



No. 1719-1/2020

The Permanent Mission of the Republic of Serbia to the United Nations Office and other International Organizations in Geneva presents its compliments to the United Nations' Office of the High Commissioner for Human Rights, and has the honour to submit the Responses of the Republic of Serbia, attached to this Note Verbal, to the questions contained in the joint letter of Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the promotion and protection of freedom of opinion and expression from 9 August 2019 addressed to the Minister of Foreign Affairs of the Republic of Serbia.

The Permanent Mission of the Republic of Serbia to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the United Nations' Office of the High Commissioner for Human Rights in Geneva the assurances of its highest consideration.



Geneva, 13 November 2020

Office of the High Commissioner for Human Rights
United Nations
Geneva

Responses of the Republic of Serbia to the Questionnaire of the Special Rapporteur on the Promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the Independence of judges and lawyers

Thank you for your August 9, 2019 letter, which was e-mailed to Permanent Mission of the Republic of Serbia to the UN and other International organizations in Geneva without a hard-copy follow-up and which went into the spam mail.

In response, please note the following observations, as per your request:

ITEM No. 1

“Please provide any additional information and comments which you may have on the above mentioned allegations.”

A. Allegations and Conclusions Without Factual Support

A substantial portion of subject allegations lack factual support to the extent that prevents any meaningful response. To wit, your statements and conclusions that:

“Judges Miodrag Majic and Omer Hadziomerovic have been victims of verbal attacks for years due to their criticism of the situation of the judiciary in Serbia.”

“In 2018, these attacks increased in frequency and gravity after they openly opposed some constitutional amendments because of the negative impact they could have on the rule of law and the independence of the judiciary.”

are not corroborated by any facts and/or documents. Basic notions of fairness and due process would require that you provide facts to support these allegations.

Therefore, to help you particularize your inquiry and to allow the Republic of Serbia to meaningfully respond thereto, please respond to the following:

1. Please state, by reference to the particular statements, each and every instance of “verbal attack” you refer to in your writing.
2. Please describe with the sufficient particularity documents that contain and/or refer to the statements referred to in no. 1, above.
3. Please state, by reference to the particular statements, factual basis for your conclusion that the “verbal attacks” were “due to their criticism of the situation of the judiciary in Serbia.”
4. Please describe with the sufficient particularity documents that contain and/or refer to the factual basis mentioned in no. 3, above.
5. Please describe, by reference to the particular statements, each and every instance of the “attacks increased in frequency and gravity” you refer to in your writing.

6. Please describe with the sufficient particularity documents that contain and/or refer to the statements referred to in no. 5, above.
7. Please state, by reference to the particular statements, each and every instance where “they openly opposed some constitutional amendments” as referred to in your writing.
8. Please describe with the sufficient particularity documents that contain and/or refer to the statements requested in no 7, above.
9. Please describe “the negative impact ... the constitutional amendments ... could have on the rule of law and the independence of judiciary”, as referred to in your writing.
10. Please describe with the sufficient particularity documents that contain and/or refer to your response to item no. 9, above.

B. Statements Made by the Members of the National Assembly

Regarding the statements made in the Parliament on May 20, 2019, please note the following:

- The issue you raise relates to the freedom of speech of the members of the National Assembly, as opposed to the freedom of speech of members of judiciary. Therefore, the authorities you refer to are not on point.
- Further, the authorities you refer to relate to the dismissal of members of judiciary because of their speech, which is not the case in the instant matter. No adverse proceedings and/or consequences against the two judges were commenced and or caused whatsoever.
- In this case, we have the members of the national Assembly exercising their right of free speech and commenting upon a long-resolved judicial proceedings, a so called “Gnjilane Group case” in which, indeed, a group of terrorists were acquitted by Judge Majic and Judge Hadziomerovic. In this case, the first instance court found the Gnjilane Group of terrorists guilty and sentenced them accordingly. On Appeal, the ruling panel, by split decision acquitted them. Judges Majic and Hadziomerovic voted for acquittal. Subsequently, on a request by the Public Prosecutor for extraordinary review, the Supreme Court of Cassation found that the Appellate Court erred and that the terrorists should not have been acquitted. However, since the Appellate court’s decision was final and enforceable, the accused walked free.
- To the extent to which you believe that the UN (or for that matter any other) standards prohibit comments by the members of the legislative branch regarding the performance of judiciary, including the long-resolved cases – please inform of such authority. Of course, we are looking for a widely accepted authority, as opposed to subjective views. Authority that has been accepted and implemented in the world’s leading democracies.

