



Strasbourg, 11 February 2013

CDL-REF(2013)004

Engl. only

Opinion No. 709 / 2012

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT AMENDMENTS TO THE LAW
ON PUBLIC PROSECUTION
OF SERBIA



REPUBLIC OF SERBIA
Ministry of Justice

DRAFT AMENDMENTS TO LAW ON PUBLIC PROSECUTION

December 25, 2012

Original Law
Published in:
"Official Gazette of the Republic of Serbia" No. 116/08 of 27 December 2008

2008
translation
Prepared by
Jugoslovenski pregled /Yugoslav Survey

Belgrade, 2008.

Note: This is a true translation of the original law but it is not legally binding

Original title:

ZAKON O JAVNOM TUŽILAŠTVU

Službeni glasnik RS, br. 116/08

Translation date: December 2008.

Prepared by: Javna ustanova / Public Agency Jugoslovenski pregled /Yugoslav Survey
Dečanska 8, Beograd; Phone/Fax: + 381 11 / 32 33 610, 32 32 295; 32 41 953, 32 40 291; P.O.B. 677
www.pregled-rs.rs • www.survey-rs.rs • e-mail: info@pregled-rs.rs

LAW ON PUBLIC PROSECUTION C

Chapter One

GENERAL PROVISIONS

Article 1

This Law governs organization and jurisdiction of public prosecutor's offices, requirements and procedure for the election and termination of office of public prosecutor and deputy public prosecutor, rights and duties of public prosecutor and deputy public prosecutor, performance evaluation of the work of public prosecutor and deputy public prosecutor, promotion and disciplinary accountability of public prosecutors and deputy public prosecutors, performance of judicial administration and prosecutorial administration tasks in public prosecutor's offices, and provision of funds for the work of public prosecutor's office and other issues of relevance to their work.

Public Prosecutor's Office

Article 2

Public prosecutor's office is an autonomous state body, which prosecutes perpetrators of criminal and other punishable offences and takes measures for the protection of constitutionality and legality.

Public prosecutor's office performs its function pursuant to the Constitution, law, ratified international agreements and regulations enacted on the basis of law.

Establishment and Organization

Article 3

The Republican Public Prosecutor's Office is the highest public prosecutor's office in Serbia.

The seat of the Republican Public Prosecutor's Office is in Belgrade.

Establishing, seat, and territorial jurisdiction of other public prosecutor's offices is governed by the law.

Jurisdiction of Public Prosecutor's Office

Article 4

The function of public prosecutor's office is performed by the Republican Public Prosecutor and other public prosecutors, in accordance with the law.

Independence in Work

Article 5

A public prosecutor and deputy public prosecutor are independent in the performance of their competencies.

Any influence on the work of a public prosecutor's office and on actions in cases by the executive and the legislative powers by use of public office, public media and in any other manner that may jeopardise the independence of the work of a public prosecutor's office, is prohibited.

Public prosecutor and Deputy public prosecutor are obliged to reject any action that represents influence on independency on work of public prosecutor's office.

Insignia of Public Prosecutor's Office

Article 6

Public prosecutor's office has a seal containing the name and seat of the public prosecutor's office, and the name and Coat of Arms of the Republic of Serbia, in accordance with separate laws..

The name of the public prosecutor's office, Coat of Arms and the flag of the Republic of Serbia must be displayed on the building in which the public prosecutor's office is located.

Public prosecutor and deputy public prosecutor shall use official IDs and badges in performance of prosecutorial duties.

The Rules of Procedure on Administration in Public Prosecutor's Offices defines in detail the look and use of the official ID and badge.

Official Language and Script

Article 7

Serbian language and Cyrillic script are in official use in the public prosecutor's offices in the Republic of Serbia.

Official use of other languages and scripts is governed by law, pursuant to the Constitution.

Duty to Forward Documents to Public Prosecutor's Office

Article 8

Courts, other state authorities, local self-government and autonomous province authorities, as well as other organisations and legal persons, are required to forward to the public prosecutor's office, at its request, documents and information required for undertaking actions in its purview. When a public prosecutor's office is bound by a statutory time limit, they shall forward documents promptly.

Duty to Provide Data and Explanations to Public Prosecutor's Office

Article 9

Everyone is required to directly provide to the public prosecutor's office at its request, explanations and data it requires to undertake actions in its competencies under the law.

A public prosecutor's office is required to accept submissions and statements on matters in its jurisdiction, and may demand supplements and explanations in respect of received submissions and statements.

Informing the Public

Article 10

Public prosecutor's office may inform the public on the state of criminality and other occurrences that come to its notice in work, in accordance with the Rules of Procedure on Administration of Public Prosecutor's Offices.

A public prosecutor's office may, within the constraints of its competencies and in accordance with the interest of proceedings, taking care of the protection of privacy of participants in proceedings, notify the public also on individual cases in which it is proceeding.

Principles in discharge of public prosecutor's function

Article 10a

Public prosecutor and Deputy public prosecutor undertake to perform the function in professional, honourable, impartial and just manner without unnecessary delay especially taking care on protection of victims and prevention of discrimination on any ground.

Meaning of Terms in This Law

Article 11

Terms used in this Law shall have the following meaning:

1. "Prosecutorial office" shall include the office of public prosecutor and deputy public prosecutor.
2. "Public prosecutor" shall mean the Republican Public Prosecutor and other public prosecutors.
3. "Mandatory instruction" is the order of a public prosecutor to a directly lower ranking public prosecutor or deputy public prosecutor to undertake certain actions within his/her statutory competencies.
4. "First appointed" shall mean the first appointment to public prosecutor's function.

Chapter Two

ORGANISATION OF PUBLIC PROSECUTOR'S OFFICE

~~1. NOTION AND TYPES~~

1. COMPOSITION AND TYPES

Notion

Article 12

A public prosecutor's office consists of the public prosecutor, deputy public prosecutors and staff. The public prosecutor's office function is performed by the public prosecutor. Everyone in the public prosecutor's office is subordinate to the public prosecutor.

Types of Public Prosecutor's Offices

Article 13

The Public Prosecution of the Republic of Serbia consists of the Republican Public Prosecutor's Office, the appellate public prosecutor's offices, the higher public prosecutor's offices, the basic public prosecutor's offices, and the public prosecutor's offices with special jurisdiction.

Public prosecutor's offices with special jurisdiction are the Public Prosecutor's Office for Organized Crime and Public Prosecutor's Office for War Crimes.

Republican Public Prosecutor's office, Public Prosecutor's Office for Organized Crime and Public

Prosecutor's Office for War Crimes are established for the territory of the Republic of Serbia.

Public Prosecutor's Office for Organized Crime and Public Prosecutor's Office for War Crimes are seated in Belgrade.

Appellate public prosecutor's office is established for the territory of the appellate court.

A higher public prosecutor's office is established for the territory of a higher court, and basic public prosecutor's offices are established for the territory of basic courts.

Establishment, seat and territories of appellate, higher and basic public prosecutor's offices are regulated by a separate law.

~~Public prosecutor's office may have a separate department in charge of prosecution of certain criminal offences, in accordance with a separate Law.~~

Public prosecutor's office can form departments in its seat and outside of the seat, special departments for prosecution of certain criminal offences or other departments in accordance with the law.

~~Public Prosecutor's Office for Organised Crime may have separate departments outside its seat, in accordance with a separate Law.~~

Subject Matter Jurisdiction

Article 14

Subject matter jurisdiction of a public prosecutor's office is determined in accordance with provisions of the Law that are in effect for determining subject matter jurisdiction of a court, except when set forth otherwise by law.

Territorial Jurisdiction

Article 15

Territorial jurisdiction of a public prosecutor's office is determined in accordance with the Law governing the seats and territories of public prosecutor's offices.

2. HIERARCHY

Seniority of Higher Ranking Public Prosecutors over Lower Ranking Public Prosecutor

Article 16

A lower ranking public prosecutor is subordinated to the directly higher ranking public prosecutor, a lower ranking public prosecutor's office to the directly higher ranking public prosecutor's office.

The basic public prosecutor's office is of a lower rank than the higher public prosecutor's office. Higher public prosecutor's office is of a lower rank than the appellate public prosecutor's office. Public prosecutor's offices of special jurisdiction and the appellate public prosecutor's office are of lower rank than the Republican Public Prosecutor's office.

Every public prosecutor is subordinate to the Republican Public Prosecutor and every public prosecutor's office to the Republican Public Prosecutor's Office.

Conflict of Jurisdiction

Article 17

A conflict of jurisdiction between public prosecutors is resolved by the directly higher ranking public prosecutor.

A conflict of jurisdiction between Special Public Prosecutors themselves and a conflict of jurisdiction between Special Public Prosecutors and other public prosecutors is resolved by the Republican Public Prosecutor.

Mandatory Instructions of the Higher Ranking Public Prosecutor to Lower Ranking Public Prosecutor

Article 18

A higher ranking prosecutor may issue to a directly lower ranking prosecutor mandatory instruction for proceeding in particular cases when there is doubt in respect of the efficiency and legality of his performance, and the Republican Public Prosecutor can issue such instruction to any public prosecutor.

Mandatory instruction is issued in writing and must contain the rationale and explanation for the issuance thereof.

