pressures in the administration of justice may be even more important for the independence of the judiciary. In its report on the independence of judges (2010), the Venice Commission expressed the view that a system such as the one in the old democracies, in which the executive has a decisive influence on the appointment of judges, could function well in practice and allow judicial independence because those powers are limited by legal and cultural traditions. New democracies that do not have an established legal tradition, prefer to establish a judicial council with a decisive influence on the appointment of judges. The majority of the members of this judicial council should be elected only by the judiciary. The Venice Commission states in its report that such a judicial council meets European standards of the rule of law.[18]

16 https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2021)019rev-e

17 Resource Guide on Strengthening Judicial Integrity and Capacity, UNODC, 2011 https://www.unodc.org/documents/treaties/UNCAC/Publications/ResourceGuideonStrengtheningJudicialIntegrityandCapacity/11-85709_ebook.pdf

18 Recruitment and appointment of judges and justices in Europe and the US: law and legal culture, Paul Bovend'Eert, 2018 https://trema.nvvr.org/editie/2018-05/recruitment-and-appointment-of-judges-and-justices-in-europe-and-the-us

The European Charter on the Statute for the Judges, adopted by the European Association of Judges, also states that measures are needed to ensure the real independence of the judiciary from political influence by the executive and the legislative branches, and that "concrete measures are needed to guarantee the independence of the judiciary" from any form of political influence on decision-making through the constitution or adoption of primary and secondary legislation and the establishment of clear procedures and objective criteria for appointing, rewarding, mandating, promoting, suspending and dismissing members of the judiciary and imposing disciplinary sanctions".[19]

The act on changing the Constitution, which formally separates the election of judges from the competence of the National Assembly, was confirmed in a referendum on January 16, 2022. Until the formation of the new High Judicial Council, the Assembly will continue to perform its function, and then the election of judges will pass entirely into the hands of the members of the High Judicial Council. The announced early parliamentary elections, if implemented, could end the work of this convocation in mid-February 2022, and the next period in which the newly constituted assembly could begin work, in full capacity, is the regular autumn session in October 2022. After that, we can expect the adoption of a set of laws that will regulate this area in more detail and the formation of a new High Judicial Council that will take over the election of judges. Until the establishment of a new practice, only in theory can one consider which type of election of judges is more expedient and whether the practice of their hypothetical arbitrary election was interrupted by moving the election of judges from the hands of the MPs. Without a legal and political culture that nurtures the independence of the judiciary, any legal solution can be used and modified in accordance with the intentions of the governing structures.

19 European Charter on the Statute for Judges (Strasbourg, July 8-10 1998), adopted by the European Association of Judges, published by the Council of Europe [DAJ/DOC (98)23] https://wcd.coe.int/ViewDoc.jsp?p=&id=1766485&direct=true

Law on Amendments to the Law on Prevention of Corruption

The Law on Prevention of Corruption regulates the position, competence, organization and work of the Anti-Corruption Agency; rules on: conflict of interest prevention in performing public office, holding two or more incompatible offices, reporting assets and income of public officials and other issues of importance for preventing corruption. The Law was adopted in May 2019, and has been in force since September 1st, 2020. Its predecessor, the Law on the Anti-Corruption Agency, was in force from January 1st, 2010 until the adoption of this Law. The reasons for the proposed amendments are the harmonization with the recommendations of the Group of States against Corruption of the Council of Europe (GRECO), of which the Republic of Serbia is a member. In addition, the Agency for the Prevention of Corruption pointed out certain provisions of the Law that need to be specified in order for it to be applied better. One of the most important changes is a more precise definition of the abuse of public resources and tougher penalties for public officials who abuse public resources.

KEY NOVELTIES

AMENDMENT OF THE CONCEPT OF CORRUPTION

The Law defines corruption as a relationship that arises from the use of an official or a social position or influence in order to gain illegal benefits for oneself or others. The previous legal definition did not require the benefit to be illegal. This means that in the procedures in which the existence of a corrupt relationship is determined, the Agency will also have to determine the illegality of the benefit for which someone used their official or social position.

ADDITIONAL CONDITIONS FOR THE ELECTION OF THE AGENCY DIRECTOR

In addition to the existing conditions for the election of the Director of the Agency (a person who meets the general conditions for work in state bodies, has a law degree, at least nine years of work experience and has not been sentenced to at least six months in prison or convicted of a crime for which he would be deemed unworthy of public office) a new condition is prescribed - special knowledge and experience in the field of corruption prevention.

EXTENSION OF THE MANDATE OF THE DEPUTY DIRECTOR OF THE AGENCY

Until now, the mandate of the Deputy Director of the Agency was tied to the mandate of the Director. The proposed amendments prescribe that the mandate of the Deputy Director of the Agency lasts until the election of a new director in order to ensure the continuity of the work in the Agency. In addition, the Deputy Director of the Agency is authorized to perform the function of the Director from the day of termination of the Director's mandate until the new Director of the Agency takes office.

