

**Report on the Monitoring of Peer Elections to the State
Prosecutors' Council of the Republic of Serbia**

Belgrade, February 2021

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EXECUTIVE SUMMARY

This report is the result of the OSCE Mission to Serbia's (hereinafter: the OSCE Mission) efforts to monitor the peer elections of prosecutors¹ to the State Prosecutors' Council (SPC), conducted from October to December 2020. The Serbian non-governmental organization YUCOM served as an implementing partner in monitoring the election.

Activities included: monitoring peer elections across Serbia; analysing the underlying legal framework; and interviewing prosecutors who participated in the process. Due to the restraints related to the COVID-19 pandemic, the presence of monitors was reduced in comparison to the elections in 2015.

The analysis of the international standards governing judicial and prosecutorial councils, as well as of the relevant legal framework in Serbia, is summarized from the last report, as they did not undergo any changes since the 2015 report on the Monitoring of the Elections was published.²

As hardly any of the Mission's recommendations from the 2015 report have been addressed, many of the same challenges occurred in the 2020 elections. Therefore, the recommendations remain largely the same:

- Amend the legal framework to change the election process for the prosecutorial council 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 that the process of proposing candidates is made clearer;
- Further develop the legal framework to enhance the procedures for the resolution of disputes and to provide effective remedies.

This report aims to inform 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.

¹ The term "prosecutor" has been used for both prosecutors and deputy prosecutors to avoid overburdening the text.

² For a detailed analysis of both the international standards and the Serbian legal framework, see the Report on the Monitoring of Peer Election for the High Judicial Council and State Prosecutors' Council of the Republic of Serbia (Report on the 2015 elections), available at <https://www.osce.org/odhr/242346>.

BACKGROUND

The creation of the SPC and the High Judicial Council (HJC) is the result of, and integral to, the ongoing legal reforms in Serbia.³ Indeed, the 2006 constitution established the HJC and SPC and mandated them with, *inter alia*, the appointment, transfer, evaluation and discipline of judges and prosecutors respectively.⁴

The SPC includes, *inter alia*, six prosecutor-members elected by their peers. The criteria and standards for their election are regulated by the Law on the State Prosecutors' Council ("Law on the SPC").

These are the third elections for the State Prosecutors' Council under the 2006 Constitution. Two previous elections were held in 2011 and 2015. The Mission has monitored all the elections that have been held so far.

The European Commission's Serbia 2020 Report emphasises that: *The scope for political influence over the judiciary is a continuous and serious concern. The delay in the adoption of the constitutional amendments has repercussions on the adoption of related judicial legislation that is needed to increase safeguards for judicial independence [...] Pressure on the judiciary still remains high. Government officials, some at the highest level, as well as members of parliament, continue to comment publicly on a regular basis about ongoing investigations or court proceedings, and on individual judges and prosecutors. Articles in tabloid newspapers target and seek to discredit members of the judiciary.*⁵

After the previous elections, there was an expectation among prosecutors that the new members would bring change and improvement. Some changes did indeed occur. For instance, the SPC established within its ranks a commissioner for the autonomy of prosecutors, who is in charge of receiving complaints from prosecutors concerning any undue influence and alerting the SPC about such incidents.⁶ However, the functioning of the SPC was under tension. The SPC has not held regular sessions since November 2019.⁷

³ The elections for the HJC were held on 7 December 2020. They were also monitored by the OSCE Mission. The findings are published in a separate report.

⁴ Available in English at <http://www.ustavni.sud.rs/page/view/en-GB/235-100028/constitution> (last visited 18 December 2020). See Article 154 on the High Judicial Council and Article 164 on the State Prosecutors Council.

⁵ COMMISSION STAFF WORKING DOCUMENT, Serbia 2020 Report, p. 20. See: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf.

⁶ See Article 9 of the Rules of Procedure of the State Prosecutors' Council ("Official Gazette of the Republic of Serbia", No. 29/2017 and 46/2017), available in the Serbian language. All references to Serbian laws are in the Serbian language unless otherwise noted.

⁷ See [in Serbian]: <http://www.dvt.jt.rs/sednice/>.

METHODOLOGY

For the monitoring of the SPC elections, the OSCE Mission applied the methodology that had been developed for previous elections. The monitors were experienced professionals who had participated in the monitoring of the elections in 2015, when they underwent specific training on the Code of Conduct and election monitoring methodology developed by a joint ODIHR/OSCE Mission to Serbia team. As a reminder, an overview of the relevant documents and practices was provided by the implementing partner's project co-ordinator in October 2020.

OSCE Mission and YUCOM personnel monitored the elections in order to assess the validity of the electoral results, the soundness of the voting process and its conformity with the Serbian legal framework. They did so by monitoring sessions of the Electoral Commission, the voting processes at selected polling stations on Election Day, and by conducting interviews with relevant 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.

Code of Conduct

Throughout the entire monitoring exercise, the monitors abided by a code of conduct developed by a joint ODIHR/OSCE Mission to Serbia team for the monitoring of the 2015 council elections. The Code of Conduct emphasised 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 opinion regarding a particular candidate, a set of procedures or 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 about the election process or their observations or opinion of the same. If they were asked for such an opinion, procedure dictated that they would refer such questions to the OSCE Mission to Serbia's communication office. The duty of professionalism required that monitors conduct themselves according to appropriate professional standards. Confidentiality meant 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 and other interlocutors) to freely share their views and opinions without fear of public disclosure.