Having in mind that in the Republic of Serbia Parliamentary elections were held on 21 June and 1 July 2020 and that the new, 12th National Assembly has been

constituted and new Parliamentary officials have been elected, as well as new Parliamentary working groups, we kindly ask that the Special Rapporteurs take into consideration these facts while deliberating on our responses with regard to the events that took place during the session held on 20 May 2019, that is during the mandate of the previous Assembly. We expect that the new National Assembly will resume its work on strengthening human rights in the Republic of Serbia and that further reform and advancement of the judiciary independence, including the right to a freedom of opinion and freedom of expression of the judges and other judicial officials, as well as providing efficient measures for the protection of these rights, will be on the top of our priorities. National Assembly is very much interested in harmonizing to the fullest extent our regulations with the standards of human rights protection developed within the UN system, as well as in efficiently enforcing the laws that we enact. We deem enhanced cooperation between National Assembly and UN human rights mechanisms an important part of further improvement of our work.

ITEM No. 2

„Please provide detailed information on the inquiries carried out or to be carried out regarding the alleged verbal attacks in the National Assembly on 20 May 2019 to analyze if they constitute an attack to the independence of the judiciary as well as threats to the integrity of Judges Majić and Hadžimerović; and accordingly adopt the relevant sanctions and remedies”.

An inspection of the official records kept in the Ministry of the Interior established that the described event where the mentioned persons were damaged was not recorded. In view of the above and in accordance with the competence established by law, the Ministry of the Interior did not take any measures and actions in the matter in question.

The Constitution of the Republic of Serbia guarantees freedom of expression and opinion to the Members of the Parliament. Article 103, paragraph 2 of the Constitution provides that ‘deputies may not accept criminal or other liability for the expressed opinion or cast vote in performing the deputy's function.’

National Assembly Act (art. 38, par. 2) specifies that the deputy’s opinion may be expressed orally or in writing. Accordingly, a deputy enjoys immunity that cannot be removed due to his speech or opinion (oral or written) expressed in the course of the performance of the deputy’s function. Article 251 of the Rules of the procedure of the National Assembly provides that a deputy, in accordance with the Constitution and the law, enjoys immunity from the day of confirmation until the day of the termination of deputy’s mandate.

We point out that the National Assembly enacted the Code of conduct for Members of Parliament which regulates commenting judicial decisions and procedures on 20 July 2017. The Code insists on: the principle of the presumption of innocence – that everyone shall be deemed innocent until his guilt has been determined by the enforceable decision of the court; the principle of prohibition of influencing the court – that a deputy in his public statements and public appearances during the criminal

procedure or other judicial procedure may not express ideas, information or opinions which may prejudice the direction or outcome of the procedure or assess procedural value of the evidence adduced or is about to be adduced in a way that may affect the outcome of the criminal procedure; applicability of the provisions of the Code to other punitive offences and procedures of making public statements and appearances by the deputies with regard to the misdemeanors and corporate offences.

However, the Code does not encroach on the right of a deputy to express publicly his ideas, information or opinions about the work of the courts and other judicial bodies (item 2, paragraph 4 of the Code)

We also point out that in the previous Assemblies there were opinions about a need for amendments of the Rules of the procedure, as well as activities with regard to the preparations of the Code with a view to regulating more precisely ethical rules and standards of conduct of the deputies.

Having all this in mind, we do not have any information on whether investigations about the events that are the subject of your request have been or will be carried out.

ITEM No. 3

“Please provide detailed information on the guarantees in place to protect and promote the independence of the judiciary as a whole as well as the independence of individual judges.”

Four legal acts are the most important for the position of judiciary as a whole and individual judges in the legal system of the Republic of Serbia: the Constitution of the Republic of Serbia, the Law on Judges, the Law on Organization of Courts and the Law on the High Judicial Council.

The basic guarantees of the independence of courts and judges are contained in the 2006 Constitution of the Republic of Serbia. The positioning of the Rule of law principle at the beginning of the Constitution affirms its status and importance for the State. In the Article 3 is stated: “Rule of law is a fundamental prerequisite for the Constitution which is based on inalienable human rights. The rule of law shall be exercised through free and direct elections, constitutional guarantees of human and minority rights, separation of power, independent judiciary and observance of Constitution and Law by the authorities”. It is followed by the principle of the Division of power which defines that the government system shall be based on the division of power into legislative, executive and judiciary while judiciary power shall be independent.

