

**Resolution of the Constitutional Court of the Republic of Serbia,
Official Gazette no. 66/2011**

Pursuant to Article 167, paragraph 1, item 1, the Constitutional Court, composed of President Dragisa Slijepcevic, PhD, and judges Olivera Vucic, PhD, Marija Draskic, PhD, Bratislav Djokic, Vesna Ilic Prelic, Agnes Kartag Odri, PhD, Katarina Manojlovic Andric, Milan Markovic, LL.M., Bosa Nenadic, PhD, Milan Stanic, Dragan Stojanovic, PhD, Tomislav Stojkovic, LL.M., Sabahudin Tahirovic, and Predrag Cetkovic, at a session held on July 7, 2011, passed this

RESOLUTION

(Official Gazette of RS no. 66/11)

The original text entered into force on September 7, 2011; its implementation started on September 7, 2011.

It has been established that the provision of Article 29, paragraph 3, of the Law on Amendments to the Law on the Anti-Corruption Agency (*Official Gazette of RS*, no. 53/10) is not in line with the Constitution and ratified international treaties.

Rationale

The Constitutional Court received a proposal for review of constitutionality and conformity with international treaties of a provision under Article 29, paragraph 3, of the Law on Amendments to the Law on the Anti-Corruption Agency (*Official Gazette of RS*, no. 53/10).

The proponent believes the contested provision of Article 29, paragraph 3, of the Law Amendments to the Law on the Anti-Corruption Agency (Article 82, paragraph 3, of the original text of the Law on the Anti-Corruption Agency) is not in line with the provisions of Article 3, paragraph 2, Article 4 and 6, Article 21, Article 1, Article 53, Article 102, Article 3, and Article 126 of the Constitution. According to the proponent, the contested provision of the Law is not in line with Article 3, paragraph 2 of the Constitution, due to the fact that the public officials who held public offices before the start of the implementation of the Law on the Anti-Corruption Agency were put in the position where they were not obliged to observe the Constitution and the law, because this provision of the Law had enabled them to act contrary to the Constitution's provisions defining incompatibility of public offices and conflict of interests, and to the provisions of specific laws regulating the same matters. The proponent further states that the contested provision of the Law enables public officials elected directly by citizens to simultaneously hold public offices in other branches of the state, which undermines the principle of separation of powers from Article 4 of the Constitution and threatens the system of checks and balances, disabling mutual control of the three branches of power. The contested provision of the Law, in the opinion of the proponent, also violates the constitutional principle of prohibition against conflicts of interest from Article 6 of the Constitution, because it enables public officials directly elected by citizens before January 1, 2010, to continue holding other public offices, regardless of whether this threatens impartial execution of public offices, i.e., whether simultaneously holding a public office where one was directly elected by the citizens, and continuing to hold another public office constitutes a conflict of interests. Regarding the violation of the principle of prohibition of discrimination from Article 21 of the Constitution, the proponent stresses that by the contested provision of the Law the legislature made a difference between public officials who held more than one public office on January 1, 2010, and those who came into public office after this date or who are yet to be elected or

appointed to public office, thus privileging the public officials who already held a public office, by making them exempt from complying with the prescribed conditions for taking up a second public office, and from the approval procedure conducted before the Anti-Corruption Agency. According to the proponent, the contested provision of the Law is also contrary to the provision under Article 53 of the Constitution, considering the fact that public officials who held more than one public office on January 1, 2010 are not required to meet all the conditions and initiate the procedure for obtaining the ACA's approval in order to keep holding their public offices, unlike the public officials who came into office after the adoption of the Law on the Anti-Corruption Agency. The proponent further adduces that the contested provision of the Law is not in line with provisions under Article 102, paragraph 3 and Article 126 of the Constitution, because, contrary to these provisions, it enables public officials who were directly elected by the citizens before January 1, 2010, to continue holding both the public offices they had been directly elected to, and other public offices, regardless of the possibility of incompatibility of offices or conflict of interests, even in the case where there is a ban regarding the public office in question, in accordance with the abovementioned provisions of the Constitution. The proponent also points out that the contested provision of the Law is not in line with provisions under Article 1, item (v), Article 5, paragraph 1, and Article 7, paragraph 4 of the United Nations Convention against Corruption, because the implementation of the contested provision of the Law “disables the advancement of integrity, accountability, and proper management of public affairs, disables development, implementation, and maintenance of efficient, coordinated anti-corruption policies in the Republic of Serbia, which violates the principles of rule of law, good management of public affairs and public property, integrity, transparency, and accountability of state powers, thus reducing the capacities of the Republic of Serbia for establishing, maintaining and strengthening the system aimed at increasing transparency and preventing conflicts of interest.”

