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SERBIA

OPINION

**ON THE DRAFT LAW ON THE JUDICIAL ACADEMY AND DRAFT
AMENDMENTS TO THE LAW ON JUDGES AND THE LAW ON THE
PUBLIC PROSECUTOR'S OFFICE**

**Adopted by the Venice Commission
at its 141st Plenary Session
(Venice, 6-7 December 2024)**

On the basis of comments by

**Ms Regina KIENER (Member, Switzerland)
Ms Hanna SUCHOCKA (Expert, Honorary President)
Mr Kaarlo TUORI (Expert, Honorary President)**

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I. Introduction

1. By letter of 12 September 2024, the Minister of Justice of the Republic of Serbia, Ms Maja Popovic, requested an opinion of the Venice Commission on the draft law on the Judicial Academy ([CDL-REF\(2024\)041](#)) and draft amendments to the Law on Judges and the Law on the Public Prosecutor's Office ([CDL-REF\(2024\)042](#), [CDL-REF\(2024\)043](#)).

2. Ms R. Kiener, Ms H. Suchocka and Mr K. Tuori acted as rapporteurs for this opinion.

3. On 12 November 2024, the rapporteurs conducted a series of on-line meetings with representatives of the Ministry of Justice, the Judicial Academy, the Supreme Court, the High Judicial Council, the High Prosecutorial Council, the Supreme Public Prosecutor's Office, professional associations of judges and prosecutors, civil society organisations, and Serbia's international partners, including the European Commission. The Venice Commission is grateful to the Ministry of Justice and the Council of Europe Office in Serbia for the excellent organisation of the meetings and to the interlocutors for their availability.

4. This opinion was prepared in reliance on the English translation of the draft amendments. The translation may not accurately reflect the original version on all points.

5. This opinion was drafted on the basis of comments by the rapporteurs and the results of the online meetings on 12 November 2024. The draft opinion was examined at the joint meeting of the Sub-Commissions on Judiciary and the Rule of Law on 5 December 2024. Following an exchange of views with the Minister of Justice, it was adopted by the Venice Commission at its 141st Plenary Session (Venice, 6-7 December 2024).

II. Background

A. General remarks

6. In recent years, Serbia has undertaken significant reforms in the field of the judiciary and the Venice Commission has provided continuous assistance throughout the process. In 2022, amendments to the Constitution were adopted aiming to strengthen judicial independence. These amendments transferred the competence for the appointment of judges and public prosecutors from the National Assembly to the High Judicial Council and the High Prosecutorial Council, reinforcing the independence of members of the judiciary and the status of the councils. The constitutional amendments were adopted through a referendum held in January 2022 and subsequently promulgated by the National Assembly in February 2022. Prior to their adoption, the proposed amendments were subject to analysis by the Venice Commission, which issued two opinions in 2021.¹

7. In February 2023, Serbia enacted five laws to implement the 2022 constitutional amendments. These implementing laws were also assessed by the Venice Commission.²

8. In furtherance of the judicial reform, the Ministry of Justice prepared a draft law on the Judicial Academy, along with corresponding draft amendments to the Law on Judges and the Law on the Public Prosecutor's Office (collectively referred to as "the draft legislation"). In her request to the Venice Commission, the Minister of Justice specified that the draft legislation was prepared within

¹ Venice Commission, [CDL-AD\(2021\)032](#), Serbia - Opinion on the draft Constitutional Amendments on the Judiciary and draft Constitutional Law for the Implementation of the Constitutional Amendments, and [CDL-AD\(2021\)048](#), Serbia - Urgent opinion on the revised draft constitutional amendments on the judiciary.

² Venice Commission, [CDL-AD\(2022\)030](#), Serbia - Opinion on three draft laws implementing the constitutional amendments on Judiciary; [CDL-AD\(2022\)042](#), Serbia – Opinion on two draft laws implementing the constitutional amendments on the prosecution service; [CDL-AD\(2022\)043](#), Serbia - Follow-up Opinion on three revised draft Laws implementing the constitutional amendments on the Judiciary of Serbia.

the framework of the EU accession process, with the aim of ensuring Serbia's compliance with Interim Benchmark 4 of Chapter 23 of the EU Rules ("Acquis").³

