

Report on Monitoring of Peer Elections for the High Judicial Council and State Prosecutors' Council of the Republic of Serbia

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I. EXECUTIVE SUMMARY

This report is the result of joint efforts by the OSCE Mission to Serbia and the Office for Democratic Institutions and Human Rights (ODIHR) to monitor the nomination and election processes for peer elections of judges and prosecutors in Serbia to the High Judicial Council (HJC) and the State Prosecutors' Council (SPC), respectively, conducted from October to December 2015. The Lawyers' Committee for Human Rights (YUCOM), a Serbian non-governmental organization, also served as an implementing partner.

This monitoring was conducted in consideration of ongoing judicial and legal reform initiatives in Serbia as part of a broader National Justice Reform Strategy and ongoing reforms for accession to the European Union (EU). Activities included monitoring nomination processes (in selected courts and prosecutor's offices), monitoring peer elections across Serbia, analyzing the underlying legal framework, and interviewing judges and prosecutors who participated in the process.

Judicial and prosecutorial councils can play an important role in ensuring the independence and accountability of the judiciary and contributing to an individual's right to a fair trial and effective remedies. Increasingly, these councils are seen as an effective way to promote international and regional standards regarding the effective delivery of justice. At the same time, standards regarding the composition and functions of these councils are evolving because the presence of judicial and prosecutorial councils is a relatively new development for some OSCE participating States. Important guidance in this respect is provided in international standards, including OSCE commitments, on judicial independence and accountability.

The legal framework of Serbia governing the selection process, role, and composition of these councils is fairly comprehensive although the monitoring highlighted a few minor issues with the implementation of laws and regulations, which partly resulted from gaps in the law. The election processes themselves were conducted without any major irregularities observed, and the main findings highlight concerns mostly connected with the nomination and campaign process.

The report makes a number of recommendations, largely similar for both the judicial and prosecutorial councils, including the following:

- Amend the legal framework to change the election process for the judicial and prosecutorial councils so that the role of the National Assembly in the election process is lessened and the councils remain free from undue external influence;
- Amend the rules and regulations on candidate nomination so the process of proposing candidates is made more clear;
- Further develop the legal framework to enhance procedures for resolution of disputes and to provide effective remedies.

This report has been prepared with the aim of informing the ongoing judicial reform process in Serbia and to provide the relevant state institutions and justice stakeholders with an objective assessment and concrete recommendations to further strengthen the independence, accountability and efficiency of the Serbian judiciary.

II. BACKGROUND

From October to December 2015 the Organization for Security and Cooperation in Europe (OSCE) Mission to Serbia and the Office for Democratic Institutions and Human Rights (ODIHR) joined together to monitor the nominations and elections process for the two judicial self-administration bodies in Serbia: the High Judicial Council of Serbia (HJC)¹ and the State Prosecutors' Council of Serbia (SPC)². Both the HJC and SPC invited OSCE to monitor the elections held in December 2015.³

The creation of the HJC and SPC is the result of, and integral to, ongoing legal reforms in Serbia. As part of the current wave of judicial reform in Serbia which began in 2006, the new constitution established the HJC and SPC *inter alia* for the appointment, transfer, evaluation, and discipline of judges and prosecutors respectively.⁴ The Law on the Implementation of the Constitution stipulated that all incumbent judges and prosecutors shall be removed from office unless re-elected.⁵ The Law on Seats and Organisation of Courts and Prosecution Offices⁶ of 2008 paved the way for a new court network reducing the overall number of judges' and prosecutors' positions in Serbia. Judicial reforms continue within the framework of the 2013-2018 National Judicial Reform Strategy and Serbia's accession process to the European Union (EU).⁷

In 2009, the HJC and the SPC were formed. The HJC includes six judge-members elected by their peers and the SPC includes six prosecutor⁸-members elected by their peers. The laws on these councils established criteria and standards for the election of judge and prosecutor members to the councils. In December 2009, the councils rendered decisions on dismissal and retention of judges and prosecutors, respectively, effectively determining who would serve in the new court network. However, implementation of the procedures was deemed unfair by the Council of Europe because they did not provide reasons for retention and dismissal and the hearings did not properly assess compliance with relevant criteria –

¹ The HJC is responsible for selection of judges; assignment, transfer, and discipline; providing training; passing a Code of Ethics; judicial administration; budget; and performance evaluation of judges (Law on the High Judicial Council, Article 13).

² The SPC is responsible for proposing names of public prosecutors to the Government; promoting budget proposals; giving opinions on laws and amendments that touch upon the functions of the prosecution service; developing the Code of Ethics; rendering decisions in disciplinary proceedings; determining performance evaluation criteria; helping to implement the National Strategy for Justice Reform; and establishing and implementing the curriculum for continuing education of prosecutors (Law on the State Prosecutorial Council Article 13).

³ SPC elections were held on 1 December and the HJC elections were held on 21 December 2015.

⁴ Available in English at <http://www.refworld.org/docid/4b5579202.html> (last visited 27 January 2016). See Article 154 on the High Judicial Council and Article 164 on the State Prosecutors Council.

⁵ Articles 7 and 8 of the Constitutional Law on the Implementation of the Constitution, *Official Gazette* no. 98/2006.

⁶ The Law on Seats and Organisation of Courts and Prosecution Offices, *Official Gazette* no. 116/2008.

⁷ For more information on the national strategy see <http://www.vk.sud.rs/en/national-judicial-reform-strategy-0> (last visited 27 January 2016). For more information on the status and issues involved in the EU accession process see http://ec.europa.eu/enlargement/countries/detailed-country-information/serbia/index_en.htm (last visited 27 January 2016).

⁸ The term prosecutor is used to mean both prosecutors and deputy prosecutors throughout this report unless indicated otherwise.

worthiness, competence and professionalism.⁹ According to available data, the number of sitting judges was reduced from 2,686 to 1,972. In addition, 871 new judges with a three-year mandate entered the system (including 579 misdemeanor judges).¹⁰ The number of prosecutors and deputy prosecutors was reduced from 799 to 653.¹¹

Following complaints to the Constitutional Court of Serbia by dismissed judges and prosecutors and taking into account concerns about the appointment process, the December 2010 amendments to key judicial laws¹² mandated the HJC and SPC to review decisions regarding (1) non-elected judges/prosecutors; (2) re-elected judges/prosecutors; and (3) “probationary” judges/prosecutors elected for the first time for a period of three years.

In March 2011, elections were held for the six new permanent members from the ranks of judges and prosecutors to the HJC and the SPC respectively.¹³ All incumbent judges and prosecutors participated in the elections. However, those not re-elected in 2009 were not allowed to participate in the elections. In June and July 2011, the newly composed HJC and SPC began reviewing the re-election of judges and prosecutors.

By December 2011, the SPC concluded the review of 162 cases, re-instating 29 prosecutors. By May 2012, the HJC concluded the review of 752 cases, re-instating 98 judges. By July 2012, the Constitutional Court began issuing decisions ordering the councils to re-instate all judges and prosecutors who had not been re-elected. It found that the HJC and the SPC had violated the appellants’ fair trial rights and had arbitrarily applied criteria for selection. All non-elected judges and prosecutors who filed complaints to the Constitutional Court were thus reinstated.

Against this backdrop, the 2015 elections by prosecutors and judges for the new composition of the SPC and HJC, respectively, held a special significance. They provided an opportunity for incumbent judges and prosecutors to elect members who would represent their professional interests in a fair and transparent manner. It also served as a means for judges and prosecutors to exhibit their independence and show support for the independence of these councils from undue external influence.

III. METHODOLOGY

The methodology applied by the OSCE Mission to Serbia and ODIHR for the monitoring of the HJC and SPC elections was developed before the monitoring began. Training on the Code

⁹ GRECO fourth evaluation round report on Serbia (concerning corruption prevention in respect of members of parliament, judges, and prosecutors, published 2 July 2015), available at [https://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4Rep\(2014\)8_Serbia_EN.pdf](https://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4Rep(2014)8_Serbia_EN.pdf).

¹⁰ Figures quoted in European Commission Staff Working Paper, Analytical Report, Brussels, SEC 2001 (2008), 12.10.2011.

¹¹ Ibid.

¹² Amendment to the Law on Judges (see article 6), Amendment to the Law on Prosecutors (see article 7), enacted on 29 December 2010, *Official Gazette* no. 101/2010.

¹³ The members of the HJC are: the President of the Supreme Court of Cassation, the Minister of Justice and the President of the authorized committee of the National Assembly (ex officio members) and eight members elected by the National Assembly. Elected members include six judges elected by their peers and two respected and prominent lawyers one of whom is an attorney and the other one is a law professor. The composition of the State Prosecutors’ Council is similar, with six prosecutors elected by their peers. See articles 153 and 164 of the Serbian Constitution.

of Conduct and election monitoring methodology was conducted on 6 November 2015 in Belgrade for eight OSCE and 11 YUCOM¹⁴ staff (out of which 12 were women), all of whom participated in the monitoring of the council peer elections for this project.

Monitors from OSCE and YUCOM monitored the council elections in order to assess the validity of the electoral results, soundness of the voting process, and conformity with the Serbian legal framework. They did so by monitoring the voting processes at selected polling stations on Election Day and by conducting interviews with relevant judges and prosecutors. The data and information collected through monitoring and interviews, as well as a desk review of legal documents, constitute the basis of this final report.

A. THE CODE OF CONDUCT

Throughout the entire monitoring exercise, monitors abided by a code of conduct. The Code of Conduct, which all monitors committed to respect, stressed four main principles: impartiality, non-intervention, professionalism, and confidentiality. To be impartial meant that monitors could not express an opinion or act in a way that seemed to indicate their personal belief or bias regarding a particular candidate, set of procedures, or evaluation of the overall process. Non-intervention meant that monitors could not respond to questions, physically intervene, or volunteer information to remedy on-the-spot shortcomings of the elections process. Monitors were not allowed to give any public statements regarding the elections process or their observations or opinion of the same. If they were asked for such an opinion, procedure dictated they refer the press official to the OSCE Mission to Serbia. The duty of professionalism required that monitors conduct themselves according to appropriate professional standards. Confidentiality required that all observations, sources, and information obtained would not be shared beyond those directly involved with the project until the results were made public, in order to ensure the integrity of the process and to encourage interviewees (candidates, voters, other interlocutors) to freely share their views and opinions without fear of public disclosure.

B. HJC AND SPC ELECTIONS MONITORING

Given limited human resources, monitors were sent out individually to polling stations throughout Serbia to try to cover as many stations as possible. In selecting polling stations for monitoring, consideration was given to geographical diversity, representation for areas with large minority populations, and locations where challenges could be anticipated based on prior experience or information received. Monitors were instructed to remain at their assigned polling station throughout the course of the day, arriving prior to official start and remaining until after the collection and count of votes. Monitors used pre-established questionnaires which directed them to observe and report upon the most relevant and important elements as described in the Serbian legal framework.

C. INTERVIEWS

In addition to observing the elections process for the HJC and SPC, monitors interviewed a number of voters and candidates¹⁵ to obtain more detailed qualitative information regarding their perception of the process, to identify any challenges, and to propose suggestions for reform. Questionnaires were developed in advance to ensure that the most relevant issues were addressed and to make data collection more streamlined. Best efforts were made to interview as many voters and candidates as possible given relatively limited human

¹⁴ The Lawyers' Committee for Human Rights (YUCOM), a Serbian NGO, was enlisted to aid in implementation of the project.

¹⁵ A total of 107 prosecutors were interviewed from 25 different prosecutor offices and a total of 113 judges were interviewed from a total of 35 courts.

resources. There were approximately 656 potential prosecutor-voters and approximately 3054 potential judge-voters voting for 31 candidates for the SPC and 33 candidates for the HJC. Voters were interviewed after voting had concluded, whereas candidates were interviewed prior to voting to ensure that their feedback was not influenced by the outcome of the elections process.

D. REPORTING

Building upon the responses to questionnaires used for elections monitoring and interviews of voters and candidates, monitors were then asked to report upon their findings. Individual reports were peer reviewed for clarity and accuracy and verified against peer reports from other regions, and public reports on elections outcomes. The information was then analyzed and compiled by the OSCE Mission to Serbia and ODIHR to form this final report.

IV. INTERNATIONAL AND REGIONAL STANDARDS AND GOOD PRACTICES

A. INTRODUCTION

Across the OSCE region, challenges exist concerning the role and function of the judiciary and prosecutorial service. Integral to their effectiveness, these institutions must be independent and accountable. The proper functioning of these institutions, consistent with democratic checks and balances and the separation of powers, is essential to ensuring effective access to justice and implementation of an individual's right to a fair trial and effective remedy. Countries throughout the OSCE region and beyond have developed their own mechanisms and tools for ensuring the proper functioning of judiciaries and prosecutorial services, with some opting for judicial and prosecutorial councils as such a tool. Amongst OSCE participating States, judicial councils are more common with functions varying from administration and management to more substantive functions including selection, discipline, promotion, and removal of judges.¹⁶ Prosecutorial councils are a more recent phenomenon, and thus less common, emerging over the last ten to fifteen years and concentrated primarily in South Eastern Europe.¹⁷

As part of the EU accession process currently in place for some OSCE participating States, the European Union as well as the Council of Europe's European Commission for Democracy through Law ("Venice Commission") have recommended that accession countries develop judicial and prosecutorial councils to help ensure the independence of and fair accountability mechanisms for the judiciary and prosecutorial service.¹⁸ Still, the Venice Commission reiterates that "there is no standard model that a democratic country is bound to follow in setting up its Supreme Judicial Council so long as the function of such a Council falls within the aim to ensure the proper functioning of an independent judiciary within a democratic State".¹⁹ In contrast, OSCE ODIHR's *Kyiv Recommendations on Judicial*

¹⁶ For more information on the differences in role, function, and composition of judicial councils across Europe see i.e. the Venice Commission Report on Judicial Appointments (2007).

¹⁷ Specialized prosecutorial councils exist, for instance, in Bosnia and Herzegovina, Moldova, Montenegro, Serbia, and the Former Yugoslav Republic of Macedonia. France, Italy, and Turkey have judicial councils which cover both judges and prosecutors. See Venice Commission Report on European Standards as Regards the Independence of the Judiciary Part II: The Prosecutorial Service (2010) at footnote 6.