PERFORMANCE OF ANOTHER JOB BY A PUBLIC OFFICIAL

The competencies of the Agency for giving consent to a public official to perform another job or activity are specified. In addition, the Agency has been authorized to set a deadline for a public official to stop performing a certain job or activity if it jeopardizes the impartiality or reputation of public office, or if it represents a conflict of interest. The Law stipulates that a public official, whose public office requires full-time or permanent work, may not perform another job or activity. Exceptionally, a public official may engage in scientific research, teaching, cultural, artistic, humanitarian and sports activities, without the consent of the Agency, but only if it does not jeopardize the impartiality and reputation of public office. Apart from the mentioned tasks, the Agency may, at the request of a public official, give consent for performing other tasks, i.e. activities.

RECORDS OF LEGAL ENTITIES IN WHICH PUBLIC OFFICALS' OR THEIR FAMILY MEMBERS' PARTICIPATE WITH PRIVATE CAPITAL

The list of legal entities, which are obligated to report certain data to the Agency, is extended to all legal entities in which a public official or their family member, while holding a public office and two years after its termination, has shares, as well as legal entities which participate in public procurement or privatization or any other process that results in the conclusion of a contract with a public authority. Keeping special records by the Agency on the mentioned legal entities, as well as public availability of data from those records, is also prescribed.

ILLEGAL INFLUENCE ON PUBLIC OFFICIALS IN THE AGENCY

A definition of illegal influence on a public official in the Agency is introduced. Illegal influence means any influence that is not based on a law or other regulation, which affects the lawful and proper conduct of a public official of the Agency in performing public office.

RULES FOR RESTRICTIONS ON PUBLIC OFFICIALS AFTER TERMINATION ARE SPECIFIED

The rules for the restriction of employment and other kinds of business cooperation for a public official, after the termination of public office, are specified. In the process of giving consent to a former public official for employment or other kind of business cooperation, it is prescribed that the Agency is to assess specifically the powers the public official had while in office.

THE LIST OF OBLIGATORY DATA ON PROPERTY AND INCOME OF A PUBLIC OFFICIAL IS EXTENDED

The list of obligatory data on property and income that a public official is obligated to submit to the Agency is being extended with: an obligatory declaration of cash, digital property and valuables, as well as other movable property whose value exceeds 5.000 euros in dinar equivalent.

DEADLINES FOR INITIATING PROCEEDINGS FOR LAW VIOLATION ARE HARMONIZED

Proceedings on violation of the Law, on which the Agency decides, may be initiated within two years from the day of finding out about the violation of the Law. Said proceedings may not be initiated or terminated if five years have elapsed since the action or inaction of a public official.

TYPES OF MEASURES THAT CAN BE IMPOSED ON A PUBLIC OFFICIAL

It is prescribed that the Agency, when imposing measures for violation of the Law, assesses as a special fact whether the public official acted according to the previously imposed measure of reprimand until the expiration of the deadline set in the decision. A measure of reprimand or a measure of public announcement of a recommendation for dismissal from public office may be imposed on a public official. Exceptionally, a public official elected directly by the citizens, as well as a person whose public office has ceased, may be issued a warning or a measure of public announcement of the decision on violation of this Law.

CRIMINAL OFFENSE OF NOT REPORTING PROPERTY OR PROVIDING FALSE PROPERTY INFORMATION

The action of this criminal offense is now prescribed more precisely. So, this criminal offense is committed by a public official who, contrary to the provisions of this Law, does not report property and income to the agency or provides false information on property and income, in order to conceal information on said property and income. Such public official shall be sentenced to 6 months – 5 years of prison.

TOUGHER PENALTIES FOR PUBLIC OFFICIALS

Another novelty is the increasing of the minimum fine for public officials who violate the provisions of the Law from 50.000 to 100.000 dinars. The maximum fine still remains 150.000 dinars.

Law on Amendments to the Law on Free Access to Information of Public Importance

The Law on Free Access to Information of Public Importance was first adopted in 2004, and subsequently amended in 2007, 2009 and 2010. It was once highly positioned on the RTI-RATING list of the best laws on free access to information in the world. However, in practice there have been numerous obstacles in its implementation. The most significant problems that the Commissioner for Information of Public Importance and Personal Data Protection (hereinafter: the Commissioner) has been pointing out in his reports over the years are the impossibility of administrative execution of the Commissioner's decision, inadequate accountability of authorities for violating the right to free access to information, as well as the difficult exercise of the Commissioner's authority.

These, as well as numerous other obstacles in the implementation of the Law, have created the need to improve the normative framework. Amendments to this Law were initially stipulated by the Action Plan for Chapter 23, the Action Plan for the Implementation of the Public Administration Reform Strategy in the Republic of Serbia for the period 2018-2020 and the Action Plan for the Implementation of the Open Government Partnership Initiative (OGP) for 2016 and 2017. As they were not implemented on time, they were repeated as binding in the revised Action Plan for Negotiating Chapter 23 in the process of accession of the Republic of Serbia to the European Union, the Action Plan for the implementation of the new Public Administration Reform Strategy in Serbia for 2021-2025 and the Action Plan for the implementation of the Open Government Partnership Initiative in the Republic of Serbia for the period 2020-2022.