At a session held on October 28, 2010, the Constitutional Court decided that the proposal should be submitted to the National Assembly in order to obtain its response. The National Assembly did not issue a response to the statements from the proposal to the Constitutional Court before the specified deadline; therefore, the Constitutional Court, in accordance with the provision of Article 34, paragraph 3, of the Law on the Constitutional Court (*Official Gazette of RS*, no. 109/07), continued the proceedings on this constitutional case.

After the proceedings, the Constitutional Court ascertained:

The Law on the Anti-Corruption Agency was passed by the National Assembly at a session of the second regular sitting in 2008, on October 23, 2008. The Law was published in the *Official Gazette of RS*, no. 97/08 issued on October 27, 2008; it entered into force on November 4, 2008, and was implemented from January 1, 2010. The National Assembly passed the Law on Amendments to the Law on the Anti-Corruption Agency on July 28, 2010; this Law came into force on August 6, 2010.

The Law on the Anti-Corruption Agency regulates the establishment, legal status, competences, organization, and work procedures of the Anti-Corruption Agency. Furthermore, it regulates the rules regarding the prevention of conflict of interests of those holding public office, and reporting their assets; the procedures and decisions in the case of violations of this law; introduction of integrity plans; and other matters important to the ACA's work. Article 29 of the Law on Amendments to the Law on the Anti-Corruption Agency changed Article 82 of the original text of the Law in its

entirety. This article was a transitional solution to regulate conflict of interests regarding the execution of public office by public officials who were holding more than one public office at the moment the Law's implementation started (January 1, 2010), in accordance with the legislation regulating this issue before the implementation of this Law. Thus the provisions of article 29, paragraphs 1 and 2 of the Law on Amendments to the Law prescribe that a public official who was holding more than one public office on January 1, 2010, and did not, before April 1, opt for one public office he or she would continue to hold, is required to notify the ACA before September 1, 2010, about all the public offices he or she is holding. Upon the receipt of the notifications from paragraph 1 of this article, the ACA shall determine whether the holding of more than one public office undermines the impartial execution of public office, i.e., whether there is a conflict of interests. If it is determined that this is indeed the case, the ACA shall pass a decision determining a deadline, not exceeding 30 days, within which the public official is required to cease holding incompatible offices. These are the basic rules regulating the issue of a possible conflict of interests of the public officials who were in office when the Law started being implemented. However, the legislature specified an exception to these rules, prescribing by the contested provision of Article 29, paragraph 3 of the Law on Amendments to the Law that, regardless of the paragraph 2 of this article, a public official may continue to hold a public office, and along with it another one to which he or she was directly elected by the citizens, as well as a public office required of him or her by law or other regulation.

