HIGH PROSECUTORIAL COUNCIL AND JUDICIAL REFORM

Miroslav Đorđević, PhD[1]
High Prosecutorial Council, Belgrade, Serbia
Institute of Comparative Law, Belgrade, Serbia
State University of Novi Pazar, Serbia

Reform of the Serbian Constitutional and Legislative Framework Regarding Judiciary

The reform of the public prosecution system in the Republic of Serbia, which formally began with the amendment of the Constitution through the adoption of constitutional amendments, is the result of long-term efforts of the scholarly and expert-like public, as well as the holders of public prosecutors and judicial functions themselves, to bring the legal framework into harmony with European values that guarantee better realization of the ideal of the independence of the judiciary and the autonomous status of the public prosecution. The specificity of the situation in this domain in Serbia is the obvious discrepancy between the proclaimed constitutional principles and the way of their realization. "For the realistic realization of the independence of the judiciary, it is far more important whether the principles guaranteed by the Constitution are operationalized with appropriate institutional guarantees" (Simović, 2014: 162). The Serbian Constitution of 2006 proclaims in its very first article: "The Republic of Serbia is a state of Serbian people and all citizens who live in it, based on the rule of law and social justice, principles of civil democracy, human and minority rights and freedoms, and commitment to European principles and values." The Republic of Serbia is hence committed, by the letter of its Constitution, to European principles and values – "European identity is legally rooted in the core of the modern Serbian constitutionality, even though Serbia is not an EU member state" (Petrov & Đorđević, 2022: 137-138).

The pursuit for constitutional reform in the domain of judiciary did not however solely have for its goal to prove the adherence to European legal standards. In other words, since the joining to the EU is officially considered to be the political strategy of the country (and Serbia was given the EU candidate status), implementation of European standards is to be expected from the political standpoint. Changes in the judicial domain, and especially when public prosecution is in question, were needed for the sake of Serbian citizens, buildup of legal culture and safety and further developing of rule of law.

The provisions of the Serbian 2006 Constitution were criticized by the European Commission for Democracy through Law (Venice Commission) right after the enacting of the Constitution. In its opinion the Venice Commission stated that the provisions on the public prosecutors contain solutions that "create a risk of unduly politicizing the appointment process", as well as room for "political interference in prosecutions" which it had found to be "disturbing" (Venice Commission, CDL-AD-2007-004-e). In its final remarks, the Opinion states: "The National Assembly elects, directly or indirectly, all members of the High Judicial Council proposing judges for appointment and in addition elects the judges. Combined with the general reappointment of all judges following the entry into force of the Constitution provided for in the Constitutional Law on Implementation of the Constitution, this cre-

1 miroslav.djordjevic@yahoo.com

ates a real threat of a control of the judicial system by political parties". All of this can be applied to the State Prosecutors' Council, because this state body, envisaged as the protector of public prosecutors' autonomous status, "closely followed the model of the High Judicial Council" (Venice Commission, CDL-AD(2007)004-e). The Venice Commission concludes that "the respective provisions of the Constitution will have to be amended" (Đorđević & Stanić, 2023: 6).

Apart from being criticized by the Venice Commission (which is one of the greatest authorities for constitutional law issues in the Western legal culture), the position and functioning of the judiciary and especially public prosecution was put under scrutiny by Serbian scholars and practitioners. A group of eminent Serbian professors and constitutional law scholars conclude in their thorough analysis of the Constitution that it "contains weaknesses that endanger the judicial independence, which presents one of the fundamental principles of the rule of law" (Pejić *et al.,* 2017).

Before any serious consideration of legal framework changes, during 2008 and 2009 the so-called "judicial reform" took place, essentially with only one goal: to dismiss all and (re)elect judges and deputy public prosecutors in Serbia. This questionably constitutional action caused the odium of the holders of judicial offices, whose status did not correspond to the nature and significance of their profession. Not only did the constitutional and corresponding legal frameworks not provide satisfactory guarantees for the independence of the judiciary, but such a "reform" practically rendered meaningless the proclaimed permanence of the holders of judicial functions (Đorđević & Stanić, 2023: 7).

