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TÍTULO: El Ministerio Público como objeto de la regulación constitucional.

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RESUMEN: El artículo presenta un análisis de las cualidades particulares de la organización y las actividades del Ministerio Público en la República de Serbia después de la reforma, aprobada con la aprobación de la Constitución del año 2006. La principal técnica de la investigación fue el método sistémico, que permitió analizar la posición de la fiscalía en el sistema de aplicación de la ley de la República de Serbia en la etapa actual de su desarrollo. Como parte del estudio de la situación jurídica constitucional de la fiscalía en la República de Serbia, el autor llegó a la conclusión de que este Estado ha creado una base jurídica constitucional fiable para las actividades de la fiscalía.

PALABRAS CLAVES: El sistema de la fiscalía, la Constitución de la República de Serbia de 2006, la constitucionalidad y la legitimidad, la inmunidad y la incompatibilidad de los poderes del fiscal, el Consejo de Fiscales Estatales.

TITLE: Public prosecution service as an object of constitutional regulation.

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ABSTRACT: The article presents an analysis of the particular qualities of the organization and activities of the public prosecution service in the Republic of Serbia after the reform, passed with the adoption of the 2006 Constitution. The main technique of the research was the system method, which allowed analyzing the positioning of the prosecutor's office in the law enforcement system of the Republic of Serbia at the present stage of its development. As a part of the study of the prosecutor's office constitutional-legal status in the Republic of Serbia, the author came to the conclusion that this state has created a reliable constitutional-legal foundation of prosecutorial activities.

KEY WORDS: The prosecution system, the 2006 Constitution of the Republic of Serbia, constitutionality and legitimacy, immunity and incompatibility of powers of the prosecutor, the State Prosecutors Council.

INTRODUCTION.

Various models of the prosecution authorities have emerged with the formation of modern national legal systems across the globe. The features of such models are characterized both by the status of the prosecutor's office and the content of its functions and powers.

The peculiarities of the constitutional-legal regulation of the status of the prosecutor's office are mainly related to the role and place of this authority in the whole mechanism of the state. Thus, all states can be separated into three groups according to this criterion: 1) the states where the prosecutor's office is placed within the Ministry of Justice (USA, France, Poland, Japan, Israel); 2) the states where the prosecutor's office is included in the composition of the judiciary (magistracy) and seats with the courts (Italy, Spain, Colombia, Bulgaria, Latvia), and 3) the states where the prosecutor's office is separated into a discrete independent centralized system and reports to parliament or president (China, Vietnam, Cuba, Russia, Hungary).

The organization and activities of the public prosecution service in the states of the first group are generally not subjected to the constitutional regulation. In the states belonging to the second group, particular constitutional articles devoted to the judiciary also provide for the prosecutor's office. As for the states of the third group, their prosecutor's office has constitutional status, meaning that there is a section in the constitution specifically devoted to the prosecutor's office.

The functions of the prosecutor's office in modern states, as a rule, are reduced to three main ones: 1) criminal prosecution of persons having committed offence; 2) representation of the public prosecution in court; 3) supervision of the legitimacy of the preliminary criminal investigation and monitoring places of detention and deprivation of liberty. Furthermore, the prosecutor's office in the states belonging to the third group, along with the above-mentioned duties is usually assigned the function of supervision over the implementation of laws (the so-called primary supervision), regulating the state bodies (mostly of executive branch), public associations, economic organizations, and various kinds of legal entities and natural persons. The Republic of Serbia could clearly be attributed to the latter group of states with specific features of the prosecution system.

The separate Chapter 9 of Part 5 'Organization of Government' of the 2006 Serbian Constitution is devoted to the public prosecution service. This chapter immediately follows the chapters on the judicial system of the Republic of Serbia, which is quite natural, since the prosecutor's office is functionally related to the judiciary. So, without exercising justice, the prosecutor's office exercises a number of powers directly related to justice.

As professor Marković rightly pointed out, the prosecutor's office initially was an expression of the democratic evolution of the judiciary, since its emergence was due to the fact that the function of criminal prosecution was separated from the function of justice. As a result, the prosecutor's office performs the function of prosecution, and justice is carried out by the court, which naturally

contributes to the objectivity of the judicial process and the creation of the conditions necessary for the judicial authorities to take legitimate decisions.

In accordance with Article 156 of the Constitution of the Republic of Serbia, the prosecutor's office is an independent state body that conducts legal proceedings against persons who have committed criminal acts and other offenses and takes measures to protect constitutionality and legitimacy. Being an independent state body, the prosecutor's office is subjected only to the Constitution and the law. At the same time, Article 45 of the Law on Public Prosecution specifies that the prosecutor is independent in exercising of vested powers from both the legislature and executive branch.

Prosecutors and deputies are obliged to support the confidence of society in their independence by their actions. At the same time, no one outside the structure of the prosecutor's office has the right to influence the activities of the prosecutor and deputy prosecutors or the decisions taken by them; prosecutors and their deputies are obliged to justify their decisions ad hoc only to the competent prosecutor. So, any individually-defined act of the judicial administration that violates the independence of the prosecutor's office is null and void. The invalidity of such an act is approved by the Administrative Court (Art. 44 of the Law on Public Prosecution). In accordance with Part 2 of Article 156 of the Constitution of the Republic of Serbia, the prosecutor's office exercises its powers on the basis of the Constitution, the law, the ratified international treaties and the normative acts adopted on the basis of the law.

DEVELOPMENT.

Methodology.

The object of this study is a set of constitutional-legal relations associated with the public prosecution system in the context of the transformation of the human rights mechanism of the state. The subjects of the study are the rules governing the organization and activities of the prosecution authorities in the Republic of Serbia.

The theoretical basis of the thesis was constituted by fundamental works on the theory of law and constitutional law of leading Serbian and European legal experts. The methodological basis of the study was a set of general and special scientific methods of cognition. The study is based on the method of system analysis, which allowed reviewing the prosecution system as an essential component of the structure of the state mechanism of the Republic of Serbia. In addition, the author used comparative-legal, formal-legal and sociological methods. The source-study base of the research was constituted by regulatory and general acts of the Republic of Serbia, as well as by a number of other European states.

According to Part 1 of Article 157 of the Constitution of the Republic of Serbia, the establishment, arrangement procedures, and competencies of the prosecutor's office are regulated by law. In accordance with Article 13 of the Law on Public Prosecution, the structure of the public prosecution system in the Republic of Serbia consists of the Republican prosecutor's office, appellate prosecutor's office, higher prosecutor's office, main prosecutor's office, and special competence prosecutor's office.

The prosecutor's offices of special competence are the prosecutor's office for organized crime and the prosecutor's office for war crimes. The Republican Public Prosecutors Office is the highest prosecutor's office in the Republic of Serbia (Part 2 of Art. 157 of the Constitution). The Republican and organized crime prosecutor's offices, as well as the prosecutor's office for war crimes, are located in the city of Belgrade.