In addition to the provisions of Article 29 of the Law on Amendments to the Law on the Anti-Corruption Agency, in the opinion of the Constitutional Court it is also important to consider the provisions of the original text of the Law on the Anti-Corruption Agency regulating the ban on holding more than one public office, i.e., Article 28, in order to gain a better understanding of the legal issues in dispute. Article 28 of the Law on the Anti-Corruption Agency prescribes that public officials may only hold one public office, unless a law or other regulation require them to hold more than one public office, regardless of paragraph 1 of this article; public officials may hold more than one public office with the approval of the ACA (paragraphs 1 and 2); that public officials elected to office directly by the citizens may, without the approval of the ACA, continue to hold more than one public office to which they were elected directly by the citizens, except in the cases of incompatibility of offices defined by the Constitution (paragraph 3); that public officials who were selected, appointed, or designated to a second public office and who intend to hold more than one office simultaneously are required to submit a request for the ACA's approval within 3 days after being selected, appointed, or designated; along with the request, public officials should also submit a positive opinion issued by the authority which selected, appointed, or designated them to public office, and the officials who were elected to public office directly by the citizens, should submit a positive opinion issued by the competent working body of the authority where they hold public office (paragraph 4); that the ACA is required to decide on regularly completed requests from paragraph 4 of this article within 15 days after receiving the request; that the ACA shall not issue its approval for holding a second public office if it comes into conflict with the public office already held by the public official, that is to say, if it is determined that there is conflict of interests, on which matter a justified decision is to be passed (paragraph 5); that in case the ACA fails to decide within the deadline set in paragraph 5 of this article, it shall be considered that the ACA gave its approval for holding a second public office to the public official, unless the execution of the two public offices in question is prohibited by another regulation (paragraph 6); that public officials who were selected,

appointed, or designated to a second public office contrary to the provisions of this law shall have their second public office terminated *ex lege* (paragraph 7); that the decision on termination of office in the case mentioned in paragraph 7 of this article shall be passed by the authority, or its permanent working body, that selected, appointed, or designated the public official to the second office, within eight days after receiving the ACA's decision determining that the public official was selected, appointed, or designated to the second public office contrary to the provisions of this law (paragraph 8).

Aside from the above, the provisions of the Law on the Anti-Corruption Agency prescribe: that in the sense of this law, a public official is a person that was selected, appointed, or designated to the authorities of the Republic of Serbia, the autonomous province, local self-government unit, and the bodies of public enterprises and commercial companies, institutions and other organizations of which the Republic of Serbia, the autonomous province, local self-government unit, or other party selected by the National Assembly, is a founder or member; that a public office is defined as an office in the authorities of the Republic of Serbia, the autonomous province, local self-government unit, bodies of public enterprises and commercial companies, institutions and other organizations of which the Republic of Serbia, the autonomous province or local self-government unit is a founder or member, as well as offices of other persons selected by the National Assembly; that public office includes the powers of management and decision-making, i.e., passing general and specific acts; that conflict of interests is defined as a situation wherein a public official has personal interests which affect, may affect or appear to be affecting the public official's actions and the execution of his or her public office, that is to say, professional duties, in a manner that is detrimental to public interest (Article 2, paragraph 1, second, third, and sixth sub-paragraphs); that the ACA is competent to oversee the implementation of the National Anti-Corruption Strategy, the Action Plan for implementing the National Anti-Corruption Strategy and sector-specific action plans, to institute proceedings and pronounce measures for violations of this law, and to decide on conflicts of interest (Article 5).

It is established by the Constitution of the Republic of Serbia that the rule of law shall be exercised through free and direct elections, constitutional guarantees of human and minority rights, separation of powers, independent judiciary, and authorities' observance of the Constitution and the law (Article 3, paragraph 2); that the legal system is unique; that the government system shall be based on the separation of power into legislative, executive and judiciary; that the relation between the three branches of power shall be based on balance and mutual control (Article 4, paragraphs 1, 2 and 3); that no person may hold a state or public office which is in conflict with their other offices, occupations or private interests; that the presence of conflict of interests and responsibility for its resolution shall be regulated by the Constitution and the law (Article 6); that all are equal before the Constitution and the Law (Article 21, paragraph 1); that citizens shall have the right to take part in the management of public affairs and to assume public service or office under equal conditions (Article 53); that the Republic of Serbia shall regulate and provide for the organization, competences and work of republic authorities (Article 97. item 16); that National Assembly MPs may not be MPs in the Assembly of the autonomous province nor public officials in the authorities of executive powers and the judiciary, nor may they undertake other offices, activities, or duties, which were established by law as representing a conflict of interests (Article 102, paragraph 3); that members of the Government may not be MPs in the National Assembly, MPs in the Assembly of the autonomous province, or councilors in local self-government councils, or

