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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
(VENICE COMMISSION)

**DRAFT CONSTITUTIONAL AMENDMENTS  
CONCERNING THE REFORM OF THE JUDICIAL SYSTEM  
IN “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”**

This amendment is a constituent part of the Constitution of the Republic of Macedonia and shall enter into force on the day of its publication

### **AMENDMENT XX**

1. The entity charged with crime shall be considered innocent until its guilt is confirmed with a legally effective verdict.
2. The entity charged with tort will be considered innocent until its guilt is confirmed with a legally effective verdict, i.e. in cases determined by law and by a decision of an administrative body or organization or other institutions with public competences.
3. This amendment replaces paragraph 1 of Article 13 of the Constitution of the Republic of Macedonia.

## **RATIONALE**

### **OF THE TEXT OF THE DRAFT AMENDMENT**

#### *No. XX to the Constitution of the Republic of Macedonia*

The Constitution of the Republic of Macedonia defines the presumption of innocence, as follows (Article 13 paragraph 1): "The entity indicted with a chargeable crime shall be considered innocent until its guilt is confirmed with a legally effective verdict)."

The aforementioned constitutional provision on presumption of innocence is interpreted in practice as basis of the general decision, according to which a sanction for chargeable act can be pronounced only in a legitimate procedure by a court. Having regard to the fact that the Constitution proclaims unity of a court organisation, it further on, implies that, the basic courts as courts of general jurisdiction decide over all chargeable acts, while the courts of appellate jurisdiction make decisions of second instance. Beyond this kind of structure, there are no special courts or other bodies which would be authorized to pronounce sanctions for chargeable deeds.

The Macedonian system of chargeable deeds recognizes 2 categories: crimes, criminal offences and misdemeanors. The first shall be regulated by the Criminal Code adopted in 1996, whereas the latter, by the Law on Torts adopted in 1997. In 1995 a Law on Courts was adopted, with which the former magistrates' courts were abolished and a single court organisation was established.

Prior to the adoption of this regulation on misdemeanors, the authorization for pronouncing sanctions was vested in magistrates' courts, as well as in institutions of the state administration and in public services, which were legally authorized for pronouncing such sanctions (the Police, Customs Administration, Currency Inspectorate, different administrations, etc). After the enforcement of the above mentioned laws, the former laws, concerning the authorization of certain bodies within the state administration and public services for pronouncing sanctions for misdemeanors, were being used for few more years. However, the provision of the Law of Courts, which enabled some other types of bodies (customs, currency, foreign trade and taxation bodies) to have authority over certain types of misdemeanors, was abolished with the decision U. No. 313/95, as of 10.07.1996, of the Constitutional Court of the Republic of Macedonia. According to the Constitutional Court, having regard to the fact that, the Constitution does not classify the chargeable deeds according to the degree of public danger and provides that the guilt for certain chargeable deed must be confirmed with certain court decisions, only courts can decide over criminal offences according to the Constitution.

This constitutional concept of domestic law on punishments has far-reaching consequences on the position and on the authorizations, not only of the State administration, but also of the other public services with certain surveillance and similar kinds of authorizations. This negatively affected the work of the courts as well as the functioning of the state administration and the public services. On one hand, the courts were suddenly loaded with large number of misdemeanor cases, even with the least serious ones, as unauthorized parking, which resulted in slowness and inefficiency in their work. On the other hand, the state administration and public services deprived of these authorizations were put a position of passive observers of the areas in which they should have participated effectively concerning the solution of the citizens and legal entities' claims, the protection of their rights etc.

Due to the extremely increased number of cases, the basic courts are continuously ineffective, and due to the time limitation of majority of the misdemeanor cases because of the unduly resolving, the question of the suitability of their procedure shall be raised. The procedure

upon such cases is delayed and complex and the administration operation in courts is hard and expensive.

Having regard to the aforementioned, the suggested amendment XX shall provide for the possibility for different authorized institutions (bodies of the public administration, institutions with public authorizations stipulated by law) other than courts to decide upon misdemeanors as chargeable deeds.

In addition, it is necessary that a distinction is made between different types of chargeable deeds, such as chargeable deeds upon which only courts should decide in future and misdemeanors for which apart from courts other institutions should decide, since the Constitution does not make any distinction between them.

With the new constitutional provision, a constitutional basis for adoption of legal resolutions will be established, with which certain bodies of the administration and institutions with public competences will be provided with authorizations under Penal Law.

### **TEXT OF THE DRAFT AMENDMENT No. XXI TO THE CONSTITUTION OF THE REPUBLIC OF MACEDONIA**

This amendment is a constituent part of the Constitution of the Republic of Macedonia and shall enter into force on the day of its publication

#### **AMENDMENT XXI**

1. Everyone has right to fair trial in public, without undue delay before independent and impartial court as well as before an administration body or organisation or other institutions with public competences.
2. This Amendment shall amend Section 1. Civil and political freedoms and rights from the Part II. Fundamental human and citizens' freedoms and rights of the Constitution of the Republic of Macedonia

## **RATIONALE**

### **OF THE TEXT OF THE DRAFT AMENDMENT** *No. XXI to the Constitution of the Republic of Macedonia.*

The adoption of this amendment derives from the Recommendations of the Committee of Ministers of the Council of Europe REC (2004) 6th of May 2004, which stress the principle of subsidiarity established with the European Convention on Human Rights and Fundamental Freedoms.

Namely, in accordance with Article 1 of the Convention, the obligation for protection of human rights and obligations guaranteed by the Convention to all under jurisdiction of the High Contractual Parts, shall, primarily, be delegated to the High Contractual Parts - the States signatories of the Convention, whereas the role of the European Court of Human Rights situated in Strasbourg, is to ensure surveillance over the activities undertaken by the High Contractual Parts. In accordance with the principle of subsidiarity, the responsibility of each Member State is to ensure effective application of the Convention. This is why the states should undertake practical measures in order to introduce effective legal remedies regularly and in conformity with the relevant court procedures, which shall be accessible to each person considering that his/hers rights, guaranteed by the Convention, have been violated. Due to this, the State should provide the complainants, current and possible ones, with an effective legal remedy which shall enable them to present their problem before the domestic competent authorities.

In compliance with this principle of the Convention on Human Rights and Fundamental Freedoms, the right of trial with undue delay of the domestic courts was not so far guaranteed by the Constitution of the Republic of Macedonia. This led to conclusion, that Article 6 of the Convention is only partly integrated and incorporated in the Constitutions and in the Laws of the Republic of Macedonia.

Namely, unlike the independence and impartiality of the judiciary, which are regulated and guaranteed in section 4 of Part III of the Constitution, with exception to declaratory provisions in the processing Laws which guarantee the right to come in front of courts and institutions without undue delay, and which are not guaranteed by the Constitution, may result in inappropriate protection of the citizens according to Article 6 of the Convention in the part referring to procedure without undue delay.

The Constitution of the Republic of Macedonia with its provisions does not guarantee the reasonability of the duration of the procedures in front of the bodies and courts. On the other hand, Article 50 of the Constitution provides that every citizen can refer to protection of rights and freedoms stipulated by the Constitution, in front of the courts and in front of the Constitutional Court. Although, the Constitution in Article 118 provides the possibility for direct application of the Convention which has become part of the domestic legal order, it is fact that the Constitution has priority over the international agreements and consequently, no domestic court has started a court action so far, nor will do that according to the permanent provision aiming at assessing the reasonability of the duration of the procedures conducted in front of the judicial institutions.

Taking into consideration the above mentioned, the principle of subsidiarity for protection of rights established by the Convention and the responsibility of each Member State to ensure effective application of the Convention, can enable the European Court to conclude that the Republic of Macedonia has not ensured adequate protection of the right for acting without undue delay.

