



COMPARATIVE OVERVIEW OF BASIC PRINCIPLES ON THE POSITION OF THE PROSECUTION SERVICE

1. Constitution of the Republic of Serbia
2. National Judicial Reform Strategy of the Republic of Serbia
1. Guidelines on the Role of Prosecutors, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990
2. Council of Europe Recommendation No. (2000) 19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system

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ABA/CEELI, in cooperation with the OSCE Mission in Serbia and the Strategy implementation secretariat (SIS), has prepared this comparative overview of basic principles on the position of the prosecution service with an aim of contributing to the legal reform process taking place in Serbia by providing technical legal assistance to the Working Group tasked with developing the laws on the judiciary. The overview includes provisions contained in the following documents:

- Constitution of the Republic of Serbia (promulgated on November 8, 2006)
- National Judicial Reform Strategy of the Republic of Serbia (April 2006)
- Guidelines on the Role of Prosecutors, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, and
- Council of Europe Recommendation No. (2000) 19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system

The provisions contained in the aforementioned documents have been systematized in the following manner:

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ABA-CEELI would like to emphasize that the given systematization represents a starting point. In the future this overview will be adjusted according to the comments, suggestions and needs of the Working Group, in coordination with the OSCE Mission and the Secretariat. In addition, CEELI will be prepared to conduct a further comparative analysis of pertinent provisions from other national laws.

<p style="text-align: center;">1.</p>	<p style="text-align: center;">FUNCTIONS OF THE PUBLIC PROSECUTOR/ ROLE IN CRIMINAL PROCEEDINGS</p>
<p><i>Constitution of the Republic of Serbia</i></p>	<p style="text-align: center;">Status and jurisdiction</p> <p style="text-align: center;">Article 156</p> <p>Public Prosecutor's Office shall be an independent state body which shall prosecute the perpetrators of criminal offences and other punishable actions, and take measures in order to protect constitutionality and legality.</p> <p>Public Prosecutor's Office shall perform its function on the grounds of the Constitution, Law, ratified international treaty and regulation passed on the grounds of the Law.</p>
<p><i>National Judicial Reform Strategy</i></p>	<p>The reform of the judiciary presents an important opportunity to improve the autonomy, accountability and effectiveness of the prosecutors, who by law work closely with Judiciary and the Ministry of Interior.</p> <p>Apart from the key prosecutorial function of prosecuting criminal and other punishable acts as stipulated by the law, the new constitutional and legal framework will change the scope of competence of the prosecutor's office by means of clear definition of its role in the protection of the constitutionality and legality.</p> <p>... The considerable limitation of the investigative judges' role will allow prosecutors to have the most important role in the investigation. This role, which involves the obtaining of criminal evidence, will become effective upon the promulgation of the new legal framework.</p> <p>Criminal prosecution of the crimes stipulated in ratified international conventions and other cases specifically prescribed by the law may be subject to subsequent instructions issued by the Ministry of Justice, on behalf of the Government of the Republic of Serbia. The procedure for the promulgation of these instructions will be precisely regulated by the law, so that the Government may exercise its authority in a transparent manner.</p>
<p><i>Guidelines on the Role of Prosecutors, Eighth United Nations Congress, Havana, 1990</i></p>	<p><u><i>Role in criminal proceedings</i></u></p> <p>10. ...</p> <p>11. Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.</p> <p>...</p> <p>14. Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.</p> <p>15. Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such</p>

	<p>offences.</p> <p>16. When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.</p>
<p><i>Recommendation No. (2000) 19 of Council of Europe</i></p>	<p><u><i>Functions of the public prosecutor</i></u></p> <p>1. “Public prosecutors” are public authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system.</p> <p>2. In all criminal justice systems, public prosecutors:</p> <ul style="list-style-type: none"> - decide whether to initiate or continue prosecutions; - conduct prosecutions before the courts; - may appeal or conduct appeals concerning all or some court decisions. <p>3. In certain criminal justice systems, public prosecutors also:</p> <ul style="list-style-type: none"> - implement national crime policy while adapting it, where appropriate, to regional and local circumstances; - conduct, direct or supervise investigations; - ensure that victims are effectively assisted; - decide on alternatives to prosecution; - supervise the execution of court decisions; - etc.