The Ministry of Public Administration and Local Self-Government started the process of amending this Law in early 2018. The Draft published in March 2018 suffered harsh criticism from the professional public, and after a public debate and changes in the text of the Draft, which were carried out in 2018 and 2019, the procedure was suspended until the beginning of 2021. The Ministry then formed a new working group, but did not conduct a new analysis of the situation in the field of access to information in order to identify all the problems that arose in the period from 2018 (when the analysis was done for the first draft) to 2021. The work of the new working group was marked by a lack of transparency and resulted in a draft that, according to numerous civil society organizations, threatened to jeopardize the achieved level of right to access information of public importance. Following a public hearing in June 2021, the text of the Draft has been somewhat improved. The Draft Law, which entered the parliamentary procedure on October 8th 2021, improves the procedure for enforcing the Commissioner's decisions, but it does not increase responsibility for access to information within public authorities. It also encourages public authorities to proactively publish information. The Draft also extends the list of grounds for denying the right of access to information and expands the range of bodies against whose decisions lengthy administrative proceedings will have to be conducted.

KEY NOVELTIES

CLARIFICATION OF THE CONCEPT OF PUBLIC AUTHORITY

The Draft Law extends the list of public authorities. Obligations arising from this Law will burden natural persons with public authority (e.g. notaries and public executors), but also other individuals who are not entrusted by Law with the exercise of public authority, but in reality exercise it based on contracts, founding or other acts of the government (e.g. communal activities), to the extent that the information pertains to the performance of those activities.

The definition that exists in the current Law is specified and explicitly states that public authorities are public companies, institutions, organizations and other legal entities established by a regulation or a decision of a body of the Republic of Serbia, autonomous province or local self-government unit, including city municipalities.

It is also specified that the list of public authorities includes companies in majority state ownership as well as companies that are majority owned or under the control of the mentioned companies but also other authorities, together or individually, as well as other legal entities that are established by all the above companies.

INTRODUCTION OF NEW GROUNDS FOR DENIAL OF INFORMATION

The Draft Law introduces new grounds for restricting the right to access information related to the protection of intellectual or industrial property rights, endangering the protection of artistic, cultural and natural assets, endangering the environment or rare plant and animal species. In addition, the existing grounds for denial of information have been expanded or specified.

REMOVAL OF ABUSE OF RIGHTS BY INFORMATION SEEKERS AS GROUNDS FOR DENIAL OF INFORMATION

Abuse of rights by information seekers will no longer be grounds for refusing to act on a request. The provision that exists in the current Law, which was supposed to protect the authorities from applicants who try to abuse their rights, turned into its opposite during the application of the Law. It became a tool that public authorities abused to deny the applicant access to information. In almost every one of his reports, the Commissioner warned that public authorities "are denying information under the guise of abuse of rights by information seekers, more often than not without adequate arguments and evidence."

NO COMPLAINT TO THE COMMISSIONER AGAINST DECISIONS OF THE NATIONAL BANK

According to the Draft Law, the National Bank of Serbia is included in the list of bodies exempted from second-instance decision-making in this procedure. The list also contains the National Assembly, the Government, the President of the Republic, the Constitutional Court, the Supreme Court of Cassation and the Republic Public Prosecutor. The only recourse against the decisions of these bodies is an administrative dispute, not only against an unfavorable decision but also when they do not act upon a request at all. The deadlines for the Commissioner's handling of appeals are clearly defined, which is not the case with administrative disputes. In case of administrative silence, the Law on Administrative Disputes obligates the party (information seeker) to submit another request to the public authority after the expiration of the 15-day deadline, which is how long the administrative body has to respond according to the Law on Free Access to Information of Public Importance. The information seeker is also obligated to leave the administrative body 7 days to respond before resorting to an administrative dispute. On the other hand, a complaint to the Commissioner can be submitted as soon as 15 days have passed from the submission of the initial request.

EXTENSION OF THE DEADLINE FOR THE COMMISSIONER TO ACT ON APPEALS

The Draft Law extends the timeframe in which the Commissioner is obligated to make a decision on the complaint of the information seeker from 30 to 60 days. An exception to this rule is provided for cases when the complaint was filed due to administrative silence, when the Commissioner will, as before, be obligated to make a decision within 30 days from the date of receipt of the complaint.