The establishment, location, and zoning of the appellate, higher and main prosecutor's offices are regulated by a special law. The prosecutor's office may have a special department created to investigate certain crimes in accordance with a special law (Article 13 of the Law on Public Prosecution). In addition, the 2006 Constitution of Serbia provided for the creation of the State Prosecutors Council, the status of which (in addition to the 2006 Constitution) was regulated by a

special Law on the State Prosecutors Council of Serbia of 2008 with amendments and additions of 2010, 2011 and 2015. In accordance with Article 164 of the Constitution of the Republic of Serbia, the State Prosecutors Council is an independent body ensuring and guaranteeing the independence of prosecutors and deputy prosecutors in accordance with the Constitution.

Peculiarities of the status of the public prosecution service in the Republic of Serbia.

According to Part 1 of Article 159 of the Constitution of the Republic of Serbia, the powers of the public prosecution service are exercised by the prosecutor. At the same time, in addition to the prosecutor, the prosecutor's office includes deputy prosecutors and prosecution staff who are subordinated to the prosecutor. Thus, the prosecutor's office is the sole authority. The deputy prosecutor replaces the prosecutor when exercising prosecutorial powers and is obliged to act in accordance with his or her instructions.

The number of deputy prosecutors in a particular office is set by the State Prosecutors Council; the number is also subjected to the prior consent of the Minister of Justice. The staff of the prosecutor's office consists of assistant prosecutors, prosecutors, interns, civil servants, and also employees under the contract, carrying out administrative, technical, accounting, informational and other support for the activities of the prosecutor's office. The assistant prosecutors receive the following ranks: prosecution officer, senior officer, counselor, and senior counselor.

Prosecutor-interns are accepted for an internship only in the main and highest prosecutor's office for three years. Preference is given to candidates who have graduated from law school with top grades, representatives of national minorities, and specialists familiar with the specific legal terminology in the officially used in court language of national minorities. Also, employees of the prosecutor's office without a labor contract include volunteers - certified lawyers who undergo special training in the prosecutor's office in order to gain work experience for passing the bar exam (Article 124 of the Law on Public Prosecution).

As for the general competence, the prosecutor, in the framework of conducting legal proceedings for crimes and economic offenses, acts as a prosecuting official in court and other state bodies, carrying out activities prescribed by law. The prosecutor takes part in civil, administrative, executive and other proceedings while pursuing actions authorized by a special law. At the same time, the prosecutor acts strictly within the limits of subject and territorial competence (Article 26).

Like most other post-socialist states, the prosecutor's office of the Republic of Serbia is a single centralized system with the subordination of lower prosecutors to higher and Republican ones. A higher prosecutor may give the subordinate fellow employee mandatory and direct instructions for conducting the proceedings in a particular case when there are doubts about the efficiency and legitimacy of the prosecutor's actions; the Republican Prosecutor may give such instructions for any prosecutor. Mandatory instruction is issued in writing and must contain the basis and appropriate justification.

Article 19 of the Law on Public Prosecution provides for devolution, i.e. the right of the immediate superior prosecutor to carry out all actions for which the subordinate prosecutor is authorized, but in this case, the superior prosecutor is obliged to take an informed decision on this matter. The subordinate prosecutor may file a complaint to the Republican Prosecutor within eight days from the date of the decision (in presence of a reasonable doubt that the decision of the higher prosecutor is unfounded). At the same time, such complaint is to be filed through the prosecutor who made the contested decision; the latter is obliged to review the issued decision within three days from the date of receiving the complaint.

Before making a decision on a complaint, the subordinate prosecutor is not entitled to take any action on the subject matter of the proceedings. The immediate superior prosecutor may issue a decision on the revision process that cancels his previous decision and in this case, the complaint is not sent

to the Republican Prosecutor. The Republican Prosecutor is obliged to make a decision within 15 days from the date of the adoption of the complaint against the decision.

In addition, Article 20 of the Law on Public Prosecution provides for a substitution, i.e. the right of the immediate superior prosecutor to authorize the subordinate prosecutor to act under the jurisdiction of another subordinate counterpart if the authorized prosecutor due to legal or factual reasons cannot take actions within the framework of the case; in this case the superior prosecutor must take an informed decision. As a contingency measure, the Republican Prosecutor may authorize an organized crime prosecutor to carry out proceedings in a case falling within the competence of another prosecutor for the effective conduct of the proceedings or for other important reasons; in this case, an informed decision also must be taken. The complaint against the decision of the Republican Prosecutor will not be taken under consideration.

In accordance with Article 21 of the same Law, the Republican Prosecutor has the right to check any case under consideration by the prosecutor of any office, and the immediate superior prosecutor has the right to check any case that is under subordinate consideration. The Republican Prosecutor issues in writing general mandatory instructions for the activities of all subordinate prosecutors to ensure legitimacy and efficiency in jurisprudence constante. The Republican Prosecutor may also issue general mandatory instructions at the suggestion of the Republic Public Prosecutor's Office Collegium (Article 25).

The deputy prosecutor is obliged to perform all the actions assigned by the prosecutor; the latter may give mandatory instructions for the implementation of activities and proceedings, however, such instructions should be properly justified in writing. Whether the deputy prosecutor believes that the received instructions are illegal or unreasonable, this official has the right to file a substantial complaint to the superior prosecutor within eight days from the date of issuance of the disputed instruction. At the same time, the complaint is to be filed through the prosecutor who made the

contested decision; the latter is obliged to review the issued decision within three days from the day the complaint was filed.

The prosecutor may issue a decision on the revision process that cancels his previous decision, and in this case, the complaint is not sent to the superior authority. The deputy prosecutor who filed the complaint is obliged to act in accordance with the received instructions before the decision is made by the immediate superior prosecutor. The immediate superior prosecutor is obliged to make a decision within eight days from the date of the acceptance of the complaint about the mandatory instruction, the decision on such complaint is final (Article 23 of the Law on Public Prosecution).

So, with regard to the responsibility of prosecutors, according to Article 160 of the Constitution of the Republic of Serbia, the Republican Prosecutor is accountable for own actions and for the activities of the prosecutor's office before the National Assembly. In addition, as mentioned above, prosecutors are accountable for their actions and for the activities of the prosecutor's office before the Republican Prosecutor and the National Assembly; subordinate prosecutors are also accountable before the immediate superior prosecutor (Article 22). In this regard, professor Marković aptly noted that since the National Assembly is also electing all prosecutors, the public prosecution has a combining responsibility at all levels of the organization (except for the Republican Prosecutor) to the Republican Prosecutor's Office and to the immediate superior prosecutor on the one hand, and the National Assembly on the other.

Deputy prosecutors are accountable for their actions to the prosecutor. In turn, the responsibility of the prosecutor's office to the National Assembly (which elects all the prosecutors) creates the possibility of political (or partisan-ideological) interference in the work of the prosecutor's office; this fact is still subjected to the justified criticism by Serbian experts¹.

¹ Stojanović, D. *Constitutional law (In Serb.) / Niš, 2009:338.*

Procedure for election and termination of powers of the prosecutors and their deputies.

The most important issue of constitutional-legal regulation of the arrangement of the public prosecution system is the procedure for electing and terminating the powers of prosecutors.