¹⁸ See the Venice Commission's Compilation of Opinions and Reports Concerning Courts and Judges (2015), p. 70-71, available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2015\)001-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2015)001-e) (last visited on 10 February 2016).

¹⁹ Report on Judicial Appointments (CDL-AD (2007)028), op. cit., paragraph 28.

Independence in Eastern Europe, South Caucasus and Central Asia are less prescriptive.²⁰ It is common for these councils to contain at least a simple majority of judge or prosecutor-members alongside other representatives, which are often chosen from academia, bar associations, or executive structures. Judge and prosecutor-members are usually chosen through a peer-election process, as is the case in Serbia.

Although there are currently no established international standards specifically on the elections process for these members,²¹ the election of such members and the overall role, composition, and function of such councils should always be viewed through the lens of judicial independence and accountability as an important precondition to an individual's right to a fair trial²² and effective remedy.

This section will first provide a brief overview of relevant international and regional standards, including OSCE Commitments, on the proper functioning of an effective judiciary and prosecutorial service, highlighting principles common to both institutions. Next, international good practices for judicial and prosecutorial councils will be examined. Last, some comments will be noted concerning the development of regional European standards for peer elections to these bodies.

B. INTERNATIONAL AND REGIONAL STANDARDS

In international law, the rights to a fair trial and effective remedy are enshrined in the International Covenant on Civil and Political Rights (ICCPR).²³ Article 2 of the ICCPR stipulates the right to an effective remedy, noting “that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.” The State is further obligated to enforce such remedies when granted. Article 14 recognizes the right to a fair and public hearing in both civil and criminal cases with provision for a “competent, independent and impartial tribunal established by law.”²⁴ These rights were first outlined in the Universal Declaration of Human Rights (UDHR).²⁵ On the regional level, the European Convention on Human Rights and Fundamental Freedoms (ECHR) contains similar provisions.²⁶

²⁰ They speak of “use of independent body[ies]” and “where a judicial council is established...” OSCE/ ODIHR 2010.

²¹ See Venice Commission Compilation of Opinions and Reports Concerning Prosecutors available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2015\)009-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2015)009-e) (last visited 10 February 2016).

²² For more information on fair trial rights see OSCE/ ODIHR Legal Digest of International Fair Trial Rights (2012) available at <http://www.osce.org/odihr/94214>.

²³ Entered into force on 23 March 1976, available at: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (last visited 26 January 2016). Serbia ratified the ICCPR in 2001.

²⁴ ICCPR Article 14.

²⁵ Adopted by the United Nations General Assembly on 10 December 1948, available at <http://www.un.org/Overview/rights.html> (last visited 26 January 2016). See Article 10: “everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal...” and Article 8 regarding right to an effective remedy.

²⁶ European Convention on Human Rights Article 6, “everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law” and Article 13 detailing the right to an effective remedy. Available at http://www.echr.coe.int/Documents/Convention_ENG.pdf (last visited 26 January 2016). Serbia ratified the Convention in 2004.

OSCE commitments,²⁷ like international law, recognize the relationship between the right to a fair trial and the independence and accountability of the judiciary.²⁸ The principles relevant to an independent judiciary exist in support of the guarantee of an individual’s right to a fair trial, thus, an independent judiciary is essential to a fair trial. Although an accused person has a right to a fair trial, it cannot be said that a judge or judiciary has a right to be independent.²⁹ In fact, it is rather a responsibility on behalf of the judiciary and individual judges, enshrined in the law and supported by the State³⁰, to be independent and impartial so that an individual’s right to a fair trial may be realized. Thus, when speaking of principles and elements of an independent judiciary, it is important to keep in mind that an independent judiciary is essential not for the empowerment of the judiciary as such but rather to ensure an individual’s right to a fair trial.

In order to provide further detail on how to guarantee these rights, various international and regional (i.e. European) soft law documents contain further description and guidance, describing standards concerning the role and function of the judiciary and prosecutorial service, and relevant judicial and prosecutorial councils, where applicable.³¹

From these documents emerge a number of principles common to the proper functioning of both the judiciary and the prosecutorial service. These include the requirements of: 1) independence and impartiality; 2) separation of powers; 3) respect for human rights; 4) selection, appointment and promotion; 5) discipline, tenure and irremovability; and 6) code of conduct/ ethics. The below table provides further description of these principles.

International and Regional Standards: The Judiciary and Prosecutorial Service		
Principle	Judges	Prosecutors
Independence and Impartiality	<ul style="list-style-type: none"> • Independence should be statutory (set out in the Constitution or equivalent texts), functional and financial, and guaranteed by the State. • Individual judges should be impartial (without personal bias) in their decision-making • Judgments should not be subject to revision except for ordinary judicial review • Internal independence (within the judicial hierarchy) and external independence (free from undue 	<ul style="list-style-type: none"> • Prosecutors should be free to perform professional functions free of any interference, intimidation, hindrance, or pressure • Prosecutors shall be impartial and unaffected by sectional interests and public or media pressures • Use of prosecutorial discretion, in jurisdictions where permitted, should be exercised independently and free of political interference

²⁷ OSCE commitments are political commitments made voluntarily by participating States and as such do not have the weight of international law. However, they do provide evidence of participating States’ unanimous agreement on fundamental principles related to democracy, human rights, and the rule of law and States’ willingness to work toward the implementation of these shared values. For a list of the 57 OSCE participating States (including Serbia) see <http://www.osce.org/states>.

²⁸ See, for example, the Brussels Document 2006, stating “judicial independence is a prerequisite to the rule of law and acts as a fundamental guarantee of a fair trial.”

²⁹ Report of the UN Special Rapporteur on the independence of judges and lawyers (2014).

³⁰ See OSCE Copenhagen Document of 1990 and Moscow Document of 1991.

³¹ For a list of standards and best practices consulted in preparation of this report, refer to Annex A.

	influence of the executive or legislature)	<ul style="list-style-type: none"> • Internal independence should be ensured through checks and balances in systems with hierarchical structures in order to maintain prosecutorial autonomy • Prosecutors should not be required to obtain approval for their actions in the exercise of their functions • The independence and autonomy³² of the prosecution services constitute an indispensable corollary to the independence of the judiciary
Separation of Powers	<ul style="list-style-type: none"> • Case judgments and verdicts are the purview of the judiciary and should not be interfered with by any other branch of government • Case assignments are an internal matter of judicial administration 	<ul style="list-style-type: none"> • The office of the prosecutor shall be strictly separate from judicial functions • As protector of the public interest, the role of the prosecutor must not function, or be perceived to function, in the interest of the Government, a particular political party, or other State institution
Respect for Human Rights	<ul style="list-style-type: none"> • Judicial proceedings should be conducted fairly and in line with the rights of those involved • Judicial functions should include promoting the observance and attainment of human rights • Judicial approval and review are essential to oversight of prosecutors' actions which affect human rights, such as search or detention 	<ul style="list-style-type: none"> • Prosecutors should promote, respect and protect fundamental rights of victims, witnesses and the accused
Selection, Appointment, and Promotion	<ul style="list-style-type: none"> • There shall be no discrimination (including on the basis of gender or ethnicity) in the selection of judges and judicial candidates shall have equality of access to judicial office • Both selection and promotion of judges should give effect to objective criteria based on merit (with due regard to qualifications, integrity, ability, character, judgment, and communication skills) with decisions made independent of the executive and legislative powers 	<ul style="list-style-type: none"> • Recruitment, transfer, and promotion of prosecutors shall be conducted under fair and impartial procedures regulated by law and governed by transparent and objective criteria with consideration for building a diverse prosecutorial service

³² It should be noted that the terms “independence” and “autonomy” are used interchangeably and separately by various international and regional standard-setting bodies. There is some disparity in the literature over the extent to which prosecutorial services should actually be “independent.”

	<ul style="list-style-type: none"> • Where the final appointment of a judge is with the State President, the discretion to appoint should be limited to the candidate(s) nominated by the selection body • Appointments of judges of ordinary courts are not an appropriate subject for a vote by Parliament given the danger that political considerations could prevail over the objective merits of a particular candidate 	
Discipline, Tenure, and Irremovability	<ul style="list-style-type: none"> • Judges shall have guaranteed tenure until a mandatory retirement age or expiry of their legal term of office. • Where a probationary period exists following initial appointment, the probationary tenure and the conferment of permanent tenure shall be substantially under the control of the judiciary • Use of probationary periods should be limited because they can be used as a punishment or reward mechanism and thus serve to undermine the independence of judges • Judges shall be secure in their posts with tenure under the principle of irremovability • Discipline and removal proceedings shall be conducted according to objective criteria with consideration for confidentiality and opportunity for a full and fair hearing • A judge shall not be removed except on proven grounds of incapacity or misbehavior rendering the judge unfit to continue in office 	<ul style="list-style-type: none"> • It is recommended that tenure for prosecutors be implemented as an important element that reinforces their independence and impartiality • Irremovability helps guard against undue use of transfer which may lead to unjustifiable interference in the work of the prosecutor and be used as a punishment or reward mechanism • In the absence of permanent appointment for a Prosecutor General, he or she should be appointed for a relatively long period without the possibility of renewal and the period of office should not coincide with Parliament's term in office • In disciplinary and removal proceedings, prosecutors should have the right to be heard in adversarial proceedings • Disciplinary procedures should be objective and impartial based on the law and legal regulations
Ethics/ Code of Conduct	<ul style="list-style-type: none"> • Judges should be persons of integrity and ability • They should respect those involved in the judicial system, communicate and listen effectively, ensure equal treatment, and be competent and impartial • A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the 	<ul style="list-style-type: none"> • Prosecutors should maintain honor and dignity in their profession and must be fair and impartial while conducting their work in a professional manner • Prosecutors should adhere to the highest of ethical standards and should behave impartially and with objectivity • Prosecutors are bound by a code of conduct which can serve as an

	<p>confidence of the public, legal profession and litigants in the impartiality, propriety, and independence of the judge and the judiciary</p> <ul style="list-style-type: none"> Standards of conduct should be drawn up by judges themselves and implemented by an independent authority 	important tool for enhancing professionalism and integrity
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C. INTERNATIONAL AND REGIONAL GOOD PRACTICES FOR JUDICIAL AND PROSEUCTORS' COUNCILS

Judicial and prosecutorial councils can be instrumental in promoting the effective functioning of the judiciary and prosecutorial service, including adherence to the principles noted above. Like judges and prosecutors, councils must simultaneously be independent and accountable. Striking this balance through the role, composition, and function of these councils is paramount in a democratic society and to ensuring effective access to justice. Given the power vested in the council to govern the activity of the judiciary or prosecutorial service, the appointment or election process to the council becomes a key consideration in promoting the overall effectiveness of the institutions.

International and Regional Good Practices: Judicial and Prosecutorial Councils		
Good Practices	Judges	Prosecutors
Role	<ul style="list-style-type: none"> The role of the judicial council is to act as a watchdog for the independence of the judiciary and to protect democratic checks and balances Independent judicial bodies can provide accountability for the judicial profession 	<ul style="list-style-type: none"> The role of the prosecutorial council is to ensure the autonomy and/or independence of prosecutors and the prosecutorial service
Composition	<ul style="list-style-type: none"> It is recommended that a substantial part, if not majority, of council members are judges³³ The Minister of Justice, State President, and other politicians 	<ul style="list-style-type: none"> Prosecutorial councils should not be comprised solely of prosecutors It is not advisable that the Minister of Justice should sit on

³³Venice Commission Compilation on Courts and Judges 2015 (quoting its own language – “substantial part, if not majority” - used in recent opinions prepared for Kyrgyzstan and Kazakhstan). See the Report of the UN Special Rapporteur on the independence of judges and lawyers (2014) recommending that “a commission or council for the judiciary should preferably be composed entirely of members of the judiciary, retired or sitting, although some representation of the legal profession or academics could be advisable. No political representation should be permitted.” The ENCJ recommends a “majority.” See ENCJ Self Governance for the Judiciary: Balancing Independence and Accountability. Regarding composition of the Councils for the Judiciary, the Council can be composed either exclusively of members of the judiciary or members and non-members of the judiciary. When the composition is mixed, the Council should be composed of a majority of members of the judiciary, but not less than 50 %.

	<p>should not sit on the Council, but if they sit on the Council, they should not have the ability to exert undue influence and should ideally be non-voting members</p> <ul style="list-style-type: none"> • The Council should also comprise civil society members including i.e. law professors and lawyers • Judges from all levels should be included amongst the judge-members • Non-judge members should be selected according to clear criteria and transparent processes 	<p>the council, but it is reasonable for a representative from the Ministry to be present³⁴</p> <ul style="list-style-type: none"> • It is highly advisable that eminent lawyers also sit on the council • Prosecutors from all levels should be represented
Function and Powers	<ul style="list-style-type: none"> • Where judicial councils are responsible for selection and training of judges they should not be under executive control and should operate independently from regional governments • Councils should not be competent to both receive and conduct disciplinary investigations and hear a case and render decision on disciplinary matters³⁵ • Judicial councils should have decisive influence in the selection, promotion, and discipline of judges • Annual public reports detailing the council's activities are a good practice 	<ul style="list-style-type: none"> • The prosecutorial council should oversee prosecutorial activity in accordance with the principle of legality • In relation to appointment and removal issues for prosecutors, competence should ideally be placed with the prosecutorial council and not Parliament • The council's work should be transparent and accountable to the public through regular, widely disseminated reports
Election/ Appointment to the Council	<ul style="list-style-type: none"> • Judge members shall be elected by their peers • Methods other than direct election of judges that guarantee the widest representation of the judiciary with diverse and territorial representation in the Council may be developed • It is recommended that non-judge members be elected according to criteria laid down in the law by a qualified majority of Parliament rather than the executive to avoid partisanship 	<ul style="list-style-type: none"> • Where possible, prosecutor members of the council should be elected by their peers • Other members should be chosen by Parliament according to objective qualifications by qualified majority • Parliament shall not have main control over selection of council members

³⁴ Venice Commission opinion from 2014 on Montenegro, as noted in its Compilation on Prosecutors, p.48: "it is wise that the Minister of Justice should not him- or herself be a member but it is reasonable that an official of that Ministry should participate."