CLARIFICATION OF THE PROVISIONS ON THE EXECUTION OF THE COMMISSIONER'S DECISION

The current Law prescribes that the Commissioner's decisions are binding, final and enforceable, and that the Commissioner's decisions are enforced by coercive measures, i.e. fines, in accordance with the law governing general administrative procedure. Following the amendments to the Law on General Administrative Procedure that have been in force since 2017, the Commissioner could not determine the base for these penalties. The Law on General Administrative Procedure stipulates that a fine for a legal entity is determined based on its income in the range from half of its monthly income to up to ten percent of its annual income in the Republic of Serbia in the previous year. The problem stems from the fact that the Commissioner could not determine the base i.e. the data on the annual income of the bodies for the previous year, that are necessary for determining the fine in accordance with the Law, because the competent bodies kept informing the Commissioner that they do not have access to the revenue of public authorities.

The Draft Law specifies the range of fines for bodies that do not execute the Commissioner's decisions (from 20.000 to 100.000 dinars), noting that fines may be imposed an unlimited number of times, until the decision is followed through. In addition, it was specified that the court is to be the competent body for the implementation of the decisions on fines.

EXTENDING THE LIST OF BODIES THAT ARE OBLIGATED TO PRODUCE NEWSLETTERS PROVIDING INFORMATION ABOUT THEIR WORK

The Draft Law prescribes that the obligation to prepare a newsletter that provides information about their work will burden a wider range of public authorities, and that more categories of information are to be included in the newsletter than so far. In addition, an application is being introduced, i.e. electronic processing of newsletters, which will also be available in a machine-readable format. The Draft Law stipulates that, in case the public authority body fails to prepare and update the newsletter providing information about their work, the Commissioner is authorized to submit a request to initiate misdemeanor proceedings.

DISTINGUISHING BETWEEN MISDEMEANORS OF PERSONS AUTHORIZED TO ACT UPON REQUEST AND MISDEMEANORS OF MANAGERS

The Draft Law makes a clear distinction between the responsibility of persons authorized to act upon requests for access to information and the responsibility of managers. The authorized person has not committed a misdemeanor if he acted on the order of his superior in the public authority body and took all the actions he was obligated to in order to prevent the misdemeanor. Unless an authorized person for misdemeanors has been appointed in a public authority body, the manager is always responsible.

AUTHORIZING THE COMMISSIONER TO ISSUE A MISDEMEANOR ORDER IN CASE OF ADMINISTRATIVE SILENCE

In case the Commissioner accepts an administrative silence complaint, the Draft Law allows him to issue a misdemeanor order to the responsible person in the public authority body in the amount of 30.000 dinars. In accordance with the Misdemeanor Law, a person against whom a misdemeanor order has been issued may pay only a half of the imposed fine if he accepts responsibility and pays that half within eight days from the day of receipt of the misdemeanor order.

THE INFORMATION SEEKER MAY NOT SUBMIT A REQUEST TO INITIATE MISDEMEANOR PROCEEDINGS BEFORE THE END OF THE COMPLAINT PROCEEDINGS OR BEFORE END OF THE PROCEEDINGS BEFORE THE ADMINISTRATIVE COURT

The current Law prescribes that the information seeker as plaintiff is authorized to submit a request to initiate misdemeanor proceeding, meaning that not only the state bodies that are recognized as authorized for such actions by the Misdemeanor Law have that option. The information seeker can initiate these proceedings whenever he considers that a misdemeanor prescribed by the Law on Free Access to Information of Public Importance is committed against him. Moreover, he can exercise his right to submit a request to the misdemeanor court regardless of whether he has challenged the decision or inaction of a public authority before the Commissioner or the administrative court.

The Draft Law stipulates a different solution. The information seeker cannot initiate misdemeanor proceedings before the end of the complaint procedure or the administrative court procedure. Even after the completion of these procedures, the applicant cannot submit a request directly to the misdemeanor court, but must first address the Commissioner or the administrative inspection and request them to submit a request initiating a misdemeanor procedure. Only if these bodies consider that there are no grounds for this, the information seeker shall be authorized to submit a request for initiating misdemeanor proceedings.

INTRODUCTION OF THE INSTITUTE OF PUBLIC INVITATION IN THE PROCEDURE OF ELECTING THE COMMISSIONER

According to the current Law, the candidate for Commissioner is proposed by the Committee in charge of information. The Draft Law prescribes that the Committee in charge of public administration, that is also in charge of reviewing the annual reports on the work of the Commissioner, will take over that competence. Commissioner candidate proposals to the competent Committee may be proposed by parliamentary groups in the National Assembly. The Draft Law also prescribes conducting a mandatory public conversation between the Committee and the candidates, who are to be enabled to express their views on the role and manner of performing the duties of the Commissioner, in accordance with the Rules of Procedure of the National Assembly.

A novelty brought by the Draft Law in the procedure of electing the Commissioner is the introduction of a public invitation to all interested individuals to apply as candidates for this position. The public invitation is announced by National Assembly Speaker, published on the website of the National Assembly and in one daily newspaper that is distributed throughout the country.