Due to this, further amendments to the Constitution of the Republic of Macedonia are absolutely necessary, with which this right shall be guaranteed and there shall be a proposition for adoption of the suggested draft amendment, which will provide conditions for guarantying this right that is guaranteed by the Convention.

**TEXT OF THE DRAFT AMENDMENT No. XXII TO THE CONSTITUTION OF THE  
REPUBLIC OF MACEDONIA**

This amendment is a constituent part of the Constitution of the Republic of Macedonia and shall enter into force on the day of its publication

**AMENDMENT XXII**

1. The candidate with the majority of the votes is elected president.
2. This amendment shall replace paragraphs 5 and 6 of Article 81 of the Constitution of the Republic of Macedonia.

## **RATIONALE**

### **OF THE TEXT OF THE DRAFT AMENDMENT *No. XXII to the Constitution of the Republic of Macedonia.***

The Constitution of the Republic of Macedonia, with several provisions, regulates certain questions referring to the function of President of the Republic of Macedonia. It, also, regulates the issue concerning the manner of election of the President of the Republic of Macedonia.

According to the Constitution of the Republic of Macedonia, the candidate with the majority of the votes of the total number of voters is elected president of the Republic.

If the president is not elected during the first round, i.e. unless any of the candidates for president obtained the required majority of votes during the first round, than in the second round the votes shall be cast for the two candidates to have obtained the largest number of votes during the first round.

In the second round, the candidate with the majority of votes is elected president provided that more than half of the electorate voted.

According to prescribed procedure that in the second ballot 50% plus one of the registered voters should vote and the majority of which should give their votes for one candidate, this can result in innumerable repetition of the elections.

The representatives of the international organisations who were carrying out an expertise of the current Presidential Election Law of the Republic of Macedonia made certain remarks concerning these constitutional decisions on the manner of electing president of the Republic of Macedonia and recommended that an amendment to the constitutional provision, which shall directly be transposed in the law, should be made.

Furthermore, OSCE/ODIHR, in the final report on the presidential elections in 2004, recommended an amendment to the constitutional provisions for election of president of the Republic of Macedonia, particularly regarding the conditions prescribed for the second round.

The proposed amendment shall ensure simplification of the presidential election procedure, as well as legal basis for election of the candidate with the majority of votes for president in the second round.

Such resolution shall provide implementation of the recommendation of OSCE/ODIHR regarding the amendment to the constitutional resolution for the election of president in the second round.

### **TEXT OF THE DRAFT AMENDMENT No. XXIII TO THE CONSTITUTION OF THE REPUBLIC OF MACEDONIA**

This amendment is a constituent part of the Constitution of the Republic of Macedonia and shall enter into force on the day of its publication

#### **AMENDMENT XXIII**

1. Appoints two members of the State Judicial Council and two members of the Council of Public Prosecutors.
2. This amendment shall replace indent 5 of the Article 84 of the Constitution of the Republic of Macedonia.

**RATIONALE****OF THE TEXT OF THE DRAFT AMENDMENT**  
***No. XXIII to the Constitution of the Republic of Macedonia***

Amendment XXVIII, item 5, provides that two members of the State Judicial Council are appointed by the President of the Republic of Macedonia, one of which is representative of the communities that do not represent majority in the Republic of Macedonia. With this amendment, besides the terminological harmonization with the change of the name of the current Republic Judicial Council to State Judicial Council, it was considered to be necessary to integrate Amendment VI of the Constitution of the Republic of Macedonia in such a manner as to ensure proper and equitable representation of citizens. That would mean that representative of a non-majority community of the Republic of Macedonia appointed by the President shall be member of the State Judicial Council.

Amendment XXXII provides for establishment of a new institution - Council of Public Prosecutors and regulates the composition thereof. In addition, as with the State Judicial Council, in item 5, it provides that 2 members of the Council of Public Prosecutors are appointed by the President of the Republic of Macedonia, one of which is representative of a non-majority community in the Republic of Macedonia. The composition of this body, advocates the principle of proper and equitable representation of the representatives not being majority in the Republic of Macedonia within all public institutions on all levels.

Since Amendment XXXII regulates the composition of the Council of the Public Prosecutors, i.e. the bodies that elect and appoint members of this Council, also the President of the Republic of Macedonia, it is absolutely necessary to amend Article 84 of the Constitution of the Republic of Macedonia which regulates the competences of the President of the Republic of Macedonia in such a manner as to expand his authority concerning the appointment of members of the Council of the Public Prosecutors.

**TEXT OF THE DRAFT AMENDMENT**  
**No. XXIV to the Constitution of the Republic of Macedonia**

This amendment is a constituent part of the Constitution of the Republic of Macedonia and shall enter into force on the day of its publication

**AMENDMENT XXIV**

1. The Assembly of the Republic of Macedonia decides upon the immunity of the Presidents and of the Ministers.
2. This amendment replaces the second sentence of the paragraph 3 of Article 89 of the Constitution of the Republic of Macedonia.



## **RATIONALE**

### **OF THE TEXT OF THE DRAFT AMENDMENT No. XXIV to the Constitution of the Republic of Macedonia.**

The adoption of this amendment derives from the GRECO's Recommendation XV which refers to modification to national legislative in order to provide a decision-making procedure for the immunity of the president and of the members of the Government. This procedure is not to be conducted by the Government itself.

With the item 1 of this amendment an implementation of this Recommendation is provided, with which the question of the immunity of the president and of the members of the Government shall be vested in the Assembly of the Republic of Macedonia which is competent body for the election of the president and the members of the Government.

In accordance with the constitutional system of the state authority, the accountability of the Government is clearly stated, i.e. the accountability of the president and of each member of the Government before the Assembly it was elected by.

This implies that current constitutional decision concerning the immunity of the president and the members of the Government which says that the Government should decide upon these questions has to be changed. This means that the competent body which elects the Government, i.e. the Assembly, should decide upon this issue.

### **TEXT OF THE DRAFT AMENDMENT No. XXV to the Constitution of the Republic of Macedonia**

This amendment is a constituent part of the Constitution of the Republic of Macedonia and shall enter into force on the day of its publication

#### **AMENDMENT XXV**

1. Nominates a Supreme Public Prosecutor in the Republic of Macedonia.
2. This amendment replaces line 12 of the Article 91 of the Constitution of the Republic of Macedonia.

**RATIONALE****OF THE TEXT OF THE DRAFT AMENDMENT  
No. XXV to the Constitution of the Republic of Macedonia.**

The amendment XXX provides that the Supreme Public Prosecutor of the Republic of Macedonia shall appoint and dissolve the Assembly of the Republic of Macedonia upon proposal of the Government. Due to this it is necessary to modify Article 91 of the Constitution of the Republic of Macedonia which regulates the authorities of the Government of the Republic of Macedonia. In addition, line 12 of this Article should be also modified meaning that the Government nominates only the Supreme Public Prosecutor and not all the Public Prosecutors as it was until now.

**TEXT OF THE DRAFT AMENDMENT No. XXVI  
to the Constitution of the Republic of Macedonia**

This amendment is a constituent part of the Constitution of the Republic of Macedonia and shall enter into force on the day of its publication

**AMENDMENT XXVI**

1. Within the first round of the election of judge in a court of first instance the judge is appointed for a period of three years. After these three years have passed and the judge has met the requirements stipulated by law, he/she can be elected without any limitations of his/hers terms of office.
2. The office of the judge shall end if:
  - if that is desire if the judge himself;
  - if he/she permanently loses the capability of performing the judicial function, which is determined by the State Judicial Council;
  - if he/she meets the requirements for age pension;
  - if he/she is not re-elected judge after the end of the 3-year term;
  - if he/she is appointed to another public function, unless his office is maintained free under conditions determined by law.
3. The judge shall be removed from office:
  - if is convicted of a crime and sentenced to prison for at least six months;
  - if he/she seriously violates the Constitution of the Republic of Macedonia and Laws concerning the performance of judge's office; this is decided by the State Judicial Council with two-thirds majority of votes from the total number of members.
4. The procedure for removal of judge from his office shall be regulated by law.