<p style="text-align: center;">2.</p>	<p style="text-align: center;">QUALIFICATIONS, SELECTION AND TRAINING</p>
<p><i>Constitution of the Republic of Serbia</i></p>	<p style="text-align: center;">The Republic Public Prosecutor Article 158</p> <p>...</p> <p>The Republic Public Prosecutor shall be elected by the National Assembly, on the Government proposal and upon obtaining the opinion of the authorized committee of the National Assembly.</p> <p>The Republic Public Prosecutor shall be elected for the period of six years and may be re-elected.</p> <p>...</p> <p style="text-align: center;">Public Prosecutors and Deputy Public Prosecutors Article 159</p> <p>...</p> <p>A Public Prosecutor shall be elected by the National Assembly, on the Government proposal.</p> <p>Tenure of office of the Public Prosecutor shall last six years and he/she may be re-elected.</p> <p>...</p> <p>On proposal of the State Prosecutors Council, the National Assembly shall elect as a Deputy Public Prosecutor the person who is elected to this function for the first time.</p> <p>Tenure of office of a Deputy Public Prosecutor elected to that function for the first time shall last three years.</p> <p>In accordance with the Law, the State Prosecutors Council shall elect Deputy Public Prosecutors to permanently perform that function, in that or other Public Prosecutor's Office.</p> <p>In addition, the State Prosecutors Council shall decide on the election of Deputy Public Prosecutors who permanently perform that function in another or superior Public Prosecutor's Office.</p>
<p><i>National Judicial Reform Strategy</i></p>	<p>The Republic Public Prosecutor, War Crimes Prosecutor and Organized Crime Prosecutor will be elected by the Parliament for a renewable term of six years, which shall be regulated by the law. The Government proposes nominees, having previously obtained the opinion of the State Prosecutorial Council. The manner of selection of the appeals, higher and first instance prosecutors is the same.</p> <p>The State Prosecutorial Council is a category defined by law. The State Prosecutorial Council provides for the functional autonomy of the prosecution. Deputy Public Prosecutors are elected by the National Assembly for the period of three years, upon the proposal of the State Prosecutorial Council. After the expiry of the trial period, the State Prosecutorial Council will decide on the appointment for life tenure. Moreover, the Council will also decide on the promotion and discipline, except in the area falling within the scope of competence of the Republic Public prosecutor.</p> <p>Prosecutors receive training for expanded role in evidentiary collection and case management (medium – term reforms 2008-2009).</p> <p>Additional training programs for prosecutors established in order to improve</p>

	criminal case proceedings (long – term reforms 2010-2011).
<i>Guidelines on the Role of Prosecutors, Eighth United Nations Congress, Havana, 1990</i>	<p><u>Qualifications, selection and training</u></p> <p>1. Persons selected as prosecutors shall be individuals of integrity and ability, with appropriate training and qualifications.</p> <p>2. States shall ensure that:</p> <p>(a) Selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice, excluding any discrimination against a person on the grounds of race, color, sex. Language, religion, political or other opinion, national, social or ethnic origin, property, birth, economic or other status, except that it shall not be considered discriminatory to require a candidate for prosecutorial office to be a national of the country concerned;</p> <p>(b) Prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law.</p>
<i>Recommendation No. (2000) 19 of Council of Europe</i>	<p><u>Safeguards provided to public prosecutors for carrying out their functions</u></p> <p>...</p> <p>5. States should take measures to ensure that:</p> <p>a. the recruitment, ... of public prosecutors are carried out according to fair and impartial procedures embodying safeguards against any approach which favors the interests of specific groups, and excluding discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status;</p> <p>...</p> <p>7. Training is both a duty and a right for all public prosecutors, before their appointment as well as on a permanent basis. States should therefore take effective measures to ensure that public prosecutors have appropriate education and training, both before and after their appointment. In particular, public prosecutors should be made aware of:</p> <p>a. the principles and ethical duties of their office;</p> <p>b. the constitutional and legal protection of suspects, victims and witnesses;</p> <p>c. human rights and freedoms as laid down by the Convention for the Protection of Human Rights and Fundamental Freedoms, especially the rights as established by Articles 5 and 6 of this Convention;</p> <p>d. principles and practices of organization of work, management and human resources in a judicial context;</p> <p>e. mechanisms and materials which contribute to consistency in their activities.</p>