³⁵ Kyiv Recommendations 2010. As such, they only address judges and not prosecutors.

D. PEER ELECTIONS TO JUDICIAL AND PROSECUTORS' COUNCILS

As noted above, there are no explicit international or regional European standards regarding judicial and prosecutorial councils let alone the specific methodology or technical requirements for peer elections to such councils. This in part owes to a wide diversity of councils across Europe (for those countries that utilize them) and considers that each council must be examined within its own unique historical context, legal culture and system, and legal and constitutional framework. However, a few brief comments can be made regarding peer elections to these councils, examining the countries of Spain, Italy, France, and Portugal, which served as models and inspiration for the councils developed in South Eastern Europe, and thus provide the most relevant examples for comparison.

On the issue of peer elections for judges to the judicial council, the Venice Commission has stated that true peer election is preferable, and in the context of Serbia specifically, noted that provisions that allow the National Assembly to directly or indirectly elect all members of the council is not advisable.³⁶ It has also recommended that it is a good practice for election procedures to be in place to help ensure minority representation on the council.³⁷

In considering the four countries noted above, there is varied application of the preference for peer election to judicial councils in practice. No overall conclusions can be drawn, but these dynamic developments show that the proper balance needs to be found within each national model, in line with the main principles outlined above. The judicial council in Portugal, impacted by recent legal reforms in 2014, consists of 16 members, with seven judges elected by their peers through a system of proportional representation, but this model has been criticized because judges do not form the majority of the council.³⁸ In Spain, the history of peer elections has been rather controversial. Until 1985 judge-members were elected by their peers but this was changed due to political pressure to mandate appointment by Parliament based on recommendations made by the judges' association. In 2013 this was amended to allow for judges, additionally, to directly propose their own candidacy alongside recommendations made by the association, a development that remains contentious amongst the Spanish judiciary.³⁹ In Italy, 16 of the 27 members of the council are magistrates (judges and prosecutors) elected by their peers on proposal of magistrates' associations. The Council is dominated by judges from upper level courts, but judges from all levels vote for them.⁴⁰ In France, until January 2011 when the law was changed to add a number of non-judicial members and thus put the judiciary in the minority,⁴¹ twelve of the sixteen members of the judicial council were members of the judiciary (six prosecutors and six judges) who were elected, respectively, through a system of representation by all levels of the judiciary.

Election procedures for prosecutors to prosecutorial councils are even less well developed. In commenting on an elections system in Montenegro in 2015 as being overall too complex, the Venice Commission did not take specific issue with a provision allowing for all prosecutors to "vote for all the vacancies [on the Council] and successive rounds to take place until

³⁶ See Venice Commission Compilation on Courts and Judges (2015) and Venice Commission Opinion on the draft amendments to the Law on the High Judicial Council of Serbia Opinion No. 776/2014.

³⁷ See Venice Commission Compilation on Courts and Judges (2015).

³⁸ GRECO Fourth Round Evaluation Report on Portugal published 10 February 2016.

³⁹ GRECO Fourth Round Evaluation Report on Spain published 15 January 2014.

⁴⁰ See Giuseppe Di Federico "Judicial Independence in Italy" in *Judicial Independence in Transition*, Anja Seibert-Fohr (ed.) 2012, citing the Constitution of Italy and relevant laws.

⁴¹ Antoine Garapon and Harold Epineuse "Judicial Independence in France" in *Judicial Independence in Transition*, Anja Seibert-Fohr (ed.) 2012.

candidates receive the necessary majority.”⁴² In commenting on the election procedure in Moldova in 2015, the Venice Commission and ODIHR found acceptable the election of the six prosecutor members of the Superior Council of Prosecutors by the General Assembly of Prosecutors from among all prosecutors in office.⁴³ Furthermore, in the context of Georgia, the Venice Commission and ODIHR have noted that a law requiring only four out of nine members of the council to be prosecutors could be improved by considering election procedures that would ensure diverse representation by prosecutors from different levels and across geographical areas with consideration for gender balance as well.⁴⁴

Although there is a lack of standards concerning peer elections to these councils, the broader framework of good practices for judicial and prosecutorial councils and international standards on the judiciary and prosecutorial service should be considered. The principles of transparency, fairness, due process, independence, and democratic checks and balances provide the guidance necessary for finding the right model within each national context.

V. SERBIAN LEGAL FRAMEWORK GOVERNING THE PROCESS OF ELECTIONS OF MEMBERS OF THE STATE PROSECUTORS COUNCIL (SPC) AND THE HIGH JUDICIAL COUNCIL (HJC) OF SERBIA

The following sections describe the main elements of the Serbian national legal framework regarding the process of elections for members of the SPC and HJC from the ranks of prosecutors and judges.

A. LEGAL FRAMEWORK GOVERNING THE PROCESS OF ELECTIONS OF MEMBERS OF THE SPC

1. Constitutional and Legal Framework

The Constitutional and legal framework of the SPC is set in the Constitution of the Republic of Serbia⁴⁵ and the Law on the State Prosecutors’ Council (“Law on SPC”)⁴⁶. Article 164 of the Constitution of the Republic of Serbia defines the composition of the SPC. The Council is composed of eleven members, three of which are *ex officio* members (Minister of Justice, president of the relevant parliamentary committee and the Republic Public Prosecutor), while the remaining eight are elected for a five-year term.

Six of the eight elective members are drawn from the ranks of public and deputy public prosecutors. They are elected by the National Assembly at the proposal of the SPC based on the list of elected candidates. The remaining two are representatives of legal academia and the Bar Association respectively, and nominated through separate procedures.⁴⁷ These eight

⁴² Venice Commission Opinion on the revised draft law on the Public Prosecution Service of Montenegro Opinion No. 785/2014.

⁴³ Venice Commission Opinion on the draft law on the Public Prosecution Service of Moldova Opinion No. 791/2014.

⁴⁴ Venice Commission Opinion on draft amendments on the law of the Prosecutor’s Office Opinion No. 811/2015.

⁴⁵ Constitution of the Republic of Serbia (“Official Gazette of the Republic of Serbia”, No. 98/2006). Available in the Serbian language. All references to Serbian laws are in the Serbian language unless otherwise noted.

⁴⁶ Law on State Prosecutors’ Council (“Official Gazette of the Republic of Serbia”, No. 116/2008, 101/2010 and 88/2011).

⁴⁷ Law on SPC, Article 20.

are appointed to a five-year term and can be re-appointed to the same function, but not in successive terms.⁴⁸

During the term, a deputy public prosecutor serving on the SPC may be relieved of his/her prosecutorial duties by a decision of the SPC. There are no provisions allowing public prosecutors to be relieved of their duties as prosecutors. All Council members receive remuneration for service but the amount and how it is calculated varies, with a distinction made between deputy public prosecutors and the other members.⁴⁹

2. Election Procedure

The SPC conducts and oversees the peer election process. The Law on the SPC, the Rules of Procedure of the Electoral Commission (“Rules of Procedure”)⁵⁰ and the bylaws of the SPC and its Electoral Commission (“Bylaws”)⁵¹ govern the peer election process for prosecutors.

The appointment procedure has several phases. It begins when, at least six months before the expiration of the term of the council’s sitting members, the President of the SPC announces the opening of procedures for electing members of the SPC. This decision is published in the Official Gazette of the Republic of Serbia.⁵²

The Electoral Commission (“EC”), as a permanent working body of the SPC, is in charge of the organization of elections.⁵³ In preparation for Election Day, the EC oversees the list of voters, determines the number of polling stations and their locations, appoints members to the electoral boards, provides election materials, and undertakes all other tasks necessary for the organization of elections.⁵⁴

The EC is comprised of five members (all tenured prosecutors) appointed by the SPC with their consent. All members have substitutes. While holding this position, members of the EC cannot run in the elections for the SPC,⁵⁵ but are allowed to vote⁵⁶. Members of the SPC cannot be members or substitute members of the EC.⁵⁷ Remuneration for work in the EC is determined by the SPC.⁵⁸

The EC is independent in its work and all prosecutors’ offices have a legal obligation to cooperate with the EC.⁵⁹ The EC regularly reports to the SPC on its work. The Rules mandate the work of the EC be transparent, which is ensured through press conferences, communiqués, and information published on the SPC’s website.⁶⁰

⁴⁸ *Ibid.*, Article 12, paragraphs 1 and 2.

⁴⁹ *Ibid.*, Articles 10 and 11, paragraph 2.

⁵⁰ Rules of procedure of Electoral Commission (“Official Gazette of Republic of Serbia”, No. 59/2010 and 2/2011).

⁵¹ These documents (Serbian versions only) can be found at the SPC website: <http://www.dvt.jt.rs/izborna-komisija-drzavnog-veca-tuzilaca.html>, (last viewed on 15 January 2016).

⁵² Law on SPC, Article 21, paragraphs 1 and 2.

⁵³ *Ibid.*, Article 25.

⁵⁴ *Ibid.*, Articles 27-31.

⁵⁵ *Ibid.*, Article 25, paragraph 6.

⁵⁶ Rules of procedure of the Electoral Commission, Article 4, paragraph 2.

⁵⁷ Law on the SPC, Article 25, paragraph 4.

⁵⁸ Rules of procedure of the Electoral Commission, Article 10, paragraph 4.

⁵⁹ Law on the SPC, Article 26, paragraphs 1, 3 and 4.

⁶⁰ Rules of procedure of the Electoral Commission, Article 12, paragraphs 1 and 2.

The EC determines the plan of activities and timeframe for all electoral activities. The EC's decision is shared with the public prosecutors who are obliged to ensure familiarity with its content by all deputy prosecutors in their offices.⁶¹

3. Process of Nominations

Prosecutors from all levels and types of prosecutors' offices are represented in the SPC.⁶² Elective members of the SPC include one member each from the Republic Prosecutor's Office, Appellate Prosecutors' Offices, War Crimes Prosecutor's Office, Organized Crime Prosecutor's Office and Higher Prosecutors' Offices respectively; two members from the Basic Prosecutors' Offices and one member from the territory of autonomous provinces. When voting for a candidate, a voter must vote for one candidate in line with his/her own type and level. This means, for example, that twelve people in the Republic Public Prosecutor's office elect one member and approximately 350 basic prosecutors elect two members.

Prosecutors sitting in an office located in an autonomous province vote for two candidates: one coming from the same type and level of prosecutors' office they are working in and the other from the list of candidates representing prosecutors from an autonomous province. Candidates representing prosecutors from an autonomous province may hail from any level of the prosecutor's office located in an autonomous province.⁶³ It should be noted that only the provinces are territorially represented in the SPC, while the other parts of the country are not.

If delegated to a prosecutor's office of a different type or level than the one to which they were appointed, prosecutors must vote for candidates of the same level and type they were appointed to, and not for the ones of the type and level they were delegated to.⁶⁴

In order to vote and stand for candidacy, a prosecutor must be tenured. This requirement excludes probationary deputy public prosecutors appointed for an initial three year period. The Law on the SPC prevents first time appointees both from voting and running in elections.⁶⁵

Prosecutors wishing to run in the election can acquire candidate status in one of three ways. Deputy public prosecutors from the Republic Prosecutor's Office, as well as prosecutors from the War Crimes and Organized Crimes prosecutors' offices, become candidates simply by registering.⁶⁶ All other prosecutors can either be nominated by a joint session of one or more prosecutors' offices or be supported by at least 15 prosecutors. Support for nomination can only be given by the office of the same level and type. There is no limit on the number of candidates that a prosecutor can support. One joint session can support only one candidate, but one candidate can be supported by multiple joint sessions. Prosecutors vote in secret during joint sessions for the candidate they will support. If there is more than one candidate proposed, the joint session will support the one with the most votes.⁶⁷

⁶¹ Law on the SPC, Article 27.

⁶² Article 22 of the Law on the SPC sets out the structure of the representation.

⁶³ Law on the SPC, Article 24, paragraphs 4 and 5.

⁶⁴ Rules of procedure of the Electoral Commission, Article 27, paragraph 4.

⁶⁵ Law on the SPC, Article 23, paragraph 1 and Article 24, paragraph 3.

⁶⁶ *Ibid.*, Article 23, paragraph 3.

⁶⁷ *Ibid.*

The legal framework does not detail how joint nominations are administered and coordinated. Consent of the candidate is needed before a joint session can vote for him/her. However, there are no rules on when and how joint sessions of one or more prosecutor's offices should acquire the consent of the prosecutor it wishes to nominate. The list of candidates is then submitted to the EC.⁶⁸

All candidacies must include accompanying documentation within 15 days from the day the President of the SPC announces the start of the electoral procedure.⁶⁹ The EC must decide on a candidacy within 24 hours after submission and deliver its decision to the candidate without delay.⁷⁰ Applicants who submit incomplete applications will be notified to complete their documentation within 48 hours or lose consideration.⁷¹ Eight days after expiration of the aforementioned 15 days period, the Commission will determine the final list of candidates.⁷²

4. Campaign

The presentation of candidates and their programmes is regulated by the Rules on presentation of candidates in the nomination procedure for elected members of the SPC⁷³ ("Rules on Presentation") adopted by the EC. There are no detailed rules regarding campaign activity. The Rules on Presentation prescribe that the EC must treat candidates equally and without any discrimination, distribute their biographies and work programmes to all prosecutors' offices, and publish the documents on its website. It is up to the public prosecutors to make these programmes available to all potential voters within each prosecutor's office.

There are no explicit rules to limit the type of campaign activities. Heads of prosecutors' offices must allow candidates to publicly present their ideas, but there are no rules regulating whether candidates may be granted a leave of absence to do so.

All candidates are obliged to respect the rights of other candidates and to refrain from disclosing any inappropriate and offensive facts regarding another candidate's character and professional dignity.⁷⁴

5. Election Day and Election Boards

Elections are held at polling stations established in public prosecutor offices. Each polling station has a three-person Election Board (EB) chosen from deputy prosecutors who are not running in the elections. Main duties include establishing, monitoring and maintaining the secrecy and legality of voting at each polling station.