With respect to the provisions of paragraph 1 of Article 158 of the Constitution of the Republic of Serbia that the Republican Prosecutor exercises the competence of the prosecutor's office within the framework of the rights and obligations of the Republic of Serbia, the election of the Republican Prosecutor has the most complex procedure. Thus, in accordance with the second part of the above Article of the Constitution, the Republican Prosecutor is elected by the National Assembly at the suggestion by the Government and with the approval of the relevant committee of the National Assembly. This official is elected for a term of six years and may be re-elected; the remaining prosecutors in the Republic of Serbia are elected by the National Assembly on the proposal of the Government for a term of six years, and they also can be re-elected (Pts. 2, 3 of Art. 159 of the Constitution). Thus, the prosecutors' election procedure in Serbia still exhibits a somewhat insignificant difference between the election of the Republican and other prosecutors.

At the same time, the election of a deputy prosecutor falls under a different legal regime. Thus, according to Part 5 of Article 158 of the Constitution, newly elected deputy prosecutor will receive three-year mandate when elected by the National Assembly at the suggestion of the State Prosecutors Council. In the same time, deputy prosecutors for the exercise of authority on a perpetual basis (in the same or another office) are elected by the State Prosecutors Council (Part 8 of Art. 159 of the Constitution). According to Article 74 of the Law on Public Prosecution, the Government proposes one or several candidates to the National Assembly from a list of candidates approved to be elected as a prosecutor. However, if the State Prosecutors Council offers only one candidate, the Government is entitled to return the proposal.

A citizen of the Republic of Serbia, who graduated from law school, passed a special exam and meets the state employment requirements, therefore, considered a worthy person to exercise the powers of the prosecutor, and can be elected prosecutor or deputy prosecutor.

After passing the exam, a certain number of years of experience in the legal profession are required by law, which depends on the type of prosecutor's office. Thus, a four-year experience is required for the election of the chief prosecutor and a three-year one for the election of a deputy principal. Seven-year experience is required for the election of the highest prosecutor and six-year-old for the election of a deputy higher prosecutor. A decade of experience is required to elect an appellate prosecutor and a prosecutor of special competence, and, accordingly, an eight-year one – for their deputies. And, finally, twelve years of experience in the legal field is required for the election of the Republican prosecutor and eleven years for the election of the deputy (Article 77 of the Law on Public Prosecution).

According to Article 78 of the aforementioned Law, the State Prosecutors Council announces the election of prosecutors and deputy prosecutors; the announcement is to be published in the Official Gazette of the Republic of Serbia within 15 days from the nominations. The evidence of conformity to the conditions for election is also presented with the support of such nominations (if candidates were not employed by the prosecutor's office). The State Prosecutors Council summarizes candidates' data and conclusions on professionalism, workplace achievements, and other merits. Data and conclusions are requested from the bodies and legal organizations of previous employment; for more information on the candidate, the State Prosecutors Council may conduct an interview (Article 81).

The State Prosecutors Council draws up a rating list of candidates, compiled on the basis of the professionalism, competence and moral character of each candidate. The list is resting on data from candidates' nominations, as well as proposals and conclusions of the Council. The rating list of

candidates is posted on the Council's website. The criteria and standards for the assessment of professionalism, competence, and moral qualities are also set by the State Prosecutors Council in accordance with the law. Standards of 'professionalism', 'competence' and 'moral qualities' are identical with those used in the election of judges in the Republic of Serbia, while the use of such standards in election procedure refers to prosecutorial experience.

Serbian legislation governing the election of prosecutors and their deputies paid particular attention to the representation of national minorities, with due regard to the fact that any form of discrimination is prohibited when nominating and electing the prosecutors (Part 1 of Article 82 of the Law on Public Prosecution). Thus, according to Part 2 of Article 82 of the same Law, the ethnical composition of the population and corresponding representation of persons belonging to national minorities, as well as the knowledge of professional legal terminology in the language of national minorities are taken into account when selecting and nominating candidates for the positions of prosecutors and deputy prosecutors. Every nomination or proposal that the State Prosecutors Council accepts must be justified.

A public prosecutor and deputy public prosecutor elected for the first time shall take the oath before the Speaker of the National Assembly, prior to taking office. The Republican Prosecutor takes the oath before the National Assembly; the text of the oath reads: 'I swear on my honor that I shall perform the public prosecutorial office with dedication, conscientiously and impartially, and shall protect constitutionality and legality, human rights and civil liberties'.

The prosecutor and the deputy prosecutor are taking office at a ceremonial meeting in the branch of election; entry into office terminates the exercise of their other powers. At the same time, if the prosecutor will not take office within 30 days from the date of election without justified reasons; such official is considered not elected, which is decided by the Republican Prosecutor. However, such a decision of the Republican Prosecutor may be appealed to the State Prosecutors Council

within seven days; the National Assembly shall be notified on the decision of the Republican Prosecutor and the State Prosecutors Council. The decision on the grounds for not taking the office of the Republican Prosecutor is taken by the State Prosecutors Council and may be appealed to the competent committee of the National Assembly as well.

As for the order of termination of powers of the Republican Prosecutor, the prosecutors and the deputy prosecutors, it is due to the procedure for election. Thus, in accordance with Part 4 of Article 158 of the Constitution of the Republic of Serbia, the powers of the Republican Prosecutor are terminated 1) if the prosecutor is not re-elected; 2) in the case of resignation; 3) upon the occurrence of circumstances provided for by law; 4) dismissal from office on the grounds provided by law. The decision to terminate the powers of the Republican Prosecutor is taken by the National Assembly in accordance with the law. The National Assembly accepts this decision at the suggestion of the Government.

According to Part 1 of Article 161 of the Constitution of the Republic of Serbia, the grounds for termination of powers of the prosecutor or the deputy prosecutor are as follows: 1) the resignation letter; 2) the occurrence of the circumstances provided by law; 3) the dismissal on the grounds provided by law. The fact that the establishment of grounds for termination and dismissal of a prosecutor is subjected to the regulation of the law has become the subject of justifiable criticism of Serbian constitutionalists. In particular, it is being noted that ensuring the principle of independence in the activities of prosecutors is thus weakened.

The decision to terminate the powers of the prosecutor is taken by the National Assembly in accordance with the law; the decision on dismissal is taken at the suggestion of the Government, which makes a proposal for dismissal of a prosecutor in accordance with the grounds approved by the State Prosecutors Council. The latter also issues the executive order of the termination of powers of the deputy prosecutor in accordance with the law.

Thus, according to Part 5 of Article 161 of the Constitution, the procedure, the grounds, and the conditions for termination of the powers of the prosecutor and the deputy prosecutor are established by law. According to Part 1 of Article 87 of the Law on Public Prosecution, the powers of the prosecutor and the deputy prosecutor are terminated in the following cases: 1) by resign; 2) upon reaching the retirement age; 3) in case of permanent disability; 4) in case of dismissal. Also, the powers of the prosecutor are terminated if this official is not re-elected, and the powers of the deputy prosecutor - if not elected on a perpetual basis.

