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CONSTITUTIONAL PROVISIONS ON JUDICIAL INDEPENDENCE AND EU STANDARDS

Implementation of the "Checks and balances" principle as one of the mile stones in modern democracies, demonstrates its full complexity when it comes to balancing guaranties of judicial independence and the need to prevent misinterpreta tion or abuse of the rights. Additional issue in that process is determination of the border line between constitutional and guaranties of judicial independence pre scribed by law. Raising that issue opens various questions which go beyond the legal framework itself. It actually tackles the historical, political and cultural country background. Furthermore, if analyzed from the prospective of the requirements de fined in the accession negotiation process with the EU, constitutional guaranties of judicial independence become division criteria that challenge the idea of EU stand ards' existence and their unselective application as an accession benchmark. Fur thermore, lack of clear and objective criteria of (non)application of the EU standards might demotivate candidate countries in their efforts to achieve substantial reform results.

Key words: *Judicial independence. Separation of powers. European stand ards. Accession negotiations. Chapter 23.*

1. SEPARATION OF POWERS AS A STARTING POINT OF JUDICIAL INDEPENDENCE

Checks and balances principle is usually understood as a system of counterbalancing influences whereby each branch of the government (executive, judicial, and legislative) has some extent of influence over the other branches and may choose to block procedures of the other branches.

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This principle is directly derived from separation of powers, division of the legislative, executive, and judicial functions of the government among separate and independent bodies. Such separation limits the possibility of arbitrary excess by any of them in the process of the designing, implementing, and administering of laws.

The first modern formulation of the doctrine was that of the Montesquieu in The Spirit of Laws (*De l'esprit des lois*).[1] Montesquieu's argument that liberty is most effectively safeguarded by the separation of powers influenced the authors of the U.S. Constitution that precludes the concentration of political power. The same principle is now built in constitutional framework of numerous modern states. Checks and balances principle has been clearly articulated in the article 4 of the Constitution of the Republic of Serbia which says that the legal system is unique but the government system shall be based on the division of power on legislative, executive and judiciary. Relationship between three branches of power shall be based on balance and mutual control. The fact that par. 4 of the same article says that judiciary power shall be independent, represents the biggest challenge in establishment of the mutual balance and control system between three branches of government.

2. STANDARDIZED AND/OR TAILOR-MADE NATIONAL LEGISLATION

The milestone and essential starting point of the idea to establish a united Europe is based on the idea of unification. This process affects all segments of society, but it is undoubtedly the most important when it comes to reform of national legal systems. A degree of unification ranging from complete in areas regulated by *acquis,* to framework-based on EU standards. Depending on the particular field, these frames can be extremely wide forming a "scale" of permissible or desirable, within which candidate countries could opt to be on the basic level (just to satisfy the requirements), or to pose themselves on mid-level or even in the top. In some areas the scope of permissible is extremely narrow, and the process for harmonization with standards closely resembles the process of transposing the *acquis*.[2]

EU decision on the required level of unification is basically decision to regulate some field by *acquis* or by (wider or narrow) standards,

[1] C.L. de Secondat Montesquieu, *The Spirit of Laws*, 1748, 30.

[2] M. Kolaković Bojović, "Organizacija pravosuđa u Republici Srbiji i Poglavlje 23", *Evropske integracije i kazneno zakonodavstvo (Poglavlje 23 norma, praksa i mere harmonizacije),* Serbian Society for Criminal Law and Practice, Intermex, Zlatibor–Beograd 2016, 99.

depends on several factors. One of the key criteria is importance of the subject area for the functioning of the EU. Issues of the essential importance for the EU dealing with its competences had been ruled by *acquis* at an early stage of Union's life. Another important criterion concerns the sensitivity of certain issues in the context of readiness of candidate countries to renounce their own traditions. Constitutional regulation of key state institutions' competences and functioning, the judiciary in particular, undoubtedly represents one of the areas in which it is difficult for a country to waive heritage. In this sense, absence of *acquis* is not a peculiar specificity of the Chapter 23 that deals, *inter alia*, with judicial reform. With the exception of procedural safeguards, there are just few issues regulated by EU legislation that imply alignment with European standards. Seemingly, this resembles the mitigatory circumstance, since instead of strictly prescribed solutions that candidate countries are obliged to pass into their legal system, there is a kind of acceptable full scale of solutions within which a candidate country for EU membership should select the one that best suits it. However, this scale represents only an illusion, caused by the fact that the "freedom of choice" has been continuously challenged by selective application of the standards. Furthermore, their selective application has been approved by Venice Commission as well as by the European Commission (hereinafter EC) and has become a tool for pre-sorting particular country in one of the two possible "quality" groups based on (non)existence of their obligation to meet relevant standards as a precondition for EU membership.

