PROSECUTORIAL REFORM INDEX

FOR

SERBIA

December 2011

© American Bar Association
The statements and analysis contained in this report are the work of the American Bar Association’s Rule of Law Initiative, which is solely responsible for its content. The Board of Governors of the American Bar Association has neither reviewed nor sanctioned its contents. Accordingly, the views expressed herein should not be construed as representing the policy of the ABA. Furthermore, nothing contained in this report is to be considered rendering legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. This project was supported by Award No. 2008-AB-CX-0370 awarded by the U.S. Department of Justice Criminal Division, Office of Overseas Prosecutorial Development, Assistance, and Training. The opinions, findings, and conclusions or recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice.

978-1-61438-389-5 (PDF)

Printed in the United States of America

Copyright © 2012 by the American Bar Association
740 15th Street, NW, Washington, DC 20005

The ABA hereby grants permission for copies of the materials herein to be made, in whole or in part, for classroom use in an institution of higher learning or for use by not-for-profit organizations, provided that the use is for informational, noncommercial purposes only and any copy of the materials or portion thereof acknowledges original publication by the ABA, including the title of the publication, the name of the author, and the legend “Reprinted by permission of the American Bar Association. All rights reserved.”
**TABLE OF CONTENTS**

Introduction ...................................................................................................................................... i

Executive Summary ...................................................................................................................... 1

Serbia Background ........................................................................................................................ 3

Legal Context ............................................................................................................................... 3
History of the Public Prosecution ............................................................................................... 4
The Basic Principles and Structure of the Public Prosecution .................................................... 5
Conditions of Service .................................................................................................................. 7
  Qualifications ............................................................................................................................. 7
  Appointment and Tenure ........................................................................................................... 7
  Training ...................................................................................................................................... 7

Serbia PRI 2011 Analysis .............................................................................................................. 9

I.  Qualifications, Selection, and Training ........................................................................ 11
  Factor 1: Legal Education ......................................................................................................... 11
  Factor 2: Continuing Legal Education ....................................................................................... 13
  Factor 3: Selection: Recruitment, Promotion, and Transfer of Prosecutors ............................. 17
  Factor 4: Selection Without Discrimination ............................................................................... 23

II. Professional Freedoms and Guarantees ..................................................................... 11
  Factor 5: Freedom of Expression.............................................................................................. 25
  Factor 6: Freedom of Professional Association ........................................................................ 26
  Factor 7: Freedom from Improper Influence ............................................................................. 28
  Factor 8: Protection from Harassment and Intimidation............................................................ 30
  Factor 9: Professional Immunity ................................................................................................ 31

III. Prosecutorial Functions ........................................................................................... 32
  Factor 10: Discretionary Functions ............................................................................................ 32
  Factor 11: Rights of the Accused ............................................................................................... 35
  Factor 12: Victim Rights and Protection .................................................................................... 37
  Factor 13: Witness Rights and Protection .................................................................................. 40
  Factor 14: Public Integrity ......................................................................................................... 42

IV. Accountability and Transparency ........................................................................... 46
  Factor 15: Public Accountability ............................................................................................... 46
  Factor 16: Internal Accountability ............................................................................................. 48
  Factor 17: Conflicts of Interest .................................................................................................. 50
  Factor 18: Codes of Ethics ........................................................................................................ 52
  Factor 19: Disciplinary Proceedings .......................................................................................... 53

V. Interaction with Criminal Justice Actors .................................................................. 55
  Factor 20: Interaction with Judges ............................................................................................ 55
  Factor 21: Interaction with Police and Other Investigatory Agencies ..................................... 57
  Factor 22: Interaction with Representatives of the Accused .................................................... 59
  Factor 23: Interaction with the Public/Media ............................................................................. 61
  Factor 24: International Cooperation ......................................................................................... 64
VI. Finances and Resources ........................................................................................................... 67
Factor 25: Budgetary Input........................................................................................................... 67
Factor 26: Resources and Infrastructure .................................................................................... 68
Factor 27: Efficiency .................................................................................................................. 69
Factor 28: Compensation and Benefits ...................................................................................... 71

List of Acronyms .......................................................................................................................... 73
Introduction

The Prosecutorial Reform Index (PRI) is a tool developed by the American Bar Association’s Rule of Law Initiative. Its purpose is to assess a cross-section of factors important to prosecutorial reform in transitioning states. In an era when legal and judicial reform efforts are receiving more attention than in the past, the PRI is an appropriate and important assessment mechanism. The PRI will enable the ABA, its funders, and the local governments themselves, to better target prosecutorial reform programs and monitor progress towards establishing accountable, effective, and independent prosecutorial offices.

The ABA embarked on this project with the understanding that there is not uniform agreement on all the particulars that are involved in prosecutorial reform. There are differences in legal cultures that may make certain issues more or less relevant in a particular context. However, after working in the field on this issue for 15 years in different regions of the world, the ABA has concluded that each of the 28 factors examined herein may have a significant impact on the prosecutorial reform process. Thus, an examination of these factors creates a basis upon which to structure technical assistance programming and assess important elements of the reform process.

The technical nature of the PRI distinguishes this type of assessment tool from other independent assessments of a similar nature, such as the U.S. State Department’s Human Rights Report and Freedom House’s Nations in Transit. This assessment will not provide narrative commentary on the overall status of the prosecutorial system in a country. Rather, the assessment will identify specific conditions, legal provisions, and mechanisms that are present in a country’s prosecutorial system and assess how well these correlate to specific reform criteria at the time of the assessment. In addition, this analytic process will not be a scientific statistical survey. The PRI is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country’s prosecutorial system.

Methodology

The ABA was able to borrow heavily from the Judicial Reform Index (JRI) and Legal Profession Reform Index (LPRI) in terms of structure and process. However, the limited research on legal reform that exists tends to concentrate on the judiciary, excluding other important components of the legal system, such as lawyers and prosecutors. According to democracy scholar Thomas Carothers, “[r]ule-of-law promoters tend to translate the rule of law into an institutional checklist, with primary emphasis on the judiciary.” Carothers, Promoting the Rule of Law Abroad: the Knowledge Problem, CEIP Rule of Law Series, No.34, (Jan. 2003). Moreover, as with the JRI and LPRI, the ABA concluded that many factors related to the assessment of the prosecutorial system are difficult to quantify and that “[r]eliance on subjective rather than objective criteria may be … susceptible to criticism.” ABA/Central European and Eurasian Law Initiative, Judicial Reform Index: Manual for JRI Assessors. (2001).

The ABA sought to address these issues and criticisms by including both subjective and objective criteria and by basing the criteria examined on some fundamental norms, such as those set out in the United Nations Guidelines on the Role of Prosecutors; the International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors; Council of Europe Recommendation R(2000)19 ‘On the Role of Public Prosecution in the Criminal Justice System; and the American Bar Association Standards for Criminal Justice: Prosecution Function.

In creating the PRI, the ABA was able to build on its experience in creating the JRI, the LPRI, and the more recent CEDAW Assessment Tool and Human Trafficking Assessment Tool in a number
of ways. ¹ For example, the PRI borrowed the JRI’s factor “scoring” mechanism and thus, as with the LPRI, was able to avoid the difficult internal debate that occurred with the creation of the JRI. In short, the JRI, the LPRI, and now the PRI employ factor-specific qualitative evaluations. Each PRI factor, or statement, is allocated one of three values: positive, neutral, or negative. These values only reflect the relationship of that statement to that country’s regulations and practices pertaining to its prosecutorial system. Where the statement strongly corresponds to the reality in a given country, the country is to be given a score of “positive” for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a “negative.” If the conditions within the country correspond in some ways but not in others, it will be given a “neutral.” Like the JRI and LPRI, the PRI foregoes any attempt to provide an overall scoring of a country’s reform progress since attempts at aggregate scoring based on this approach could be counterproductive.²

The results of the 28 separate evaluations are collected in a standardized format in each PRI country assessment. As with the JRI and LPRI, the PRI utilizes an assessed correlation and a brief summary describing the basis for this conclusion following each factor. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits users to easily compare and contrast performance of different countries in specific areas and—as PRIs are updated—within a given country over time. There are two main reasons for borrowing the JRI’s and LPRI’s assessment process, “scoring,” and format. The first is simplicity. Building on the tested methodology of the JRI and LPRI enabled the speedier development of the PRI. The second is uniformity. Creating uniform formats will enable the ABA eventually to cross-reference information generated by the PRI into the existing body of JRI and LPRI information. This will eventually give the ABA the ability to a much more complete picture of legal reform in target countries.

Social scientists might argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of prosecutors, judges, and defense counsel. Sensitive to the potentially prohibitive cost and time constraints involved, the ABA decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of lawyers, judges, and outside observers with detailed knowledge of the legal system. Overall, the PRI is intended to be rapidly implemented by one or more assessors who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

The PRI was designed to fulfill several functions. First, local government leaders and policymakers can utilize the findings to prioritize and focus reform efforts. Second, the ABA and other rule of law assistance providers will be able to use the PRI results to design more effective programs related to improving the quality of the prosecutorial system. Third, the PRI will also provide donor organizations, policymakers, NGOs, and international organizations with hard-to-find information on the structure, nature, and status of the prosecutorial system in countries where the PRI is implemented. Fourth, combined with the JRI and LPRI, the PRI will contribute to a comprehensive understanding of how the rule of law functions in practice. Fifth, PRI results can also serve as a springboard for such local advocacy initiatives as public education campaigns about the role of prosecutors in a democratic society, human rights issues, legislative drafting, and grassroots advocacy efforts to improve government compliance with internationally established standards for the prosecutorial function.

¹ CEDAW stands for the UN Convention on the Elimination of All Forms of Discrimination Against Women. CEELI developed the CEDAW Tool in 2001-2002. The Human Trafficking Assessment Tool is based on the UN Trafficking Protocol and was developed in 2004-2005.

Acknowledgements

The ABA would like to thank the team that developed the concept and design of the PRI, including the project coordinators Simon Conté, Deputy Director of the ABA Rule of Law Initiative’s Research and Program Development Office, and Mary Greer, the ABA Rule of Law Initiative’s Senior Criminal Law Advisor, as well as a splendid team of research assistants - Jasna Dobricik, Malika Levarlet, Lada Mirzalieva, Jaspreet Saini, and Gideon Wiginton. In addition, the ABA gratefully acknowledges the contributions made to this project by a number of valued colleagues, including Wendy Patten, Carson Clements, Olga Ruda, Andreea Vesa, and Monika Jaworska.

During the year-long development process, input and critical comments were solicited from a variety of experts on prosecutorial reform matters. In particular, the ABA would like to thank the members of its PRI Expert Working Group, who helped to revise the initial PRI structure and factors: Mark Dietrich, Barry Hancock, Christopher Lehman, Martin Schöenteich, Irwin Schwartz, and Raya Boncheva, as well as those submitting written comments: Wassim Harb, Woo Jung Shim, Antonia Balkanska, and Feridan Yenisy.

Assessment Team

The Serbia PRI 2011 Analysis assessment team was led by both Simon Conté, ABA ROLI Director of Research and Assessments, and Mary Greer, ABA ROLI Senior Criminal Law Advisor. Other members of the team were Milan Nikolic, who served as the Serbia PRI Field Coordinator, and Ljiljana Sobajic, who provided interpretation services for the assessment. The team received strong support from ABA ROLI staff in Washington, including Program Manager Ashley Martin, Program Officer Ellen Davis, and Research Fellow Shant Taslakian. The conclusions and analysis are based on interviews that were conducted in Serbia in October 2011 and relevant documents that were reviewed at that time. Records of relevant authorities and a confidential list of interviewed are on file with ABA ROLI. We are extremely grateful for the time and assistance rendered by those who agreed to be interviewed for this project.
Executive Summary

Brief Overview of the Results

Numerous reforms to the justice system have transpired in Serbia in recent years, including a process of complete review and re-election of all judicial and prosecutorial positions. Shifts in the duties and responsibilities of justice actors are also occurring, as mandated by a new criminal procedure code. These reforms and changes are occurring under the watchful eye of the European Commission as Serbia targets entry into the European Union. The commitment of the Republic Public Prosecutor and the Public Prosecution to genuine reform has been tested by the very real challenges of addressing crime on both a national and global scale, and the further challenge of remaining truly autonomous, while being responsible and accountable to the public in its decision making at all points throughout the criminal justice continuum. Serbia has prioritized, through the allocation of financial resources, as well as expertise, its fight against organized crimes and corruption, as well as war crimes. And while it has achieved a certain level of success in these areas, and others, the corresponding challenges to effectively combating crime are reflected in an inconsistent and nontransparent approach to what criminal activity is targeted for investigation and prosecution, and who is actually pursued. Overall, however, the recent efforts of the RPP and her staff in modernizing and elevating the expertise and stature of the Public Prosecution are encouraging.

Positive Aspects Identified in the 2011 Serbia PRI

- While the quality of general legal education of law students is moving in a positive direction, it is the Judicial Academy that has evolved into a critical institution focused on high standards of competence and expertise for new and existing judicial actors. The inception of the initial training program for prosecutors and judges, which is also coordinated by the Judicial Academy, also represents a promising effort to ensure a high quality, harmonized approach to preparing qualified applicants for justice positions.

- The Association of Public Prosecutors and Deputy Prosecutors has been a vital force in elevating the stature and expertise of prosecutors in Serbia. It is an independent organization relying on membership dues and donor funding to pursue a wide range of activities benefiting all prosecutors in Serbia. In addition to providing an impressive selection of publications and trainings for its members, the Association advocates for the interests of prosecutors and the criminal justice system, and most recently, its efforts proved critical in addressing the flawed reappointment process.

- In the important area of international cooperation, the enhanced internal capacity and pro-activity of the Public Prosecution, coupled with a solid legislative framework, is proving increasingly effective in meeting the challenges of combating crime with global breadth.

Major Concerns Identified in the 2011 Serbia PRI

- The reappointment process commenced in 2009 lacked due process and transparency, and while the revision efforts ending in 2011 did result in the correction of some deficiencies and the reappointment of some qualified prosecutors, it remains to be seen how the newly constituted State Prosecutorial Council (the SPC) will handle the appointment, promotion, and transfer of prosecutors, as well as the fair evaluation of prosecutors in the future.
While traditional corruption is not perceived to be a significant problem within the RPP, and prosecutors are guaranteed autonomy by law, the potential for both internal and external influence raises concerns. Prosecutors are reportedly subject to mandatory instructions from superiors on any aspect involving a case, and influence from political authorities on high profile cases is suspected. Political authorities are perceived to wield too much influence over the appointment process for prosecutors and on the SPC, diminishing its role as the independent authority governing the Public Prosecution.

Currently the constitutional and legislative scheme in Serbia is weak in its protections for victims. There is no centralized victim coordination function or unit within the Public Prosecution, except in the special offices dealing with organized and war crimes, and then services are only available during the pendency of court proceedings. Lastly, victims are not afforded legal aid to assist them in pursuing their claims within or parallel to a criminal proceeding.

Though in progress, until a Code of Ethics is adopted by the SPC, ethical standards for prosecutors are inadequate, currently consisting of general and vague requirements in several different laws and regulations. Education and training in ethics is lacking at both the academic and professional levels. While the Law on Public Prosecution provides thorough and fair procedures for disciplinary proceedings, the SPC’s failure to adopt an Ethics Code and appoint a Disciplinary Prosecutor has left prosecutors effectively unaccountable for misconduct. Similarly, prosecutors are rarely subjected to criminal prosecution for misconduct.
Serbia Background

Legal Context

The Republic of Serbia is a parliamentary democracy organized in accordance with the separation of powers principle. The state is governed by the Parliament (the Narodna Skupština, or National Assembly), President, Government, and Judiciary.

The National Assembly, consisting of 250 members, has legislative authority. Its primary competences include authority to enact laws and other regulations within the jurisdiction of the Republic of Serbia and to adopt and amend the Constitution. Announcing Republic referenda and ratifying international treaties also fall within the scope of its jurisdiction. The National Assembly exercises its budgetary powers by adopting the budget and the final account of the Republic of Serbia proposed by the Government. Within criminal matters, the National Assembly has authority to grant amnesty for criminal acts. The National Assembly has some electoral rights, which enable it to have certain leverage over the other two branches of government. One of these most important powers is the right to elect the Government, and moreover, to supervise its work and decide on the termination of the Government's and Ministers' mandate. In the area of the judiciary, the National Assembly has very significant powers, including specific responsibilities in the election process for the posts of the President of the Supreme Court of Cassation, courts presidents, the Republic Public Prosecutor, Public Prosecutors, judges, and for the first election of Deputy Public Prosecutors, in accordance with the Constitution. The National Assembly also appoints and dismisses one third of the Constitutional Court judges.

The President is elected via direct election, by secret ballot for a term of office of five years. He embodies the governmental unity of the Republic of Serbia and represents the Republic of Serbia within the country and abroad. His mandate is not only representative but also encompasses a certain level of influence over legislative and executive power. The President proposes candidates for Prime Minister to the National Assembly. In the legislative area, the competence of the President is to declare laws by decree, in accordance with the Constitution. He may return a proposed law to the National Assembly for further consideration if he feels that the law either does not conform with the Constitution or is in conflict with confirmed international treaties or generally accepted rules of international law, or if applicable procedures were not followed during the passage of the law. He can also grant amnesties and award honors. The President of the Republic may, in accordance with the Constitution and laws, dismiss the National Assembly on a justified proposal by the Government and announce new parliamentary elections. The Government, vested with executive power, has jurisdiction over the setting of policy, the enforcement of laws and other regulations, and the adoption of regulations and general acts for law enforcement purposes, and is responsible for directing and coordinating the work of government agencies. It consists of the Prime Minister, the Deputy Prime Minister, and Ministers.

Judicial power in Serbia is vested in the courts of general and special jurisdiction. The High Judicial Council (HJC) is positioned by the Constitution as an independent and autonomous body, and guardian of the courts independence. The HJC has jurisdiction over the following: appointing judges for permanent tenure and dismissing judges; proposing to the National Assembly the election of judges in their first election to the position of judge; proposing to the National Assembly the election of the President of the Supreme Court of Cassation as well as presidents of courts; participating in proceedings for terminating the tenure of office of the President of the Supreme Court of Cassation and presidents of courts, and other duties specified by law. In certain cases an appeal may be lodged with the Constitutional Court against decisions of the HJC, as was widely utilized by non-reelected judges after the 2009 reelection process. Composition of the HJC is structured to ensure majority representation of judges; hence seven out of its eleven members are judges.
The structure of the courts in Serbia is such that the Supreme Court of Cassation is the highest court in the state. Courts of general jurisdictions consist of 4 appellate courts, 26 higher courts and 34 basic courts. The courts of special jurisdiction are the Administrative Court, Appellate Commercial Court and 16 commercial courts, and the Higher Misdemeanor Court and 45 misdemeanor courts. The Constitution protects judicial independence by guaranteeing that judges are independent in performing their function, are non-transferable, and have immunity. Judges have permanent tenure, except for an initial election of three years. On the proposal of HJC, the National Assembly elects judges for the first time, while the HJC elects judges for their permanent post.

The Constitutional Court consists of 15 judges, out of whom 5 are appointed by the National Assembly, 5 by the President and 5 by the general session of the Supreme Court of Cassation. Its main jurisdiction is to ensure the compliance of laws and other general acts with the Constitution and generally accepted rules of international law and ratified treaties.

**History of the Public Prosecution**

The development of the Serbian legal system, judiciary, and prosecutorial structure was influenced by the legal traditions of European continental countries, most notably Austria, Germany, and France. Until 2001, however, the most significant influence on the prosecution service was the legacy of socialist rule in Yugoslavia, when the service was regarded as more or less an extended arm of the executive power of the government. Following the fall of the Milosevic regime in October 2000, a democratically oriented Government sought to strengthen the independence of the judiciary, as well as the autonomy of the public prosecution, and to enhance their role in advancing legal and judicial reforms. In November 2001, a new package of laws granted the judiciary greater authority to regulate its own affairs and the prosecution service received wider autonomy in its work.

Acknowledging that the legal system based on the principals of 1990 Constitution was outdated and did not provide an adequate framework for a modern judiciary intended to be more responsive to new political, social, and economic relations, the National Assembly in 2006 adopted the National Judicial Reform Strategy (Strategy). The Strategy was adopted with the goal to improve the overall judiciary, but also recognized that reform of the judiciary represents a unique opportunity to improve the autonomy, accountability, and effectiveness of prosecutors. The Strategy explains that “the Public Prosecutor must not be an ordinary civil servant but cannot have a status equal to an independent judge.”

Following the recommendations set forth in the Strategy, Article 156 of the new Constitution, adopted in 2006, defines the public prosecution as an “autonomous state authority responsible for prosecuting the offenders of criminal and other punishable acts and takes all necessary measures for the protection of constitution and legislation.” The Constitution also defines the internal and external structure of the prosecution service, its relationship with other state organs, and sets forth the procedure for the nomination and selection of prosecutors. The Constitutional framework was further developed in 2008 through the adoption of new judicial laws, particularly the Law on Public Prosecution, Law on State Prosecutorial Council, and Law on Seats of the Law on the Seats and Territorial Jurisdiction of Courts and Public Prosecutor’s Offices.

The most notable aspects introduced by the 2006 Constitution were the establishment of the State Prosecutorial Council (SPC) and permanency of the prosecutorial function. The SPC is defined by the Constitution as a special autonomous body that guarantees the autonomy of prosecutors and deputy prosecutors. As such, it is not surprising that the majority of SPC members, 7 out of 11, are from the ranks of Public Prosecutors and Deputy Public Prosecutors. The Republic Public Prosecutor (RPP) is an *ex officio* member and President of the SPC. The
other six members from the prosecution service are nominated via secret vote by their colleagues, and those with the most votes are proposed by the SPC to the National Assembly for election. Aside from the RPP, there are two more members who sit on the SPC by virtue of their office: the Minister competent for the Judiciary and the Chairperson of the competent Committee of the National Assembly. The SPC also has two distinguished and prominent jurists elected by the National Assembly with a minimum 15 years of professional experience, one of whom is an attorney nominated by the Bar Association of Serbia and the other a law faculty professor nominated via a joint session of the law faculties’ deans. The main competences of the SPC are related to the election of the prosecutors and deputy prosecutors; the establishment of disciplinary bodies and procedures performance evaluations; the proposal of training programs for prosecutors and deputies with permanent office, as well as the establishment of curricula for those elected for the first time; the rendering of opinions on laws influencing the status and work of prosecutors; and the submission of budget proposals to support the operations of the Public Prosecutor's offices.

The other Constitutional novelty is the permanency of the prosecutorial function and limited duration of the prosecutor’s mandate (6 years). The National Assembly, upon a proposal made by Government, selects Public Prosecutors for 6 year mandates. Deputy Public Prosecutors are elected for the first time by the National Assembly upon a proposal made by SPC, and those deputies have a mandate of three years. After the first three year mandate, however, Deputy Public Prosecutors may be elected for a permanent position and this election is completely under the jurisdiction of the SPC.

The Basic Principles and Structure of the Public Prosecution

The founding principles of the organization of the public prosecution are autonomy, internal unity and indivisibility, a monocratic and hierarchical structure, and subordination of lower prosecutors to the obligatory instructions of those higher. The core principles of the duties and responsibilities of the public prosecution are lawfulness, legality, opportunity, devolution and substitution, mutability and immutability, and economy and efficiency.

Article 16 (2) of the Law on Public Prosecution sets forth the structure and hierarchy of the organization:

A basic public prosecution shall be ranked lower than a higher public prosecution. A higher public prosecution shall be ranked lower than an appellate public prosecution. Public prosecutions of special jurisdiction and the appellate public prosecution shall be ranked lower than the Republican Public Prosecution.

Deputy Public Prosecutors are required to perform all actions entrusted to them by Public Prosecutors. Deputy Public Prosecutors may undertake all actions for which prosecutors are allowed to perform without special authorization.