5. The item 1 of this amendment replaces paragraph 1 of Article 99 of the Constitution of the Republic of Macedonia, items 2 and 3 replace paragraph 3 of Article 99 of the Constitution of the Republic of Macedonia and item 4 amends Article 99 of the Constitution of the Republic of Macedonia.

## **RATIONALE**

### **OF THE TEXT OF THE DRAFT AMENDMENT No. XXVI to the Constitution of the Republic of Macedonia.**

1. According to paragraph 1 of Article 99 of the Constitution of the Republic of Macedonia, the judge shall be elected without any limitations to his term of office.

The unlimited term of office of the judge's function has already shown some flaws in practice concerning the inability to filter competent staff, especially among the newly elected judges. This decision is legitimate and is in compliance with the international standards from judiciary, as for example the basic principles of the United Nations' independent Judiciary, the Recommendation No. (94)12 of the Committee of Ministers within the Council of Europe and the European Charter on the Statute for Judges. All these, provide that a judge could be elected for time-limited period during the first election and that period should be short and should serve as an experimental term of office before the election for unlimited term of office.

Due to these reasons the amendment provides the possibility the first election for judge to be for unlimited term of office as a kind of experimental term of office.

Thus, the shift of the age limit for obtaining a permanent term of office for performance of judge's function would render possible the election of judges with higher level of maturity, with richer life experience and wisdom which represents an essential part of being a good judge.

2. There is an extensive list for what can constitute a basis for removal of judge<sup>1</sup> from his office in the current constitutional provision: if that is desire if the judge himself; if he permanently loses the capability of performing the judicial function, which is determined by the State Judicial Council; if he meets the requirements for age pension; if is convicted of a crime and sentenced to prison for at least six months; if he commits a serious disciplinary offence defined by law; making him/her unsuitable to perform a judge's office as determined by the State Judicial Council; if he exhibits unprofessional and unethical performance of a judge's office as determined by the State Judicial Council.

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<sup>1</sup> Comparative examples for what can constitute a basis for removal of judge from his office:

-retirement, resignation, conviction to imprisonment for committed crime, permanent incapability for performance of judge's office which took place more than one year ago. (Bulgaria)

- upon request, imprisonment, permanent incapability for performance of judge's office, if he/she becomes citizen of another country (Croatia).

- if the Judge violates the Constitution or seriously violates the Law during performance of his duties, and when the Judge deliberately commits a crime during performance of his duties (Slovenia), etc.

It is necessary to precise the grounds for the termination of judge's of judge's office due to strengthening of the independence and reliability of the judge's office. These grounds refer to serious disciplinary offences and to unprofessional and unethical performance of the function regulated by law which makes the judge unsuitable to perform his office.

As previously presented, the State Judicial Council has wide range of competences, referring to determining the accountability of the judge. For example, committing a serious disciplinary offence regulated by law is a rather imprecise ground for removal of judge from its function and most often it is used without additional explanations to the proposal for removal of a judge.

Having this in regard, we consider that lines 5 and 6 from paragraph 3 of Article 99 of the Constitution of Republic of Macedonia should be replaced, i.e. instead, there should be the following text: "violation of the Constitution and Laws referring to the performance of the judge's office" as a ground for removal of judge.

Regarding the fact the removal represents termination of the function as a kind of punishment for committed criminal offence or violation of the Constitution, i.e. the laws, this amendment proposes a distinction of the grounds for termination of the judge's office from the grounds for removal of the judge from its function. Also, there is a similar decision in the Constitution of the Republic of Macedonia for the judges of the Constitutional Court of the Republic of Macedonia (Article 111) as well as in the international documents concerning the Judiciary as for example the European Charter on the Statute for Judges which foresees termination of judge's office in case of resignation, physical incapability, turning certain age, expiration of term or removal.

Taking in consideration that in compliance with the international standards for the Judiciary, a judge removed from office should be provided with guarantee for fair proceedings (right to participate in proceedings based on the principle of the contradiction, right to an Appeal against the decision for removal) it is necessary that the Constitution provides a ground for the procedure for termination of the judge's office because of removal.

### **TEXT OF THE DRAFT AMENDMENT No. XXVII to the Constitution of the Republic of Macedonia**

This amendment is a constituent part of the Constitution of the Republic of Macedonia and shall enter into force on the day of its publication

#### **AMENDMENT XXVII**

1. The judges performing their function shall enjoy immunity.
2. A judge can not be criminally prosecuted, detained, arrested, nor held responsible according to Civil Law for opinion while reaching judicial decisions.
3. A judge can not be detained without an approval of the State Judicial Council unless caught while committing criminal offence for which imprisonment for at least six months is prescribed by law.

4. The State Judicial Council decides upon the immunity of the judges by two-thirds majority of votes from the total number of the members of the State Judicial Council with a procedure determined in Law.
5. Items 1, 2, and 3 of this amendment amend paragraph 1 of Article 100 of the Constitution of the Republic of Macedonia and item 4 replaces paragraph 2 of Article 100 of the Constitution of the Republic of Macedonia.

## **RATIONALE**

### **OF THE TEXT OF THE DRAFT AMENDMENT No. XXVII to the Constitution of the Republic of Macedonia**

In accordance with Article 100 of the Constitution of the Republic of Macedonia the Judges enjoy immunity. The Assembly of the Republic of Macedonia decides upon the immunity of the judges.

The realization of independent and impartial Judiciary comprises creation of constitutional and legal solutions for adequate guarantees for the holders of judge's office. The development and the interest of democracy and the rule of law based on independent and impartial Judiciary requires the creation and incorporation of all the significant elements and guarantee that judges' function and its holder shall be in the center of the attention while establishing and advancing the judicial power in the country.

The guarantee for objective, impartial and conscientious performance of judge's office is realization of the possibility of making it immune to influences of individuals or institutions. This is ensured in the Constitution through institution **immunity**. Thus, the current provision of Article 100 of the Constitution of the Republic of Macedonia provides that judges enjoy immunity and this immunity is decided upon by the Assembly. This formulation does not present the scope and the contents of the immunity of the judges and it does not imply that that will be regulated by law. However, Article 64 of the Constitution of the Republic of Macedonia describes the contents and the scope of the immunity of the members of the Parliament. The parliamentary immunity is determined in criminal legal and procedural sense. The substantive and legal immunity of the members of the Parliament is defined as criminal levity for voiced opinion or vote in the Assembly. The process and legal immunity of the members of the Parliament consists of the fact that the member of the Parliament can not be detained without the approval of the Assembly unless he/she is caught while committing criminal offense for which imprisonment for at least 5 years is prescribed by law.

The contents of judge's immunity is defined by the Law on Courts since substantial and legal immunity of the judge is not limited only to criminal levity, but also to other kinds of levity for voiced opinion and decision as well as to damage caused while performing his function. Thus, according to the law, a judge or a juror can not be prosecuted for damage compensation nor any other prosecution can be conducted against him by a party dissatisfied of the court decision. In addition, the law provides that the Republic of Macedonia is held liable for the damage caused by a judge or juror to citizens or private entities by unlawful and improper performance of his function

According to the Law on courts the process and legal immunity is defined in such a way that a judge cannot be detained without approval of the Assembly of the Republic of Macedonia

unless he/she is caught while committing criminal offense for which imprisonment for at least 5 years is prescribed by law. Thus, the process and legal immunity of the judges is equalized in its contents with the one of the members of the Parliament.