Exceptionally from paragraph 2 of this Article, the public prosecutor may issue oral mandatory instruction, when that is necessary for taking of actions that must not be delayed. In that case the mandatory instruction in written form is submitted within three days from the day of issue of oral instruction.

A lower ranking prosecutor who deems the mandatory instruction unlawful and unwarranted may submit an objection with explanation to the Republican Public Prosecutor, within eight days from the date of receiving the instruction.

The objection is filed through the public prosecutor issuing the mandatory instruction, who is required to reconsider the mandatory instruction he has issued, within three days from the day of receiving the objection.

The public prosecutor filing the objection is not required to act on the instruction before the decision of the higher ranking public prosecutor, except in cases when there is a risk from deferment of action.

If, in the course of reconsideration, the public prosecutor sets aside his mandatory instruction, it shall be deemed that the objection is sustained and shall not be forwarded to the Republican Public Prosecutor.

The Republican Public Prosecutor is required to take decision within fifteen days from the date of receiving the objection to the mandatory instruction.

No objection is allowed against the mandatory instruction of the Republican Public Prosecutor.

Devolution

Article 19

A higher ranking public prosecutor may undertake all actions under the competence of a lower ranking public prosecutor and is required to issue a reasoned ruling thereof.

A lower ranking public prosecutor who deems the decision of the higher ranking public prosecutor unlawful or unwarranted, may file an objection with the Republican Public Prosecutor within 8 days from the date of receiving the decision.

The objection is filed through the prosecutor issuing the decision, who is required to reconsider the ruling issued within three days from receiving the objection. The lower ranking public prosecutor may not undertake any case-related actions until the decision upon the objection is reached.

If, in the course of reconsideration, the public prosecutor sets aside his ruling, it shall be deemed that the objection is sustained and shall not be forwarded to the Republican Public Prosecutor.

The Republican Public Prosecutor shall decide on the objection within 15 days from receiving the objection to the ruling.

Substitution

Article 20

A higher ranking public prosecutor may authorise a lower ranking public prosecutor to proceed in a matter under the jurisdiction of another lower ranking public prosecutor when the public prosecutor with competent jurisdiction is prevented by legal or objective reasons from proceeding in a particular case, and shall issue a reasoned ruling thereof.

Exceptionally, the Republican Public Prosecutor may authorise the Prosecutor for Organised Crime to proceed in a matter under the jurisdiction of another public prosecutor for the purpose of more efficient proceeding or for other significant reasons, and shall issue a reasoned explanation thereof.

Inspection of Cases of Lower Ranking Prosecutor

Article 21

In order to exercise seniority of rank, the Republican Public Prosecutor is entitled to inspect any case, while a higher ranking prosecutor is entitled to inspect any case of a directly lower ranking prosecutor.

The request for inspection is submitted to the lower ranking public prosecutor, who shall, thereafter promptly forward the case to the higher ranking public prosecutor.

Accountability

Article 22

The Republican Public Prosecutor manages the work of and represents the Public Prosecution.

The Republican Public Prosecutor is accountable to the National Assembly for the work of the Public Prosecution and his/her own work.

A public prosecutor is accountable for the work of the public prosecutor's office and his/her own work to the Republican Public Prosecutor and to the National Assembly, whilst a lower ranking public prosecutor is also accountable to the directly higher ranking public prosecutors.

Deputy public prosecutors are accountable for their work to the public prosecutor.

Seniority of Public Prosecutor over Deputy Public Prosecutor

Article 23

A deputy public prosecutor is required to perform all actions entrusted to him/her by the public prosecutor.

A deputy public prosecutor can undertake any action to which a prosecutor is authorised without special authority.

Mandatory Instructions of the Republican Public Prosecutor

Article 24

A public prosecutor may issue to his deputy mandatory instructions for work and action.

A public prosecutor issues mandatory instructions in writing that shall contain rationale and an explanation for issuance thereof.

Exceptionally from paragraph 2 of this Article, the public prosecutor may issue oral mandatory instruction, when that is necessary for taking of actions that must not be delayed. In that case the mandatory instruction in written form is submitted within three days from the day of issue of oral instruction.

A deputy public prosecutor who deems the mandatory instruction unlawful and unwarranted, may file an objection with an explanation to a directly higher public prosecutor, within eight days from the date of receiving the instruction.

The objection is filed through the public prosecutor issuing the instruction, who is required to reconsider the issued instruction within three days from the day of receiving the objection.

If, during the reconsideration procedure, the public prosecutor sets aside the mandatory instruction, the objection shall be deemed sustained and shall not be forwarded to the higher public prosecutor.

The deputy public prosecutor filing the objection is required to act on the instruction until the decision of the higher public prosecutor.

The higher public prosecutor is required to take decision, within eight days from the day of receiving the objection against the mandatory instruction.

The decision of the higher public prosecutor in respect of the objection is final.

General Instructions of the Republican Public Prosecutor

Article 25

The Republican Public Prosecutor issues, in writing, general mandatory instructions for all public prosecutors aimed at achieving legality, effectiveness and uniformity in proceeding.

The Republican Public Prosecutor may issue general mandatory instructions at the recommendation of the Republic Public Prosecutor's Office Collegiate.

3. JURISDICTION

General Jurisdiction

Article 26

In prosecuting criminal offences, economic offences and petty offences, a public prosecutor proceeds before the court and other state organs, undertaking actions for which he/she is authorized by law.

A public prosecutor proceeds in litigation, administrative, enforcement, non-contentious and other proceedings, performing actions for which he/she is authorized under a separate Law.

A public prosecutor acts within the constraints of his/her subject matter and territorial jurisdiction, within the framework of jurisdiction of the authorities.

Motion to Stay and Suspend Enforcement

Article 27

If a public prosecutor deems that there are grounds to challenge a decision reached in judicial or other proceedings by extraordinary legal remedy, he/she may request stay or suspension of enforcement of the decision.

The motion is filed with the authority approving the enforcement of the decision and, if enforcement has commenced, with the implementing body, along with proof that an extraordinary legal remedy was filed.

Consequences of Sustaining the Motion

Article 28

If the public prosecutor's motion from Article 27 of this Law is sustained, stay or suspension of enforcement shall last until the taking of decision on the extraordinary legal remedy of the public prosecutor.

The decision to stay or suspend enforcement shall cease to have an effect if the public prosecutor fails to file the extraordinary legal remedy within thirty days of receiving the decision.

Competence of the Republican Public Prosecutor

Article 29

The Republican Public Prosecutor exercises the competencies of public prosecutor's office within the framework of the rights and duties of the Republic of Serbia.

The Republican Public Prosecutor is competent to proceed before all courts and other authorities in the Republic of Serbia, and to undertake all actions within the purview of the public prosecutor's office.

He/she shall also have the competence to:

- 1) file extraordinary legal remedies in accordance with the law;
- 2) oversee the work of the public prosecutor's offices and the implementation of instructions, observe and study the practice of public prosecutor's office and courts;
- 3) propose professional advanced training programmes for public prosecutors and deputy public prosecutors;
- 4) ~~submit reports to the National Assembly;~~
4) submit regular annual reports about work of Public Prosecutors Office and other reports to the National Assembly;
- 5) perform other tasks defined by the Law.

In tasks from its competence, the Republican Public Prosecutor acts directly and through his/her deputies.

Competence of Appellate Prosecutor and Public Prosecutors with Special Jurisdiction

Article 30

Appellate public prosecutor exercises the competence of the appellate public prosecutor's office and is competent to act before the Appellate Court and other courts and authorities, in the manner prescribed by law, as well as to supervise and direct basic and higher public prosecutor's offices from its territory, in accordance with this Law.

Appellate public prosecutor in the territory of the Commercial Appellate Court shall proceed before this court as well.

Public Prosecutor for Organized Crime and Public Prosecutor for War Crimes shall act before the competent courts of first and second instance, and perform other tasks in accordance with the law.

Competence of the Higher and Basic Public Prosecutor

Article 31

A higher public prosecutor exercises the competencies of the higher public prosecutor's office and has the competence to proceed before the higher court and other courts and authorities in the manner set forth by the law, and to oversee and direct the territorial basic public prosecutor's offices in the manner set forth by this Law.

A basic public prosecutor exercises the competencies of the basic public prosecutor's office and proceeds before the basic court.

The basic public prosecutor at the seat of a commercial court proceeds also before that court.

Transfer of Competence

Article 32

If a public prosecutor's office is unable to exercise competence, the Republican Public Prosecutor may transfer its competencies to another public prosecutor's office of the same or higher level.

Transfer of competencies shall last until requirements are met for the work of the competent public prosecutor's office.

Deciding on the Motion for Recusal

Article 33

The motion for the recusal of deputy public prosecutor is decided on by the public prosecutor, and the motion for the recusal of a public prosecutor is decided on by the directly superior public prosecutor.

The State Prosecutorial Council decides on the motion for recusal the Republican Public Prosecutor, following the opinion obtained from the Collegiate of the Republic Public prosecutor's office.

4. ADMINISTRATION IN PUBLIC PROSECUTOR'S OFFICE

Managing Public Prosecutor's Office Administration Tasks

Article 34

The public prosecutor is the administrative authority in the public prosecutor's office and is responsible for the proper and timely work of the public prosecutor's office, in accordance with the law and the public prosecutor's office Rules of Administration.