3.	<p style="text-align: center;">STATUS AND CONDITIONS OF SERVICE/ SAFEGUARDS PROVIDED TO PUBLIC PROSECUTORS FOR CARRYING OUT THEIR FUNCTIONS</p>
<p><i>Constitution of the Republic of Serbia</i></p>	<p style="text-align: center;">Status and jurisdiction Article 156</p> <p>Public Prosecutor's Office shall be an independent state body which shall prosecute the perpetrators of criminal offences and other punishable actions, and take measures in order to protect constitutionality and legality.</p> <p>...</p> <p style="text-align: center;">Termination of Public Prosecutor and Deputy Public Prosecutor's tenure of office Article 161</p> <p>...</p> <p>A Public Prosecutor and Deputy Public Prosecutor may lodge an appeal with the Constitutional Court against the decision on termination of their tenure of office. The lodged appeal shall not include the right to lodge a Constitutional appeal.</p> <p style="text-align: center;">Immunity Article 162</p> <p>A Public Prosecutor and Deputy Public Prosecutor may not be held responsible for the expressed opinion while performing the function of prosecutors, except in cases when a Public Prosecutor or Deputy Public Prosecutor commits a criminal offence by violating the law.</p> <p>A Public Prosecutor or a Deputy Public Prosecutor may not be detained or arrested in the legal proceedings instituted due to a criminal offence committed in performing the prosecutor's function or service without the approval of the authorized committee of the National Assembly.</p>
<p><i>National Judicial Reform Strategy</i></p>	<p>The prosecutors will, while honoring the principles of hierarchical subordination, be given a far greater autonomy in their work, which will also carry greater responsibility for their work in accordance with objective criteria, and will for the most part be free from political influence. ...</p>
<p><i>Guidelines on the Role of Prosecutors, Eighth United Nations Congress, Havana, 1990</i></p>	<p><u><i>Status and conditions of service</i></u></p> <p>...</p> <p>5 Prosecutors and their families shall be physically protected by the authorities when their personal safety is threatened as a result of the discharge of prosecutorial functions..</p> <p>...</p> <p>7 Promotion of prosecutors, wherever such a system exists, shall be based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures.</p>
<p><i>Recommendation No. (2000) 19 of Council of Europe</i></p>	<p><u><i>Safeguards provided to public prosecutors for carrying out their functions</i></u></p> <p>...</p> <p>5. States should take measures to ensure that:</p> <p>a. the ..., the promotion and the transfer of public prosecutors are carried out according to fair and impartial procedures embodying safeguards against any approach which favors the interests of specific groups, and excluding</p>