On the other hand, Article 103 of the Constitution of the Republic of Macedonia provides that jurors cannot be held responsible for opinion or decision while reaching court decisions. This constitutional provision refers only to jurors, not to judges. Namely, the Constitution is inconsistent with this kind of decision because it does not regulate the contents of the immunity of the judges to whom it should primarily refer as principal holders of judge's function.

With the proposed amendment the immunity of the judges is equalized in its contents to the immunity of the members of the Parliament with certain expansions due to the specificities of the judge's office and which refer to civil liability. It is widely accepted that a judge should in person be acquitted of liability for damage recovery for committed errors while making his/hers decisions because they are corrected during the appellate procedure where the State is held responsible.

**TEXT OF THE DRAFT AMENDMENT**  
**No. XXVIII to the Constitution of the Republic of Macedonia**

This amendment is a constituent part of the Constitution of the Republic of Macedonia and shall enter into force on the day of its publication

**AMENDMENT XXVIII**

1. The State Judicial Council shall be composed of 15 members.
2. The President of the Supreme Court of the Republic of Macedonia and the Minister of Justice shall be automatically members of the State Judicial Council.
3. 8 members of the State Judicial Council shall be selected from all of the Judges of the Republic of Macedonia. 3 of the selected members are representatives of the non-majority communities which shall insure proper and equitable representation of the citizens of all communities. The procedure for election of Judges members of the State Judicial Council is regulated by law.
4. The Assembly of the Republic of Macedonia shall elect 3 members of the State Judicial Council. The members shall be elected with the majority of the votes of the total number of the members of the Parliament being part of the non-majority communities in the Republic of Macedonia.
5. 2 members of the State Judicial Council shall be appointed by the President of the Republic of Macedonia, one of which is representative of non-majority communities of the Republic of Macedonia.
6. The President of the state Judicial Council is the president of the Supreme Court of the Republic of Macedonia.
7. The members of the State Judicial Council elected by the Assembly of the Republic of Macedonia, i.e. appointed by the President of the Republic of Macedonia, are university professors of law, lawyers and other distinguished jurists.

**DRAFT TEXT**

**To Amendment XXVIII of the Constitution of the Republic of Macedonia**

This Amendment is a constituent part of the Constitution of the Republic of Macedonia and enters into force on the day of its promulgation.

**AMENDMENT XXVIII**

1. The State Judicial Council consists of fifteen members.
2. Members of the State Judicial Council by their function are the President of the Supreme Court of the Republic of Macedonia and the Minister of Justice.

3. Eight members of the State Judicial Council shall be elected from among all of the judges in the Republic of Macedonia. Three of the elected members are representatives of the communities, who are not a majority in the Republic of Macedonia, while the equitable representation of the citizens from all communities shall be observed. The procedure for election of the member judges of the State Judicial Council is proscribed by Law.
4. Three members of the State Judicial Council are elected by the Parliament of the Republic of Macedonia. The members are elected with majority vote of the total number of members of the Parliament, while there must be a majority of the votes of the total number of members of Parliament coming from the non-majority communities in the Republic of Macedonia.
5. Two members of the State Judicial Council are appointed by the President of the Republic of Macedonia, of which one is representative of the non-majority communities in the Republic of Macedonia.
6. The President of the State Judicial Council is the President of the Supreme Court of the Republic of Macedonia.
7. The members of the State Judicial Council elected the Parliament of the Republic of Macedonia, i.e. appointed by the President of the Republic of Macedonia, come from among the university professors of law, legal advisors and other distinguished lawyers.
8. The mandate of the elected and appointed members of the State Judicial Council is 6 years.
9. The elected and the appointed members of the State Judicial Council enjoy immunity. A member of the State Judicial Council cannot be a person that is criminally persecuted, deprived of liberty or detained, nor could be held liable for an expressed opinion or for voting on a session of the State Judicial Council.
10. An elected and appointed member of the State Judicial Council cannot be detained without permission from the State Judicial Council, unless he/she is caught in doing of a criminal act for which a sentence of at least 5 years is proscribed.
11. The State Judicial Council decides on the immunity of the elected and the appointed members of the State Judicial Council with a two-thirds majority vote of the total number of members with a procedure stipulated by law.
12. The function of the member of the State Judicial Council terminates:
  - if he/she asks for it; and
  - if he/she permanently loses the capacity for exercising the function of a member of the State Judicial Council.
13. A member of the State Judicial Council can be dismissed:
  - if he/she is sentenced for a criminal act for an unsuspended imprisonment of at least 6 months; and
  - due to a violation of the Constitution of the Republic of Macedonia and severe violation of laws in his/her performance of the function, which are established by the State Judicial Council.
14. The function of a member of the Council terminates to a member of the State Judicial Council by function with the termination of the function Minister of Justice, i.e. President of the Supreme Court.
15. The function elected and appointed member of a State Judicial Council is incompatible with the performance of other public functions or professions.
16. This Amendment replaces Article no. 104 of the Constitution of the Republic of Macedonia.



**EXPLANATION**  
**TO THE DRAFT TEXT**

*Of the Amendment XXVIII of the Constitution of the Republic of Macedonia*

In accordance with article 104 of the Constitution of the Republic of Macedonia, State Judicial Council consists of 7 members. The Parliament elects the members of the Council. Amendment XIV stipulates that three persons from the members are elected with a majority vote of the total number of Members of Parliament, where there has to be a majority vote of the total number of Members of Parliament that belong to non-majority communities in the Republic of Macedonia. The members of the Council are elected from among the distinguished lawyers for a period of 6 years, with a right to another election. The members of the State Judicial Council enjoy immunity. The Parliament decides on their immunity. The function of a member of the State Judicial Council is incompatible with the performance of other public functions and professions or with a membership in political parties.

The fundamental aim of the establishing of the State Judicial Council as a new institution in the judiciary system, was to link the legislative power with the judiciary power in such a way that the political ground for the election of the judges is replaced with a professional, and thus to contribute for a greater degree of independence of the judiciary. The basic idea was the assessment of the quality of the candidates for future judges to be conducted by an expert body instead of the Parliamentary Commissions, which as an explicitly political body, decide on the basis of a political assessment.

Nevertheless, the concept of the State Judicial Council already at constitutional, i.e. at the normative level, contains specific shortcomings which are not in line with the stated idea, and which, above all, refer to the small number of members and the manner in which the members are nominated and elected.

Namely, the 7 members of the State Judicial Council, although being a representative composition, is not able to secure the needed open-mindedness in the representation of the legal profession, from which, in essence, all of the proposals for candidates for judges should be put forward and which is the most meritorious one to assess the expert and moral qualities of its members. A bigger number of members, although by definition, makes the decision making slower and more complicated, in principle, enables the surfacing a greater number of initiatives and consideration of the posed questions from several different aspects. This is especially important for the establishing of candidates for judges, for which, given the movement in their career, it is helpful to have professional assessments from people coming from various environments.

In accordance with the existing solution, the manner in which the election of the members of the State Judicial Council is conducted hides some dangers related to political influences. The fact that they are elected by the Parliament, as a result to the circumstance that it is composed on political grounds, and functions as a political body in whose decision making the interests of the political parties that are dominant in its composition, are always incorporated, presents a possibility for an enormous political influence not only over the composition of the Council, but also indirectly - through it, over the composition of the courts. In order to reduce the influence of the politics in the system of nomination of candidates for judges and for their dismissal, a kind of decentralisation of the system of creation of the personnel composition of the State Judicial Council is necessary.