Besides that difference, the approach of the Venice Commission, as well as the EC, differs when it comes to definition of the border line between constitutional, and guaranties of judicial independence prescribed by law. This "discriminatory" approach was clearly articulated in 2007, through the Venice Commission's Opinion CDL-AD(2007)028 (par. 5 6)[3]. The Commission admitted that in some older democracies, systems exist in which the executive power has a strong influence on judicial appointments. At the same time, the Commission stated that such systems may work well in practice and allow for an independent judiciary because the executive is restrained by legal culture and traditions, which have grown over a long time. Contrary to this, the new democracies have not yet had a chance to develop these traditions, which can prevent abuse (CDL-AD(2007)028, par. 45).

However, limitations in developing the "tailor-made legislation" for candidate countries are not exhausted in above mentioned opinion. The Venice Commission has gone further in its views stating that at least in new democracies explicit constitutional provisions are needed as a

[3] European Commission for Democracy through Law (Venice Commission),CDL AD(2007)028, Judicial Appointments Report adopted by the Venice Commission at its 70th Plenary Session (Venice, 16–17 March 2007).

safeguard to prevent political abuse by other state powers in the appointment of judges. What does that mean in practice? When the detailed constitutional guaranties of judicial independence are in place, the chance for political interference through legislative amendments is limited (CDL-AD(2007)028, par. 46).Without denying that there is a positive logical pattern in such approach of the Venice Commission, it stays unclear who, when and based on which criteria made the decision on division of European countries in two "qualitative groups"? Furthermore, as it is even obvious that there is neither a list of the countries with the great democratic tradition nor of those classified as new democracies, it seems a bit inappropriate to raise such issue in expert or EU bureaucracy circles. The status of "those who need to meet EU standards" is obtained by every single country through the Venice Commission's opinions on constitutional, or amendments to judicial legislation.

3. THE KEY ISSUES THAT EU STANDARDS OF JUDICIAL INDEPENDENCE DEAL WITH

In general, the guaranties of judicial independence could be sorted in two groups. The first one deals with guaranties of independence of judiciary as the branch of government, in order to allow realization of the "checks and balances" principle, as well as to provide a solid ground for realization of the individual guaranties of judicial independence, such as permanency of tenure, guaranties of financial independence, immovability, functional immunity, limited ground for removal, etc. It is important to notice that there are significant differences in level of interest in particular type of guaranties among legal professionals. While guaranties of independence of judiciary as the branch of government are continuously being subject of discussion, it seems that only permanency of judicial tenure still tends to be an individual guaranty that needs further clarification.

Since there are no EU directives and regulations in this field, the relevant EU standards are derived from various acts adopted by the United Nations and relevant committees of the Council of Europe, especially the Committee of Ministries and Consultative Council of European Judges (hereinafter CCJE), as well as from the opinions of the Venice Commission. Even the Venice Commission noticed that there are large number of texts on the independence of the judiciary that exist at the European and international level. Having that in mind, all the above mentioned guaranties should be considered as a tool for establishment of the system that allows realization of the "checks and balances" principle, preventing the misinterpretation and abuse of the concept of judicial independence.

It could be said that "independence" became the buzzword of justice reform in transitional countries that is promoted and frequently used beyond the scope that includes impartiality, competence, quality, accountability and efficiency. The independence of judiciary has been wrongly understood and misinterpreted as the right on some kind of self-perpetuation and corporatization of judiciary. Contrary to this, efforts of executive or legislative power to have a strong influence or total control over the judiciary are sometimes so intensive that they don't even try to hide them. Producing a so called "parrot judges" is usually defended by arguments related to necessity of compliance of a "judge's basic outlook on life, his attitude to life and his politics" with the policy of government.[4] Additional problem could be found in some kind of "forced widening" of standards dealing with judicial independence, on position of public prosecution service that is, in its nature, different from judicial. This difference is significant to the extent that shall be subject of a separate analysis.