According to Part 4 of Article 161 of the Constitution of the Republic of Serbia, the prosecutor and, respectively, the deputy prosecutor has the right to file a complaint against the decisions of the National Assembly and State Prosecutors Council on the termination of powers to the Constitutional Court within 30 days after such a decision was taken. In this case, the complaint itself excludes the right to file a constitutional claim. The Constitutional Court by its decision may reject or satisfy the complaint and cancel the decision on termination of powers; the decision of the Constitutional Court is final².

In the case of resignation, the prosecutor dispatches a written statement on the termination by own will to the National Assembly (with the mandatory notification of the State Prosecutors Council); the deputy prosecutor files the resignation directly with the State Prosecutors Council. The application may be withdrawn until the relevant decision on termination of powers is taken by the National Assembly and, respectively, by the State Prosecutors Council. If the decision on the termination of authority is not resolved within 30 days, it is considered that the powers of the prosecutor and, respectively, the deputy prosecutor ceased to expire 30 days from the date of

² Noteworthy that unelected deputy prosecutors sent complaints to the Constitutional Court on the termination of their powers in 2009 when the general elections of deputy prosecutors were held by the State Prosecutors Council. The Constitutional Court revoked the general resolution of the Council on the termination of powers of deputy prosecutors by its decisions VIII-421/2011, later same was adjudged in regard to all individual decisions.

submission of the application (Article 88 of the Law on Public Prosecution). As for the achievement of the retirement age as the basis for termination of office, in accordance with Article 89 of the above Law, the prosecutor and the deputy prosecutor retire upon reaching the age of sixty-five or forty years of government experience.

The prosecutor, as well as the deputy prosecutor reaching the retirement age, may be granted the right to continue to exercise the authority only to complete the proceedings of the initiated cases. Yet, as an exception, the State Council may extend the term of execution of prosecutorial powers for another two years, with the consent of the immediate prosecutor and, respectively, the deputy prosecutor, at the request of the Republican Prosecutor.

The state of permanent loss of labor capacity (which is also the basis for termination of official powers) by the prosecutor, and respectively, the deputy prosecutor, is established on the basis of the conclusion of a special commission of the authorized body; such a conclusion should specify that the particular person is unable to exercise prosecutorial powers due to the state of health. The decision on compulsory medical examination is taken by the State Prosecutors Council upon the proposal of the immediate superior prosecutor or the prosecutor himself or, respectively, the deputy prosecutor.

The State Prosecutors Council conducts a procedure for approving the presence of grounds for termination of the powers of the prosecutor whether it was caused by resignation, reaching retirement age or in the case of permanent disability. The Council decides on the approved grounds and directs its verdict to the National Assembly to make a final decision. The approval of the presence of the grounds for the termination of the deputy prosecutor powers at the request for resignation, upon reaching retirement age or in the case of permanent disability is also carried out by the State Prosecutors Council and that makes a final decision containing the grounds for termination of powers and the official date of such act.

As for the dismissal of the prosecutor and the deputy prosecutor, according to Article 92 of the Law on Public Prosecution, the following cases are justified to initiate this procedure: 1) if the prosecutor or the deputy prosecutor has been convicted of a crime to imprisonment for at least six months and the sentence has entered into force; 2) if such officials have been convicted of an offense that makes them unworthy to exercise prosecutorial powers and the sentence has entered into force; 3) if the vested powers were exercised unprofessionally; 4) if committed a serious disciplinary offense.

Article 93 of the Law on Public Prosecution under ‘non-professional’ is considering ‘insufficiently successful implementation of prosecutorial powers, if the prosecutor or, respectively, the deputy prosecutor has been rated ‘unsatisfactory’ in accordance with the criteria and standards for evaluating the activities of prosecutors and deputy prosecutors’.

Any legal person may initiate the dismissal; the very process of dismissal may proceed by the proposal of the prosecutor, the immediate superior prosecutor, the Republican prosecutor, bodies authorized to assess the activities, and the Disciplinary Commission. In addition, such a procedure may also well be initiated by the State Prosecutors Council. As for the rights of the prosecutor or respectively, the deputy prosecutor in the proceedings for dismissal, they have the right to be immediately informed on the grounds for commencement of the proceedings in order to be familiar with the subject, the accompanying documentation and the progress of the proceedings, or to provide explanations and evidence of arguments, which they are also entitled to present verbally and directly to the State Prosecutors Council (Article 97).

The State Prosecutors Council approves the presence of grounds for dismissal; the Council carries out the approval on the grounds and the decision in non-public session. The Council is obliged to carry out the proceedings and make an informed decision within 45 days from the date of receipt of the action initiating the proceedings. The prosecutor or, respectively, the deputy prosecutor has the right to appeal the above-mentioned decision of the Council within 15 days from the date of the

decision; the appeal is to be directed to the very same State Prosecutors Council. However, the latter has the right to reject the complaint (if it not submitted within the specified period) or to satisfy the complaint and change the decision or reject the complaint and confirm the decision. A decision asserting grounds for dismissal shall enter into force after being confirmed during the complaint proceedings (or after expiration if the decision has not been appealed); the decision that has entered into force is sent to the Government.

The final decision on the termination of powers of prosecutors is taken by the National Assembly by a majority vote of the people's deputies on the proposal of the Government; the latter makes the proposal being guided by the grounds approved by the State Prosecutors Council, given that the final decision on the termination of the deputy prosecutor powers is taken by the same Council. Prosecutorial powers are terminated on the day indicated by the decision of the National Assembly and, respectively, the State Prosecutors Council. The decision on the termination of prosecutorial powers is published in the Official Gazette of the Republic of Serbia.

According to Part 4 of Article 161 of the Constitution of the Republic of Serbia, the prosecutor or, respectively, the deputy prosecutor has the right to file a complaint against the decision of the National Assembly and, respectively, the State Prosecutors Council on the termination of powers to the Constitutional Court within 30 days. The Constitutional Court in its decision may reject or satisfy the complaint and cancel the decision on termination of powers; the decision of the Constitutional Court is final.

Operating policies of public prosecution officers.

The 2006 Constitution settled two major principles referring to the definition of the status of prosecutors: the prosecutorial immunity and incompatibility of prosecutorial powers. Prosecutorial immunity is aimed at protecting the independence of the institution of the prosecutor's office; it includes two types of guarantees: substantive and procedural. In the fair opinion of professor

Pajvančić, the substantive and procedural immunity of prosecutors and their deputies is guaranteed to the same extent and content as the common judicial immunity in the Republic of Serbia³. So, the substantive immunity is related to the fact that the prosecutor and the deputy prosecutor cannot be held liable for the expressed opinion in the exercise of prosecutorial powers, with exception of criminal cases involving a violation of the law by the prosecutor or, respectively, the deputy prosecutor.