The main idea regarding the depolitisation of the manner in which the judges are elected, would be realised provided in the creation of its composition it is enabled that the portion of its membership coming from among the judges to dominate in the process of election of new judges over that part of the membership that comes from the legislative and the executive power.

By having an insight into the acts regulating the composition of the State Judicial Council, it can be concluded that they do not foresee to have an obligatory participation of the judges as members of that body. The sole requirement proscribed by law for election of a member of the Council is for him/her to be from among the distinguished lawyers. This means that it is possible not even a single member of the Council to come from among the judges, but from other structures, that is from the structures of the legislative or executive powers, thus having this body in complete dependence from them. Having in view the stated, the acts regulating the composition of the Council are not in compliance with the requirements of the Recommendation of the Committee of Ministers of the Council of Europe R(94) 12 on the independence, the efficacy and the role of the judges and the European Charter of the Statute of the Judges 98/23.

The fundamental remark on the acts of the Republic of Macedonia, when the State Judicial Council is in question, is addressed to the part regulating its composition. Namely, the lack of provisions establishing that a specific number of members of the Council must come from among the judges, the fact that two members of the Council are represented by the President of the State, and it is not regulated who proposes the rest of the members of this body, clearly indicates to the possibility for members of the Council to be elected persons who are not judges, and who had received the role - member of the Council due to political and other influences. If the State Judicial Council is formed on these grounds, and that, based on the Constitution and the law, is absolutely possible, it is easy to envisage a situation in which its functioning is not in favour of strengthening of the independence and the efficiency of the judges, on the contrary, serves as a tool by which the executive and legislative powers exercise their influence in the courts.

The composition of the State Judicial Council proposed in the Amendment, is in compliance with the above-mentioned European standards, at the same time taking into consideration of the application of the principle on equitable representation of the members of the non-majority communities of the Republic of Macedonia.

In order to avoid the shortcomings that could be generated by a purely judicial composition of the Council (corruption, nepotism, elitism), as a kind of balance of powers, it is also foreseen that the legislative and the executive powers elect, i.e. nominate members for the Council (the President of the Republic of Macedonia).

The expertise of the composition of the State Judicial Council shall be strengthened also with the foreseen possibility, that apart from the judges, members in it to become also of representatives from other legal professions (university law professors, legal advisors and other distinguished lawyers).

Also, this amendment also regulates the immunity of the members of the State Judicial Council by scope and contents and the same it differs from the immunity of judges in the domain of the civil liability, which derives from the specificities of the function - member of the State Judicial Council. At the same time, for lifting of the immunity, the Council itself decides with a two-third majority of the members and with a procedure stipulated by law.

With the amendment guaranties are built in by which the members of the State Judicial Council are protected from untimely dismissal that might occur due to political reasons. Namely, termination of the function member of the Council and dismissal from the function member of the Council is foreseen. With the possibilities defined with the Constitution for termination of the function, i.e. dismissal solely due to the stated reasons, an assurance is secured in the duration of the mandate. The provision that regulates that fulfillment of the condition for dismissal due to violation of the Constitution of the Republic of Macedonia and more severe violation of the laws in the course of the performance of the function are established by the State Judicial Council also represents a defense barrier.

**DRAFT TEXT**

**To Amendment XXIX of the Constitution of the Republic of Macedonia**

This Amendment is a constituent part of the Constitution of the Republic of Macedonia and enters into force on the day of its promulgation.

**AMENDMENT XXIX**

1. The State Judicial Council:

- elects and dismisses the judges and the judges-jurors;
- determines the termination of the function of a judge;
- elects and dismisses the Presidents of the Courts;
- follows and evaluates the work of the judges;
- decides on the promotion of the judges;
- decides the disciplinary responsibility of the judges;
- decides on temporary detachment of judge and secondment in another court;
- decides on the removal of the immunity of the judges;
- proposes two judges of the Constitutional Court of the Republic of Macedonia;
- performs other duties stipulated by Law.

2. The State Judicial Council for its work submits annual report to the Parliament of the Republic of Macedonia.

3. With this amendment, article 105 of the Constitution of the Republic of Macedonia is replaced, and line 15 of paragraph 1 of Article 68 of the Constitution of the Republic of Macedonia is deleted.

**EXPLANATION  
TO THE DRAFT TEXT**

***Of the Amendment XXIX of the Constitution of the Republic of Macedonia***

In accordance with article 105 of the Constitution of the Republic of Macedonia, the State Judicial Council proposes to the Parliament election and dismissal of judges and establishes a proposal for dismissal of a judicial function in cases determined by the Constitution; decides on the disciplinary responsibility of the judges; evaluates the expertise and consciousness of the judges in the performance of their function; and proposes two judges for the Constitutional Court of the Republic of Macedonia.

The State Judicial Council is responsible for four groups of questions: 1. It proposes to the Parliament election and dismissal of the judges and establishes a proposal for dismissal of a judge from the function; 2. decides on the disciplinary responsibility of the judge; 3. evaluates the expertise and consciousness of the judges in the performance of their function; and, 4. proposes two judges for the Constitutional Court of the Republic of Macedonia.

Within the competences of the State Judicial Council there is a concentration of the authorizations related to the assessments that are relevant for election and dismissal of the judges, as the most sensitive issue in the process of creation of the personnel composition of the courts, and as a sphere that is traditionally under scrutiny by the political interests.

Provisions that more closely define the competences of the State Judicial Council are contained in the Law on the State Judicial Council.

With this amendment more precisely are defined the competence of the State Judicial Council. Having in mind the set-up of the State Judicial Council in the Amendment XXVIII and the need to change of the current manner of election of judges, for the purpose of elimination of the political influences in this process and, also, with this amendment are introduced some new competences of this body. Namely, the composition of the State Judicial Council and the manner in which its members are elected, on one hand, represent a guaranty for its independence from the executive and the legislative power, due to which all questions related to the status of the judges (election, dismissal, deciding on promotion in the career, deciding on the disciplinary responsibility, immunity) are entrusted as a competence to this authority, thus it appears as the highest guarantor for the independence of the judiciary.

The State Judicial Council or similar bodies to it which exist in large number of European countries have the same competence foreseen also for the State Judicial Council.

At the same time, also the European Charter on the status of the judges foresees that all decisions that would influence the election, recruitment, appointment, promotion in the career, or termination of the mandate of the judge are brought by a body that is independent from the executive and legislative power, in which at least half of its members are judges elected by their colleagues and in a manner that guarantees their widest representation.

**DRAFT TEXT**

**To Amendment XXX of the Constitution of the Republic of Macedonia**

This Amendment is a constituent part of the Constitution of the Republic of Macedonia and enters into force on the day of its promulgation.