Additionally, just a few years after the enacting of the Constitution, the new Code on Criminal Procedure came into power with the aim to introduce accusatorial instead of inquisitorial criminal prosecution system (much like an American one). This tectonic shift was not followed by the adequate changes in the public prosecutor's office system, leading to the strange mixture of legal traditions, incompatible but all in force at the same time. The situation was described in literature as: an American criminal procedure with the Soviet public prosecution: "The writers of the (Criminal Procedure) Code did not take into account that the independence of the prosecution is vitally threatened by the constitutional decision according to which public prosecutors are elected by the National Assembly on the proposal of the Government, as well as by the fact that the members of the State Council of Prosecutors are elected by the National Assembly. So, we are witnessing a completely contradictory process. On the one hand, the prosecution is subordinated to the executive power by the Constitution, and on the other hand, the powers of an independent judicial body, the investigating judge, are transferred to the prosecution in criminal proceedings. This, we are convinced, also calls into question the objectivity of the criminal procedure, especially the investigation in which the prosecutor occupies a central place. In addition to not taking into account the constitutional position of the public prosecutor's office, the creators of the Code did not take into account the fact that the prosecutor's office is organized according to the traditional model, with excessive centralism and a practically unrestrained hierarchy, which to a large extent makes it impossible to adapt to the new procedural role and reduces its ability to fully respond to the tasks that are set before it" (Ilić, 2012: 133-134).

It was obvious that changes have to be introduced, but because of either lack of political or scholarly consensus all the attempts were not to progress pass the starting point. The only time when it seemed that a certain significant effort was given was in 2018, though, as the time will tell, in vein. The 2018 Draft of the Constitutional Amendments was heavily criticized by the vast majority of the scholarly and expert-like public. It was not uncommon to state that it would present even a step backwards from the already unsatisfactory position of the Serbian judiciary. Various aspects of the proposed Draft were seen as problematic from the standpoint of striving towards depoliticization, and especially the position and role of the judicial councils (Beljanski, 2019: 59-61). After much deliberation in scholarly

circles, the Draft was abandoned (but it will however serve as a reference point a couple of years later– for the most part on ways how *not* to resolve particular issues which were troubling holders of judicial functions at the time).

The "critical mass" of political will and scholarly consensus was finally reached in 2020. The Proposal for the constitutional revision in the domain of judiciary that was placed before the National Assembly embodied much of the critical approach expressed by the judicial function holders and scholarly circles. The Proposal was adopted with the 2/3 majority of all MPs, and the Working group was created with the single task – to draft the Constitutional Amendments in the domain of judiciary. This time, the process was transparent. The Working group did include political representatives, but the large majority of members were professors and research fellows (doctors of Constitutional law), judges, public prosecutors, representatives of professional associations. After months of intensive work on the Draft, series of public hearings were organized with the intention to seek for constructive criticism, new insights and opinions. Regular consultations with the experts from the Venice Commission also took place.

In late 2021 the Draft of the Constitutional Amendments was completed and it was welcomed by the Venice Commission (and got mostly very favorable comments in its Opinion CDL-AD-2021-032). The National Assembly of Serbia adopted the proposed Amendments (with the very high 2/3 majority of all MPs) and the only thing left was, according to the Constitutional provisions on its own revision, to place the Amendments in front of the voters, who had to support the changes (with simple majority) in order for Constitutional changes to come into life.