In appellate prosecutors' offices, EBs have three additional members in charge of voting conducted outside of the polling stations. These additional members are responsible for all the prosecution offices within their respective territories. Voters who are unable to be present at the polling station on Election Day may vote outside of the polling station if the EB is

⁶⁸ Instructions for the implementation of the procedure for nominating candidates for elective members of the SPC from the ranks of public prosecutors and deputy public prosecutors of 9 October 2015 (no reference number was given to this document), Article 8. Hereafter "Instructions".

⁶⁹ Law on the SPC, Article 28, paragraph 1.

⁷⁰ Instructions, Article 14.

⁷¹ *Ibid.*, Article 15, paragraphs 2 and 3.

⁷² *Ibid.*, Article 17, paragraph 1.

⁷³ Decision no. A 625/15 of 9 October 2015.

⁷⁴ *Ibid.*, Article 2.

notified in advance. In this case, the additional members will visit the voter at another location.⁷⁵

In order to vote, a prosecutor must be registered in the electoral register. Electoral registers are kept for each prosecutors' office individually. The EC is responsible for keeping accurate records. The electoral register is closed 15 days prior to the elections⁷⁶ and determines the number of eligible voters for each prosecutors' office.⁷⁷

All members of the EB must be present at the polling station during the entire voting procedure.⁷⁸ Space designated for voting has to be sufficient for the EB and to assure secrecy of voting and easy access by voters to polling boxes and election materials. Screens separating voting booths help to ensure secrecy. The EB posts at the polling stations the number and name of the polling station, the list of candidates, and the EC decisions establishing the polling station and appointing members to the EB.⁷⁹ The EC is obliged to provide all voting materials for each EB before elections begin.⁸⁰

The EB verifies the ballot box in the presence of the first voter at the polling station. The control slip is inserted into the ballot box and the ballot box is then sealed. For the voting to be legal the control slip must be present when the ballot box is opened after the voting has finished. If the control slip is missing, voting must be repeated.⁸¹

The Rules of Procedure of the EC prescribe the content of the voting ballot. The ballot contains the name of the candidates by public prosecutors' office, full name of the candidates, the type and rank of public prosecutor's office in which he/she serves and an instruction to circle only one candidate. In public prosecutors' offices that use languages of national minorities as official languages, ballots are also printed in the minority languages.⁸² Upon closing the polling station, the EB determines the number of voters who have voted, the number of unused ballots and separates the valid from invalid ballots. In case the number of ballots in the box is higher than the number of voters who have voted, the EB is dismissed and voting at that polling station is to be repeated.⁸³

EBs use standardized forms to report on their work, pursuant to the Instructions. The form which is part of the Instructions contains a section for noting the number of votes each candidate received. The report prepared by the EB is made in four copies out of which one must be presented to the public at the polling station and one has to be presented to the EC within ten hours after the polling station has closed.⁸⁴

⁷⁵ Rules of procedure of the Electoral Commission, Article 30.

⁷⁶ Rules of procedure of the Electoral Commission, Article 19, paragraph 5.

⁷⁷ Decision no. A625/15 of the Electoral Commission of 13 November 2015 on the final electoral register determining the total number of voters (656). In accordance with its discretionary power, the Electoral Commission established the number and the location of the polling stations (in total 17 stations) Decision no. A 625/15, from 28 October 2015, and adopted the decision on publishing the total number of voters in all prosecutors' offices in the Republic of Serbia and the decision on the total number of ballots (Decision no. A625/15 of the Electoral Commission of 13 November 2015).

⁷⁸ *Ibid.*, Article 31.

⁷⁹ Instructions, Article 7.

⁸⁰ *Ibid.*, Articles 18 and 19.

⁸¹ Rules of procedure of the Electoral Commission, Article 33.

⁸² *Ibid.*, Articles 20 and 21.

⁸³ *Ibid.*, Article 34.

⁸⁴ *Ibid.*, Article 35.

The EC establishes preliminary results of the voting within 36 hours from submission of the Electoral Boards' reports.⁸⁵ All electoral materials are to be kept on the SPC's premises for five years, after which they will be archived.⁸⁶

6. Complaints Procedure

Voters and candidates have the right to file a complaint with the EC alleging a breach of their voting rights or other alleged irregularities in the nomination or elections process. A complaint must be filed within 24 hours of the alleged breach.⁸⁷ The EC must decide on the complaint within 48 hours. If no decision is reached within this period, the complaint is deemed accepted. Otherwise, the EC can reject or accept the complaint. If the complaint is accepted, the challenged electoral activity has to be repeated within ten days.⁸⁸ The decision of the EC is final, but it can be challenged before the Administrative Court within 48 hours from the receipt of the decision. If the Administrative Court annuls the disputed electoral activities, the election will be repeated within ten days.⁸⁹ However, there is no deadline for when the Administrative Court is obliged to reach a decision.

7. Monitoring

Representatives of professional associations, non-governmental organizations and international organizations have the right to observe the process, thus ensuring transparency and oversight.⁹⁰ The EC may grant access to polling stations and the election process in general upon a request submitted by an interested party at least three days prior to elections.

8. Appointment of Elective Members to the SPC by the National Assembly of Serbia

The names of the prosecutors elected by their peers to the SPC must be submitted to the National Assembly of the Republic of Serbia at least 90 days before the term of the sitting members expires.⁹¹ However, the Law on the SPC does not contain any deadlines for the Parliament to decide. Before they are voted upon in a plenary session, the names are considered by the competent Committee of the National Assembly. A member of parliament can dispute a particular name. In the plenary, members of parliament vote on each disputed name separately but cannot propose someone different. As the SPC proposes one prosecutor for each position, the National Assembly does not have the possibility to choose between several options. Neither the Law on the SPC nor the Rules of Procedure of the National Assembly regulate the consequences of such an outcome. For undisputed candidates, members of parliament vote jointly.⁹²

B. SPC FINDINGS

This section will present the main findings related to the nomination and election processes for the SPC. On a general note, all electoral deadlines were respected in the election process. On 5 October 2015, six months before the expiry of the mandate of the elective members of

⁸⁵ *Ibid.*, Article 36.

⁸⁶ Instructions, Article 31.

⁸⁷ Rules of procedure of the Electoral Commission, Article 37.

⁸⁸ *Ibid.*, Article 38, paragraphs 1-3.

⁸⁹ *Ibid.*, Article 38, paragraph 4 and Article 39.

⁹⁰ Decision no. A 625/15 of 9 October 2015.

⁹¹ Law on the SPC, Article 21, paragraph 4.

⁹² Rules of Procedure of the National Assembly ("Official Gazette of Republic of Serbia", No. 20/2012), Article 201.

the sitting Council, the SPC President issued a decision to commence nominations thereby initiating the election process.⁹³

1. Attitude Towards the SPC as Established Through Interviews

Encouragingly, the monitors found that of the 107 prosecutors interviewed the majority expressed interest in the SPC elections. In particular, 87% of respondents considered the elections significant due to the important role of the SPC, the way elections were conducted, and by their expectation that the newly elected members would improve the performance of the SPC. At the same time, 36.1% of those interviewed stated that their office did not propose candidates for the SPC elections due to lack of interest. Among the reasons stated were negative experiences with the previous elections, heavy work load, and the perception that only candidates from Belgrade would stand a chance of election.

Interestingly, the monitoring process exposed limited knowledge of the role and competencies of the Council. Only 21.5% of those interviewed saw the SPC as a body to preserve the autonomy and independence of the profession and stated that the SPC should engage in the fight against political and other influences encountered by prosecutors. Only 24 out of 107 respondents considered the selection of prosecutors to be a basic role of the SPC.

2. Process of Nomination

Probationary deputy prosecutors serving their initial three year appointment are denied the right to vote or stand as candidates in elections by regulation. Because of this, an uncertainty arose whether they could participate in joint sessions of the public prosecutors' offices when they were deciding to nominate candidates. The Law on the Public Prosecutors' Office ("Law on the PPO") and the Rulebook on administration in public prosecutors' offices ("Prosecutors Rulebook") define a joint session as one comprised of the public prosecutor and all deputy prosecutors in that public prosecutor's office.⁹⁴ As there are no exceptions contained in this definition, a literal reading would have them participate in the joint sessions. However, in 2011 the EC had doubts about this issue and asked for clarification from the Ministry of Justice. In its response, the Ministry of Justice advised that the probationary deputy public prosecutors should not participate in the joint sessions for nominations. Yet based on the monitors' interviews with voters 34% of respondents stated that they observed only tenured deputy prosecutors vote while all others indicated that all public deputy prosecutors present at the joint session were allowed to vote for proposed candidates.

⁹³ Decision no. A 625/15, from 5 October 2015 ("Official Gazette of Republic of Serbia", No. 84/2015). The election process for the members of the SPC was initiated by the decision of the President of the SPC issued on 5 October 2015, within the six month timeframe specified by the Law on the SPC. The Decision of the Electoral Commission laid out the schedule for the elections process, including the date of the elections on 1 December. It also specified the deadline in which nominations both personal and from joint sessions should be submitted (21 October), a 24 hour deadline from the receipt of the lists to confirmation of the lists (22 October), the deadline by which final electoral lists shall be compiled (29 October), completion of the electoral roll (15 November), completion of a certified extract of the electoral roll (16 October), determination of polling locations (16 November), formation of electoral boards (16 November), public announcement on the time and date of elections (20 November), submission of electoral materials (27 November), opening of polling stations (1 December 08:00 – 13:00 hours), submission of election materials from polling stations (1 December 22:00 hours), and the declaration of election results (at the latest by midnight on 2 December).

⁹⁴ The Law on Public Prosecutors' Offices ("Official Gazette of Republic of Serbia", no. 116/2008, 104/2009, 101/2010, 78/2011, 101/2011, 38/2012, 121/2012, 101/2013, 111/2014 and 117/2014), Article 31; Rulebook on administration in Public Prosecutors' Offices, ("Official Gazette of the Republic of Serbia", no. 110/2009, 87/2010 and 5/2012).

This lack of clarity in the legal framework also raises a quorum issue for joint sessions because legally there must be at least two thirds of deputy prosecutors participating in joint sessions (all of them, not just those with tenure),⁹⁵ and there are no provisions on what constitutes a quorum in cases when some of the deputy prosecutors are excluded from taking part in the session.

This practice of making probationary prosecutors ineligible to vote and stand for election seems discriminatory and the rationale is unclear. However, a possible rationale for this could be to avoid a deputy prosecutor from electing a representative for five years, which goes beyond the voter's own three year term. Also, the practice could be consistent with international and regional good practices whereby the use of probationary prosecutors are discouraged because they are deemed to be more susceptible to external influence and more likely to adjust their behavior to ensure they are chosen for a permanent position. This rationale may help explain why probationary prosecutors are not included or allowed to participate in the election process.

For all joint sessions, materials of the SPC regarding the election process activities and timeframe were forwarded from prosecutors to deputy prosecutors prior to the session and all public prosecutors' offices held joint sessions convened solely for nominations.. All joint sessions began with presiding prosecutors explaining the nomination procedure. Candidates consented to nomination prior to voting.

Provisions are lacking for how joint nominations are made, meaning that no co-ordination is provided by the rules. Also, there are no rules on when and how the joint session acquires the consent of the prosecutor or deputy prosecutor it wishes to nominate if he/she is not from the same office.

Two of the submitted nominations were rejected because they were submitted by the prosecutor's offices to which the candidates were delegated, which were not of the same level as the ones to which they were appointed, which contravenes the relevant provisions of the Law on the SPC (see above under the section on the legal framework governing the process of elections of members of the SPC).

Joint sessions were held in 68% of the 25 public prosecutors' offices in which monitors conducted interviews, while 32% of the offices did not hold joint sessions regarding the nomination process. The most frequent reason provided for this discrepancy was that prosecutors did not express interest in running for nomination.

The vast majority (86.9%) of prosecutors interviewed declared that they were informed regarding the rules of the electoral process at the joint sessions, while the rest mentioned that they were aware of the rules mostly because they were published on the SPC website. To the question "Have you been invited to nominate candidates in advance", 58.5% of the respondents replied that they had not, while 41.5% answered they had. On most joint sessions, prosecutors were offered only one candidate; on some there were two or three candidates to choose from, and in one basic prosecutor's office there were six candidates. Respondents from 14 out of 17 public prosecutors' offices in which joint sessions were held stated that secrecy of the vote was ensured; in three, there was no secret voting but unanimous declarative support for the proposed candidate. The vast majority (92.5%) of

⁹⁵ Law on the Public Prosecutors' Offices Article 114.

respondents did not collect signatures for nomination in their prosecutor's office, nor were they asked to sign to support another prosecutor.

At some of the joint sessions monitors observed uncertainty as to what characteristics or qualifications an ideal candidate for nomination should possess. The Law on the SPC and the bylaws of the SPC prescribe the formal criteria required for the submission of a candidacy, but it appeared that understanding of the role of the council was unclear to some prosecutors and this left some wondering then what type of person would be best suited to carry out those competences and functions. Some prosecutors were unsure whether those prosecutors whose work results have been outstanding should be considered for the position or whether integrity and enjoyment of public trust were more integral to the competences and functioning of the SPC.⁹⁶

The EC deemed twenty-three candidate registration applications incomplete meaning they had to be resubmitted. Reasons included no indication whether the vote at the joint sessions which nominated the candidates was secret, no information on which list the candidate applied for, or the documentation was incomplete for other reasons. In total, 35 applications were received out of which 31 were accepted.⁹⁷ Two were rejected because the candidates were nominated by a prosecutor's office in which they were delegated and was not of the same level as the one they were appointed to, and two were withdrawn. In comparison, there were 18 candidates in the 2011 elections.

3. Campaign

Twenty-three out of 31 candidates submitted biographies and election programmes to the EC which were published on its webpage. As many as 98.2% of respondents confirmed that candidates presented their programmes in their offices. 85.7% of the aforementioned respondents were familiar with the programmes through the personal presentation of some of the candidates, and 63.2% of them received presentations in electronic form. In very few cases, respondents were acquainted with candidates through brochures that were sent by mail to the prosecutors' offices. Two of the six interviewed candidates presented their programmes at prosecutors' offices other than their own. Candidates who presented their programmes were either given a day off or had to use their annual leave. Some respondents believed that personal presentation of candidates' programmes should be mandatory and that time provided for running the campaign should be prolonged. Those candidates who were interested in

⁹⁶ The Prosecutors' Association of Serbia ('PAS') tried to clarify this issue by publishing an article on its webpage calling upon its members to support those who would stand for the interests of the professional community instead of rewarding those with good results or extensive experience. See letter of the President of PAS, available at PAS website: http://uts.org.rs/index.php?option=com_content&view=article&id=1105:izboriza-izborne-clanove-drzavnog-veca-tuzilaca&catid=98:programi-kandidata-za-dvt&Itemid=737 (last viewed on 20 January 2016).