**AMENDMENT XXX**

1. The State Prosecutors Office is a single and independent state body that detects and persecutes the perpetrators of criminal or other penal offences defined by law and performs other tasks defined by law.
2. The State Prosecutors Office performs its function on the basis of and within the Constitution, the laws and the international agreements ratified in compliance with the Constitution of the Republic of Macedonia.
3. The function of the State Prosecutors Office is performed by the Supreme State Prosecutor and the Public prosecutors.
4. The kinds, the competence, the establishing, abolishing, the organization and the functioning of the State Prosecutors Office is regulated by law.
5. The Supreme State Prosecutor of the Republic of Macedonia is appointed and dismissed by the Parliament of the Republic of Macedonia upon a proposal by the Government of the Republic of Macedonia, for a period of 6 years without the right to re-election.
6. The state public prosecutors in the Republic of Macedonia are appointed and dismissed by the Council of the State Prosecutors Office.
7. The State Prosecutor at his/her first appointing as a State Prosecutor in the State Prosecutors' Office of first instance is appointed for a period of three years. After the expiry of the three-year period and meeting of the requirements stipulated by law, the State Prosecutor can be appointed without the limitation in respect to the duration of the mandate.
8. The function of the Supreme State Prosecutor of the Republic of Macedonia terminates upon his/her own request; if he/she permanently loses the capacity for performing of the function, which is established by the Parliament of the Republic of Macedonia; or if he/she meets the requirements for retirement.
9. The Supreme State Prosecutor of the Republic of Macedonia is dismissed: if he /she is sentenced for a criminal act with an unsuspended imprisonment in the duration of at least six months, or due to violation of the Constitution of the Republic of Macedonia and more severe violation of the laws in the course of performing of its function, established by the Parliament of the Republic of Macedonia.
10. To a State Prosecutor the function terminates upon his/her free will; if he/she permanently loses the capacity for performing of the function, which is established by the Council of State Prosecutors; if he/she fulfils the requirements for retirement; if after the expiry of the 3-year mandate he/she is not re-appointed for a state prosecutor; or if he/she is elected or appointed on another public function, except when his/her function of public prosecutor is inactive under conditions stipulated by law.
11. The State Prosecutor is dismissed: if he /she is sentenced for a criminal act with an unsuspended imprisonment in the duration of at least six months, or due to violation of the

Constitution of the Republic of Macedonia and more severe violation of the laws in the course of performing of his function, for which a decision is taken by the Council of State prosecutor with a two-third majority vote of the total number of members.

12. The procedure for dismissal of a State prosecutor is regulated by law.

13. This Amendment replaces article 106 of the Constitution of the Republic of Macedonia.

**EXPLANATION**  
**TO THE DRAFT TEXT**

***Of the Amendment XXX of the Constitution of the Republic of Macedonia***

In compliance with Article 106 of the Constitution of the Republic of Macedonia, the Public Prosecutors' Office is a single and independent state body that persecutes the perpetrators of criminal or other penal offences defined by law and performs other tasks defined by law. The Public Prosecutors' Office performs its function on the basis of and within the Constitution and the law. The Public Prosecutor is appointed and dismissed by the Parliament for a period of 6 years.

In the Constitution of the Republic of Macedonia the position of the Public Prosecutors Office in the legal system of the Republic of Macedonia and in the domain of criminal justice, as a single and independent state body, responsible for implementation of the function defined by the Constitution for persecution of the perpetrators of criminal acts, is not sufficiently regulated. Namely, even though with the new Law on Public Prosecutors' Office of 2004 the position of the Public Prosecutors' Office is strengthened, also in compliance with the international standards in the domain of realising the Public Prosecutors function, still, the absence of constitutional grounds occurs as an impediment for a full realisation of the position of this body.

For these reasons, with these constitutional amendments several novelties are foreseen, the basic objective of which is protection of the Public Prosecutors' Office against influences of the legislative and executive powers, which, on the other hand, should contribute for the body to efficiently persecute the bearers of public functions for performed criminal acts with corruptive elements, abuse of their official duty, violation of human rights and other deeds established with domestic and international law.

Bearing in mind that the Public Prosecutors' Office is a state body which on behalf of the state and of the general interest makes sure that there is a uniform application of the law against perpetrators of criminal acts, it was assessed that it would be more appropriate to rename this body from Public Prosecutors' Office into State Prosecutors' Office.

Further more, following the amendments until now of the procedure related laws as well as the novelties introduced in the Law on Public Prosecutors' Office of 2004 which strengthen the role of the Public Prosecutors Office in the pre-criminal proceedings, with the proposed amendment the constitutional competence of the Public Prosecutors' Office and in the domain of detecting of perpetrators of criminal and other punishable acts, for the purpose of securing of an efficient criminal persecution of the new forms of crime and ever more present forms of organised crimes. In that context, bearing in mid that in the field of organised crime and corruption at international level, there is a large number of documents that the Republic of Macedonia has adopted and which are a constitutive part of the domestic law, it is necessary to widen the scope of the grounds for performance of the public prosecutors' function also with the international agreements ratified in compliance with the Constitution

The existing Article 106 of the Constitution of the Republic of Macedonia defines only the position of the Public Prosecutors' Office as a body but does not do that for the bearers of the Public Prosecutors' function. Due to these reasons, with the Amendment, the Supreme State Prosecutor and the State Prosecutors are defined as bearers of function of the State Prosecutors' Office. Also, there is no ground in the Constitution in respect to that which issues related to the prosecutors office should be regulated by law, like the provision that exists in the Article 98, paragraph 5 of the Constitution, which refers to the courts. For those reasons, the proposed amendment foresees that the kinds, competence, establishing, abolishing, organisation and the functioning of the State Prosecutors Office is regulated by law, thus creating a constitutional basis for legal regulation of this matter.

Also, with the amendment are foreseen novelties in respect to the appointment and dismissal of the bearers of the State Prosecutors' Office function. For the purpose of securing a greater independence in the performance of their function in respect to the legislative and the executive powers, all State Prosecutors, except the Supreme State prosecutor, are appointed and dismissed by the Council of the State Prosecutors Office. In that way, the government of the Republic of Macedonia as a segment of the executive power is excluded as a possible creator of the personnel related solutions for the prosecutor's office, thus guaranteeing to the prosecutor the necessary independence for an efficient implementation of the function.

In respect to the duration of the mandate of the Supreme State Prosecutor, the constitutional provision remains unchanged and it still is 6 years. For the other state prosecutors, a mandate with duration of three years is foreseen, at the first appointment in the lowest organisational form of the prosecutors office, and after the expiry of this mandate, the same as for the judges, a permanent mandate is foreseen, provided the requirements stipulated by law are met. This kind of solution is in compliance with the Recommendation (2000)19 of the Council of Europe on the role of the State Prosecutors' Office, the reports of the GRECO group, as well as the comparative legislation of the EU Member States. Namely, it was assessed that in this way primarily professionalism and greater independence shall be secured in the realisation of the function, and at the same time, the need for independence of the prosecutors office from the executive branch shall be realised.

In respect to the basis for termination of the state prosecutor's function and the basis for dismissal from the function, with the Amendment identical solutions are built in as those foreseen for the bearers of the judicial function, with the difference that for the State Prosecutors, the violation of the Constitution and the laws is established by the State Prosecutors Council, and for the Supreme State Prosecutor, the Parliament of the Republic of Macedonia as a body that appoints him/her.

Having in mind that, both for judges and prosecutors, in the case of dismissal all guaranties for a just procedure should be secured, it is necessary to create the grounds ion the Constitution for a legal regulation of the procedure for termination of the State Prosecutors' function due to dismissal.



**DRAFT TEXT**

**To Amendment XXXI of the Constitution of the Republic of Macedonia**

This Amendment is a constituent part of the Constitution of the Republic of Macedonia and enters into force on the day of its promulgation.

**AMENDMENT XXXI**

1. The Supreme State Prosecutor of the Republic of Macedonia and the State Prosecutors of the Republic of Macedonia in their performing of the function enjoy immunity. A State Prosecutor cannot be criminally prosecuted, deprived from liberty, detained nor called in for a civil-accountability for opinions and decision made in the course of performing of his/her function.
2. The Supreme State Prosecutor of the Republic of Macedonia cannot be detained without the consent of the Parliament of the Republic of Macedonia, except in the case where he/she is caught in performing of a criminal deed punishable by law in the period of at least 5 years.
3. State prosecutor in the Republic of Macedonia cannot be detained without the consent of the Council of State Prosecutors, except in the case where he/she is caught in performing of a criminal deed punishable by law in the period of at least 5 years.
4. The Parliament of the Republic of Macedonia decides on the immunity of the Supreme Public prosecutor.
5. The Council of State Prosecutors decides on the immunity of the state prosecutor with a two-third majority vote of the total number of members of the Council through procedure regulated by law.
6. The function Supreme State Prosecutor, i.e. State Prosecutor is not compatible with the performance of other public function and profession or with a membership in a political party.
7. Political organizing and acting is prohibited in the State Prosecutors' Office.
8. This Amendment replaces article 107 of the Constitution of the Republic of Macedonia.

