

Identification of the problems for the fight against corruption that need to be resolved in the reform of the Constitution

1. The Constitution

Since the adoption of the final text of the current Constitution of the Republic of Serbia was not preceded by a public debate, the first step for the adoption of the new supreme legal act is to define all key issues that can have alternative solutions and **open public debate** to address them before the adoption of the constitutional amendments in the National Assembly. Some of the questions that need to be addressed during the constitutional reform are as follows:

- 1.1 **Changes in the number of MPs and other issues related to the work of the National Assembly and the status of MPs.** Instead of the current practice, which "limits" the number of MPs to 250, the number of MPs should be defined as a variable in the Constitution (e.g. one MP should be appointed for a certain number of adult voters or a certain number of citizens according to the latest census), so that the number of MPs is lower than it is today. In addition, the norm from Section 102 paragraph 2 should be removed, as it opened way for the introduction of "blank resignations" in the legal system. Changes in the practice of decision-making in the National Assembly should also be considered. The decision on the selection of officials requires majority of the total number of MPs, which eliminates the option for MPs to feely choose among several candidates (in reality, a candidate can be elected only if MPs who have majority reach voting agreement).
- 1.2 **The immunity of MPs and other officials:** current provisions of the Constitution provide immunity that is too broad. Not only do the provisions of the immunity protect MPs and other government officials from arbitrary arrest (which is necessary in a democratic society) and protect their freedom of expression and right to vote while holding public functions (which is also necessary), but they also require a special declaration of the National Assembly in regards to the possibility of criminal proceedings for serious offenses.
- 1.3 **Judicial authorities:** Constitution amendments should exclude the participation and influence of political officials from the executive and legislative government in the High Judicial Council and State Prosecutorial Council.
- 1.4 **The rules on conflict of interest:** The concept of conflict of interest in the Constitution is not properly defined, nor consistently implemented in relation to various state officials, which may complicate legal regulation of this matter. For example, the Constitution now stipulates that "no one can perform a state or public function in conflict with their other functions, occupation or private interests". If this

rule was consistently implemented, no one could perform any public function, because the very fact that someone dedicated a considerable amount of time for the execution of public job interferes with the exercise of certain private interests of that person.

- 1.5 **The method of establishment and status of independent state bodies:** The establishment and status of independent state bodies are regulated only in some cases, which places these bodies in unequal positions, without justifiable reason, and can create problems in terms of establishing their authority through laws or it can create space for politically motivated abolition of control institutions that are not preferred institutions of the legislative and executive government. That is why the Constitution should determine the manner of establishment of new independent state bodies, as well as the position of those that are already established.
- 1.6 **Firmer guarantees for the transparency in the work of state bodies:** current provisions of the Constitution (i.e. "right to information") defines guarantees for the access to public information and public work of government bodies (which explicitly existed in the Constitution of 1990) not only incorrectly (as media duty), but also inadequately.
- 1.7 **Guarantees for the participation of citizens in the legislative process:** the Constitution guarantees citizens the right to popular initiative for legislation. However, the exercise of this right is unattainable, both because of inadequate legal norms (insufficient deadline for the collection of a large number of signatures), and because of the absence of duty for the President of the National Assembly to include such an initiative in the agenda.
- 1.8 **Firmer guarantees for the unity of legal order:** current provisions of the Constitution do not clearly regulate situations when one law violates the provisions of another law (usually systemic law), causing a serious disturbances in the legal system.
- 1.9 **The introduction of restrictions in undertaking obligations and conclusion of agreements:** The legislation of Serbia currently includes certain restrictions in regards to undertaking obligations and allocation of public assets, both in terms of the amount of undertakings, and in terms of the procedure that must precede the conclusion of the agreement (for example, limiting the amount of public debt in the Law on Budget System, public procurement rules, the rules on public-private partnerships and concessions). However, these restrictions are being directly violated through individual laws (e.g. the laws that allow borrowing and issuing guarantees, interstate agreements that allow contracting of procurements, sales of public assets or forming a joint venture with a predetermined company or partner

from a predetermined state). The absence of constitutional limitation makes it impossible to successfully challenge such acts, which may lead to undertaking disproportionate obligations for future generations and to the renunciation of valuable public assets for the sake of short-term benefits.

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