THE ELECTION OF THE COMMISSIONER SHALL BE LIMITED TO ONE TERM OF EIGHT YEARS

Unlike the current legal solution, according to which the same person can be elected Commissioner no more than twice, the Draft Law stipulates that the number of mandates of the same person is to be limited to one. The office term of the Commissioner is extended from current seven to eight years.

Law on the Protector of Citizens

The proposed Law regulates the position, competence and procedure before the Protector of Citizens as an independent state body that protects the rights of citizens and controls the work of public administration bodies, bodies responsible for legal protection of property rights and interests of the Republic of Serbia, and other bodies and organizations, companies and institutions entrusted with public authority. The purpose of adopting the new Law is above all strengthening the efficiency and independence of the Protector of Citizens. The initiative for the improvement of the Law on the Protector of Citizens has existed since 2011, and the necessity of amending the Law is even prescribed in the Revised Plan for Chapter 23.

KEY NOVELTIES

PUBLIC CALL FOR ALL CANDIDATES INTERESTED IN THE POSITION OF PROTECTOR OF CITIZENS

One of the more important novelties of the Law is the introduction of the concept of a public call in the procedure of electing the Protector of Citizens, that enables all interested individuals to apply as potential candidates for the Protector of Citizens. The public call will be announced by the National Assembly Speaker, and that invitation will be published on the website of the National Assembly and in one daily newspaper that is distributed throughout Serbia. Each parliamentary group has the right to propose its candidate to the Committee on Constitutional and Legislative Issues, but only after 15 days have elapsed from the publication of the list of applicants who

meet the conditions for election to office. Before determining the proposal for the election of the Protector of Citizens, the new Law obligates the Committee on Constitutional and Legislative Issues to hold a public conversation with all candidates proposed by parliamentary groups, enabling them to express their views on the role of the Protector of Citizens. In the previous version of the Law, this was only a possibility, and now it is a legal obligation. In case the National Assembly does not elect the Protector of Citizens, more precisely if the proposed candidate does not receive the required number of votes of all MPs, the new Law prescribes a that a new election procedure is to be initiated in a period of 15 days. The National Assembly elects the Protector of Citizens by a majority vote of all MPs, at the proposal of the Committee on Constitutional and Legislative Issues. The selected candidate is to assume office within 30 days from the day of taking the oath, doing otherwise is grounds for dismissal of the Protector of Citizens.

CHANGING THE CONDITIONS FOR PROTECTOR OF CITIZENS CANDIDATES

According to the current proposal, it will no longer be necessary for a Protector of Citizens to hold a law degree and have previous experience in legal affairs. These conditions are replaced with having a university education and at least 10 years of experience in jobs that are important for perfoming the duties of the Protector of Citizens.

LONGER MANDATE FOR THE PROTECTOR OF CITIZENS

The current proposal also extends the mandate of the Protector of Citizens, who will now be elected for a period of 8 years, but without the possibility of re-election to that position. Earlier, the individual was elected for a 5-year period, but with the possibility of re-election. The office of the Deputy Protector of Citizens is now tied to the Protector himself and will last until the new Protector takes office (term - 8 years). The election of the Deputy is left to the Protector of Citizens, after conducting a public competition, instead of the previous solution, where the National Assembly was the one that elected the deputy.

FINAL COURT DECISION AS GROUNDS FOR OBLIGATORY TERMINATION OF THE MANDATE OF THE PROTECTOR OF CITIZENS

The following solution is introduced as grounds for obligatory termination of the Protector's mandate: if the Protector of Citizens is sentenced to imprisonment for at least 6 months by a final court decision, as is the case with MPs. The current Draft Law stipulates that the Protector of Citizens and the Deputy Protector of Citizens may not participate in political, professional and other activities that are not in accordance with the independence and impartiality of the office of the Protector of Citizens. They also cannot be members of any political party. Another novelty is the provision stipulating that the National Assembly, on the proposal of Committee on Constitutional and Legislative Issues, will adopt a decision suspending the Protector of Citizens, if detained in police custody or if a prohibition order on leaving their place of residence is imposed upon them.

SETTING A DEADLINE FOR CONSIDERATION OF LEGAL INITIATIVES MADE BY THE PROTECTOR OF CITIZENS

The National Assembly, i.e the Government or administrative bodies, now have a deadline for considering the Protector's initiatives for amendments of laws and other regulations and general legal acts - 60 days from the date of submission of the initative. The current Draft Law also authorizes the Protector of Citizens, in the procedure of application of regulations, to give opinions

on draft laws and other regulations of the aforementioned bodies, if they regulate issues that are important for the protection of citizens' rights.

OBLIGATION TO KEEP DATA SECRET AFTER THE END OF OFFICE

Bearing in mind that administrative bodies have an obligation to provide the Protector of Citizens with access to premises and data, if they are relevant to the procedure conducted by the Protector, regardless of the degree of data secrecy (except when contrary to law), the new Draft Law prescribes the obligation for the Protector and his Deputy, as well as employees of the Protector's Office, to keep all information obtained during the performance of their duties secret, and even after the termination of their office.