9. The 2024 report on Serbia, issued by the European Commission (EC) within the 2024 Communication on EU enlargement policy, noted that the EC's recommendations of 2023 had been partly implemented and remained valid; in the coming year, Serbia should, in particular, adopt the Law on Judicial Academy.⁴

10. The Venice Commission addressed the issue of Judicial Academy of Serbia in two opinions. In the Opinion of 2018 dealing with the constitutional reform of the judiciary, the Commission expressed the view that *"the Academy's role as a sole gatekeeper to the judiciary seems well founded with the aspiration and commitment to strengthen the calibre and professionalism of judicial and prosecutorial training, but it would be advisable to protect the Academy from possible undue influence by providing it with a firm status within the Constitution"*.⁵ The constitutional entrenchment of the Judicial Academy was not pursued, however. In a subsequent opinion issued in 2021, the Venice Commission revisited the matter, stating that *"the Judicial Academy was initially foreseen as being the institution that would provide a "point of entry" into the Serbian judiciary. It was therefore to be given a preeminent role to protect the appointment process from undue influence ... but has been excluded from the draft [Constitutional] Amendments. The latter no longer stipulate that entry into the judiciary is conditional on completion of the Judicial Academy, nor do the draft Amendments provide for a constitutional basis for the Judicial Academy"*.⁶ In light of this, the Venice Commission proposed that, should the provisions on the Judicial Academy not be included in the Constitution, its position and role should be regulated through ordinary legislation.⁷

11. Such draft legislation has been prepared by the authorities and is the subject of the present opinion.

B. The proposed amendments

12. The draft law on the Judicial Academy seeks to reform the existing Academy by introducing safeguards against undue influence and enhancing its autonomous status. It also aims to strengthen the institutional and functional ties between the Academy and the judicial and prosecutorial community, particularly with the High Judicial Council and the High Prosecutorial Council (hereinafter "Judicial Council" and "Prosecutorial Council").

13. Pursuant to the draft law, the Academy is established with the purpose of providing the theoretical and practical training necessary for the proper performance of judicial and prosecutorial functions (Article 2). To fulfil this mandate, the Academy shall, *inter alia*, ensure: (i) "prior training" for candidates for judicial or prosecutorial positions, and (ii) "continuous training" for sitting judges and prosecutors (Article 6).

14. The bodies of the Judicial Academy shall include the Management Board, the Director, and the Programme Council. The Management Board shall comprise eleven members: five members

³ EC, Directorate-General for Neighbourhood and Enlargement Negotiations (DG NEAR), [Chapters of the acquis](#). Interim Benchmark 4 for Serbia provides, in particular: *"Serbia establishes an initial track record of implementing a fair and transparent system based on merit for the management of the careers of judges and prosecutors including recruiting, evaluating and promoting judges and prosecutors based on periodic, professional performance assessment (including at senior level)"*.

⁴ EC, Directorate-General for Neighbourhood and Enlargement Negotiations, 2024 Communication on EU enlargement policy, [2024 Serbia Report](#), SWD(2024), 30 October 2024, page 5.

⁵ Venice Commission, [CDL-AD\(2018\)011](#), Opinion on the draft amendments to the constitutional provisions on the judiciary, para. 42.

⁶ Venice Commission, [CDL-AD\(2021\)032](#), Opinion on the draft Constitutional Amendments on the Judiciary and draft Constitutional Law for the Implementation of the Constitutional Amendments, para. 97.

⁷ *Ibid.*, para. 98.

appointed from among the ranks of judges by the Judicial Council, including two members nominated by the Judges' Association; four members appointed from among the ranks of public prosecutors by the Prosecutorial Council, including one member nominated by the Prosecutors' Association; the Minister of Justice; and one member from among the employees of the Academy, appointed by the Government (Article 8).

15. The Management Board shall elect the Director of the Academy and the members of the Programme Council. It shall also adopt training programmes for various categories of personnel within the judiciary and the public prosecution service (Article 10). The Judicial Council and the Prosecutorial Council shall monitor the operation of the Academy and exercise professional supervision over its activities (Article 4).

16. The central issue addressed by the draft legislation concerns the use of "prior training" in the recruitment of new judges and prosecutors. Two options are proposed.