members of the executive council of the autonomous province, or of the executive body of a local self-government unit; and that other offices, activities or private interests in conflict with the position of a Government member shall be specified by the law (Article 126).

The United Nations Convention against Corruption (*Official Journal of SCG – International Treaties*, no. 12/05) established that its objectives are: the improvement and strengthening of measures for a more efficient and successful prevention of and fight against corruption; improvement, facilitation, and support of international cooperation and technical assistance in the prevention of and fight against corruption, including asset recovery and integrity promotion; accountability for and proper management of public affairs and public property (Article 1); that each state party, in accordance with the fundamental principles of its legal system, is required to develop and implement or maintain effective coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability (Article 5, paragraph 1); that each state party shall ensure the existence of a body or bodies, as appropriate, that prevent corruption, and that shall be granted independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence (Article 6, paragraphs 1 and 2); that each state party shall, in accordance with the fundamental principles of its legal system, endeavor to adopt, maintain, and strengthen systems that promote transparency and prevent conflicts of interest (Article 7, paragraph 4).

Following from the above, the principle of prohibiting conflict of interests is among the most important constitutional principles, determining that no person may hold a state or public office which is in conflict with his or her other office, activity, or private interest. This principle, therefore, implies a ban, for office-holders of all public offices, on simultaneously holding other offices or performing activities which, due to their inherent interests, could put the office-holders in a position to execute their public office in a manner that would make them subordinate public interest to their or someone else's private interest, that is to say, in a manner that would call into question the realization of public interest.

In order to preserve public interest in the execution of state and public offices, the Constitution established the incompatibility of certain public offices, for example that National Assembly MPs may not be MPs in the assembly of the autonomous province or public officials in executive authorities and the judiciary, nor may they hold other offices, or undertake activities or duties established by law to represent a conflict of interests (Article 102, paragraph 3); that the President of the Republic may not hold another public office or professional occupation (Article 115); that Government members may not be MPs in the National Assembly, autonomous province assembly, councilors in local self-government councils, or members of autonomous province executive councils or local self-government executive authorities (Article 126, paragraph 1); that court presidents may not be selected as members of the High Judicial Council (Article 153, paragraph 5); that a Constitutional Court judge may not hold another public or professional office or occupation, other than professorship at the Faculty of Law of the Republic of Serbia, in line with the law (Article 173, paragraph 1).

Aside from this type of incompatibility of public offices and occupations – directly

defined by the Constitution – regarding specific categories of public officials, the Constitution left it to specific laws to determine the presence of conflict of interests for other categories of public officials. These laws regulate the status, competences, and organization of certain state and other authorities, bearing in mind all their particularities, and different situations which could lead to the violation of the principle of prohibition against conflict of interests in performing the activities within those authorities' competences. Thus, when it comes to judges, the Constitution only set a ban on political activities, whereas the issues of incompatibility of the position of the judge with other offices, occupations and private interests was regulated by the Law on Judges. The incompatibility of the prosecutor's position with other offices, occupations and private interests was regulated in the same manner. Namely, the Constitution established a ban on political activities for public prosecutors and public prosecutor deputies, and the issue of incompatibility of the position of the public prosecutor with other offices, occupations, and private interests was regulated by the Law on Public Prosecution. Beside the abovementioned laws, provisions dealing with incompatibility of offices, and provisions on conflict of interests, are also included in all current laws regulating the organization of power in the Republic of Serbia (e.g., Article 39 of the Law on the National Assembly; Article 9 of the Law on the President of the Republic; Article 11 of the Law on Government; Article 20 of the Law on the National Bank of Serbia; Article 24, paragraph 5, of the Law on Public Administration; Article 30 of the Law on Local Self-Government; etc.).