The Constitution contains a special section dealing with the position of courts and judges. Courts are defined as autonomous and independent state bodies that perform their duties in accordance with the Constitution, Law and other general acts, when stipulated by the Law, generally accepted rules of international law and ratified international contracts. (Article 142, paragraph 2 of the Constitution). Courts can be established and abolished only by law, which is an act of the highest legal force after the Constitution. The law also

prescribes the organization, jurisdiction and composition of courts (Article 143, paragraph 2 of the Constitution). The establishment of temporary, indirect and extraordinary courts is prohibited (Article 143, paragraph 3 of the Constitution). Judicial power in Serbia can be regulated only by an act of parliament, as a legislative power.

The Constitution is detailed and extensive in the part which guarantees judicial independence and autonomy. The Constitution specifically regulates the position of judges, as the protagonist of the judicial power. In the Article 149 called “Independence of judge” is defined: “In performing his/her judicial function, a judge shall be independent and responsible only to the Constitution and the Law. Any influence on a judge while performing his/her judicial function shall be prohibited.” This provision of the Constitution establishes that a judge is bound only by the Constitution and law, which means that he is not subject to any authority: nor to the authority of colleagues within the judiciary (this is specifically elaborated by the Law on Judges), and especially not to authorities originating outside the judiciary.

The principle of the Permanent tenure of office is proclaimed in the article 146 of the Constitution: “A judge shall have a permanent tenure”. The judicial function, however, is not always permanent. Exceptionally, a person who is elected a judge for the first time shall be elected for the period of three years, on proposal of the High Judicial Council, by the National Assembly. After the expiration of the probationary period of three years, the judge is elected to the posts of permanent judges by the High Judicial Council (Article 147, paragraphs 3 and 4 of the Constitution). That solution was taken from German law and was supposed to leave a probationary period (of three years) in which it is evaluated whether the judge on probation has the qualities to be elected to a permanent judicial position. However, in the analysis of the Constitution, it was assessed as incompatible with judicial independence, since it enables a trial judge to be put under the pressure about his/her election on a permanent function. Therefore, the draft of the constitutional amendments eliminated this exception of the principle of the permanent tenure of the judges for the future prescribing that the High Judicial Council shall immediately elect judges on a permanent position.

The Constitution also regulates the termination of a judge's tenure of office: “A judge's tenure of office shall terminate at his/her own request, upon coming into force of legally prescribed conditions or upon relief of duty for reasons stipulated by the Law, as well as if he/she is not elected to the position of a permanent judge. The High Judicial Council shall pass a decision on termination of a judge's tenure of office. A judge shall have the right to appeal with the Constitutional Court against this decision. The lodged appeal shall not include the right to lodge a Constitutional appeal. The proceedings, grounds and reasons for termination of a judge's tenure of office, as well as the reasons for the relief of duty of the President of Court shall be stipulated by the Law”. This is the Law on Judges. According to the draft constitutional amendments the reasons for termination of a judge's tenure of office are regulated by the Constitution itself.

The principle of Non-transferability of judge is guaranteed in the Article 150: “A judge shall have the right to perform his/her judicial function in the court to which he/she was elected, and may be relocated or transferred to another court only on his/her own

consent.” Only exception of this principle is established in case of revocation of the court or the substantial part of the jurisdiction of the court to which judge was elected.

According to the Constitution, a judge may not be held responsible for his/her expressed opinion or voting in the process of passing a court decision, except in cases when he/she committed a criminal offence by violating the Law and a judge may not be detained or arrested in the legal proceedings instituted due to a criminal offence committed in performing their judicial function without the approval of the High Judicial Council. As can be seen, a judge is guaranteed functional immunity and he is guaranteed procedural immunity, which can only be lifted by the High Judicial Council.