Procedural immunity ensures that the prosecutor or, respectively, the deputy prosecutor, cannot be deprived of liberty in the process instituted for committing a crime committed while exercising prosecutorial powers without the approval of the competent committee of the National Assembly (Article 162 of the Constitution). Overcoming this obstacle is entrusted to the internal working group of the National Assembly, thus breaking the rule that the National Assembly, in accordance with the principle of collegiality, takes all its decisions in plenary meetings, and its internal working groups do not have independent competence, being subsidiary working bodies of the National Assembly complementing exercise of its constitutional powers.

The incompatibility of powers of prosecutors and their deputies with the implementation of other activities and private interests is regulated both by a general constitutional norm prohibiting a conflict of interest (Article 6) and by special constitutional norms prohibiting the political activities of prosecutors (Article 163), and the Law is prescribed to regulate in detail the activities incompatible with the prosecution. Also, as it was rightly observed by professor Pajvančić, the most consistent and systematic ban on the political activities of prosecutors was set out in the Chapter of the 2006 Constitution on rights and freedoms, which clearly stated that prosecutors cannot be members of political parties⁴.

³ Pajvančić, M. *Constitutional law (In Serb.) / Novi Sad, 2014:264.*

⁴ Pajvančić, M. *Constitutional law (In Serb.) / Novi Sad, 2014:264.*

Thus, the incompatibility of prosecutorial powers includes a ban on the political activities of prosecutors and deputy prosecutors, as well as a ban on the implementation of other activities and the combination of prosecutorial activities with private interests described by law as incompatible with the exercise of prosecutorial powers.

The Law on Public Prosecution provides that ‘the prosecutors and the deputy prosecutors cannot assume the positions in legislative and executive bodies, public services, autonomy, and local self-government bodies, be members of a political party, engage in public or privately paid activities, provide legal services or give legal advice for an additional fee (Part 1 of Article 65). Any authorities, activities and private interests that are harmful to the independence of the prosecutor's office are incompatible with the exercise of prosecutorial powers. At the same time, the State Prosecutors Council is entitled to establish other powers and decide on activities that violate independence and harm the authority of the prosecutor’s office. The prosecutor is obliged to notify the immediate superior prosecutor of other powers, activities or private interests, and the Republican prosecutor does the same to the State Council. However, the prosecutor and the deputy prosecutor have the right to engage (off duty and without special approval) in teaching and research activities, including on a paid basis, and to carry out research and teaching activities during working hours in cases provided for by law.

In accordance with Article 67 of the Law on Public Prosecution, the prosecutor is obliged to initiate a decision-making proceedings on the incompatibility of powers of the subordinate prosecutor or deputy prosecutor to the Republican prosecutor if the prosecutor acquires information and as a result of its research concludes that other activities, private interests or powers exercised by the subordinate prosecutor or deputy prosecutor are incompatible with the exercise of prosecutorial powers. If this

establishes the absence of grounds for dismissing the prosecutor, the latter may be brought to disciplinary responsibility⁵.

State prosecutor's council as a constitutional body of the Republic of Serbia.

One of the most significant innovations of the Constitution in the framework of the reform of the prosecution system was the inclusion in its structure of a new key element, namely, the State Prosecutors Council. In addition to the 2006 Constitution, the status of this constitutional body is also regulated by a special Law on State Prosecutors Council of 2008 with amendments and additions of 2010, 2011 and 2015.

Thus, in accordance with Article 164 of the Constitution of the Republic of Serbia, the State Prosecutors Council is an independent body that ensures and guarantees the independence of prosecutors and deputy prosecutors in accordance with the Constitution. The Council cooperates within its powers with the High Judicial Council, government and other bodies and organizations, as well as with the prosecutorial councils of other states and international organizations.

The most important condition for the independence of the State Prosecutors Council is the financial independence of this body. The funds ensuring the activities of the Council are laid in the budget of the Republic of Serbia at the proposal of the State Prosecutors Council as a separate line; the Council is entitled to dispose of these funds in accordance with the law (Article 3 of the Law on State Prosecutors Council). The seat of the State Prosecutors Council is the capital of Serbia, Belgrade.

As for the composition and structure of the State Prosecutors Council, in the fair opinion of professor Marković, it recalls the model of the High Judicial Council.⁶ It consists of 11 members: the Republican Prosecutor, the Minister of Justice and the Chairman of the relevant committee of the

⁵ A similar procedure is initiated and implemented by the State Prosecutors Council regarding the powers, activities and private interests of the Republican Prosecutor.

⁶ Marković, R. Constitutional law (In Serb.) / Belgrade, 2014:535.

National Assembly as members by virtue of their position; and eight members elected by the National Assembly in accordance with the law. Of the eight elected members, six are prosecutors or deputy prosecutors exercising their powers on a perpetual basis, of which at least one is from the territory of an autonomous region and two are ‘well-known and distinguished’ legal experts with at least 15 years of professional experience, another one is a member of the bar, and the last is a professor at the Faculty of Law (Parts 2, 3, 4 of Art. 164 of the Constitution).

The Republican Prosecutor, being the chairman of the State Prosecutors Council by virtue of this position, represents and leads the Council and exercises other powers in accordance with the law. In the absence or inability to exercise the powers of the Chairman of the Council, the powers of this official are exercised by the Deputy Chairman of the State Prosecutors Council elected from among the prosecutors and deputy prosecutors (but only from elected members of the Council). The procedure for electing a deputy and the term of office are governed by the Regulations of the Council (Art. 7 of the Law on State Prosecutors Council).

According to Part 6 of Article 164 of the 2006 Constitution, a member of the State Prosecutors Council enjoys the same immunity as the prosecutor. As per professor Pajvančić, this guarantee of immunity actually covers only two of the members of this body, elected from among legal counselors and professors of law faculties, since eight other members already have prosecutor's immunity, and the Minister of Justice and the Chairman of the relevant Committee of the National Assembly have respectively, the immunity of the Minister and People's Deputy⁷. The decision on immunity of a member of the State Prosecutors Council, as well as on the immunity of prosecutors and deputy prosecutors, is made by the relevant committee of the National Assembly. Thus, a member of the Council is not accountable for the opinion expressed or voting in the decision-making process of the State Prosecutors Council (substantive immunity). Also, the same member cannot be deprived of

⁷ Pajvančić, M. *Commentary on the Constitution of the Republic of Serbia (In Serb.)* / KAS Belgrade, 2009:206.

liberty by a court decision for a crime committed while performing the duties of a member of the National Assembly, without the consent of the relevant committee of the National Assembly (procedural immunity).

The amendment to the Law on State Prosecutors Council incorporated the institution of the suspension of the powers of a member of the Council. Thus, the powers of a member of the State Prosecutors Council may be suspended in the case of member's detention. In addition, the powers of an elected member of the Council are to be suspended if the dismissal proceedings are initiated for this member or, respectively if a criminal case has been initiated for a crime involving the dismissal of a member of the State Prosecutors Council.

The decision to suspend authority is taken by the chairman of the Council; the powers of a member of the Council are suspended until the end of the proceedings for dismissal or the end of proceedings related to the crime, the commission of which provides for the dismissal of a member of the State Prosecutors Council. At the same time, an elected member shall have the right to appeal against the decision on the suspension of powers within eight days from the date of receipt of the decision. The State Prosecutors Council decides on the complaint within eight days from the date of receipt of the complaint. Filing a complaint does not suspend the execution of the appealed decision (Article 9 (c) of the Law on State Prosecutors Council).