THE PROTECTOR OF CITIZENS CAN ALSO VISIT SOCIAL PROTECTION INSTITUTIONS

The current proposal extends the powers of the Protector of Citizens to inspect correctional facilites, persons with restricted freedom of movement, detention units, prisons, psychiatric institutions without prior notice and without obstruction. Social protection institutions that provide accomodation services for children and young people, adults and the elderly, are added to this list.

SHORTER DEADLINE FOR AUTHORITIES TO RECEIVE THE PROTECTOR OF CITIZENS IN EMERGENCIES

Another novelty is a shorter deadline for the President of the Republic, the Prime Minister, the National Assembly Speaker, the President of the Constitutional Court and officials in administrative bodies to receive the Protector of Citizens, at his request. The previous legal solution prescribed a deadline of 15 days, which is now changed to 3 days – when it comes to cases that require an urgent reaction.

A CHILD AT THE AGE OF 10 CAN INDEPENDENTLY SUBMIT A COMPLAINT TO THE PROTECTOR OF CITIZENS

Regarding the procedure before the Protector of Citizens, a very important novelty is the possibility that a complaint on behalf of a natural person can now be submitted by an association dealing with the protection of children's rights, if it obtains the consent of the child's parents and guardians. The Law also prescribes for the possibility that a child who has reached the age of 10 can file a complaint independently. The child is to be assisted in drafting a complaint by experts in the service of the Protector of Citizens, free of charge, even in situations where the child has not requested such assistance. The child's complaint cannot be dismissed due to it not being properly written or because it was submitted before the use of all available legal remedies before the administrative bodies.

EXTENSION OF THE DEADLINE FOR SUBMITTING A COMPLAINT TO THE PROTECTOR OF CITIZENS

One of the most significant changes in the Law is reflected in the fact that the deadline for submitting a complaint to the Protector of Citizens is now being extended - from the existing one to three years, from the violation of citizens' rights, i.e from the last action or inaction of administrative bodies in connection with a specific violation of citizens' rights. According to the valid Law, there is

an obligation of the complainant to, before addressing the Protector of Citizens, try to protect his rights in the appropriate legal procedure. However, bearing in mind that this often involves very long court proceedings, it was proposed that this obligation to exhaust all relevant legal proceedings be limited to those proceedings that the Protector can control, so the proposal further specifies those legal proceedings as ones in front of an administrative body.

THE GOVERNMENT, THE NATIONAL ASSEMBLY AND THE PUBLIC WILL BE INFORMED ABOUT THE ADMINISTRATIVE BODIES' FAILURE TO ACT

In situations when the administrative body does not act upon the request of the Protector of Citizens within the deadline set by the Protector, it is obligated to state the reasons for that without delay. In that case, the Law introduces another important novelty - the Protector of Citizens will then inform the body directly superior to the administrative body to which the complaint refers, the Government, the National Assembly and the public about the failure to act. This shows that although a specific administrative body may not be legally sanctioned, such inaction can still have consequences - political responsibility, public condemnation, etc.

INFORMATION ON THE HUMAN RIGHTS SITUATION IN THE REGULAR ANNUAL REPORTS OF THE PROTECTOR OF CITIZENS

According to the proposed Law, the Protector of Citizens will now be obligated to submit information on the human rights situation in the Republic of Serbia along with his regular annual report. The Law now regulates more precisely all the elements that this report should contain.

FUNDS FOR THE WORK OF THE PROTECTOR OF CITIZENS CANNOT BE REDUCED

The Draft Law also explicitly prescribes that the funds for the work of the Protector of Citizens cannot be reduced, unless this reduction is applied to other budget users. The proposed provisions also prescribe the formation of the professional service of the Protector of Citizens, which will deal with the performance of professional and administrative tasks. The Protector of Citizens will be in charge of adopting the act on the organization and systematization of this service, and unlike the previous solution, the consent of the National Assembly will not be necessary - it is prescribed that the Protector of Citizens is only to inform the National Assembly within 15 days from adoption of said act.

Act on Amending the Constitution

KEY NOVELTIES

CHANGING THE ROLE OF THE NATIONAL ASSEMBLY IN THE PROCEDURE OF ELECTING HOLDERS OF JUDICIAL OFFICE

The current Constitution stipulates that the National Assembly elects the President of the Supreme Court of Cassation, court presidents, the Republic Public Prosecutor, public prosecutors, judges and deputy public prosecutors. In addition, the National Assembly elects 8 elected members of the High Court Council and 8 elected members of the State Prosecutors' Council.

The Act on Amending the Constitution stipulates that the National Assembly will perform its electoral competencies in electing judicial office holders by electing the Supreme Public Prosecutor, four members of the High Court Council, and four members of the High Prosecutorial Council.