The incompatibility of the judicial function is regulated in the Constitution by prohibiting the engagement in political actions by judges (Article 152, paragraph 1 of the Constitution), while other cases of incompatibility are regulated by law. Indeed, the Law on Judges has minutely regulated this issue: “A judge may not hold office in bodies enacting or enforcing legislation, public offices, and autonomous province and local units of local authorities. A judge may not be a member of a political party or act politically in some other manner, engage in any paid public or private work, nor extend legal services or advice for compensation. Exceptionally from paragraph 1 of this Article, a judge may be a member of governing body of judicial training institution, based on decision of a High Judicial Council, pursuant to specific law. Other functions, engagements and activities, which are contrary to the dignity and independence of a judge, or damaging to the reputation of the court, are incompatible with judgeship. The High Judicial Council decides which activities are contrary to the dignity and independence of a judge and damaging to the reputation of the court, on the basis of the Code of Ethics. A judge shall not require explicit permission to engage in compensated educational and research activity outside working hours. In cases set forth by the law, a judge may engage in teaching and research activities in a judicial training institution during working hours.”

The Constitution establishes the High Judicial Council as an independent and autonomous body which shall provide for and guarantee independence and autonomy of courts and judges. The High Judicial Council has eleven members (the President of the Supreme Court of Cassation, the Minister responsible for justice and the President of the authorised committee of the National Assembly as members ex officio and eight electoral members elected by the National Assembly, in accordance with the Law; electoral members include six judges holding the post of permanent judges, of which one shall be from the territory of autonomous provinces, and two respected and prominent lawyers who have at least 15 years of professional experience, of which one shall be a solicitor, and the other a professor at the law faculty.) According to the Constitution the jurisdiction of the High Judicial Council is following: “The High Judicial Council shall appoint and relieve of judges, in accordance with the Constitution and the Law, propose to the National Assembly the election of judges in the first election to the post of judge, propose to the National Assembly the election of the President of the Supreme Court of Cassation as well as presidents of courts, in accordance with the Constitution and the Law, participate in the proceedings of terminating the tenure of office of the President of the Supreme Court of Cassation and presidents of courts, in the manner stipulated by the Constitution and the Law, and perform other duties specified by the Law.” The

jurisdiction of the High Judicial Council may be extended by law. The composition and competence of the High Judicial Council have been changed by draft of the constitutional amendments in favor of strengthening the independence of the judiciary.

Judges are also guaranteed financial independence: "A judge is entitled to a salary commensurate with the dignity of judgeship and the burden of responsibility. The salary of a judge shall represent a guarantee of his/her independence and support of his/her family (Article 4 of the Law on Judges).

A judge is guaranteed the right but also a duty to professional training and education at the expense of the State: "A judge has the right and duty to advanced professional education and training at the cost of the Republic of Serbia, pursuant to a separate law" (Article 9, paragraph 1. Law on Judges); Training of judges is a structured acquiring and developing of theoretical and practical knowledge and skills required for the independent, professional and efficient performance of judge's function (Article 9, paragraph 2 of the Law on Judges). Thus, in addition to the already classic guarantees of judicial independence (permanent tenure, immobility, immunity, etc.), new ones are introduced, which should primarily create an environment that guarantees the realization of the independence and autonomy of judges.

The Law on Judges also regulates the mutual (internal) independence of judges, which should enable the judge to be independent and free to decide in relation to his colleagues (primarily the president of the court). "A judge is free in holding his/her views, determination of facts and application of law in all matters under his/her deliberation." (Article 22, paragraph 1 of the Law on Judges); "A judge is not required to justify to anyone, even other judges and/or the president of the court, his/her understanding of the law and the facts found, except in the reasoning of the judgment or when so particularly stipulated by law." (Article 22, paragraph 2 of the Law on Judges).

Next are the principles of Immutability of Type of Work and Random Allocation of Cases: "A judge is entitled to have his/her workload defined by the Annual Calendar of Tasks and not to have it changed during the year" (Article 23, paragraph 1 of the Law on Judges); "Cases are allocated to a judge according to a schedule that is independent of personality of parties and circumstances of the legal matter." (right to a natural judge, right to a random judge - Article 24, paragraph 1 of the Law on Judges); "A judge is entitled to raise objections to the Annual Calendar of Tasks, change of type of work, derogation from the order of received cases and taking away of cases with the president of the directly superior court, within three days from the day of becoming aware thereof" (Article 26, paragraph 1 of the Law on Judges).

Finally, for the general protection of judges and all forms of their autonomy and independence, it is envisaged that a judge may file a complaint with the High Judicial Council if his right is violated for which the Law on Judges does not provide a particular remedy (Article 29, paragraph 1 of the Law on Judges). The High Judicial Council, deciding on a judge's complaint, may, if the complaint is grounded, undertake measures to protect the rights of a judge (Article 29, paragraph 3 of the Law on Judges).