The public prosecutor determines the organization and work of the public prosecutor's office, takes decision in respect of employment rights of deputy public prosecutors and staff employment relations, rectifies work-related irregularities and procrastination, attends to maintaining of independence in work and the dignity of public prosecutor's office, and performs other tasks as authorized by the law or other regulation.

Substituting for the Public Prosecutor in Administration

Article 35

A public prosecutor who is absent or prevented to manage the public prosecutor's office is substituted for by a deputy public prosecutor designated in the annual schedule of tasks.

If not designated, or if requirements cannot be met to designate who shall manage in lieu of the public prosecutor, the directly superior public prosecutor shall appoint the administrator from the ranks of deputy public prosecutors.

Acting Public Prosecutor

Article 36

If the term of office of a public prosecutor ceases, the Republican Public Prosecutor appoints an acting public prosecutor until the new public prosecutor takes office, for a period not exceeding one year.

The Acting Republican Public Prosecutor is appointed by the State Prosecutorial Council.

Personal File

Article 37

The State Prosecutorial Council shall maintain a personal file for every public prosecutor, deputy public prosecutor and employee in the public prosecutor's office.

Data contained in the personal file is forwarded to the State Prosecutorial Council by the public prosecutor who shall be responsible for its accuracy, as well as by the person to whom such data relates, if supplied by such person.

Data from the personal file is confidential, and may be used only for the purposes of implementation of this Law.

The State Prosecutorial Council shall stipulate the obligations of public prosecutors when supplying the data required for maintaining personal files.

Content of the Personal File

Article 38

The personal file of a public prosecutor and deputy public prosecutor shall contain the name, surname, parent's name, place and date of birth, residence address, completed law faculty, achieved grades at the faculty, internship, bar examination, career, date of completing years of service, fulfilment of norm, assignment to work in another public prosecutor's office, suspension from duty, disciplinary measures, termination of office, published professional or research papers, performance evaluation, participation in advanced training programs, knowledge of foreign languages and other specific skills, property status, housing situation, as well as other information relating to the work and status of a public prosecutor or deputy public prosecutor.

The personal file of a staff member of a public prosecutor's office shall contain the name and surname, birth data, residence, education, occupation and profession, performance evaluation, career, published papers, participation in advanced training programs, knowledge of foreign languages, property status, housing situation, and other information.

Authorities in possession of data recorded in the personal file are required to submit such data to the State Prosecutorial Council.

The State Prosecutor's Council shall determine the form and detailed content of personal files from Paragraphs 1 and 2 of this Article.

Rules of Administration in Public Prosecutor's Office

Article 39

Rules of Administration in Public Prosecutor's Office regulate: the relationship of public prosecutor's office to other state authorities, citizens and the general public, manner of maintaining records, manner of allocation of cases, case management, procedure with archive materials and other issues of relevance to the work of public prosecutor's offices.

Rules of Administration in Public Prosecutor's Office is issued by the Minister in charge of the judiciary, following the opinion obtained from the Republican Public Prosecutor.

Rules of Administration in Public Prosecutor's Office are published in the "Official Gazette of the Republic of Serbia".

Overseeing of Application of the Rules

Article 41

The Ministry in charge of the judiciary supervises the application of the Rules of Administration in Public Prosecutor's Offices

While performing the supervision, the Ministry in charge of the judiciary may require reports and data from public prosecutor's offices that are under supervision.

Only a person who fulfils requirements needed for the position of deputy public prosecutor in the public prosecutor's office he/she is supervising may conduct supervision.

Effects of Supervision

Article 41

A record shall be made of the performed supervision and forwarded to the public prosecutor of the public prosecutor's office where the supervising was conducted, to the directly superior public prosecutor, and to the Minister in charge of the judiciary.

The public prosecutor is required to notify the directly superior public prosecutor, the Republican Public Prosecutor, and the Minister in charge of the judiciary on steps undertaken to eliminate the noted deficiencies, time limits for their elimination, as well as reasons for their existence.

The time limit for notification is defined in the Rules of Administration in Public Prosecutor's Office.

Chapter Three

JUDICIAL ADMINISTRATION

Judicial Administration Tasks in Public Prosecutor's Office

Article 42

Judicial administration includes tasks that ensure the performance of public prosecutor's office tasks, particularly ensuring material, financial, spatial and other requirements for the work of the public prosecutor's office, provision of funds for professional advanced training of public prosecutors, deputy public prosecutors and staff, prescribing space and equipment standards in the public prosecutor's office, issuing agreement on the internal organization act and job classification in the public prosecutor's office, and other tasks.

Competences in Respect of Judicial Administration Tasks

Article 43

Judicial administration tasks are carried out by the Ministry in charge the judiciary, with the exception of judicial administration tasks related to the provision of funds needed for the work of public prosecutor's offices, which are performed by the Public Prosecutor's Council, in accordance with the provision of Article 127 of this Law.

The Ministry in charge the judiciary may, in performing judicial administration tasks, request reports and data from public prosecutor's offices.

Prohibition of Influence on the Independence
of Public Prosecutor's Offices

Article 44

Any individual act of judicial administration infringing the independence of the work of public prosecutor's office is null and void.

The Administrative Court shall decide on the nullity of an act from Paragraph 1 of this Article.

Chapter Four

STATUS OF PUBLIC PROSECUTOR AND
DEPUTY PUBLIC PROSECUTOR

1. BASIC RIGHTS AND OBLIGATIONS

Autonomy of Public Prosecutors and Deputy Public Prosecutors

Article 45

A public prosecutor and deputy public prosecutor are independent of the executive and the legislative powers in performance of their duties.

A public prosecutor and deputy public prosecutor are required to maintain the confidence in their independence of work.

No one outside the public prosecutor's office is entitled to define tasks of public prosecutors and deputy public prosecutors, or influence their decisions in cases.

A public prosecutor and deputy public prosecutor shall account for their decisions only to the competent public prosecutor.

Impartiality

Article 46

The office of a public prosecutor is discharged in public interest to ensure the implementation of the Constitution and the law, while providing respect and protection of human rights and fundamental freedoms.

The office of a public prosecutor must be performed impartially.

Code of Ethics

Article 47

~~In the performance of their office, a public prosecutor and deputy public prosecutor shall adhere to the Code of Ethics passed by the State Prosecutorial Council.~~

Public prosecutor and deputy public prosecutor act in accordance with Ethical code. State Prosecutorial Council is promulgating the Ethical code upon obtaining of opinion of professional association of public prosecutors and deputy public prosecutors.

Publicity of Work

Article 48

The work of a public prosecutor and deputy public prosecutor is public, unless otherwise provided by the law.

Prohibition of Political Activity and Activities Incompatible with Prosecutorial Function

Article 49

A public prosecutor and deputy public prosecutor cannot be members of political parties, or participate politically in any manner.

Offices, jobs, and activities incompatible with the prosecutorial function shall be defined by the law.

Financial Independence and Labour Rights

Article 50

A public prosecutor and deputy public prosecutor are entitled to a salary sufficient to ensure their independence in work and security of their families.

The salary of an incumbent of a public prosecutorial office must be in conformity with the dignity of the public prosecutorial office and the burden of responsibility.

The salary is regulated by law, pursuant to criteria set herein.

Public prosecutors and deputy public prosecutors shall realize their labour rights in accordance with regulations that define labour relations of appointed persons, unless this Law provides differently.

Immunity

Article 51

A public prosecutor and deputy public prosecutor may not be held accountable for opinions expressed in the performance of prosecutorial office, except in case of committing a criminal act by the public prosecutor and/or deputy public prosecutor.

A public prosecutor and/or deputy public prosecutor may not be deprived of freedom in proceedings instituted for a criminal offence committed in the performance of prosecutorial office and/or service, without a permission of the relevant Committee of the National Assembly.

Liability for Damage

Article 52

The Republic of Serbia shall be liable for any damage caused by a public prosecutor and deputy public prosecutor through unlawful or incompetent work.

After the determination by a final decision of the Constitutional Court, a final court decision, or a settlement before a court or another competent body that the damage was caused intentionally or through gross negligence, the Republic of Serbia is entitled to seek compensation of the paid amount from the public prosecutor and deputy public prosecutor.

Right to Association Article 53

~~Public prosecutors, deputy public prosecutors, prosecutorial assistants and trainees have the right of association with aim to protect their interests and undertake measures to retain their independence in work.~~

~~The State Prosecutorial Council and the higher ranking public prosecutor shall take measures to ensure the right to association of persons from Paragraph 1 of this Article.~~

~~Public prosecutors, deputy public prosecutors, prosecutor assistants and apprentices have right to associate in professional, trade union and other associations to protect their interests and take measures to maintain independency in work of public prosecutor's offices.~~

~~The right of professional association also assumes participation in activities of professional associations during the working time if that does not disturb the process of work of public prosecutor's office.~~

~~Activity in professional association must not endanger proper and regular discharge of function and fulfilling of working duties in public prosecutor's office.~~

~~State Prosecutorial Council and public prosecutor are taking measures for undisturbed realization of the right to associate.~~

Professional Training

Article 54

A public prosecutor and deputy public prosecutor have the right, and an obligation, to professional training at the cost of the Republic of Serbia, in the manner regulated by the law.