Election Monitoring

Sixteen monitors were deployed to all (17) but one polling station – the one in the Republic Public Prosecutors' Office. It was assessed that the polling station at the Republic Public Prosecutor's Office was least likely to suffer from irregularities considering that there was only one candidate at that level. The monitors were instructed to remain at their assigned polling stations throughout the day, arriving prior to the official start and remaining until after the collection and count of the votes. The monitors used pre-established questionnaires that directed them to observe and report upon the most relevant elements as described in the Serbian legal framework.

Interviews

In addition to observing the elections process for the SPC, the monitors interviewed a number of voters and candidates to obtain more detailed qualitative information about 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. Efforts were made to interview as many voters and candidates as possible given the relatively limited human resources.

Reporting

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

INTERNATIONAL AND REGIONAL STANDARDS AND GOOD PRACTICES

Introduction

Across the OSCE area, challenges exist concerning the role and function of the judiciary and the prosecution. Being independent and accountable is an integral part of the effectiveness of these institutions. The proper functioning of these institutions, rooted in the separation of powers, is essential to ensuring effective access to justice and the implementation of an individual's right to fair trial and effective remedy. Among OSCE participating States, judicial councils' functions vary from administration and management to more substantive functions including selection, discipline, promotion and removal of judges.⁸ Prosecutorial councils are a more recent phenomenon, and thus less common, emerging over the last ten to fifteen years and primarily concentrated in Southeast Europe.⁹

As the Venice Commission reiterates, "there is no standard model that a democratic country is bound to follow when setting up its Supreme Judicial Council as long as the function of such Council falls within the aim of ensuring the proper functioning of an independent judiciary within a democratic State".¹⁰ In contrast, OSCE ODIHR's *Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia* are less prescriptive.¹¹ It is common for these councils to contain at least a simple majority of judge or prosecutor-members alongside other representatives, who 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.

⁸ For more information on the differences in the role, function and composition of judicial councils across Europe, see i.e. the Venice Commission Report on Judicial Appointments (2007).

⁹ Specialized prosecutorial councils exist, for instance, in Moldova, Montenegro, North Macedonia and Serbia. Bosnia and Herzegovina, France, Italy or Turkey have judicial councils that cover both judges and prosecutors. See the Venice Commission Report on European Standards Regarding the Independence of the Judiciary Part II: The Prosecutorial Service (2010) at footnote 6.

¹⁰ Report on Judicial Appointments (CDL-AD (2007)028), paragraph 28, available at [https://www.venice.coe.int/webforms/documents/CDL-AD\(2007\)028.aspx](https://www.venice.coe.int/webforms/documents/CDL-AD(2007)028.aspx) (last visited on 11 December 2020).

¹¹ They speak of the "use of independent body[ies]" and "where a judicial council is established..." See OSCE/ODIHR 2010: <https://www.osce.org/odihr/KyivRec>

Although there are currently no established international standards on the elections process for these members,¹² 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 trial¹³ and effective remedy.

International and regional good practices

Judicial and prosecutorial councils can be instrumental in promoting the effective functioning of the judiciary and prosecutorial service. Like judges and prosecutors, councils must simultaneously be independent and accountable. Striking this balance through the role, composition and function of these councils is vital in a democratic society and for 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: Prosecutorial Councils	
Role	<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"> • Prosecutorial councils should not consist solely of prosecutors. • It is not advisable that the Minister of Justice sits on the council, but it is reasonable for a representative of the ministry to be present.¹⁴ • 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"> • 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 located in 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"> • 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 a qualified majority. • Parliament shall not have the main control over the selection of council members.

¹²See the 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 11 December 2020).

¹³ 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>.

¹⁴ The 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.”

Peer elections to judicial and prosecutorial 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. Election procedures for prosecutors to prosecutorial councils are even less well-developed than for judicial councils.

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

SERBIAN LEGAL FRAMEWORK GOVERNING THE PROCESS OF ELECTING MEMBERS OF THE STATE PROSECUTORS COUNCIL (SPC)

Constitutional and Legal Framework

The constitutional and legal framework of the SPC is set in the Constitution of the Republic of Serbia¹⁵ and the Law on the State Prosecutors' Council ("Law on the SPC").¹⁶ Article 164 of the Constitution defines the composition of the SPC: 11 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 are nominated through separate procedures.¹⁷ These eight are appointed for a five-year term and can be re-appointed to the same function, but not in successive terms.¹⁸

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 SPC members receive remuneration for service, but the amount and how it is calculated varies, with a distinction made between deputy public prosecutors and other members.¹⁹

¹⁵ Constitution of the Republic of Serbia, *op. cit.*, fn. 4.

¹⁶ Law on the State Prosecutors' Council ("Official Gazette of the Republic of Serbia", No. 116/2008, 101/2010,88/2011 and 106/2015).

¹⁷ *Ibidem*, article 20.

¹⁸ *Ibidem*, article 12, paragraphs 1 and 2.

¹⁹ *Ibidem*, articles 10 and 11, paragraph 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”)²⁰ and the bylaws of the SPC and its Electoral Commission (“Bylaws”)²¹ 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 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.²²

The Electoral Commission (“EC”), as a permanent working body of the SPC, is in charge of the organization of elections.²³ 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.²⁴ The EC determines the plan of activities and the timeframe for all electoral activities. The EC’s decision is shared with the public prosecutors, who are obliged to ensure that all deputy prosecutors in their offices are familiar with its content.²⁵ Usually, prosecutors distribute a printed plan of activities to all deputy prosecutors in their office.