However, the law that lays down systemic rules regarding the prevention of conflict of interests in the execution of public office is the Law on the Anti-Corruption Agency, considering the fact that preventing conflict of interests is one of the most significant anti-corruption aspects in any society. General rules prescribing the ban on holding a second public office are contained in the provisions of Article 28 of said law. Thus a provision under Article 28, paragraph 1 of the Law prescribes that public officials may only hold one public office, except if the law or other regulations require them to hold more than one, as is the case, for instance, with mayors who, by strict provisions of the Law on Local Self-Government, are also chairmen of the municipal or town council. Consequently, with the purpose of protecting the constitutional principle of preventing conflict of interests in public office and preserving public interest in their execution, the fundamental rule stipulates that public officials may only hold one public office, except in situations where a law or other regulation prescribe that a public official is required to also hold another public office, primarily for the reason that the simultaneous holding of the two offices in question, bearing in mind their nature and the activities they imply, enables a more successful and more efficient execution of both offices. An exception to this rule is specified in paragraph 2 of Article 28, which stipulates that public officials may hold a second public office based on the approval from the Anti-Corruption Agency, following the procedure and method prescribed by this law. Namely, according to the Law's provisions, each public official who was selected, appointed, or designated to a second public office that he or she is not required by the law to hold, and who intends to hold both offices simultaneously, may not do so automatically and unconditionally, and is required to request the ACA's approval on the matter. The aforementioned provisions of the Law, according to the assessment of the Constitutional Court, determine that it shall be upon the ACA to examine whether there is conflict of interests in particular cases as regards the holding of public offices, and afterwards to give or refuse its approval to the public official who submitted the request for holding a second public office.

In addition to the abovementioned, Article 28 of the original text of the Law was supplemented by the amendments to the Law from July 2010, with paragraph 3, which stipulates that public official elected to public office directly by the citizens may, without the approval of the ACA, hold more than one public office to which they are directly elected by citizens, except in situations where there is incompatibility of offices as defined by the Constitution. These rules apply to public officials who were selected, appointed, or designated to a second public office after January 1, 2010 – the start of the implementation of the Law on the Anti-Corruption Agency.

In view of the fact that at the time of the start of this law's implementation a certain number of public officials were holding two or more offices, the Law includes provisions for transitional purposes regulating and resolving the legal status of such persons. In accordance with this, the provisions under Article 29 of the Law on Amendments to the Law on the Anti-Corruption Agency establish a transitional solution defining the rules concerning the public officials who were holding two or more offices on January 1, 2010. In that sense it was prescribed that public officials who held several public offices on January 1, 2010, and did not decide which one of them they intend to keep before April 1, 2010, were required to notify the ACA on all the public offices they hold before September 1, 2010, so the ACA could determine whether there is conflict of interests in each particular case of holding more than one public office. Furthermore, it was prescribed that should the ACA find that there is conflict of interests, it shall pass a decision determining a deadline of no more than 30 days for the public official to cease executing any incompatible offices. However, the contested provision of paragraph 3 under Article 29 of the Law defines an exception to this rule by stipulating that a public official may continue to hold a public office, along with public offices he or she was directly elected to by the citizens, as well as public offices he or she is required to hold by the law or other regulations. Since the provisions of Article 29 of the Law on Amendments to the Law on the Anti-Corruption Agency regulate a transitional system dealing with public officials who were holding more than one public office at the time of the start of this law's implementation, the contested provision of paragraph 3 of this article allows public officials, provided they were elected to one of their public offices directly by the citizens, to continue holding, along with said office, not only a public office they are required to hold by law or other regulation, but also another public office, regardless of its type and without the obligation to notify the ACA on the matter so that it could determine whether there is conflict of interests between the public office they were elected to directly by the citizens and the other public office they hold, but are not required to hold by law. The previously indicated content of the contested provision of the Law shows that the transitional arrangement contained within it is in derogation from the general rules established for all persons who come into office after the start of the implementation of the Law on the Anti-Corruption Agency. This results from the fact that according to the rules set by the Law, public officials may hold more than one public office without the approval of the ACA only in two cases: if the holding of another public office is required by the law or other regulations (Article 28, paragraph 1), or if they were elected to all their public offices directly by the citizens, under the condition that those offices are not defined as incompatible by the Constitution (newly added paragraph 3 of Article 28). In all other case, after the start of the Law's implementation on January 1, 2010, derogation from the rule set by the Law, prescribing that public officials may only hold one public office, is permitted and possible only with the approval of the ACA, in the manner prescribed by the Law.