17. Under Option 1, individuals seeking to enter the profession may either: (a) pass the professional examination at the Academy upon completion of the "prior training" programme, or (b) pass the examination directly before the Judicial or Prosecutorial Council without undergoing the "prior training" programme. Subsequent assessment of the candidates and the decision on their appointment shall be made by the Judicial or Prosecutorial Council. This option retains the current recruitment model, with the addition of a new requirement: where candidates pass the examination directly before the Judicial or Prosecutorial Council and are subsequently appointed, they must undergo a 30-day post-appointment training ("continuous training") at the Academy (Article 56 of the draft law on the Judicial Academy).

18. Option 2 removes the possibility for candidates to sit for the professional examination directly before the Judicial or Prosecutorial Council. Under this option, the sole method for recruiting new judges and prosecutors will be through "prior training" at the reformed Academy. Upon completion of the training, trainees will take the professionalism examination at the Academy, after which they will be assessed and appointed by the Judicial or Prosecutorial Council. Option 2 provides for a transitional period until 1 January 2029, during which the dual examination system will remain in effect, allowing the candidates to go through an examination either by the Academy or directly by the Judicial or Prosecutorial Council.

19. During the online meetings, the authorities and other interlocutors primarily focused on discussing the advantages and disadvantages of each of the two options. The positions of the stakeholders were divided. Some supported the proposal for the Academy to be the sole entry channel (Option 2), emphasising the benefits of a uniform institutional approach to the training of judges and prosecutors. However, others, particularly professional communities and civil society organisations, expressed concerns about this approach for two main reasons: (i) serious concerns about the independence of the current Academy and fairness in managing traineeships and examinations; and (ii) the potentially unfair treatment of experienced judicial and prosecutorial assistants, who would be required to undergo traineeship at the Academy, despite their already acquired professional experience and expertise. Allegedly, in these cases the necessity of "prior training" was less evident compared to candidates without any professional experience in judicial or prosecutorial services.

20. The concerns regarding Option 2 were further amplified by allegations from certain interlocutors about the lack of an inclusive process and public discussion in the drafting of the proposed legislative amendments.

21. In its analysis of the draft legislation, the Venice Commission will focus on these most pertinent changes and the issues arising from discussions with the relevant stakeholders. The absence of comments on other provisions of the draft should not be interpreted as tacit approval of those provisions.

III. Analysis

A. Applicable standards and scope of national discretion

22. The Council of Europe standards regarding training of judges and prosecutors generally support the view that proper initial and in-service training is an essential and important component of independence of their profession. In particular, the Committee of Ministers' Recommendation 12(2010) states that “[j]udges should be provided with theoretical and practical initial and in-service training, entirely funded by the state. (...) An independent authority should ensure, in full compliance with educational autonomy, that initial and in-service training programmes meet the requirements of openness, competence and impartiality inherent in judicial office”.⁸ The Magna Carta of Judges (Fundamental Principles) by the Consultative Council of European Judges (CCJE) includes Principle 8 which asserts: “[i]nitial and in-service training is a right and a duty for judges. It shall be organised under the supervision of the judiciary. Training is an important element to safeguard the independence of judges as well as the quality and efficiency of the judicial system”.⁹ The CCJE recommends that mandatory initial training includes programmes which are appropriate to appointees' professional experience.¹⁰ Also, the Venice Commission Report on the independence of the judicial system: Part II – the Prosecution System has noted that “[a]ppropriate training should be available for prosecutors throughout their career. The importance of training for prosecutors is certainly of the same level as that for judges.”¹¹

23. While European standards emphasise the importance of training, they do not prescribe specific details on how the education and training system concerning judges and prosecutors should be organised, or the conditions under which such training is integrated into the process of entering the professions. These matters fall within the organisational competence and discretion of individual countries. As such, the options available to each country for structuring training and determining the entry channels to the judiciary and prosecution services are quite broad.

B. Two options examined by the authorities

24. As noted earlier, in the case of Serbia, the authorities are considering two possibilities: Option 1 retains the current dual system (where candidates may sit for the examination either at the Academy or before the Judicial/Prosecutorial Council); Option 2 confers exclusive responsibility for the professional examination to the Academy. In both options, however, the final assessment of candidates remains within the competence of the Judicial and Prosecutorial Councils, which, under Articles 150(2) and 162(2) of the Constitution, are empowered to appoint judges and prosecutors.