2. TERM OF OFFICE

Term of Office of Public Prosecutor

Article 55

A public prosecutor is elected from the ranks of public prosecutors and deputy public prosecutors, that is, from the ranks of persons who fulfil the election requirements, for a term of six years, and may be re-elected.

A public prosecutor whose office ceases at personal request, or if not re-elected, returns to the office of deputy public prosecutor that he/she performed prior to election. If elected to the office of public prosecutor from a lower ranking public prosecutor's office to a higher ranking, he/she shall, upon termination of the office of public prosecutor, continue to perform the office of deputy public prosecutor in the public prosecutor's office he/she had managed.

If the public prosecutor is elected from the rank of persons who are not deputy public prosecutors, upon termination of the office he/she shall be appointed deputy public prosecutor in the public prosecutor's office in which he/she was a public prosecutor. The decision on the appointment shall be taken by the State Prosecutorial Council.

A public prosecutor's term in office may cease prior to the expiry of the term to which he/she was elected, or prior to the fulfilment of years of service, only on grounds and for reasons provided under this Law.

Term of Office of Deputy Public Prosecutor

Article 56

The term of office of a deputy public prosecutor who is elected to the office for the first time shall last three years, while any subsequent election shall be permanent.

The term of office of deputy public prosecutors may cease prior to the expiry of the term to which they were elected, or prior to the fulfilment of years of service, only on grounds and reasons provided under this Law.

Continuation of Office

Article 57

If a public prosecutor's office is abolished, or new public prosecutor's offices will be established, a public prosecutor and deputy public prosecutor shall continue to perform the office of a public prosecutor and deputy public prosecutor in a public prosecutor's office designated by the State Prosecutorial Council, at the recommendation of the Republican Public Prosecutor.

3. SUSPENSION FROM DUTY

Grounds for Suspension

Article 58

A public prosecutor and deputy public prosecutor may be suspended from duty when remanded in custody.

A public prosecutor and deputy public prosecutor may be suspended from duty when proceedings for their dismissal, or a criminal procedure for a dismissible offence, have been instituted.

Decision on Suspension

Article 59

A public prosecutor decides on the mandatory suspension of a deputy public prosecutor, while a directly higher ranking public prosecutor decides on the mandatory suspension of a public prosecutor.

The Republican Public Prosecutor takes decision on non-mandatory suspension.

The State Prosecutorial Council decides on the suspension of the Republican Public Prosecutor.

Right to Objection

Article 60

A public prosecutor and deputy public prosecutor are entitled to object to the Republican Public Prosecutor's decision on non-mandatory suspension with the State Prosecutorial Council.

The Republican Public Prosecutor shall be entitled to object to the competent National Assembly board against a State Prosecutorial Council decision on non-mandatory suspension.

The objection from paragraphs 1 and 2 of this Article is filed within three days, and the competent authority shall make a decision on the objection within thirty days.

The filed objection from paragraphs 1 and 2 of this Article shall not stay the enforcement of the decision.

Duration of Suspension

Article 61

Suspension from office shall last until the revocation of custody, the final conclusion of dismissal proceedings, or the final conclusion of criminal proceedings.

The Republican Public Prosecutor, or the State Prosecutorial Council may set aside the decision on the suspension prior to the conclusion of the dismissal procedure.

4. TRANSFER AND ASSIGNMENT

Transfer

Article 62

A deputy public prosecutor may be permanently transferred to another public prosecutor's office of the same level only with his/her written consent.

The decision on the transfer is issued by the Republican Public Prosecutor.

In the case from Article 57 of this Law, a deputy public prosecutor can be transferred even without his/her consent, on the basis of a decision of the State Prosecutorial Council.

A deputy public prosecutor shall continue to perform his/her office permanently in the public prosecutor's office to which he/she is transferred.

Assignment

Article 63

A deputy public prosecutor may be assigned, with his/her written consent, to another public prosecutor's office for a period not exceeding one year. Upon a proposal of the Special Public Prosecutor, a deputy public prosecutor may be assigned, with his/her written consent, to a Special Prosecutor's Office for a period not exceeding four years.

When a deputy public prosecutor is assigned to a public prosecutor's office of a higher rank, he/she must meet the requirements to be elected as deputy public prosecutor of the public prosecutor's office to which he/she is transferred.

As an exception, a deputy public prosecutor may be assigned without his/her consent to a public prosecutor's office of the same or lower rank, due to an insufficient number of public prosecutors in the other public prosecutor's office. .

The assignment from paragraph 3 of this Article may not exceed one year.

The decision on the assignment is issued by the Republican Public Prosecutor.

Assignment to Another State Body, Institution in Charge of Judicial Training, or an International Organisation

Article 64

A deputy public prosecutor may be assigned, for the purpose of performing professional tasks, to the State Prosecutorial Council, the Ministry in charge of the judiciary, an institution in charge of judicial training, and to a judicial international organisation.

Assignment from Paragraph 1 of this Article is conducted upon the proposal of the head of the authority, institution, or organisation to which a deputy public prosecutor is being assigned, having obtained the opinion of the public prosecutor from the prosecutor's office in which the deputy public prosecutor performs his/her function, and with a written consent of the deputy public prosecutor himself/herself.

The assignment may not exceed a period of three years.

The decision on the assignment is issued by the State Prosecutorial Council.

5. INCOMPATIBILITY OF OFFICE WITH OTHER FUNCTIONS, AFFAIRS OR PRIVATE INTERESTS

Relationship of Other Offices, Engagements and Private Interests with the Office of Public Prosecutor and Deputy Public Prosecutor

Article 65

A public prosecutor and deputy public prosecutor may not hold office authorities enacting or enforcing regulations, in bodies of executive power, public services, and bodies of autonomous provinces and local self-management units; may not be members of political parties, engage in public or private paid work, nor extend legal services or give legal advice for compensation.

A public prosecutor's office is also incompatible with other offices, engagements or private interests that are contrary to the dignity and autonomy of public prosecutor's office or are damaging to its reputation.

The State Prosecutorial Council shall determine the offices and engagements that are contrary to the dignity, violate the autonomy, or damage the reputation of a public prosecutor's office.

A public prosecutor and deputy public prosecutor may engage, without an explicit permission, in educational and scientific work with compensation

In cases determined by the law, a public prosecutor and deputy public prosecutor may perform educational and scientific work during working hours.

A public prosecutor and/or deputy public prosecutor may be assigned to a study or other professional visit abroad, on the basis of a decision of the State Prosecutorial Council, after obtaining the opinion of the directly superior prosecutor and/or deputy public prosecutor, where special attention is given to the performance evaluation from the personal file, as well as knowledge of foreign languages.

Duty to Notify

Article 66

A deputy public prosecutor has the duty to notify, in writing, the public prosecutor about another office, engagement or private interest, where there exists a possibility of their incompatibly with his/her office, as well as of the engagement or private interest of members of his/her immediate family, if there exists a possibility of their incompatibility with his/her office.

A public prosecutor shall notify the directly higher ranking prosecutor of such a function, engagement, or private interest, and the Republican Public Prosecutor shall notify the State Prosecutorial Council.

Initiating Proceedings

Article 67

A public prosecutor has a duty to initiate proceedings to decide on the incompatibility of office of a lower ranking public prosecutor or deputy public prosecutor before the Republican Public Prosecutor, when becoming cognizant of, and estimating as probable the existence of, grounds provided in Article 65 Paragraphs 1 to 3 of this Law.

The State Prosecutorial Council initiates and conducts proceedings to decide on the incompatibility of the office of the Republican Public Prosecutor with other offices, engagements, or his/her private interests.

Decision on Incompatibility

Article 68

If the Republican Public Prosecutor determines that another office or engagement performed by a public prosecutor or deputy public prosecutor, or a private interest that he/she realises, are incompatible with the prosecutorial function, and that there are no grounds for dismissal, he/she shall accordingly notify the immediately higher ranking public prosecutor, as well as the public prosecutor, or deputy public prosecutor to whom the decision on incompatibility relates.

If the State Prosecutorial Council determines that another office or engagement performed by the Republican Public Prosecutor, or a private interest he/she realises, are incompatible with the public prosecutorial function, it shall accordingly notify the Republican Public Prosecutor thereof, and if there are grounds for dismissal, it shall notify the Government thereof.

The State Prosecutorial Council, that is, the Republican Public Prosecutor from Paragraphs 1 and 2 of this Article have a duty to submit a disciplinary report.

6. FINANCIAL STATUS

Base Salary

Article 69

The salary of a public prosecutor and deputy public prosecutor shall be computed on the basis of the base salary.

The base salary is determined by multiplying the coefficient for calculation and payment of salary with the base for calculation and payment of salary.

Base for calculation and payment of salaries of public prosecutors and deputy public prosecutors is equal to that for calculation and payment of salaries of judges.

The coefficient for calculation and payment of salary is determined by classifying each of the public prosecutors into one of five pay grades.

The base salary under this Law is the value that does not include the percentage for years of work.

Pay Grades

Article 70

Deputy public prosecutors are classified into five pay grades, each having salary levels expressed in coefficients.

The first pay grade includes deputy basic public prosecutors.

The second pay grade includes deputy higher public prosecutors and deputy special public prosecutors.