	<p>discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status;</p> <p>b. the careers of public prosecutors, their promotions and their mobility are governed by known and objective criteria, such as competence and experience;</p> <p>c. the mobility of public prosecutors is governed also by the needs of the service;</p> <p>d. public prosecutors have reasonable conditions of service such as remuneration, tenure and pension commensurate with their crucial role as well as an appropriate age of retirement and that these conditions are governed by law;</p> <p>e. disciplinary proceedings against public prosecutors are governed by law and should guarantee a fair and objective evaluation and decision which should be subject to independent and impartial review;</p> <p>f. public prosecutors have access to a satisfactory grievance procedure, including where appropriate access to a tribunal, if their legal status is affected;</p> <p>8. In order to respond better to developing forms of criminality, in particular organized crime, specialization should be seen as a priority, in terms of the organization of public prosecutors, as well as in terms of training and in terms of careers. Recourse to teams of specialists, including multi-disciplinary teams, designed to assist public prosecutors in carrying out their functions should also be developed.</p> <p>9. With respect to the organization and the internal operation of the Public Prosecution, in particular the assignment and re-assignment of cases, this should meet requirements of impartiality and independence and maximize the proper operation of the criminal justice system, in particular the level of legal qualification and specialization devoted to each matter.</p> <p>10. All public prosecutors enjoy the right to request that instructions addressed to him or her be put in writing. Where he or she believes that an instruction is either illegal or runs counter to his or her conscience, an adequate internal procedure should be available which may lead to his or her eventual replacement.</p>
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4.	DISCIPLINE, SUSPENSION AND REMOVAL
<i>Constitution of the Republic of Serbia</i>	<p style="text-align: center;">The Republic Public Prosecutor Article 158</p> <p>...</p> <p>Tenure of office of the Republic Public Prosecutor shall terminate if he/she is ... or upon relief of duty for reasons stipulated by the Law.</p> <p>The decision on termination of tenure of office of the Republic Public Prosecutor shall be adopted by the National Assembly, in accordance with the Law, bearing in mind that it shall pass a decision on relief of duty on the Government proposal.</p> <p style="text-align: center;">Termination of Public Prosecutor and Deputy Public Prosecutor's tenure of office Article 161</p> <p>A Public Prosecutor and Deputy Public Prosecutor may terminate their tenure of office ... or upon relief of duty for reasons stipulated by the Law. ...</p> <p>A decision on termination of a Public Prosecutor's tenure of office shall be adopted by the National Assembly, in accordance with the Law, and it shall pass a decision on relief of duty on the Government proposal.</p> <p>A decision on termination of a Deputy Public Prosecutor's tenure of office shall be passed by the State Prosecutors Council.</p> <p>A Public Prosecutor and Deputy Public Prosecutor may lodge an appeal with the Constitutional Court against the decision on termination of their tenure of office. The lodged appeal shall not include the right to lodge a Constitutional appeal.</p> <p>The proceedings, grounds and reasons for termination of a Public Prosecutor and Deputy Public Prosecutor's tenure of office shall be regulated by the Law.</p>
<i>National Judicial Reform Strategy</i>	Does not contain provisions.
<i>Guidelines on the Role of Prosecutors, Eighth United Nations Congress, Havana, 1990</i>	<p><u>Disciplinary proceedings</u></p> <p>17. Disciplinary offences of prosecutors shall be based on law or lawful regulations. Complaints against prosecutors which allege that they acted in a manner clearly out of the range of professional standards shall be processed expeditiously and fairly under appropriate procedures. Prosecutors shall have the right to a fair hearing. The decision shall be subject to independent review.</p> <p>18. Disciplinary proceedings against prosecutors shall guarantee an objective evaluation and decision. They shall be determined in accordance with the law, the code of professional conduct and other established standards and ethics and in the light of the present Guidelines.</p>
<i>Recommendation No. (2000) 19 of Council of Europe</i>	<p><u>Safeguards provided to public prosecutors for carrying out their functions</u></p> <p>4. ...</p> <p>5. States should take measures to ensure that:</p> <p>...</p> <p>e. disciplinary proceedings against public prosecutors are governed by law and should guarantee a fair and objective evaluation and decision which should be subject to independent and impartial review;</p>