With the abovementioned facts in mind, the Constitutional Court determined that the regulation prescribing the persons who were holding several public offices on January 1, 2010, and were directly elected by the citizens to one of those offices, may continue to hold another public office – aside from the office they are required to hold by the law or other regulation – without notifying the ACA, undermines the principle of equality of all persons before the Constitution and the law, set by Article 21, paragraph 1, of the Constitution. The Constitutional Court bases this assessment on the view that all persons holding public offices have the same legal status, regardless of whether they acquired the status of public official, in the sense of this law, before or after the start of the Law's implementation; thus the rules regulating prevention of conflict of interests must equally apply to all of them. The Constitutional Court stresses that the exception set by the contested provision of the Law may result in a situation where two public officials elected to public office directly by the citizens who hold another public office which is not mandatory and is equal in the case of both public officials, face different requirements, due to the fact that one of the public officials, who comes into office after January 1, 2010, and intends to hold two public offices, would need to request and obtain the ACA's approval in order to do so, whereas the other public official who already held the same two public offices on January 1, 2010, may continue to hold them without being required to obtain the ACA's approval. This further implies that the public officials mentioned in paragraph 3 of Article 29 of the Law on Amendments to the Law on the Anti-Corruption Agency may continue to hold the other public office even in the case the ACA has found there is conflict of interests between these offices during the procedure of granting approval for holding the same public office to a public official who was likewise directly elected by the citizens, but after January 1, 2010. Consequently, the Constitutional Court has come to the conclusion that the contested provision is not in line with the constitutional principle of equality of all persons before the Constitution and the law.

The same reasons are behind the Constitutional Court's assessment that the contested provision of the Law violates the citizens' right to come into public office under equal conditions, as set by Article 53 of the Constitution, because the contested provision of the Law necessarily sets different conditions for coming into public office – not only in general, but also regarding identical public offices – depending only on the time of a public official's coming into office.

In the opinion of the Constitutional Court, the facts previously stated also violate the principle of prohibition of conflict of interests set in Article 6 of the Constitution. Namely, due to the fact that the Constitution stipulates that the presence of conflict of interests and the responsibility for its resolution is determined not only by the Constitution, but also by the law (paragraph 2, Article 6), the constitutional principle determines that no person may hold a state or public office in conflict with his or her other offices, activities, or private interests (paragraph 1, Article 6), meaning that the law determining the presence of conflict of interests may regulate this issue exclusively in conformity with the said constitutional principle. However, since the contested legal arrangement, as previously mentioned, also enables the holding of public offices which are in conflict of interests with public offices to which public officials were directly elected by the citizens, by excluding the verification procedure conducted by the ACA, the Constitutional Court finds the provision under Article 29, paragraph 3, of the Law on the Amendments to the Law on the Anti-Corruption Agency, also contrary to Article 6, paragraph 1 of the Constitution. The Court points out that the above assessment cannot be influenced by the formulation of the contested legal regulation, according to which, “a public official may continue

holding a public office alongside another one to which he or she was directly elected to by the citizens”, because this provision means that a public official holding an office to which he or she was directly elected by the citizens, automatically and according to the Law itself may continue holding any other public office, without an examination whether there is conflict of interests between those two offices, which implies he or she may continue holding them even when there evidently is a conflict of interests.