Nominations

Prosecutors from all levels and types of prosecutors’ offices are represented in the SPC.²⁶ Elective members of the SPC include:

1. one member from the Republic Prosecutor’s Office;
2. one member from the Appellate Prosecutors’ Offices, the War Crimes Prosecutor’s Office, and the Organized Crime Prosecutor’s Office;
3. one member from the Higher Prosecutors’ Offices;
4. two members from the Basic Prosecutors’ Offices; and
5. 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.²⁷ This means, for example, that twelve prosecutors in the Republic Public Prosecutor’s Office elect one member and approximately 320 basic prosecutors elect two members. Prosecutors sitting in an office in an autonomous province vote for two candidates: one from the same type and level of prosecutors’ office that they are working in and the other from the list of candidate prosecutors from an autonomous province. It should be noted that

²⁰ Rules of procedure of the Electoral Commission (“Official Gazette of the Republic of Serbia”, No. 59/2010 and 2/2011).

²¹ These documents (Serbian versions only) can be found on the SPC website: <http://www.dvt.jt.rs/izborna-komisija-drzavnog-veca-tuzilaca.html>

²² Law on the SPC, article 21, paragraphs 1 and 2.

²³ *Ibidem*, article 25.

²⁴ *Ibidem*, articles 27-31.

²⁵ *Ibidem*, article 27.

²⁶ Article 22 of the Law on the SPC sets out the structure of the representation.

²⁷ This has been a matter of some controversy. Namely, the Law on the SPC stipulates that two members are elected from the basic level, but does not provide any details on the manner in which they are elected. The Rules of Procedure of the Electoral Commission specify that the voting is performed by circling one candidate, meaning that at the basic level, prosecutors also vote for one candidate (the two with the most votes are elected). However, there have been views that, since the basic-level prosecutors are entitled to elect two members, they should all vote for two candidates. An initiative has been submitted to the Constitutional Court to assess the legality of such provision of the Rules of Procedure of the EC, but the Constitutional Court has not reached a decision on that issue by the time of the elections.

only the provinces are territorially represented in the SPC, while the other parts of the country are not.

In order to vote and stand for candidacy, a prosecutor must be tenured. This requirement excludes deputy public prosecutors appointed for an initial three-year period.²⁸

Prosecutors wishing to run in the election can acquire candidate status in one of three ways. Deputy public prosecutors from the Republic Public Prosecutor's Office, as well as prosecutors and deputy prosecutors from the War Crimes and Organized Crimes Prosecutors' offices, become candidates simply by registering.²⁹ 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 an 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 that they will support.³⁰

There are no rules on whether the same person can be a candidate from his/her level of prosecutors' offices and a candidate for the autonomous province in the same elections.

The legal framework does not detail how joint nominations by two or more joint sessions are administered and co-ordinated. The consent of the candidate is needed before a joint session can vote for him/her. However, there are no rules on when and how the joint sessions of one or more prosecutor's offices should acquire the consent of the prosecutor it wants to nominate.

Campaign

The presentation of candidates and their programmes is regulated by the Rules on the Presentation of Candidates in the Nomination Procedure for Elected Members of the SPC³¹ ("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, as well as 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. 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 or professional dignity.³²

²⁸ Law on the SPC, article 23, paragraph 1 and article 24, paragraph 3. This has also been contested before the Constitutional Court, but the initiative has been dismissed.

²⁹ *Ibidem*, article 23, paragraph 3.

³⁰ *Ibidem*, paragraph 4.

³¹ Decision no. A 268/20 of 2 October 2020.

³² *Ibidem*, article 2.

Election Day

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

In appellate prosecutors' offices, the 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 notified in advance. In this case, the additional members will visit the voter at another location.³³

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 elections³⁴ and determines the number of eligible voters for each prosecutors' office.³⁵ The procedure on Election Day is regulated in detail by the Rules of Procedure of the Electoral Commission.³⁶

Complaint 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 election process. A complaint must be filed within 24 hours of the alleged breach.³⁷ 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 must be repeated within ten days.³⁸ The decision of the EC is final, but it can be challenged before the Administrative Court within 48 hours of the receipt of the decision. If the Administrative Court annuls the disputed electoral activities, the election will be repeated within ten days.³⁹ However, there is no deadline for when the Administrative Court is obliged to reach a decision.

Monitoring

Representatives of professional associations, non-governmental organizations and international organizations have the right to observe the process, thus ensuring transparency and oversight.⁴⁰ 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 the elections.

³³ Rules of procedure of the Electoral Commission, article 30.

³⁴ *Ibidem*, article 19, paragraph 5.

³⁵ Decision no. A 268/20 of the Electoral Commission of 28 October 2020 on the final electoral register determining the total number of voters (629). In accordance with its discretionary power, the Electoral Commission established the number and location of the polling stations (17 in total) by Decision no. A 268/20, from 22 October 2020, 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. A 268/20 of the Electoral Commission of 28 October 2020).

³⁶ For a detailed overview, see the Report on 2015 elections.

³⁷ Rules of procedure of the Electoral Commission, article 37.

³⁸ *Ibidem*, article 38, paragraphs 1-3.

³⁹ *Ibidem*, article 38, paragraph 4 and article 39.

⁴⁰ Decision no. A 268/20 of 2 October 2020.