⁹⁷ There were 11 female candidates and 21 male. At the appellate level, three out of four candidates were from Belgrade (two from Belgrade Appellate Prosecution Office and one from the Office of the War Crimes Prosecutor), while one was from Novi Sad (the one who was elected). At the higher prosecution office level all candidates were coming from different towns across Serbia (Užice, Novi Pazar, Smederevo, Požarevac, Čačak, Belgrade, Zrenjanin, Niš) – the one from Novi Pazar was elected. At the basic prosecution level candidates were from Obrenovac, Layarevac, Novi Pazar, Smederevo, Pančevo, Leskovac, Šabac, Kruševac (one from each town) and Belgrade (five candidates). The elected candidates are from Belgrade and Šabac. Three candidates were running to be elected as representatives of the autonomous provinces, two from Vojvodina and one from Kosovo. One of the candidates from Vojvodina was elected. Among the six elected candidates three are female and three are male.

doing so could also send their programmes to PAS, which published the programmes on its website.⁹⁸

Candidates' programmes reflected a number of commonly-supported goals: the need for a more independent SPC to serve the interests of prosecutors, better working conditions, changes to the Rulebook on performance evaluation and changes to legislative acts to achieve this.⁹⁹ It is worth noting that, at least in the published programmes, there were no unfair campaigns targeting another candidate on personal grounds and all proposals were in line with the competences and mandate of the SPC.

4. Preparations for Election Day

The EC confirmed the election lists and set the total number of polling stations by 28 October 2015. Taking into account the recommendation of PAS that voting in smaller public prosecutors' offices might compromise the secrecy of the ballot thus raising suspicion of election fraud, the EC aimed at organizing polling stations in such a way that no less than 20 prosecutors voted at each station. Exceptions were made when the interest of proximity to the polling stations so required.

The President of the EC timely notified prosecutors about the date, time, and location for elections and reminded them to inform all deputy prosecutors at least seven days before election day and to post the communication on the prosecutor's office bulletin board.¹⁰⁰

In a letter sent to appellate public prosecutors' offices on 26 November 2015, the EC recommended that all trials set for election day be postponed and that official vehicles of the public prosecutors' offices be at the disposal of voters for transport to polling stations.¹⁰¹

5. Election Day

Elections were held on 1 December 2015 from 8:00 to 13:00 hours at 17 polling stations (four in Belgrade, three in Novi Sad, three in Kragujevac, three in Niš and one each in Požarevac, Valjevo, Užice and Kraljevo). Prosecutors from 92 public prosecutors' offices voted for six elective members of the SPC.

Voting was performed by circling only one candidate's name on the ballot form consistent with legal requirements.¹⁰²

According to information gathered by the monitors, all polling stations opened at 8:00 save one which opened at 8:25. No irregularities concerning the ballot boxes or the privacy screens were observed. Names and numbers of polling stations were prominently displayed, along with the lists of candidates. However, at three stations the notice determining the

⁹⁸ All programs were made available at the PAS website at http://www.uts.org.rs/index.php?option=com_content&view=category&id=98&Itemid=737 (last viewed on 15 January 2016).

⁹⁹ A list of the programs is available at the SPC website at <http://www.dvt.jt.rs/izborna-komisija-predstavljanje-kandidata.html> (last viewed on 20 January 2016).

¹⁰⁰ Communication no. A 625/15 from 13 November 2015.

¹⁰¹ Minutes from the Electoral Commission session on 26 November 2015 (no. A 625/15).

¹⁰² PAS in its letter to the EC suggested that Article 21 of the Rules on Procedure should be changed to allow basic level prosecutors to vote for two candidates since two of their peers were being elected to the SPC. However, the EC rejected that proposal, explaining that the electoral cycle had already begun and the election rules could not be changed.¹⁰²

location of the polling station or the appointment of the members of the EBs were not displayed.

Prior to voting at 16 out of the 17 polling stations the ballot box was checked and the control slip filled out in the form prescribed by the Instructions. It was then inserted into the ballot box and this was witnessed by the first voter who showed up at the polling station. At one polling station, however, the control slip was not inserted at the beginning of the voting process, but at a later time (8:45). After consulting the Rules of Procedure, one of the members of the EB called the first voter to return to the station to fill in the control slip. No other voters approached the polling station in the meantime, so there was only one ballot in the ballot box at the time the control slip was inserted.

All ballots contained the same content written in all minority languages in official use in Serbia, regardless of whether that language was in official use at the particular polling station, which led to confusion among some voters and questions as to how to vote – whether it was necessary to circle the name only on the list in one language. Some of the voters circled the name of the same candidate under several languages on the ballot, and these ballots were treated as valid.

Voter identity checks were conducted at six polling stations, while at eleven polling stations voters were not required to present personal ID or any other document if known personally to members of the EB.

Monitors observed that all 17 polling stations provided privacy screens and there were no complaints concerning a breach of secrecy of the vote. However, monitors at two polling stations observed violations of the voting secrecy. At one polling station voters asked the members of the EB how to fill out the ballot. Members of the EB then approached the voting covers to demonstrate, thus violating the privacy of the voters and secrecy of the voting process. At the other polling station, the secrecy of the vote appeared to have been breached due to the large number of people present in the room at the same time.

With no exceptions, all prosecutors present at the polling stations at closing time were allowed to vote. The EBs were continuously present at 13 polling stations but were not continuously present at four polling stations, either because all voters from those polling stations already cast their votes so they felt there was no need for them to remain, or a single representative of the EB was present continuously. At one polling station in Belgrade, EB members were late since they were stuck in traffic and had to come from outside of Belgrade, so the voters had to wait for all of the appointed EB members to gather before they could vote.

The order at polling stations was not violated and there were no interruptions of the voting process.

The closing of the polling stations occurred between 11:30 and 13:20 hours. Some polling stations closed early, even though the law does not explicitly allow for it, because it was evident that all prosecutors had already voted and there was no need to keep them open until 13:00 hours. Most of the polling stations (13 out of 17) closed at 13:00 hours. During the vote count at all 17 polling stations the ballot box was checked for the control slip. A number of unused ballots were determined and separated into special envelopes with appropriate

markings and sealed. Then the number of voters was tallied. Valid ballots were separated from invalid ones, and the voting material was handed over to the EC.

There seemed to be a discrepancy between the provisions of the Rulebook of the Election Commission guiding the work of EBs and the forms to be used by the EBs during the election day when counting the votes. The forms used on election day allowed the boards to enter election results for individual candidates and record possible complaints from the observers, but that is not specifically regulated by the Rulebook.

Election boards from all 17 polling stations submitted to the EC their minutes summarizing the results in accordance with Article 35 of the EC Rules of procedure.

6. Complaints Procedure

There were no complaints filed regarding the voting process or the published voting results.

7. Overall Impressions of Voters

According to the results of the survey conducted by the monitors, the overall impression of respondents was that the elections process was clear and transparent and well organized. However, the respondents in the survey pointed out several shortcomings in the process that were not covered by the monitor's questionnaire. For some voters, the distance of polling stations from their offices/ place of residence was an issue. Some respondents thought that all voters should be allowed to vote for all six elective candidates. Some suggested that members should be elected at appellate levels in order to ensure wider territorial representation at appellate levels in order to ensure wider territorial representation.

8. National Assembly

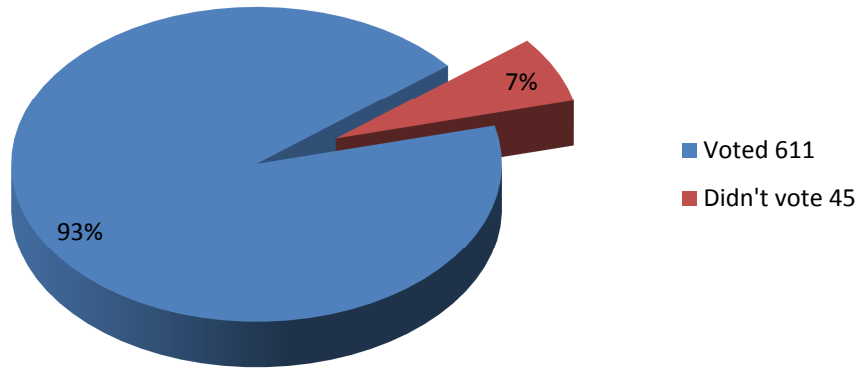
The SPC submitted the list of elected candidates to the National Assembly of the Republic of Serbia and the National Assembly then confirmed all the names on 12 February 2016.

C. FACTS AND FIGURES: ELECTIONS FOR THE SPC

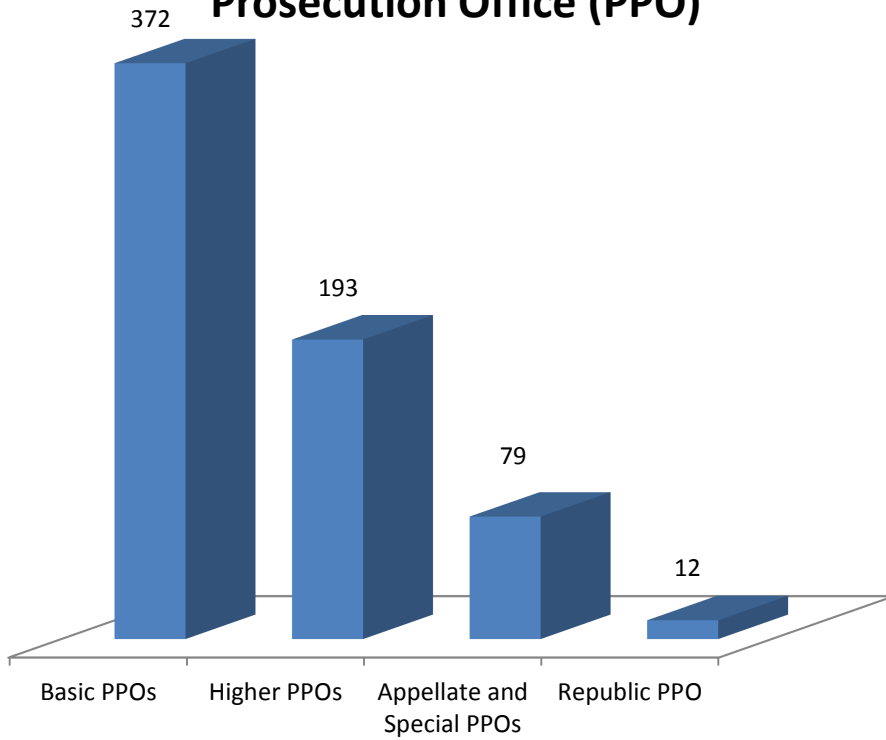
Turnout

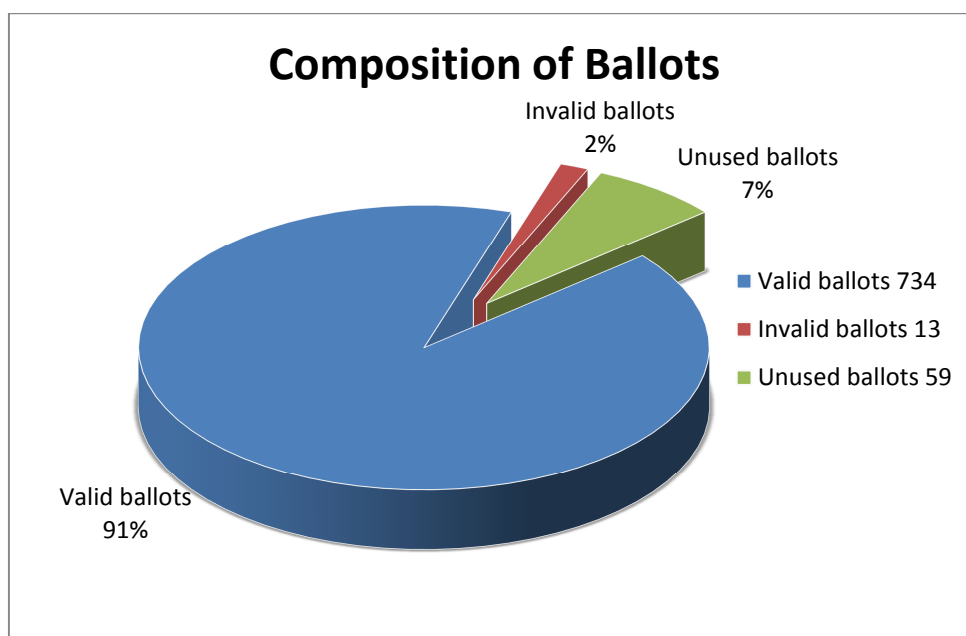
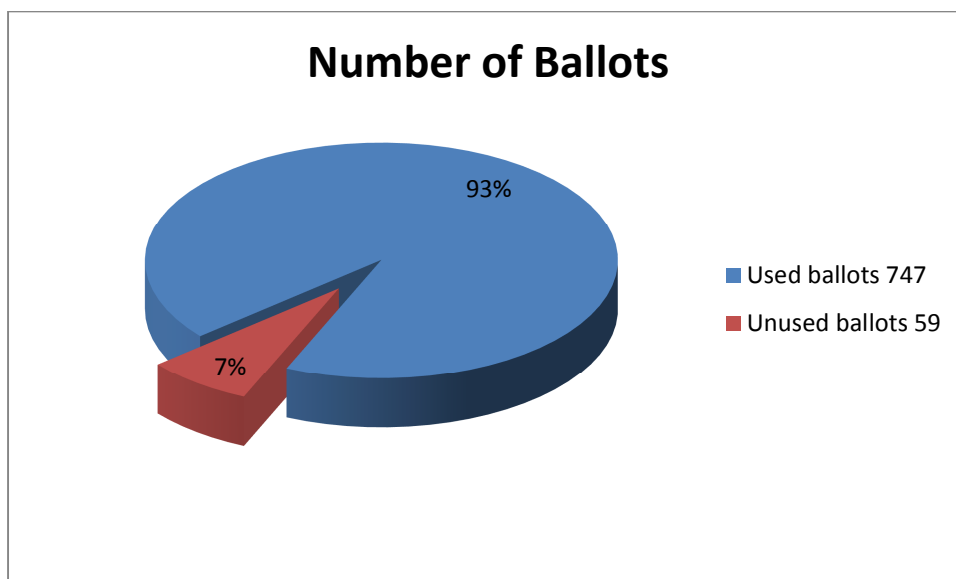
- Total number of eligible voters: 656
- Total number of voters who cast ballots: 611
- Total number of prosecutors who did not vote: 45

Voter Turnout



Number of Voters by Public Prosecution Office (PPO)





D. SPC RECOMMENDATIONS

Based on the monitoring undertaken of the peer elections as described above, ODIHR and the Mission to Serbia identified the following recommendations for improving the Serbian national legal framework and practice.

