COMMENTS ON THE "DRAFT PROPOSAL OF THE NATIONAL PLAN FOR THE DEVELOPMENT OF THE JUDICIAL SYSTEM FROM 2021 TO 2027" THAT WAS SUBMITTED FOR PUBLIC DEBATE BY THE GOVERNMENT OF THE REPUBLIC OF CROATIA

Thank you for the opportunity to comment on this document under the E-Consultation procedure.

Our general comments are as follows:

1. The one-month deadline for providing comments on the draft proposal is too short given the importance of the topic and considering that the designated period included Christmas and New year holidays. As a result, as of 6 January 2022, only one comment was entered into the E-Consultation platform.

We propose therefore that the Government extend the deadline for public discussion by at least two months and invite the widest possible circle of stakeholders to actively participate in the discussion.

Moreover, it is difficult to escape the impression that the draft proposal was written quickly, with grammatical errors, unrelated sequences of sentences, and with a lot of uncritical descriptions of the current situation, the purpose of which is not clear in a program-oriented document. The only parts of the document that are critical of the current situation are those that report the findings of EU institutions. Extending the deadline for discussion may contribute to improving the text in these aspects as well.

2. We suggest that the National Plan give much more attention to the problem of the weak reputation of the judiciary and the high degree of public distrust of its impartiality and objectivity. The slowness of the courts to pass judgments is an additional cause of mistrust, often seen as motivated by waiting to reach the statute of limitations.

3. The public is also dissatisfied with the fact that certain judges deviate from the principle of judicial ethics, that appropriate disciplinary measures are not taken against them in time, and that some of the judges remain connected with the political elite. The public did not miss the fact that worrisome examples of corruption were not discovered by the judicial administration and other state bodies, but primarily by media activities and by individuals who were engaged in corrupt activities. In this context, the sentence in the draft Proposal that "the Croatian judicial system in terms of judicial independence is in line with the best practices of the European Union, but this is not sufficiently recognized by the public" does not seem convincing. In addition, independence is not an objective in itself; it is a necessary but not a sufficient condition for achieving impartial justice.

4. The Government acknowledged the need to strengthen judges' accountability when it proposed that the Law on Courts be amended by introducing mandatory checks of all judges by the security agencies. However, in this draft National Plan, the government no longer refers to this proposal. Should it be understood that the government has given up on its proposal while at the same not envisaging any other measures for strengthening the mechanisms of the accountability of judges? The proposal of the National Plan should clarify this.

5. The document points out in several places that the most important objective of the judicial system is to be efficient, independent, and "to be good quality" (e.g., introduction, point 3.1, etc).

The term "the judicial system of good quality" is rarely used in international practice. Instead, the courts are expected to be impartial and effective in terms of the duration of proceedings. By contrast, in this proposal, the Government uses the vague adjective "of good quality" in various versions 37 times. The impartiality of court decisions is mentioned only once, as something that has already been achieved. We suggest that the repetitive use of "of good quality" be avoided and that the objectives be clearly specified.

6. We would like to remind here that, in the context of the debate on the proposed amendments to the Law on Courts, Centre Miko Tripalo published its Recommendations to Increase Transparency and Strengthen Mechanisms of Accountability of the Judiciary. We see these measures as the main conditions for increasing public trust. Among them, the most important are the following:

A. By amending the law, the Government should introduce a possibility that professional chambers of attorneys, university law departments, and civil society organizations can express their opinions on candidates for higher positions in the judiciary, as well as on candidates for the members of the State Judicial Council (SJC)) and should encourage these institutions to do so.

B. Ensure public access to video recordings of interviews of candidates for judges (Recommendations 1-3).

C. Make disciplinary proceedings against judges public and introduce the obligation for the SJC to regularly notify the Parliament of the undertaken disciplinary measures (recommendations 4-6).

D. In our published Recommendations, we argued against the Government's proposal that the amended law introduce the general periodic check of judges by security agencies, saying that this measure cannot be expected to lead to more serious sanctions against judges. We also warned about the illogical provisions of the current laws, which stipulate that the investigative commissions for establishing facts under the disciplinary proceedings can only be formed once the proceedings have reached the SJC. It appears to us that it is much more logical that the facts are established before the authorized officers open disciplinary proceedings at the SJC.

Instead of the security checks of judges, we proposed that a special office be established within the office of the President of the Supreme Court that would have the authority, based on the request of the authorized proposers, on its own initiative, and possibly based on complaints from citizens, to conduct investigative procedures, including those for checking the origins of property, for determining facts about the possible violation of disciplinary provisions by individual judges. Based on the findings of this office, the President of the Supreme Court would then open the disciplinary proceedings before the SJC. Such an office would need to be provided with adequate resources as well as the cooperation of other government institutions should this be deemed necessary (recommendations 7 and 8).

E. In our Recommendations, we proposed a series of changes in the procedure for electing the members of the State Judicial Council to make it more transparent and democratic (recommendations 18 to 23).