Basic Public Prosecutors exercise the competences of the basic public prosecution service and act before basic courts, as well as before commercial courts if such a court exists in that jurisdiction. All 34 Basic Public Prosecutors are spread across different territorial jurisdictions of the country, and usually act in first instance criminal cases addressing criminal offences punishable by a fine or imprisonment of up to and including 10 years as a principal penalty.

Higher Public Prosecutors exercise the competences of the higher public prosecution service and act before higher courts and other courts and authorities as provided by law, as well as oversee and direct basic public prosecutions. There are 26 higher prosecutors in the Republic of Serbia who act before higher courts in first instance criminal cases addressing criminal offences.
punishable by imprisonment of more than 10 years as the principal penalty. In addition, there are certain criminal offences that always fall under the jurisdiction of the higher courts, regardless of penalty. Consequently, higher prosecutors act in most of those cases, which include a variety of criminal offences against the Republic of Serbia, trafficking in minors, money laundering, and accepting bribes. Other competences of the higher courts, and hence higher prosecutors, relate to juvenile criminal proceedings. There are four appellate Public Prosecutors in Serbia seated in the four biggest cities and regional centers where such courts are located: Belgrade, Novi Sad, Kragujevac and Niš. Appellate Public Prosecutors are competent to act before the appellate courts and other courts and authorities, as well as to supervise and direct basic and higher public prosecutions from their territory. The Appellate Public Prosecutor in the seat of the Commercial Appellate Court also acts before that court. The main competences of the appellate courts, and appellate prosecutors accordingly, are to decide on appeals against decisions of higher courts and basic courts, unless such an appeal falls under the jurisdiction of a higher court.

The RPP is at the top of the hierarchical structure of the prosecutorial organization in Serbia. The RPP is elected by the National Assembly upon the proposal of the Government for a term of 6 years, and exercises all of the competences of the public prosecution service. The RPP is competent to proceed before all courts and other authorities in the Republic of Serbia, and to undertake all actions within the purview of the public prosecution. Competences of the RPP also include the filing of extraordinary legal remedies, oversight of the work of the public prosecution service, proposing advanced training programs for prosecutors, and submitting operational reports to the National Assembly.

The Public Prosecutors for Organized Crime and War Crimes are prosecutors of special competences, and provide specialized prosecution in these types of criminal offences for all of Serbia country. These prosecutors act before the competent courts of first instance (the Specialized Department and the War Crimes Department of the Higher Court in Belgrade) and second instance (Specialized Department and the War Crimes Department of the Appellate Court in Belgrade).

The War Crimes Prosecutor directs the work of the Office of the War Crimes Prosecutor, which was established in 2003. Its main competences are to detect and prosecute perpetrators of crimes against humanity and international law, as well as grave breaches of international humanitarian law, committed in the territory of the former Yugoslavia beginning January 1, 1991, as recognized by the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY).

The Prosecutor for Organized Crime heads the office of the Prosecutor’s Office for Organized Crime. The competences for this Office are precisely defined in the Law on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime, Corruption and Other Severe Criminal Offences, and include organized crime, criminal offences against constitutional order and security of the Republic of Serbia, abuse of official duty or official position, international terrorism and terrorist financing. The Prosecutor for Organized Crime also has the authority to prosecute cases involving money laundering, when the property which is the object of the crime originates from any of the previously listed criminal offences. Lastly, his jurisdiction also includes crimes against government authorities and the judiciary, if committed in relation to any of previously mentioned criminal offences.
Conditions of Service

Qualifications

All Public Prosecutors and Deputy Public Prosecutors are required to be law school graduates and to have passed the bar exam. Many Public Prosecutors and Deputy Public Prosecutors satisfy the two-year practical experience requirement before being eligible to sit for a bar exam by working as prosecutorial trainees, followed by at least another 3 years as prosecutorial assistants before assuming their official duties. Those prosecutorial assistants who complete the recently initiated 2-year training program at the Judicial Academy will have an advantage in their possible election to a prosecutorial posting. Furthermore, after passing the bar exam, the Law on Public Prosecution requires a certain number of years of experience in the legal profession. Depending on the level of prosecution function, the required years of experience varies from 3 years for a deputy basic Public Prosecutor to 12 years for Republic Public Prosecutor. In addition to the educational and experience requirements, a candidate has to be worthy of the office of a Public Prosecutor, a citizen of the Republic of Serbia and has to fulfill the general requirements for employment within governmental authorities.

Appointment and Tenure

The Constitution and the Law on Public Prosecution set forth the procedures for the election of the public and Deputy Public Prosecutors.

A significant part of the responsibilities in the election process for Public Prosecutors and Deputy Public Prosecutors lay within SPC competencies. After conducting the gradual procedure of recruiting and assessing the applicants’ professional qualifications, specific knowledge and worthiness, the SPC makes a list of candidates deemed eligible for the posts. For election of Public Prosecutors, the SPC submits the list of candidates to the Government, though if only one candidate is proposed, the Government may return the proposal to the SPC. For the election of RPP the Government shall obtain the opinion on the candidates from the competent committee of the National Assembly. In the end, the National Assembly elects Public Prosecutors upon proposal by the Government. Public prosecutors are elected for a term of six years and may be reelected. However, if a Public Prosecutor is not re-elected to same office, he will be elected to the office of Deputy Public Prosecutor where he was posted prior to election, or to a higher prosecution office if the prosecution he formerly headed is higher compared to the one where he served as a deputy.

Deputy Public Prosecutors serving for the first time are elected for three year terms by the National Assembly, from one or more candidates proposed by the SPC. After the completion of an initial three year term, a deputy prosecutor may be elected to permanent office, based on the sole decision of the SPC. The SPC also has competence to decide on the election of a Deputy Public Prosecutor seeking a position within a higher ranked public prosecution office.

Training

The Judicial Academy was founded in 2010 to supplement the theoretical knowledge provided in law schools, especially with practical skills, and to provide for continuing legal education. The Judicial Academy is a successor of the Judicial Training Center, and its goals, organizational structure, scope of work, and activities are defined by the Law on Judicial Academy adopted in 2008. The Judicial Academy provides initial training over a period of two years for judicial and prosecutorial assistants. Continuous legal education is provided on a voluntary basis for judges and prosecutors, unless made mandatory by decision of the HJC or SPC due to changes in the law or regulations, or deficiencies noted in the work of judges or Public Prosecutors. The Law also prescribes that judges and Deputy Public Prosecutors elected for the first time are obliged to
attend a special continuous training program if they have not attended the initial training. The Judicial Academy also conducts special training programs for judicial and prosecutorial assistants and trainees.
Serbia PRI 2011 Analysis

While the correlations drawn in this exercise may serve to give a sense of the relative status of certain issues present, the ABA would underscore that these factor correlations possess their greatest utility when viewed in conjunction with the underlying analysis, and the ABA considers the relative significance of particular correlations to be a topic warranting further study. In this regard, the ABA invites comments and information that would enable it to develop better or more detailed responses in future PRI assessments. The ABA views the PRI assessment process to be part of an ongoing effort to monitor and evaluate reform efforts.

Table of Factor Correlations

<table>
<thead>
<tr>
<th>Prosecutorial Reform Index Factor</th>
<th>Correlation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>I. Qualifications, Selection, and Training</strong></td>
<td></td>
</tr>
<tr>
<td>Factor 1 Legal Education</td>
<td>Neutral</td>
</tr>
<tr>
<td>Factor 2 Continuing Legal Education</td>
<td>Positive</td>
</tr>
<tr>
<td>Factor 3 Selection: Recruitment, Promotion, and Transfer</td>
<td>Negative</td>
</tr>
<tr>
<td>Factor 4 Selection Without Discrimination</td>
<td>Positive</td>
</tr>
<tr>
<td><strong>II. Professional Freedoms and Guarantees</strong></td>
<td></td>
</tr>
<tr>
<td>Factor 5 Freedom of Expression</td>
<td>Neutral</td>
</tr>
<tr>
<td>Factor 6 Freedom of Professional Association</td>
<td>Positive</td>
</tr>
<tr>
<td>Factor 7 Freedom from Improper Influence</td>
<td>Neutral</td>
</tr>
<tr>
<td>Factor 8 Protection from Harassment and Intimidation</td>
<td>Neutral</td>
</tr>
<tr>
<td>Factor 9 Professional Immunity</td>
<td>Positive</td>
</tr>
<tr>
<td><strong>III. Prosecutorial Functions</strong></td>
<td></td>
</tr>
<tr>
<td>Factor 10 Discretionary Functions</td>
<td>Neutral</td>
</tr>
<tr>
<td>Factor 11 Rights of the Accused</td>
<td>Neutral</td>
</tr>
<tr>
<td>Factor 12 Victim Rights and Protection</td>
<td>Negative</td>
</tr>
<tr>
<td>Factor 13 Witness Rights and Protection</td>
<td>Neutral</td>
</tr>
<tr>
<td>Factor 14 Public Integrity</td>
<td>Neutral</td>
</tr>
<tr>
<td><strong>IV. Accountability and Transparency</strong></td>
<td></td>
</tr>
<tr>
<td>Factor 15 Public Accountability</td>
<td>Neutral</td>
</tr>
<tr>
<td>Factor 16 Internal Accountability</td>
<td>Neutral</td>
</tr>
<tr>
<td>Factor 17 Conflicts of Interest</td>
<td>Positive</td>
</tr>
<tr>
<td>Factor 18 Codes of Ethics</td>
<td>Negative</td>
</tr>
<tr>
<td>Factor 19 Disciplinary Proceedings</td>
<td>Neutral</td>
</tr>
<tr>
<td><strong>V. Interaction with Criminal Justice Actors</strong></td>
<td></td>
</tr>
<tr>
<td>Factor 20 Interaction with Judges</td>
<td>Neutral</td>
</tr>
<tr>
<td>Factor 21 Interaction with Police and Other Investigatory Agencies</td>
<td>Neutral</td>
</tr>
<tr>
<td>Factor 22 Interaction with Representatives of the Accused</td>
<td>Neutral</td>
</tr>
<tr>
<td>Factor 23 Interaction with the Public/Media</td>
<td>Neutral</td>
</tr>
<tr>
<td>Factor 24 International Cooperation</td>
<td>Positive</td>
</tr>
<tr>
<td><strong>VI. Finances and Resources</strong></td>
<td></td>
</tr>
<tr>
<td>Factor 25 Budgetary Input</td>
<td>Neutral</td>
</tr>
<tr>
<td>Factor 26 Resources and Infrastructure</td>
<td>Neutral</td>
</tr>
<tr>
<td>Factor 27 Efficiency</td>
<td>Neutral</td>
</tr>
<tr>
<td>Factor 28 Compensation and Benefits</td>
<td>Neutral</td>
</tr>
</tbody>
</table>
I. Qualifications, Selection, and Training

Factor 1: Legal Education

Prosecutors have the appropriate legal education and training necessary to discharge the functions of their office, and should be made aware of the ideals and ethical duties of their office, of the protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by international law.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>While university-level legal education is still lacking in vibrant clinical opportunities and effective testing techniques, the state supported faculties have become more pro-active in their efforts to implement interactive teaching methodologies and relevant preparatory curricula.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

Article 76 of the Law on Public Prosecutors states that a citizen of Serbia who is a law school graduate, who has passed the judicial examination, and is “worthy of the office of a Public Prosecutor” may be elected Public Prosecutor or Deputy Public Prosecutor.

Serbia’s Law on Higher Education sets out the rights and obligations relating to higher education, and creates The National Council for Higher Education. LAW ON HIGHER EDUCATION, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA 76/05, 100/07 – other law 97/08, 44/10. The Council’s 21 members are appointed by the National Assembly of the Republic of Serbia. Id. art. 10. The act also sets up an Accreditation and Quality Evaluation Commission for carrying out the tasks relating to accreditation and evaluation. The Commission consists of 15 members elected by the Council. Id. art. 13. The Council is tasked with conducting periodic evaluations of institutions (universities) and their respective programs (including law schools) in a broad range of areas to ensure they satisfy the standards established by law. Id. arts. 16 and 15 respectively.

In the 2006/2007 academic year a two-cycle system of legal studies was introduced – the first lasts four years (undergraduate studies) and the second lasts one year (Master studies). The undergraduate studies include mandatory courses and a selection of four major streams of study – judicial, administrative, business law and legal theory, and international law, as well as a number of elective courses from which students can choose according to their personal interests and preferences. Mandatory classes include Civil and Criminal Law (including Procedure); Comparative Legal Traditions; Administrative, Constitutional, and Commercial Law. The Master studies encompass two basic programmes—a business law programme and an administrative-judicial programme, as well as a large number of open master programmes in various areas: Legal Theory, Legal History, Civil Law, Criminal Law, Business Law, Financial Law, International Commercial Law, Law on Intellectual Property, International Public Law, Labor Law and Social Security Law, Administrative Law and Public Administration, Constitutional Law and Political System, Legal and Economic Studies, Legal and Social Studies, and European Union Law. (Available at http://www.ius.bg.ac.rs/eng/). Legal Ethics is included as an elective in the Master studies, but is not mandatory. The Master studies may be completed during the post law school internship period.

The bar exam may be taken upon graduation from the faculty of law and after completion of the requisite work experience: two years in a court, Public Prosecutor’s office, public attorney’s office or lawyer’s office; three years in a misdemeanor court, or state or local government authority; or four years in a company, institution or other organization. LAW ON THE BAR EXAM, art. 2, OFFICIAL
GAZETTE OF THE REPUBLIC OF SERBIA No. 16/97. The bar examination consists of written and oral parts. “Practical tasks” in criminal and civil law are addressed in the written part, and a variety of subjects are included in the oral part of the examination: Constitutional, Criminal, Civil, Commercial (Economic), International Private, Administrative, and Labor Law. Id. art. 3. The bar exam falls under the purview of the Ministry of Justice, which appoints a seven-member examination board to devise and administer the exam. Id. arts. 4-5. A candidate who has failed the bar examination may retake it after six months from the last exam. Id. art. 26. It was reported that the exam is given over 3 consecutive days. Those interviewed stated the exam is rigorous, and there were no complaints heard about its fairness.

In practice, the initial four years of legal education, while improving, are still not as effective as they could be. Students reported that it was easy to be admitted to the law faculty but harder to graduate, with huge student/faculty ratios initially. The first year class size was approximately 1,500 students, but dropped to approximately 300 students by the third year. One lecture hall for a first year class may contain up to 700 students, though not every student attends every day, hampering attempts by professors to create an interactive learning environment. Students, professors, and practitioners reported that the curriculum is strong on theory but not as strong on practical skills. Students indicated professors are smart but do not always challenge them. Some courses, however, are more competitive: one student mentioned that he applied to be admitted into the moot court program, but was unsuccessful due to the strong competition. There is no mandatory ethics course in the curriculum, nor historically on research and writing, though it was reported there is now a course in “written work,” which includes the drafting of indictments or relevant writing projects.

There is no directed study in the law faculties for those wishing to pursue a career in the Public Prosecution. After the initial two years of initial study, it was reported that students can specialize in criminal, international, or economic law by gearing their elective courses in that area. Courses within the criminal specialty include criminology, misdemeanors, forensics, juvenile law, and organized crime. Only one student interviewed wanted to pursue a career in criminal law. A female student stated that she did not think becoming a prosecutor was easy for women, and several agreed it takes a very strong personality. No students interviewed had any negative things to say about the integrity and reputation of prosecutors, citing it as a “distinguished profession.” Both students and professors complained that in some substantive areas, it is hard to squeeze in all relevant course work in one semester, especially criminal procedure. In 2010, elective criminal and civil clinics were initiated. There is also a clinic specializing in representing refugees and displaced persons. There are ad hoc special courses, some of which are funded by the Organization for Security and Cooperation in Europe [hereinafter OSCE], in international criminal law and war crimes, including a writing contest where the best students win a trip to visit the international courts in Den Haag.

Most professors are full time. Law faculties occasionally facilitate the short term visits of professors from the United States and Europe to teach for 2-3 weeks, as well as experts from the International Criminal Tribunal for the Former Yugoslavia [hereinafter ICTY] and other international bodies. Both students and professors stated there was an anonymous process for student evaluations of professors at end of each semester. Both students and faculty observed that the reforms under the Bologna process have not been easy or necessarily successful, and that more rigorous law school accreditation and evaluation processes are needed.

There were complaints by students as to the methods used to evaluate and test legal knowledge. There is one book per course assigned per semester and attendance at lectures seemed most often voluntary. Testing at the end of a semester frequently consists of a short written exam, which must be passed in order to proceed to the oral exam. Both the oral and written exams only test a few areas within the entire knowledge base covered in each semester. If the written exam in a mandatory class is not passed it must be retaken.
Tuition is approximately RSD 81,000 per year, which corresponds to approximately USD 1,130 at the Belgrade Law Faculty. Some of the more exceptional students obtain a legal education at no cost, while a number of those who are economically disadvantaged may receive up to a 25% discount on tuition costs. The Belgrade Law Faculty premises has been substantially renovated, including the library and computer facilities, and it now has a state of the art moot court trial room.

Those interviewed agreed the Belgrade Law Faculty was likely the best in the country, with 65% of its student body coming from the gymnasium high schools, but noted that not all state law faculties are uniformly strong. Private law schools have blossomed all over Serbia, though neither students nor faculty felt they were as prestigious or strong academically, contrary to the positive reputation of private schools in other countries, like the United States, and need to be more strongly regulated. Private schools, including Union Law School, however, are reported to emphasize interactive teaching methodology.

**Factor 2: Continuing Legal Education**

*In order to maintain and improve the highest standards of professionalism and legal expertise, prosecutors undergo continuing legal education (CLE) training. States sponsor sufficient and appropriate CLE training, which is professionally prepared on specific issues and is relevant to the prosecutors’ responsibilities, taking into account new developments in the law and society.*

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Positive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Most post-law school training and educational efforts are being coordinated by the Judicial Academy, which has evolved into a critical institution focused on high standards of competence and expertise for new and existing judicial actors. The inception of the initial training program for prosecutors and judges represents a promising effort to ensure a high quality, harmonized approach to preparing qualified applicants for justice positions.</td>
<td></td>
</tr>
</tbody>
</table>

**Analysis/Background:**

Both Public Prosecutors and Deputies have a right and obligation to undergo professional training provided by the State. LAW ON PUBLIC PROSECUTION art. 54, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA No. 116/08 amended by LAW ON AMENDMENTS AND SUPPLEMENTS TO THE LAW ON PUBLIC PROSECUTION, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA Nos. 104/2009, 101/2010, 78/11, 101/11 [hereinafter LAW ON PUBLIC PROSECUTION]. Initial trainings for prosecutors, as well as continuing education, are organized by the Judicial Academy. LAW ON JUDICIAL ACADEMY, art. 5, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA No. 104/2009. The Ministry of Justice supervises the legality of the work of the Judicial Academy. Id. art. 3. The governing bodies of the Judicial Academy are: the Steering Committee, the Director and the Program Council. Id. art. 6. The Steering Committee is the managing body of the Academy and is comprised of 9 members: 4 members appointed by the High Judicial Council [hereinafter HJC] from the ranks of judges, 2 of whom are nominated by the Association of Judges; 2 are appointed by the State Prosecutorial Council, [hereinafter SPC], from the ranks of prosecutors, 1 of whom is appointed at the proposal of the Association of Public Prosecutors [hereinafter PAS]; and 3 members appointed by the Government, 1 from within the Ministry of Justice in charge of professional advancement of those employed in the judiciary, and 1 is from among the employees of the Judicial Academy. Id. art. 7. Members of the HJC and SPC cannot be members of the Steering Committee. Id. The Steering Committee elects the Director and the members of the Program Council, and, along with the HJC and the SPC, approves the entrance and final examination for the initial training for prosecutors.
and judges, as well as the curriculum for all continuing education. *Id.* art. 9. The Program Council [hereinafter Council] is the professional body of the Academy and is made up of 11 members appointed by the Steering Committee, and is comprised of judges and prosecutors, other experts, and judicial and prosecutorial staff. At least 5 members of the Council are judges, at least 3 of them are prosecutors, of whom 1 member shall be nominated by the Prosecutors Association, and 1 member shall be from the judicial and prosecutorial staff. Members of the HJC, SPC and members of the Steering Committee may not be members of the Program Council. *Id.* art. 16. The Council drafts the entrance and final exams for the initial training as well as the program for continuing education, all of which are ultimately submitted for approval by the Steering Committee. *Id.* art. 17.

In regard to continuing legal education, such trainings can be both voluntary and mandatory, depending on circumstances. The HJC and the SPC may make trainings mandatory in a variety of circumstances, including a change of specialization, significant changes in regulations, introduction of new methods of work, and, for deputy prosecutors who are elected for the first time and have not attended the initial training program. *Id.* art. 43. Such training programs are adopted by the Steering Committee of the Judicial Academy, and approved by the HJC or SPC. *Id.*

The Judicial Academy has 18 full time staff, approximately two-thirds of which are professionals, including the evaluation unit, while the remaining staff members provide administrative support. While the main facility is based in Belgrade, the Judicial Academy has a regional presence in three appellate districts (Nis, Novi Sad, and Kragujevac), where its offices are typically located in the courthouse. The main facility in Belgrade has been impressively renovated from its original purpose of housing the stock exchange. It has one very large training room and one smaller, and is equipped with video link equipment, as well as that for simultaneous translation. Operationally, it was reported that the staff of the Judicial Academy begins the process of developing curricula, selecting trainers, and devising the draft agenda, and then works with the Council to finalize the training program before submitting it for approval to the Steering Committee. Ultimately the SPC must also approve the training program, but it did not appear that there was a significant level of involvement by the SPC, except for the development of the curriculum for initial trainees. Currently the prosecutor representatives on the Council include one from the office of the Republic Public Prosecutor [hereinafter RPP], one appellate prosecutor from Beograd, and one representative from Sremska Mitrovica.

In terms of its cadre of trainers, the Judicial Academy maintains a list or database of trainers categorized by substantive areas of expertise from differing geographic areas. When enlisting trainers for a specific training, the Judicial Academy tries to ensure the trainers are not of a lower job level or experience level than those who will be trained, unless the trainer holds a unique accreditation or expertise. Trainers are often members of a specific working group. The Judicial Academy is proactive in working with trainers to harmonize lectures, materials, and information that ultimately will be disseminated across regions. The Judicial Academy is also attempting, through e-learning, to have identified subject matter experts and trainers in regions on standby to help with specific questions, especially as implementation issues arise with the new CPC.

Training participants do evaluate each trainer, as well as the materials disseminated, and this information is used by the Judicial Academy to inform future efforts. At the time of the assessment, the Judicial Academy was in negotiations with international donors to fund software to track each trainer’s history, expertise, and evaluations. In 2012, the Judicial Academy plans on instituting an evaluation program by the trainers of actual participants, and it is hoped that these opinions will ultimately be considered in performance evaluations of prosecutors.

In terms of international trainers, challenges were noted in obtaining not only substantive expertise, but those who know and understand the Serbian judicial context, and who can be
available to provide more than a single training. It was also noted that trainers must be solution-oriented and not just focused on pointing out the flaws in their own justice systems. One interviewee indicated that many of the better experts have been from the United States. The Judicial Academy also plans to use Bosnian trainers already experienced in implementing drastic changes in criminal procedure.

The Judicial Academy began in 2010 and receives state support. Its predecessor, the Judicial Training Center, started in 2001. The actual budget of the Academy is within that of the MOJ, but is reported to not be controlled by MOJ. About three-fourths of the annual budget of the Judicial Academy is for the salaries of the assistant prosecutors and judges participating in the initial training program. In 2011, the Judicial Academy received a 60% increase to approximately RSD 88,000,000, corresponding to USD 1,100,000, about 34% of which is for operational needs. For 2012, the Judicial Academy will be requesting approximately RSD 144,000,000, which corresponds to USD 1,800,000. This represents a slight increase over normal operational expenses, due to increased training needs because of the passage of the new CPC. Judicial Academy representatives noted a strong collaborative relationship with the PAS, which has representatives on both the Judicial Academy Steering Committee and Council.