The Constitution of 2006 had foreseen the presented changes in the domain of judiciary as one of those for which the referendum is obligatory (Art. 203). This solution is, as the situation will show, questionable to say the least. The voters, "ordinary" citizens, were placed into uncomfortable situation to have to decide upon matters that were far beyond their capabilities. It was not because of some general lack of education or access to relevant information, but for the mere fact that the Amendments had to do with something highly legally specialized – judiciary. Even for some lawyers the issues and dilemmas at hand were complicated since they were not dealing with such constitutional law topics in their professional lives. But to expect from engineers, doctors, merchants, workers, artists, IT specialists and all the other people of various occupations to differentiate between sophisticated differences, such as e.g. "independence" and "autonomous status" of public prosecutor's office[2], pros and cons of newly introduced system for the election of judicial function holders, or means for weakening the hierarchy of the public prosecutors' system – was illusionary. Voters were therefore vulnerable for effects of negative campaigns that could (and for a significant part – did) use completely false arguments in order for referendum to fail (hence gaining political points on the fact that the government failed in a

2 Some of the most famous scholars tend to define public prosecutor's office as a "quasi-court power": "In the organizational sense, the Public Prosecutor's Office is a separate, autonomous state body, while in the functional sense, it is the bearer of special powers related to the exercise of judicial (CS) power" (Marković, 2014: 528-529). There is no doubt that by the nature and function of PP it stands close to courts. However, from the constitutional law and the tripartite division of power point of view, PP undoubtedly has to belong to the executive power, with the special, highly autonomous status. Because of all the aforementioned reasons, it cannot be a part of CS power – it does not decide on the law dispute, but enforces laws, like the executive power. "The Public Prosecutor's Office is not part of the judiciary (CS), but it is part of the judicial system in a broader sense. Given their function in the field of criminal justice, public prosecutors are required to act objectively and impartially, like judges." Finally, PP surely cannot be regarded as a part of the legislative branch of government, hence, within the tripartite division, leaving only the third one – the executive power. "What was once combined in the inquisitorial procedure now stays strictly separated - accusation, defense and trial. The prosecutor is allowed to bring the accusation (*thesis*), the accused opposes the defense (*antithesis*), and the court makes a final decision (*synthesis*)." (Škulić & Bugarski, 2015: 93) Consequently, the prevailing opinion in Serbian literature states that "the public prosecution cannot enjoy the independence of the same nature and quality as courts, among other things, due to the fact that courts present a separate state power, while the public prosecution does not."(Petrov, 2022: 253) Public prosecution is therefore considered to be "autonomous" but not "independent".

way as well). The matter of the utmost significance for future development was left to political interpretations and various misconceptions.

However, in spite of all the difficulties, the referendum was a success. With the turnout of approximately one third of all voters, out of which circa 2/3 were in favor of the proposed Amendments, constitutional changes have passed this "test of the sovereign people" and came into force on February 9th 2022.

Constitutional Amendments introduced a list of novelties in the Serbian constitutional system when it comes to judiciary, including: changing the way judicial office holders are appointed, fundamental reform of the way the judicial councils work (whose jurisdiction has now been significantly expanded), abolishing the monocratic system of public prosecution, strengthening the constitutional guarantees of the independence of the judiciary and the autonomy of the public prosecution, systematically reducing the possibility of the politicization of the judiciary, strengthening the integrity and individual responsibility of public prosecutors guaranteeing the permanence of the judge's office (the abolition of trial terms with constitutionally prescribed reasons for early termination of office); judges, the president of the Supreme Court (instead of the former "Supreme Court of Cassation") and the presidents of courts are now appointed by the High Judicial Council; the role of public prosecution is now performed by the Supreme Public Prosecutor, Chief Public Prosecutors and Public Prosecutors (deputies have been abolished); the Supreme Public Prosecutor is still elected by the Parliament, but the Chief Public Prosecutors and Public Prosecutors are now appointed by the High Prosecutorial Council; it is stipulated that a lower chief public prosecutor or a public prosecutor who considers that a mandatory instruction (received by a higher prosecutor) is illegal or unfounded has the right to object; the composition of the judicial councils was rearranged in such a way that now in both councils (of 11 members each), the majority is made up of representatives of the profession, i.e. six judges elected by their peers and the president of the Supreme Court in the High Judicial Council and five public prosecutors elected by the public prosecutors and the Supreme Public Prosecutor in the case of High Prosecutorial Council, while maintaining the legitimacy of sovereign citizens through the participation of four members each appointed by the National Assembly from among the ranks of prominent lawyers (Đorđević & Stanić, 2023: 10).