We propose that the government includes these reforms in the National Plan.

7. The proposal of the National Plan stipulates that all court rulings will have to published by 2027, but only in an anonymized form.

In our Recommendations, we pointed out the harmfulness of the current practice in which less than 5% of decisions of the county, i.e., second-level courts, are published, and an even smaller percentage of the first-level, municipal, courts. Such practice contributes to the disparity in the case law and makes it difficult for the parties to initiate a judicial review, which is permitted if the practice differs between the second-level courts. In this context, we believe that the deadline for publishing all court decisions by 2027 is completely inconsistent with the urgency of the need and should be shortened considerably. Furthermore, we propose that lawyers, law professors, and journalists be granted full access to the existing electronic file of court decisions, which can now only be accessed by judges and officials of the Ministry responsible for justice. This measure should also be included in the National Plan.

8. In our Recommendations we warned that the existing practice in Croatia that all published rulings must be anonymized does not necessarily follow from the General Data Protection Regulation and that several EU countries anonymize court rulings only in case of justified requests by parties, or in specific cases such as family relations and general security, while other countries appreciate the public interest not to anonymize some decisions.

It is, therefore, necessary to review the present decision on the full anonymization of the published decisions. We suggest that this be addressed in the National Plan.

9. The proposal of the National Plan does not address the problem of high budget costs of the Croatian judiciary relative to the GDP: according to EU data, by costs of the judiciary, Croatia is at the top of the list among EU countries.

The number of courts and the structure of the court system significantly affect the level of costs. Croatia currently has sixty-seven courts, while some countries in the EU, known for the efficiency and high international reputation of their judicial system, have a significantly smaller number (Ireland, for example, 7, and the Netherlands, 15). Moreover, Croatia has a complex vertical structure of courts with five levels (municipal, county, High courts, the Supreme and the Constitutional Court, the last one also being involved in adjudicating individual cases). This not only increases costs but also affects the length of the proceedings and the uniformity of the case law.

It would therefore be worth examining the possibility of reducing the number of courts and simplifying their vertical structure. For example, the number of the second instance (now county) courts could be reduced to four, and all the high courts could be integrated into the Supreme Court. Without prejudicing the findings, we suggest that the National Plan foresees doing a study on this topic.

Specific comments:

10. In special objective 4 in the draft proposal, the Government states that "the Ministry of Justice and Administration has already … requested an independent assessment of the reorganization of the

court network in relation to the results achieved and a comprehensive analysis of the existing ICT infrastructure and information systems …".

The National Plan should specify which independent institution has the Government engaged for this task and how precisely was it defined.

11. To increase the efficiency of courts, the proposal introduces an indicator "time needed to resolve first instance civil and commercial proceedings" and sets the goal of reducing that time from 655 days in 2020 to a target of 455 days in 2027.

In this regard, we have the following comments:

A. We welcome the introduction of these important statistics, which have so far not been made available to the public. However, the Government should better explain the purpose of using these statistics as the proposed performance indicator.

B. The same statistics should be published for all types of cases (not only for civil and commercial), and all steps of the judiciary proceedings. In other words, it is necessary to start systematically publishing data on the duration of cases until the final adjudication. Specifically, these statistics should be available separately for cases that were not appealed, then for those that became final after the appeal procedure, those that resulted in a review by the Supreme court, and finally those that were subject to the interventions by the Constitutional Court. We suggest that a systematic publication of these statistics be provided in the annual report of the Supreme Court.

We also recall our recommendation to the Ministry responsible for justice to draft a new Regulation on judiciary statistics and organize a public consultation on it. We suggest that the government includes this measure in the National Programme.

C. The fact that first instance proceedings in civil and commercial cases currently last on average 655 days is highly worrying. Moreover, with a targeted duration of 455 days in 2027, Croatia would only reach the point at which two EU countries with the worst values of this indicator were already in 2019. It is also useful to compare this target with achievements in Ireland where the finality of such verdicts is reached in about a year.

We believe that the government should first study the causes of this slowness, and only then set goals for the duration of cases at all stages and until the final adjudication, and not only during the first instance.

12. Footnote 39 of the proposal refers to the practice of the Supreme Court not to publish its decisions in cases related to the right to trial within a reasonable time, because of the large number of identical decisions.

We believe that the National Plan should advise the Supreme Court to publish all these decisions as they are an important indicator of the dysfunction of the court system. It should also advise the Supreme Court to conduct an annual analysis of the causes that led to delays in proceedings that violated the principle of fair justice, and consequently caused costs for damages to be paid from the State Budget. In its annual report, the Supreme Court would then report on the measures it took itself to improve the situation and provide recommendations on what the legislator should do.

13. When elaborating on educational activities in the judiciary, we recommend that teaching staff be expanded with law professors, public prosecutors, and attorneys.

14. We recommend that future documents submitted for the e-Consultations have numbered paragraphs to facilitate comments.

Centre for Democracy and Law Miko Tripalo

In Zagreb, 7 January 2022.