The guaranties of the independence of the judiciary as a whole are stipulated also by the Law on Organization of Courts in the first chapter called “Principles”. Article 1 *Judicial Power* envisages: “Courts are autonomous and independent state bodies protecting the freedoms and rights of citizens, rights and interests of legal subjects stipulated by law, ensuring constitutionality and legality. Courts adjudicate in accordance with the Constitution, laws and other general acts, where specified by law, generally accepted rules of international law and ratified international agreements”.

Article 3 describes the components of *the Independence of the Judicial Authority*:

“Judicial authority shall be vested in courts and shall be independent of the legislative and the executive authorities. Judicial decisions shall be binding on all and may not be subject to extra-judicial control.

Judicial decisions may be reviewed only by the court of competent jurisdiction in due proceedings established by law.

All persons are obliged to comply with enforceable judicial decisions.”

Article 6 of the Law on Organization of Courts proclaims *the Prohibition of Influence on Courts*:

“Use of public office and public appearance that may influence the course and outcome of judicial proceedings are prohibited in order to maintain the authority and impartiality of the courts.

Any other form of influence on the courts shall be prohibited, as well as pressure on participants in the proceedings.”

Constitution of the Republic of Serbia and the Law on the High Judicial Council provide that the Council is an independent and autonomous body which ensures and guarantees independence and autonomy of the courts and judges.

The High Judicial Council adopted the Code of Ethics on 14 December 2010, which, inter alia, determines ethical principles and rules of conduct of the judges which they must adhere to with the aim of preserving and strengthening dignity and reputation of the judges and courts.

The Code of Ethics is especially devoted to the following categories:

Independence – a judge is independent in performing his duties subject only to the Constitution and the law. Judge is free in advocating his opinion, determining facts and applying law in everything that he decides on.

A judge is under no duty to anyone, not even to other judges nor to the president of a court, to explain his legal understandings and factual situation he determines, except in reasoning of the decision or where it is specifically prescribed by the law.

The Code of Ethics specifies the meaning of the independence in the following way:

Judge performs judicial duty independently, without any external influence, limitation, persuasion, pressure, threat or interference by anyone.

Judge is independent from legislature and executive, media and other institutions of a society, political parties, other judges and parties in the proceedings in which he judges.

Judge promotes high standards of judicial conduct and adheres to them with the aim of preservation and strengthening of the confidence of the public in the independence of the judges and courts.

Judge defends independence of the court from political pressure, intervention and influence on any occasion. Judge will not take part in public debates of political nature, unless the debate relates to the questions concerning the functioning of the courts and independence of judiciary.

Impartiality – Judge is under a duty to conduct the proceedings impartially, according to his own conscience, assessment of facts and interpretation of the law, ensuring a fair trial, within a reasonable period and respecting procedural rights of the parties as guaranteed by the Constitution, law and international treaties. The meaning of the notion of impartiality is explained in more detail in response to question number 4.

Dignity – Judge is under duty both while performing judicial duty and in his conduct out of the court to develop the standards of behavior that contribute to the preservation of the reputation and dignity of the court and judges.

The Code of Ethics specifies the meaning of dignity in the following way:

A judge must refrain from unworthy actions, as well as from the actions that may damage the confidence of the public in the court.

A judge must protect the reputation of the court and judicial functions through written and spoken word.

As a person exposed to a constant judgment of the public, a judge freely and willingly accepts personal limitations inherent to a judicial function.

A judge must not use his position to achieve his own interests, interests of the members of his family or other persons, and he must not allow other persons to leave such an impression that anybody is in such a special position to be able to affect the work of a judge.

A judge and the members of his family shall not ask nor accept any gifts, legacies, loans or favors related to a conduct or misconduct in performance of his duty, nor shall a judge allow any of the court staff to do so.

A judge must refrain from any action creating an impression of the existence of corruption in the court.

Dedication – A judge is under duty to put up his effort and use his knowledge to accomplish the best results.

A judge is under duty, in accordance with his potentials and aspirations and apart from performing his judicial functions, to perform other activities that are important for raising reputation of the judges and improvement of the functioning of the court.

Out-of-court activities must not impair his regular and orderly performance of judicial function.

The Code of Ethics specifies the meaning of dedication in the following way:

A judge may perform activities that are not related to the performance of judicial function if they do not affect performance of the judicial function, such as: writing, lecturing and participation in public debates pertaining to law, legal system and functioning of the judiciary; membership in governmental working bodies; participation in scientific, literary and artistic work.