The member of the State Prosecutors Council elected from among legal counselors and law academicians after taking office may not exercise authority in the framework of lawmaking bodies, executive bodies, public services, and regional autonomy or local self-government bodies. The member of the Council elected from among the deputy prosecutors may be exempted from the powers of the deputy prosecutor in the exercise of powers in the Council in accordance with the decision of the State Prosecutors Council.

The issue of procedure for electing a member of the Council is regulated in detail by the Law on State Prosecutors Council. Thus, according to Article 20 of the Law, the members of the Council are elected by the National Assembly on the proposal of authorized entities; such entities include the State Council for the election from among the prosecutors and deputy prosecutors (the Council must present the candidates directly elected by the prosecutors and deputy prosecutors to the National Assembly in a manner prescribed by law); the Serbian Bar Association proposes candidates for the State Council from among legal counselors; and a joint meeting of deans of law faculties in the Republic of Serbia nominates candidates from among professors and academicians of law faculties. Authorized entities must submit particular candidates for election as members of the State Council to the National Assembly of the Republic of Serbia no later than 90 days before the expiration of the term of office of elected members of the Council.

Elected members of the State Prosecutors Council from among the prosecutors and deputy prosecutors represent the following composition:

- One candidate from the Republican prosecutor's office.
- One by one from the appellate prosecutor's office, the prosecutor's office for organized crime and the prosecutor's office for war crimes.
- One candidate from the highest prosecutor's offices.
- Two from the main prosecutor's offices.
- One from the autonomous region prosecutor's office.

Any prosecutor and any deputy prosecutor exercising authority on a perpetual basis can be a candidate for the State Council. The status of the candidate is acquired by the prosecutor or the deputy prosecutor willing to be proposed by the board of one or several prosecutor's offices, in accordance with the type and level of the prosecutor's office and, respectively, the board of prosecutors of the autonomous region, where the candidate exercises prosecutorial powers; same

candidate status may be acquired by the prosecutor or deputy prosecutor who was supported by at least 15 prosecutors and deputy prosecutors of the appropriate type and level of the office where the candidate exercises prosecutorial powers, as well as the prosecutor or deputy prosecutor of the autonomous region, whose candidacy also was supported by at least 15 prosecutors and deputies of the autonomous region. Every board of prosecutors may propose only one candidate (Part 2 of Article 23 of the Law on State Prosecutors Council).

Prosecutors and deputy prosecutors are electing members to the State Prosecutors Council on the basis of free, universal, equal and direct suffrage by secret ballot. No one has the right under any circumstances to impede or force the prosecutor or, respectively, the deputy prosecutor to vote or hold accountable for voting. All prosecutors and deputy prosecutors who exercise their powers on a perpetual basis have the right to elect candidates to the Council. The prosecutor and the deputy prosecutor vote only for candidates proposed by the prosecutor's offices of the same type and level (Article 24).

The State Prosecutors Council nominates the only candidate received the highest number of votes from each list from the respective prosecutor's offices, except for the main prosecutor's offices, from which the Council nominates the two candidates with the highest number of votes (Article 35).

The procedure for the selection of candidates to the State Prosecutors Council from among legal counselors is organized and implemented by the Serbian Bar in a way to ensure the widest possible representation of its members. The nomination process is conducted in the manner and within the time limits established by the Serbian Bar Association; the latter also nominates one or more candidates to the National Assembly.

As for the proposal of candidates for election from among the academicians, their nomination is carried out in the manner determined by the act of the joint meeting of deans of law faculties in the Republic of Serbia. Based on the decision of such meeting, the dean of the oldest law faculty in the

Republic of Serbia proposes candidates for election to the State Prosecutors Council from among professors of law faculties to the National Assembly.

As stated above, the members of the State Prosecutors Council are elected by the National Assembly on the proposal of authorized entities. The National Assembly elects two members to the Council from the list proposed by the main prosecutor's offices, and by one from the lists of each other prosecutor's office. If a person elected as a member of the Council does not take office within 30 days from the date of election by the National Assembly without good reason, then this person is considered not elected. The reasons for the refusal are to be approved by the decision of the Council; the latter is also obliged to notify the National Assembly. In this case, the Council organizes rerun of the ballot to elect another member instead of a non-acting or repudiated candidate within 60 days (Article 38 of the Law on State Prosecutors Council).

According to Part 5 of Article 164 of the 2006 Constitution, the mandate of the members of the State Prosecutors Council lasts five years, with the exception of members by virtue of their position. Elected members of the Council may be re-elected (but not consecutively); the prosecutor and deputy prosecutor cannot be elected to another prosecutor's office being members Council at the same time. The most important question regarding the status of a member of the State Prosecutors Council is the basis and procedure for termination of powers. The powers of members of the Council by virtue of their positions are terminated in the case of termination of powers based on which they become acting members, while the powers of the elected members are terminated in the following cases: 1) permanent disability; 2) resignation from the official post; 3) expiration of the term of office; 4) dismissal. The powers of the elected members are also terminated if they lose the status on the basis of which they were elected, namely: members from among the prosecutors and deputy prosecutors with the termination of powers of the prosecutor and deputy prosecutor; a member from among legal counselors ceases the exercise of powers of the Council member being excluded from the register of

attorneys; and member from among the academicians ceases to exercise the powers by the loss of the title of professor of law.

An elected member of the State Prosecutors Council shall be dismissed before the expiration of the term in the following cases: 1) if the elected member does not exercise the powers of a member in accordance with the Constitution and the law; 2) if convicted of a crime punishable by imprisonment; 3) if convicted of a crime the commission of which makes this person unworthy to exercise the powers of a member of the Council.

The initiative to dismiss an elected member of the State Prosecutors Council may be submitted by any member of the named Council. In addition, the initiative to dismiss a member elected from among the prosecutors and deputy prosecutors can be submitted by any prosecutor in accordance with the decision of the board of the relevant prosecutor's office. The initiative to dismiss a member elected from among legal counselors and law academicians can be submitted by their authorized subjects.

The State Prosecutors Council assesses the likelihood of the reasons that were the grounds for submitting the initiative for dismissal within a reasonable time after receiving the immediate initiative. If the Council considers that the reasons for dismissal do not seem likely, it will notify the applicant that the initiative has not been accepted (Article 43).

If however, the State Prosecutors Council accepts the initiative, then in this case, before making a decision to initiate the dismissal procedure, the Council provides an alleged member (whose dismissal was initiated) with an opportunity to give own explanation regarding the arguments set forth in the initiative.

The decision to initiate the dismissal procedure is taken by the State Prosecutors Council within 15 days from the receipt of the immediate initiative. An alleged elected member is given the opportunity to provide explanations on all matters relevant to the decision on dismissal. The Council considers

the proposal on dismissal within 30 days from the moment of commencement of the proceedings; the final decision on dismissal is taken by the National Assembly (Art. 46). An alleged member of the Council does not participate in the decision to make a corresponding proposal to the National Assembly.