Appointment of SPC elective members by National Assembly of Serbia

The names of the prosecutors elected by their peers to the SPC must be submitted to the National Assembly at least 90 days before the term of the sitting members expires.⁴¹ However, the Law on the SPC does not contain any deadlines for 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 is not able 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.⁴²

FINDINGS

This section will present the main findings related to the nomination and election processes for the SPC. All electoral deadlines were respected in the election process. On 1 October 2020, six months before the expiry of the mandate of the elective members of the sitting Council, the SPC President issued a decision to commence nominations thereby initiating the election process.⁴³

Interviews

The OSCE Mission and YUCOM interviewed 109 public prosecutors and their deputies covering 34 different public prosecutors' offices. Most respondents expressed interest in the SPC elections, which is similar to the findings of the previous Report,⁴⁴ with 87 per cent of respondents considering the elections to be important. While some respondents refrained from answering this question, others openly expressed dissatisfaction with the work of the current SPC and the situation in the judiciary, stating that elections would not change anything due to the strong influence of the executive branch over the prosecution service.

Those who are supportive of the process of the elections and the work of the SPC noted that the SPC should, within its mandate, work on improving the human and material resources for the public prosecutors' offices and the position of the prosecutorial profession in society, as two major issues that need reform.

⁴¹ Law on the SPC, article 21, paragraph 4. The current prosecutors mandate expires on 5 April 2021.

⁴² Rules of Procedure of the National Assembly ("Official Gazette of the Republic of Serbia", No. 20/2012), article 201.

⁴³ Decision no. A 268/20, from 1 October 2020. The election process for the members of the SPC was initiated by the decision of the President of the SPC issued on 1 October 2020, within the six month timeframe specified by the Law on the SPC. The Decision of the Electoral Commission laid out the schedule for the election process, including the date of the elections on 12 November. It also specified the deadline in which personal and joint session nominations should be submitted (16 October), the deadline by which the final electoral lists shall be compiled (24 October), the completion of the electoral roll (28 October), the completion of a certified extract of the electoral roll (29 October), determination of polling locations (29 October), the formation of electoral boards (29 October), public announcement on the time and date of elections (2 November), the submission of electoral materials (9 November), the opening of polling stations (12 November from 08:00 – 13:00 hours), the submission of election materials from polling stations (12 November 22:00 hours), and the declaration of election results (by 11:00, 14 November at the latest).

⁴⁴ See [Report on the 2015 elections](#), p. 22.

There was a smaller number of candidates than in the previous elections as only 36 per cent of the prosecutor's offices proposed the candidates. The majority of those interviewed stated that their office did not propose candidates due to a lack of interest among prosecutors in the elections. Others had the perception that only candidates from Belgrade stood a chance of election, which was also an issue noted in the previous Report.⁴⁵

The interviews showed limited knowledge of the role and competencies of the SPC, as only 40 per cent of respondents were familiar with the role of the SPC and/or some of its competences. Most respondents gave more generalized answers stating, among others, that the role of the SPC was the selection and protection of interests of the prosecutors, and improving their position.

Nomination

One of the recommendations in the Report on the 2015 elections was to amend the legal framework to make the conduct of joint sessions on support for candidates obligatory, as this would make the process more inclusive for all prosecutors. No such amendments were made in the meanwhile; in these elections, joint sessions were only held in 37.5 per cent of the 32 public prosecutors' offices in which the monitors conducted interviews, while 62.5 per cent of the offices did not hold joint sessions. In some cases, respondents answered that informal meetings were held instead of the joint sessions. Joint sessions are called by the prosecutors in charge and it remains unclear why most prosecutors' offices did not hold a joint session. In the previous elections, 68 per cent of the public prosecutors' offices did hold joint sessions on the nomination procedures.

At most (97 per cent) joint sessions, prosecutors were voting for only one candidate. Respondents in five out of the twelve public prosecutors' offices in which joint sessions were held⁴⁶ stated that the secrecy of the vote was ensured and in one that it was not, while respondents from six prosecutors' offices refrained from answering the question.

The overall majority (77 per cent) of prosecutors interviewed declared that they had been informed about 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", half of the respondents gave a positive answer and half a negative one.

Out of the 14 candidates running for election, one candidate withdrew for personal reasons after his nomination had been confirmed by the EC, so the final list confirmed by the EC included 13 candidates. There were five female and eight male candidates. Among the six elected candidates, four were male and two were female. Four elected candidates were from Belgrade and two from Novi Sad.

The number of candidates shows a significant drop in comparison to the 31 nominations accepted for the 2015 elections.⁴⁷

Regarding the characteristics or qualifications that an ideal candidate for nomination should possess, most respondents were of the opinion that it should be a person with integrity,

⁴⁵ *Ibid.*

⁴⁶ The number refers to the prosecution offices in which interviews were conducted.

⁴⁷ See [Report on 2015 elections](#), p. 24.

independence, resilience to pressures and knowledge of the prosecutor's work.

Campaign

Twelve out of the 13 candidates submitted their biographies and election programmes to the EC; these materials were published on the EC webpage. In terms of quality of the presented information there was a significant improvement in comparison to the 2015 elections. While in 2015 it was mostly personal biographies, this time the programmes focused more on the candidates' goals as potential SPC members. Four out of 12 candidates also broadcasted their programmes via the Youtube channel of the Prosecutors Association of Serbia,⁴⁸ with links to the channel posted on the EC website.

