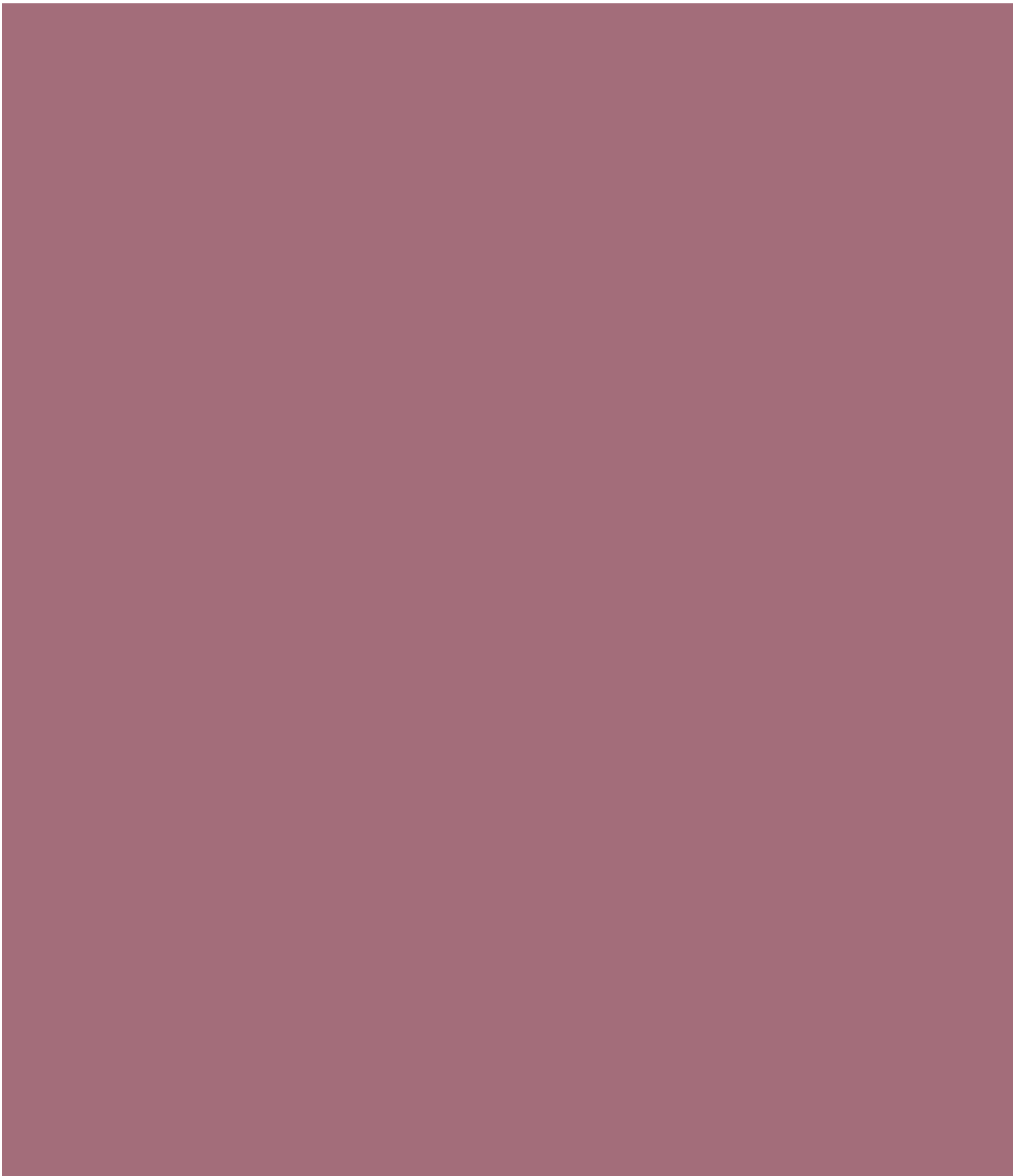




THE LAW OF THE HIGH **PROSECUTORIAL COUNCIL**





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WHAT DID THE CONSTITUTION CHANGE?