25. The Venice Commission acknowledges that, in light of the absence of specific European standards and the broad discretion afforded to individual countries in this area, both options are viable. However, in the context of contemporary needs and expectations, Option 2 may present distinct advantages in preparing individuals for the judicial and prosecutorial professions.

26. Firstly, placing initial training before appointment ensures that candidates are adequately prepared, enabling a genuine merit-based evaluation of their qualifications later at the selection process. If professional training occurs after the appointment decision, the sequence becomes inconsistent, as it may weaken the merit-based nature of the appointment process.

⁸ Council of Europe Committee of Ministers Recommendation [CM/Rec\(2010\)12](#) on judges: independence, efficiency and responsibilities, paras. 56-57.

⁹ CCJE, Magna Carta of Judges (Fundamental Principles), [CCJE\(2010\)3](#), 17 November 2010, principle 8.

¹⁰ CCJE, [Opinion No. 4 \(2003\)](#) on training for judges, para. 26.

¹¹ Venice Commission, [CDL-AD\(2010\)040](#), Report on the independence of the judicial system: Part II – the Prosecution System, 17-18 December 2010, para. 70.

27. Secondly, the establishment of a single channel for the professional examination guarantees that all candidates undergo the same rigorous process, thereby ensuring equality and transparency. A uniform procedure mitigates the risk of unequal treatment or discrepancies between candidates, ensuring that all are evaluated under consistent standards.

28. Thirdly, eliminating the redundant parallel system would improve the efficiency of the recruitment process by simplifying the overall procedure and enhancing predictability in appointments. This streamlined approach would also reduce potential administrative complications that may arise from maintaining dual system.

C. Challenges to Option 2

29. During the meetings, the rapporteurs were informed of two main issues regarding the implementation of Option 2: (1) the model may encounter difficulties in aligning with the constitutional provisions concerning the appointing powers of the Judicial and Prosecutorial Councils; and (2) there may be disproportionate treatment of experienced judicial and prosecutorial assistants, who would be required to enrol in the “prior training” programme.

1. Constitutionality

30. In 2014, the Constitutional Court ruled that assigning the Judicial Academy the role of sole gatekeeper to the judicial and prosecutorial professions conflicted with the constitutional powers of the Judicial and Prosecutorial Councils to appoint judges and prosecutors. The *ratio decidendi* of the ruling was that, among other arguments relating to the principle of non-discrimination and the equal conditions of access to public service (Articles 21 and 53 of the Constitution), the constitutional powers of the Councils could not be frustrated by the Academy’s role in determining who is professionally fit for judicial and prosecutorial functions.¹² This constitutional case-law is relevant to the present draft legislation. By deciding who may be admitted to the “prior training” programme and who has successfully graduated, the Academy *de facto* participates in the professional selection of candidates. Under Option 2, the Academy remains solely competent to carry out the *preliminary* professional selection of candidates through the entry and final examinations.

31. It is ultimately for the domestic authorities to assess the conformity of ordinary legislation with the Constitution. However, it is important to emphasise that while the Judicial and Prosecutorial Councils are constitutionally entrusted with the power to appoint judges and prosecutors (Articles 150(2) and 162(2) of the Constitution), this competence must be interpreted in conjunction with other relevant constitutional provisions. In particular, Article 145 provides that “*the conditions for the election of judges... shall be regulated by law,*” which grants the legislator discretion to determine such conditions, including the preliminary selection procedure. The legislator, however, must exercise this discretion in a manner that respects the principle of judicial and prosecutorial independence as well as the Councils’ competence to appoint judges and prosecutors.

32. The draft law on the Judicial Academy seeks to address this issue by ensuring *certain level of subordination* of the Academy to the Judicial and Prosecutorial Councils. These Councils, according to the Constitution, are state bodies entrusted with safeguarding and guaranteeing the independence of judges and prosecutors. The following provisions are particularly pertinent:

- (i) the Academy is subject to monitoring and professional supervision by the Judicial and Prosecutorial Councils (Article 4);
- (ii) the Judicial and Prosecutorial Councils have a decisive role in the formation of the management bodies of the Academy (Articles 8 and 10);

¹² Constitutional Court of Serbia, Decision No. IUz – 497/2011, 6 February 2014.