Commonly, the right solution should be found in a balanced approach that assumes application of basic principles of democracy, where no branch of government should be potentially self-perpetuating." A mature democracy requires those who exercise significant public power to hold themselves open to account. Judicial power ought not to be excluded from accountability requirements. The challenge is to develop mechanisms of accountability that do not undermine judicial independence."[5] Without such a balanced approach, one branch of government is in danger of effectively becoming a "self-perpetuating oligarchy".[6] The imperative of every state has to be identification of an ideally balanced normative and institutional scope that stays in line with the Venice Commission request to avoid both – the risk of politicization and the risk of self-perpetuating government of judges.[7]

The fact that the Republic of Serbia has been placed in above mentioned category of the new and young democracies became obvious after submitting the Venice Commission opinion on the draft Constitution in

[4] F. Musthafa, "Does the Government want parrot judges", *http://www.livelaw.in/government want parrot judges/*, last visited 14 October 2016.

[5] A. Paterson, C. Paterson, *Guarding the guardians? Towards an independent, accountable and diverse senior judiciary,* Centre Forum, London 2012, 11. (See also: A. Le Sueur, "Developing mechanisms for judicial accountability in the UK", *Legal Studies,* 1–2/2004, 73–98.)

[6] R. Stevens, "Reform in haste and repent at leisure: Iolanthe, the Lord High Executioner and Brave New World", *Legal Studies*,1–2/2003, 1–34.

[7] European Commission for Democracy through Law (Venice Commission) Opinion on two Sets of Draft Amendments to the Constitutional Provisions Relating to the Judiciary of Montenegro, adopted by the Commission at its 93rd plenary session (Venice, 14–15 December 2012), 20 and 52.

2005[8], where Commission insisted on the complete elimination of the impact of legislative and executive power on the judiciary. The Venice Commission stated that the position of legislative and executive powers is not in accordance with EU standards, which proclaimed independence of the judiciary, in terms of the role that parliament has in the process of electing the members of the High Judicial Council (hereinafter HJC) and the State Prosecutorial Council (hereinafter SPC), court presidents and public prosecutors, as well as of judges and deputy public prosecutors (first election on judicial or prosecutorial function), but also due to the fact that the representative of the Committee on the judiciary, public administration and local self-government of the National Assembly, as well as the Minister of Justice, are members of the HJC and SPC, who participate in decisions of these bodies. One of the most serious critiques of the Venice Commission on Serbian Constitution was directed to three years' probation period for judicial office holders who have been elected on their first tenure. These opinions showed that Serbia will need to go through the long path of alignment with EU standards, but if we look at recent EC recommendations to Serbia[9] and the other candidate countries,

[8] European Commission for Democracy through Law (Venice Commission) Opinion on the Provisions on the Judiciary in the Draft Constitution of the Republic of Serbia, adopted by the Commission at its 64th plenary session (Venice, 21 22 October 2005) and European Commission for Democracy through Law (Venice Commission), CDL AD(2007)004, Opinion on the Constitution of Serbia, adopted by the Venice Com mission at its 70th Plenary Session (Venice, 17–18 March 2007).

[9] In the Screening Report (pp. 21–22) the EC noticed that the independence of the judiciary is, in principle, provided for by the Constitution (Articles 4 and 149). How ever, suggestions given below this sentence, raise concerns regarding common under standing of the relevant EU standards dealing with judicial independence. The EC criti cized the role of the National Assembly in the election and dismissal of judges as substantial shortcoming that creates risks for political influence over the judiciary. The same goes for the relation with HJC, having in mind that the National Assembly also elects eight of the eleven members of the HJC while the other three are members *ex offi cio*, including the President of the Supreme Court of Cassation (appointed by the Na tional Assembly), the Minister of Justice and the chairman of the competent parliamen tary Committee. The EC confirmed that described set up is not in line with EU standards through the comment that "Serbia should ensure that when amending the Constitution and developing new rules, professionalism and integrity *become* the main drivers in the ap pointment process, while the nomination procedure should be transparent and merit based. Serbia should ensure that a new performance evaluation system is based on clear and transparent criteria, excludes any external and particularly political influence, is not per ceived as a mechanism of subordination of lower court judges to superior court judges and is overseen by a competent body within the respective Councils." Even more problematic is a sentence where the EC challenges the role of the Ministry of Justice regarding its role in administration of justice as well as the part of the Report where the EC says that "the judicial reform process should lead to tasking both Councils with providing leadership and managing the judicial system." Also, the probation period has been challenged and described as "very long". See more: *http://seio.gov.rs/upload/documents/eu dokumenta/ Skrining/Screening%20Report%2023 SR.pdf*, last visited 25 May 2016.