	f. public prosecutors have access to a satisfactory grievance procedure, including where appropriate access to a tribunal, if their legal status is affected;
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5.	STANDARDS OF CONDUCT
<i>Constitution of the Republic of Serbia</i>	<p style="text-align: center;">Restriction of human and minority rights Article 20</p> <p>...</p> <p>When restricting human and minority rights, all state bodies, particularly the courts, shall be obliged to consider the substance of the restricted right, pertinence of restriction, nature and extent of restriction, relation of restriction and its purpose and possibility to achieve the purpose of the restriction with less restrictive means.</p> <p style="text-align: center;">Incompatibility of prosecutor's function Article 163</p> <p>Public Prosecutors and Deputy Public Prosecutors shall be prohibited to engage in political actions. Other functions, activities or private interests which are incompatible with the prosecutor's function shall be stipulated by the Law.</p>
<i>National Judicial Reform Strategy</i>	<p>C. A TRANSPARENT JUDICIAL SYSTEM 2. Appropriate Access to Court Proceedings</p> <p>The public will be granted access to case information and court decisions while preserving litigant privacy to achieve objective perception of public perceptions of courts, judges, and the adjudicative process through transparent approach.</p>
<i>Guidelines on the Role of Prosecutors, Eighth United Nations Congress, Havana, 1990</i>	<p><u><i>Role in criminal proceedings</i></u></p> <p>...</p> <p>12. Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.</p> <p>13. In the performance of their duties, prosecutors shall:</p> <p>(a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;</p> <p>(b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;</p> <p>(c) Keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise;</p> <p>(d) Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. ...</p>
<i>Recommendation No. (2000) 19 of Council of Europe</i>	<p><u><i>Relationship between public prosecutors and court judges</i></u></p> <p>. ...</p> <p>19. Public prosecutors must strictly respect the independence and the impartiality of judges; in particular they shall neither cast doubts on judicial decisions nor hinder their execution, save where exercising their rights of appeal or invoking some other declaratory procedure.</p> <p>20. Public prosecutors must be objective and fair during court proceedings. In</p>

particular, they should ensure that the court is provided with all relevant facts and legal arguments necessary for the fair administration of justice.

Relationship between public prosecutors and the police

21. In general, public prosecutors should scrutinize the lawfulness of police investigations at the latest when deciding whether a prosecution should commence or continue. In this respect, public prosecutors will also monitor the observance of human rights by the police.

...

Duties of the public prosecutor towards individuals

24. In the performance of their duties, public prosecutors should in particular:

- a. carry out their functions fairly, impartially and objectively;
- b. respect and seek to protect human rights, as laid down in the Convention for the Protection of Human Rights and Fundamental Freedoms;
- c. seek to ensure that the criminal justice system operates as expeditiously as possible.

25. Public prosecutors should abstain from discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, health, handicaps or other status.

26. Public prosecutors should ensure equality before the law, and make themselves aware of all relevant circumstances including those affecting the suspect, irrespective of whether they are to the latter's advantage or disadvantage.

27. Public prosecutors should not initiate or continue prosecution when an impartial investigation shows the charge to be unfounded.

28. Public prosecutors should not present evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to methods which are contrary to the law. In cases of any doubt, public prosecutors should ask the court to rule on the admissibility of such evidence.

29. Public prosecutors should seek to safeguard the principle of equality of arms, in particular by disclosing to the other parties – save where otherwise provided in the law – any information which they possess which may affect the justice of the proceedings.

30. Public prosecutors should keep confidential information obtained from third parties, in particular where the presumption of innocence is at stake, unless disclosure is required in the interest of justice or by law.

31. ...

32. Public prosecutors should take proper account of the interests of the witnesses, especially take or promote measures to protect their life, safety and privacy, or see to it that such measures have been taken.

33. Public prosecutors should take proper account of the views and concerns of victims when their personal interests are affected and take or promote actions to ensure that victims are informed of both their rights and developments in the procedure.. ...