A judge may receive remuneration for out-of-court activities provided such remuneration does not leave impression of influencing a judge in the performance of his judicial duties.

Adherence to the principles of the Code of Ethics: judge is under duty to adhere to the principles of the Code on any occasion and the principles represent way of life of a judge.

The Code of Ethics specifies the meaning of adherence to the principles of the Code of Ethics in the following way:

A judge is under duty to leave an impression of impeccable conduct on any occasion.

A judge shall, apart from personal adherence to the principles of this Code, encourage the others to adhere to them too. A judge has the right and duty to point out to the competent organs the behavior of a judge which is in contravention with this Code.

Violations of the Code to a greater extent constitute a disciplinary offence.

* * *

We especially emphasize that the Government of the Republic of Serbia, as well as the National Assembly and representatives of the judiciary on all levels, having appreciated the overall situation in judiciary, perceived a need for improving the independence of judiciary as a whole, as well as independence of individual judges, which resulted in submitting a Proposal for the amendments of the Constitution of the Republic of Serbia to the National Assembly by the Government on 30 November 2018, in accordance with Article 203 paragraph 1 of the Constitution.

Among the reasons for the submission of this Proposal, the Government, inter alia, stated a need for determination of a clearer relationship between legislature, executive and judiciary, in a sense that a new constitutional solution should recognize that the relationship between the three branches of power are based on mutual checks and balances, rather than control, which is the purpose of the division of powers.

Committee on Constitutional and legislative issues of the National Assembly on its session of 14 June 2019, which was attended by the Minister of Justice, considered the

Proposal for the amendment of the Constitution submitted by the Government, pursuant to the Article 142 of the Rules of the procedure of the National Assembly.

Taking into consideration the parliamentary elections held in 2020 and subsequent constitution of the new National Assembly, it is realistic to expect that in the future period the activities in the procedure for the amendment of the Constitution will be intensified, which will present a starting point for the amendment of the legal frame with a view to securing firm guarantees for the protection and advancement of the independence of judiciary as a whole, as well as independence of individual judges.

ITEM No. 4

4. Please provide detailed information on the guarantees in place to protect and protect the freedom expression and association of judges.

The Constitution of the Republic of Serbia in the Article 46 proclaims the Freedom of thought and expression for everyone:

“The freedom of thought and expression shall be guaranteed, as well as the freedom to seek, receive and impart information and ideas through speech, writing, art or in some other manner.

Freedom of expression may be restricted by the law if necessary to protect rights and reputation of others, to uphold the authority and objectivity of the court and to protect public health, morals of a democratic society and national security of the Republic of Serbia.”

The Law on Judges in the Article 3 named “Preserving Confidence in Independence and Impartiality” prescribes:

“A judge is required to preserve confidence in his/her independence and impartiality at all times.

A judge is required to conduct proceedings impartially, in accordance with his/her own assessment of facts and interpretation of law, ensuring fair trial and compliance with procedural rights of parties guaranteed by the Constitution, the law and international acts.

The law shall set forth the services, engagements and actions that are incompatible with judgeship.

Judges shall adhere at all times to the Code of Ethics issued by the High Judicial Council.

All state bodies and officials are required to preserve, with their actions and behavior, the confidence in independence and impartiality of judges and courts.”

In *Judicial Code of Ethics* issued by the High Judicial Council in 2010, under the principle of independence is defined:

“A judge performs the judicial function independently, without any outside influence, restrictions, persuasion, pressure, threats or interference by anyone.

A judge is independent in relation to the legislative and executive power, the media and other institutions of society, political parties, other judges and in relation to the parties in the proceedings in which he judges.

A judge promotes high standards of judicial conduct and adheres to them in order to maintain and strengthen public confidence in the independence of judges and courts.

The judge defends the independence of the court from political pressures, interventions and influences at every opportunity. A judge shall not take part in public hearings of a political nature, except when the hearing concerns issues concerning the work of the courts and the independence of the judiciary.”

Under the principle of impartiality, among other things, the following is defined:

“In performing his judicial function, a judge, by his conduct in court and out of court, maintains and strengthens the trust of the public and the parties in the procedure in the impartiality of judges and courts.

The judge is obliged to refrain from making statements or comments in public, which could create an impression of bias in the cases in which he acts and disturb the fairness of the trial. The judge is obliged to refrain from giving any information or comments in the media about specific cases that could affect the outcome of the proceedings.”