we can get a wrong impression about the legal and institutional set up that can be considered aligned with the EU standards. Furthermore, the importance of proper understanding and implementation of the standards is growing in the moment when the Republic of Serbia needs to fulfil its obligations from the Action Plan for Chapter 23 (hereinafter Action Plan)[10] that had been adopted as the response to recommendations from the Screening Report. It seems that there are several issues of crucial importance when, in accordance with the Action Plan, drafting constitutional and legal amendments dealing with judicial independence is concerened: the system of appointment for judges, the role and composition of judicial councils and permanency of judicial tenure.

4. APPOINTMENT OF JUDGES AND SEPARATION OF POWERS

Methods of judicial appointment in Europe vary greatly among different countries and their legal systems, but these rules can be grouped under two main categories: The elective system– where judges are directly elected by the people or by the parliament, and the direct appointment system, where it is possible to establish appointment body or to use existing institutions/bodies. Even though there is no single model that can just be transposed in the national legal systems, there are relatively clear borders of acceptable in line with EU standards and basic principles of democracy. The common idea of all relevant documents that include standards in this field is that "all decisions concerning the professional career of judges should be based on objective criteria, and the selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency."[11] On the same path is the opinion of the CCJE[12] which says that "every decision relating to a judge's appointment or career should be based on objective criteria and be either taken by an independent authority or subject to guarantees to ensure that it is not taken other than on the basis of such criteria." The most problematic part within this issue is the choice of the authority which will be responsible for appointment of judges. Predominate, but not a single acceptable from the perspective of relevant bodies is that "the authority

[10] Action Plan for Chapter 23, *http://www.mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf*, last visited 16 October 2016.

[11] *Judges: independence, efficiency and responsibilities Recommendation No. R (94) 12 of the Committee of Ministers of the Council of Europe, on 17th November 2010 and explanatory memorandum*, Council of Europe, Strasbourg 2011, I.2.c.

[12] Consultative Council Of European Judges (CCJE), Opinion No 1 (2001) of the Consultative Council of European Judges (CCJE) for the Attention of the Committee of Ministers of the Council of Europe on Standards Concerning the Independence of the Judiciary and the Irremovability of Judges, Strasbourg, 23 November 2001, par. 37.

taking the decision on the selection and career of judges should be independent of the government and the administration".[13]

Having in mind this principle and previously mentioned diversity of national legal systems in Europe, the Venice Commission stated that appointments of judges are not an appropriate subject for voting by the parliament because the danger that political considerations prevail over the objective merits of a candidate cannot be excluded. From the perspective of the Commission, elections by parliament are discretionary acts, therefore even if the proposals are made by a judicial council, it cannot be excluded that an elected parliament will not self-restrain from rejecting candidates. Consequently, political considerations may prevail over the objective criteria. Based on this, the Commission suggests the establishment of a judicial council, which should be endowed with constitutional guarantees for its composition, powers and autonomy (CDL-AD(2007)028, par. 47 48), as an appropriate method for guaranteeing judicial independence. Emphasizing that there is a need to put in place constitutional guaranties regarding all relevant issues dealing with judicial council, the Venice Commission underlines importance of its protection from political interference through the frequent legal amendments. "Democratic legitimacy requires a degree of involvement of elected officials in the appointment of those adjudicating on the laws passed by elected officials".[14] Paterson states that doubtless, the separation of powers is an important underlying factor in the appointment and operation of the judges, but underlines unacceptability of this principle as an absolute one in relation to the appointment of judges because the judges cannot be purely a self-appointing body. The same author perceives the appointment procedure which is exclusively in hands of judges, as an opportunity for self-replication.[15]

When it comes to the role that other branches of government (e.g. president of the state) may have in systems where the strong "position for intervention" is reserved for judicial council, according to the Explanatory Memorandum of the European Charter, their "intervention" in that process could be legally articulated as an opinion, recommendation or proposal, as well as an actual decision.[16] In line with the standards, when some other authority is in charge for appointment, the proposals from the council may be rejected only exceptionally, and the other authority would not be allowed to appoint a candidate not included on the list submitted by it. The Venice Commission underlines that, as long as the other author-

[13] *Ibid.*, 38

[14] A. Paterson, C. Paterson, 11.