<p style="text-align: center;">6.</p>	<p style="text-align: center;">FREEDOM OF EXPRESSION, ASSOCIATION AND ASSEMBLY</p>
<p><i>Constitution of the Republic of Serbia</i></p>	<p style="text-align: center;">Freedom of thought, conscience and religion Article 43</p> <p>Freedom of thought, conscience, beliefs and religion shall be guaranteed, as well as the right to stand by one's belief or religion or change them by choice. No person shall have the obligation to declare his religious or other beliefs. Everyone shall have the freedom to manifest their religion or religious beliefs in worship, observance, practice and teaching, individually or in community with others, and to manifest religious beliefs in private or public. Freedom of manifesting religion or beliefs may be restricted by law only if that is necessary in a democratic society to protect lives and health of people, morals of democratic society, freedoms and rights guaranteed by the Constitution, public safety and order, or to prevent inciting of religious, national, and racial hatred.</p> <p style="text-align: center;">...</p> <p style="text-align: center;">Freedom of thought and expression Article 46</p> <p>The freedom of thought and expression shall be guaranteed, as well as the freedom to seek, receive and impart information and ideas through speech, writing, art or in some other manner. Freedom of expression may be restricted by the law if necessary to protect rights and reputation of others, to uphold the authority and objectivity of the court and to protect public health, morals of a democratic society and national security of the Republic of Serbia.</p> <p style="text-align: center;">Freedom of association Article 55</p> <p>Freedom of political, union and any other form of association shall be guaranteed, as well as the right to stay out of any association. Associations shall be formed without prior approval and entered in the register kept by a state body, in accordance with the law. Secret and paramilitary associations shall be prohibited. Constitutional Court may ban only such associations the activity of which is aimed at violent overthrow of constitutional order, violation of guaranteed human or minority rights, or inciting of racial, national and religious hatred. Judges of Constitutional Court, judges, public prosecutors, Defender of Citizens, members of police force and military persons may not be members of political parties.</p>
<p><i>National Judicial Reform Strategy</i></p>	<p>Does not contain provisions.</p>
<p><i>Guidelines on the Role of Prosecutors, Eighth United Nations Congress, Havana, 1990</i></p>	<p><u><i>Freedom of expression and association</i></u></p> <p>8. Prosecutors like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional disadvantage by reason of their lawful action or their membership in a lawful organization. In exercising these rights, prosecutors shall always conduct themselves in accordance with the law and the recognized</p>

	<p>standards and ethics of their profession.</p> <p>9. Prosecutors shall be free to form and join professional associations or other organizations to represent their interests, to promote their professional training and to protect their status.</p>
<p><i>Recommendation No. (2000) 19 of Council of Europe</i></p>	<p><u><i>Safeguards provided to public prosecutors for carrying out their functions</i></u></p> <p>...</p> <p>6. States should also take measures to ensure that public prosecutors have an effective right to freedom of expression, belief, association and assembly. In particular they should have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings in a private capacity, without suffering professional disadvantage by reason of their lawful action or their membership in a lawful organization. The rights mentioned above can only be limited in so far as this is prescribed by law and is necessary to preserve the constitutional position of the public prosecutors. In cases where the rights mentioned above are violated, an effective remedy should be available.</p>