For the purpose of the establishment of an effective mechanism allowing the Councils to react against political interferences, The High Judicial Council, at the session held on 25 October 2016, adopted amendments to the Rules of Procedure of the High Judicial Council that stipulates the procedures of public reactions of the High Judicial Council in cases of political interference in the judiciary. Also, the State Prosecutorial Council adopted the Regulation on work of the State Prosecutorial Council in March 2017, which established the institute of the Commissioner for autonomy, stipulated that this function will be performed by the Deputy President of State Prosecutorial Council and prescribed the procedure of the State Prosecutorial Council public reactions in cases of political influence to work of public prosecution office, regularly (once in a year) and extraordinary (if needed).

In the Revised Action for Chapter 23 adopted in July 2020 some new activities have been proposed with the aim to improve the existing mechanism for the Councils to react in the event of eventual pressure on the judiciary, but also with the aim to establish an effective follow up of the breaches by members of parliament and government of their duty to refrain from inappropriate public comments. Holding regular quarterly meetings between representatives of ethics committees of the High Judicial Council and State Prosecutorial Council and the representatives of the National Assembly and the Government of the Republic of Serbia is a good way and proper mechanism to promote and raise awareness of public officials and politicians for full respect of court proceedings, judicial decisions and work of courts and PPOs. The joint group composed of the same members will also

prepare quarterly reports on the conclusions and recommendations for future improvements in the area of full respect for judicial independence and autonomy.

Regarding the freedom of expression of parliamentary members, the National Assembly has adopted the *Code of conduct for members of Parliament (MPs) relating to restrictions on commenting on judicial decisions and proceedings* in July 2017.

Under the Article named “The principle of prohibition of influence on the court” is prescribed:

“The Member of Parliament is obliged to respect the authority and impartiality of the court.

A Member of Parliament may not, in public statements and public appearances during the course of criminal proceedings, present ideas, information or opinions which predict the course or outcome of such proceedings or which assess the procedural value of evidence presented or to be presented in such proceedings, in a way that is possible to influence the outcome of criminal proceedings.

The prohibition referred to in paragraph 2 of this Article prevents the intentional or unintentional pressure on the court from denying the defendant the right to a fair and impartial trial.

The prohibition referred to in paragraph 2 of Article does not encroach on the right of the Member of the Parliament to present ideas, information or opinions on the work of courts and other judicial bodies in public statements and public appearances.”

However according to the *Constitution of the Republic of Serbia* the members of Parliament enjoy the immunity. The Article 103 of the Constitution regulates the Immunity of deputies:

“Deputies shall enjoy immunity.

Deputies may not accept criminal or other liability for the expressed opinion or cast vote in performing the deputy's function.”

The Rules of Procedure of the National Assembly (articles 252, 253 and 254) further regulate this issue with more details.

Professional associations of judges and public prosecutors play an important role in protecting the rights, interests and reputation of the judicial profession. Such associations are of the utmost importance in transition countries that are faced with the comprehensive reform of the national judicial system

The Constitution of the Republic of Serbia proclaims the Freedom of association:

“Freedom of political, union and any other form of association shall be guaranteed, as well as the right to stay out of any association.

Associations shall be formed without prior approval and entered in the register kept by a state body, in accordance with the law.

Secret and paramilitary associations shall be prohibited.

Constitutional Court may ban only such associations the activity of which is aimed at violent overthrow of constitutional order, violation of guaranteed human or minority rights, or inciting of racial, national and religious hatred.

Judges of Constitutional Court, judges, public prosecutors, Defender of Citizens, members of police force and military persons may not be members of political parties.”

The Law on Judges explicitly guarantees to judges the right to association.

Article 7 of the Law envisages:

“Judges have the right to associate in professional associations in order to protect their interests and preserve their independence and autonomy in their work.

The right of professional association also implies participation in the activities of professional associations during working hours, provided that this does not interfere with work in court.”

The Code of Ethics provides for the freedom of association of judges to protect their interests and preserve their autonomy and independence, meaning the judge may be a member of professional association or other organizations and may participate in their work, which will represent interests of the judges and protect independence and position of the judicial function in order to protect and advance the reputation of judicial profession.

It is worth noting that there is a pluralism of the professional associations in the justice sector in Serbia (more than 7 active professional associations) which contributes to the reform processes through sharing different views and ideas between judges, public prosecutors and the Government.