- (iii) the Judicial and Prosecutorial Councils have a decisive role in the formation of (a) the commission responsible for the entry examination, (b) the appeal commission for the entry examination, and (c) the final examination commission (Articles 33, 36, and 43);
- (iv) the Judicial and Prosecutorial Councils determine, on a regular basis, the number of vacancies for the “prior training” programme (Article 27);
- (v) the Judicial and Prosecutorial Councils may review the report on the entrance examination and the ranking list of candidates applying for the “prior training” (Article 38).

33. It is also to be noted that the Judicial and Prosecutorial Councils retain the competence of finally deciding on the appointments, following a review and interview of successful candidates, particularly regarding their integrity.

34. These arrangements indicate that the level of subordination of the Academy to the Councils is *sufficient* to ensure respect for the appointing powers of the Councils provided for by the Constitution.

35. However, the Commission is of the opinion that it would be advisable that the draft law provide further clarification on the relationship between the Academy and the Councils by elaborating on and clarifying the procedures related to the exercise by the Councils of their specific competencies in this domain: (i) to monitor the operation of the Academy and perform professional supervision; (ii) to review the entrance examination report and ranking; (iii) to exercise their discretion in reviewing candidates following successful graduation from the Academy. Lack of procedural clarity in these provisions could lead to unnecessary tensions and inconsistent practices. If deemed appropriate, such clarifications could be incorporated into other legislative acts, notably the Law on Judges and the Law on Public Prosecutor’s Office, with the current draft legislation including references to those provisions.

2. Proportionality

36. Another issue concerns the proportionality of the treatment of current judicial and prosecutorial assistants, who possess significant experience but will be required to undergo “prior training” programme at the Academy. Certain domestic interlocutors argued that, to date, the duties performed during the traineeship programme largely replicated those already carried out by judicial and prosecutorial assistants, which would make the transition from assistant to trainee somewhat artificial. However, the other interlocutors argued that the “prior training” programme would still offer valuable additional preparation, even for experienced assistants, with the curriculum being tailored to the specific needs of different categories of trainees. Ultimately, it will be for the reformed Academy to review and adapt the training programme to ensure that it adequately meets the relevant needs. This observation is particularly pertinent to senior candidates from academia. Given their academic qualifications and experience, their training needs should be carefully assessed and limited to areas necessary, such as judicial craftsmanship. This might include skills in managing court hearings, holding questioning sessions, and specific training on judicial conduct.

37. It appears that, in pursuing the objectives of the current reform through Option 2, no excessive burden would be imposed on the current judicial and prosecutorial assistants, for the following reasons. Firstly, the draft law on the Judicial Academy provides for varying periods of “prior training”, ranging from three to 24 months, depending on the years of professional experience of the trainees (Article 40). Secondly, the draft law ensures that trainees are provided with an employment contract, with remuneration set at 80% of the basic salary of a judge at the first-instance court. Furthermore, their prior employment will be suspended, but not terminated (Article 48). Thirdly, the draft legislation introduces a five-year transitional period, during which the current dual system will remain in place. This period, even if reduced to two years, will offer current

assistants ample time to make use of the current entrance system going through a direct examination by the Judicial and Prosecutorial Councils, should they wish to do so.

D. Status of the Academy

38. In performing its functions, the Academy must be shielded from undue influence and ensure that training and examinations are conducted in accordance with the principles of judicial and prosecutorial independence. In this regard, the Venice Commission has previously emphasised that the training of judges should remain under the control of the judiciary.¹³ Similarly, the CCJE has advised that “the judiciary should play a major role in or itself be responsible for organising and supervising training”.¹⁴

39. The draft law on the Judicial Academy adheres to these principles, as there is a substantial functional relationship between the Academy and the judicial and prosecutorial services. As discussed above (paragraph 32), this relationship is ensured through the Judicial and Prosecutorial Councils, which, according to the Constitution, are responsible for safeguarding the independence of judges and prosecutors.

40. The functioning of the Academy is overseen by the Management Board, which appoints the Director of the Academy and members of the Programme Council, adopts training programmes, and performs other tasks (Article 10). The Board consists of eleven members: five members appointed from the ranks of judges by the Judicial Council, including two members nominated by the Judges' Association; and four members appointed from the ranks of public prosecutors by the Prosecutorial Council, including one member nominated by the Prosecutors' Association; the Minister of Justice; and one member from among the employees of the Academy, appointed by the Government (Article 8).