All the solutions that the Constitutional Amendments introduced were further regulated in more detail by the set of new judicial laws: Law on Judges, Law on Organization of Courts, Law on the High Judicial[3] Council, Law on the Public Prosecutor's Office and Law on the High Prosecutorial Council.

Introduction of the New High Prosecutorial Council

One of the major "culprits" for such an extensive criticism of the original solutions (envisaged by the Constitution of 2006) on judiciary was the regulation of the "State Council of Prosecutors" – an organ that is to be constitutionally fundamentally reshaped, as well as renamed with the adoption of Constitutional Amendments into "the High Prosecutorial Council". In order to fully understand the position and the role of the State Council of Prosecutors, one has to bear in mind the structure of the prosecutorial system before the Constitutional Amendments. It was a true representative of the monocratic model – with the Republican public prosecutor on the top of the hierarchy, with numerous

3 Here the use of the term "judicial" refers solely to courts and the court system. There is a particular terminological mix-up when translating Serbian technical, legal terms to English. In Serbian, the term "pravosuđe" refers both to public prosecutor's office and the court system and is usually translated as judiciary. The problem emerges since the same word "judiciary" is also being used to denote the court system/courts alone – "sudstvo". Hence, when needed, this difference is specially underlined in the paper in order to avoid confusion. If not otherwise suggested, the term "judiciary" is here used as a cover term for both public prosecutor's office and courts/ court system.

competences to direct and control the whole system of public prosecution. Each public prosecutor's office had a public prosecutor who was in charge while all the others in that particular office were his deputies. Higher prosecutor's office had an authority over the lower ones, with the Republican public prosecutor standing on the very top of the hierarchical pyramid. The responsibility laid for the most part on the behalf of public prosecutors, while all the deputies could "hide" behind his or her authority. The other side of the coin was the fact that such a strong hierarchical structure could not provide the necessary space for alternative opinion and clear distinguishing of responsibility. If one also takes into consideration that all the deputies were firstly to be elected for only three years' term, and then they could apply and be elected (again) – this time for a permanent tenure, it is easy to see why such a system caused dissatisfaction among many deputies, as well as why it was difficult to achieve coherency and transparency. Hierarchical powers of the higher-ups were not followed by the effective legal remedies that could balance out all the possible problems and disagreements in practice. The State Council of Prosecutors had a role in the election of the function holders, but the National Assembly was present both in the process of the deputy public prosecutors' election, as well as in the election of the very members of the State Council of Prosecutors. This caused major concerns for the possible politicization of the process that should remain strictly professional and impartial as much as possible.

The powers and competences of the State Council of Prosecutors were set in the constitutional text: "The State Council of Prosecutors proposes to the National Assembly candidates for the election of deputy public prosecutors, elects deputy public prosecutors for the permanent tenure of the function of deputy public prosecutor, elects deputy public prosecutors who are on a permanent position as deputy public prosecutors in another public prosecutor's office, decides in the procedure for the termination of the deputy public prosecutor's office of public prosecutors, in the manner provided for by the Constitution and the law and performs other tasks specified by law" (Art. 165, subsequently amended). It is obvious that *de facto* and even *de jure* in a way, the State Council of Prosecutors was not potent enough to be considered recognized as an effective protector of the public prosecutor's office autonomous status and operational independence. The structure of the State Council (the Republic Public Prosecutor, the Minister of Justice and the President of the authorized committee of the National Assembly as *ex officio* members and eight electoral members, out of which six prosecutors and two prominent lawyers elected by the National Assembly) was also not adequate mostly because of the fact that all its members were either elected by the parliament (that serves to represent *political* opinion of the sovereign people[4]), or were political by their nature (Minister of Justice and the President of the authorized committee of the National Assembly).