The third pay grade includes deputies of appellate public prosecutors. The fourth pay grade includes deputy Republican Public Prosecutors. The fifth pay grade includes the Republican Public Prosecutor.

Pay Levels

Article 71

The first pay grade shall have a pay level of 3.00.

The second pay grade shall have a pay level of

3.50. The third pay grade shall have a pay level of 4.00. The fourth pay grade shall have a pay level of 5.00. The fifth pay grade shall have a pay level of 6.00.

Base Salary of a Public Prosecutor

Article 72

The base salary of a public prosecutor is equal to that of the president of the court of general jurisdiction before which the public prosecutor acts.

The base salary of the Prosecutor for War Crimes is equal to that of the president of the higher court before which the prosecutor acts.

Base salary of the Republican Public Prosecutor is equal to the salary of the President of the Supreme Court of Cassation.

Salary in Case of Transfer and/or Assignment and Increase of Base Salary

Article 73

A deputy public prosecutor who is transferred and/or assigned to another public prosecutor's office, the Ministry in charge of the judiciary, an institution, or international organisation is entitled to a base salary of a deputy public prosecutor of the public prosecutor's office, and/or the base salary of the Ministry in charge of the judiciary, the institution, or the international organisation to which he/she is transferred and/or assigned, if more favourable.

Compensations and other emoluments of a deputy public prosecutor transferred or assigned to another public prosecutor's office, the Ministry in charge of the judiciary, an institution or international organisation, are prescribed by the State Prosecutorial Council, with the consent of the Ministry in charge of the judiciary.

The base salary of a deputy public prosecutors performing his/her duty in a public prosecutor's office where prosecutorial vacancies cannot be filled may be increased up to 50%, on the basis of a decision of the State Prosecutorial Council

The base salary of a public prosecutor and/or deputy public prosecutor acting in criminal offence cases with elements of organised crime and war crime may be increased up to 100%, on the basis of a decision of the State Prosecutorial Council.

Chapter Five

ELECTION

Fundamental Rules for Election of Public Prosecutor

Article 74

The Republican Public Prosecutor is elected, at the nomination of the Government, by the National Assembly to a term of six years, and may be reelected. The Government shall obtain the opinion of the competent committee of the National Assembly on the nominated candidates.

The Government proposes one or more candidates to the National Assembly for the office of the Republican Public Prosecutor.

The Government proposes candidates from paragraph 2 of this Article from the list of candidates determined by the State Prosecutorial Council.

The State Prosecutorial Council proposes to the Government a list of one or more candidates for the election to office of public prosecutor. If the State Prosecutorial Council proposes only one candidate to the Government, the Government may return the proposal to the State Prosecutorial Council.

If the Republican Public Prosecutor is not reelected to the same office after the expiry of the term in office, or if his/her office is terminated at personal request, he/she shall continue work as a Deputy Republican Public Prosecutor. The State Prosecutorial Council shall take a decision on election.

If a public prosecutor is not reelected to same office following the expiry of the term of office, or if his/her office is terminated at personal request, he/she shall continue work as a deputy prosecutor in terms of Article 55 paragraph 2 of this Law..

Fundamental Rules for Election of Deputy Public Prosecutor

Article 75

The National Assembly elects, at the proposal of the State Prosecutorial Council, a deputy public prosecutor who is elected for the first time, to a term of three years.

The National Assembly is obliged to elect a deputy public prosecutor elected for the first time, from one or more candidates proposed by the State Prosecutorial Council. THE STATE PROSECUTORIAL COUNCIL IS IN OBLIGATION, WHEN PROPOSING CANDIDATES FOR ELECTION OF THE DEPUTY PUBLIC PROSECUTOR, TO PROPOSE A CANDIDATE WHO HAS COMPLETED THE INITIAL TRAINING IN THE JUDICIAL ACADEMY, IN ACCORDANCE WITH THE SPECIAL LAW.

The State Prosecutorial Council elects deputy public prosecutors to permanent office in the same or other public prosecutor's office.

The State Prosecutorial Council also decides on the election of deputy public prosecutors with tenure to another or higher ranking public prosecutor's office.

The number of deputy public prosecutors for each public prosecutor's office is determined by the State Prosecutorial Council, following the obtained approval of the Minister in charge of the judiciary.

1. ELECTION REQUIREMENTS

General Requirements

Article 76

A citizen of the Republic of Serbia who fulfills the general requirements for employment in government authorities, who is a law school graduate with a passed Bar Exam, and who is worthy of the office of a public prosecutor, may be elected public prosecutor and deputy public prosecutor.

Special Requirements

Article 77

A person may be elected public prosecutor and deputy public prosecutor if he/she, in addition to general requirements, has experience in the legal profession after passing the Bar Exam, as follows:

- four years for a basic public prosecutor, and three years for a deputy basic public prosecutor;
- seven years for a higher public prosecutor, and six years for a deputy higher public prosecutor;
- ten years for an appellate public prosecutor and a public prosecutor with special jurisdiction, and eight years for a deputy appellate public prosecutors and deputy public prosecutor with special jurisdiction;
- twelve years for the Republican Public Prosecutor and eleven years for Deputy Republican Public Prosecutor.

2. ELECTION PROCEDURE

Announcement of Election

Article 78

The State Prosecutorial Council announces the election of public prosecutors and deputy public prosecutors.

The announcement is published in the "Official Gazette of the Republic of Serbia" and other public media that cover the entire territory of the Republic of Serbia.

Submission of Applications

Article 79

Applications are submitted to the State Prosecutorial Council, within fifteen days from the publication of the announcement.

Proof of meeting of the election requirements, unless already in the public prosecutor's office, shall be attached to the applications.

Obtaining Information and Opinions

Article 80

The State Prosecutorial Council obtains information and opinions on competence, work capability and worthiness of candidates.

Information and opinions are obtained from bodies and organisations in which the candidate worked in the legal profession.

Interviewing Candidates

Article 81

Prior to taking decision on the election, the State Prosecutorial Council may interview the candidates.

Nomination and Election

Article 82

~~In nominating candidates for a public prosecutor's office, the State Prosecutorial Council shall take into consideration competence, work capacity and worthiness of a candidate, pursuant to the criteria for the evaluation of competence, work capacity and worthiness determined by the State Prosecutorial Council in accordance with the law. In nominating and proposing candidates for a public prosecutor's office, discrimination on any grounds shall be prohibited.~~

~~In nominating and proposing candidates to be elected public prosecutors and deputy public prosecutors, care shall be taken of the national composition of the population, adequate representation of members of national minorities, as well as knowledge of professional legal terminology in national minority languages used in court..~~

~~Every proposal and/or decision regarding the election passed by State Prosecutorial Council must be reasoned.~~

In nominating and election of candidates for a public prosecutor's office, the State Prosecutorial Council shall make a list of candidates based on professional competence, capabilities and worthiness of candidates, pursuant to the criteria for the evaluation of competence, work capacity and worthiness determined by the State Prosecutorial Council in accordance with the law. THE LIST OF CANDIDATES IS ANNOUNCED AT THE INTERNET SITE OF THE STATE PROSECUTORIAL COUNCIL.

In making of the ranking list, nominating and proposing candidates to be elected public prosecutors and deputy public prosecutors, care shall be taken of the national composition of the population, adequate representation of members of national minorities, as well as knowledge of professional legal terminology in national minority languages used in court.

~~*Each proposal, or decision about the election brought by the State Prosecutorial Council must be explained.*~~

The State Prosecutorial Council shall explain the proposal and decision about election of candidate for a public prosecution function.

3. OATH AND TAKING OFFICE

Taking the Oath

Article 83

The Republican Public Prosecutor shall take the oath before the National Assembly.

A public prosecutor and deputy public prosecutor elected for the first time shall take the oath before the Speaker of the National Assembly, prior to taking office.

A public prosecutor and deputy public prosecutor elected from the ranks of public prosecutors and deputy public prosecutors does not take the oath again.

Text of the Oath

Article 84

The text of the oath reads: "I swear on my honour that I shall perform the public prosecutor's office with dedication, conscientiously and impartially, and shall protect the constitutionality and legality, human rights and civil freedoms".

Taking Office

Article 85

A public prosecutor and deputy public prosecutor shall take office at the Formal Session in the public prosecutor's office to which they are elected.

By taking office, their other office in a public prosecutor's office shall cease.

When Deemed that There Was no Election

Article 86

It shall be deemed that a public prosecutor or deputy public prosecutor has not been elected if, without justifiable reason, he/she fails to take office within 30 days after the election, where such decision shall be taken by the Republican Public Prosecutor.

An objection against the decision from paragraph 1 of this Article may be filed to the State Prosecutorial Council, within eight days.

The National Assembly shall be notified of the decision of the Republican Public Prosecutor and the State Prosecutorial Council, in cases where it is competent for the election of public prosecutors and deputy public prosecutors.

The State Prosecutorial Council shall take decision on reasons for the failure of the Republican Public Prosecutor to take office; the competent Committee of the National Assembly shall take a decision on objection.

Chapter Six

TERMINATION OF OFFICE

All Reasons for Termination of Office

Article 87

The office of a public prosecutor and deputy public prosecutor shall terminate at personal request, upon completion of years of service, in the case of permanent loss of work capacity, or if dismissed.

The office of a public prosecutor shall also terminate if not reelected, and of a deputy public prosecutor if not elected to permanent office.