Unless ordered by a prosecutor’s superior or the RPP, all continuing education conducted through the Judicial Academy is voluntary. It was noted that currently there is an extraordinary need for training on the “flood” of laws passed in the past several years, especially the new CPC. The CPC trainings are the main priority now at the Judicial Academy, with two distinct types of prosecutors being targeted: those with prior experience who were re-elected, and those first elected in 2010 with no previous on the job experience.

Among the areas noted as training priorities are human rights, especially from the European Convention for the Protection of Human Rights and Fundamental Freedoms [hereinafter EUROPEAN CONVENTION ON HUMAN RIGHTS], and especially that impacting detention; financial crimes and auditing, customs administration, and environmental crimes; the increased and more effective use of internal inspectorates; animal welfare; crime scene investigation, and the handling and processing of evidence; issues specific to border areas including the smuggling of drugs, weapons or people, and organized crimes; and lastly, general corruption. One interviewee requested that trainings utilize an increased use of roleplaying, moot courts, and other simulations.

Much of the ongoing continuing trainings are funded by donors and usually handled as a cost share with the Judicial Academy. At the time of the assessment, CPC training for the organized and war crimes departments was already occurring and being jointly sponsored by the Office of Overseas Prosecutorial Development, Assistance and Training of the United States Department of Justice [hereinafter OPDAT] and the OSCE.

As previously noted, applicants to the initial training program must pass the entrance exam administered by the Judicial Academy, after passing the bar exam and completing two years of work experience in a state body. Id. art. 28. See also Factor 1. The program provides a two-year curriculum, including substantive and procedural laws, ethical standards, international legal standards, and practical skills training. Id. art. 35. During the training period, trainees are temporarily employed at the Academy for a 30-month period. Id. art. 40. Upon completion of the initial training, a final exam is conducted to test the practical knowledge and skills of trainees. It is mandated that hiring boards take into consideration the candidates’ performance during their initial training period. Id. art. 40.

There are currently two classes participating in the initial training program for judges and prosecutors. There are 22 participants in the class of 2010, which graduates in December 2012.
The second class of 26 started in the fall of 2011. It is intended that this certification replace the mandated two years post graduate practical experience.

Over a period of two years it was reported that the trainees are exposed to both civil and criminal law, with a definite emphasis on new laws, especially the CPC. Specific relevant lectures have included those on human rights generally, the European Union [hereinafter EU], the European Convention on Human Rights, gender equality, and war crimes. There have been visits to detention centers, law offices, and to Strasbourg to observe the European Court of Human Rights. Over the course of the two years, each student participates in various mentoring opportunities: 6 months in the first instance criminal court, 4 months in a prosecutor’s office, 8 months in a civil court, and 2 months in a misdemeanor court. While in the mentoring phase, trainees not only draft documents, including indictments, judicial findings, and decisions, but also engage in strategic decision making and participation in actual court proceedings. The final “grade” for the trainees will be a combination of a moot court simulation, with students playing judge, prosecutors, and defense attorneys (60%), and ratings from the various mentors (40%). It was noted that there was no guarantee of a job after the trainees complete the two year training program, though they will have priority in open positions, which may or may not be outside of Belgrade.

One trainee felt that his involvement in the program was the missing link in his preparation thus far after law school, and the bar exam, and two years of experience as a prosecutors trainee, as it was the only way to gain significant qualifications. Another felt the ultimate challenge was to actually be accepted through a very rigorous entrance process, which he noted excluded being tainted by political connections and influence. Many acknowledged that while those in the initial class were truly part of an initial professional experiment, it had been a quality experience thus far.

Interviewees voiced an overall appreciation and respect for the efforts of the Judicial Academy and noted that it is responsive to the needs of prosecutors. Some prosecutors were more self-critical and expressed frustration at not having the time to better support the efforts of the Judicial Academy in devising and implementing its initial training program, and actively participate in training and mentoring. One noted that it was intended that five different programs in criminal law were to be taught over the two year period, but that has been delayed.
Factor 3: Selection: Recruitment, Promotion, and Transfer of Prosecutors

Prosecutors are recruited, promoted, and transferred through a fair and impartial procedure based on objective and transparent criteria, such as their professional qualification, abilities, performance, experience, and integrity.

While political elements may be involved, the overall system should foster the selection of qualified individuals with integrity and high professional qualifications.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
</tr>
</thead>
<tbody>
<tr>
<td>While the reappointment process commenced in 2009 lacked due process and transparency, the revision efforts ending in 2011 did result in the correction of some deficiencies and the reappointment of some qualified prosecutors. The SPC is beginning to assume its responsibilities in regulating the Public Prosecution, including the appointment, promotion, and transfer of prosecutors, and the establishment of a regular and standardized evaluation process tied to criteria intended to measure skill, competence, and integrity.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

Article 158 of the Constitution provides that the RPP is elected by the National Assembly for a period of six years. The position is renewable, based on re-election. See CONSTITUTION OF THE REPUBLIC OF SERBIA art. 158 [hereinafter CONST.]. Further, Public Prosecutors and Deputy Public Prosecutors are also elected by the National Assembly. Id. art 159. While a Public Prosecutor is elected for an initial period of six years (LAW ON PUBLIC PROSECUTION, art. 55), and a Deputy Public Prosecutor’s initial tenure is for a three years period. Id. art. 75. Upon expiry, the SPC may extend those terms to a lifetime position. Public Prosecutors, including the RPP, and Deputy Public Prosecutors are recommended for election to the National Assembly by the SPC, however the RPP and all other Public Prosecutors are nominated by the Government from the list of candidates provided by the SPC. Id. art. 74. Those Public Prosecutors who are not re-elected are automatically designated to be Deputy Public Prosecutors. Id. art. 74. See also art. 55.

There are general and specific requirements to serve as a prosecutor. General requirements mandate the candidate be a law school graduate who has passed the Juridical Examination, and who is worthy of the office. Id. art 76. Specific requirements are set forth in Article 77:

A person may be elected Public Prosecutor and Deputy Public Prosecutor if he, in addition to general requirements, has experience in the legal profession after passing the Juridical Examination, as follows:

- four years for a basic Public Prosecutor, and three years for a Deputy Basic Public Prosecutor;
- seven years for a higher Public Prosecutor, and six years for a Deputy Higher Public Prosecutor;
- ten years for an appellate Public Prosecutor and a Public Prosecutor with special jurisdiction, and eight years for a Deputy Appellate Public Prosecutors and Deputy Public Prosecutor with special jurisdiction;
- twelve years for the RPP and eleven years for Deputy Republican Public Prosecutor.
The SPC is mandated to advertise the election of Public Prosecutors and Deputy Public Prosecutors in the *Official Gazette of the Republic of Serbia* and in other national level public media outlets. *Id.* art. 78.

In nominating and electing candidates to a prosecutorial function, the SPC gathers and considers the professional qualifications, specific knowledge, and worthiness of a candidate. (*Id.* arts. 80 and 82), and may interview the candidates prior to making a decision. *Id.* art. 81. In nominating and electing candidates to a prosecutorial function, discrimination on any grounds is prohibited (*Id.* art. 82), and the national composition of the population should be considered to ensure the adequate representation of members of national minorities, as well as the knowledge of professional legal terminology in national minority languages in official use in courts. *Id.* art. 82.

Specific evaluation procedures were initiated during the reappointment and revision process intended to uphold the quality of prosecution, and are intended to be implemented in the future. Public Prosecutors and Deputy Public Prosecutors with tenure of office are to be evaluated once in three years, while the performance of a first-time elected Deputy Public Prosecutor is evaluated once a year. *Law on Public Prosecution*, art. 100. However, if the SPC so deems, the performance of a Public Prosecutor and Deputy Public Prosecutor may be subjected to an unscheduled evaluation. *Id.* The evaluation of the performance of a Public Prosecutor is conducted by the immediately superior prosecutor, after obtaining the opinion of the collegium of the immediately superior public prosecution. The performance evaluation of a Deputy Public Prosecutor is conducted by a Public Prosecutor. In evaluating performance, periodical reports on the work of the public prosecution are to be taken into account. *Id.* art. 102.

The Rules on Criterion and Standards for the Evaluation of the Qualification, Competence and Worthiness of Candidates for Bearers of Public Prosecutor's Function of Serbia established a matrix to evaluate prosecutors based on pre-established guidelines. These guidelines assess prosecutors' qualifications, competence and worthiness. *Rules on Criteria and Standards for the Evaluation of the Qualification, Competence and Worthiness of Candidates for Bearers of Public Prosecution Function* art. 2, *Official Gazette of Serbia* No. 55/09. Deputy Public Prosecutors are evaluated differently than Public Prosecutors. Such criteria analyze various elements and are broken down into quantitative and descriptive factors. The factors are, in accordance with Article 7 of the Rules on Criteria, the following:

- efficiency in procedure
- demonstrated expertise
- capability demonstrated in undertaking procedural action, quality of written and oral expression and skilfulness in deposition of legal positions,
- adoption of new knowledge, application of new responsibilities, expert proficiency and training,
- relation to and cooperation with co-workers, court and other bodies of state, organisations and participants in the proceedings.

Efficiency in procedure is the quantitative aspect of the evaluation. For this criterion, the reviewer totals the number of decisions rendered by the specific prosecutor's office. Based on the performance of the prosecutors' case load, the person is given a score. Although Article 8 of the Rules on Criteria sets a standardized method, it does allow the reviewer to add weight to the prosecutors score based on cases that are deemed to be complicated matters. The general grading system is as follows:
• up to 50% of average number does not satisfy;
• between 50 and 120% of average number does satisfy;
• more than 120% over the average number does satisfy for promotion.

The criteria for evaluation of Public Prosecutors examine different areas of performance. Specifically, in accordance with Article 15 on the Rules on Criteria, a Public Prosecutor is examined by:

• general capacity for heading the Public Prosecutor's office,
• capacity for realisation of supervision,
• capacity for improvement of work of Public Prosecutor's office, and
• capacity of crisis situation management.

As with the criteria for the Deputy Public Prosecutor, the Public Prosecutor is evaluated based on a qualitative or descriptive basis for each criteria; such evaluations do not have a quantitative basis.

The SPC is mandated to maintain a personal file for every Public Prosecutor, Deputy Public Prosecutor and employee in the public prosecution. LAW ON PUBLIC PROSECUTION art. 37.

In accordance with Article 63 of the Law on Public Prosecution, a Deputy Public Prosecutor may be assigned, with written consent, to another prosecution office for a period not exceeding one year. Also, upon proposal by a special Public Prosecutor, a Deputy Public Prosecutor may be assigned, with written consent, to a special prosecution for a period not exceeding four years. However, a Deputy Public Prosecutor may be assigned without consent to a public prosecution of the same or lower rank, if there is a need due to insufficient Public Prosecutors. An assignment under these circumstances may not exceed one year, and the final decision is made by the RPP. Id.

In addition to standard assignments, Deputy Public Prosecutors can also be assigned to the SPC, the Ministry of Justice, the Judicial Academy, or to a judicial international organization. Id art. 64. Such an assignment shall be proposed by the head authority from the respective agency the deputy prosecutor shall be assigned to, and must be authorized by the Public Prosecutor from the prosecutor’s office in which the deputy works, and with the written consent of the deputy himself Id. art. 64. Finally, the final decision of the assignment is issued by the SPC. Id. Such an assignment cannot exceed a period of three years. Id.

In regards to transfers, in accordance with Article 62 of the Law on Public Prosecution, a Deputy Public Prosecutor may be permanently transferred, with or without his consent, based on a decision by the SPC. While there was little mention of irregularities in the transfer of prosecutors, it was noted that, in practice, any such action has to be approved by RPP.

As noted, in 2008, two separate councils, the HJC and the SPC were created to regulate and discipline judges and prosecutors, though several interviewees commented that the HJC has thus far functioned more robustly with a wider range of functions and activities. It was not until 2011 that a nearly complete slate of positions on the SPC were filled, as per its enabling legislation, and approved by the National Assembly (the eleventh member had yet to be nominated by the Bar Association of Serbia). It was reported that the SPC election, which was monitored by OSCE and the PAS, had a 92% turnout rate among prosecutors and the National Assembly approved the entire slate of those nominated by the vote of the prosecutors.
Up until the time of the assessment, it appeared that there had been no consistent, transparent, institutionalized system of formal evaluation of prosecutors within the Public Prosecution, based on specific performance criteria and tied to a professional ethics code, which hampered the reappointment process greatly. It was reported that a comprehensive system is now being devised by the SPC. The current evaluation process seems to be ad hoc. One supervisory prosecutor indicted that he obtains information from the head of office or the prosecutor’s immediate supervisor and looks at caseload statistics. Another indicated that, while specific regulations have yet to be adopted by the SPC, she does have the right to discipline her subordinates, and does, and all involved are allowed to state their arguments. Another interviewee stated that he considers expertise, dignity, skills in the evaluative process, and is assisted by deputies specifically assigned to travel throughout the district to monitor the performance of subordinates. Lastly, another supervisory prosecutor reported that he conducts performance evaluations at least once every three years, and more frequently if necessary, and considers this evaluation when promoting prosecutors. While compliance with rules on general prosecutorial functions is considered, he also takes into account the number of cases disposed of, meeting deadlines, the quality of performance, participation in trainings and most importantly, the number of sentences pronounced.

Several interviewees outside the Public Prosecution reported, however, that prosecutors are not graded or evaluated according to their level of competence but by the level of cooperation with their superiors. It was specifically recommended by more than one interviewee that prosecutors who handle more complex cases should be given additional consideration in their evaluations. It was further recommended that there should also be some accountability mechanisms put in place that discourage or mandate penalties for the filing cases without a meaningful review of the evidence, and to generally encourage prosecutors to focus more on process and fairness than convictions. One interviewee cautioned that the lack of accountability mechanisms, coupled with the lack of a professional ethics code and a “clumsy” reappointment process, may or may not be reflected in the caliber and integrity of the current slate of prosecutors.

A reappointment procedure for all judges and prosecutors was carried out during the second half of 2009 and took effect as of January 2010. The report of the European Commission, released just before the assessment on October 11th, 2011, was justifiably critical of the initial process, noting that significant shortcomings affected the re-appointment procedure. See EUROPEAN COMMISSION, ANALYTICAL REPORT ACCOMPANYING THE DOCUMENT “COMMUNICATION FROM THE COMMISSION OF THE EUROPEAN PARLIAMENT AND THE COUNCIL, COMMISSION OPINION ON SERBIA’S APPLICATION FOR MEMBERSHIP OF THE EUROPEAN UNION” (2011) [hereinafter EC REPORT] p.17-18. Available at http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/sr_analytical_rapport_2011_en.pdf. Both the HJC and the SPC acted in their transitory forms. The procedure lacked due process and transparency, and decisions lacked specific reasoning and justification. Those not reappointed had the sole remedy of appealing directly to the Constitutional Court. The EC Report noted that 1,500 appeals were filed, but the Court lacked the capacity to deal with the large number of cases within a reasonable time. Id. p. 18. Most confounding, at a time when more prosecutors will be needed to implement new responsibilities under the new CPC, the EC Report noted that there was initially an under-calculation of the number of necessary posts, as the number of prosecutors was reduced from 129 to 67 and the number of deputy prosecutors from 670 to 586. Id. p. 18.

No one interviewed spoke positively of the 2009 reappointment process. One international representative criticized the 2009 reappointment process as neither fair, nor transparent, nor public. It lacked due process protections. It was speculated that prosecutors who were not re-appointed were being penalized for a variety of possible reasons, including the dismissal of charges without approval, or if a trial had resulted in an acquittal. Conflicting statistics were proffered during the assessment period regarding the 2009 reappointment process and the
subsequent revision. According to informal tallies from the PAS, in 2009 there were a total of 567 prosecutors elected:

- 63 Public Prosecutors, 11 of whom came from outside the prosecution
- 504 deputies, 84 of which were elected for the first time, with 30 out of the 84 from outside the Public Prosecution

In 2010, 46 new positions were filled, 20 of whom were elected for the first time (5 from outside the Public Prosecution), and 26 who were returned after being rejected in 2009. In 2011, 161 prosecutors had cases pending as part of the revision process. This figure, added to the 26 who had initially been rejected in 2009, totals 187 prosecutors who were initially rejected in 2009. This information approximates other estimates received at the time of the assessment: in 2011, 127 decisions had been issued on complaints filed by prosecutors out of total of 157.

Given the shortcomings of the original reappointment process, legislative amendments were adopted in December 2010. The amendments empowered the SPC to review the decisions of the termination of public and Deputy Public Prosecutors, whether or not appeals had been initiated in the Constitutional Court, as well as to review decisions appointing deputies for a lifetime tenure, along with those Public Prosecutors and deputies appointed for the first time. LAW ON PUBLIC PROSECUTION arts. 6 and 7. The amendments further mandated that in its review, the permanent composition of the SPC adopt guidelines for evaluating professional qualifications, specific knowledge, and worthiness (id. art. 6), as well as due process rights providing that the complainants be “informed about the case, attend documentation and course of the procedure, and state their assertions orally” to the SPC. Id. In addition, the amendments provided that those prosecutors whose termination decision remained the same after reconsideration by the SPC could appeal such a decision to the Constitutional Court within 30 days of the delivery of that decision. Id.

Respective guidelines for the review procedure for non re-appointed judges and prosecutors were adopted in May 2011 by the HJC and the SPC in their permanent form. It was noted in the EC report that broad consultation of all stakeholders was conducted on the guidelines, which included clear and transparent criteria and provided a more sound basis for the review procedure that was launched at the end of June. Id. p. 18. As of the time of the assessment, 127 decisions had been issued on complaints filed by prosecutors out of 157. The EC report further noted that certain procedural shortcomings occurred in the review process. Id. p. 18.

Many interviewed stated that during the initial process, some of those not reappointed were actually fit, but there were just no openings for them, or a better qualified candidate for that specific position was appointed for that slot, since prosecutors had to apply for specific openings in specific offices. The 2011 revision hearings and deliberations were closely monitored by representatives of the international community, including the Council of Europe and OSCE, and the PAS, though the actual decisions were taken in closed session. Most internationals had stayed clear of the original reappointment process, given its perceived flaws. The role of the PAS was critical, especially in assisting applicants prepare for the actual hearings. Though it was unclear what impact the involvement by prosecutors in PAS activities actually had on individual reappointments, especially those activities related to the elections, the current head of the PAS was reappointed, to a higher position during the reappointment and revision process, as noted in Factor 6.

Some observers who heard evidence presented during the hearings were surprised by the disconnect in some cases between the strength of the evidence presented at the hearing and the negative results, in that some who seemed strong applicants were not appointed, potentially reflecting a concerning lack of independence by the SPC and possible internal or external improper influence. It was suggested that it was also a missed opportunity by the current RPP to
exert her leadership and encourage independence and impartiality, since the original process occurred during the tenure of her predecessor. Also mentioned was the inclusion of additional criteria in the revision process that had not been used as criteria during the initial process in 2009, most especially that addressing the “accuracy of following instructional deadlines given by supervisors” and statistical data. One interviewee stated that the SPC did not always follow even its own guidelines. A prosecutor indicated that the rules of transparency were met but not all rules of procedure, and that it did not result in sufficient numbers of those who were qualified being returned to work. Another criticism was that, in the end, after applicants submitted a variety of information during the revision process, including case statistics and trainings completed, it was still unclear what criteria were used to make the final decision, which was a major complaint during the initial process.

Several overarching observations highlighting other confounding issues during the revision process were shared, most especially the fact that at a time when prosecutors are in dire need of more prosecutors to imminently assume additional responsibilities mandated by the new CPC, fewer prosecutors are available after the entire re-appointment process, including the failure to reappoint some who have been deemed fit to assume or reassume positions. An interviewee noted that some of the deficiencies were corrected in a de facto manner, as some who were initially unsuccessful later obtained postings when vacancies appeared. In the end, the reappointment process has created two specific categories of prosecutors: 120 new prosecutors were elected for 3 years and, in December 2012, the SPC will determine whether they receive a lifetime appointment. The remaining prosecutors were formerly prosecutors and now have a lifetime appointment.

Many interviewees noted that, even though the reappointment process is nearly completed, many prosecutors continue to function in their positions under a lingering cloud of anxiety and fear, which does not bode well as prosecutors begin assuming additional responsibilities. Unfairness and irregularities in the appointment process does not encourage confidence and security in ones’ profession or in the execution of day-to-day duties.

As noted in Factor 2, it is possible that a graduate of the Judicial Academy will not ultimately be selected by the SPC to be a prosecutor. It was also noted that there is not yet a meaningfully-linked relationship between the functions of the SPC and Judicial Academy, especially in terms of the SPC forecasting in a scientific, statistical manner how many prosecutors should be trained to fill vacancies in subsequent years, particularly given the expanded role of prosecutors under the CPC.

A final observation by someone within the Public Prosecution was that, in the end, though the process was problematic, those who did not deserve their posting were not reappointed, though one representative from the international community stated that the subsequent revision process was a missed opportunity to bring back some qualified and effective prosecutors. And, most critically, many agreed that an insufficient number of prosecutors to meet current and future human resource needs were returned to their postings through the revision process.
Factor 4: Selection Without Discrimination

The recruitment, promotion, and transfer of prosecutors at every level of hierarchy shall not be unfairly influenced or denied for reasons of race, sex, sexual orientation, color, religion, political or other opinion, national, social or ethnic origin, physical disabilities, or economic status, except that it shall not be considered discriminatory to require a candidate for prosecutorial office to be a citizen of the country concerned.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Positive</th>
</tr>
</thead>
<tbody>
<tr>
<td>While Serbia does not maintain statistics on the ethnic, racial, or gender composition of the Public Prosecution, interviews reveal that there are efforts made to ensure ethnic diversity in regions with varying ethnic populations. Women seem well represented throughout all levels of the Public Prosecution, including the RPP position itself.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

Several provisions of the Constitution provide protection against various forms of discrimination. The most pertinent of these provisions is Article 21 of the Constitution, which states:

Everyone shall have the right to equal legal protection, without discrimination. All direct or indirect discrimination based on any grounds, particularly on race, sex, national origin, social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability shall be prohibited.

Additionally, Article 21 states that "special measures", which may be introduced to achieve full equality of individuals or group of individuals in a substantially unequal position compared to other citizens, shall not be deemed discrimination. CONST. art. 21. Article 77 mandates that "when taking up employment in state bodies, public services, bodies of autonomous province and local self-government units, the ethnic structure of population and appropriate representation of members of national minorities shall be taken into consideration." Id. art. 77.

Even though Article 21 of the Constitution excludes gender in its scope of protection, Article 15 guarantees the equality of woman and men, and requires the development of equal opportunity policies. Additionally, Articles 60 (Right to Work) and 66 (Special Protection of the Family, Mother, Single Parent and Child) extend further protections to women by providing protections for women both before and after child-birth and special work conditions. Further, Article 14 mandates that the State guarantee “special protection to the national minorities for the purpose of exercising full equality and preserving their identity.” Id. art. 14. Lastly, as noted in Factor 2, Article 82 of the Law on Public Prosecution prohibits discrimination on any grounds when nominating and electing candidates to a prosecutorial function, and mandates the national composition of the population should be considered to ensure the adequate representation of members of national minorities, as well as the knowledge of professional legal terminology in national minority languages in official use in courts.