<p>7.</p>	<p>RELATIONSHIP BETWEEN PUBLIC PROSECUTORS AND THE EXECUTIVE AND LEGISLATIVE POWERS</p>
<p><i>Constitution of the Republic of Serbia</i></p>	<p style="text-align: center;">Article 156</p> <p>Public Prosecutor's Office shall be an independent [autonomous] state body which shall prosecute the perpetrators of criminal offences and other punishable actions, and take measures in order to protect constitutionality and legality.</p> <p>...</p> <p style="text-align: center;">The Republic Public Prosecutor</p> <p style="text-align: center;">Article 158</p> <p>...</p> <p>The Republic Public Prosecutor shall be elected by the National Assembly, on the Government proposal and upon obtaining the opinion of the authorized committee of the National Assembly.</p> <p>...</p> <p>The decision on termination of tenure of office of the Republic Public Prosecutor shall be adopted by the National Assembly, in accordance with the Law, bearing in mind that it shall pass a decision on relief of duty on the Government proposal.</p> <p style="text-align: center;">Public Prosecutors and Deputy Public Prosecutors</p> <p style="text-align: center;">Article 159</p> <p>A Public Prosecutor shall perform the function of the Public Prosecutor's Office. A Public Prosecutor shall be elected by the National Assembly, on the Government proposal.</p> <p>...</p> <p>On proposal of the State Prosecutors Council, the National Assembly shall elect as a Deputy Public Prosecutor the person who is elected to this function for the first time.</p> <p>...</p> <p style="text-align: center;">Responsibility</p> <p style="text-align: center;">Article 160</p> <p>The Republic Public Prosecutor shall account for the work of the Public Prosecutor's Office and his/her own work to the National Assembly. Public Prosecutors shall account for the work of the Public Prosecutor's Office and their own work to the Republic Public Prosecutor and the National Assembly, whereas Junior Prosecutors shall account for their work to their immediately superior Public Prosecutor as well.</p> <p>...</p> <p style="text-align: center;">Termination of Public Prosecutor and Deputy Public Prosecutor's tenure of office</p> <p style="text-align: center;">Article 161</p> <p>...</p> <p>A decision on termination of a Public Prosecutor's tenure of office shall be adopted by the National Assembly, in accordance with the Law, and it shall pass a decision on relief of duty on the Government proposal.</p> <p>...</p> <p style="text-align: center;">Immunity</p> <p style="text-align: center;">Article 162</p> <p>...</p> <p>A Public Prosecutor or a Deputy Public Prosecutor may not be detained or arrested in the legal proceedings instituted due to a criminal offence committed in performing the</p>

	<p>prosecutor's function or service without the approval of the authorized committee of the National Assembly.</p> <p style="text-align: center;">Status, constitution and election of the State Prosecutors Council Article 164</p> <p>...</p> <p>The State Prosecutors Council shall be constituted of the Republic Public Prosecutor, the Minister responsible for justice and the President of the authorized committee of the National Assembly as members ex officio and eight electoral members elected by the National Assembly, in accordance with the Law.</p>
<p><i>National Judicial Reform Strategy</i></p>	<p>B. PROSECUTORS</p> <p>However, the public prosecution, by its legal nature, is not only an executive but also a judicial authority that has to be operationally autonomous, which defines its position in the judicial system and its relation to the other branches of government. It is without doubt that the only true answer lies in the middle, which means that the public prosecutor must not be an ordinary civil servant, but he/she cannot have the status equal to that of the independent judge either.</p> <p>This Strategy envisages exactly such a position of the prosecution.</p> <p>...</p> <p>Criminal prosecution of the crimes stipulated in ratified international conventions and other cases specifically prescribed by the law may be subject to subsequent instructions issued by the Ministry of Justice, on behalf of the Government of the Republic of Serbia. The procedure for the promulgation of these instructions will be precisely regulated by the law, so that the Government may exercise its authority in a transparent manner.</p> <p>The Republic Public Prosecutor, War Crimes Prosecutor and Organized Crime Prosecutor will be elected by the Parliament for a renewable term of six years, which shall be regulated by the law. The Government proposes nominees, having previously obtained the opinion of the State Prosecutorial Council. The manner of selection of the appeals, higher and first instance prosecutors is the same.</p> <p>...</p> <p>The State Prosecutorial Council will have 11 members. The deputies from all levels of the prosecution will elect six members from their ranks. A member of the Judiciary Committee of the National Assembly, the Minister of Justice and the Republic Public Prosecutor will be members of the Council by virtue of their office. The National Assembly will elect two Council members from the ranks of distinguished, renowned legal experts with over 15 years of experience. ...</p>
<p><i>Recommendation No. (2000) 19 of Council of Europe</i></p>	<p><u><i>Relationship between public prosecutors and the executive and legislative powers</i></u></p> <p>11. States should take appropriate measures to ensure that public prosecutors are able to perform their professional duties and responsibilities without unjustified interference or unjustified exposure to civil, penal or other liability. However, the public prosecution should account periodically and publicly for its activities as a whole and, in particular, the way in which its priorities were carried out.</p> <p>12. Public prosecutors should not interfere with the competence of the legislative and the executive powers.</p> <p>13. Where the public prosecution is part of or subordinate to the government, states should take effective measures to guarantee that:</p>