[15] *Ibid.*, 30.

[16] The European Charter on the statute for judges DAJ/DOC(98)23, adopted in Strasbourg in July 1998, par. 1.3.

ity is bound by a proposal made by an independent judicial council, this type of appointment does not appear to be problematic. But again, the Commission emphasizes that this method may function in a system of settled judicial traditions, but its introduction in new democracies would clearly raise concern (CDL-AD(2007)028, par. 14 15).

5. THE ROLE AND COMPOSITION OF JUDICIAL COUNCILS

As the establishment of judicial councils or similar types of bodies has become widely used, increased attention of professionals, politicians and academics is focused on the composition of these bodies and their (non)exclusive role in judicial appointment (and judicial career in general), as well as their other competences regarding administration of judiciary.

It seems that relevant bodies were aware of legal systems' diversity when defining standards relevant for composition of judicial councils. According to the Venice Commission, "there is no standard model that a democratic country is bound to follow in setting up its Supreme Judicial Council so long as the function of such a Council falls within the aim to ensure the proper functioning of an independent judiciary within a democratic State. Though models exist where the involvement of other branches of power (the legislative and the executive) is outwardly excluded or minimized, such involvement is in varying degrees recognized by most statutes and is justified by the social content of the functions of the Supreme Judicial Council and the need to have the administrative activities of the Judiciary monitored by the other branches of power of the State"(CDL-AD(2007)028, par. 28). The European Charter on the statute for judges[17] states that "in respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, the statute envisages the intervention of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary." The similar recommendation is consisted in the Venice Commission opinion which says that "substantial element or a majority of the members of the judicial council should be elected by the judiciary itself. But, it is important to notice that, in line with previously mentioned need for application of basic democratic principles, the Venice Commission recognizes a need to include other members of the council beside judges, stated that judicial councils include also members who are not part of the judiciary and represent other branches of power or the academic or professional sectors. Such a

[17] *Ibid.*

composition is justified by the fact that the control of quality and impartiality of justice is a role that goes beyond the interests of a particular judge. Moreover, an overwhelming supremacy of the judicial component may raise concerns related to the risks of "corporatist management". In this mixture composition and the Council's performance of this control, the Commission sees as mechanism that will raise citizens' confidence in the administration of justice." In a system guided by democratic principles, it seems reasonable that the Council of Justice should be linked to the representation of the will of the people, as expressed by parliament (CDL-AD(2007)028, par. 30 31). However, since the involvement of parliament in election of the judicial council's members is acceptable, the Commission recommends qualified majority for the election of its parliamentary component to ensure that a governmental majority cannot fill vacant posts with its followers. From the perspective of the Commission, in order to protect the judicial council from politics, its members should not be active members of parliament (CDL-AD(2007)028, par. 32).

When it comes to involvement of representatives of the executive power in judicial councils (e.g. Minister of Justice), the Venice Commission, having in mind practice of numerous European countries, in general allows possibility of the minister's membership in council, but suggests his exclusion from decision making" concerning the transfer of judges and disciplinary measures against judges, as this could lead to inappropriate interference by the Government"(CDL-AD(2007)028, par. 34). The Commission underlines the necessity to ensure that disciplinary procedures against judges are carried out effectively and are not marred by undue peer restraint (CDL-AD(2007)028, par. 30, 50 51).

The Venice Commission's tendency to provide solution that allows democratic legitimacy of the judicial council as well as to find a balance between judicial independence and self-administration on the one side and the necessary accountability of the judiciary on the other side, in order to avoid negative effects of corporatism within the judiciary, is also visible in its recommendation to elect the chair of the council by the council itself from among the non-judicial members of the council (CDL-AD(2007)028, par. 35).

The situation is quite different when it comes to the competences of the councils that go beyond the scope of judges' career. The Venice Commission is of the opinion that a judicial council should have a decisive influence on the appointment and promotion of judges and (maybe via a disciplinary board set up within the council) on disciplinary measures against them, as well as that an appeal against disciplinary measures to an independent court should be available. While the participation of the judicial council in judicial appointments is crucial, there is no need to take over the whole administration of the justice system, which can be

left to the Ministry of Justice. "An autonomous Council of Justice that guarantees the independence of the judiciary does not imply that judges may be self-governing. The management of the administrative organization of the judiciary should not necessarily be entirely in the hands of judges"(CDL-AD(2007)028, par. 25 26).

