

RESOLUTION ON THE SITUATION OF THE JUDICIARY IN SERBIA

At its meeting in Berlin on 25 May 2018, the European Association of Judges (the EAJ) considered the current situation of the judiciary in Serbia, in particular the proposed amendments to the Constitution of the Republic of Serbia which will affect the organisation of judicial power.

The EAJ noted the Opinion of the Consultative Council of European Judges (the CCJE) issued on 4 May 2018 (CCJE-BU(2018)4) following a request by the Judges' Association of Serbia to assess the compatibility of the proposed amendments with European standards.

The EAJ shares the concerns expressed in this Opinion. Judicial independence and the separation of powers need to be safeguarded in any democratic society governed by the Rule of Law.

The EAJ notes the conclusions set out in paragraph 6 of the CCJE Opinion, as follows:

“A. The provisions on the dismissal of members of the HJC should provide the members with sufficient guarantees for their independence by stating possible grounds for dismissal (Amendment II, para 4).

B. The provision requiring legislation on the method to ensure uniform application of the law should not be included in the Constitution (Amendment V, para 3).

C. The way in which the grounds for dismissal of judges are formulated violates the principle of irremovability of judges and is potentially very dangerous to judicial independence. The ‘incompetence’ as a ground for dismissal of a judge should be deleted. Provisions on other grounds for dismissal should require strong and clear implementing primary legislation, both to set out the specific misconduct that may result in a dismissal, and the procedure to be followed in cases of possible dismissal. The essential elements of this procedure should be included in the Constitution (Amendment VII, 3).

D. The HJC should be composed of an odd number of members, the majority of which should be judges. The possibility for judges if they so choose to be represented by a court president should be guaranteed (Amendment XIII).

E. The provision on the dissolution of the HJC in the event it does not render a decision should be deleted.”

The EAJ further notes the following provisions of the Universal Charter of the Judge :

“Article 2-2,3: No judge can be assigned to another post or promoted without his/her agreement”.

“Article 2-2,4: A judge cannot be transferred, suspended or removed from office unless it is provided for by law and then only as the effect of disciplinary proceedings, under respect of the rights of defence and of the principle of contradiction”.

Therefore, the EAJ:

- **Calls upon the Republic of Serbia to take the necessary steps to address the concerns raised by the CCJE in its Opinion issued on 4 May 2018.**

- **Calls upon the Republic of Serbia, in particular, to make the revisions set out in paragraph 6 of that Opinion.**
- **Calls upon the Republic of Serbia to ensure that the provisions of the Universal Charter set out above are duly observed.**