1. DETERMINATION OF REASONS FOR TERMINATION OF OFFICE

Termination of Office at Personal Request

Article 88

A public prosecutor submits a request for the termination of office in writing to the National Assembly, and shall accordingly notify the State Prosecutorial Council.

A deputy public prosecutor submits a request for the termination of office in writing to the State Prosecutorial Council.

The request may be withdrawn until the office of the public prosecutor or deputy public prosecutor terminates by a decision of the National Assembly and/or the State Prosecutorial Council.

If the request for termination of office is not decided on within one month, it shall be deemed that the office of a public prosecutor and/or deputy public prosecutor was terminated by the expiry of one month from the day of submitting the request for termination of office.

Completion of Years of Service

Article 89

Office of a public prosecutor or deputy public prosecutor shall terminate at the age of 65, or at completing 40 years pensionable years of service.

Exceptionally, at the request of the Republican Public Prosecutor, the State Prosecutorial Council may extend years of service of a public prosecutor and deputy public prosecutor, with his/her consent.

Years of service may be extended solely in order for the public prosecutor or deputy public prosecutor to participate in proceedings not as yet concluded finally.

Permanent Loss of Working Capacity

Article 90

The office of a public prosecutor and deputy public prosecutor shall terminate when the expert commission of the competent authority establishes that his/her health conditions renders him/her unable to perform office.

Decision for referral to mandatory health check is passed by the State Prosecutorial Council, at the proposal of the public prosecutor, directly superior public prosecutor, and the public prosecutor and/or deputy public prosecutor himself/herself

Competence and Initiation of Procedure

Article

91

Procedure for determination of reasons for the termination of office of a public prosecutor at personal request, due to completion of years of service, and due to permanent loss of working capacity, is conducted by the State Prosecutorial Council.

State Prosecutorial Council shall take a decision on determined reasons and forward it to the National Assembly, for the purpose of decision taking in respect of termination of office.

Determination of reasons for the termination of office of a deputy public prosecutor at personal request, due to completion of years of service, and due to permanent loss of working capacity, is conducted by the State Prosecutorial Council, which takes a decision in that respect.

The decision specified in paragraph 3 of this Article shall contain the reasons for termination of office and the date of termination of office.

2. DETERMINATION OF GROUNDS FOR DISMISSAL

Grounds for Dismissal

Article 92

A public prosecutor and deputy public prosecutor are dismissed when sentenced by a final judgement for a criminal offence to a prison sentence of not less than six months, or for a punishable offence making them unworthy of office, or when incompetently discharging their function, or for a committed grave disciplinary offence.

Specially on Incompetent Performance

Article 93

A public prosecutor and deputy public prosecutor perform their office incompetently if their performance is rated as “unsatisfactory” according to the criteria and standards of performance evaluation.

Competence and Initiation of Dismissal Procedure

Article 94

Everyone is entitled to file an initiative for the dismissal of a public prosecutor and/or deputy public prosecutor.

Dismissal procedure is initiated by the public prosecutor, directly superior public prosecutor, Republican Public Prosecutor, Minister in charge of the judiciary, authorities competent for performance evaluation and the Disciplinary Commission.

Grounds for dismissal are established by the State Prosecutorial Council.

Procedure before the State Prosecutorial Council

Article 95

~~The State Prosecutorial Council establishes facts and decides in proceedings that are closed to the public.~~

*The State Prosecutorial Council establishes facts and decides in proceedings that are **open**¹ ~~closed~~ to the public. The proceedings may be **closed**² ~~open~~ to the public upon request of public prosecutor or deputy public prosecutor against whom the proceeding is conducted. or when it is necessary for keeping of professional secret. The decision of closing for public must be motivated.*

¹ Change introduced by the Secretariat of the Venice Commission after meetings with the Working Group on the Draft Law on Public Prosecution and the Prosecutors' Association of Serbia in Belgrade on 1 February 2013.

² Ibid.

The State Prosecutorial Council is required to conduct proceedings and pass a decision within 45 days from the day of being served the act that initiated the proceedings.

The decision of the State Prosecutorial Council must be reasoned.

The decision of the State Prosecutorial Council that determines reasons for the dismissal of a public prosecutor shall be forwarded to the Government.

Status of Public Prosecutor and/or Deputy Public Prosecutor in Dismissal Procedure

Article 96

A public prosecutor and deputy public prosecutor are entitled to be notified immediately on the reasons for initiating procedure, to be informed of the case and supporting documentation, the course of the procedure and to directly, or through authorised representative, extend explanations and proof for their assertions.

A public prosecutor and/or deputy public prosecutor is entitled to present his/her assertions orally before the State Prosecutorial Council.

3. DECISION ON TERMINATION OF OFFICE

Decision Taking

Article 97

The National Assembly decides on the termination of office of a public prosecutor, and shall take the decision on the dismissal at the recommendation of the Government.

The Government proposes the dismissal of a public prosecutor, based on reasons for dismissal determined by the State Prosecutorial Council.

The State Prosecutorial Council decides on the termination of office of a deputy public prosecutor.

Prosecutorial office shall cease on the day specified in the decision of the National Assembly and/or the State Prosecutorial Council, except in cases from Article 88, paragraph 4, and Article 89 Paragraph 1 of this Article.

The decision on the termination of office is published in the "Official Gazette of the Republic of Serbia."

Complaint to the Constitutional Court

Article 98

Public prosecutor and/or deputy public prosecutor is entitled to file an appeal to the Constitutional Court against the decision on termination of office passed by the National Assembly and/or the State Prosecutorial Council, within 30 days from being served the decision.

The Constitutional Court may deny the appeal, or uphold the appeal and annul the decision on the termination of office.

Decision of the Constitutional Court is final.

Chapter Seven

PERFORMANCE EVALUATION OF PUBLIC PROSECUTOR AND DEPUTY PUBLIC PROSECUTOR

Notion

Article 99

Performance evaluation of a public prosecutor and deputy public prosecutor constitutes grounds for election, mandatory education, and dismissal..

Performance evaluation is conducted on the basis of publicized, objective and uniform criteria based on applicable and comparable standards established by the State Prosecutorial Council in the Rules on Criteria and Standards for Performance Evaluation

Periodic Evaluation

Article 100

The performance of a public prosecutor and deputy public prosecutor with tenure of office is evaluated once in three years, while the performance of a of a first-time elected deputy public prosecutor is evaluated once a year.

Exceptionally, based on a decision of the State Prosecutorial Council, the performance of a public prosecutor and deputy public prosecutor may be subjected to an unsheduled evaluation.

Performance Rating

Article 101

Performance is rated.

Ratings are: "performs prosecutorial function exceptionally", "successfully performance of prosecutorial function", "satisfactory performance" and "unsatisfactory performance".

Rating is entered in the public prosecutor's and/or deputy public prosecutor's personal file.

A public prosecutor and/or deputy public prosecutor is entitled to object to the rating to the State Prosecutorial Council, within 15 days from the day of service of the decision on the rating, which has to be reasoned.

Evaluation Procedure

Article 102

The performance evaluation of a public prosecutor is conducted by the directly superior prosecutor, after obtaining the opinion of the Collegium of directly superior public prosecutor's office.

The performance evaluation of deputy public prosecutor is conducted by the public prosecutor, after obtaining the opinion of the Collegium of the public prosecutor's office.

In evaluating the performance, periodical reports on the work of the public prosecutor's office are taken into account.

Extraordinary evaluation of performance

Article 102a

Extraordinary evaluation is made after six months from the date when a public prosecutor or deputy public prosecutor is evaluated with the appraisal “does not satisfy”, as well as when public prosecutor or deputy public prosecutor requests extraordinary evaluation of his performance.

Extraordinary evaluation is made by special commission of immediately higher ranked public prosecutor’s office in accordance with rules stipulated in the Rules on evaluation of performance of public prosecutors and deputy public prosecutors.

Chapter Eight

DISCIPLINARY LIABILITY AND DISCIPLINARY PROCEEDINGS

Disciplinary Offence

Article 103

Disciplinary offence is unconscientious performance of prosecutorial office, or such actions of a public prosecutor and/or deputy public prosecutor that renders him/her unworthy of office, which is prescribed by this Law.

Disciplinary Offences

Article 104

A public prosecutor or deputy public prosecutor commits a disciplinary offence if he/she:

1. fails to draw up prosecutorial decisions and file ordinary and extraordinary legal remedies within stipulated time limits;
2. frequently misses, or is late for, scheduled trials, hearings, and other procedural actions in cases allocated to him/her;
3. fails to request recusal in cases where legal grounds for doing so exist;
4. refuses to perform assigned tasks and duties;
5. fails to comply with a written instruction of a superior public prosecutor;
6. manifestly violates rules of proper procedure in respect of judges in proceedings, parties, their legal counsel, witnesses, staff. or colleagues;
7. gives incomplete or incorrect information important to the work of the State Prosecutorial Council in procedures for appointment or dismissal of public prosecutors and deputy public prosecutors, disciplinary accountability proceedings, and other matters under his competence;
8. violates the principle of impartiality and jeopardizes the public’s trust in the public prosecutor’s offices;
 9. engages in activities set forth by the Law as incompatible with a public prosecutorial office;
10. fails to observe working hours;
11. violates provisions of the Code of Ethics;
12. accepts gifts, contrary to regulations governing the conflict of interest;

13. engages in inappropriate relations with parties or their legal counsels in pending proceedings;

14. fails to attend mandatory training programmes without justification.