As for the competence of the State Prosecutors Council, in accordance with Article 165 of the Constitution of the Republic of Serbia, the Council proposes candidates elected for the first time as deputy prosecutors to the National Assembly, elects deputy prosecutors to exercise the powers of the deputy prosecutor on a perpetual basis in accordance with a procedure prescribed by the Constitution and law, as well as carries out other activities prescribed by law.

Professor Marković aptly noted that this body mainly decides on the status of deputy prosecutors, in view of what follows of Article 165 of the Constitution (which establishes competence). In addition, in accordance with Part 3 of Article 172 of the Constitution of the Republic of Serbia, five out of fifteen judges of Serbian Constitutional Court are appointed by the plenary assembly of the Supreme Court of Cassation from among 10 candidates proposed at a joint meeting of the High Judicial Council and the State Prosecutors Council⁸. This authority of the Council is still the subject of well-deserved criticism from the Serbian constitutionalists⁹.

In the fair opinion of professor Pajvančić, the powers of the State Prosecutors Council provided for by the 2006 Constitution were not established sufficiently fully and in detail, given its status as a

⁸ Polovchenko, K.A. Theory and practice of formation of constitutional control body: experience of Serbia // Socio-political sciences, № 1:97.

⁹ Thus, professor Marković, analyzing the role of the State Prosecutors Council in the process of nominating five candidates for appointment as judge of the Constitutional Court by the plenary assembly of the Supreme Court of Cassation, considers it 'absolutely unnecessary'. This refers to the fact that the prosecutor's office in accordance with the Constitution of the Republic of Serbia is 'organizationally and functionally separated from the courts and does not belong to the judicial branch of government, and is rather perceived as part of the executive branch ..., its role in appointing judges to the Constitutional Court only undermines the purity the principle that judges of the Constitutional Court are elected (appointed) in each of the three branches of government and in equal numbers'. See: Marković, R. Constitutional law (In Serb.) / Belgrade, 2014:177.

body of prosecutorial self-government¹⁰. However, with the adoption of the Law on State Prosecutors Council, this problem was resolved, and the powers of the National Assembly were significantly expanded. The Council was granted a number of powers, which can be divided into several groups. Thus, in the organizational sphere, the State Prosecutors Council has the right to initiate the procedure for dismissal of the prosecutor or deputy prosecutor, as well as to assert the presence of grounds for dismissal of the prosecutor or, respectively, of the deputy prosecutor¹¹.

In the sphere of financial support for the activities of the prosecutor's office, the Council proposes the amount and structure of budget funds necessary for the implementation of the activities of prosecutors (with respect to the current expenses), and also monitors the spending of funds in accordance with the law. In the sphere of supervision of prosecutorial activities, the Council accepts the Rules of procedure on criteria and standards for the evaluation of the activities of prosecutors and deputy prosecutors; decides on the procedure for legal protection in regard to the decision on the evaluation of the activities of the prosecutors and the deputy prosecutors; keeps personal file records of each prosecutor, deputy prosecutor and prosecution officer; appoints and dismisses the Disciplinary Prosecutor and his deputies and members of the Disciplinary Commission and their deputies; makes decisions on legal means within the framework of disciplinary proceedings; establishes powers, activities or private interests that contradict the maintenance of the authority and independence of the prosecution; and adopts ethical code.

In the sphere of training and professional development, the Council offers a program of retraining of prosecutors and deputy prosecutors exercising their powers on a perpetual basis, and also determines the content of the program of training of newly elected deputy prosecutors and assistant

¹⁰ Pajvančić, M. *Commentary on the Constitution of the Republic of Serbia (In Serb.)* / KAS Belgrade, 2009:208.

¹¹ The prosecutor and, respectively, the deputy prosecutor have the right to file a complaint against the decision of the State Prosecutors Council on the approval of the grounds for dismissal to the very same Council within 15 days after the date of a claim. The decision of the Council, asserting the presence of grounds for dismissal, shall enter into force after the confirmation in the complaint proceedings or after the expiration of the filing period if the complaint has not been filed.

prosecutors in accordance with the law. In the sphere of justice reform, the Council carries out activities related to the implementation of the National Judicial Reform Strategy; expresses opinions on amendments to existing or adoption of new laws governing the status and activities of prosecutors and deputy prosecutors and the arrangement procedures of the prosecutor's office, as well as on the other laws applied by the prosecutor's office.

As an instance of appeal, the Council takes decisions on complaints against decisions to terminate the powers of prosecutors and deputy prosecutors; decides on complaints under the procedure for electing members of the Council from among prosecutors and deputy prosecutors. The Council also exercises other powers prescribed by the law (Article 13 of the Law on State Prosecutors Council). Prosecutors' offices and other state bodies (as well as immediate prosecutors and deputies) are required, upon request of the Council, to provide information, documents and other data necessary for the exercise of the powers of the State Prosecutors Council (Article 8).

As for the order of activities of the Council, its foundations are established in the Law on State Prosecutors Council. Thus, the meetings of the Council are convened by the Chairman following own initiative or at the request of at least three members of the State Prosecutors Council. All sessions are of open nature, however, the Council may decide to hold a meeting closed to the public if it is in the interests of public order or due to the protection of confidentiality of information, as well as in cases provided for by the Regulations of this body. The quorum for a meeting of the State Prosecutors Council comprises six members.

The permanent working bodies of the State Prosecutors Council are the election commission¹² and disciplinary bodies. The composition and procedure of the activities of permanently working bodies are regulated by a special act of the State Prosecutors Council. At the same time, the Council may

¹² **The election commission organizes and conducts the procedure for electing candidates for elected positions in the State Prosecutors Council from among prosecutors and deputy prosecutors.**

create temporary working bodies in order to resolve certain issues within its competence. The corresponding Regulations are governing the arrangement procedures and activities in more detail, as well as the composition of temporary working bodies (Article 16).

The Council adopts its Regulations for the decision-making procedure and other activities; decisions of the Council are made by a majority vote of the total number of members. Decisions should contain a justification, especially in cases if they can be challenged in the prescribed manner or if it is provided for by the law and the Regulations of the Council. The Regulations and other general acts of the Council are published in the Official Gazette of the Republic of Serbia and on the website of the State Prosecutors Council. The public disclosure of the activities of the Council is also manifested in the fact that the latter regularly inform the public on its activities in the manner prescribed by the Regulations. In addition, the Council also submits an annual report on its activities to the National Assembly (Part 1 of Article 19 of the Law on State Prosecutors Council). The annual report is published on the website of the State Prosecutors Council¹³.

Summing up the analysis of the status of the State Prosecutors Council, it should be noted that with its establishment the Council assumed a number of functions previously performed by the High Judicial Council; as it was rightly pointed out by Serbian constitutionalists, the current role of the State Prosecutors Council in the public prosecution corresponds in many respects to the role of the High Judicial Council in the Serbian judicial system as well¹⁴.