- The composition of the State Prosecutorial Council (SPC) has been changed, so the future High Prosecutorial Council will have eleven (11) members, of which five (5) are public prosecutors elected by their peers (public prosecutors and chief public prosecutors), four (4) distinguished lawyers elected by the National Assembly and two (2) ex officio members - Supreme Public Prosecutor and the Minister of Justice.
- A notable novelty is that the chairman of the competent committee of the National Assembly, who was an ex-officio member of the SPC, and two distinguished and prominent lawyers with at least 15 years of experience in the profession, one of whom is a lawyer and the other a professor at the Faculty of Law, will no longer be part of that body. Also, in the structure of that body, the 2022 Constitution no longer foresees an elective member from the ranks of prosecutors, at least one of whom is from the territory of the autonomous provinces.
- The Supreme Public Prosecutor will no longer preside over the High Prosecutorial Council.
- The president of the High Prosecutorial Council is elected among public prosecutors, and the vice president is elected among prominent lawyers.

- The Minister responsible for justice has limited competencies because he/she does not vote in determining the public prosecutor's disciplinary responsibility.
- Elective members - representatives of prosecutors, can be elected only from the ranks of public prosecutors, not from the ranks of chief public prosecutors.
- In addition to the primary competence to elect chief public prosecutors and public prosecutors and to decide on the termination of their functions, the High Prosecutorial Council is also entrusted with the competence to decide on status issues in the public prosecutor's organization, i.e., to appoint the acting Supreme Public Prosecutor and decide on other issues of the position of the Supreme Prosecutor, chief public prosecutors, and public prosecutors.
- The 2022 Constitution extended the functional immunity of the holders of public prosecutor's office, which protects them so that they cannot be called to account for the opinion given or the decision made in connection with the performance of the office unless they commit a criminal act of violation of the law by a judge or public prosecutor. At the same time, the High Prosecutorial Council will decide on procedural immunity instead of the National Assembly.



WHAT DOES THE WORKING VERSION OF THE LAW ON THE HIGH PROSECUTORIAL COUNCIL PROVIDE?

EXTENDED AUTHORITY OF THE HIGH PROSECUTORIAL COUNCIL TO:

- Proposes to the National Assembly the election and termination of the function of the Supreme Public Prosecutor;
- elects chief public prosecutors and public prosecutors;
- decides on the termination of the office of the Chief Public Prosecutor and the Public Prosecutor;
- elects the president and vice-president of the Council;
- appoints acting Supreme Public Prosecutor and Chief Public Prosecutor;
- decides on other issues of the position of the Supreme Public Prosecutor, chief public prosecutors, and public prosecutors;
- decides on the objection to the mandatory instructions of the Supreme Public Prosecutor and the Chief Public Prosecutor for work and action in the specific case, on the complaint to the decision on devolution, and the objection to the decision on substitution;
- decides on the permanent transfer of the chief public prosecutor and the public prosecutor, temporary referral and referral of the public prosecutor;
- determines the number of public prosecutors for each public prosecution;



- decides on the incompatibility of performing other functions, work and work with the public prosecutor function;
- decides in the process of evaluating the work of the chief public prosecutor and the public prosecutor;
- decides on the existence of undue influence on the work of the holders of the public prosecutor's office and the Public Prosecutor's Office and measures to prevent undue influence;
- performs the work of administration in the public prosecutor's office and judicial administration within its jurisdiction;
- decides on the immunity of the holder of the office of the public prosecutor and the elected member of the Council;
- proposes the volume and structure of budget funds and supervises their spending by the law;
- decides on the objection in the election procedure for a member of the Council from the ranks of public prosecutors;

BUDGETARY AUTONOMY OF THE HIGH PROSECUTORIAL COUNCIL

- According to the current legal solution, the budget of the Council depends on the Ministry of Justice and the Ministry of Finance.
- The working version of the Law envisages the budgetary independence of the High Prosecutorial Council, which will propose a budget modeled after the competence of the Constitutional Court. Therefore, the ministries above will not have the authority to approve the prosecutor's budget.