1. SPC Composition Regarding Elective Members from the Rank of Prosecutors

- *Amend the constitutional and legal framework regarding composition of the SPC and election of its members from the rank of prosecutors.* Future reform of the SPC composition should consider allowing prosecutors from all levels and types of prosecutorial offices to vote for prosecutors from all levels and types of prosecutorial offices.

- *Discuss ways of ensuring geographic diversity in the Council. The reform should aim at ensuring broader territorial representation while maintaining representation of all levels and types of prosecution offices.*

- *Consider amending the Law on the SPC so that prosecutors are appointed as full time SPC members with equal pay for prosecutor and deputy prosecutor members. This would ensure uniform practice between the SPC and HJC. It would also help to strengthen the role of the SPC and to increase its leverage and efficiency if SPC members were able to focus full-time on conducting the work of the SPC. Remuneration for prosecutors and non-prosecutor members should be the same.*

2. Role of the National Assembly

- *Amend the Constitution regarding the procedure for appointing members of the SPC.* The role of the National Assembly should be reconsidered. Its current broad involvement makes the composition of the SPC subject to the control and influence of the National Assembly, thereby undermining separation of powers principles. This recommendation is consistent with similar recommendations made by the Venice Commission and GRECO with equal application to the SPC and HJC.

- *Amend the Law on the SPC regarding the National Assembly procedure of appointment of SPC members.* Currently, the Law on the SPC does not contain any deadlines for Parliament to decide on candidates and neither does any other legal act. There are no procedures for what to do in the case that the National Assembly rejects the prosecutors proposed by the SPC.

- *Regulate in more detail the election procedure for other elective members.* Elections for the other elective members of the SPC are not regulated by law. The member of the Bar and the member chosen from academia should be elected through a transparent process based on objective criteria.

3. Nomination Rules

- *Amend the legal framework to make the conduct of joint sessions on support to candidates obligatory.* This would make the process more inclusive for all prosecutors.

- *Clearly stipulate the way in which joint nominations should be made, as well as the rules on when and how a joint session acquires the consent of the prosecutor it wishes to nominate if he/she is not from the same prosecutor's office.*

- *Clarify the status of probationary deputy prosecutors in the election process.* If the practice of probationary prosecutors remains, the role of these prosecutors should be clarified in law and in practice as to their eligibility to vote and stand for election into the SPC. However, given the perception of such probationary prosecutors as lacking in independence and impartiality according to international and regional standards, abandoning the practice of probationary deputy public prosecutors should be considered.

- *Clearly stipulate how joint sessions should determine the quorum necessary to decide on candidates' nominations.* It cannot be determined from this monitoring exercise how joint sessions established their quorum to work and decide on candidates' nominations when probationary deputy prosecutors did not take part. The law defines a quorum as participation of at least two thirds of all deputy prosecutors and requires a majority of present deputies to vote for a decision in order for the decision to be adopted.

- *The SPC or EC should provide specific and detailed instructions to public prosecutors' offices on how to complete and submit the forms for candidacies.* In the 2015

elections, the EC sent back 23 candidates' documentation to be amended as prescribed. This indicates that prosecutors need more precise instructions on these procedures.

4. Candidacy and Campaign Questions

- *Clarify the legal framework regarding whether one candidate can apply for two different voting lists.* The issue arises when one wishes to simultaneously be considered for the list of his/her type and rank of appointment and for the list from the autonomous provinces.

- *Develop Rules on campaigning to ensure that candidates have enough time and resources to publicize their programmes.* Gaps in the legal framework resulted in inconsistent campaigning practices. In order for candidates to be better able to present their programmes to the wider professional public, benefits such as paid leave, reimbursement of travel costs, and similar would help enable candidates to raise awareness of their programmes and explain how they would serve their peers on the SPC. These initiatives could also aid in reaching out to peers from other geographical areas and thus potentially contribute to more diverse geographical representation in the SPC. The timeframe for the campaign is also very short and does not afford candidates adequate time to travel and present their programmes.

5. Rules on Complaint Procedure

- *Amend the Rules of Procedure regarding the complaint procedure.* The deadline for filing the complaint should be set at 24 hours from the time the claimant knew or could have known of the alleged breach.
- *Develop the rules on procedure before the Administrative Court.* There are no specific provisions for effective remedies before the Administrative Court. Currently there are no rules on the timeframe for when the Administrative Court must act and decide. This legal deficiency could potentially lead to significant delays in the election procedure.

E. LEGAL FRAMEWORK GOVERNING THE PROCESS OF SELECTION OF JUDGE-MEMBERS OF THE HJC

1. Constitutional and Legal Framework

The legal framework of the HJC is set in the Constitution of the Republic of Serbia¹⁰³ and the Law on the High Judicial Council ("Law on the HJC").¹⁰⁴

The HJC has eleven members. Three of them are *ex officio* members and eight are elective. The *ex officio* members are the President of the Supreme Cassation Court, the Minister of Justice and the Chair of the parliamentary committee for parliamentary oversight of the justice sector. Six out of eight elective members are judges. The remaining two are representatives of legal academia and the Bar Association respectively, nominated in separate procedures. The elective members are appointed for a five-year term and can be re-appointed

¹⁰³ Constitution of the Republic of Serbia ("Official Gazette of the Republic of Serbia", No. 98/2006).

¹⁰⁴ Law on the High Judicial Council ("Official Gazette of the Republic of Serbia", No. 116/2008, 101/2010, 88/2011 and 106/2015).

to the same function but not in successive terms.¹⁰⁵ During the term, a judge-member does not perform his/her judicial duties in court and cannot be appointed as a judge of a different court.¹⁰⁶

2. Election Procedure

The election procedure for the six judge-members is governed by the Law on the HJC and bylaws of the HJC (“Bylaws”) and its Electoral Commission (EC).¹⁰⁷ Elections are conducted and overseen by the HJC.

The law on the HJC divides the appointment procedure into several phases. It begins when the President of the HJC issues a decision, at least six months before the term of the sitting members expires, to open the election process for new members.¹⁰⁸ This decision is followed by the nomination procedure, the campaign and elections. Once the new members are elected by their peers, their names are submitted to the National Assembly for confirmation or rejection. The HJC is obliged to propose to the National Assembly candidates who were elected in the procedure regulated by the Law on the HJC.¹⁰⁹

The EC is a permanent working body established within the HJC and tasked with organizing the elections.¹¹⁰ The Commission is composed of a President, four members and their substitutes. All are chosen from the ranks of judges who are not members of the HJC, are not standing candidates in the elections, and have given their consent prior to being appointed. The EC is independent and autonomous. All courts are obliged to cooperate with the EC and to submit requested data and information. The EC reports to the HJC.¹¹¹ It adopts its decisions by majority vote.¹¹² Transparency of the EC’s work is facilitated by press conferences, communiqués and placement of public announcements on its website.¹¹³ All members of the EC are allowed to vote.¹¹⁴

The EC issues a decision on electoral activities and determines the deadlines within which all electoral activities must take place, including the plan of activities for the EC and all other stakeholders in the election process. The EC submits the plan to the courts’ presidents who are obliged to disseminate the information to judges in their courts.

3. Process of Nominations

All levels and types of judges are represented in the HJC. Article 22 of the Law on the HJC sets out the structure of the representation: one member from the Supreme Cassation Court, Commercial Appellate Court and Administrative Court; one from the appellate courts,¹¹⁵ one from the higher and commercial courts; two from basic, misdemeanour and higher

¹⁰⁵ *Ibid.*, Article 12, paragraph 2.

¹⁰⁶ *Ibid.*, Article 11, paragraph 2 and Article 12, paragraph 3.

¹⁰⁷ These documents can be found on the HJC website available at <http://vss.sud.rs/sr-lat/postupak-predlaganja-kandidata-za-izborne-%C4%8Dlanove-visokog-saveta-sudstva> (Last viewed on 15 January 2016).

¹⁰⁸ Law on the HJC, Article 21, paragraph 1.

¹⁰⁹ *Ibid.*, Article 20, paragraphs 1-3.

¹¹⁰ *Ibid.*, Article 15, paragraph 1.

¹¹¹ Rules of Procedure of the Electoral Commission, Article 9.

¹¹² *Ibid.*, Article 10, paragraph 2.

¹¹³ Law on the HJC, Articles 25 – 27.

¹¹⁴ Rules of Procedure of the Electoral Commission, Article 4.

¹¹⁵ The appellate court representative in the HJC was elected on 8 March 2012. These elections were organized after the resignation of Judge Lukić so the mandate of Judge Tomić elected in 2012 lasts until March 2017. Thus, there were no elections for the representative of appellate courts in this election process.

misdemeanour courts; and one from the territory of autonomous provinces. Voters must vote for the list of candidates from the type of court in which they preside as judges.

An exception to this rule is the election procedure for judges sitting in courts located in the autonomous provinces. They vote for two candidates: one coming from the same type and level of court and the other from the list of candidates representing judges from the autonomous provinces. Candidates standing for election to represent judges from the autonomous provinces may come from any type of court located in an autonomous province.¹¹⁶ It should be noted that only the provinces are territorially represented in the HJC, while the other parts of the country are not.

If delegated to a court of a different type or level than the one to which they were appointed, judges must vote for candidates from the same level and type as the one they were appointed to and not for ones of the type and level they were delegated to.¹¹⁷

Judges must be tenured in order to be eligible as a candidate and to vote.¹¹⁸ Tenure means that they have been appointed to a permanent judgeship by the National Assembly and excludes those appointed for an initial probationary three year term.¹¹⁹ Presidents of the courts cannot be candidates.¹²⁰

A judge can obtain candidate status in one of three ways. One way is for a joint session of one or more courts of the same level and type to nominate him/her. If delegated to a court of a different type or level than the one to which they were appointed, judges cannot be nominated by that court. Judges may also become candidates if proposed by a court from the territory of an autonomous province in which the judge sits. Secondly, the status of candidate can be obtained by the expressed support of at least 20 judges from the courts of the same level and type as the court to which he or she is appointed or courts from an autonomous province, where relevant. Finally, candidates from the ranks of judges of the Supreme Cassation Court, Appellate Misdemeanour Court, Commercial Appellate Court and Administrative Court become candidates simply by applying.¹²¹

A joint session may nominate only one candidate. Voting at the sessions is secret.

Judges may apply to stand as candidates for elections within a 15-day timeframe, starting from the day of publication of the decision on initiation of the elections process. Depending on whether they apply individually or they are nominated by a joint session of a court, the application is submitted by the candidate or by the president of the court in question. The EC reviews all applications and must notify an applicant regarding an incomplete application within 24 hours from receipt. The applicant has 48 hours to complete the application. Within eight days from conclusion of the 15-day timeframe, the EC must publish a final list of candidates.¹²²

¹¹⁶ Law on the HJC, Article 23, paragraphs 4 and 5.

¹¹⁷ *Ibid.*, Article 23 paragraph 2, and Article 24, paragraph 4.

¹¹⁸ *Ibid.*, Article 23, paragraph 1.

¹¹⁹ *Ibid.*, Article 24, paragraph 3.

¹²⁰ *Ibid.*, Article 23, paragraph 5.

¹²¹ *Ibid.*, Article 23, paragraphs 2 and 4. The Electoral Commission issued an Instruction on implementation of the nomination procedure of candidates for elective members of the HJC from the ranks of judges (Instruction no.013-00-3/2015-02 of 12 October 2015. "Official Gazette of the Republic of Serbia", No. 86/2015). The Instruction includes various candidacy application forms for judges.

¹²² Law on the HJC, Articles 28 – 30.

4. Campaign

Rules on the Procedure of the EC contain some basic provisions regarding candidates' presentation of their programmes,¹²³ but there are no detailed rules on permissible and impermissible campaign activities.

Candidates submit their biographies and accompanying material to the HJC, which then publishes their biographies and programmes (if submitted – there is no explicit requirement to submit a programme) on its website. Candidates may campaign in support of their candidacy but there are no explicit rules allowing them to take a leave of absence in order to do so.¹²⁴

5. Election Day and Election Boards

Voting is conducted at polling stations located in courts as determined by the EC.¹²⁵ Voting is done by secret ballots verified by the EC.¹²⁶ Privacy screens are provided to separate voting booths and ensure secrecy. Ballots are printed in minority languages where appropriate.¹²⁷ In order to vote, a judge must be registered in the electoral register. Electoral registers are kept for each court to determine the names and number of eligible voters and are closed 15 days before Election Day. The EC is responsible for maintaining accurate records.¹²⁸

The EC appoints EBs for each polling station to organize the election process.¹²⁹ The EBs' decisions are made by a majority of its members and its work is public.¹³⁰ An EB directly oversees and organizes the election process at a polling station, ensures the secrecy of the ballot, establishes the results of the vote, preserves order during the election process, and performs other tasks as defined by the EC. The EC appoints the boards' permanent and additional members from the ranks of judges who are not standing candidates in the elections. Three additional members coordinate voting by judges unable to make it to the polling station. Voting outside of the polling stations may be allowed if the voter notifies the EB one day in advance.¹³¹

Twenty-four hours prior to Election Day the ballots and other election materials are provided to the EB. The EB convenes at the polling station on Election Day one hour before the polling station opens. Furthermore, the board prepares the polling location for elections by setting up privacy screens and posting relevant announcements. The EB should verify the identity of each voter by reviewing his/her ID and verifying the name against the election roll.¹³² The EB verifies the ballot box in the presence of the first voter by placing a control slip into the ballot box, which is then sealed.¹³³

¹²³ Article 28 of the Rules of Procedure of the EC.