The overwhelming majority of respondents (99 per cent) were acquainted with at least one candidate and their programme through personal presentations and 27 per cent of them through electronic means as well (e-mail, SPC website, Youtube channel). This is in line with the OSCE recommendations⁴⁹ emphasizing the importance of the ability of the candidates to present their programmes to the wider professional public, as this is in the interest not only of the candidates, but also of the voters and the institution itself. However, no improvement was observed with regard to implementing the measures suggested by the OSCE such as paid leave, reimbursement of travel costs, and similar, which would enable candidates to raise awareness of their programmes and explain how they would serve their peers on the SPC. On the other hand, improving the ways of presenting the candidates to voters through online platforms would help bring candidates onto an equal footing, where candidates with a significant workload, who have less time for travelling around in order to present themselves, would not be disadvantaged.

None of the interviewed candidates stated that they had asked for days off for the presentations, and they covered the costs of travel themselves. While the short timeframe for the campaign, which does not afford candidates adequate time to travel and present their programmes, was already an issue raised in the 2015 elections (32 days), in this year's elections, the campaign was even shorter – only 20 days. Several candidates have pointed that out to the EC.⁵⁰

The election programmes presented by the candidates demonstrate that the autonomy of the prosecution is not high on the agenda, but rather more technical issues are. The candidates mostly advocated for: increasing the number of deputy prosecutors; increasing their salaries and introducing an early retirement plan; hiring support staff; improving working conditions; and better planning of the budget.⁵¹ Some candidates have suggested that the funds collected through the deferral of prosecution could become part of the public prosecutors' offices' budget, and thus fill the gap in funding them, as well as to motivate deputy public prosecutors to work harder.⁵²

The Association of Judges and Prosecutors voiced their concern in the daily *Kurir* that the

⁴⁸ See [in Serbian]: <https://youtu.be/MWujaMDSZCw> (Branislava Vučković), <https://youtu.be/13-1f13Acg> (Lidija Komlen Nikolić), <https://www.youtube.com/watch?v=sOMS5917l-Y&feature=youtu.be> (Aleksandar Radosavljević) and https://www.youtube.com/watch?v=GPY4ktQIow&feature=emb_logo (Predrag Milovanović).

⁴⁹ See [Report on 2015 elections](#), p. 24.

⁵⁰ The Association of Public Prosecutors and Deputy Public Prosecutors of Serbia expressed concerns regarding the short timeframe in a letter to the EC. See [in Serbian]: <https://uts.org.rs/press-centar/saopstenja-za-javnost/1706-saopstenje-za-javnost-izbor-dvt>.

⁵¹ All programmes are available on the EC website [in Serbian]: <http://www.dvt.jt.rs/izborna-komisija/>.

⁵² See [in Serbian]: <http://www.dvt.jt.rs/wp-content/uploads/2016/05/Boris-Pavlovic-1.pdf>.

prosecutors elected for the period of three years did not have the right to vote. They advocated introducing an impeachment procedure for elected prosecutors if they did not stick to their programme, or their promises therein, or if they worked in their personal interest or the interest of third parties.⁵³

One candidate presented anti-NGO rhetoric in his programme. His claim was that the prosecution as an organization has allowed NGOs to present themselves publicly as defenders of human rights through criticising the prosecution service. In his view, the defence of citizens' rights should be a prosecution service and the NGOs should remain within their parameters – which should apparently exclude criticism of public service.⁵⁴

In a press release⁵⁵ of 23 October 2020, the Association of Public Prosecutors and Deputy Public Prosecutors of Serbia informed the public about attempts to influence the electoral will, alleging that it had received information that the Republic Public Prosecutor and the State Secretary of the Ministry of Justice had been involved in a door-to-door campaign for certain candidates.

When asked whether they had any knowledge of voters having received suggestions to vote for certain candidates, most respondents answered negatively (90 per cent). Those who responded positively claimed that they did not have any first-hand knowledge, but had learned of this through the media, the press release of the Association of Public Prosecutors and Deputy Public Prosecutors of Serbia or from other voters. Two respondents considered that it was normal to receive suggestions from candidates and their supporters during an election campaign.

On the other hand, 12 per cent of respondents believe that certain candidates received preferential treatment. While some limited their responses by stating only that they had heard rumours, others believe that such preferential treatment stems from the fact that some candidates received support from the Ministry of Justice and others from the Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, which, in their opinion, discouraged other prosecutors from taking part in the process.

Electoral Commission

The EC confirmed the election lists and set the total number of polling stations by 22 October 2020. In a press release published on the same day, the EC informed the public that no objections had been filed concerning the irregularity of the elections in the candidacy procedure, nor had any credible information been submitted to the Commission by any public prosecutor about attempts to influence the electoral will of the public prosecutors and deputies in Serbia, as a response to the letters and public announcements of the Association of Public Prosecutors and Deputy Public Prosecutors of Serbia.⁵⁶

The EC called on all participants in the elections for the SPC, and especially the candidates, to refrain from unfounded claims aimed at achieving personal rather than professional goals.⁵⁷

⁵³ See [in Serbian]: <https://www.kurir.rs/vesti/drustvo/3533889/udruzenje-sudija-i-tuzilaca-srbije-apelujemo-na-jedinstvo-struke-uoci-izbora>.

⁵⁴ See [in Serbian]: <http://www.dvt.jt.rs/wp-content/uploads/2016/05/Lazar-Lazovic-2.pdf>.