	<p>a. the nature and the scope of the powers of the government with respect to the public prosecution are established by law;</p> <p>b. government exercises its powers in a transparent way and in accordance with international treaties, national legislation and general principles of law;</p> <p>c. where government gives instructions of a general nature, such instructions must be in writing and published in an adequate way;</p> <p>d. where the government has the power to give instructions to prosecute a specific case, such instructions must carry with them adequate guarantees that transparency and equity are respected in accordance with national law, the government being under a duty, for example:</p> <ul style="list-style-type: none"> - to seek prior written advice from either the competent public prosecutor or the body that is carrying out the public prosecution; - duly to explain its written instructions, especially when they deviate from the public prosecutor's advices and to transmit them through the hierarchical channels; - to see to it that, before the trial, the advice and the instructions become part of the file so that the other parties may take cognizance of it and make comments; <p>e. public prosecutors remain free to submit to the court any legal arguments of their choice, even where they are under a duty to reflect in writing the instructions received;</p> <p>f. instructions not to prosecute in a specific case should, in principle, be prohibited. Should that not be the case, such instructions must remain exceptional and be subjected not only to the requirements indicated in paragraphs d. and e. above but also to an appropriate specific control with a view in particular to guaranteeing transparency.</p> <p>14. In countries where the public prosecution is independent of the government, the state should take effective measures to guarantee that the nature and the scope of the independence of the public prosecution is established by law.</p> <p>15. ...</p> <p>16. Public prosecutors should, in any case, be in a position to prosecute without obstruction public officials for offences committed by them, particularly corruption, unlawful use of power, grave violations of human rights and other crimes recognized by international law.</p>
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<p style="text-align: center;">8.</p>	<p style="text-align: center;">ORGANIZATION OF THE PROSECUTION SERVICE</p>
<p><i>Constitution of the Republic of Serbia</i></p>	<p style="text-align: center;">Establishment and organization Article 157</p> <p>Establishment, organization and jurisdiction of Public Prosecutor's Office shall be specified by the Law. The Republic Public Prosecutor's Office shall be the supreme Public Prosecutor's Office in the Republic of Serbia.</p> <p style="text-align: center;">Public Prosecutors and Deputy Public Prosecutors Article 159</p> <p>A Public Prosecutor shall perform the function of the Public Prosecutor's Office. ... A Deputy Public Prosecutor shall stand in for the Public Prosecutor in performing the function of the Public Prosecutor's Office and shall be obliged to act according to his/her instructions. ...</p>
<p><i>National Judicial Reform Strategy</i></p>	<p>The prosecutors will, while honoring the principles of hierarchical subordination, be given a far greater autonomy in their work, which will also carry greater responsibility for their work in accordance with objective criteria, and will for the most part be free from political influence. ...</p>
<p><i>Recommendation No. (2000) 19 of Council of Europe</i></p>	<p>36. a. With a view to promoting fair, consistent and efficient activity of public prosecutors, states should seek to:</p> <ul style="list-style-type: none"> - give prime consideration to hierarchical methods of organization, without however letting such organizational methods lead to ineffective or obstructive bureaucratic structures; - define general guidelines for the implementation of criminal policy; - define general principles and criteria to be used by way of references against which decisions in individual cases should be taken, in order to guard against arbitrary decision-making. <p>b. The above-mentioned methods of organization, guidelines, principles and criteria should be decided by parliament or by government or, if national law enshrines the independence of the public prosecutor, by representatives of the public prosecution.</p> <p>c. The public must be informed of the above-mentioned organization, guidelines, principles and criteria; they shall be communicated to any person on request.</p>