THE NUMBER OF WORKING BODIES OF THE HIGH PROSECUTORIAL COUNCIL HAS BEEN INCREASED

The working bodies of the Council are:

- Commission for evaluating the work of the chief public prosecutor and public prosecutor,
- Election Commission,
- Commission for monitoring the equal distribution of cases,
- Budget Commission,
- Ethics Committee
- Disciplinary bodies.

To ensure protection against undue influence on the performance of the public prosecutor's office, the Council appoints a member of the Council from among public prosecutors to deal with cases of undue influence on the work of the public prosecutor's office and the holder of the public prosecutor's office.



METHOD OF MAKING DECISIONS

- A qualified majority of eight (8) votes adopts decisions in the Council.
- In determining disciplinary responsibility, the Minister responsible for justice does not participate.
- Only elected members of the High Prosecutorial Council from the ranks of public prosecutors take part in the decision-making process based on an objection against mandatory instructions for work and action in a specific case, and they decide by a majority of three votes. The Supreme Public Prosecutor does not participate in the proceedings.

THE RIGHTS OF THE CANDIDATES IN THE ELECTION PROCEDURE FOR MEMBERS OF THE HIGH PROSECUTORIAL COUNCIL ARE MORE PRECISELY DEFINED

- Every candidate has an equal right to be presented to the holders of the public prosecutor's office.
- The chief public prosecutor is obliged to allow public prosecutors to attend the presentations of candidates at the headquarters of the Appellate Public Prosecutor's Office in whose territory they are located.
- The Election Commission, with the consent of the candidate, organizes a video recording of the presentation of the candidate in the Appellate Public Prosecutor's Office and publishes the video on the Council's website.
- The candidate has the right to paid leave for the days when they present themselves at the headquarters of the Appellate Public Prosecutor's Office.
- The Council provides compensation for the travel expenses of candidates for representation at the headquarters of the Appellate Public Prosecutor's Office.

THE LAW ELABORATED THE CONDITIONS FOR SELECTING MEMBERS OF THE COUNCIL ELECTED BY THE NATIONAL ASSEMBLY, PROVIDING CLOSER DETERMINATIONS OF WHO IS TO BE CONSIDERED A PROMINENT LAWYER

In addition to the conditions prescribed by the 2022 Constitution that a prominent lawyer cannot be a member of a political party and that he/she must have at least ten years of experience in the legal profession and must be worthy of that position, the law additionally prescribed that a prominent lawyer must:

- Meet the general requirements for working in state bodies,
- have acquired higher education at the basic academic studies at the Faculty of Law in the scope of at least 240 ECTS or higher education received at the basic studies at the Faculty of Law for a duration of at least four years;
- to have experience and knowledge relevant to the work of the judiciary;
- that they are worthy of performing the function of a member of the Council;
- that he/she does not meet the general requirements for retirement;
- not to perform the role of the public prosecutor or judge;
- that he did not exert undue influence on the work of public prosecutors and public prosecutors or judges and courts;
- that in public appearances, he/she did not represent positions that threatened the independence of the public prosecutor's office or the independence of the judiciary;
- The legislator defined in more detail what is meant by worthiness and what are the moral qualities that a member of the Council should possess;
- The legislators also added a special provision that during the selection of prominent lawyers, professional or scientific work of importance for the work of the judiciary, as well as an understanding of the judiciary and advocacy in professional employment or public action for the independence of the Public Prosecutor Office, will be especially valued.

TRANSITIONAL AND FINAL PROVISIONS

- A member of the existing composition of the State Prosecutorial Council who is a deputy public prosecutor continues to perform his function as a member of the Council by this law until the end of the mandate for which he/she was elected.
- A member of the existing composition of the State Prosecutorial Council from among lawyers and professors of the Faculty of Law may be elected as a member of the Council by the provisions of the new law.