¹³ In this regard, professor Marković observed that, in accordance with the 2006 Constitution, while ensuring the independence of prosecutors and deputy prosecutors, the very independence of the State Prosecutors Council remains questionable, because, firstly, its members are elected by the National Assembly (Serbian Parliament), and secondly, the State Prosecutors Council is obliged, in accordance with the Law on Public Prosecution, to submit an annual report on its activities to the very same authority. See: Marković, R. Constitutional law (In Serb.) / Belgrade, 2014:535.

¹⁴ Pajvančić, M. Commentary on the Constitution of the Republic of Serbia (In Serb.) / KAS Belgrade, 2009:206.

CONCLUSIONS.

Thus, the constitutional-legal analysis of the organization of the public prosecution system in the Republic of Serbia suggests that this state has created a reliable constitutional-legal foundation of prosecutorial activities.

The public prosecution is recognized as one of the most important bodies of the state, representing an institutionally independent centralized system of bodies headed by the Republican Prosecutor; the public prosecution is organizationally and functionally separated from both the judiciary and executive branches. Furthermore, being an independent state body, the Serbian Republic Public Prosecutors Office not only conducts legal proceedings against the people committed criminal acts and some other types of offenses, but also takes measures to protect the constitutionality and legitimacy.

A number of promising innovations of the Serbian constitutional legislation on this issue should be mentioned in regard to the procedure for electing and terminating the powers of prosecutors and their deputies in the Republic of Serbia. This refers, in particular, to the fact that the ethnic composition of the state is well taken into account when selecting candidates for the post of prosecutors and deputy prosecutors.

Certain issues associated with the regulation and implementation of procedures for the election and termination of prosecutors' powers cause fair criticism of the Serbian constitutionalists. These include the fact that the National Assembly is assigned the main role not only in electing and terminating the powers of all prosecutors in the Republic of Serbia but also in establishing the grounds for termination and dismissal of the prosecutors (by adopting a corresponding statute), and it should be borne in mind that prosecutors are accountable to the National Assembly; all of that creates the possibility of excessive political influence of the leading political parties on the prosecutorial activities in this parliamentary state. At the same time, an important step aimed at

ensuring the independent status of prosecutorial authorities in the Republic of Serbia was the introduction of a new constitutional body of the State Prosecutors Council, which is a body of prosecutorial self-government vested with sufficiently broad powers, covering training, professional development, and supervision and, more importantly, active participation in the implementation of the National Judicial Reform Strategy in the Republic of Serbia.

BIBLIOGRAPHIC REFERENCES.

1. The 2006 Constitution of the Republic of Serbia / 'Službeni glasnik' Official Gazette of the Republic of Serbia 98/06.
2. The Law on the Public Prosecutor's Office / Official Gazette RS 116/2008, 104/2009, 101/2010, 38/12 (Const. Court des.), 121/12, 101/13, 111/14 (Const. Court des.), 117/14.
3. The Law on the State Prosecutorial Council / Official Gazette RS 116/2008, 101/2010. 88/11.
4. The Law on National Assembly / Official Gazette RS 9/10.
5. Rules of Procedure of the National Assembly of the Republic of Serbia / Official Gazette RS 52/10, 13/11, 20/12.
6. The Law on High Judicial Council / Official Gazette RS 116/08, 101/10, 88/11, 54/12 (Const. Court des.).
7. Dodonov V.N., Krutskikh V.E. (2001). Public prosecution service in Russia and abroad (In Russ.) / Moscow: 'Norma' publishing house.
8. Marković, R. (2007). Constitution of the Republic of Serbia since 2006: Critical view; Marković, R. Constitution of the Republic of Serbia since 2006: some elements of the new political system (In Serb) / Belgrade.
9. Marković, R. (2014). Constitutional law (In Serb.) / Belgrade.
10. Marković, R. (1973). The beginning of a constitutional dispute on the constitutionality of normative acts (In Serb.) / Belgrade.

11. Mukhamedzhanov, E. (2003). British-style Prosecutor's office (In Russ.) // *Femida Science*, 2003; № 6.
12. Pajvančić M. (2009). *Komentar Ustava Republike Srbije* [Pajvančić, M. Commentary on the Constitution of the Republic of Serbia] (In Serb.) / KAS Belgrade.
13. Pajvančić, M. (2014). *Constitutional law* (In Serb.) / Novi Sad.
14. Pajvančić, M. (2011). On judicial power in the constitutional system of Serbia in the context of international standards (In Serb.) / *Proceedings of the Law Faculty in Novi Sad*, 3/2011.
15. Pavlov E.Y., Shashkova A.V., Kremyanskaya E.A., Leibo Y.I., Polovchenko K.A. (2018). Constitutional and legal mechanism of conducting foreign policy of the Czech Republic. *Opción*, Año 34, Especial No.14.
16. Petrov, V. (2011). "National Machine" before the Constitutional Court – fictitious jurisdiction and fictitious decision (In Serb.) / *Hereticus*, 3-4/2011.
17. Polovchenko, K.A. (2015). *Konstitucionnyi kontrol' v respublike Srbija* [Constitutional control in the Republic of Serbia] / *Konstitucionnyi kontrolo' v zarubezhnyh stranah* [Constitutional control in foreign countries]. - MGIMO-University.
18. Polovchenko, K.A. (2017). The constitutional basics of the judicial power in the Republic of Serbia // *Socio-political sciences*, №2:125-129.
19. Polovchenko, K.A. (2017). The constitutional court as a defender of state integrity of the republic of serbia / *Problems of economics and legal practice*, №2:97-101.
20. *The Prosecutor's office in the constitutional state. Proceedings of the multilateral meeting.* Moscow, 1997.
21. *Legality control by procuracy: textbook* / Eds O. Kapinus, A. Vinokourov (In Russ.) // Moscow: Yurait, 2013.

22. The legal mechanism of state control and supervision: features of industry regulation: monograph (In Russ.) / Ed. Prof. O.Y. Bakayeva // Moscow: Yurlitinform, 2013.
23. Ryabtsev, V.P. (2013). The functional content of the constitutional status of the prosecutor's office [Funkcional'noe sodержaniye konstitucionnogo statusa prokuratury] (In Russ.) / Vestnik Akademii General'noi prokuratury Rossiiskoi Federatsii [Bulletin of the Academy of the Prosecutor General of the Russian Federation], № 5.
24. Stojanović, D. (2014). Constitutional law (In Serb.) / Niš.
25. Tumanov V.A., Polovchenko K.A. (2016). Konstitucionnye osnovy sudebnoj vlasti [Constitutional Bases of Judicial Power]. Konstitucionnoe pravo zarubezhnyh stran [Constitutional Law of Foreign Countries: Textbook] (In Russ.) // Ed. by M.V. Baglai, Ju.I. Lejbo, L.M. Jentin. Moscow.
26. Vučić, O. (2010). On the protection of legal rights / Belgrade, 2010. (In Serb.)
27. Rakić-Vodinečić V., Knežević A., Reljanović M. (2012). Reform of the system of justice in Serbia 2008–2012 (In Serb.) / Belgrade.

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