Serbia’s 2002 census formed the basis for an analysis of ethnic minorities by the OSCE, noting a total of 18 ethnic minorities residing in Serbia. See “Ethnic Minorities in Serbia--An Overview” (2008), p. 4. Available at http://www.osce.org/serbia/30908. The largest of these ethnic groups were the Albanians, Bosniaks, Croats, Hungarians, and Slovaks. Id. It was noted that these groups lived mostly in concentrated areas throughout the country such as Southern Serbia or the autonomous Northern Province of Vojvodina. Id. pp. 7-23. The largest non-Serbian ethnic group...
were the Hungarians, composing 3.91% of the population, most of whom lived in Vojvodina. Id. p. 16. The second largest non-Serbian ethnic group noted were the Bosniaks, composing 1.82% of the population and who were the majority populations in Novi Pazar, Tutin, and Sjenica. Id. p. 9. Also noted was a substantial Albanian population, composing 0.82% of the population and mostly residing in the South Serbian towns of Bujanovac, Presevo, Medvedja. Id. p. 7. The Croats, composing 0.80% of the population, mostly resided in the autonomous region of Vojvodina. Id. p. 12. Lastly, the Slovaks were noted as the third largest ethnic group in Vojvodina composing 0.79% of Serbia’s population, Id. p. 23.

At the time of the assessment, the Chief Judge of the High Court, the Minister of Justice, and the RPP were all female. Women seem to be well represented at all levels in the Public Prosecution and it was reported that in Nis, a higher overall percentage of prosecutors are women.

In Subotica, where there are six official languages, it was reported that Hungarians are in the majority, followed by Serbs, Croats, and Slovaks. One interviewee stated that giving priority to a prosecutorial candidate based solely on ethnicity, while ignoring his skills, educational background, and other relevant factors, would be illegal. Interestingly, under the former socialist regime there used to be a formal “key” or published data setting forth the ethic proportions to guide the hiring of all public positions. Informally, it was reported that supervisory prosecutors endeavor to ensure ethnic representation, with one reporting he has a Hungarian and Slovakian on his staff. Another stated he has three deputies, all three are of whom are from the three differing ethnicities represented in his region.

In the Novi Pazar region, Bosniaks are in the majority. While the Higher Public Prosecutor is of Serbian ethnicity, he has four deputies who are Bosniaks. The Basic Public Prosecutor is a Bosniak, as are three of his six deputies. It was also reported there was a chief prosecutor in Serbia who is Romani.

Lastly, while there is a substantial Albanian population in several towns in Southern Serbia as noted above, there was insufficient data to determine the appropriate level of representation within the ranks of prosecutors in that region.
II. Professional Freedoms and Guarantees

Factor 5: Freedom of Expression

Prosecutors, like other citizens, are entitled to freedom of expression, belief, association, and assembly. In exercising these rights, prosecutors should always conduct themselves in accordance with the law and the recognized standards and ethics of their profession.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prosecutors' freedom of expression is not protected except in relation to their official duties, and prosecutors are prohibited from engaging in political activities and other conduct deemed incompatible with their office. While the strict, hierarchical structure of the Public Prosecution might prevent some prosecutors from being more active and outspoken on legal issues and developments, prosecutors generally seem free to engage in academic discourse and writing.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

The Constitution provides broad protections for citizens' freedoms of thought and expression in Article 46. More specifically, however, prosecutors' freedom of expression is only protected in relation to statements made in their official capacity. See CONST. art. 162 and LAW ON PUBLIC PROSECUTION art. 51. As such, prosecutors' general freedom of expression is not specifically provided for by law.

Further, prosecutors' participation in political activities and other actions that may conflict with their role is explicitly prohibited. For example, Article 163 of the Constitution provides, "Public Prosecutors and Deputy Public Prosecutors shall be prohibited to engage in political actions. Other functions, activities or private interests which are incompatible with the prosecutor's function shall be stipulated by the Law." Additionally, Article 65 of the Law on Public Prosecution prohibits prosecutors from a wide variety of activities, including participation in political parties, holding offices in regulatory or executive bodies, and from engaging in public or private paid work, except for educational and scientific activities.

While the statutory restrictions on prosecutors' freedom of expression are largely reasonable, some respondents expressed concern that the strictly hierarchical structure and culture within the Public Prosecution served to chill the willingness of prosecutors to be more active on issues affecting their interests. However, it is worth noting that, as explained in more detail in Factor 6, Prosecutors have been extremely outspoken through the PAS. Also, prosecutors seem free to engage in educational and academic activities related to legal issues, such as by writing articles and other publications.
Factor 6: Freedom of Professional Association

Public prosecutors have an effective right to freedom of professional association and assembly.

They are free to join or form local, national, or international organizations to represent their interests, to promote their professional training and to protect their status, without suffering professional disadvantage by reason of their participation or membership in an organization.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Positive</th>
</tr>
</thead>
</table>

The Association of Public Prosecutors and Deputy Prosecutors of Serbia [hereinafter PAS] is an independent organization relying on membership dues and donor funding to pursue a wide range of activities on behalf of not just its members, but all prosecutors in Serbia. In addition to providing an impressive selection of publications and trainings for its members, the PAS advocates for the interests of prosecutors and the criminal justice system. Most recently, these efforts have focused on the flawed reappointment process and changes to the CPC. As a result, it has fallen out of favor with the government and is viewed by some as an opponent of criminal justice reform.

Analysis/Background:

Article 55 of the Constitution provides that, "Freedom of political, union and any other form of association shall be guaranteed, as well as the right to stay out of any association. Associations shall be formed without prior approval and entered in the register kept by a state body, in accordance with the law." Prosecutors are specifically granted the right to join associations in Article 53 of the Law on Public Prosecution, which states, "Public Prosecutors, Deputy Public Prosecutors, prosecutorial assistants and trainees have the right of association with aim of protecting their interests and undertaking measures to retain their independence in work."

Under these laws, prosecutors may join the PAS, which was formed in 2001 and currently has 463 members, approximately 60% of active prosecutors. See PAS Website, available at http://www.uts.org.rs/en/index.php?option=com_content&task=view&id=24&Itemid=49. The PAS is governed by the Statute of the Association of Public Prosecutors and Deputy Public Prosecutors of Serbia [hereinafter PAS Statute]. The PAS is supported through its annual membership fee of RSD 3,943 (USD 55) and with funding from international donors for specific activities. It is a member of the International Association of Prosecutors, and was scheduled to host an IAP Regional Conference on Cooperation Against Corruption in October 2011.

Article 2 of the PAS Statute states that the goals of the organization are:

1. Care about improving regulations on organization and work of the prosecution and judiciary, and other regulations relevant to the Public Prosecutor's Office;
2. Commitment to the independence of Public Prosecutors and the independence of the work of Public Prosecutors and Deputy Public Prosecutors in the performance of public prosecution office;
3. Raising public confidence in the work of the Public Prosecutor's Office and the professional ethics;
4. Commitment to improve the material status of the Public Prosecutor, Public Prosecutors and Deputy Public Prosecutors (enhancing the reputation and financial status of public prosecution office);

5. Affirmation of the law as a profession and science;

6. Improving efficiency and more complete realization of the public prosecution authority, particularly in combating organized crime and corruption;

7. Devotion to harmonization of the judicial and criminal justice system of the Republic of Serbia with the European Union, as well by the relevant International Standards;

8. Cooperation with trade and professional associations in Serbia and abroad;

9. Participation in the work of the European Association of judges and prosecutors for Freedom and Democracy and the International Association of Prosecutors, and

10. Other objectives that contribute to establishing the rule of law and public confidence in judicial institutions.

As reflected in these goals, the PAS is involved in an ambitious range of activities. The website for the PAS (available at http://www.uts.org.rs/en/index.php) is extremely robust and informative, with a wide variety of resources and information in both Serbian and English. In particular, the PAS has produced an impressive list of publications, including a handbook for Public Prosecutors and a series of reports examining current issues related to the role of prosecutors in both criminal justice reform and important substantive areas, such as antidiscrimination legislation, corruption, integrity systems for Public Prosecutors, human trafficking, and victim protection, to name but a few. The PAS also publishes a regular journal, Prosecutorial World, which contains articles related to the work of the association, prosecutorial practice, and contributions from experts. The journal has grown from an initial 15-page publication to its current length of 100 pages.

The PAS is also extremely active providing training opportunities for prosecutors. In 2011, the PAS provided 33 trainings on a wide variety of topics, ranging from EU law, to protection of human trafficking victims, to challenges in investigating and prosecuting war crimes. In order to increase the efficiency of its training activities, the PAS has coordinated its efforts with the Judicial Academy to avoid duplicative programs. This positive and collaborative relationship is enhanced by a member of the PAS sitting on the Judicial Academy Steering Committee and Council.

The most controversial aspect to the PAS's activities are its advocacy efforts on issues relating to recent criminal justice reforms, particularly the election and revision processes for the reappointment of prosecutors, as well as the amendments to the CPC. As detailed in Factor 3, the reappointment procedures for both prosecutors and judges remains a contentious issue, due to serious concerns with lack of transparency, procedural violations, and perceived influence and interference. The PAS has been a vigorous proponent for the rights of prosecutors adversely affected by the reappointment process, it helped draft the procedures for the revision process, and PAS representatives were included as observers to the revision interviews and discussions. As reflected by many respondents, including international organizations, the results of the reappointment process were disappointing, and the PAS remains a forceful critic of what most agree was a severely mishandled process.

The PAS has also been outspoken with regards to the CPC amendments, particularly the transfer of investigative powers from investigative judges to prosecutors. Unfortunately, one result of these advocacy efforts is that the organization is now seen as an opponent to criminal justice reform, and the PAS has expressed concerns that it now excluded from the dialogue on reform efforts. On the other hand, the PAS has been criticized for foregoing opportunities to submit comments to the CPC working group and for declining to participate in CPC trainings.
Overall, the fact that the PAS serves as a strong and independent voice for the prosecutorial profession is a testament to its role and development over the past ten years. The organization remains popular with its members, and membership levels have remained steady since the PAS began focusing much of its time on the reappointment process. While a few prosecutors did express concerns that the PAS had become overly consumed with and distracted by the reappointment process, the vast majority of respondents remained strongly supportive and grateful for its efforts. Similarly, while some respondents in outlying areas commented that the PAS was not as active outside of Belgrade, other prosecutors in outlying areas were very active in the organization.

Perhaps the greatest challenge facing the PAS is increasing its capacity to match its ambitious goals. The PAS does not receive government funding, which helps preserve its independence and credibility. However, this makes it reliant on membership dues and donor funding, constraining its capacity. With only a small number of full-time support staff, the organization is led and staffed by full-time prosecutors who conduct the PAS's activities in addition to their full-time work obligations. While it is obviously beneficial to have active, experienced prosecutors as part of the organization's leadership and staff, the PAS would be able to accomplish much more on behalf of its members with an increase in dedicated, full-time staff.

**Factor 7: Freedom from Improper Influence**

*Prosecutors are able to perform their professional functions without improper interference from prosecutorial and non-prosecutorial authorities.*

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traditional corruption is not perceived to be a significant problem within the RPP. However, while prosecutors are guaranteed autonomy by law, the potential for both internal and external influence raises concerns. Prosecutors are reportedly subject to mandatory instructions from superiors on any aspect involving a case, and influence from political authorities on high profile cases is suspected. Political authorities are perceived to wield too much influence over the appointment process for prosecutors and on the SPC, diminishing its role as the independent authority governing the Public Prosecution.</td>
<td></td>
</tr>
</tbody>
</table>

**Analysis/Background:**

Under Article 156 of the Constitution, the Public Prosecution is established as "an autonomous state body", while Article 5 of the Law on Public Prosecution provides that prosecutors are:

> [A] utonomous in the performance of their competences. All forms of influence by the executive and the legislative authorities on the work of the public prosecution and its activity in cases, attempted by using public office, the public information media and any other means, which may threaten the autonomy of the work of a public prosecution, is prohibited.

The Law on Public Prosecution also states that prosecutors are autonomous of the executive and legislative powers (*id. art 45*) and must be impartial in performing their duties. *Id. art. 46.* Interfering or influencing the work of prosecutors is subject to criminal sanction. It is a crime for officials to accept bribes in the course of conducting criminal investigations or proceedings, with imprisonment of three to fifteen years. **CRIMINAL CODE OF THE REPUBLIC OF SERBIA** art. 367(3), **OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA** Nos. 85/2005, 88/2005 - corr., 107/2005 - corr.,
29

72/2009 and 111/2009 [hereinafter CRIMINAL CODE]. Similarly, Article 368 of the Criminal Code punishes bribery of an official with imprisonment of six months to five years.

Measuring corruption or other improper influence in the Public Prosecution is difficult at best, as most measures necessarily focus on perceived rather than actual corruption. Obviously, corruption and improper influence are hidden activities, and quantifying actual cases involving such misconduct only begins to scratch the surface of the extent to which it actually occurs, as most instances go unreported. However, Serbia has consistently received mediocre scores on Transparency International's Corruption Perceptions Index [hereinafter CPI]. In the 2010 CPI, Serbia received a 3.5 out of 10, and a country ranking of 78 out of 178 countries surveyed. Available at http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results.

Perhaps of greater concern is Transparency International's Global Corruption Barometer, which attempts to measure public perception as to whether corruption in a particular country is increasing, decreasing, or the same. In the 2010 report, 49% of respondents indicated that corruption in Serbia had increased over the prior 3 years, and the judiciary (including prosecutors) was perceived as the second most corrupt institution. Available at http://www.transparency.org/policy_research/surveys_indices/gcb/2010/results.

In contrast with the generally negative public perceptions in Serbia, PRI respondents from all key informant categories overwhelmingly perceived traditional corruption as fairly minimal in the Public Prosecution. Much greater concerns arose, however, in the context of improper influence by political authorities on the work of prosecutors. One aspect potentially exacerbating this problem is the structure of the Public Prosecution itself. While the laws referenced above seem to enshrine the autonomy and impartiality of prosecutors, the strict, hierarchical structure of the Public Prosecution facilitates interference by higher ranking prosecutors. For example, Article 12 of the Law on Public Prosecution provides that, "Everyone in the Public Prosecution is subordinate to the Public Prosecutor." The law also provides for a strict hierarchy, in which lower ranked prosecutors are subordinate to higher ranked prosecutors. Id. arts. 16 and 23.

As explored in Factor 10, the discretionary powers of lower ranked prosecutors are reportedly curtailed, as any decision may effectively be overruled at any point by mandatory instructions from a higher ranked prosecutor. Id. art. 18. While Articles 18 and 24 provide that mandatory instructions must be in writing, it was widely reported that, in practice, oral instructions are still common. Due to the strict hierarchy and principle of subordination, lower ranked prosecutors are susceptible to interference from supervisors, who are in turn responding to external pressures.

Just as the strict hierarchy and lack of meaningful autonomy for prosecutors is based in law, so too are the potential avenues for improper external influence. As noted in a Venice Commission Opinion, On the Rule of Procedure on Criterion and Standards for the Evaluation of the Qualification, Competence and Worth of Candidates for Bearers of Public Prosecutor's Function of Serbia at 3, Opinion No. 528/2009, CDL-AD(2009)022 (June 15, 2009), the election of Public Prosecutors in the National Assembly "leaves open the possibility of bringing political pressure to bear on Public Prosecutors and is therefore undesirable." Id. Specifically, under Articles 74 and 75 of the Law on Public Prosecution, the Government and National Assembly each have final approval for Public Prosecutor candidates and Deputy Public Prosecutor candidates being elected for the first time, respectively. Additionally, both the government and National Assembly have representatives on the SPC. LAW ON THE STATE PROSECUTORIAL COUNCIL art. 5, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA No. 116/08, 101/10, 88/11 [hereinafter SPC LAW]. While these members only have 2 votes on the 11 member SPC, it opens up the possibility of SPC decisions being influenced by outside actors, undermining the SPC's role as the independent authority providing self-governance for prosecutors.

Overall, many respondents raised concerns as to the autonomy of the Public Prosecution. The sense is that, at least for most high profile cases, only those associated with the prior government
were targets of criminal investigation, and that those with ties to the current government are effectively immune from prosecution. To the extent that these perceptions of selective prosecution are accurate, it is difficult to determine whether it occurs in response to direct political pressure or simply the current political environment. For example, it is possible that as misconduct by the prior government is brought to light by the media, the Office of the RPP naturally responds with an investigation. Not because they have been instructed to do so, but simply because they feel obliged to prosecute high profile instances of misconduct.

Factor 8: Protection from Harassment and Intimidation

Prosecutors are able to perform their professional functions in a secure environment and are entitled, together with their families, to be protected by the State.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>Most prosecutors find security to be adequate, and incidents of harassment or intimidation seem fairly rare. Security at most court buildings and offices is generally sufficient, although additional measures could be taken to ensure consistent levels of security at all locations.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

Various provisions in the Criminal Code attempt to protect prosecutors from threats to their safety. Article 114 provides for the aggravated murder of prosecutors in connection with the discharge of their duties, with punishment of at least 10 years or from 30 to 40 years. Article 138 provides that endangering the safety of a prosecutor is punishable with imprisonment of 1 to 8 years. Chapter 29 of the Criminal Code, on Criminal Offenses Against Government Authorities, contains several provisions that can be used to protect prosecutors. These provisions criminalize the use of force or the threat of force to prevent a public official from carrying out their duties (id. art. 322), attacks or threatened attacks upon public officials performing their duties (id. art 323), and joint efforts by a group to prevent an official from performing their duty (id. art. 324). Additionally, obstruction of justice includes the use of insult, force, or threats to prevent a prosecutor from exercising their prosecutorial duties. Id. art 336(b). However, other than the generally applicable criminal law, no provisions specifically protect prosecutors' families from harassment or violence.

While it is important to have the necessary legislative framework to punish those who use threats or violence against prosecutors, it is obviously preferable to have sufficient security to protect prosecutors and their families. All prosecutorial buildings visited by the assessment team were located in court or other governmental buildings, and security was generally sufficient, although it varied from location to location. On one hand, the building for the organized crime and war crimes courts is a highly secure location, with armed guards patrolling outside the building, visitors allowed to enter the building only one at a time for screening in a metal detector, interior guards at key locations on each floor, and electronic key card access required to enter individual rooms. However, security at other buildings was not as rigorous. All buildings had guards and metal detectors at entrances. In some cases identification was checked, but not all. And some buildings had no separation or guards between publicly accessible courts and prosecutorial offices. In such cases, any visitor who gets through the initial security could gain access to a prosecutor in their office. While some additional security measures would be helpful, overall security was adequate.

Generally, prosecutors did not feel threatened in their day to day work, although they were certainly aware of the inherent risks of their profession. Threats and the use of force against
Prosecutors seem extremely rare, and were related to disgruntled family members of defendants rather than organized crime. In one instance, a prosecutor's family was threatened by the family of a defendant. Police were informed and provided security at the prosecutor's residence. In another case, a prosecutor was verbally threatened by a defendant's family, who were then promptly arrested after the prosecutor's supervisor filed a complaint with the police. As indicated, however, instances such as this seem to be fairly isolated, and prosecutors are generally safe to conduct their work.

**Factor 9: Professional Immunity**

*Prosecutors have immunity for actions taken in good faith in their official capacity.*

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Positive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prosecutors have functional immunity for official acts, and may only be detained for official misconduct with the approval of the National Assembly. However, prosecutors may be liable for damages related to unlawful or incompetent work.</td>
<td></td>
</tr>
</tbody>
</table>

**Analysis/Background:**

Article 51 of the Law on Public Prosecution provides prosecutors with functional rather than absolute immunity:

> A Public Prosecutor and Deputy Public Prosecutor may not be held accountable for opinions expressed in the performance of prosecutorial office, except in the case of the commission of a criminal act by a Public Prosecutor or Deputy Public Prosecutor. A Public Prosecutor or Deputy Public Prosecutor may not be deprived of liberty in connection with a criminal offence committed in the performance of prosecutorial office or service without the permission of the relevant committee of the National Assembly.

As such, prosecutors are generally provided with appropriate protection from prosecution for their official actions and statements, but are responsible for their personal, non-official behavior.

Additionally, prosecutors may be held liable for damages caused by unlawful or incompetent work, if there is a final decision that such conduct was caused intentionally or by gross negligence. *Id.* art 52.
III. Prosecutorial Functions

Factor 10: Discretionary Functions

Prosecutorial discretion, when permitted in a particular jurisdiction, is exercised ethically, independently, and free from political interference, and the criteria for such decisions are made available to the public. The prosecutor's power to waive or to discontinue proceedings for discretionary reasons is founded in law, and, if applied, sufficiently justified in writing and placed in the prosecutor's file.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>Generally speaking, the strict hierarchical structure of the Public Prosecution constricts the use of discretion by individual prosecutors, which, when exercised logically and ethically, can assist in efficiently and fairly processing cases. Oral instructions from superiors are commonplace, and serve to further limit a prosecutor's discretion on an operational level. However, given the increasing use of abbreviated proceedings and plea bargaining which could increase efficiency and assist in more effectively prosecuting tougher cases, written guidelines will need to be instituted and adhered to so that these procedures will be implemented fairly, consistently and transparently.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

Article 156 of the Constitution provides that the Public Prosecution shall be an autonomous state body that shall prosecute the perpetrators of criminal offences and other punishable actions, and take measures to protect constitutionality and legality. See also CPC art 19. The functional structure of the office is set forth in the Law on Public Prosecution: “The Public Prosecution of the Republic of Serbia consists of the Republican Public Prosecution, the appellate public prosecutions, the higher public prosecutions, the basic public prosecutions, and the public prosecutions with special jurisdiction.” LAW ON PUBLIC PROSECUTION art. 13. Everyone in the public prosecution is subordinate to the Public Prosecutor. Id. art. 12.

The RPP supervises the operation of all prosecutors and provides guidance. CONST. art. 160. See also, LAW ON PUBLIC PROSECUTION arts. 2 and 12. The Law on Public Prosecution also addresses the issuance of written instructions. The RPP may issue written instructions to any Public Prosecutor, and a higher ranked prosecutor may do so to an immediately lower ranked prosecutor. Mandatory instructions are issued in writing and must contain the reasons and substantiation for their issuance. A lower ranked prosecutor who deems mandatory instructions unlawful and unjustifiable may submit a substantiated objection to the RPP within eight days of the date of receiving the same; however no objection may be brought regarding the mandatory instructions of the RPP. LAW ON PUBLIC PROSECUTION art. 18.

Criminal proceedings are initiated on the basis of a motion to indict by the Public Prosecutor, a subsidiary prosecutor, or through private prosecution. Before submitting the motion to indict, the Public Prosecutor may request the investigating judge to conduct certain investigatory actions. If the investigating judge accepts the motion, he then conducts investigatory actions, and then delivers the entire file to the Public Prosecutor. CPC art. 435(1). When the Public Prosecutor finds that that there are no grounds for instituting criminal proceedings, he is required to notify aggrieved parties of his decision within eight days and advise them of their right to assume private prosecution. This shall also be done by the court, which stays the proceedings after the Public Prosecutor drops the charges. Id. art. 61. An aggrieved party may then assume his role as a subsidiary prosecutor. Id. art. 62. When the Public Prosecutor drops
the charges during the trial, the aggrieved parties are required to declare no later than eight
days thereafter in writing, whether they wish to continue the prosecution. *Id.* art. 62.

Article 235 mandates that the Public Prosecutor dismiss a criminal complaint where the act
reported does not constitute a criminal offence or a criminal offence prosecutable *ex officio*,
where the statutory limit for prosecution has lapsed, or the offence is encompassed in an
amnesty or pardon or where there are other circumstances that exclude proceedings, or, lastly,
there is no reasonable suspicion that the suspect committed a criminal offence, and, as noted
above, shall notify the aggrieved party of the dismissal of the complaint and the reasons for
doing. When a criminal complaint was submitted by an investigative authority, that authority shall
also be notified. See also art 61.