This means that according to the Act on Amending the Constitution the National Assembly will no longer be electing judges and deputy public prosecutors (which it has so far elected during the first election for a three-year term), nor will it be electing the President of the Supreme Court and presidents of other courts in the country. However, the National Assembly will continue to elect four members of the judicial councils (the High Court Council and the High Prosecutorial Council), who subsequently directly elect judges, prosecutors and court presidents.

THE PERMANENCE OF THE JUDICIAL FUNCTION FROM THE FIRST ELECTION UNTIL RETIREMENT IS INTRODUCED

According to the still valid provisions of the Constitution of the Republic of Serbia, a judge who is elected to a judicial position for the first time is elected by the National Assembly for a three-year term, at the proposal of the High Court Council. At the end of this "probationary period", judges are elected by the High Court Council for permanent office.

The Act on Amending the Constitution completely entrusts the election of judges to the High Court Council, while prescribing the permanence of the judicial office, from the first election until retirement.

CHANGES TO THE HIGH COURT COUNCIL COMPOSITION

The High Court Council (HCC) is an independent and autonomous body that ensures and guarantees the independence and autonomy of courts and judges. One of its basic competencies is the election of judges to permanent judicial office.

The still valid provisions of the Constitution of the Republic of Serbia stipulate that the High Court Council consists of 11 members, three of whom are ex officio members (Minister of Justice, President of the competent Assembly Committee, President of the Supreme Court of Cassation), and eight are elected members. Elected members are elected by the National Assembly, namely two eminent and prominent law graduates with at least 15 years of experience in the profession (one from the ranks of lawyers, one professor of law) and six judges with a permanent judicial function.

The Act on Amending the Constitution stipulates that the High Court Council is to consist of 11 members - the ex officio member will be the president of the Supreme Court, six will be judges elected directly by their peers, and four will be elected by the National Assembly on the proposal of competent Committees.

CHANGING THE MANNER OF ELECTION OF ELECTED MEMBERS OF THE HIGH COURT COUNCIL

According to the current Constitution, the National Assembly elects 8 members of the HCC by a majority of the total number of MPs, 6 of which are judges in permanent office proposed by the HCC. The HCC is under obligation to propose candidates that are directly chosen by their peers, i.e. judges in permanent office. The remaining two elected members must be respectable and prominent law graduates with at least 15 years of experience in the profession, one of whom is proposed by the Serbian Bar Association and the other by the Joint Session of the Deans of the Faculty of Law.

The Act on Amending the Constitution stipulates that in the future the National Assembly will elect four members of the High Court Council that are to be prominent law graduates with at least ten years of experience in the legal profession. They are elected among candidates proposed by the competent Committee of the National Assembly after a public competition. Instead of a majority vote of all MPs, the election of elected members of the High Court Council will require the vote of two-thirds of all MPs.

However, in the event that one of the members is not elected this way, the members will be elected by a majority of votes by a commission composed of the Speaker of the National Assembly, the Protector of Citizens, the President of the Constitutional Court, the President of the Supreme Court and the Supreme Public Prosecutor. It is important to note that the majority of the members of this commission are directly elected by the National Assembly.

CHANGE OF THE NAME OF THE HIGHEST COURT IN THE REPUBLIC OF SERBIA

The Act on Amending the Constitution prescribes that the highest court in the country will be called the Supreme Court instead of the Supreme Court of Cassation.

The President of the Supreme Court and the Presidents of the Courts will be elected by the High Court Council instead of the National Assembly

The current constitutional provision prescribes that the President of the highest court in the Republic is elected by the National Assembly, at the proposal of the High Court Council, upon obtaining the opinion of the General Session of the Supreme Court of Cassation and the competent Assembly Committee. Contrary to that, the Act on Amending the Constitution prescribes that the President of the Supreme Court is elected by the High Court Council, upon obtaining the opinion of the General Session of the HCC. The five-year mandate remains and it will not be allowed for the same person to be re-elected.

In addition, the presidents of other courts will be elected by the HCC instead of the National Assembly.

CHANGING THE NAME OF PROSECUTORIAL OFFICES AND INTRODUCING PERMANENCE FROM FIRST ELECTION TO RETIREMENT

According to the still valid provisions of the Constitution, the State Prosecutorial Council has the competence to elect only the Deputy Public Prosecutor for permanent office. In addition, the SPC is the authorized nominator of the Deputy Public Prosecutor, when elected for the first time for a three-year term. The final decision on this election is made by the National Assembly. Public prosecutors are also elected by the National Assembly on the proposal of the Government.

The Act on Amending the Constitution changes the organization of the prosecutor's office. If this Act is adopted, the current deputy public prosecutors will be called public prosecutors, and their superiors will be the Chief Public Prosecutors. The term in office of a public prosecutor (former deputy public prosecutor) will last from election to retirement, i.e. there will no longer be a "probationary" three-year term. The Chief Public Prosecutors and public prosecutors will be elected by the High Prosecutorial Council instead of the National Assembly.

