

Darko Simović, PhD
Full professor
University of Criminal Investigation and Police Studies, Belgrade

Radomir Zekavica, PhD
Full professor
University of Criminal Investigation and Police Studies, Belgrade

The right to an independent and impartial court as a presumption of the rule of law in light of the constitutional reforms in the Republic of Serbia

Abstract: The right to an independent and impartial court is one of the components of the right to a fair trial. As such, it is a key prerequisite for realizing the right to a fair trial and at the same time a barrier against arbitrariness and bias in the realization and protection of human rights. And it is precisely here that one can see the key importance that this right has for the rule of law. Namely, as a concept that implies the absence of arbitrariness in the exercise of power, the rule of law could not be achieved without the independence and impartiality of the judiciary. In legal theory, there is a general consensus about the primary importance of an independent judiciary for the existence and preservation of the rule of law. What is and should be the subject of constant analysis and criticism is the way it is realized in a given society. When it comes to Serbia, the constitutional changes, from the beginning of 2022, were aimed at the reform of the Serbian judiciary, within which the issue of judicial independence was one of the most important. The trial, three-year mandate of judges was abolished, while the election of all judges and court presidents was transferred to the jurisdiction of the High Council of the Judiciary. The composition of the High Council of the Judiciary was depoliticized and the constitutional guarantees of the independence of judges were improved, among other things, by ensuring the permanence of the judicial office, constitutionalizing the reasons for the dismissal of judges and more precisely guaranteeing their immovability. Nevertheless, the majority of legal scholars remained critical or at least visibly restrained regarding the scope of the implemented constitutional changes. In addition to the deficient democratic legitimacy of the convening of the National Assembly that decided on constitutional changes, it is emphasized that the constitutional guarantees of the independence of the judiciary were only partially improved with the creation of new and hidden channels for political influence. Hence, the contextual analysis of the content of the constitutional amendments indicate that the implemented constitutional reform cannot have positive effects on improving the rule of law in Serbia. The goal of this paper is precisely the analysis of these issues, a critical review of constitutional reforms, but also an analysis of the jurisprudence of the Constitutional Court of the RS, which in a large number of decisions dealt with the right to a fair trial and, within that, the right to an independent and impartial court.

CV: Darko Simović is a full professor of Constitutional Law and the Head of the Department of Legal Studies at the University of Criminal Investigations and Police Studies in Belgrade. He is a member of the Commission for the Acquisition of Scientific Titles. He is the recipient of the "Outstanding Reviewer for the Social Sciences" award for 2022 by the Centre for Evaluation in Education and Science (CEON). He wrote more than a hundred scientific and professional papers, including textbooks on Constitutional law and Human rights.

CV: Radomir Zekavica is a full professor and Chair of the Faculty of Criminal investigation at the University of Criminal Investigation and Police Studies in Belgrade. He teaches several courses at the undergraduate, master and doctoral studies: Introduction to Law (undergraduate studies), Human Rights (undergraduate studies), Police Culture (undergraduate studies), Police and Human Rights (master studies), Contemporary studies of human rights (doctoral studies). He wrote more than a hundred scientific and professional papers, including textbooks on Introduction to Law and Human rights.