The Public Prosecutor may defer, or “postpone” criminal proceedings for criminal offences
punishable by a fine or a term of imprisonment of up to three years, (*id.* art. 236(1)), and for
crimes punishable by terms of imprisonment of over three years, and up to five years (*id.* art.
236(2)), if the suspect agrees to one or more conditions, including providing compensation for
damage caused, paying money to charity, performing public service work, or undergoing psycho-
social therapy or treatment for alcohol or narcotics addiction. *Id.* art. 236(1). Article 237 provides
that a prosecutor may also dismiss a criminal complaint when he deems that the imposition of
criminal sanctions would be unfair, where a repentant suspect has prevented the occurrence of
damage or has already provided full compensation for damages caused. *Id.* art. 237. In criminal
proceedings for a single offence or for a concurrence of criminal offences punishable by terms of
imprisonment of up to 12 years, the parties may enter into a plea agreement. *Id.* art. 282a (1)(2).

One or more diversion orders may be applied to a juvenile offender for criminal offences
punishable by a fine or imprisonment of up to five years. THE LAW ON JUVENILE CRIMINAL
OFFENDERS AND CRIMINAL PROTECTION OF JUVENILES, art. 5, OFFICIAL GAZETTE OF THE REPUBLIC OF
SERBIA NO 85/05 [hereinafter JUVENILE OFFENDERS ACT]. A juvenile is a person who at the time of
commission of the criminal offence has attained fourteen years of age and has not attained
eighteen years of age. *Id.* art. 3. If the juvenile confesses, the relevant state prosecutor for
juveniles or a Juvenile Judge may apply a diversion order to a juvenile, after considering the
attitudes of the juvenile and the injured party. *Id.* art. 5. Diversion orders may include:
compensation to the injured party, regular attendance at school or employment, community
service, drug or alcohol treatment or therapy. *Id.* art. 7.

It is worrisome that as prosecutors are to assume more responsibility under the new CPC, the
prosecutorial structure appears to remain rigidly hierarchical. It was reported that there has been
such a high level of professional uncertainty among prosecutors in recent years, especially due to
the reappointment and revision process, that there is a perception that prosecutors make
decisions from a vantage point of fear of internal or external repercussions. As discussed in
Factor 7, it is unclear how strong the external influences are over the workings of the Office of the
RPP, but it was reported that it is more likely a situation where the Public Prosecution may be
influenced by its own perceptions as to what those with political influence want it to do, especially
based on what media is reporting, since a number of media outlets are reported to be controlled
by political parties. It was reported that prosecutors, even at the basic level, must go up the
hierarchy for instruction on any criminal matter even remotely related to corruption. And while
only written instructions are authorized, it was frequently reported that oral instructions are more
the norm, thereby creating a sometimes parallel track of official and unofficial communications
regarding the numerous critical decisions made by prosecutors: whether to file, the level of the
charges, who to file against, when to file, whether to request the detention of the accused,
whether to instigate any abbreviated or deferred proceedings, summary judgment or plea
bargain; and decisions regarding appeals of decisions and dispositions. Several interviewed cited
the written directive of the RPP to appeal all acquittals as an abuse of discretion, and an
unnecessary drain on court resources, as many appeals lack merit. One person noted that the
number of appeals may decrease soon, since under the new CPC an appellate court may now find in favor of the accused.

There are no overt indications of either external or internal interference, however, in the special offices addressing organized or war crimes, though there was some controversy during the interview period regarding investigations of journalists for inciting war crimes in the 1990’s. The complaints regarding politically motivated charging decisions revolved around high profile cases against influential private business executives for “abuse of an official position.” It was posited that these prosecutions are used as a tool against opposition parties, since it is often private business money funding political parties. One member of the international community stated that these prosecutions are proceeding under a very broad definition of “abuse of official position,” and there is a working group working to narrow this definition. In what was generically referred to as the Tobacco Mafia case, there is a related petition pending in the ECHR due to a public statement made by the Minister of Justice, to the effect that if the opposition party gets into power, individual criminals like the Tobacco Mafia accused will go free. In another corruption case, when criticized for violating the presumption of innocence of an accused by making inappropriate public statements, the Minister of Justice has stated that such statements were made in her capacity as anti-corruption coordinator, and not as Minister. Available at http://www.rts.rs/page/stories/sr/story/135/Hronika/959022/Zarazna+kupovina+vakcina.html.

As provided for currently by law, prosecutors are able to use several types of abbreviated or summary proceedings to dispose of lower level charges more quickly. As noted above, a criminal charge with a penalty of three years or less may be disposed of through a “postponement,” if the injured party agrees, as well as in cases where the penalty is five years or less, if the court and the injured party agree. The Public Prosecution’s Work on Suppression of Crime and Protection of Constitution and Laws in 2010, Republic Public Prosecution, March 2011. (at p. 49) [hereinafter 2010 ANNUAL REPORT OF THE RPP] noted that postponements were granted to 5,268 persons, and RSD 138,600,714, which corresponds to USD 1,751,975, was paid to a humanitarian organization, foundation or a public institution. Plea Bargains were entered into with 70 accused. Id. p. 50. Last year in one jurisdiction outside of Belgrade, out of 5,000 offenses recorded in the registry, 1400 “milder” cases were disposed of without trial (traffic, tax, milder family violence, minor prop damage), with up to 1,100 of the 1,400 resolved by “postponements” of criminal charges. In one prosecutor’s office in Belgrade, there were 1,800 cases disposed of by postponements in 2010. By October 2011, in the same office, there have already been 2,800 such dispositions for milder charges, such as a minor assault, possession of one joint of marijuana, or stealing electric power. Under this disposition, an accused has up to 6 months to pay a “fine” of up to RSD 40,000 (USD 500) for offenses with sentences of 3 years or less, or up to RSD 80,000 (USD 1000) for offenses with sentences of five years or less. If an accused is indigent, there is an attempt to allow him to perform public service instead of paying the fine. One prosecutor noted that most of those whose cases are disposed of this way do not return as recidivists. One prosecutors office has raised over RSD 5 Million (USD 63,000) for a children’s health care charity through the use of this procedure. Several prosecutors indicated they do try to recover restitution for an injured party when using this type of disposition, but occasionally those requests are inflated or unreasonable, or the parties settle on their own.

While there were minimal complaints received regarding favoritism or abuses in the use of postponements or summary proceedings, the institution of more traditional plea bargains for higher offenses have been more problematic. One prosecutor lamented that she and others have endeavored to extol the many benefits of plea bargaining to the public and other justice actors, such as ensuring a certain sentence, using a plea to secure the testimony of a “smaller fish” to obtain a conviction against the “bigger fish”, but have been frustrated by some of the more controversial high profile pleas. Several interviewed cited frustration in the embezzlement case against Svetlana Raznatovic, which, after 7 years of investigation, resulted in a fine of RSD 155,000,000 (USD 1,960,000) and her house arrest for 8 months, pursuant to a negotiated plea.
Available at http://www.guardian.co.uk/world/2011/may/09/serbia-ceca-svetlana-raznatovic. One plea cited as a success was the Miladin Kovacevic case, who was charged in New York with an assault, which resulted in his passport being confiscated. While the case was pending, Kovacevic was assisted in fleeing the United States and returning to Serbia by staff members of the Serbian consulate. Kovacevic was charged and plead guilty in Serbia, receiving a sentence of 2 years and 3 months, although it was reported that he was not required, as a condition of the plea, to testify against the staffers from the consulate.

It was noted that defense attorneys often resist engaging in plea negotiations, since currently there is the perception that the accused will receive a lesser sentence from the court. Several prosecutors have worked with representatives of the international community to author guidelines on plea bargaining. It was also pointed out that there needs to not only be further discussions within the Public Prosecution regarding its procedures and policies, but there must be a concerted public information campaign as well. Without education as to the benefits of plea bargains and transparency in the manner they are used, the public will likely interpret them as examples of the prosecution offering favoritism to influential defendants. One prosecutor noted that the increased use of plea bargaining may lessen the hierarchical influence within the prosecutors office, though one member of the international community stated that the RPP currently has to approve all plea bargains. When asked how it is decided internally when to offer a negotiated plea, one prosecutor stated that these cases are discussed weekly at regular staff meetings with all prosecutors present, so that everyone can be heard. One area of concern was raised when several interviewed stated that plea hearings are usually conducted in closed court sessions, in case the plea falls apart and the accused then proceeds to trial. This is allowed under the current CPC, which provides that the public may be excluded by the court for a variety of reasons cited, including when the interests of justice would be jeopardized. Rulings on the exclusion of the public, however, must be substantiated and made public. CPC art. 294.

Factor 11: Rights of the Accused

Prosecutors shall be impartial in the performance of their functions and must promote equality before the law and respect for the rights of the accused.

Prosecutors shall refuse to use evidence obtained in violation of the accused’s human rights.

Conclusion

The passivity of the prosecution, especially at the earliest stages, serves to expose the accused to a greater risk for violations of due process rights. Under current procedure and practice, the prosecutor has minimal involvement in the investigation and court hearings, leaving it to the courts to proactively protect the rights of the accused.

Analysis/Background:

Article 36 of the Constitution provides for the equal protection of rights before courts and other state bodies in Serbia. The CPC and the Constitution provide for various fair trial protections, including the right to be informed promptly in the language that a person understands and in detail about the nature and cause of the accusation against him, as well as the evidence against him; the right to defend himself personally or through legal counsel of his own choosing, to contact his legal counsel freely, to be allowed adequate time and facilities for preparing his defense, and if without sufficient means to pay for legal counsel to have one paid for by the State.
when the interests of justice so require. CONST. art. 33. The Constitution further provides that everyone has the right to a public hearing before an independent and impartial tribunal established by law within a reasonable time, to free assistance of an interpreter if the person does not speak or understand the language officially used in the court or if the person is blind, deaf, or mute. Id. art. 32. Any person charged or prosecuted for a criminal offense is not obligated to provide self-incriminating evidence, and has the right to present evidence in his favor by himself or through his legal counsel, to examine witnesses against him and demand that witnesses on his behalf be examined under the same conditions as the witnesses against him. Id. art. 33. Also see CPC arts. 4-5, 68-76, 89-95. Any statements elicited from an accused through the use of force, threats, deception, impermissible promises, coercion, exhaustion or other similar means may not be used against the accused person as evidence. CPC art. 89. Where an accused person is mute, deaf or unable to conduct his own defence successfully, or where the proceedings concern a criminal offence punishable by a term of imprisonment of over ten years, the accused person must have a defence counsel during the very first interrogation, and an accused person remanded in custody must have defence counsel while in detention. Id. art. 71(1)(2). A court’s decision may not be founded on the accused person’s statement obtained in violation of these provisions. Id. art.89(10). Article 99 of the CPC likewise provides that the court may not base its decision on the testimony of a witness who has not been cautioned that he has the right not to testify, whether due to privilege or age, or if the testimony has been obtained through use of force or threats. Id. art. 99.

Many of the same issues facing defense attorneys under current criminal procedures are also issues for the accused. While the accused has the right to read the prosecutor’s request to start an investigation, inspect the documents in the court file, and offer its own evidence in the main hearing, he has no right to interview the prosecution’s witnesses until trial. Certainly after the close of the investigation, it appears that it is the judiciary that is more proactive in protecting the rights of the accused. At the pre-investigation stage, testimony of a suspect is currently inadmissible if no attorney is present. What is most concerning is that many accused go before the court without legal representation (representation is currently not mandated for crimes where the maximum possible sentence is under 10 years (see art. 71(1)), and that practice will remain under the new CPC, though the threshold has been lowered to crimes with punishments up to 8 years). One interviewee estimated this level of crime represents approximately half of all crimes considered by the court and expressed concern that no legal aid is mandated. He also estimated that the overwhelming majority of those accused have no higher education.

As highlighted in other factors, prosecutors also have the general reputation under the current criminal procedure as being very passive throughout the process. For example, prosecutors do not appear to be reviewing evidence in a substantive way to assess its admissibility before initiating charges. If an accused is being held in detention, his rights are even more at risk, since even some noncomplex cases may take a considerable amount of time to be disposed of. Some interviewees stated that pretrial detention is traditionally used as the rule rather exception and is sometimes ordered when not necessary. This is especially concerning when the charges are ultimately dismissed for lack of evidence, since, as noted, there is often no stringent review of the investigatory file by the prosecution before charges are initiated. Individuals convicted wrongfully or unlawfully deprived of liberty, however, and whose conviction or detention was published in the media, may request the court publish a notice in the paper declaring the wrongful or unlawful nature of such an action, or if not originally published in the media, the court may be requested to send such an announcement to an employer, local government authority or social organization. CPC art. 561 (1).
Factor 12: Victim Rights and Protection

*In the performance of their duties, prosecutors consider the views and concerns of victims, with due regard for the dignity, privacy, and security of the victims and their families.*

*Prosecutors must ensure that victims are given information regarding the legal proceedings and their rights, and are informed of major developments in the proceedings.*

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Currently the constitutional and legislative scheme in Serbia does not set forth protections for victims, nor does it provide for mandated notifications and information regarding their cases, except when a case is dismissed. There is no centralized victim coordination function or unit within the Public Prosecution, except in the special offices dealing with organized and war crimes, and then services are only available during the pendency of court proceedings. Lastly, victims are not afforded legal aid to assist them in pursuing their claims within or parallel to a criminal proceeding.</td>
<td></td>
</tr>
</tbody>
</table>

**Analysis/Background:**

Generally speaking, the responsibility to protect an aggrieved party or witness from threats, insults or other forms of attack typically falls to the court (CPC art 109(1)), though when an investigating judge or president of the chamber so proposes, the president of the court or the Public Prosecutor may ask interior ministry officials to undertake special measures to protect witnesses and aggrieved parties. *Id. art. 109(3).* See also *LAW ON POLICE* arts. 73 and 74. The CPC further mandates the court notify the prosecutor to institute criminal proceedings in the event of a serious threat or violence by any participants in the proceedings or other persons in court. *Id. art. 109(2).* As noted in Factor 13, the court may authorize more extreme protective measures where there is a substantial degree of threat, especially in organized crime, corruption, or other extremely serious offenses. *Id. art 109(a).*

Special considerations for juveniles who testify as witnesses are set forth in Factor 13. In the event the juvenile is a victim, he is entitled to legal representation from the ranks of attorneys with special skills in the field of the rights of the child and criminal and legal protection of juveniles from the time of the first questioning of the defendant. If the juvenile victim does not have a legal representative, one shall be appointed by the president of the court and paid for under the court budget. *Id. art. 154.*

There is no specific unit within the prosecution or investigative services responsible for providing services to victims, though it was reported that social welfare agencies become involved and that safe houses exist for victims of family violence. Several judges indicated that their first priority was the victims, and one investigating judge even keeps “office hours” to be available to victims. One prosecutor mentioned that even ambulance personnel have been trained in how to assist the victims without contaminating the crime scene. There is also a prosecutor in the office of the higher prosecutor in each district who has been specially trained to handle cases involving juvenile offenders, though it was not clear if those same prosecutors handled cases involving juvenile victims. Prosecutors lack adequate facilities to interview and interact with victims and witnesses generally which is especially problematic when those individuals are juvenile. And lastly, while Article 67 of the Constitution provides generally for legal aid to individuals in Serbia,
victims are on their own when pursuing the few rights they are afforded under criminal procedures, especially when pursuing restitution or damages.

Except in the special offices for organized and war crimes, there is no victim services or coordination role within the Public Prosecution, nor does the prosecutor interact significantly with victims during the pre-trial and trial phases, or consult with them on the proceedings or decisions in the case. This includes a lack of communication when the prosecution is considering abbreviated proceedings or plea bargains. More concerningly, it was frequently reported that the Public Prosecution is frustratingly unresponsive to requests for information from aggrieved parties regarding the possible filing of charges. And while there is no strict timeline imposing a deadline for the Public Prosecution to consider initiating charges (other than the statute of limitations), as noted in Factor 10, Article 235(1) of the CPC mandates that the Public Prosecutor dismiss a criminal complaint when it is determined the act does not constitute a criminal offence and shall notify the aggrieved party within eight days of the dismissal and the reasons for doing so. This is important in light of the fact that victims and their families seem to have more acute problems obtaining information from Public Prosecution when possible charges are still being considered by the prosecution than after charges are filed. The 1999 RTS bombing case was cited as an extreme example, wherein the families of those killed have yet to be given a final determination from the investigation pending since then. Another was a situation where an individual published a book containing derogatory comments about Albanians, and there has been no response to requests for information or to requests to initiate prosecution. Even when resorting to more formal channels, NGO representatives stated that an unsatisfactory response or a refusal to provide the information under a formal request for information is not appealable against the RPP, and therefore there are few options for obtaining information.

Some interviewees noted particular issues in gender based violence cases. One cited a case involving rapes in Eastern Serbia that resulted in an acquittal, even though civil society representatives working with the victims provided relevant information to the prosecutors in support of the criminal charges. Even more concerning was the report that the prosecutor failed to protect the victim from maligning conduct by the attorney for the accused during the actual testimony at trial. One interviewee noted that some prosecutors do have training in dealing with victims of gender based and domestic violence, but just don’t use it.

In trafficking cases, there were some encouraging reports. In 2011, Serbia maintained its Tier 2 ranking in the Trafficking in Persons report issued by the Department of State. OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, DOS, TRAFFICKING IN PERSONS REPORT 2011 at 315 (2011) [hereinafter TIP REPORT]. The TIP Report noted that insufficient funding for victim services hampers the government’s ability to provide comprehensive assistance to victims, especially through its Agency for the Coordination and Protection of Victims of Trafficking in Belgrade, though the government did secure yearly funding for the care of foreign and domestic trafficking victims. It also noted that a lack of specialized shelter and services for trafficked children left some victims vulnerable to continued exploitation and re-trafficking. It was specifically recommended that Serbia improve the delivery of specialized services and shelter for children and adult male victims of trafficking. Id. pp. 315-316. One prosecutor who has worked on trafficking cases for over eight years noted progress in how the cases are handled, especially in providing protection to the victims. Numerous trainings and conferences have been held on this topic, resulting in more pro-activity in investigations and prosecutions.

Finally, there are several avenues a victim or aggrieved party can pursue to obtain damages, compensation, or criminal redress. An aggrieved party is a person where one or more of his personal or property right or rights have been violated or threatened by a criminal offence (CPC art. 221(6)), and who can submit a request for prosecution to the Public Prosecutor or initiate a private prosecution. Id. art. 53.1. Such a request must be submitted within three months of the date the victim learned about the criminal offense. Requests for public prosecution must be
submitted to the prosecutor’s office, while a request for private prosecution is submitted to the competent court. *Id.* art. 54.1. It is important to note that for some crimes, such as minor thefts, minor assault, or violations of privacy, the criminal code provides only for the victim to institute a private prosecution, and it is not possible for the Public Prosecutor to do so. See CRIMINAL CODE arts. 122, 153, 210-212. Where proceedings for a criminal offence depend on a motion by an aggrieved party, the Public Prosecutor may not request the conduct of an investigation or issue an indictment or a motion to indict until the aggrieved has filed his motion. CPC art. 215. Private prosecutors are required to pay the costs of the criminal proceedings, the necessary expenses of the accused person, and the necessary expenses and fee of his defence counsel if the charges are dismissed or the accused is acquitted. *Id.* art. 197.

Articles 61 and 62 of the CPC set forth the procedure for an aggrieved party to assume the role of a subsidiary prosecutor. When the Public Prosecutor finds that there are no grounds for instituting prosecution for criminal offences prosecutable ex officio, or when he assesses that there is no case against any of the known accomplices, he is required to notify aggrieved parties of his decision within eight days and advise aggrieved parties of their right to assume private prosecution. At this point, the aggrieved parties have eight days to undertake or continue prosecution. *Id.* arts. 61 and 62. Should they chose this option, they are considered subsidiary prosecutors. *Id.* art. 62. Alternatively, if the aggrieved party submits a complaint to the Public Prosecutor, but the Public Prosecutor does not “submit a motion to indict within one month of receiving the criminal complaint or does not notify the aggrieved that the complaint has been dismissed”, the aggrieved is entitled to assume prosecution as a subsidiary prosecutor. *Id.* art. 437.

If it is in the “interest of achieving the aim of the criminal prosecution,” Article 66 of the CPC provides that, in proceedings for a crime punishable by more than five years’ imprisonment, the court may provide assistance to a subsidiary prosecutor unable to cover the costs of representation by appointing a proxy. *Id.* art. 66. The ruling on this request is issued by the investigating judge, or the president of the chamber. *Id.* It is also important to note that in proceedings conducted on the request of a subsidiary prosecutor, the Public Prosecutor can, until the conclusion of trial, take over criminal prosecution and representation of the prosecution. *Id.* art. 64.

During the course of trial, the aggrieved parties and private prosecutors shall be entitled to offer evidence, question the defendant, witnesses and expert witnesses, make objections and explanations in connection with their statements, and to make other statements and proposals. *Id.* art. 60.2.

It was difficult to determine how successful injured or aggrieved parties are at obtaining even monetary damages from the accused using any of these procedures. It is unclear if there was any legal aid actually available for aggrieved parties when left to pursue what remains a criminal prosecution. Several prosecutors indicated they do try to collect restitution for an aggrieved party, but on occasion the aggrieved party’s requests are inflated or they have an unrealistic expectations of what can be accomplished to make them whole again through the existing procedures within the criminal justice system. The lack of involvement of the prosecutor can be especially harmful for a victim during summary judgment or postponement proceedings. One judge estimated that 80-90% of all cases are disposed of through summary proceedings and the victim typically has no attorney. Many of these are family violence cases where parties can assert marital privilege and refuse to testify. A summary case may be dealt with more leniently or more harshly by a court when there is no benefit of trained advocates familiar with the evidence acting on behalf of the parties. If the victim feels he has not received a just result, he must then also navigate an appeal when unrepresented.
Factor 13: Witness Rights and Protection

Prosecutors perform their functions with due regard for the dignity, privacy, and security of the witnesses and their families.

Prosecutors ensure that witnesses are informed of their rights and conduct every encounter with witnesses fairly and objectively.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prosecutors do not significantly interact with witnesses, leaving to other criminal justice system institutions the responsibility to inform witnesses of their rights, obligations, and of the status of pre-trial and court proceedings. A state sponsored witness protection program exists but is not yet fully functional.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

Article 96 of the CPC provides that persons likely to have knowledge of and able to provide information about a criminal offence be summoned as witnesses. CPC art. 96(1). This includes aggrieved parties, subsidiary prosecutors, and private prosecutors who may be questioned as witnesses. Id. art. 96 (2). Serbian law excludes several classifications of individuals from testimony, including persons who would by their statements violate the duty of maintaining confidentiality of information acquired in their professional capacity, including religious confessors, lawyers, physicians, and midwives. Id. art. 97(3). Spouses or other persons with whom the accused lives in an extramarital or other lasting association, and the accused person’s lineal relatives by blood, collateral relatives up to the third degree, and relations by marriage to the second degree are exempted from testimony. Id. art. 98(1). Identification of persons at the pre-trial and preliminary stages is to be performed in a manner ensuring that the person being identified cannot see the witness. Id. art 104 (4)(2). Finally, all persons summoned by the court to give testimony as witnesses have an obligation to respond (id. art. 96), and may be brought in by force, or punished by fine if he fails to honor the summons without justification. Id. art. 108(1).

A juvenile who is a witness in a criminal offence may be questioned no more than twice, unless deemed by a judge that more interviews are necessary to “achieve the purpose of the criminal proceeding,” but in that event the judge shall have “particular regard for the protection of the personality and the development of the juvenile.” JUVENILE OFFENDERS ACT, art. 152. The judge may also order questioning of the juvenile using voice or facial distortion, and outside the presence of the parties and other participants in the proceeding, and those entitled to ask questions may do so through the judge, psychologist, pedagogue, social worker, or other qualified person. Id. Confrontation between the juvenile witness and the defendant may be prohibited due to the nature of the criminal offense or if the juvenile is in a particularly difficult mental state. Id. art. 153. A juvenile who, in view of his age and mental development, is incapable of understanding the significance of the right not to have to testify may not be questioned as a witness, except where the accused person so demands. Id. art. 98 (3). As noted in Factor 12, when questioning juveniles, especially if they were aggrieved by the criminal offence, due care shall be taken to avoid questions having a detrimental effect on the mental condition of the juvenile. Where necessary, questioning juveniles shall be conducted with the help of a teacher or other relevant expert. CPC art. 102(4).