Constitutional Amendments and subsequent legislative reform in the domain of judiciary changed the structure and role of the prosecutorial council significantly. The new High Prosecutorial Council is to be considered as a legal successor of the State Council of Prosecutors, but essentially has far greater competences and substantially different composition. The High Prosecutorial Council is foreseen as "an autonomous state body that shall guarantee the autonomy of the public prosecutors' offices, the Supreme Public Prosecutor, Chief Public Prosecutors and public prosecutors" (Art 162, Para. 1).

By the letter of the Constitutional Amendments, the High Prosecutorial Council "shall propose to the National Assembly the election and dismissal of the Supreme Public Prosecutor, elect acting Supreme public prosecutor, Chief Public Prosecutors and public prosecutors and decide on the cessation of their term of office and on other issues concerning the status of the Supreme public prosecutor, Chief Public Prosecutors and public prosecutors and performs other duties within its remit of jurisdiction

4 "The basic function of the parliament as a body of political representation is that which is assumed, so sometimes it is not explicitly mentioned, and it is certainly a representative function - representing the people, basically, the political opinion of the citizens in order to achieve the ideal of semi-direct democracy" (Đorđević, 2021: 90).

defined by the Constitution and law" (Art 162, Para. 2). Those "other duties" are significant in scope, as well as impact on the overall system of the public prosecution. For instance, the High Prosecutorial Council has a decisive role in the creation of the budget for the whole public prosecution system in Serbia. On the other hand, it serves to protect the integrity of the individual function holders.

The judicial reform had for one of its goal the quite clear intent to systemically and deliberately weaken the hierarchical structure of the public prosecution system, in order to empower individual function holders, as well as strengthen the overall accountability and allow transparency. After the adoptions of Amendments, there are no more deputies – each and every one of them became public prosecutor, while the former public prosecutors came to be chief public prosecutors. This change bears much more than sole terminological importance (which is present as well, since the term "deputy" was considered to be somewhat derogatory or at least diminishing in the light of the importance of everyday tasks that these people are facing). Abolition of deputies meant that the public prosecutors were responsible themselves. Permanent tenure of a Public Prosecutor is now absolute – there is no probationary period and reelection anymore. Additionally, more effective remedies against hierarchical powers were introduced – a complaint of a person to whom a mandatory instruction was issued. This remedy may be used if there is concern that the instruction is either unlawful or simply ill-founded, and the competence to resolve the dispute is given to the High Prosecutorial Council (to be more precise: to the special prosecutorial Commission that is being elected by the High Prosecutorial Council and operates within it), and not the same hierarchy that was disputed, as was the case before the reform.

The second aspect of striving towards integrity strengthening reveals itself in the new composition of the High Prosecutorial Council and the way how its members are elected. There are still 11 members of the Council: two *ex officio* members (Minister of Justice and the Supreme Public Prosecutor – formerly the Republican Public Prosecutor), five public prosecutors elected by their fellow public prosecutors (not by the National Assembly anymore) and four prominent lawyers, elected by the 2/3 majority of all the MPs in the parliament.[5] The idea behind such composition of the Council is to find the balance between two goals – decisive participation of practitioners (public prosecutors) in the matters of their greatest importance, as well as avoiding possible "corporatism", alienation of the High Prosecutorial Council from the sovereign people.

No state power elects itself; hence the indirect legitimacy of the people through prominent lawyers elected by their political representatives in the parliament serves to provide counter-weight and balance. In order to "prevent the pendulum from going too far to the other side" certain requirement for the candidates for prominent lawyers were introduced. Apart from obvious conditions of expertise and relevant work experience, no candidate is allowed to be a member of any political party or be in the position to fundamentally influence making of party-political decisions (e.g. through non-partisan participation in political party councils, different activities and working bodies, etc.). Prominent lawyers who were to be elected members of the Council should be persons impartial and neutral as much as possible from the partisan politics standpoint. "The President of the authorized committee of the National Assembly" is no more *ex officio* member of the Council, but the Minister of Justice remained (though with somewhat limited competences in comparison to other members), since the