¹²⁴ Rules of Procedure of the Electoral Commission, Article 23.

¹²⁵ The Electoral Commission determined 49 polling stations, adopting its Decision on polling stations on 28 October 2015 (Decision no. 021-02-99/2015-02)

¹²⁶ The Electoral Commission determined the form of the ballots, as well as the number of ballots to be printed (Decision no. 013-00-00120/2015-02).

¹²⁷ Rules of Procedure of the Electoral Commission, Article 22, para. 3.

¹²⁸ Rules of Procedure of the Electoral Commission, Articles 18 and 19.

¹²⁹ Law on the HJC, Article 31, paragraph 3 and Article 32, paragraphs 1 - 2.

¹³⁰ *Ibid.*, Articles 33-35.

¹³¹ Rules of procedure of the Electoral Commission, Article 31.

¹³² *Ibid.*, Article 30.

¹³³ *Ibid.*, Article 36.

After the voting process is concluded, the EBs determine the results for each polling station.¹³⁴ The board first verifies that the control slip is in the ballot box. If it is not, the board is dismissed and voting in this location should be repeated. If the control slip is verified, the board determines the number of voters who have voted, separating used from unused ballots and placing the unused ballots in a separate envelope. The board reviews the used ballots by separating invalid ballots (those that are blank, or those from which it cannot be determined for whom the vote was cast) from valid ballots and placing the invalid ballots in a separate sealed envelope. To determine how many votes each candidate has received, the board separates the ballots for each candidate into separate envelopes. After reviewing the results of the vote, the EB drafts minutes which include statistics on turnout, used and unused ballots, votes received by each candidate and other relevant facts for the voting process. Once the EC receives all the ballots and other voting materials from the polling stations it determines the final turnout, the number of unused, valid and invalid ballots, the number of votes received by each candidate at each individual polling location and the total number of votes for each candidates' list.¹³⁵ From the time of closing of the polling stations the EB has 12 hours to submit the report with the results of a particular polling station to the EC, while the EC has 36 hours to determine the election results.¹³⁶ The minutes determining the final results are signed by all members of the EC and submitted to the HJC.¹³⁷

6. Complaints Procedure

Voters and candidates have the right to file a complaint with the HJC in case of an alleged breach of their election rights or other irregularities in the elections process. The complaint must be filed within 24 hours from the moment that an alleged breach or irregularity occurred. The HJC will decide on the complaint within 48 hours from receipt and shall notify the applicant of its decision. If no decision is reached by the HJC within the prescribed 48 hour deadline, the complaint is considered valid. If this happens, the contested election will be annulled and repeated within ten days.

The decision of the HJC concerning the complaint can be challenged by filing a lawsuit with the Administrative Court. The lawsuit is submitted to the Election Commission, which then must submit information concerning the dispute to the Administrative Court within 24 hours from filing of the lawsuit. If the complainant is successful and the Administrative Court annuls the election, it must be repeated within ten days from the day of the court decision.¹³⁸ However, there is no deadline for when the Administrative Court must reach a decision.

7. Monitoring

Domestic and international observers who wish to monitor the process of elections must submit a request to the EC.¹³⁹ The request must contain the name of the organization and the number of observers proposed, their names, ID numbers and which activities they are interested in monitoring. The EC decides on the requests.

¹³⁴ All EBs use the same form of minutes issued by the Electoral Commission in the Instruction on implementation of the nomination procedure of candidates for elective members of the HJC from the ranks of judges.

¹³⁵ Law on the HJC, Article 34.

¹³⁶ Rules of procedure of the Electoral Commission, Article 38, paragraph 4 and Article 39, paragraph 1.

¹³⁷ *Ibid.*, Article 39.

¹³⁸ *Ibid.*, Articles 40-42.

¹³⁹ Decision on monitoring elections for elective members of the HJC from the ranks of judges of 11 December 2015, No. 013-00-123/2015-02.

8. Appointment of Elective Members to the HJC by the National Assembly of Serbia

The names of the judges elected by their peers must be submitted to the National Assembly for consideration at least 90 days before the term of the sitting members expires.¹⁴⁰ There are no deadlines for the Parliament to decide on candidates.

Before the proposed members are voted on in a plenary session, the names are considered by the competent committee of the National Assembly. A member of parliament can dispute the proposal of a certain judge. In the plenary, members of parliament vote on each disputed judge separately, with the possibility to reject, but cannot propose a different candidate. The HJC proposes one judge per position so the National Assembly does not have the opportunity to choose between several options. However, neither the Law on the HJC nor the Rules of Procedure of the National Assembly regulate the situation where a proposed candidate is rejected. Members of parliament vote jointly for all undisputed candidates.¹⁴¹

F. HJC FINDINGS

All legal deadlines were respected in the election process. In line with the Law on the HJC the Supreme Court President in his capacity as President of the HJC adopted a decision on 5 October initiating the elections process.¹⁴²

1. Attitude Towards the HJC as Established Through Interviews

Nearly all of the 113 judges interviewed (94.6%) considered the elections to the HJC important in order to choose their own representatives and because of the HJC's responsibility to guarantee the functioning of the judiciary. A very small number, 5.4%, had a more negative view indicating the HJC was subject to political influence, its composition exposed shortcomings, and there should be more judges on the Council.

Of respondents, 30.09% regarded the role of the HJC to be preservation of the independence of the judiciary and countering political and other undue influence on judges. Even less, 28.32% listed the selection of judges amongst the HJC's tasks. Many described the HJC's role in conducting performance evaluations for judges.

2. Process of Nomination

Sessions to discuss support to potential candidates were held in only half of the courts where interviews were conducted.¹⁴³ In these cases, respondents claimed that their courts did not nominate any candidates because there were no interested judges. The reasons for such lack of interest were explained differently – ranging from bad experiences from previous elections

¹⁴⁰ Law on the HJC, Article 21, paragraph 4.

¹⁴¹ Rules of Procedure of the National Assembly ("Official Gazette of the Republic of Serbia", No. 20/2012), Article 201.

¹⁴² The Decision also specified the 15-day deadline in which nominations should be submitted (29 October). The Electoral Commission adopted the Decision on electoral activities and deadlines (timeframe) on 12 October 2015, establishing the timeframe for realization of all electoral activities. The Decision was amended on 13 November 2015 when the election date was moved from 14 December to 21 December 2015 at the request of Judge Branislava Goravica, due to the fact that the "Kopaonik School of Natural Law" was organized between 13 December and 17 December 2015. See Minutes from the 11th session of the HJC Electoral Commission held on 13 November 2015 (reg.no. 021-02-00117/2015-02).

¹⁴³ Monitors conducted interviews with 113 judges in 35 Courts.

to heavy workloads and the view that only candidates from Belgrade stood a chance in the elections. It should be noted that some courts which did not hold joint sessions did have candidates from that very court so the argument that the sessions were not held due to lack of interest does not always seem convincing.

Basic courts had the highest percentage for holding joint sessions while commercial and misdemeanour courts had the lowest percentage with higher courts in the middle. In one court, a joint session was held after the deadline for candidate submission. In one high court, the joint session was held and judges discussed one particular candidate; although there was no vote on the proposal, the candidate was later nominated by that court and some judges (respondents in the research) later stated that they were not aware of such an outcome.

For those courts which held joint sessions, judges on average were informed two or three days in advance. In 79.1% of the cases the nomination procedure was the focus of the session. 82.4% of respondents stated they were informed about the rules of the electoral process during the joint session.

Probationary judges appointed to three year terms do not have the right to vote in elections. However, an uncertainty arose during the joint sessions on nominations as to whether the judges appointed to probationary three year terms could participate in the work of the session as the legal framework is silent on this issue. The majority of those interviewed indicated that only tenured judges voted. However, the monitors witnessed one joint session where the probationary judges also voted. The rationale for this seems unclear and makes practical application seem discriminatory against probationary judges. A possible rationale for this could be to avoid a probationary judge from electing a representative for five years, which goes beyond the voter's own three year term. Also, the exclusion of probationary judges in this case could be consistent with the recognition in international and regional good practices that the use of probationary judges can be problematic because they are deemed to be more susceptible to external influence and more likely to adjust their behaviour to ensure they are chosen for a permanent position.

When asked "Have you been invited to nominate candidates in advance?" 51.1% of the respondents replied that they were not, while 48.8% stated that they were. When asked how it was decided who would be nominated, the majority of respondents said that their colleagues suggested candidates at the joint session. Respondents from seven of the 19 courts considered that secrecy was guaranteed, while respondents from other courts did not believe secret voting was ensured because the voting was done publicly.

Four respondents highlighted some issues regarding the nomination of their colleagues. One respondent said that a colleague was interested to run and expected to be proposed by her colleagues, but this did not happen. Another respondent stated that he personally wanted to run for candidacy, but he gave up due to lack of time, excessive documentation requirements, and because he could not personally delivery his nomination. In one court there was no nomination because the court administration was too late.

Respondents from two basic courts participated in collecting signatures to support the candidacy of their colleagues from other courts.

There were no incomplete applications, and the EC confirmed all candidacies. All candidate biographies were published on the webpage of the EC.¹⁴⁴ In total, 33 applications were confirmed and of those only one was withdrawn.¹⁴⁵

3. Campaign

Of the six candidates who submitted their programmes to the EC, four were from the basic courts and one each from the higher courts and Appellate misdemeanour courts respectively.

Despite the lack of norms regulating the campaign as many as 98.4% of interviewed judges confirmed their familiarity with the candidates' programmes, and 88.4% of these respondents learned about the programme through the candidates' personal presentation. In 77.8% of the cases the presentation was made electronically.

Some of the interviewed candidates travelled to other courts to present their programmes. One candidate presented his programme after trials, while others took vacation days. The EC informed all courts' presidents on 27 October that they were obliged to allow all candidates to personally present their programmes to judges, as well as to disseminate their programmes to all judges via mail or e-mail.

Common themes for most candidates included a more independent HJC to serve the interests of the judiciary, better working conditions and reduced workload, and changes to the rules on the evaluation of judges' work and potential for career advancement.

It is worth noting that, at least in the published programmes, there were no unfair campaigns targeting another candidate.

4. Election Day

Elections were held on 21 December 2015 at 49 polling stations from 7:30 to 15:30 hrs.¹⁴⁶ Most polling stations opened at 7:30, except for one which opened at 7:45. The number and the name of the polling stations as well as the lists of candidates were displayed at all polling stations. However, monitors observed at one polling station that the decision on the appointment of members of the election board was missing.

¹⁴⁴ The webpage dedicated to elections includes all biographies and submitted programmes, available at <http://www.vss.sud.rs/sr-lat/postupak-predlaganja-kandidata-za-izborne-%C4%8Dlanove-visokog-saveta-sudstva> (last viewed on 31 January 2016).

¹⁴⁵ One judge withdrew from the campaign because he had been elected as judge of the High court after he was nominated by the basic court. The Electoral Commission published all candidates' lists on 6 November 2015 (decisions 013-00-61/2015-02, 013-00-62/2015-02, 013-00-63/2015-02 and 013-00-64/2015-02).

Out of the 33 candidates, two were on the list of candidates to be elected by the Supreme Court of Cassation, Commercial Appellate Court and Administrative Court, eight were on the list for higher and commercial courts, 18 were on the list of basic and misdemeanour courts and five were on the list for candidates from the autonomous provinces. Because one candidate from the misdemeanour and basic courts list withdrew and some candidates were both on autonomous provinces and basic and misdemeanour/higher and commercial courts list, the total number of candidates running in the elections was 29. Out of the 29 candidates, 12 were women and 17 were men. Candidates represented different parts of Serbia (for the higher and commercial courts one candidate from Pancevo, one from Sremska Mitrovica, one from Nis, one from Kragujevac, one from Novi Sad and three from Belgrade; for basic and misdemeanour courts candidates were from Kraljevo, Kruševac, Belgrade (5 candidates), Novi Sad, Sremska Mitrovica (2 candidates), Čačak and Sombor, and 5 candidates were from the Appellate Misdemeanour Court), but all elected candidates are from Belgrade, except for the one representing the autonomous provinces. Out of the five elected candidates three are men and two are women.

¹⁴⁶ The Electoral Commission issued on 6 December 2015 a Decision on the final (closed) electoral register (decision no. 013-00-00118/2015-02) listing all courts with the number of registered voters for each court, as well as the total number of 2459 registered voters.

All polling stations complied with the legal requirement to use national minority languages on the ballots.

During the elections, the ballot box was checked and the control slip was inserted into the ballot box at all polling stations. At 16 of the 20 monitored polling stations voters were routinely asked to present their ID, while at four polling stations voters were not asked for proof of identification.

At four out of the 20 monitored polling stations judges voted elsewhere under the supervision of the additional EB members: one person registered at the electoral roll within the polling station number 18 in Čačak; one person registered at the electoral role within the polling station number 22 in Niš; two persons registered at the electoral roll within the polling station number 32 at the First Basic Court in Belgrade; and one person registered at the electoral roll within the polling station number 1 at the Supreme Court of Cassation. No irregularities were noted.

There were no irregularities related to the ballot boxes and privacy screens. Privacy screens were provided at all 20 polling stations where monitors were present. There were no complaints regarding secrecy of voting.

During the elections, the three-member EBs were permanently present at 18 monitored polling stations, while at two polling stations this was not the case. During the elections at the polling station number 22 at the High Court in Niš, there was an anonymous alert regarding a bomb in the building. The voting at this polling station was interrupted for a period of 1 hour and 40 minutes. All polling stations where monitoring was conducted were closed at 15:30, with the exception of the polling station in Niš, which was open until 18:45 due to the disruption.