6. PERMANENCE OF JUDICIAL TENURE

Even though the permanence of judicial tenure has been included in numerous relevant documents dealing with standards of judicial independence, it seems that there are still some open issues with this regard, such as a decision of every single country to choose between nonexistence and limitation of probation period.

The Universal Declaration on the Independence of Justice[18] (2.19 2.20) provides the same guaranties, saying that "judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or expiry of their term of office, where such exists. The appointment of temporary judges and the appointment of judges for probationary periods is inconsistent with judicial independence. Where such appointments exist, they shall be phased out gradually." According to the Declaration, the term of office of the judges, accompanied with other essential guaranties of their independence, shall be secured by law and shall not be altered to their detriment. In the Declaration it is also emphasized that such a provision is intended to exclude probationary periods for judges after their initial appointment, in countries which have a career judiciary and doesn't exclude possibility of hiring part-time judges where such practice exists. The European Charter on the statute for judges states as follows: "Clearly the existence of probationary periods or renewal requirements presents difficulties if not dangers from the angle of the independence and impartiality of the judge in question, who is hoping to be established in post or to have his or her contract renewed".

Since the probation period has been challenged by supreme courts of some European countries[19], the Venice Commission considered that set-

[18] Universal Declaration on the Independence of Justice, adopted at the final ple nary session of the First World Conference on the Independence of Justice held at Mon treal (Quebec, Canada) on June 10th, 1983.

[19] The Venice Commission underlines importance of the decision of the Appeal Court of the High Court of Justiciary of Scotland (Starr v Ruxton, [2000] H.R.L.R 191 and also Millar v Dickson [2001] H.R.L.R 1401). In that case the Scottish court held that the guarantee of trial before an independent tribunal in Article 6(1) of the European Con vention on Human Rights was not satisfied by a criminal trial before a temporary sheriff who was appointed for a period of one year and was subject to discretion in the executive not to reappoint him.

ting probationary periods can undermine the independence of judges, since they might feel under pressure to decide cases in a particular way. Having that in mind, the Commission stated that this should not be interpreted as excluding all possibilities for establishing temporary judges. Especially in countries with relatively new judicial systems there might be a practical need to first ascertain whether a judge is really able to carry out his or her functions effectively before permanent appointment. Anyway, if probationary appointments are considered indispensable, a "refusal to confirm the judge in office should be made according to objective criteria and with the same procedural safeguards as apply where a judge is to be removed from office". The Commission pointed that the main idea is to exclude the factors that could challenge the impartiality of judges, and concluded that "despite the laudable aim of ensuring high standards through a system of evaluation, it is notoriously difficult to reconcile the independence of the judge with a system of performance appraisal. If one must choose between the two, judicial independence is the crucial value"(CDL-AD(2007)028, par. 40–43).

7. CONCLUSIONS

As already stated, the "judicial independence" as some kind of reform buzzword tends to be wrongly interpreted and understood. On the one hand, the intention of judges to ensure their own position and unable total control over judicial system is understandable. At the same time, when such an intention goes beyond depolitization, it places the checks and balances principle at risk of corporatization of judiciary. From the perspective of realization of the checks and balances principle, establishing the self-perpetuating judiciary is equally wrong as inappropriate influence of other branches of government. It seems that balancing these two different approaches has become extremely important in the context of fulfilling the EU standards requirements within accession negotiations with EU. Having in mind earlier practice of non-transparency, lack of inclusiveness and ignorance of EU standards limits, it seems necessary to disseminate the correct information on their content, not only among judges, but also among academics, legal professionals and civil society, to ensure constructive dialogue in the process of constitutional amendments. At the same time, it is important to consider judicial independence as a part of wider picture that makes independence a starting point of modern and high quality judiciary which is efficient, competent and impartial. Lastly, but not leastly important is accountability, as a characteristic that shall counterbalance judicial independence. The proper information on what EU standards dealing with judiciary actually provide, should move or at least spread the focus on other important issues besides independ-

ence. As Musthafa has well noticed: "Let judiciary to show the same level of determination and zeal to protect citizens' rights that it demonstrates in preserving its own independence".[20]

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[20] F. Musthafa, "Does the Government want parrot judges", *http://www.livelaw.in/government want parrot judges/*, last visited 14 October 2016.