Grave disciplinary offence exists if a disciplinary offence from Paragraph 1 of this Article resulted in a serious disruption in the performance of prosecutorial office, or in the performance of work tasks in the public prosecutor's office, or in grave damage to the reputation of, and trust in, the public prosecutor's office, which in particular includes the expiry of the statute of limitations for criminal prosecution, as well as in cases of repeated offence.

Repeated disciplinary offence from Paragraph 2 of this Article is the responsibility for a disciplinary offence of a public prosecutor or deputy public prosecutor determined on three occasions.

Disciplinary Sanctions

Article 105

Disciplinary measures are: a public reprimand, a salary reduction of up to 50% for a period not exceeding one year, and prohibition of promotion for a period of three years.

A pronounced disciplinary sanction shall be commensurate to the gravity of the committed disciplinary offence.

A public reprimand may be issued only when the disciplinary liability of the public prosecutor and/or deputy public prosecutor is established for the first time.

Disciplinary Bodies

Article 106

Disciplinary bodies are: the Disciplinary Prosecutor and his/her deputies, and the Disciplinary Commission, established by the State Prosecutorial Council.

The State Prosecutorial Council appoints members of disciplinary bodies from the ranks of public prosecutors and deputy public prosecutors.

Composition, requirements for appointment, duration of term of office and the manner of termination of office, as well as the manner of work and decision-making in disciplinary bodies, shall be regulated by an act of the State Prosecutorial Council, which shall be published in "The Official Gazette of the Republic of Serbia"..

Disciplinary Proceedings

Article 107

Disciplinary proceedings are conducted by the Disciplinary Commission at the proposal of the Disciplinary Prosecutor.

Disciplinary Prosecutor files the motion for the initiation of disciplinary proceedings on the basis of a disciplinary report, which can be filed by anyone.

Disciplinary proceedings are urgent and closed to the public, unless the charged public prosecutor or deputy public prosecutor requests that the proceedings be open to the public.

Disciplinary proceedings are subject to limitation after one year from the day the disciplinary offence was committed

Decisions of the Disciplinary Prosecutor

Article 108

The Disciplinary Prosecutor may reject disciplinary charges as ungrounded, or uphold the charges and file the motion for disciplinary proceedings.

Status of Public Prosecutor and/or Deputy Public Prosecutor in Disciplinary Proceedings

Article 109

A public prosecutor and/or deputy public prosecutor has the right to be promptly notified of the motion of the Disciplinary Prosecutor, to examine the case file and supporting documentation, and to present explanations and evidence for his/her statements, in person or through a representative.

A public prosecutor and/or deputy public prosecutor has the right to orally present his/her statements before the Disciplinary Commission.

Decisions of the Disciplinary Commission

Article 110

Having conducted the disciplinary proceedings, the Disciplinary Commission may deny the motion of the Disciplinary Prosecutor, or uphold the motion and pronounce a disciplinary sanction.

The Disciplinary Prosecutor and the public prosecutor and/or deputy public prosecutor subjected to disciplinary proceedings may file an appeal to the State Prosecutorial Council against the decision of the Disciplinary Commission, within 8 days of the service of the decision.

Decisions of the State Prosecutorial Council

Article 111

Deciding on the appeal, the State Prosecutorial Council may either uphold or reverse the first- instance decision of the Disciplinary Commission.

The State Prosecutorial Council shall decide on the appeal, within 30 days from the service the appeal.

The decision of the State Prosecutorial Council is final.

Public prosecutor and deputy public prosecutor to whom the disciplinary sanction is sentenced has the right to judicial protection in the Administrative court.

The final decision on the imposition of a disciplinary sanction is entered in the personal record of the public prosecutor and/or deputy public prosecutor.

Chapter Nine

PUBLIC PROSECUTOR'S OFFICE COLLEGIUM

Composition of the Public Prosecutor's Office Collegium

Article 112

A public prosecutor's office Collegium consists of the public prosecutor and all deputy public prosecutors in that public prosecutor's office.

Convening the Public Prosecutor's Office Collegium

Article 113

The public prosecutor's office Collegium is convened and chaired by the public prosecutor, or a deputy public prosecutor he/she designates.

A public prosecutor shall convene the Collegium at the request of at least one third of his/her deputies.

Manner of Work and Decision Taking

Article 114

The public prosecutor's office Collegium takes a decision if a minimum of two thirds of deputy public prosecutors are present, and the decision is valid if voted for by the majority vote of present members.

Competence of the Public Prosecutor's Office Collegium

Article 115

The public prosecutor's office Collegium:

- gives the opinion to the State Prosecutorial Council on candidates for deputy public prosecutors in its own, or the directly lower, public prosecutor's office
- gives the opinion to the State Prosecutorial Council on candidates for public prosecutors in the directly lower public prosecutor's office
- reviews the report on the work for the previous year
- reviews issues of relevance to the professional training and work organisation of the public prosecutor's office
- performs other tasks authorised by the Rules of Procedure.

Collegium of the Republican Public Prosecutor's Office

Article 116

The Collegium of the Republican Public Prosecutor's office consists of the Republican Public Prosecutor and all Deputy Republican Public Prosecutors.

In addition to competencies specified in Article 115 of this Law, the Collegium of the Republican

Public Prosecutor's Office:

1. gives opinions on draft laws and other regulations of relevance to the work of a public prosecutor's office or performance of prosecutorial office;
2. gives opinions to the State Prosecutorial Council in procedures involving the resolving of motions for recusal of the Republican Public Prosecutor;
3. performs other tasks pursuant to the Rules of Procedure.

In order to review issues of relevance to the work of public prosecutor's offices, The Republican Public Prosecutor may also convene an expanded Collegium of the Republican Public prosecutor's office. The expanded Collegium consists of the Republican Public Prosecutor, all deputy Republican Public Prosecutors, the appellate public prosecutors, prosecutors with special jurisdiction, and higher public prosecutors.

Chapter Ten

PUBLIC PROSECUTOR'S OFFICE STAFF

Composition and Number of Staff

Article 117

A public prosecutor's office staff consists of prosecutors' assistants, prosecution interns, civil servants, and employees employed on administrative, technical, accounting, IT and other supporting tasks that are of relevance to the public prosecutor's office.

The number of staff in a public prosecutor's office is determined by the public prosecutor, in the act on internal organisation and job classification, with the approval of the Minister in charge of the judiciary..

The standards for determination of the number of staff members in a public prosecutor's office are determined by the Minister in charge of the judiciary.

Secretary

Article 118

The Republican Public Prosecutor's office has a secretary who assists the Republican Public Prosecutor in the performance of prosecutorial administration tasks.

A person meeting the requirements for a deputy appellate public prosecutor can be appointed

Secretary in the Republican Public Prosecutor's Office.

Secretary of the Republican Public Prosecutor's Office has the status of a state employee.

A public prosecutor's office can have a secretary who assists the public prosecutor in the performance of prosecutorial administration tasks.

A public prosecutor assigns a secretary of the public prosecutor's office.

Prosecutor's Assistant

Article 119

A prosecutor's assistant assists the public prosecutor and deputy public prosecutor, drafts acts, takes on record complaints, submissions, and statements of citizens, and, autonomously or under supervision, performs tasks provided by the law or other regulations.

A public prosecutor, or a deputy public prosecutor that he designates, oversees the work of a prosecutor's assistant.

Career Titles of Prosecutor's Assistants

Article 120

Prosecutor's assistants may attain the following titles: prosecutor's associate, senior prosecutor's associate, advisor, and senior advisor in a public prosecutor's office.

The title of prosecutor's associate may be attained by a person who has passed the Bar

Exam, and the title of senior prosecutor's associate by a person with a minimum of two years' experience in the legal profession after passing the Bar Exam.

The title of advisor in a public prosecutor's office may be attained by a person meeting the requirement for a deputy higher public prosecutor. The title of advisor exists in the Republican Public Prosecutor's Office and the public prosecutor's offices with special jurisdiction.

In the Republican Public Prosecutor's Office, there exists a title of senior advisor, which is attained by the decision of the Collegium of the Republican Public Prosecutor's Office. It can be attained by a person with the title of advisor.

Performance Evaluation of Prosecutor's Assistants

Article 121

A prosecutor's assistant performance is evaluated by the public prosecutor, following the opinion obtained from the deputy public prosecutor with whom the prosecutor's assistant is working.

The rules on the evaluation of judge's assistants are accordingly applied to the evaluation of prosecutor's assistants.

Prosecution Trainee

Article 122

A Law Faculty graduate meeting the general requirements for employment in state authorities may be employed as a prosecution trainee.

A prosecution trainee is employed in a basic and higher public prosecutor's office.

~~Candidates graduating from the Law Faculty with a high average grade shall have an advantage.~~ When employing prosecution trainees, particular attention is paid to the national structure of

citizens, appropriate representation of national minorities, as well as knowledge of professional legal terminology in national minority languages officially used in courts.

THE PROCEDURE OF EMPLOYING PROSECUTON TRAINEES IS REGULATED CLOSER BY THE ACT OF MINISTER WITH COMPETENCE IN JUDICIARY.