5 Since this majority is very high, an anti-deadlock mechanism was introduced as well. If the National Assembly is incapable to reach a consensus on the future members of the High Prosecutorial Council, a special Commission consisting of the President of the National Assembly, the Supreme Public Prosecutor, the President of the Supreme Court, the President of the Constitutional Court and Ombudsman is to elect the member of the Council out of all the candidates who passed the administrative requirements of the parliamentary competition. The idea was to "push" the political elites into making healthy compromise, rather than allowing the National Assembly to basically lose its competence over such an important issue. The first election for both the Judicial and Prosecutorial councils that took place in May 2023 ended however with the inevitable use of this anti-deadlock mechanism, since the parliament managed to elect only one out of eight required prominent lawyers for both prosecutorial and judicial councils. It is reasonable to expect this practice to change in future.

public prosecutor's office does not present a separate, independent branch of government, like judiciary (court) does. Even if it did not become formally independent, public prosecutor's office autonomous status became protected better than ever before.

Important aspect for the proper operation of the High Prosecutorial Council had to do with the procedure for decision making. Specific "breach" between circles of public prosecutors and prominent lawyers was desirable in order to create a sort of "melting pot", and the most effective means to achieve such a goal was to introduce a high required majority for decision making (8 out of 11) that would strongly discourage corporatism. Such a melting pot does not serve solely to avoid alienation or politicization of the Council, but more importantly to initiate a strong cooperation between legal experts of somewhat different professional backgrounds, because the very nature of the Council's competences requires pure practitioners, as well as a bit wider legal considerations at the same time. The required majority for decision making did not find its place in the Constitutional Amendments, but was subsequently introduced with the adoption of the Law on the High Prosecutorial Council.

First Steps and Challenges

The envisaged regulation of the new High Prosecutorial Council came to life with the election of the prominent lawyers on May 10th, 2023, when the Council was constituted and the application of the new public prosecutorial laws started. The decision making system served as predicted to encourage cooperation between public prosecutors and prominent lawyers within the Council. The process of judicial reform was however not yet over. All the constitutional and legislative novelties had to be regulated in detail by the long list of bylaws, out of which only a couple have been completed in the time of writing of this paper (though including most important of them all: the Rulebook on the operation of the High Prosecutorial Council), and all the other ones will have to be adopted before May 2024, within the deadline that relevant laws have set.

The transfer of many important competences from the National Assembly to the Council, such as full election authority, leaves the new High Prosecutorial Council with a list of challenges. There is literary no previous practice when it comes e.g. to issues relating to the election procedure and legal remedies before the Constitutional court, hence setting well founded basis for future practice is of the utmost importance. In the first months of the Council's operation some (at first glance) trivial problems burdened its members, like being seriously understaffed for all the new competences. At the same time, employment of new personnel for the Administrative office (that serves to provide assistance and logistics to the Council's members) proved to be difficult because of inadequate spatial capacities at the moment.

Still, the new High Prosecutorial Council has started to make noticeable steps forwards towards goals envisaged by the constitutional and legislative reform. For the first time in Serbian history, public prosecutors were elected to permanent tenure by the High Prosecutorial Council, significant efforts were made to ensure transparency of work, hence all the Council's sessions are now open to the public and there is live video stream, as well as possibility to access and watch all the previously held sessions via the internet. Such openness was not introduced only to serve the justifiable interest of the sovereign citizens, but also to "demystify" the operation of the Council, as well as support the integrity and responsibility of the Council's members.

Furthermore, the inclusion of all the relevant factors in the normative work of the Council (similarly to the way how Constitutional Amendments and the set of judicial laws were written) is continued. All the working groups that prepare the drafts of various bylaws for the Council's operation have repre-

sentatives of professional associations and civil society organizations, either in the capacity of working group's members or at least observers. The High Prosecutorial Council has started its mandate with a series of meetings with different stakeholders, starting from Serbian public prosecutors and professional associations, up to the highest EU Commission and Council of Europe representatives in Serbia. All of this serves as a part of an effort to continue with the maybe most important, but equally difficult process of any constitutional and systemic reform – its proper application in practice, for the sake of public prosecution system in Serbia, as well as all its citizens.