**EXPLANATION**  
**TO THE DRAFT TEXT**

*Of the Amendment XXXI of the Constitution of the Republic of Macedonia*

In accordance with article 107 of the Constitution of the Republic of Macedonia, the Public Prosecutor enjoys immunity. The Parliament decides on his/her immunity. The function public prosecutor is incompatible with the performing of other public function, profession or membership in a political party.

This Amendment defines the contents of the immunity of the public prosecutors, in analogy to the immunity of the judges. It is a generally accepted principle that the body that appoints and dismisses the public prosecutor, also, decides on the lifting of his/her immunity. In that respect, the Amendment foresees that the Parliament decides on the immunity of the Supreme State Prosecutor and on the immunity on the other State Prosecutors decides the Council of State Prosecutors with a two-third majority vote of the total number of members of the Council in a procedure proscribed by law.

Regarding the incompatibility of the prosecutor's function with other functions and professions, and membership in a political party, as well as the prohibition for a political organization and acting within the State Prosecutors' Office, the current provision is kept in which terminological harmonization is made regarding the name of the body and the bearers of this function.

**DRAFT TEXT**

**To Amendment XXXII of the Constitution of the Republic of Macedonia**

This Amendment is a constituent part of the Constitution of the Republic of Macedonia and enters into force on the day of its promulgation.

**AMENDMENT XXXII**

1. The State Prosecutors' Council consists of eleven members.
2. Members of the State Prosecutors' Council by their function are the Supreme State Prosecutor and the Minister of Justice.
3. Five members of the State Prosecutors' Council shall be elected from among all of the State Prosecutor in the Republic of Macedonia. Two of the elected members are representatives of the non-majority communities in the Republic of Macedonia, while equitable representation of the citizens from all communities shall be observed. The procedure for election of the member of the State Prosecutors' Council from among the state prosecutors is regulated by Law.
4. Two members of the State Prosecutors' Council are elected by the Parliament of the Republic of Macedonia. The members are elected with majority vote of the total number of members of the Parliament, and at the same time there must be a majority of the votes of the total number of members of Parliament from the non-majority communities in the Republic of Macedonia.
5. Two members of the State Prosecutors' Council are appointed by the President of the Republic of Macedonia, of which is a representative of the non-majority communities in the Republic of Macedonia.
6. President of the State Prosecutors' Council is the Supreme State Prosecutor.
7. The members of the State Prosecutors' Council elected the Parliament of the Republic of Macedonia, i.e. appointed by the President of the Republic of Macedonia, come from among the university professors of law, legal advisors and other distinguished lawyers.
8. The mandate of the elected and appointed members of the State Prosecutors' Council is 5 years.
9. The elected and the appointed members of the State Prosecutors' Council enjoy immunity. A member of the State Prosecutors' Council cannot be a person that is criminally persecuted, deprived from liberty or detained, nor could be held liable for an expressed opinion or for a voting on a session of the State Prosecutors' Council.
10. An elected and appointed member of the State Prosecutors' Council cannot be detained without permission from the State Prosecutors' Council, unless he/she is caught in doing of a criminal act for which a sentence of at least 5 years is proscribed.
11. The State Prosecutors' Council decides on the immunity of the elected and the appointed members of the State Prosecutors' Council with a two-thirds majority vote of the total number of members with a procedure stipulated by law.
12. The function of the member of the State Prosecutors' Council terminates:
  - upon his/her free will; and
  - if he/she permanently loses the capacity for conducting of the function member of the State Prosecutors' Council.
13. A member of the State Prosecutors' Council can be dismissed:

- if he/she is sentenced for a criminal act for an unsuspended imprisonment of at least 6 months;  
and

- due to a violation of the Constitution of the Republic of Macedonia and severe violation of laws in his/her exercising of the function, established by the State Prosecutors' Council.

14. To a member of the State Prosecutors' Council who is *ex officio* a member of the Council, the function terminates with the termination of the function Minister of Justice, i.e. Supreme State Prosecutor.

15. The function of an elected and appointed member of a State Prosecutors' Council is incompatible with the performance of other public functions or professions.

16. This Amendment addition is made to section 5. Public Prosecutors' Office of Part III Organisation of the State Authority of the Constitution of the Republic of Macedonia.

**EXPLANATION**  
**TO THE DRAFT TEXT**

***Of the Amendment XXXII of the Constitution of the Republic of Macedonia***

The subject of this Amendment is the composition of the State Prosecutors' Council, the mandate of its members, immunity and termination and dismissal of the function of member of this body. It is about a body that is for the first time introduced with the Law on Public Prosecutors Office of 2004. Bearing in mind its competences, it was assessed that it needs to become a constitutional category and to be named State Prosecutors' Council.

In respect to the composition of the State Prosecutors' Council it is foreseen that it has 11 members, of which members in compliance with their function are the Minister of Justice and the Supreme State Prosecutor, 5 members elected among the state prosecutors on direct elections with a secret vote by all state prosecutors in the Republic, 2 members are elected by the Parliament of the Republic of Macedonia, and two members are appointed by the President of the Republic of Macedonia. For the members elected, i.e. appointed the principle of equitable representation of the members of the non-majority communities in the Republic of Macedonia is observed. The mandate of the elected, i.e. appointed members of the State Prosecutors' Council lasts for 5 years.

In order to secure the professionalism of the composition of the State Prosecutors' Council and representation of the legal science, apart from the State Prosecutors, the possibility is foreseen that members can also become representative from other juridical professions (university professors of law, legal advisors and other distinguished lawyers).

Also, the Amendment regulates the immunity of the members of the State Prosecutors' Council, the scope and the contents of which is equal to the immunity of the State Judicial Council. At the same time, for lifting of the immunity of the elected and appointed members of the State Prosecutors' Council decides the Council itself with a two-thirds majority of the members and with a procedure proscribed by law.

The same, as with the State Judicial Council, this amendment incorporates guarantees by which the members of the State Prosecutors' Council are protected from an untimely dismissal due to political reasons. Namely, it is foreseen to have termination of the function member of the Council and dismissal from the function member of the Council. The possibilities defined with the Constitution for termination of the function, i.e. dismissal solely due to the stated reasons, secured an assurance regarding the duration of the mandate. The provision which regulates that fulfilment of the condition for dismissal due to violation of the Constitution of the Republic of Macedonia and more severe violation of the laws in the course of the performance of the function are established by the State Prosecutors' Council, also represents a defence barrier. In respect to the termination of the function of a member of the Council to the Minister of Justice and to the Supreme State Prosecutor, having in mind that their membership is coupled with their function, with the termination of these functions, also terminates their membership in the Council.

For the purpose of professionalisation of the State Prosecutors' Council, the Amendment foresees incompatibility of the function elected, i.e. appointed member of the State Prosecutors' Council with the performance of other public functions and professions, and for the purpose of its departisation, also incompatibility with membership in a political party.

**DRAFT TEXT****To Amendment XXXIII of the Constitution of the Republic of Macedonia**

This Amendment is a constituent part of the Constitution of the Republic of Macedonia and enters into force on the day of its promulgation.