Employment of a Prosecution Trainee

Article 123

A prosecution trainee is employed for a period of three years.

A prosecution trainee who passes the Bar Exam "cum laudae" shall have advantage for tenure employment with the title of prosecutor's associate.

Volunteer

Article 124

A person with a law degree may be accepted for training in a public prosecutor's office, without employment, in order to gain work experience and fulfil the requirements for sitting for the Bar Exam (volunteer).

Training

Article 125

The training programme for prosecutorial trainees and prosecutor's assistants is established by the State Prosecutorial Council.

A prosecutor's assistant and prosecution trainee can be assigned, for training purposes, to another public prosecutor's office, state authority, or local self-government authority.

Other Rules on Staff in Public Prosecutor's Office

Article 126

Staff in a public prosecutor's office shall perform their duties conscientiously and impartially, and shall maintain the dignity of the public prosecutor's office.

Regulations governing employment relations in state authorities shall apply to the employment, rights, obligations, professional training, evaluation, and responsibility of the public prosecutor's office staff, unless otherwise provided under this Law.

Chapter Eleven

FUNDS FOR THE WORK OF PUBLIC PROSECUTOR'S OFFICES

Article 127

Funds for the work of public prosecutor's offices are provided in the budget of the Republic of Serbia.

Funds, by their extent and time of payment, shall at any time maintain the autonomy and proper work of public prosecutor's offices.

The State Prosecutorial Council shall propose the scope and structure of budget funds necessary for the work of the public prosecutor's offices, having obtained the opinion of the Minister in charge of the judiciary, and distribute said funds amongst the public prosecutor's offices.

Supervision of expenditure of budget funds allocated for the work of public prosecutor's offices is conducted by the State Prosecutorial Council, the Ministry in charge of the judiciary, and the Ministry of Finance.

Supervision of financial and material activities of the State Prosecutorial Council, in part relating to budget funds from Paragraph 3 of this Article, is conducted by the Ministry in charge of the judiciary and the Ministry of Finance.

Chapter Twelve
TRANSITIONAL AND FINAL PROVISIONS

1. TRANSITIONAL PROVISIONS

Article 128

Public prosecutors and deputy public prosecutors shall continue to perform their offices in public prosecutor's offices to which they were elected or assigned in accordance with the Law on Public Prosecutor's Offices ("Official Gazette of the Republic of Serbia" No. 63/01, 42/02, 39/03, 44/04, 51/04, 61/05, 46/06, 106/06) and the Law on Organisation and Jurisdiction of State Bodies in War Crimes Proceedings ("Official Gazette of the republic of Serbia" No. 67/03, 135/04, 61/05, and 101/07) until December 31, 2008.

Election of Deputy Public Prosecutors

Article 129

The decision regarding the number of deputy public prosecutors is brought by the State Prosecutorial Council, within a period of 30 days from the day of election of the first structure of the State Prosecutorial Council, with a previously obtained agreement of the Minister in charge of the judiciary.

The election of deputy public prosecutors, in accordance with this Law, shall be conducted by
December 1,
2009.

Deputy public prosecutors elected in accordance with this Law shall take office on January 1, 2010. Election to office of public prosecutor and/or deputy public prosecutor shall be considered as a first election to a prosecutorial function, in accordance with laws previously in effect.

Termination of Office and Rights of Public Prosecutors and Deputy Public
Prosecutors Elected in Accordance with the Previous Law

Article 130

The office of public prosecutors and deputy public prosecutors who were not elected in accordance with this Law shall be terminated on December 31, 2008.

Public prosecutors and deputy public prosecutors referred to in paragraph 1 of this Article shall be entitled to the compensation of salary for the duration of six months, in the amount equal to the salary they had at the time of the termination of office.

Right to compensation of salary from paragraph 2 of this Article shall cease before the expiry of the six-months time limit if a public prosecutor or deputy public prosecutor whose office was terminated concludes an employment relationship, or acquires the right to pension, and may be extended for additional six months, if he/she acquires the right to pension within those six months.

Election of Public Prosecutors

Article 131

Election of the Republic Public Prosecutor shall be conducted within a period of 90 days from the day of coming into effect of this Law, and election of other public prosecutors within a period of six months from the day of coming into effect of this Law.

Public prosecutors from Paragraph 1 of this Article, elected in accordance with this Law, shall take office on January 1, 2010.

Delegation of Cases

Article 132

The cases in which a public prosecutor acts by December 31, 2009 in accordance with the Law on Public Prosecution ("Official Gazette of the Republic of Serbia" No. 63/01, 42/02, 39/03, 44/04, 51/04, 61/05, 46/06, 106/06) and Law on Seats and Territories of Courts and Public Prosecutor's Offices ("Official Gazette of the Republic of Serbia" No. 63/01 and 42/02) and which are not concluded, shall be delegated to public prosecutors in competence of which they are, according to this Law and the statute governing the seats and territories of public prosecutor's offices.

The cases in the competence of the Special Department for the Suppression of Organised Crime, formed at the District Public Prosecutor's Office in Belgrade, in accordance with the Law on Organisation and Competences of State Authorities in Combating Organised Crime ("Official Gazette of the Republic of Serbia" No. 42/02, 27/03, 39/03, 67/03, 29/04, 58/04, 45/05 and 61/05) by December 31, 2009 shall be delegated to the Public Prosecutor's Office for Organised Crime which shall commence its activities on January 1, 2010.

Temporary Acts on Internal Organisation and Systematization of Positions
at the Republican Public Prosecutor's Office, the Appellate Public
Prosecutors Offices, and the Office of Public Prosecutors for Organised
Crime

Article 133

The Minister in charge of the judiciary shall provide temporary acts on internal organisation and systematization of positions at the Republican Public Prosecutor's Office, the appellate public prosecutor's offices, and the Office of Public Prosecutors for Organised Crime.

Acts on internal organisation and systematization of positions at the Republican Public Prosecutor's Office, the appellate public prosecutor's offices, and the Office of Public Prosecutors for Organised Crime shall be provided by public prosecutors from said prosecutor's offices, within a period of six months from the day of their taking of office, in accordance with this Law.

Taking Over of Resources, Equipment, Archives, and Employees

Article 134

Resources needed for the work of the Republican Public Prosecutor's Office, as well as the equipment, archive, and employees, shall be taken over by the Republican Public Prosecutor's Office and appellate public prosecutor's offices, in accordance with jurisdiction as provided in this Law.

A Commission established by the Minister in charge of the judiciary shall divide the resources, equipment and the archive from Paragraph 1 of this Article.

A Commission established by the State Prosecutorial Council shall decide on the assignment of employees of the Republican Public Prosecutor's Office to the appellate public prosecutors offices, in accordance with the temporary act on internal organisation and job classification.

Resources needed for the work of the Special Department for the Suppression of Organised Crime of the District Court in Belgrade, as well as the equipment, the archive, and employees, shall be taken over by the Office of Public Prosecutors for Organised Crime.

Office of Public Prosecutors for Organised Crime shall take over the employees from Paragraph 4 of this Article, in accordance with the temporary act on internal organisation and systematization of positions.

Rights of Employees of the Republican Public Prosecutor's Office

Article 135

The Law which regulates the rights of persons employed and appointed by the state in cases of changes in the organisation of state bodies shall apply to the rights of persons employed by the Republican Public Prosecutor's Office.

Competence of the State Prosecutorial Council with Regard to Resources Needed for the Work of Public Prosecutor's Offices

Article 136

Competences of the State Prosecutorial Council as stipulated in Article 127 of this Law shall be performed by the Ministry in charge of the judiciary until January 1, 2011.

Subordinate Legislation

Article 137

Subordinate legislation, the adoption of which is envisaged by this Law, shall be passed within a period of six months from the day of coming into effect of this Law, with the exception of Article 82

Paragraph 1 of this Law, which shall be passed within a period of 60 days from the day of establishment of the State Prosecutorial Council.

Until the subordinate legislation from paragraph 1 of this Article is passed, the provisions of regulations passed on the basis of the Law on Public Prosecutor's Offices ("Official Gazette of the Republic of Serbia" No. 63/01, 42/02, 39/03, 44/04, 51/04, 61/05, 46/06, 106/06) shall apply, unless contrary to provisions of this Law.

2. FINAL PROVISIONS

Termination of Validity of Laws

Article 138

On the day this Law starts to be in effect, the Law on Prosecution ("Official Gazette of the Republic of Serbia" No. 63/01, 42/02, 39/03, 44/04, 51/04, 61/05, 46/06, 106/06) shall cease to be valid.

Termination of Validity of Other Laws

Article 139

On the day this Law starts to be in effect, provisions of the Law on Salaries in State Authorities and Public Institutions (“Official Gazette of the Republic of Serbia” No. 34/01, 62/06, and 63/06), in part that applies to the calculation of salaries, additional funds, and compensation of public prosecutors and deputy public prosecutors, shall cease to be valid.

Coming Into Force of the Law and the Start of Application

Article 140

This Law shall come into force on the day of constitution of the State Prosecutorial Council, and shall be applied as of January 1, 2010, with the exception of provisions from Articles 74 to 84 of this Law, which shall be applied from the day of the constitution of the State Prosecutorial Council. .