From the previously mentioned assessments of the Constitutional Court follows as well the assessment that the contested provision of the Law is contrary also to the principle of the rule of law, which, in Article 3, paragraph 2 of the Constitution, determines that the rule of law is realized, among other things, by authorities' compliance with the Constitution and the law. Namely, the contested provision being addressed to public officials directly elected by citizens, i.e., to persons freely elected as citizen representatives, through whom the citizens, according to Article 2, paragraph 1 of the Constitution, exercise their power, there is a constitutional obligation for those exercising power to observe the Constitution in its entirety, including the principle of the prohibition against conflict of interests. The Constitutional Court points out that the legislature's constitutional power to determine whether there is conflict of interests cannot be interpreted as the power to circumvent the procedure of determining whether there is conflict of interests regarding a particular situation even in cases for which it has not been explicitly prescribed that there is no conflict of interests between clearly defined public offices.

Also, according to the Constitutional Court's assessment, the contested provision under Article 29, paragraph 3 of the Law, undermines the principle of separation of powers from Article 4, paragraphs 2 and 3 of the Constitution, which defines that the regulation of power is founded upon the separation of powers of legislature, executive, and judiciary, and that the relation among the three branches of power is based on balance and mutual control, because the prohibition against conflict of interests set out by Article 6 of the Constitution also protects said principle, i.e., it disables the illicit influence of one branch of power over another, while the contested provision of the Law actually enables such influence through the possibility of simultaneous execution of incompatible public offices.

As for the proponent's allegations that the contested provision of Article 29, paragraph 3 of the Law undermines the constitutional principles on incompatibility of certain offices with the office of the MP from Article 102, paragraph 3 of the Constitution, and with the office of Government member from Article 126 of the Constitution, the Constitutional Court found that these allegations in fact amount to violations of constitutional principles from Article 3, paragraph 2, Article 4, paragraphs 2 and 3, and Article 6, paragraph 1 of the Constitution, regarding which the Court has already pronounced its assessment.

Upon analyzing the agreement of the contested provision of Article 29, paragraph 3 of the Law on Amendments to the Law on the Anti-Corruption Agency with the provisions of the United Nations Convention against Corruption, the Constitutional Court has come to the conclusion that the contested provision does not contribute to strengthening the system for the prevention of conflict of interests, which is among the fundamental principles of the Convention. Namely, Article 7, paragraph 4 of the Convention, defining the principles dealing with the public sector, specifies that each state party shall, in accordance with the fundamental principles of its legal system, endeavor not only to adopt and maintain, but also to strengthen the systems which increase transparency and prevent conflict of interests. Since the contested provision

clearly allows the public officials covered by the transitional arrangement to be exempt from the prohibition against conflict of interests, which is why it was only prescribed as a transitional arrangement, the Constitutional Court found that the established system for preventing conflicts of interest is not strengthened in this manner, and hence concludes that the contested provision is not in line with the ratified international treaty either.

Based on everything stated above, the Constitutional Court, pursuant to the provision under Article 45, item 1 of the Law on the Constitutional Court, passed the decision following below.

Pursuant to the provision of Article 168, paragraph 3 of the Constitution, upon the date of publishing the Decision of the Constitutional Court in the *Official Gazette of the Republic of Serbia*, the provision of Article 29, paragraph 3 of the Law on Amendments to the Law on the Anti-Corruption Agency (*Official Gazette of RS*, no. 53/10) shall cease to have effect.

No. IUz 1239/2010

Dragisa Slijepcevic, PhD, sgd.

President of the Constitutional Court