The provisions regulating state-provided witness protection are contained in the Law on the Protection Programme for Participants in Criminal Proceedings. LAW ON THE PROTECTION
PROGRAMME FOR PARTICIPANTS IN CRIMINAL PROCEEDINGS, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA No. 85/05 [hereinafter LAW ON PROTECTION PROGRAM], and CPC arts. 109 a-d. The Protection Program establishes a Commission for Implementing of the Witness Protection Program [hereinafter Commission] and a Protection Unit to manage the Program. See LAW ON PROTECTION PROGRAM art. 7. The Protection Unit is a specialized organizational unit within the Ministry of Internal Affairs, which shall implement the Protection Program Id. art. 12. The Commission receives applications for witness protection from the relevant Public Prosecutor, investigative judge or president of the court panel ex officio or upon the motion of a party in the criminal proceedings to include a party and close relatives into the Protection Program. Id. art. 25. The services provided by the Protection Program include: 1) physical protection of persons and property; 2) change of place of residence or relocation to another prison institution; 3) concealment of identity and ownership information; 4) change of identity. Id. art. 14. The unit also provides the protected person with economic, psychological, social, and legal assistance. Id. art. 12. The court may also authorize protective measures for the witness, such as ensuring that identities are not revealed and invoking security measures during the proceedings where there is a substantial degree of threat, especially in organized crime, corruption or other extremely serious offenses. CPC art. 109a. Rulings on special witness protection may be issued by the court ex officio, at the request of the parties, or the witness himself. Id. art. 109b(1).

There was a general view among interviewees that police and especially the court were traditionally and exclusively responsible for notifying and ensuring witnesses’ participation and rights. Several judges noted operational problems within court procedures in ensuring timely notification and service of summons on witnesses. Several prosecutors complained that witness trial preparation and interviews, when they occurred, were hampered by a lack of office space, exposing the witness (or victim) to relate his story in front of several prosecutors working in one room. Therefore, as with victims, except in the organized and war crimes offices, the prosecutor does not interact significantly with witnesses during the pre-trial and trial phases, and does not usually consult with them on the proceedings or decisions in the case.

Witness protection for witness collaborators in serious crimes is, in practice, a huge problem even given the witness protection scheme. Under current law, the prosecution must disclose the identification of a protected witness 30 days prior to commencement of the trial. Id. art. 109g. One prosecutor reported that he had tried unsuccessfully to disclose this information only to a judicial panel, but it still became known to the accused. If the protected person is in prison, it can be equally as hard to protect him. It is also difficult to enforce the protective provisions against those who violate them. One interviewee reported that a defense attorney at a public hearing proposed the interrogation of a protected witness’ mother, which was then repeated by the judge, thus disclosing the name of the protected witness. Several individuals interviewed questioned the logic of locating the Protection Office within the Ministry of Interior, especially given the fact that a protected witness may be testifying against an accused who is actually a member of law enforcement, while being protected by law enforcement at the same time. One interviewee stated he knew of three people who left the witness protection program in the prior year when they discovered there were no concrete plans for them to be relocated when the case was over. While Serbia has successfully changed the identification of a protected witness and his living location; much of its focus is on physical protection, which was noted to be expensive and hard on the individual being protected. There is a witness support unit within the War Crimes Office, comprised of three people, but it provides no psycho-social services, and only maintains contact while the case is pending. One interviewee stated that the worse thing you can do is to make a witness feel forgotten.

Several issues have been effectively addressed in the new CPC involving the use of witness collaborators, who will now be called “cooperating witnesses.” Under the new provisions, a
cooperating witness does not have to be charged in the same criminal scheme, as mandated under the existing CPC, but may be charged with unrelated crimes.

**Factor 14: Public Integrity**

*Prosecutors uphold public integrity by giving due attention to the prosecution of crimes committed by public officials, particularly those involving corruption, abuse of power, grave violations of human rights, and other crimes recognized by international law.*

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
</tr>
</thead>
</table>

Serbia has laid a foundation for combating corruption by instituting a comprehensive set of legislative and institutional reforms, including the inception of a special judicial chamber to address high level corruption. It is difficult to discern, though, how comprehensive, fair, and effective the efforts are, especially when those acts are committed by public officials.

**Analysis/Background:**

In recent years, as it has focused on its accession into the European community, Serbia has established an impressive institutional and legal framework to combat corruption, especially that committed by public officials. The Anti-Corruption Agency [hereinafter Agency], is an autonomous and independent state body, accountable to the National Assembly of Serbia. **LAW ON THE ANTI-CORRUPTION AGENCY** art. 3, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA No. 97/08, as amended, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA Nos. 53/10, 66/11. The Agency is managed by a Director (id. art. 15), who is appointed by an Anti-Corruption Board, whose members are appointed by the National Assembly. Id. art. 7. Some of the main tasks of the Agency include supervising the implementation of the National Strategy for Combating Corruption, the Action Plan for the Implementation of the National Strategy, and sector action plans; addressing conflicts of interest; monitoring the financing of political parties; and maintaining the registry of property and income of public officials. Id. art. 5. See also id. art. 68. A public official is to promptly notify the Agency of any prohibited influence to which he has been subjected. Id. art. 37. The Agency monitors the adoption and implementation of the Integrity Plans adopted by state bodies and organizations, territorial autonomy bodies and local state bodies, public services and public companies. Id. art. 59. The Agency also cooperates with research organizations, the media and related associations in joint activities to prevent corruption, including educational programs and media campaigns. Id. art. 63.

An official shall, within 30 days of election, appointment or nomination, submit to the Agency a disclosure report on his property and income, including the use of an apartment for official purposes, as well as the property and income of his spouse or common-law partner, and minors living in the same household on the day of election, appointment, or nomination. Id. art. 43. An official is further mandated to file a report, no later than 31 January of the current year, with the status as of 31 December of the previous year, noting any significant changes occurred since the filing of the previous years report. Id. art. 44. The EC Report noted that the Agency has been very active in the verification of asset declarations: by the end of 2010, over 18,000 asset declarations had been received from the 25,000 public officials who are required to fulfill that obligation. The Agency processed 3,500 of these. Between October 2010 and September 2011, the Agency initiated misdemeanor procedures in 8 cases and criminal procedures in 2 cases; 2 cases were transferred to the Public Prosecution. However, the report noted that the capacity and powers to investigate fraudulent declarations and discrepancies between income and assets are lacking. Not all relevant data has been entered into the Assets Registry on the Agency's website, thus
preventing the public from gaining full insight into the property disclosure reports of public officials. EC REPORT. p. 21. One interviewee reported there are currently efforts to provide the Agency with investigative powers, but he felt this would be unnecessary.

The National Strategy for Combating Corruption was adopted by the National Assembly in 2005 (THE NATIONAL STRATEGY ON COMBATING CORRUPTION, OFFICIAL GAZETTE OF SERBIA No. 109/05), though that Strategy and the Action Plan emanating from it are under review and revision. The EC Report noted that an overall legal and institutional framework for fighting corruption is in place in Serbia, including the establishment of the Anti-Corruption Agency and its important competencies in the areas involving integrity of public officials and control of party funding, and noting that its resources were further increased in 2011. EC REPORT p. 6. The EC Report expressed concern that the Agency has no mechanism to ensure the enforcement of its decisions. It also highlighted a lack of human resources within the Agency, with only 60 employees, when its organizational chart provides for 96 posts, though noting that the Agency was allocated adequate premises in September 2011, which will assist it in completing its recruitment plan. Id. p. 20. Lastly, the EC report noted that the current strategy does not cover the education and health sectors, which are areas prone to corruption. Id. p.20.

The Anti-Corruption Council was created in October 2001 as a government advisory body to propose legislative changes and other measures aimed at combating corruption, and assessing on-going anti-corruption activities. DECISION ON FORMING ANTI-CORRUPTION COUNCIL 59/01, 3/02, 42/03, 64/03, 14/06. The EC Report noted that the Council continues to raise public awareness of high-profile cases of corruption, mostly in the media and in public events. It filed two criminal charges against high profile politicians and well-known businessmen. It has also identified a number of, mainly large, privatization transactions in which there were suggestions of corruption, but only a few were investigated and even fewer were prosecuted. Id. pp. 20-22.

In 2008 the RPP established a Department for Combating Corruption. On March 26, 2010, the Appellate and Higher Prosecutions in Belgrade, Novi Sad, Kragujevac, and Nis were directed by virtue of mandatory instruction no A.br. 194/10 from the RPP to establish departments for combating corruption and money laundering. Higher prosecutors were ordered to appoint one deputy to monitor all corruption and money laundering cases in their jurisdictions, and prosecution offices at every level were directed to immediately inform the office of the RPP when criminal reports of corruption and money laundering criminal offences are received, and any decisions made. Id. 26. The 2010 Annual Report of the RPP noted that in 2010 the RPP worked on 1,001 such cases, which represents a steady increase over previous years: 908 in 2009, 760 in 2008, and 578 in 2007. 2010 ANNUAL REPORT OF THE RPP at p. 27. It was reported that lower level prosecutions for corruption are to be reported by those prosecutors tasked with handling these types of cases to the Department for Combating Corruption within the office of the RPP, where 3 staff members compile and disseminate relevant data within the Public Prosecution.

Included in the legislative scheme to combat corruption is a “whistleblower” provision within the Law on the Anti-Corruption Agency. A civil servant, who in good faith files a report with the Agency justifiably believing that corruption exists in the body where he is employed, is not to sustain detrimental consequences for doing so, though anonymous complaints are not allowed. Id. art. 56. The Agency is mandated to notify the individual initiating the complaint of its decision. Id. art. 65. The EC Report noted that practical implementation of this provision remains weak, and whistleblowers still suffer consequences for disclosing information. EC REPORT p.21.

Article 5 of the Law on Public Prosecution prohibits all forms of influence by the executive and the legislative authorities on the work of the Public Prosecution that may threaten the autonomy of the work of a public prosecution, through the use of a public office, media and any other means, LAW ON PUBLIC PROSECUTION art. 5. As noted previously, a Public Prosecutor and Deputy Public Prosecutor are autonomous of both the executive and the legislature in
the performance of their duties, and that no one outside the Public Prosecution is entitled to define the tasks of Public Prosecutors and Deputy Public Prosecutors, or influence their decisions in cases. Id. art. 45.

Articles 359-368 of the Criminal Code set forth various criminal offences addressing abuse against official duty, abuse of an official position, and bribery received by public office holders. A specific law addressing organized crime assigns jurisdiction to prosecute these offenses to the Prosecutor's Office for Organised Crime. LAW ON ORGANIZATION AND JURISDICTION OF GOVERNMENT AUTHORITIES IN SUPPRESSION OF ORGANIZED CRIME, CORRUPTION AND OTHER PARTICULARLY SEvere CRIMINAL OFFENCES, art. 4, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA Nos. 42/02, 27/03, 39/03, 67/03, 29/04, 58/04-Separate Law, 45/05, 61/05 and 72/09, 72/11 – Separate Law, 101/11 – Separate Law [hereinafter LAW ON ORGANIZED CRIME]. OPDAT provides technical assistance to the Organized Crime Prosecutor and his staff, as well as conducting trainings in investigating and prosecuting organized crime and corruption cases. It was also reported that that the organized crime prosecutors in particular have benefited from technical assistance in the area of forensic accounting, and that while it was intended that a forensic accountant actually be on the staff, it has yet to be funded by the Serbian government.

The Law on Seizure and Confiscation of the Proceeds from Crime, passed by the National Assembly in 2008, applies to variety of criminal offences, including those involving Abuse of Office. The authorities involved in the tracing, seizure and management of the proceeds from crime include the Public Prosecutor, the court, the financial investigative intelligence unit of the Ministry of Internal Affairs, and the Directorate for Management of Seized and Confiscated Assets within the Ministry of Justice [hereinafter Directorate]. THE LAW ON SEIZURE AND CONFISCATION OF THE PROCEEDS FROM CRIME art. 5, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA No. 97/08. The Directorate manages, assesses, stores, safeguards, and provisionally sells such criminal proceeds and administers the funds derived therefrom. Id. art. 9. Several interviewees cited impressive efforts in the seizure of assets alleged to have been proceeds from illegal activity, and especially from organized crimes. One estimated the value of those assets seized within a 16 month period leading up to the fall of 2011 to be RSD 31 billion (USD 393 million), though the assets have yet to be actually forfeited pending final judgments. One interviewee spoke of the need for guidelines to ensure a fair and transparent process within the Directorate for the sale and subsequent use of the forfeited proceeds. Also, in the event there is no resulting conviction, or it is reversed on appeal, it is unclear what recourse an accused has after being without the use of an asset during the pendency of proceedings, given the sizable length of time which can elapse from the commencement of a criminal proceeding until its finalization on appeal. The impressive level of resources allocated to the special war and organized crimes offices was also mentioned as a concern, as one interviewee estimated that these offenses only accounted for approximately 5% of all crimes.

Serbia’s successful efforts in enacting relevant legislation creating more effective investigative techniques, including secret audio and video surveillance, and simulated legal transactions and controlled deliveries, to combat organized crime and corruption were noted in the 2010 GRECO report. GRECO COMPLIANCE REPORT, Joint First and Second Evaluation Rounds to the Compliance Report on the Republic of Serbia, Strasbourg at 4, Greco RC-I/III (June 11, 2010).

In terms of specific prosecutions, in addition to the Raznatovic case described in Factors 7 and 10, which occurred in Belgrade (though interestingly was not treated as an organized crime or corruption case), the prosecution of a public official outside of Belgrade was also noted. The Director of Tax Administration in Mitrovica was convicted in an abuse of office prosecution for fraudulently issuing tax certificates showing taxes were satisfied when they were not. Sentencing proceedings were pending at the time of the assessment.
Several concerning issues were also raised in the 2010 Report on Human Rights Practices issued by the United States Department of State. See Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, 2010 Country Reports on Human Rights Practices: Serbia (April 8, 2011), available at http://www.state.gov/documents/organization/160212.pdf. One area of concern is the use of force and the arbitrary arrest of potential suspects by police officials in the investigations of criminal activity. See also Factor 21. Several cases were cited in the report which not only arguably reflect a pattern of abuse, but a lack of proactive investigations and prosecutions in these matters as well. Id. pp. 5-6. The report went on to state:

There was a widespread belief that impunity was a problem among police. The police internal control unit has 21 investigators who examine complaints against the police, and many observers noted that the quality of police internal investigation seemed to be improving. From January through August, 307 criminal charges and 2,600 administrative proceedings were brought against police, compared with only 262 and 103, respectively, brought during the five years from 2003-08. The government generally did not provide training to the police on corruption or human rights issues, but it facilitated training from various international actors. Id. p. 8.

On the issue of official corruption and government transparency, the report noted a failure by judicial authorities to respond to reports of high level suspected corruption. Id. p. 21.

In its report released in October 2011, as discussed previously, the EC summarized its lingering concerns regarding Serbia’s fight against corruption, though it noted that the Minister of Justice was appointed anti-corruption coordinator in May 2011, and there is currently a review of the outdated strategy and action plan for the fight against corruption. EC Report pp. 20-22. It highlighted the increased specialization of the law enforcement agencies and recognized that a greater number of cases have been prosecuted. Id. p. 22. Sadly, though, the report noted that corruption remains prevalent, however, in many areas and continues to be a serious problem. Id. Stronger political will is needed in order to significantly improve the performance in combating corruption, and the competences and capacities of the Anti-Corruption Agency need to be strengthened. Id. Lastly the report encouraged law enforcement authorities to adopt a more proactive approach in investigating and prosecuting corruption and the judiciary to build up a track record of final convictions, including in high level cases. Id.
IV. Accountability and Transparency

Factor 15: Public Accountability

In performing their professional duties and responsibilities, prosecutors periodically and publicly account for their activities as a whole.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>While the Public Prosecution is established as an autonomous state body, political authorities and other external actors have influence over prosecutors through representation on the SPC. Additionally, other aspects of public accountability include authority of the National Assembly to remove the RPP, a requirement that the RPP provide an annual report, an informative website, and a complaint process for the public. However, the Public Prosecution could improve its relationship with the media.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

Finding the appropriate balance between prosecutorial independence and accountability is extremely challenging, as is true in Serbia. On one hand, prosecutorial authorities must be sufficiently autonomous from external influence to permit fair and impartial application of prosecutorial authority. On the other hand, prosecutors must be sufficiently transparent and accountable to the public to help ensure that prosecutorial authority is not abused.

In Serbia, the Public Prosecution is established under both the Constitution and the Law on Public Prosecution as an autonomous state body. Article 2. Article 5 of the Law on Public Prosecution further specifies that prosecutors are autonomous and that all forms of influence by the executive and legislative authorities is prohibited. See also, LAW ON PUBLIC PROSECUTION art. 45. These provisions notwithstanding, the legislative framework governing the Public Prosecution provides several mechanisms whereby prosecutors are accountable to both political authorities and the public.

The most fundamental power of accountability is the power to remove the head of the Public Prosecution from office, and authority to dismiss or suspend the RPP is split between the National Assembly and SPC. Under Article 158 of the Constitution, the National Assembly may remove the RPP, while the SPC has authority to suspend the RPP under Article 59 of the Law on Public Prosecution. The SPC has authority over cases of incompatibility between the RPP’s private interests and his or her office, and if the SPC determines there are grounds for dismissal it must forward its findings to the Government. Id. art. 68.

The SPC takes a curious, hybrid approach to prosecutorial oversight, combining elected prosecutors with representatives from the National Assembly, the Minister of Justice, the professional bar, and academia. CONST. art. 164. While it seems that the SPC is primarily intended as a mechanism for prosecutorial self-governance, and will be discussed more fully in Factor 16, it does include certain elements of external accountability by including non-prosecutorial representatives. These non-prosecutorial representatives hold only 4 of the 11 positions on the SPC, but this still provides a significant opportunity for certain external actors to have a voice in the oversight of the Public Prosecution. The SPC is still a fairly new institution, and, in light of the common perception that external influence over prosecutors is too strong, it remains to be seen whether the SPC can serve as an effective and independent oversight body.
While the Public Prosecution is autonomous, Article 160 of the Constitution provides that the RPP "shall account for the work of the Public Prosecutor's Office and his/her own work to the National Assembly." Article 160 also requires each level of the Public Prosecution to account for its work to the immediately superior Public Prosecutor, thereby ensuring a flow of information up to the RPP, which in turn informs the RPP's annual report. The 2010 Annual Report of the RPP provides a fairly detailed overview of the Public Prosecution’s activities for the year, including general information and issues, statistical information on various types of crimes prosecuted, and information on international cooperation. The report, which is 140 pages in length, includes 60 pages of statistics on the work of the Public Prosecution. In addition to the RPP's annual reports, MOJ may request reports and data from the Public Prosecution as it pertains to MOJ's authority to supervise the implementation of the Regulation on Administration of Public Prosecutors. LAW ON PUBLIC PROSECUTORS art. 40.

Another mechanism for transparency is information provided directly to the public and to the media. While this is explored more fully in Factor 23, the Public Prosecution could improve its relationship with the media. The RPP only gives infrequent interviews to the media, and most media contact is extremely centralized through the RPP Spokesperson, which necessarily limits media access.

The Office of the RPP does have a fairly informative web site (available at http://www.rjt.gov.rs/), which provides the public with basic information on the structure and operations of the Public Prosecution, updates from the RPP on events and high profile cases, basic criminal justice statistics, a downloadable request-for-information form, links to important laws (including the Regulation on the Administration of Public Prosecutors), and RPP bulletins on legal practice designed to harmonize prosecution practices. While these bulletins provide important insights as to how the Public Prosecution approaches certain criminal justice issues, it appears that only two bulletins were published, both in 2008. The website does not provide the RPP's annual report. However, it does provide an Information Booklet, as required by Article 39 of the Law on Free Access to Information of Public Importance. The Information Booklet provides a variety of information, including contact information, procedures for filing complaints, budgetary information, and the general duties and internal organization. Overall, the website is an encouraging mechanism for ensuring transparency.

Finally, the Regulation on the Administration of Public Prosecutors provides citizens with the opportunity to file complaints against the Public Prosecution: "Every person that has justified interest is entitled to file a petition or a complaint regarding the subject matter that is in the competence of public prosecution and has the right to be informed about the decision on the petition or complaint." REGULATION ON THE ADMINISTRATION OF PUBLIC PROSECUTORS art. 72(1). Prosecutors are required to respond within 30 days as to any measures taken in response to the complaint. Id. art. 73(2). While complaints are intended to be directed to the relevant prosecutor's immediate supervisor, complaints may also be submitted to SPC, MOJ, RPP, or other superior prosecutors. Id. art. 73(3). In such cases they must also be informed as to the validity of the complaint and any measures taken. Id.

The complaint process seems to act as a relatively effective mechanism for the public to raise issues regarding prosecutors, although it has the potential to burden prosecutors with frivolous requests. While separate numbers on prosecutors are not available, according to the Ministry of Justice, of the 1,530 complaints referred to MOJ in July – September 2011, approximately 20% directly involved prosecutors. These numbers reflect only a small portion of complaints against prosecutors, as it only includes those complaints filed with MOJ and not those sent directly to the relevant supervisory prosecutor or other authorities. Some respondents complained that the public complaint process works too well, and that some citizens reflexively filed complaints based on unreasonable expectations of prosecutors' role and authority. The regulation does anticipate such cases, and prosecutors must give petitioners the opportunity to amend offensive or
inscrutable complaints within 8 days. Id. art. 73(4). If they fail to do so, the prosecutor may officially note the deficiency of the complaint. Id.

Factor 16: Internal Accountability

Prosecutors’ offices have a mechanism to receive and investigate allegations of wrongdoing or improprieties based on written procedures and guidelines. Internal procedures and mechanisms exist to assess or monitor compliance with departmental guidelines.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Public Prosecution is a strictly hierarchical organization, with lower ranked prosecutors subordinated to the authority of their superiors. While lower ranked prosecutors may challenge instructions from their superiors, they do not seem inclined to do so. The newly created SPC, which includes a majority of positions held by elected representatives from prosecutorial offices, also provides internal oversight. However, so far it has struggled to successfully implement its authority and fulfill its initial responsibilities.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

The principle of subordination is the keystone to the structure of the Public Prosecution, and is referred to repeatedly in the key normative acts governing the organization and role of prosecutors. The Constitution explicitly establishes the RPP's Office as the "supreme Public Prosecutor's Office in the Republic of Serbia," CONST. art. 157, and this principle is echoed in the Law on Public Prosecution (see art. 3). Article 12 of the Law on Public Prosecution reinforces the concept of subordination while outlining the basic structure of a prosecution office: "A public prosecution consists of a Public Prosecutor, Deputy Public Prosecutors, and public prosecution staff....Everyone in the public prosecution is subordinate to the Public Prosecutor." In describing the role of Deputy Public Prosecutors, Article 23 states that they are required to perform all actions given to them by their Public Prosecutor. However, perhaps the most detailed description of subordination is found in Article 16, which states:

A lower ranked Public Prosecutor shall be subordinate to the immediately higher ranked Public Prosecutor, and a lower ranked public prosecution to the immediately higher ranked public prosecution. A basic public prosecution shall be ranked lower than a higher public prosecution. A higher public prosecution shall be ranked lower than an appellate public prosecution. Public prosecutions of special jurisdiction and the appellate public prosecution shall be ranked lower than the Republican Public Prosecution. Every Public Prosecutor shall be subordinate to the Republican Public Prosecutor and every public prosecution to the Republican Public Prosecution.