**AMENDMENT XXXIII**

1. The State Prosecutors' Council:

- appoints and dismisses the State Prosecutors;
- establishes the termination of the function of a State Prosecutor;
- decides on the promotion of the State Prosecutors;
- decides regarding the disciplinary responsibility of the State Prosecutors;
- decides on the lifting of the immunity of the State Prosecutors;
- performs other duties stipulated by Law.

2. The State Prosecutors' Council for its work submits annual report to the Parliament of the Republic of Macedonia.

3. This Amendment addition is made to Section 5 Public Prosecutors' Office of Part III. Organisation of the State Authority from the Constitution of the Republic of Macedonia.

**EXPLANATION**  
**TO THE DRAFT TEXT**

*Of the Amendment XXXIII of the Constitution of the Republic of Macedonia*

This Amendment more precisely defines the competences of the State Prosecutors' Council. Thus, it is foreseen that the Council appoints and dismisses the State Prosecutors, establishes the termination of the function, decides on the promotion of the State Prosecutors, decides on their disciplinary responsibility, decides on the lifting of the immunity of the State Prosecutors, as well as on performance of other duties established by law.

A portion of the competences of the State Prosecutors' Council are already regulated with the Law on Public Prosecutor's Office, however, given the enhancement of the State Prosecutors' Office and the bearers of the state prosecutors function, and consequently, strengthening of the status of the State Prosecutors' Council and its promotion into Constitutional category rank, the need was imposed for widening of the scope of its competence.

Having in mind the international documents, which for the purpose of successful and efficient implementation of the prosecutors' function, demand that the national legislation redefines the role of the bearers of the this function, therefore it was necessary to establish a body with this kind of competences which, on the basis of objective criteria and respecting the principles of professionalism and competence, the conditions for professional recruitment of the State Prosecutors, promotion in their career, decision-making on the disciplinary responsibility and lifting of their immunity, shall be secured.

**DRAFT TEXT**

**To Amendment XXXIV of the Constitution of the Republic of Macedonia**

This Amendment is a constituent part of the Constitution of the Republic of Macedonia and enters into force on the day of its promulgation.

**AMENDMENT XXXIV**

1. The kinds of decisions of the Constitutional Court, their legal effect and the enforcement are regulated by law.
2. The internal organisation and the manner of operation of the Constitutional Court are regulated with an act of the Court.
3. This Amendment replaces Article 113 of the Constitution of the Republic of Macedonia.



**EXPLANATION**  
**TO THE DRAFT TEXT**

*Of the Amendment XXXIV of the Constitution of the Republic of Macedonia*

In accordance with Article 50, paragraph 1 of the Constitution, each citizen can invoke the protection of the freedoms and rights established by the Constitution, before the courts and before the Constitutional Court of the Republic of Macedonia, in a procedure based on the principles of the priority and urgency.

In compliance with Article 110, line 3 of the Constitution, the Constitutional Court of the Republic of Macedonia protects the freedoms and rights of the person and of the citizen which refer to the freedom of personal conviction, conscience and public expression of thought, political affiliation and activity and the prohibition of discrimination of the state on the grounds of sex, race, religious, national, social and political affiliation.

The competence of the Constitutional Court of the Republic of Macedonia for direct protection of the fundamental freedoms and rights was envisaged as one of the pillars of the democratic transformation of the society and of exercising the principle of rule of law.

Apart from the right of the citizens to demand protection of their freedoms and rights before the regular courts and before the Constitutional Court of the Republic of Macedonia, and in respect to that, the competence of the Constitutional Court to protect a specific number of freedoms and rights, the Constitution does not provide for any closer requirements and manner in which this competence shall be realised, nor it foresees a passing of a law that would regulate these issues. As in the case of the other issues relevant for the realisation of the function of the Constitutional Court, the Constitution also tacitly allows the regulation of the same matter with an act of the Constitutional Court on the procedure and the manner in which it would operate. Given that the state authorization refers only to internal questions of the internal organisation of the Constitutional Court, the Constitution in essence, does not provide any grounds for any concrete forming of this competence, in the sense of establish of the kinds and character of the individual acts against which the stated protection could be sought, the conditions to be met in order to demand this kind of protection, nor the legal effect of the decision of the Constitutional Court brought in the course of performing of its competence.

This situation indicates to a greater degree of discrepancy with the minimum standard elements of the Constitutional regulation of this matter, which is usual in other European countries with a Constitutional Court with the same competence.

Further more, by missing to establish with the Constitution all of the elements that are making up the essence of this protection, concomitantly by not allowing that to be done with a Law, the creation of its final physiognomy is allowed to be a subject of regulation by a secondary legislation, irrespective of the fact that in this case, it is an act of the Constitutional Court of the Republic of Macedonia. Hence, the quality of the regulation of this matter, measured by the criteria linked to the legal effect of the general legal acts, within the hierarchical structure of the legal order, this matter is taken two levels below in respect to the standards of the European countries in which functions this competence of the constitutional Court.

In accordance with article 112 of the Constitution of the Republic of Macedonia, the Constitutional Court shall abolish or nullify a law if it establishes that it is not in compliance with the Constitution. The Constitutional Court shall abolish or nullify other regulation or a general act, collective agreement, statute or a programme of a political party, or an association, if it establishes that they are not in compliance with the Constitution or with the Law. The decisions of the Constitutional Court are final and enforceable.

In accordance with Article 113 of the Constitution, the manner of operation and the procedure before the Constitutional Court are regulated with an act of the Court.

The Constitution of the Republic of Macedonia, in its Article 112 establishes only the two basic kinds of legal effect of the decisions of the Constitutional Court: abolishing and nullifying of the laws for which it established that they are not in compliance with the Constitution, i.e. abolishing and nullifying other regulations and general acts, collective agreements, statutes or programmes of political parties or associations, for which it established that they are not in compliance with the Constitution or with the law. Also, with this constitutional provision, the basic legal features of the decisions of the Constitutional Court are defined: as final and enforceable. The Constitution does not at all regulate the issue in respect to that which subject in the legal system is bound to execute the decisions of the Constitutional Court, nor the issue regarding which subjects are authorized to initiate a procedure before the Constitutional Court. With the Article 113 of the Constitution, authorization is granted with the act of the Constitutional Court, to regulate the manner of operation and the procedure before the Constitutional Court.

The European and international standard in the constitutional regulation of the issues related to the legal effect of the decisions of the Constitutional Court and with the manner of their enforcement are covering only the segment that is most general (for instance, to establish the kinds of legal effect of the decisions and the general obligation of all subjects in the legal system, depending on their competence for enforcement of the decisions), and all individual aspects of the given legal effect and the manner in which the decisions of the Constitutional Court are being enforced is being transferred to the regulation of the matter by a law.

The situation in the Republic of Macedonia in this domain diverges from the stated standards. The circumstance that the Constitutional Court with its own act and not the Parliament with a Law, regulates all the issues connected to the performance of the function of the Constitutional Court that are not regulated by the Constitution, represents a form of distortion of the constitutional position of the Constitutional Court. By its essence, it should have the passive role in protection of the unity of the legal order, and not a role of active creation of the legal system, by forming of specific relations, since such role does not fall into the scope of its basic function, and also for doing that, it does not have the necessary democratic legitimacy.

The kinds of decisions brought by the Constitutional Court, their general features (including the obligation of the Government for their enforcement) and the basic elements of their legal effect, should be regulated by law.

These constitutional amendments are guided by the standards that are already established by the countries that have much greater experience in the constitutional judiciary. Hence, not only numerous practical problems that exist in that respect in the Republic of Macedonia shall be resolved, but the right measure would be found regarding the authorization of the Constitutional Court to regulate with a Book of rules only those issues that have internal character, i.e. that refer to its internal organisation and manner of operation.