The work of the EBs after the closure of the polling stations was in accordance with the regulation. During the vote count at all 20 polling stations the ballot box was first checked for the control slip. A number of unused ballots were separated into special envelopes with the appropriate markings and sealed. Having determined the number of judges who voted by checking the electoral roll, all ballots were removed from the box and counted. Valid and invalid ballots were separated. The number of votes was determined for each candidate. The ballots for each candidate were put in a special envelope with a stamp. Finally, the EB prepared minutes on the final results.

The minutes should be made in four copies, one of which is presented to the public, two submitted to the EC and one to be kept by the board. This rule was not entirely clear for EBs. The EC interpreted it so that EBs were obliged to submit all four copies; however, some electoral boards left the “public copy” of the minutes at their polling stations.

5. Complaints Procedure

There were no complaints filed regarding the elections process or the published voting results.

6. Overall impressions of voters

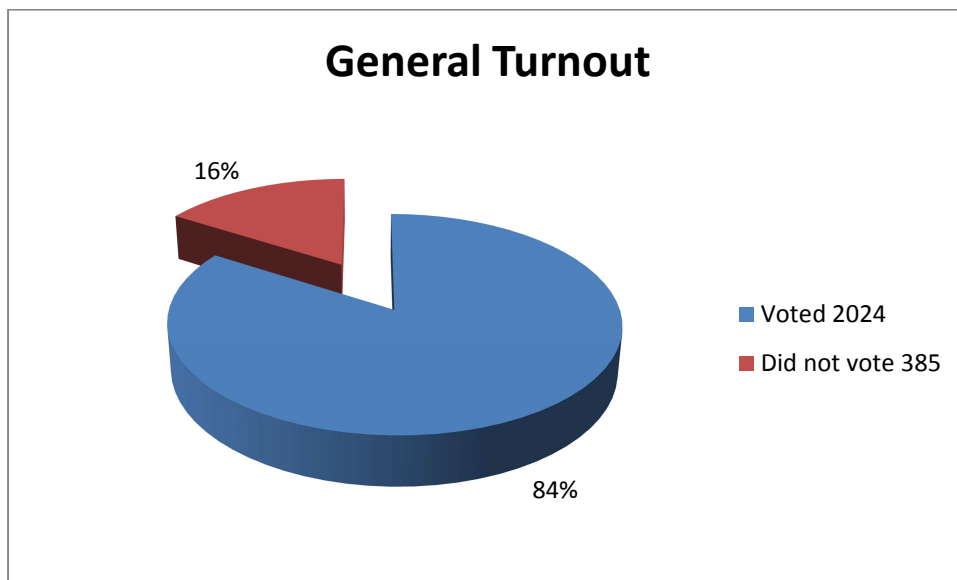
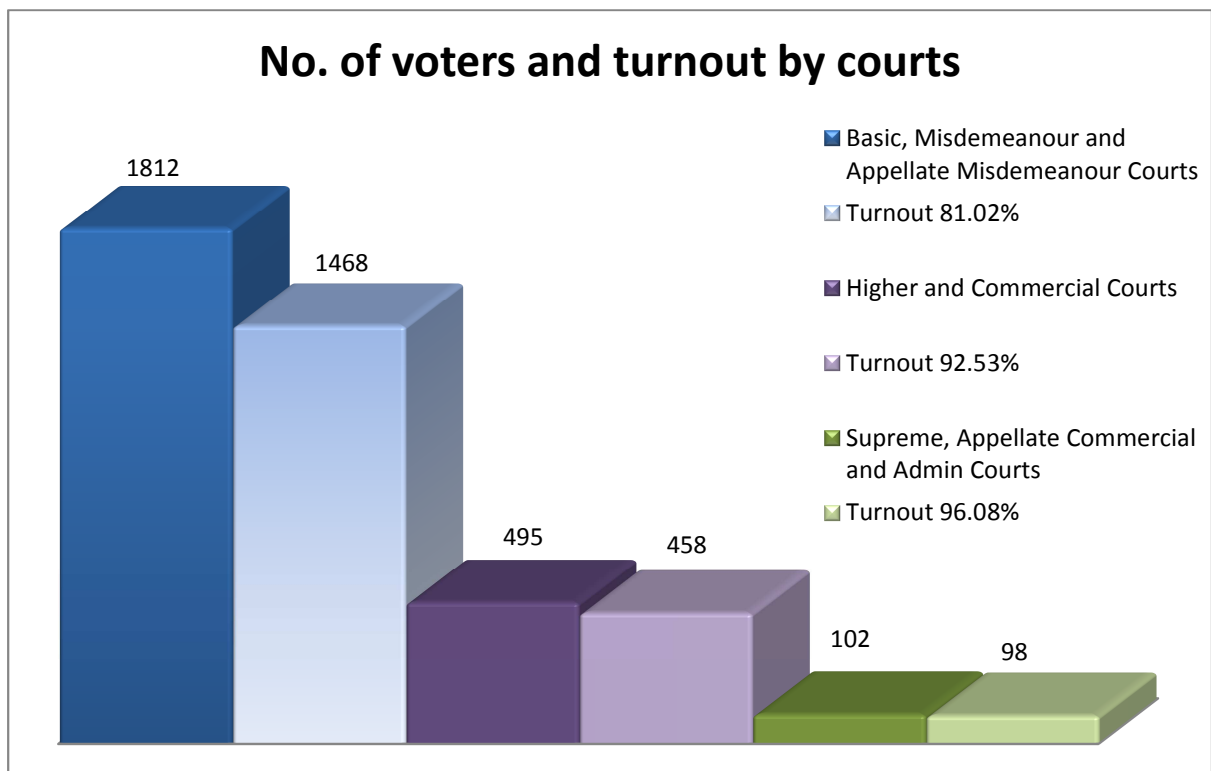
According to the results of the survey conducted by the monitors, the overall impression of respondents was that the election process was clear and transparent and went well. However, the respondents in the survey pointed out several shortcomings in the process that were not

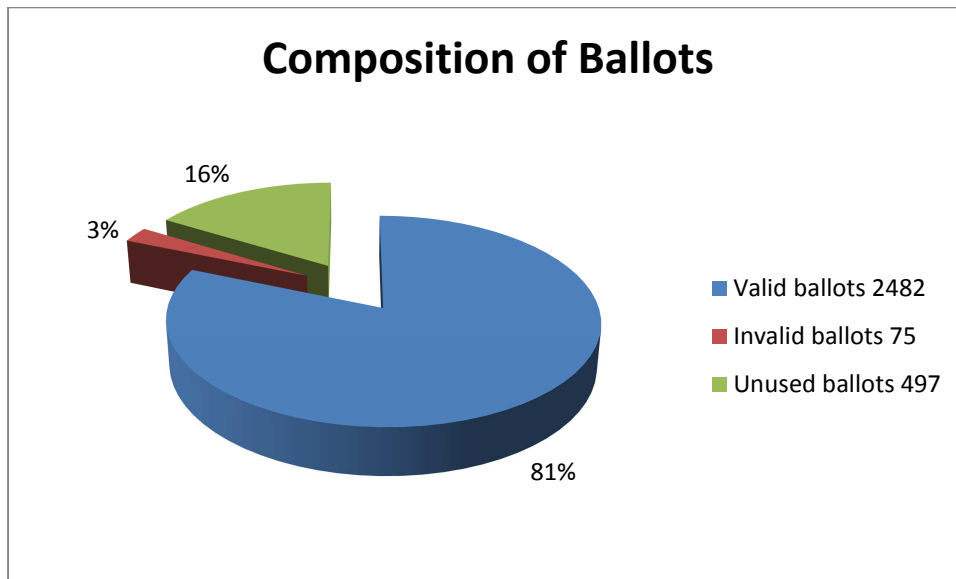
covered by the monitor's questionnaire. Some respondents noted concerns regarding the composition of the HJC, considering membership of the representatives of the executive branch and the Bar unacceptable, since they believe it impeded judicial independence. Furthermore, some suggested changing the legal framework and voting requirements to ensure better territorial representation of judge-members. Some respondents also thought there should be more representatives from the basic courts. Recommendations were made to improve the system of campaigning and to standardize presentation forms and allocate funds for campaigning. One respondent suggested that the period for presentation of candidates should be prolonged.

7. National Assembly

The HJC submitted the list of elected judges to the National Assembly of the Republic of Serbia and the National Assembly then confirmed the proposed candidates on 12 February 2016.

G. FACTS AND FIGURES: ELECTIONS FOR THE HJC





H. HJC RECOMMENDATIONS

1. HJC Composition Regarding Elective Members from the Rank of Judges

- *Amend the constitutional and legal framework regarding the composition of the HJC and election of its members.* Future reform of the composition of the HJC should consider allowing judges from all levels and types of courts to vote for judges from all levels and types of courts.

- *Consider ways of ensuring geographic diversity in the Council.* The reform should aim at ensuring broader territorial representation while maintaining representation of all levels and types of courts.

2. Role of the National Assembly in the Election Process

- *Amend the Constitution regarding the procedure for appointing HJC members.* The role of the National Assembly should be reconsidered. Its current broad involvement makes the composition of the HJC subject to the control and influence of the National Assembly, thereby undermining separation of powers principles. This recommendation is consistent with similar recommendations made by the Venice Commission and GRECO with equal application to the SPC and HJC.

- *Amend the Law on the HJC regarding the National Assembly procedure of appointment of HJC members.* If the National Assembly retains a role in the appointment process the legal framework should be further developed. Currently, the legal framework does not contain any deadlines for when Parliament must decide on candidates. There are no procedures for what to do in case the National Assembly rejects an elected candidate.

- *Regulate in more detail the election procedure for other elective members.* The current legal framework does not meet international and regional standards because procedures and criteria for the election of the other elective members of the HJC are not

clearly regulated. In line with these standards, the member of the Bar and the member from academia should be elected through a transparent process based on objective criteria.

3. Nomination Rules

- *Amend the legal framework to mandate that the conduct of joint sessions on eventual support to candidates be held.* This would make the process more inclusive for all judges.

- *Clearly stipulate the way in which joint nominations should be made, as well as the rules on when and how a joint session acquires the consent of the judge it wishes to nominate if he/she is not from the same court.*

- *Clarify the role of probationary judges in voting for new HJC members.* If the practice of probationary judges remains, their role should be clarified. However, in light of international and regional standards, the practice of probationary judges should be re-considered.

- *Clearly stipulate how joint sessions should determine the quorum.* There should be precise rules regarding quorums necessary to ensure proper voting for candidates when probationary judges are not participating in the sessions.

4. Candidacy and Campaign Questions

- *Clarify the legal framework regarding whether one candidate can apply for two different voting lists.* This situation occurs when a candidate runs simultaneously for the list of his/her type and rank of appointment and for an autonomous province. This situation should be regulated in more detail.

- *Campaign rules should be further developed.* Gaps in the legal framework resulted in inconsistent campaigning practices and ad hoc measures. In order for candidates to be better able to present their programmes to the wider professional public, benefits such as paid leave, reimbursement of travel costs, and similar would help enable candidates to raise awareness of their programmes and explain how they would serve their peers on the HJC. The timeframe for the campaign is also very short and does not afford candidates adequate time to travel and present their programmes. These initiatives could also aid in reaching out to peers from other geographical areas and thus potentially contribute to more diverse geographical representation in the HJC.

5. Lack of Regulation on the Electoral Administrative Dispute

- *Develop the rules on procedure before the Administrative Court.* There are no specific provisions regarding effective remedies before the Administrative Court, including timeframes for proceedings. This is a significant gap because the Administrative Court could potentially disrupt the entire election process until it rendered a decision. Within that timeframe, the work of the HJC could be paralysed since there would be no new elected members and the mandate of the sitting HJC would expire.

VI. CONCLUSION

Overall, the peer elections processes for the HJC and SPC were transparent, organized, and conducted in line with the Serbian national legal framework, which is generally consistent with international and regional good practices. The monitors noted a few minor shortcomings with gaps in legislation and uncertainties or inconsistencies in the application of certain procedures. The OSCE Mission to Serbia and ODIHR stand ready to continue supporting the legal reform efforts of the Serbian authorities in line with the recommendations of this report and OSCE commitments.

ANNEX A: List of International and European Standards and Best Practices

- OSCE Commitments related to the rule of law, independence of the judiciary, accountability of public institutions, right to a fair trial, and right to a remedy, including the Vienna Document of 1989; Copenhagen Document of 1990; Moscow Document of 1991; Brussels Document of 2006; and Helsinki Document of 2008
- The Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (OSCE/ODIHR 2010)
- European Charter on the Statute for Judges (Council of Europe, 1998)
- Council of Europe Recommendation (2000) 19 on the role of public prosecution in the criminal justice system
- CCJE Opinion No. 3 on the principles and rules governing judges' professional conduct (2002)
- Venice Commission Report on Judicial Appointments (2007)
- CCJE Opinion No. 10 (2007) on the council for the judiciary at the service of society
- Judicial Ethics Report 2009-2010 (European Network for the Councils for the Judiciary ("ENCJ"))
- European Commission for Democracy Through Law ("Venice Commission") Report on European Standards as Regards the Independence of the Judiciary (Parts 1 and II) (2010)
- Magna Carta of Judges (Consultative Council of European Judges ("CCJE"), 2010)
- Council of Europe Recommendation (2010) 12 on independence, efficiency, and responsibility of judges
- Consultative Council of European Prosecutors (CCPE) Opinion No. 9 (2014) on European Norms and Principles Concerning Prosecutors
- Venice Commission Compilation on Courts and Judges (2015)
- Venice Commission Compilation on Prosecutors (2015)
- Relevant opinions of the Venice Commission relating to the judicial and prosecutorial councils (2008 – 2015, including Moldova, Bosnia and Herzegovina, Serbia, Montenegro, Moldova, Ukraine, the Former Yugoslav Republic of Macedonia, and Georgia)
- United Nations Basic Principles on the Independence of the Judiciary (1985)
- Draft Universal Declaration on the Independence of Justice "(Singhvi Declaration)" (United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, 1989)
- United Nations Guidelines on the Role of Prosecutors (1990)
- Universal Charter of the Judge (International Association of Judges, 1999)
- International Association of Prosecutors (IAP) Standards of professional responsibility and statement of essential duties and rights of prosecutors (1999)
- The Universal Charter of the Judge (IAP, 1999)
- Annual reports of the UN Special Rapporteur on the Independence of judges and lawyers (2012, 2014)