⁵⁵ See [in Serbian]: <https://uts.org.rs/press-centar/saopstenja-za-javnost/1706-saopstenje-za-javnost-izbor-dvt>.

⁵⁶ See [in Serbian]: <https://www.dvt.jt.rs/izborna-komisija/>.

⁵⁷ See [in Serbian]: Press Release of the Election Commission of the State Prosecutors' Council of October 22, 2020, available at <http://www.dvt.jt.rs/wp-content/uploads/2020/10/Saopstenje-IK-DVT-221020-nacrt-1.doc>.

Three complaints were submitted to the EC on 22, 23 and 26 October 2020 respectively. The first complaint concerned two incidents at the Office of the War Crimes Prosecutor, allegedly showing a pattern of bias against a candidate.⁵⁸ The EC ruled that the complaint was founded, and ordered the War Crime Prosecutor to secure a room for the candidate where she could present her candidacy. The second and third complaints submitted were requests to ensure the secrecy of voting at polling stations with a small number of voters by merging more polling stations. Both complaints were rejected by the EC as unfounded on 2 November 2020.

Election Day

Elections were held on 12 November 2020 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 Kraljevo, Požarevac, Užice and Valjevo). As there were 16 monitors, they were present at 16 of the 17 polling stations. It was decided that monitors would not be present at the polling station at the Republic Public Prosecutor's Office, as it was least likely that any irregularities would occur there, given that there was only one candidate. A total of 629 prosecutors from 90 public prosecutors' offices voted for six elective members of the SPC. Voting was performed by circling only one candidate's name on the ballot.

According to information gathered by the monitors, 12 polling stations opened at 8:00. Three polling stations opened with a delay of a few minutes,⁵⁹ and in one case it opened at 9:00.⁶⁰ 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 four stations, the notices determining the location of the polling station and/or the appointment of the members of the EBs were not displayed.

With no exception, prior to voting, the ballot box was checked and the control slip completed in the way prescribed by the Instructions on the implementation of the nomination procedure of candidates for elective members of the SPC issued by the EC. It was then inserted into the ballot box and this was witnessed by the first voter who showed up at the polling station. All the ballots contained the same content written in all the minority languages in official use in Serbia, regardless of whether that language was in official use at that 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.

Consistent voter identity checks were conducted at four polling stations, while at three polling stations exceptions were made for voters if they were known personally to members of the EB. At nine polling stations, no identity checks were performed at all, but the voters were known to members of the EB. With no exceptions, all the prosecutors present at the polling stations by closing time were allowed to vote.

The order at polling stations was not violated and there were no interruptions of the voting process. Some polling stations closed early, even though the law does not explicitly allow for it, because it was evident that all the prosecutors had already voted and there was no need to

⁵⁸ The candidate alleged that the War Crimes Prosecutor obstructed her in the collection of signatures of support for her candidacy. She was instructed to wait in front of the War Crimes Prosecutor's Office for a permit to enter the building despite the fact that she is a deputy appellate public prosecutor, and as such does not need a permit to enter. She claims to have never received a reply from the WCP on her quest to present her programme on the premises of the War Crime Prosecution's Office.

⁵⁹ In two cases there were difficulties with sealing the voting boxes.

⁶⁰ One member of the electoral board was running late and had to be replaced by his deputy.

keep them open until 13:00 hours. Most polling stations (13 out of 16) closed at 13:00 hours. During the vote count at 15 polling stations, the ballot box was checked for the control slip. In one case, the control slip was checked after the vote count. 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. Election boards from all 16 polling stations submitted their minutes summarizing the results to the EC in accordance with Article 35 of the EC Rules of Procedure.

Complaint Procedure

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

Overall voter impressions

According to the results of the survey conducted by the monitors, the overall impression of the respondents was that the election process was clear, transparent and well organized. However, respondents also pointed out several shortcomings in the process, such as the short duration of the campaign. A number of respondents suggested that all the deputy prosecutors, regardless of tenure, should be given the right to vote in a general election and that all of them should be able to cast their votes for candidates from different levels of the public prosecutors' offices. Some suggested that the elections for SPC members should take into account geographical representation. Dissatisfaction with the underrepresentation of prosecutors outside Belgrade was also apparent. A significant number of respondents noted that they were not actively following the election process and have not formed an opinion or had any suggestions. Mostly, the same issues were pointed out in the previous elections.

Media Coverage

The SPC elections have received extensive coverage in the mainstream media⁶¹ with 29 articles published beginning on 19 September 2020. Articles were published in a variety of media including the public broadcasters, daily newspapers, tabloids and a fact-checking website. Bearing in mind that the SPC election was more interesting to legal professionals than to the general public, the coverage it received is encouraging. While 14 out of the 29 articles only provided generalized information on the elections and their outcome, much of media attention was generated after the aforementioned Association of Public Prosecutors and Deputy Public Prosecutors of Serbia' press release of 23 October 2020.⁶²

The Association of Public Prosecutors and Deputy Public Prosecutors of Serbia informed the public about attempts to influence the prosecutors' choice of candidates, alleging that the Republic Public Prosecutor and the State Secretary of the Ministry of Justice were involved in a door-to-door campaign for certain candidates. In an earlier statement,⁶³ a representative of the Association of Public Prosecutors and Deputy Public Prosecutors of Serbia pointed out that there were attempts by the executive branch to exert control over judges and prosecutors by using government-controlled media and governmental NGOs.