41. In the view of the Venice Commission, it is positive that the vast majority of members of the Management Board are appointed by the Judicial and Prosecutorial Councils. The involvement of professional associations in the selection of some of these members is also commendable. However, the fact that the draft law includes the Minister of Justice in the Management Board raises concerns. During the meetings, the rapporteurs were not presented with convincing reasons for the Minister of Justice's participation in the Board. The Venice Commission has previously expressed concerns about the involvement of the Minister of Justice in the organisation of judicial and prosecutorial training.¹⁵ It thus recommends that the authorities consider removing the *ex officio* participation of the Minister of Justice in the Management Board of the Academy be removed from the draft law.

42. Another important aspect is the transparency and fairness of the Academy entry and final examination procedures. The draft law on the Judicial Academy stipulates that admission to the “prior training” programme is based on a public call (Article 28). It also guarantees procedural rights for trainees, including the right to appeal the results of the entry examination (Article 35) and the final examination (Article 45). These provisions are positive and contribute to the integrity of the process. In addition, the authorities might explore the introduction of provisions aimed at ensuring a gender-balanced composition of the Academy's bodies.

¹³ Venice Commission, [CDL-AD\(2010\)003](#), Ukraine - Joint Opinion on the Draft Law on the Judicial System and the Status of Judges, para. 123.

¹⁴ CCJE, [Opinion No. 4 \(2003\)](#) on training for judges, para. 16.

¹⁵ Venice Commission, [CDL-AD\(2015\)022](#), Bulgaria - Opinion on the draft Act to amend and supplement the Constitution (in the field of the Judiciary) (Venice, 23-24 October 2015), para. 72.

IV. Conclusion

43. At the request of the Minister of Justice of Serbia, the Venice Commission has assessed the draft law on the Judicial Academy, along with corresponding draft amendments to the Law on Judges and the Law on the Public Prosecutor's Office.

44. The Venice Commission welcomes the authorities' readiness to pursue the judicial reform by dealing with the status and competence of the Judicial Academy.

45. The central issue in the draft legislation is whether the Judicial Academy should become the exclusive channel for entry into the judicial and prosecutorial professions through the completion of the "prior training" programme and the passing of a professional examination at the Academy. The authorities have proposed two options: the first maintains the current dual system, where candidates can choose to sit for the professional examination either at the Academy or directly before the Judicial or the Prosecutorial Council without undergoing the training; the second option assigns exclusive responsibility for the professional examination to the Academy. In both options, however, the final assessment and appointment decision of candidates remains under the competence of the Judicial and Prosecutorial Councils, as enshrined in the Constitution.

46. For the Venice Commission, both options are viable as they fall within the limits of broad national discretion in this area. However, entrusting the exclusive responsibility for entry into the judicial and prosecutorial professions to the Academy presents several advantages and may represent the preferred alternative. First, placing initial training before appointment ensures that candidates are adequately trained and prepared, enabling a genuine merit-based evaluation of their qualifications. Second, a uniform examination process promotes equality and fairness, reducing the risk of diverting practices. Thirdly, eliminating the redundant parallel system would streamline the recruitment process, enhancing its efficiency and predictability.

47. In this context, the Venice Commission reiterates its earlier recommendation that the Judicial Academy must be protected from undue influence. It is positive that the Academy is adequately distanced from other branches of power and is closely linked to the Judicial and Prosecutorial Councils, which are constitutional bodies responsible for safeguarding the independence of the judiciary and prosecution. Overall, the draft legislation aims to reinforce the institutional status of the Academy, even though further improvements, as outlined in this opinion, are recommended.

48. Key recommendations are the following:

- (1) elaborating on and clarifying the procedures related to the exercise by the Judicial and Prosecutorial Councils of the specific competencies granted to them, namely: (i) the monitoring of the Academy's operation and its professional supervision, (ii) the review of the entrance examination report and ranking, (iii) the exercise of discretion in reviewing candidates following successful completion of "prior training" programme at the Academy.
- (2) consider removing the *ex officio* participation of the Minister of Justice in the Management Board of the Judicial Academy should be removed.

49. The Venice Commission remains at the disposal of the Serbian authorities for further assistance in this matter.