To facilitate the control of supervisory prosecutors over the cases of their subordinates, lower ranked prosecutors are required to forward a case for inspection upon the request of their superior. Id. art. 21.

Not surprisingly, and as discussed in Factor 10, prosecutors have limited discretion and can be overruled at any point by a superior prosecutor through the use of mandatory instructions. Id. art. 18. Internal accountability, however, requires that internal mechanisms exist to prevent the abuse of prosecutorial authority. In response to the reportedly common practice of supervisors issuing oral instructions, Article 24 of the Law on Public Prosecution provides that mandatory instructions
must be in writing and contain substantiation for their issuance. Under the same article, lower ranked prosecutors may appeal a mandatory instruction to the supervisor of the higher ranked prosecutor, but only if they believe it be “unlawful and unjustified.” Id. If the higher ranked prosecutor's supervisor does not overturn the instruction, there is no further appeal and the instruction must be followed. Id. While this process for hierarchical recourse seems appropriate, it does not appear to be followed in practice, as respondents indicated that prosecutors do not appeal mandatory instructions from their supervisors.

Admittedly, the prosecutors interviewed by the assessment team did not feel that mandatory instructions restrict their discretion, and there were no reports of prosecutors having availed themselves of the complaint mechanism. However, all other key informant categories expressed concerns as to excessive interference from supervisors, through both oral and written instructions. While this may reflect inaccurate perceptions from outsiders, it may also indicate a culture within the Public Prosecution that discourages independence and initiative, and in which most prosecutors are content to simply do as they are told.

The second major mechanism for internal accountability is the SPC. As mentioned in Factor 15, the SPC contains representatives from several non-prosecutorial institutions, but it seems primarily intended to provide an independent authority for self-governance. See CONST. art. 164. Accordingly, the budget for the SPC is provided directly from the national budget and at the proposal of the SPC, as opposed to being a subsidiary budget of MOJ. SPC LAW art. 3. Further, prosecutors hold the majority of the 11 positions on the SPC, with 6 elected prosecutors as well as the RPP. CONST. art. 164. The 6 elected prosecutors are comprised of members from prosecutor offices at different levels, e.g., 2 representatives from basic Public Prosecutor offices. SPC LAW art. 22. Chapter III of the SPC Law provides detailed and well-considered procedures for the selection of the elected prosecutors, with each relevant prosecutor's office selecting candidates by secret ballot in elections open to all Public Prosecutors and Deputy Public Prosecutors with permanent tenure. Id. art. 24. The voting process is commendable and helps ensure a representative membership of prosecutors on the SPC.

The SPC has broad powers for governing the Public Prosecution, principally related to the selection, promotion, termination, and discipline of prosecutors, as well as responsibility for drafting a code of ethics, proposing the prosecutorial budget, and offering opinions on proposed laws or amendments affecting the status of prosecutors. Id. art. 13. However, the SPC is a fairly new institution, and, in light of the mishandled reappointment process for prosecutors, it remains to be seen whether it has the capacity to handle the various responsibilities it has been given. While a Code of Ethics has reportedly been drafted it has not yet been finalized, the SPC has not yet hired a Disciplinary Prosecutor to investigate misconduct, and the transfer of budgetary authority from MOJ to the SPC was delayed until January 2012 due to lack of staff with the necessary expertise. Lack of transparency is also a concern, such as purported bias and lack of explanation during the reappointment process. Some of these initial setbacks can be attributed to the growing pains of a new organization with limited resources, struggling to manage its first true test in the controversial and protracted reappointment process. If the SPC can learn from these experiences, is given the resources it needs, and begins to act efficiently and transparently, it may yet emerge as an effective institution for providing leadership and internal accountability for the Public Prosecution.
Factor 17: Conflicts of Interest

Prosecutors are unaffected by individual interests, and avoid conflicts of interest or the appearance thereof.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Positive</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Law on Public Prosecution, the CPC, and the Law on the Anti-Corruption Agency provide fairly broad restrictions on conflicts of interest, including conflicts of employment, gifts, and personal involvement with the defendant or other individuals involved in a case. While conflicts of interest appear to be treated as a serious issue by prosecutors, it would be beneficial for prosecutors to receive appropriate training to underscore their importance. Overall, however, respondents overwhelmingly agreed that prosecutors attempt to avoid conflicts of interest.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

Chapter IV, Section 5 of the Law on Public Prosecution provides the principal legislative framework governing conflicts of interest for prosecutors. The law prohibits prosecutors from holding positions in a wide range of outside activities, including, "authorities which enact regulations, in executive public authorities, public services, and bodies of autonomous provinces and local self-management units; may not be members of political parties, engage in public or private paid work, provide legal services or provide legal advice for compensation." LAW ON PUBLIC PROSECUTION art. 65. Prosecutors are also prohibited from any "other function, jobs or private interests which are contrary to the dignity and autonomy of the public prosecution or harm its reputation...." Id.

In instances where there is a potential conflict of interest, either for the prosecutor or for the members of his or her immediate family, the prosecutor is obligated to notify their immediate superior Public Prosecutor. Id. art. 66. The supervisory prosecutor must refer such cases for review by the RPP, who will render a decision as to whether there is a conflict of interest and whether grounds for dismissal exist. Id. arts. 67 and 68. In cases involving a potential conflict of interest for the RPP, the SPC is empowered to decide whether there is a conflict of interest and must report any grounds for dismissal to the government. Id. art 68. As regards to these provisions, the only potential sanction appears to be removal of the prosecutor from office.

These requirements are supplemented by Article 104 of the Law on Public Prosecution, which defines disciplinary offenses to include acceptance of gifts. Possible disciplinary sanctions include a public reprimand (restricted to first offenses), a salary reduction of up to 50% for up to 1 year, or a prohibition on promotion for 3 years. Id. art. 105. Such cases are heard by the SPC. Id. art. 106. These provisions must be read in conjunction with the Regulation on the Administration of Public Prosecutors, which also prohibits prosecutors from receiving gifts, except in accord with protocol. REGULATION ON THE ADMINISTRATION OF PUBLIC PROSECUTORS art. 6. Any attempts to provide prosecutors with illegal gifts must be reported to the prosecutor's immediate supervisor. Id.

Additionally, the rules governing recusal in Chapter III of the CPC are applicable to prosecutors. CPC art. 45. Chapter III includes provisions regarding conflicts stemming from prior involvement or personal connections between a prosecutor and the other individuals and parties involved in a case, such as instances where the prosecutor is related to the defendant or another individual involved in the case, or where the prosecutor was involved in another aspect of the case, such as being a witness. Id. art. 40. These provisions do not explicitly include other types of personal involvement conflicts, such as the prosecutor having business dealings or financial interests with the defendant or other individuals involved in the case, but Article 40(6) does include other
circumstances where there is reason to doubt the prosecutor’s impartiality. Motions to recuse a prosecutor are ruled on by their immediate superior prosecutor. Id. art. 45(2).

While the above provisions, all specific to prosecutors, provide a patchwork regulation of conflicts of interest that are fairly broad in scope, they are augmented by the Law on the Anti-Corruption Agency, which is applicable to all public officials. LAW ON THE ANTI-CORRUPTION AGENCY art. 2. Section III of the Law on the Anti-Corruption Agency covers conflicts of interest, and provides. Article 27 provides:

An official shall discharge the duties of public office in a manner which shall not subordinate the public interest to private interest.

An official shall observe the regulations concerning his/her rights and duties and shall secure and maintain the trust of citizens concerning his/her conscientious and responsible discharge of public office.

An official shall avoid creating relations of dependency towards persons which may influence his/her impartiality in discharge of public office and if such relation cannot be avoided or already exists he/she shall undertake everything necessary to protect the public interest.

An official must not use public office to acquire any benefit or advantage for himself or any associated person. Id. art. 27.

More specifically, public officials may only hold one public office at a time (id. art. 28); may not concurrently hold other employment unless specifically provided by law, and, if so permitted, must report any income from said employment (id. art 30); and may not establish a private business, or represent or hold a management or supervisory position on any private business, private institution, or other private legal entity (id. art. 33). Any conflicts of interest must be reported to the Anti-Corruption Agency, which in turn notifies the relevant public body or agency and proposes measures for eliminating the conflict of interest. Id. art. 32. Finally, public officials are also required to report any prohibited influence they are subjected to in performing their duties. Id. art. 37.

Section IV of the Law on the Anti-Corruption Agency provides detailed provisions governing the acceptance of gifts. Generally, public officials may only accept protocol gifts, which are turned over to the official’s public body or agency, unless the value falls below a specific threshold. Id. art. 39.

Taken together, the above provisions provide a fairly broad and comprehensive framework for regulating conflicts of interest, although prosecutors are specifically excluded from the conflict of interest provisions in the Law on Civil Servants. LAW ON CIVIL SERVANTS art. 2, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA No. 79/05.

While prosecutors do not appear to receive any training in conflicts of interest, they do seem aware of these issues and the importance of upholding the integrity of the profession. Respondents overwhelmingly agreed that prosecutors took steps to avoid conflicts of interest, as it could constitute grounds for dismissal of the case. Conflicts of interest do not appear to be a problem, in part because many prosecutors are assigned to positions outside their home area, thereby minimizing the possibility of a case involving individuals or organizations with whom/which they have prior involvement.
Factor 18: Codes of Ethics

Prosecutors are bound by ethical standards of the profession, clearly aimed at delimiting what is and is not acceptable in their professional behavior.

**Conclusion**

Until a Code of Ethics is adopted by the SPC, ethical standards for prosecutors are inadequate, consisting of general and vague requirements in several different laws and regulations. The only comprehensive Code of Ethics was drafted by the PAS and is not binding. Education and training in ethics is lacking at both the academic and professional levels.

**Analysis/Background:**

Article 13 of the SPC Law and Article 47 of the Law on Public Prosecution authorize the SPC to adopt a Code of Ethics for prosecutors. At the time this report was written, the SPC was in the process of drafting and revising a code of ethics, but it was unknown when the draft would be finalized and adopted. Until such a code is passed, only a patchwork collection of laws and regulations govern and guide the ethical conduct of prosecutors.

The primary guidelines for ethical conduct can be found in the Law on Public Prosecution. Article 46 provides generally that prosecutors perform their duties in the public interest to enforce and implement the Constitution and the law, while respecting and protecting both human rights and fundamental freedoms. **Law on Public Prosecution** art. 46. This provision also states that prosecutors must be impartial in performing their duties. *Id.* Other than the provisions relating to conflicts of interest, discussed above in Factor 17, there are very few ethical standards for prosecutors. The law does list a variety of disciplinary offenses, including inappropriate relations or their legal counsels, violating the principle of impartiality and jeopardizing the public's trust in the public prosecution, engaging in activities deemed incompatible with a Public Prosecutorial office, accepting gifts, and serious violations of the Code of Ethics. *Id.* Art. 104. However, perhaps because the Law on Public Prosecution anticipates the adoption of the Code of Ethics, the list of disciplinary offenses is very general and incomplete, focusing mostly on violations of procedure or substandard performance rather than ethical violations.

Additionally, the Regulation on the Administration of Public Prosecutors requires prosecutors to perform their duties autonomously and impartially, to act in accord with human rights, to protect the honor and dignity of the Public Prosecution, to conduct themselves in a dignified and respectful manner, and to dress appropriately. *Id.* art. 5.

The existing ethical standards for prosecutors are completely inadequate. While this will hopefully be rectified by the new Code of Ethics from the SPC, the assessment team was unable to review the draft and cannot comment on its adequacy. While a comprehensive Code of Ethics does exist, it was drafted by the PAS and is not binding on the prosecutors as a whole. The PAS Code of Ethics is considered binding on its members.

Possibly reflecting the haphazard collection of existing ethical standards, ethical training is not mandatory for either law students or prosecutors, although it is provided as an optional class in law school.
Factor 19: Disciplinary Proceedings

Prosecutors are subject to disciplinary action for violations of law, regulations, or ethical standards. Disciplinary proceedings are processed expeditiously and fairly, and the decision is subject to independent and impartial review.

**Conclusion**

While the Law on Public Prosecution provides thorough and fair procedures for disciplinary proceedings, delays in both the adoption of an Ethics Code and the appointment of a Disciplinary Prosecutor significantly undercut the accountability of prosecutors. Similarly, prosecutors are rarely subjected to criminal prosecution for misconduct.

**Analysis/Background:**

The Law on Public Prosecution provides the SPC with primary disciplinary authority over prosecutors, with power to appoint a Disciplinary Prosecutor, Deputy Disciplinary Prosecutors, and a Disciplinary Commission as its disciplinary bodies. LAW ON PUBLIC PROSECUTION art. 106. Disciplinary proceedings are to be initiated by the Disciplinary Prosecutor, who has discretion to submit a motion to the Disciplinary Commission to initiate disciplinary proceedings if he or she finds grounds to support a complaint against a prosecutor. Id. arts. 107 and 108.

Procedures for disciplinary proceedings appear to be fair and respect the rights of the accused prosecutor. Once the Public Prosecutor submits a motion to initiate disciplinary proceedings, the accused prosecutor has the right to be promptly notified, to examine the case file and evidence, and to represent him or herself before the Disciplinary Commission, either directly or through a representative. Id. art. 109. Additionally, proceedings are closed to the public, unless the accused prosecutor requests that the proceedings be open to the public. Id. art. 107. The Disciplinary Commission either denies or upholds the motion of the Disciplinary Prosecutor and, if applicable, applies a sanction against the prosecutor. Id. art. 110. Decisions of the Disciplinary Committee may be appealed by the accused prosecutor to the full SPC within eight days, which must render a final decision within 30 days. Id. arts. 110 and 111. No provision is made for appellate review by the courts.

One potential constraint on the effectiveness of the disciplinary process is a very strict statute of limitations, with a 1 year limitation from the time that an offense is committed. Id. art. 107. Since misconduct may be concealed or not reported until sometime well after the offense is committed, such a stringent statute of limitations unnecessarily restricts the disciplinary process and will exempt prosecutors from accountability. A longer statute of limitations, perhaps 5 years, would be more reasonable, or, alternatively, a limitation of 1 year from the time that the misconduct is discovered.

Possible sanctions for disciplinary offenses range from a public reprimand (restricted to first offenses), a salary reduction of up to 50% for up to 1 year, or a prohibition on promotion for 3 years. Id. art. 105.

The penalty of suspension is treated separately. Under Article 58 of the Law on Public Prosecution, suspension of a prosecutor is mandatory if he or she is remanded into custody, and may be imposed upon the initiation of either disciplinary proceedings for dismissal or upon initiation of criminal proceedings for a dismissible offense. Non-mandatory suspensions may be appealed within three days to the RPP, or, in the case of the RPP, to the National Assembly. Id. art. 60. Suspensions last until release from detention, until the final conclusion of dismissal
proceedings, or until the final conclusion of criminal proceedings; however, suspensions may be
set aside by either the RPP or SPC. Id. art. 61.

Finally, the most severe sanction, dismissal and termination, is also governed by separate
procedures. Under Article 92, prosecutors shall be dismissed when sentenced by a final judgment
for a criminal offence to a term of imprisonment of at least six months, for a punishable offence
making them unworthy of office, when their performance is deemed incompetent, or for a serious
disciplinary offence. While anyone may file an initiative to dismiss a prosecutor, the dismissal
procedure itself must be initiated by either the immediate supervisor, the RPP, the MOJ, the
authority responsible for performance evaluations, the Disciplinary Commission, or the SPC ex
officio. Id. art. 94.

Hearings to determine whether there are grounds for dismissal are conducted by the SPC and
are closed to the public. Id. art. 95. The SPC’s decision may be appealed within 15 days, but only
to the SPC itself, which may either uphold or reverse its decision. Id. As with other disciplinary
procedures, the accused prosecutor has the right to be promptly notified, to examine the case file
and evidence, and to represent him or herself before the Disciplinary Commission, either directly
or through a representative. Id. art. 96.

While the decision of the SPC is final in cases involving Deputy Public Prosecutors, for Public
Prosecutors the decision is forwarded to the government. Id. art. 95. If adopted by the
government, the grounds for dismissal are in turn forwarded to the National Assembly, which
makes a final determination regarding dismissal. Id. art. 97. Appeals may be made to the
Constitutional Court within 30 days. Id. art. 98.

The disciplinary process established in the Law on Public Prosecution is supplemented by the
SPC’s draft Rules of Procedure on Disciplinary Proceedings and Disciplinary Liability of Public
Prosecutors and Deputy Public Prosecutors [hereinafter SPC DISCIPLINARY PROCEDURE RULES],
The SPC Disciplinary Procedure Rules provide greater specificity as to the bases for initiating
disciplinary investigations, the organization of the disciplinary bodies, and the exact process for
investigations and appeals.

At the time this report was written, the disciplinary process under the SPC was still being
implemented. The SPC has not yet appointed a Disciplinary Prosecutor due to delays in obtaining
approval for the SPC Disciplinary Procedure Rules, and, as noted in Factor 18, the Code of
Ethics has not yet been adopted, both of which necessarily limit the activity level of disciplinary
proceedings against prosecutors. In the interim, however, the SPC has been accepting
complaints against prosecutors and preparing cases for investigation by the Disciplinary
Prosecutor as soon as that position is filled. While there is little available information as to the
to extent to which prosecutors are held responsible for misconduct, according to one interviewee
only 3 disciplinary proceedings have been held in the past 10 years. Similarly, it was reported that
prosecutors are only rarely subjected to criminal prosecution. Despite the strict hierarchy of the
Public Prosecution, the overall impression is that prosecutors are, at present, rarely held
accountable for misconduct. As such, the adoption of the Code of Ethics and appointment of the
Disciplinary Prosecutor and his or her staff are much needed.
V. Interaction with Criminal Justice Actors

Factor 20: Interaction with Judges

Public prosecutors safeguard the independence of the judicial and prosecutorial functions. Prosecutors treat judges with candor and respect for their office, and cooperate with them in the fair and timely administration of justice.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>While most interactions between prosecutors and judges are professional and appropriate, there is a high level of frustration among judges due to the failure of prosecutors to critically review evidence prior to initiating charges, and prior to participating in court proceedings.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

Article 26 of the Law on Public Prosecutions mandates that Public Prosecutors shall act within the constraints of their jurisdiction, and within the framework of the jurisdiction of the authorities before whom they are proceeding. The Law on Judges sets forth the mandates for judicial independence, adherence to the law, and impartiality. LAW ON JUDGES arts. 1 and 3, OFFICIAL GAZETTE OF SERBIA Nos. 116/2008, 58/2009 and 104/2009, as amended, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA No. 101/2010. The same act sets forth specific administrative activities carried out by the court to support the activities of the Public Prosecution, including working space and equipment, and the provision of funds for advanced training of Public Prosecutors, Deputy Public Prosecutors and staff. Id. art. 42. Sections 228 through 264 of the CPC outline the current responsibilities of the investigating judge, both at the pre-investigation and investigation stages, especially in more serious crimes where an accused would be facing a sentence of more than ten years. As noted, under the new CPC prosecutors will be assuming many of the responsibilities of investigating judges in leading the actual investigation, though investigating judges will maintain responsibility for investigative detentions, searches and seizures, and orders for DNA analysis.

Generally, those changes in the CPC affecting the relationship and duties of the prosecution vis-à-vis the courts are potentially positive, especially if it streamlines proceedings, avoids the duplication of investigative actions, and creates accountability for prosecutors. Though judges share concerns expressed by many that there may currently be too few prosecutors to assume the added responsibilities, there is an air of relief among some members of the judiciary. Presently prosecutors are seen as the weak link in the criminal justice continuum, as they often transfer the file from police onto judges without any substantive involvement, which can be problematic because the quality of police investigation is also reported to occasionally be weak. Article 266 of the CPC sets forth what information is to be contained in an indictment, including the name of the accused, the offense, and the evidence to be adduced at trial. CPC art. 266 (1,2,5). Respondents reported that the actual charging documents are often vague and not drafted well, the supporting documents often lack statements or arguments in support of the charges, and there is often no mention of corroborating evidence. The CPC does provide that if the president of the chamber where a criminal case is to being tried deems that an indictment is not in compliance with Article 266, he may return it to the prosecutor to rectify within three days (id. art 267), though it appeared this was seldom done. Judges expressed frustration that prosecutors could and should perform better, and some strongly asserted that it is actually the court that investigates, prosecutes, and judges, and that parties are “prosecuted by a judge and tried by the judge.” An impartial evaluation of the evidence by prosecutors also includes the lack of pro-activity on the part of prosecutors to identify due process violations during the investigation,
often leaving it to the court to address. The current passivity of some prosecutors creates animosity and misunderstandings between the criminal justice actors, as well as with the parties and public, and judges seem to often be the most accessible and visible targets to blame. Article 17 of the CPC seems to provide authority for judges to “clean up” the case by offering or supplying additional evidence when possible, and especially when the prosecutors are slow to be pro-active, amending the charges to fit evidence.

The court and the public authorities participating in criminal proceedings are required to truthfully and fully establish the facts essential for rendering a lawful decision, and to afford equal treatment in examining and establishing both incriminating and exculpatory facts.

Respondents also reported that prosecutors sometimes fail to appear during proceedings involving less serious crimes, which, as noted in Factors 11 and 12, can place an unrepresented accused or victim in a disadvantaged position.

Judges expressed concern that complex or politically sensitive cases are reported to be occasionally set aside or that charging decisions are delayed by prosecutors. Each actor wants to keep the number of cases “disposed of” as high as possible, since it is expected within the institutions of all justice actors that a certain number of cases per month be completed, and this encourages the disposal of easier cases first to meet these expectations.

In terms of expertise, and as noted in other factors, judges and other interviewees commented that prosecutors are not as versed in a variety of relevant substantive areas, particularly the European Convention and the jurisprudence of the ECHR, though some new trainees are displaying a deeper substantive knowledge base. Cooperative projects between prosecutors and judges have addressed such issues as trafficking and domestic violence, and relevant practice manuals have been produced together as a result.

Overall there seem to be satisfactory professional relationships and proper decorum displayed between judges and prosecutors, and for the most part, judges felt that individual prosecutors acted with integrity. According to interviewees, ex parte communications with prosecutors do occur. It was not, however, cited as a major concern, especially due to the lack of proactive involvement by prosecutors in proceedings.
Factor 21: Interaction with Police and Other Investigatory Agencies

In order to ensure the fairness and effectiveness of prosecutions, prosecutors cooperate with the police and other investigatory agencies in conducting the criminal investigation and preparing cases for trial, and monitor the observance of human rights by investigators.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>Some prosecutors have already assumed a coordinating role in the investigation, but often defer to the police and investigating judge, resulting in a weaker body of supporting evidence and diminished due process protections for the parties. Prosecutors do try to address cases of police misconduct.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

Law enforcement officers are, among other things, mandated by law to protect the life, rights, freedoms, and integrity of citizens and to uphold the rule of law. LAW ON POLICE art. 10. In fulfilment of their duties, they are to observe international standards of police conduct, especially in their obligation to serve the public, to actively respect human rights, to proceed without discrimination in the execution of their duties, and assist and aid victims. Id. art. 12. In terms of criminal proceedings, law enforcement officers are required to undertake measures to detect the perpetrator of a criminal offence, to prevent the perpetrator or accomplice from going into hiding or absconding, to detect and secure evidence of the criminal offence and objects which may serve as evidence, and generally to collect all information that might be of use in a criminal proceeding. CPC art. 225(1).

All authorities participating in pre-trial proceedings are required to notify the competent Public Prosecutor about all actions undertaken. The Public Prosecutor is empowered to request the initiation of investigations and direct the course of the pre-trial proceedings. Id. art. 46(2). Authorities responsible for detecting criminal offences are required to act in accordance with every request of the competent Public Prosecutor. Id. art. 46(3). When a criminal complaint is submitted it is to be promptly delivered it to a competent Public Prosecutor. Id. art. 224(3). When law enforcement authorities do not act in accordance with the request of a Public Prosecutor, he is mandated to notify the senior commanding officer, and if needed, may also notify the competent government minister, the government, or the competent parliamentary body. Id art. 46(4).