Conclusion

After the adoption of the Serbian Constitution of 2006 it was clear from the start that the parts on judiciary are not regulated in the satisfactory manner[6], neither for the sake of achieving the constitutionally proclaimed goal of adherence to European values, nor more importantly for the sake of judicial function holders, independent court system and autonomous public prosecution office. After almost fifteen years a long awaited constitutional and legislative revision came to life, bearing significant novelties, including the new High Prosecutorial Council with much broader competences in comparison to its predecessor. The shaping of the High Prosecutorial Council is in its final stages from the normative perspective, but the equally or even more important part of implementation still lies ahead. According to the present constitutional and legislative solutions it seems that the solid base for future development in the desired direction is set. If the envisaged solutions are to fully come to life in practice still remains to be seen.

References

Beljanski S. (2019). Patronat nad pravosuđem – Povodom radnog teksta amandmana na Ustav Republike Srbije, *Srpsko pravosuđe na ustavnoj stranputici*, Beograd.

Đorđević M. & Stanić M. (2023). *Srpski koraci ka evropskom pravosuđu*, Beograd.

Đorđević M. (2020). Neki nomotehnički propusti regulative funkcije predsednika Republike u Ustavu Srbije, *Godišnjak fakulteta političkih nauka*, Banja Luka.

Đorđević M. (2021). Zamke prenaglašene težnje ka efikasnosti u ustavnom pravu, *Preispitivanje klasičnih ustavnopravnih shvatanja u uslovima savremene države i politike*, Beograd.

Ilić G. (2012). Tužilaštvo sovjetsko, postupak američki, *Novi Zakonik o krivičnom postupku Srbije – Reforma u stilu jedan korak napred dva koraka nazad*, Beograd.

Marković R. (2014). *Ustavno pravo*, Beograd.

Pejić I. & Petrov V. & Simović D. & Orlović S. (2017). *Pravna analiza ustavnog okvira o pravosuđu u Republici Srbiji*, Beograd. 1.9.2023. https://www.mpravde.gov.rs/files/analiza%20Ustava%20(2)%201.doc

6 These are not the only parts where the Constitution of 2006 is seriously lacking. "The nomotechnical problems of the Serbian Constitution are numerous and range from flagrant, substantive errors, through numerous examples of bad style and systematics, to individual terminological errors. Several examples of omissions and mistakes are already becoming commonplace in doctrinal analyses, and since this Constitution has never been changed since its adoption, the mentioned weaknesses are either simply ignored, or the Constitutional Court tries to alleviate them in some ways with its interpretations by making decisions that actually prevent harmful the effect that would occur as a result of their literal application" (Đorđević, 2020: 155).

Petrov V. & Đorđević M. (2022). The Influence of Serbia's Historical Constitutions on its Modern Constitutional Identity, *Comparative Constitutionalism in Central Europe – Analysis on Certain Central and Eastern European Countries*, Miskolc – Budapest.

Petrov V. (2022). *Ustavno pravo*, Beograd.

Simović, D. (2014). Vladavina prava i institucionalne pretpostavke nezavisnosti sudstva u Srbiji, *Vladavina prava i pravna država*, Istočno Sarajevo.

Škulić M. & Bugarski T. (2015). *Krivično procesno pravo*, Novi Sad.

Venice Commission, Opinion on the Constitution of Serbia adopted by the Commission at its 70th plenary session (Venice, 16-17 March 2007), CDL-AD (2007)004-e**.**

Venice Commission, *Opinion on the draft Constitutional Amendments on the Judiciary and draft Constitutional Law for the Implementation of the Constitutional Amendments*, (Venice and online, 15-16 October 2021), CDL-AD (2021)032.

Constitution of the Republic of Serbia, Official Gazatte of RS, No.98/2006, 115/2021.

Constitution of the Republic of Serbia, Official Gazatte of RS, No.98/2006.