CHANGE OF THE NAME OF THE PROSECUTORIAL COUNCIL, ITS COMPOSITION AND THE MANNER OF DECISION-MAKING

According to the current constitutional provisions, the State Prosecutorial Council (SPC) is an independent body that ensures and guarantees the independence of public prosecutors and deputy public prosecutors. The SPC has 11 members - 3 ex officio members (Minister of Justice, Chairman of the Judiciary Committee of the National Assembly and the Republic Public Prosecutor) and 8 members elected by the National Assembly: 6 public prosecutors or deputy public prosecutors that are nominated by the SPC (after conducting elections for those candidates), while the remaining 2 are proposed by the Serbian Bar Association and the Joint Session of the Deans of the Faculty of Law.

The Act on Amending the Constitution changes the name of the State Prosecutorial Council, so in the future, if the Act is adopted, it will be called the High Council of Prosecutors. The Council will consist of 11 members: five Public Prosecutors elected by the Chief Public Prosecutors and Public Prosecutors (bearing in mind that a Chief Public Prosecutor cannot be elected to the High Council of Prosecutors), four prominent law graduates elected by the National Assembly, and two ex officio members - the Supreme Public Prosecutor and the Minister of Justice.

Another novelty brought by the Act on Amending the Constitution is that the Minister of Justice will not be voting in disciplinary procedures in which the responsibility of the public prosecutor is determined.

CHANGING THE MANNER OF ELECTING ELECTED MEMBERS OF THE PROSECUTORIAL COUNCIL

According to the current Constitution, the National Assembly elects 8 members of the SPC by a majority of the total number of MPs. In this procedure six public prosecutors or deputy public prosecutors are nominated by the SPC (after conduction candidate elections), while the remaining two are nominated by the Serbian Bar Association and the Joint Session of the Deans of the Faculty of Law, one each.

The Act on Amending the Constitution stipulates that in the future the National Assembly will elect four members of the High Prosecutorial Council, from among prominent law graduates with at least ten years of experience in the legal profession nominated by the competent National Assembly committee after conducting a public competition. Instead of a majority vote of all MPs, a two-third majority will be required for election of elected members of the High Prosecutorial Council.

The Act on Amending the Constitution also stipulates that if the National Assembly does not elect all four members within the deadline set by law, the remaining members will be elected, from among all candidates who meet the conditions for election, by a commission consisting of the Speaker of the National Assembly, the President of the Constitutional Court, the President of the Supreme Court, the Supreme Public Prosecutor and the Protector of Citizens, by a majority vote.

CHANGE OF THE NAME OF THE REPUBLIC PUBLIC PROSECUTOR OFFICE AND PROHIBITION OF RE-ELECTION OF THE SAME PERSON TO THIS POSITION

The current Constitution of Serbia stipulates that the Republic Public Prosecutor, who exercises the competence of the Public Prosecutor's Office within the rights and duties of the Republic of Serbia, is elected for a period of six years, and can be re-elected (unlimited re-election).

The Act amending the Constitution stipulates that the Republic Public Prosecutor, if the Act is adopted, will be called the Supreme Public Prosecutor. The term in office is to be 6 years, with no re-election.

CHANGE IN THE PROCEDURE FOR ELECTING THE SUPREME PUBLIC PROSECUTOR

Instead of the majority of the total number of MPs, which is required in the current constitutional solution for the election of the Republic Public Prosecutor, the Act on Changing the Constitution stipulates that the Supreme Public Prosecutor will be elected by a majority of three-fifths. In addition, in the future, the Government will not be the authorized nominator of candidates for this position – the Supreme Public Prosecutor will be elected after a public competition.

Audio reports of Couplet Chorus Rebuttal

83 episode: Statesmanlike attitude towards Kosovo

In Kosovo, tear gas, shootings, injuries; in Raška, a meeting of Kosovo Serbs with the state leadership and a promise that Serbia will “be with its people”. One might have expected MPs to interrupt the debate on judges on such a day and demand an emergency session on Kosovo, but that did not happen. **Episode no. 83 #CoupletChorusRebuttal**

85 episode: Protect the Vučićs!

On the agenda – laws that allegedly strengthen the institutions of the Protector of Citizens and the Commissioner for Information of Public Importance. In the debate – proof of how the MPs and ministers of the Serbian Progressive Party actually perceive the independence of the institutions. It is good to have them, but only if they defend ‘us’, and not criticise the government like those who were in power before did. **Episode no. 85 #CoupletChorusRebuttal**

89 episode: We are not doing any favours to Rio tinto!

MPs did not heed urges to reject the Law on Referendum and the Expropriation Law. They did vote, but somehow they were not really convincing in the praise.
Episode no. 89 #CoupletChorusRebuttal

90 episode: Stop lying that you’re not doing fine!

The Speaker of the Assembly, Ivica Dačić, called for a referendum to amend the Constitution, as the proposal was supported by 193 MPs. That powerful parliamentary force was there only when voting took place, while during the day they were not very interested.
Episode no. 90 #CoupletChorusRebuttal