⁶¹ *Danas, Kurir, RTV, Večernje Novosti, Radio Free Europe, RTS, N1, Nova-S, Blic, Alo, Informer, Espresso, Indeksonline, Istinomer, Direktno, Republika and Boom.*

⁶² See [in Serbian]: <https://uts.org.rs/press-centar/saopstenja-za-javnost/1706-saopstenje-za-javnost-izbor-dvt>.

⁶³ See [in Serbian]: <https://www.danas.rs/drustvo/lidija-komlen-nikolic-vlast-po-svaku-cenu-pokusava-da-kontrolise-sudije-i-tuzioce/>.

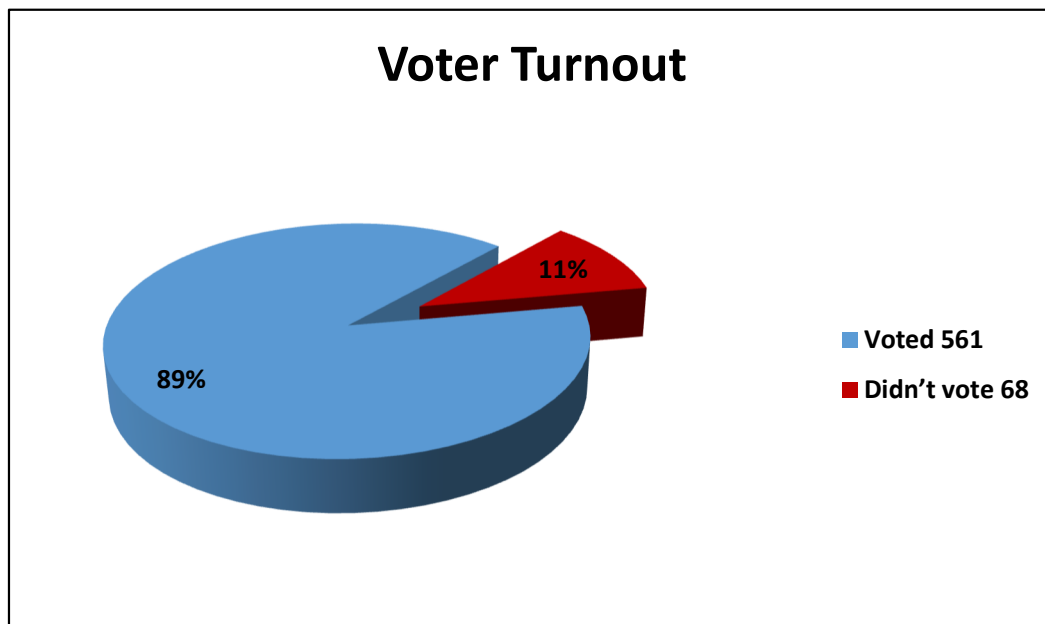
On 19 September 2020, the Association of Judges and Prosecutors of Serbia stated for daily *Kurir*⁶⁴ that it had appealed to all prosecutors to remain united and to resist external influence. According to the Association of Judges and Prosecutors of Serbia, some NGOs were trying to influence the election process.

Overall, the way the media covered the elections depended on the type of media. The tabloids did not broadcast information on the influence of the executive branch on the choice of candidates. Other media coverage was informative and not favouring candidates. *Kurir* was the only one reporting on the Association of Judges and Prosecutors of Serbia as an advocate of their activities. In general, the media coverage provided general information on the SPC election, not on the candidates and their programmes – except one, which was published after the elections.⁶⁵

FACTS AND FIGURES

Turnout

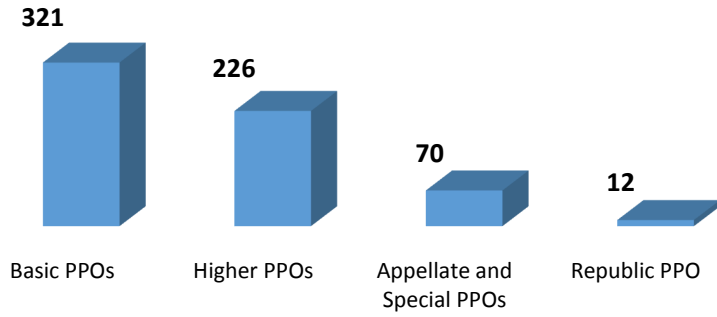
- Total number of eligible voters: 629
- Total number of voters who cast ballots: 561
- Total number of eligible voters who did not vote: 68



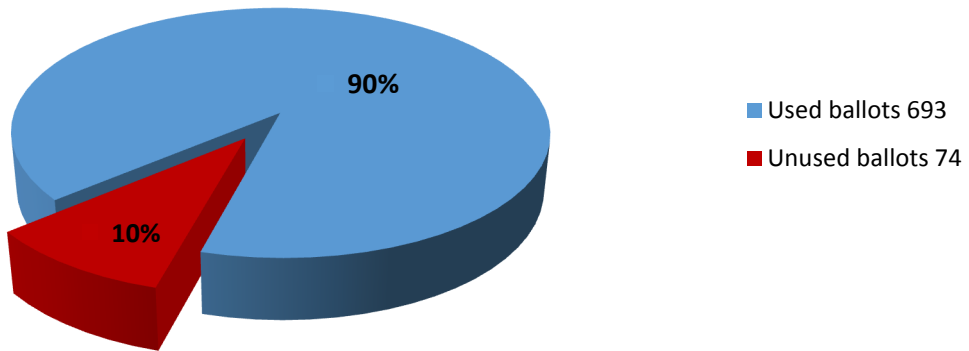
⁶⁴ See [in Serbian]: <https://www.kurir.rs/vesti/drustvo/3533889/udruzenje-sudija-i-tuzilaca-srbije-apelujemo-na-jedinstvo-struke-uoci-izbora>.

⁶⁵ See [in Serbian]: <https://www.istinomer.rs/analize/izbori-za-drzavno-vece-tuzilaca-urusen-ugled-ljudi-a-ne-zidina/>

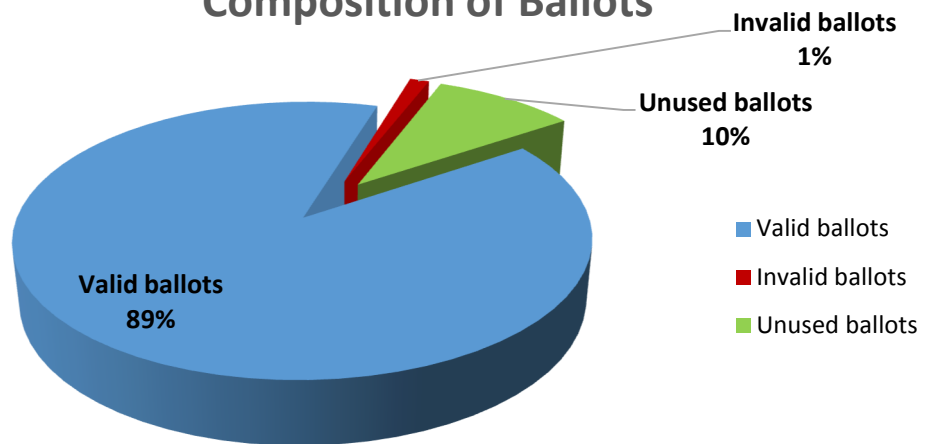
Number of Voters by Public Prosecution Office (PPO)



Number of Ballots



Composition of Ballots



RECOMMENDATIONS

Based on the undertaken monitoring of the elections, as described above, the OSCE Mission has identified the following recommendations for improving the national legal framework and practice.

SPC composition

- *Amend the constitutional and legal framework regarding the composition of the SPC and the 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 SPC.* The reform should aim at ensuring a broader territorial representation while maintaining the 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 the 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.

- *Clarify the status of deputy prosecutors selected for the initial three year period in the election process.* Deputy prosecutors are currently appointed by the National Assembly upon proposal of the SPC for an initial 3-year term, then confirmed for lifetime terms by the SPC. The role of the National Assembly in the first appointment raises concerns about susceptibility to political influence. If this practice remains, the role of these deputy prosecutors should be clarified in law and in practice in terms of their eligibility to vote and stand for SPC election. However, given the perception of such deputy prosecutors as lacking independence and impartiality according to international and regional standards, abandoning the practice of electing deputy public prosecutors for the initial three-year period should be considered.

Role of the National Assembly

- *Amend the Constitution regarding the procedure for appointing SPC members.* The role of the National Assembly should be reconsidered. Its current broad involvement makes the SPC composition subject to the authority of the National Assembly, thereby undermining the 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. Any future constitutional amendment should aim at maintaining prosecutors as the majority in the SPC and thus enable them to be autonomous in governing the prosecution service.

- *Amend the legal framework regarding the National Assembly procedure for the appointment of SPC members.* Currently, the legal framework does not contain any deadlines for Parliament to decide on candidates. There are no procedures for what to do if the National Assembly rejects the prosecutors proposed by the SPC.

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

Nomination Rules

- *Amend the legal framework to make the conduct of joint sessions on support for 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.*

- *Clearly stipulate how joint sessions should determine the quorum necessary to decide on candidates' nominations.* It cannot be determined how joint sessions established their quorum to work and decide on candidates' nominations when deputy prosecutors who were elected for the initial three-year period did not take part. The law defines a quorum as the 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.

Candidacy and Campaign Issues

- *Clarify the legal framework regarding whether one candidate can apply for two different voting lists.* The issue here 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 their peers, benefits such as paid leave, the reimbursement of travel costs and similar would enable candidates to raise awareness of their programmes and demonstrate how they would serve their peers on the SPC. Another way to increase the visibility of the candidates could be to encourage the use of online platforms that are accessible to all voters. These initiatives could also aid in reaching out to peers from other geographical areas and thus potentially contribute to a more diverse geographical representation in the SPC. The timeframe for the campaign is also very short and does not allow candidates adequate time to travel and present their programmes.

Electoral administrative dispute

- *Develop the rules on the 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.

CONCLUSION

Overall, the peer elections processes for the SPC were transparent, organized and conducted in line with the Serbian national legal framework, which is generally consistent with international and regional good practices. We would like to commend the excellent co-operation with the SPC's Electoral Commission, which was responsive to all our requests. The monitors noted a few minor shortcomings in terms of gaps in the legislation and uncertainties or inconsistencies in the application of certain procedures. The implementation of the recommendations from this Report would increase transparency and fairness of the election process. The OSCE Mission to Serbia stands ready to continue supporting the judicial reform efforts of the Serbian authorities in line with the recommendations of this report and OSCE commitments.