When a suspect agrees to make a statement with a lawyer being present, the investigative authority interrogates the suspect and notifies the competent Public Prosecutor, who may attend the interrogation. The record of the interrogation must not be excluded from the files and may be used as evidence in criminal proceedings. Id. art. 226(9). Based on the information gathered, the investigative authority then drafts a criminal complaint, in which he specifies the evidence obtained during the collection of information. If, after filing the criminal complaint, the investigative authority learn of new facts, evidence, or traces of the criminal offence, it is required to gather all necessary information and submit a report thereof to the Public Prosecutor as an appendix to the criminal complaint. Id. art. 226(11). If, during the interrogation of a detained person, the Public Prosecutor does not file a request to conduct an investigation within the following 24 hours from the time when detention was ordered, the investigating judge is mandated to release the person detained. If, within 48 hours of the submission of a request to conduct an investigation, the investigating judge does not issue a ruling on an investigation, he is required to release the detained person. Id. art 228(5)(6). When the Public Prosecutor dismisses a criminal complaint
submitted by an investigative authority, that authority shall also be notified. *Id.* art 235(1). When the Public Prosecutor is unable to conclude from the complaint that it is probably accurate or where the data in the complaint do not provide sufficient foundation for the prosecutor to decide whether to request the conduct of an investigation, the Public Prosecutor is to gather the requisite information on his own or with the help of other authorities or request the investigative authorities to collect the requisite information. *Id.* art 235(2). The Public Prosecutor may always request to be informed by the investigative authorities about their activities, who are required to reply promptly. *Id.* art 235(3).

A special unit or “service for the suppression of organised crime” is contained within the Ministry of Interior. LAW ON ORGANIZED CRIME art. 10. The Minister for Internal Affairs shall appoint and dismiss the commanding officer of the Service, upon the opinion of the Prosecutor, and shall adopt an act specifying activities of the Service, who shall act upon motions of the prosecutor. *Id.*

As discussed previously, the new CPC mandates that prosecutors will soon be responsible for leading the criminal investigation. In some regions, it appears that there is already a strong level of coordination and cooperation between the police, the investigating judges, and the prosecutors, and criminal justice actors have a better sense of what evidence is needed to support charges. This is especially true in the special prosecutorial and investigative functions for war and organized crimes. Some stated that police are often requesting direction from prosecutors in connection with their investigations. In other regions, this is not the case, and these shifts in authority and responsibility will be harder to implement, especially since police officers ultimately answer to their law enforcement superiors, and, in essence, will soon be “serving two masters.” A more significant problem may be the willingness of law enforcement authorities to give up control. The lack of pro-activity of some prosecutors in conducting in depth review of the evidence obtained through the investigation is also concerning, especially, as noted in Factor 20, actors in the continuum are often focused on keeping their individual statistics high, and once a file is handed off from the police to the prosecutor, the police consider the case successfully closed. The reappointment process created a sense of job insecurity amongst prosecutors, contributing to a lack of willingness to direct the investigation. Lastly, prosecutors lack the training to presume a leading role in the investigation, as well as adequate resources and physical space, including the need for additional numbers of prosecutors. See Factor 26.

Interviewees reported varying levels of expertise among law enforcement officers. It was estimated that 30-40% of officers had no degree in law or training at a police academy, and thus were not adequately qualified to perform their actual duties. It would also be helpful if police were recruited from more varied educational backgrounds, including economics and criminology. One of the risks noted in an environment with a general lack of adequate training is that officers may look to their superiors as role models, who themselves may not be of the best caliber.

Both prosecutors and police indicated it would be helpful to form investigative centers where expertise is concentrated, especially in specialized areas such as financial crimes and trafficking. They also expressed appreciation for the effective joint trainings organized by OPDAT and other international organizations. The EC Report cited weaknesses in investigative capacity among law enforcement agencies, especially noting that money laundering and drug smuggling are key areas of concern. The report further highlighted the general need for increased capacity for more effectively coordinated investigations and enhanced cooperation at regional and international levels. EC REPORT p. 8.

Law enforcement agencies are also afflicted by a lack of resources, even including gloves, digital cameras, and toner for printer, and mileage money to get to areas outside major cities. Most apparently finally have mobile phones, especially for purposes of reaching the prosecutor on duty after business hours, which has helped prosecutors become involved at earlier stages in the investigation. Of concern are issues relating to expertise and resources in the collection,
safekeeping and analysis of forensic evidence, which could compromise the integrity of the analysis and the success of subsequent prosecutions. One example cited was that following the assassination of Prime Minister Djincic, some of his clothing collected for forensic analysis was allowed to mold after they were seized as evidence. While there has been international assistance donated in this area (the Norwegian Embassy provided funding for the construction of a forensic lab), the Ministry of Interior is not always able to procure the supplies, and one office was reported to be without the chemical needed for fingerprinting.

Many observed the need for an integrated case management system between police, prosecutors, and the court, though it is anticipated that in 2012 the European Union will be funding a project to assist police and prosecutors to interface data. There is currently no electronic data sharing between law enforcement and prosecutors. Communications between prosecutors and police are always in writing and written requests can take several days. Some prosecutors complained that they have to make requests several times to get a response from police in connection with investigations.

A lack of training and skills in effectively gathering evidence in an investigation is reported to occasionally result in the use of physical coercion and sometimes torture to extract confessions, which was noted as more prevalent in southern Serbia. One defense advocate reported that prosecutors do investigate allegations of police misconduct, as he is defending several law enforcement officers. See also Factor 14. Another interviewee verified that when she previously worked for an investigating judge, the judge did receive complaints about physical and procedural abuse by police, mostly in situations where an accused was coerced to sign statements, and especially when unrepresented. The Minister of Interior is mandated to take disciplinary action against law enforcement officers and other employees of the ministry who commit misconduct and serious violations of duty. LAW ON POLICE art. 155. Serious violation of duties include the illegal use of authority, disclosure of confidential information, illicit gain of property, or any crime committed at work or in connection with work. Id. art. 157. The Division of Internal Affairs is mandated to monitor the legality of police work, including the protection of human rights Id. art. 172. Any person has the right to file a complaint with the Ministry against a police officer they believe to have violated their rights or freedoms by unlawful or improper action. Id. art. 180.

**Factor 22: Interaction with Representatives of the Accused**

*Public prosecutors respect the independence of the defense function. In order to ensure the fairness and effectiveness of prosecutions, prosecutors satisfy their legal and ethical obligations towards the representative of the defendant.*

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prosecutors generally have a satisfactory and cooperative relationship with defense advocates, though currently the law fails to provide for accountable and enforceable procedures enabling an advocate to access all investigatory information relevant to the defense, which impairs his ability to protect the due process rights of the accused.</td>
<td></td>
</tr>
</tbody>
</table>

**Analysis/Background:**

As noted in Factor 11, Serbian law confers numerous due process rights on the accused, most particularly under the Constitution and CPC. Article 33 of the Constitution provides that any person charged with a criminal offense shall have the right to defend himself personally or through legal counsel of his own choosing. Any person charged with a criminal offense without sufficient means to pay for legal counsel has the right to free legal counsel only in certain
circumstances. CONST. art. 33. When an accused person is mute, deaf, or unable to conduct his own defence successfully, or where the proceedings concern a criminal offence punishable by a term of imprisonment of over ten years, the accused person must have a defence counsel. Id.

The CPC sets forth additional protections for an accused through the involvement of his counsel. An accused remanded into custody must have defence counsel while in detention. CPC art. 71. Article 251 lists specific points in the investigation and proceedings where an accused is afforded the protection of his counsel. During the investigation, subsidiary prosecutors, private prosecutors, and defence counsel may attend the interrogation of the accused person. Id. art. 251(1). The prosecutor, the aggrieved, the accused, and defence counsel may attend crime scene inspections and the questioning of expert witnesses. Id. art. 251(2). The prosecutor and defence counsel may attend searches of abodes. Id. art. 251(3). The prosecutor, the accused, defence counsel, and aggrieved persons may attend the questioning of witnesses. Id. art. 251(4). The investigating judge is required to notify the prosecutor, defence counsel, aggrieved persons and the accused of the time and location of the performance of investigatory actions that they may attend, except where there is a “danger of deferrals.” Id. art. 251(5).

Issues brought up regarding the role of the defense attorney in criminal cases focused on equality of arms and accountability. While, in practice, it appears that the court file contains most or all of the information from the prosecutors file, which the accused and his attorney can access, this does not occur until the investigation is completed. There is no way to verify, however, that all of the information gathered during the investigation, especially any evidence that may be exculpatory, is in the court file and thus being provided to the accused or his attorney, which directly impacts his ability to address the charges and prepare a defense. As noted in Factor 20, some judges interpret Section 17 of the CPC to mandate the sharing of information, including that which may be exculpatory, since that provision requires the court and the public authorities participating in criminal proceedings to truthfully and fully establish the facts essential for rendering a lawful decision, and to afford equal treatment in examining and establishing both incriminating and exculpatory facts. Id. art. 17. In one instance, a frustrated defense attorney, who felt he was not being provided all relevant information for the defense of his client, successfully cited international law in court and was able to obtain a court order requiring the State to share all documents. In the next case, however, he was unsuccessful.

Under current procedures, it is up to the court to decide whether the attorney for the accused may offer its own expert testimony. Depending on the facts of the case, some courts occasionally allow expert testimony when requested by the defense. Under the new CPC, the defense may offer its own expert testimony, though it remains unclear how that will work in practice, especially when analyzing forensic evidence already gathered and analyzed by the prosecution. The current procedure is also silent as to the right of an accused or his attorney to interview or have contact with witnesses for the prosecution. This can prevent a complete investigation into the sufficiency of the evidence by an accused and the veracity of witnesses testifying in support of the charges.

The passivity of the prosecutors also impacts their ability to meet their burden of proof. It is the obligation of the Public Prosecution to prove the elements that comprise the criminal charges beyond a reasonable doubt. One attorney mentioned that it should be the situation where the defense can stand silent, and be acquitted if the prosecution does not support its case. This passivity also impacts the accountability of the prosecution. When there is no rigorous evaluation of the evidence available at the earliest stages, and the evidence turns out to be insufficient, prosecutors seem to suffer little consequence as a result of this inaction, while, in the meantime, an accused is often detained and their reputation ruined, even if there is ultimately an acquittal. It often falls upon the judges to try to “clean up” the case by granting continuances to the prosecution to allow more investigation, modifying the judgment to fit the actual evidence that was offered, which may or may not reflect the original charging language, or ultimately acquitting the accused. Finally, as noted in other factors, prosecutors and judges seem to be moving
forward in recognizing the potential efficiency that can result when a proactive defense attorney is willing to enter into negotiations for abbreviated proceedings or plea bargains on behalf of his client.

Generally speaking, most prosecutors have a professional, respectful relationship with defense advocates, although at the time of the assessment there was some discord within the actual bar associations, preventing a bar representative from being placed on the SPC. One former defense attorney admitted to some unethical behavior on the part of defense attorneys in the past, but observed that it had lessened. One interviewee described a range of categories of defense advocates: a small group who are competent and non-political; some who are competent but overly political and dramatic in front of clients and families, and unfairly attack knowledge of prosecution; those who politicize cases without reason to help get future business; and those who are totally unskilled.

There were complaints about defense attorneys making inappropriate statements about pending cases to media representatives. This behavior might decrease if the RPP would be more proactive in sharing appropriate information with the media, as currently media outlets have few sources to reach out to when attempting to report on a case. It was reported that some prosecutors have mandated that defense counsel sign agreements promising not to talk to the media, which is concerning in an environment where little information about criminal cases is proactively provided to the media by the Public Prosecution. (See also Factor 23).

Factor 23: Interaction with the Public/Media

*In their contacts with the media (and other elements of civil society), prosecutors provide appropriate and accurate information wherever possible, within their discretion.*

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>There remains a strong tension between the efforts of the Public Prosecution to carry out effective investigations and prosecutions and the public’s right to timely information, all within an environment of a lack of professionalism of some media outlets. Clear and transparent guidelines or procedures regarding what information can be made public during a criminal proceeding are greatly needed.</td>
<td></td>
</tr>
</tbody>
</table>

**Analysis/Background:**

Generally speaking, the work of a Public Prosecutor and Deputy Public Prosecutor is public information, unless provided otherwise by the law. LAW ON PUBLIC PROSECUTION art. 48. Article 10 allows the prosecution to inform the public regarding individual cases so long as the prosecution takes into account the interests of the proceedings and the privacy of the participants. *Id.* art. 10. The CPC sets forth a general restriction on public statements by government authorities, as well as media and citizen associations, that may negatively impact the presumption of innocence and other rights of the accused and aggrieved party, as well as the independence, authority, and impartiality of the court. CPC art. 3(2). Article 336a of the Criminal Code provides for a punishment of up to six months imprisonment and a fine against anyone who gives public statements to the media during proceedings before a court and before a final court decision is issued, with the intent of violating the presumption of innocence and the independence of the court. Article 32 of the Constitution provides that the press and public may be excluded from all or part of the court procedure in the interest of protecting national security, public order and morals in a democratic society, the interests of juveniles or the protection of the private life of the parties.
Information of public importance is defined under Serbian law as information held by a public authority body, created during or relating to the operation of a public authority body, which is contained in a document and concerns anything the public has a justified interest to know. Law on Free Access to Information of Public Importance art. 2, Official Gazette of Serbia No. 120/04, 54/07, 104/09 and 36/10, though there is a long list of considerations governing when information may be kept from the public domain, including when disclosure would risk the life, health, safety, or another vital interest of a person; jeopardize, obstruct, or impede the prevention or detection of a criminal offence, indictment of a criminal offence, pretrial proceedings, trial, execution of a sentence or enforcement of punishment, any other legal proceeding, or unbiased treatment and a fair trial; seriously threaten national defense, national and public safety or international relations. Id. art. 9. A public authority is precluded from giving preference to any journalist or media outlet in cases where more than one applicant applies for the same information. Id. art. 7. An applicant who is unable to obtain the requested information may lodge a complaint with the Commissioner for Information of Public Importance [hereinafter the Commissioner], an autonomous government body independent in the exercise of its powers. Id. art. 1. However, such complaints are inadmissible if lodged against decisions of the National Assembly, the President of the Republic, the Government of the Republic of Serbia, the Supreme Court of Serbia, the Constitutional Court, or the RPP. Id. art. 22. Even though a complaint is not allowed against a decision of the RPP, an individual can initiate an administrative procedure before the Administrative Court if he is not satisfied with the decision of the RPP to attempt to obtain the information. Id.

The Rules of Procedure on Administration of Public Prosecutor’s Office specifically address the responsibility of the RPP and the Public Prosecution to handle requests for information of public importance, which includes the establishment of uniform practices and the creating of an information booklet for the public. The Rules of Procedure on Administration of Public Prosecutor’s Office, art. 71(1)(2). The prosecutor is obliged to respond to the request within 30 days of the receipt, (id. art. 73(2)), unless the request is not in proper form, wherein the prosecutor must then so inform the person making the request in writing within 8 days of receipt. Id. art. 73(5). See also Factor 15. Article 66 outlines the responsibility of the public prosecution to inform the public of the actions of public prosecution when necessary, so long as it does not harm the interests of the proceedings or it does not impede the privacy of the participants (id. art. 66 (1)(2)), while keeping in mind the “interests of morals, public order, national security, protection of minors, privacy and national feelings.” Id. art. 67(2). The higher Public Prosecutor, designated Deputy Public Prosecutor, or spokesperson of the Public Prosecution is responsible for providing information to the public. Id. art. 68(1).

There remains a strong tension and a high level of frustration between the media and the Public Prosecution; though it appears the RPP herself is attempting to be more proactive in public outreach efforts. Her office’s media policy remains very closed and hierarchical, as there is only one spokesperson for the entire Public Prosecution, positioned in the RPP office in Belgrade, as well as one spokesperson for the War Crimes Office. It was reported that for prosecutors to have any contact with the media, they must either obtain the approval of the spokesperson or turn the matter over to him to handle. One prosecutor in a region outside of Belgrade indicated that in the near future he anticipates being able to locate a spokesperson in his office to manage public information and media relations. As noted, there is little statutory or regulatory guidance on what type of information in a criminal case can be released to the press, and at what stages. The Public Prosecution appears to lack pro-activity in supplying information to media outlets in an expeditious manner, even in cases with a high level of public interest. This lack of pro-activity, in combination with the strict hierarchy, ultimately prevents the community from obtaining accurate and timely information. Members of the Public Prosecution, on the other hand, expressed frustration at the lack of professionalism among some reporters and media outlets, and pointed to the need for competent investigative journalistic skills.
It is understandable that those focused on detecting and investigating criminal activity feel strongly that they need to maintain strict confidentiality of information being gathered in order to build a strong prosecution and protect witnesses, especially given concerns regarding the professionalism of some media outlets. On the other hand, it is logical and often critical that members of the public, especially in serious cases involving safety and security, know as soon as possible that a crime has occurred, and whether someone is in custody or still at large. As mentioned previously, some investigations have been pending for years with no resolution or information being made public. When someone is actually charged, members of the public, and especially involved parties, have a strong interest in knowing who has been charged, what is happening in the legal process, and ultimately the resolution of the case. There is also a large level of frustration, echoed by those within the MOJ who process citizen complaints, that members of the public, and some within the civil society community, do not understand what situations actually constitute a criminal matter, what the actual functions of the Public Prosecution are, and what possible outcomes can be reasonably expected.

While obtaining information is frequently an arduous process, there were minimal complaints regarding the accuracy and veracity of any information provided. Often media outlets and NGO’s turn to the courts in attempts to obtain information, since it is less centralized. The courts can at least verify the filing of a “request for investigation,” even if it can’t supply the actual names of suspects. One member of the media expressed frustration that the Public Prosecution had supplied his own “scoop” to other media outlets without responding to his original inquiry, and felt this to be unethical as well as unprofessional. Civil society representatives expressed frustration not only because requests for information are refused or ignored, but that complaint decisions issued by the Commissioner are often ignored or merely result in a fine.

It also appeared that, on occasion, media outlets are used as a conduit to circulate inaccurate or inflammatory information, and the only possible logical source to supply that information is a criminal justice actor or agency. This can endanger the safety and reputation of the individuals involved, especially the victim and suspect. One instance was cited involving a Roma juvenile, where information was leaked about his alleged criminal actions, creating a negative reaction against the Roma population in this particular region. Another interviewee noted that even when charges are ultimately dismissed or not filed; the publicity can still serve to damage reputations and livelihoods. On other occasions information has been leaked regarding possible criminal conduct of individuals from past political administrations, and then just weeks later criminal charges have been initiated. It was unclear whether the information was being leaked from investigative services, the prosecution, or the Ministry of Justice.

The function of public outreach and providing information of a general or specific nature becomes even more critical given the issues noted in other factors highlighting the lack of relevant information and protective services available to victims and witnesses. Victims especially lack standing to obtain any information when no actual charges are pending. While there is no contact phone number directly on the website of the RPP, contact information is available from the downloadable Information Booklet, and there is a template through which an individual can request information or submit a question. There is a link from that website to that for Novi Sad, where there are contact phone numbers for all levels of prosecutors within that district and a listing of frequently asked questions.
Factor 24: International Cooperation

In accordance with the law and in a spirit of cooperation, prosecutors provide international assistance to the prosecutorial services of other jurisdictions.

<table>
<thead>
<tr>
<th>Conclusion Correlation: Positive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enhanced internal capacity, a solid legislative framework and pro-active efforts in the area of international cooperation instituted by Serbia in recent years is proving increasingly effective in meeting the challenges of combating crime with global breadth.</td>
</tr>
</tbody>
</table>

Analysis/Background:

The Law on Mutual Assistance in Criminal Matters governs mutual assistance in criminal matters in cases where no ratified international treaty exists or where certain subject matters are not regulated under such treaty. LAW ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS art 2, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA No.20/09 [hereinafter LAW ON MUTUAL LEGAL ASSISTANCE]. Mutual assistance may also be exercised at the request of the International Court of Justice, International Criminal Court, ECHR, and other international institutions established under international treaties ratified by Serbia. Id. art 3. Authorities in Serbia competent to exercise mutual assistance shall include national courts and the Public Prosecutors’ offices [hereinafter judicial authorities], while certain actions may also be performed by the Ministry of Justice, the Ministry of Foreign Affairs, and the Ministry of Internal Affairs. Id. art 4. Requests for mutual assistance are submitted in the form of letters rogatory. Id. art 5. Letters rogatory and other annexed documents of the national judicial authority are transmitted through the Ministry of Justice directly to a foreign judicial authority; or, in the case of urgency, transmitted through the International Criminal Police Organisation [hereinafter Interpol].

Articles 13 through 37 of the Law on Mutual Legal Assistance set forth the procedure for extradition of defendants or convicted persons to a foreign state. The Ministry of Justice transmits the letter rogatory to the court in the territory of which the person sought for extradition resides or is found. Id. art 18. The judge where the accused is found notifies the Public Prosecutor of the arrest of the person sought for extradition. Id. art 20. A judicial decision by the court setting forth the preconditions to extradition, accompanied with supporting documents, is transmitted to the Minister of Justice, who grants or refuses extradition. The decision is sent to the competent court, the person sought for extradition, the Ministry of Internal Affairs, and the requesting party. Id. art 31. Articles 38 through 40 of the Law on Mutual Legal Assistance set forth a similar procedure for extradition of defendants or convicted person to Serbia.

A variety of other forms of mutual assistance at the disposal of judicial authorities include the issuance of summonses and delivery of writs, interrogation of an accused, examination of witnesses and experts, crime scene investigation, search of premises and persons, temporary seizure of objects, and implementation of measures such as surveillance and tapping of telephone or communication as well as photographing or videotaping of persons. Id. art. 83. If the circumstances of the case so justify, joint investigative teams may be formed by an agreement between the competent authorities of the Republic of Serbia and a foreign country. Id. art 96. Under the condition of reciprocity, national judicial authorities may transmit, without letter rogatory, information relating to known criminal offences and perpetrators to the competent authorities of the requesting party if this is considered to be of use to criminal proceedings conducted abroad. Id. art 98. See also LAW ON POLICE art. 19.
The EC Report stated that while Serbia’s ratification of relevant international conventions and establishment of a legal framework has improved its fight against organized crime, including the area of international cooperation, it noted issues with Serbia’s cooperation with Kosovo, in that it needs to improve implementation of police protocol and exchange of information in organized crime cases. EC REPORT p.34. The report noted that Serbia does cooperate with the European Union Rule of Law Mission in Kosovo, [hereinafter EULEX] on an operational level, and needs to continue to cooperate actively with EULEX in order for it to exercise its functions in all parts of Kosovo, including in administrative cooperation and war crimes. Id. The report noted that an agreement on strategic cooperation with Europol was signed in 2009, and that agreements on police cooperation and on cooperation in the fight against organized crime have been signed with Albania, Austria, Bosnia and Herzegovina, Bulgaria, the Czech Republic, Croatia, Cyprus, the former Yugoslav Republic of Macedonia, France, Greece, Hungary, Italy, Montenegro, Romania, Slovakia, Spain, and Switzerland. Id. pp.107-108. Agreements executed with Croatia and Montenegro allow extradition of Serbia’s own nationals in cases of organized crime and corruption. Id. An agreement establishing a regional office in Belgrade for improving cooperation in the fight against organized crime was signed in October 2010. Id. An international law enforcement coordination unit has been established. Id. Lastly, the report noted that Serbia has launched an initiative for a regional arrest warrant. Id.

Of particular note, Serbia has a dedicated Department of International Cooperation within the office of the RPP, and has ratified and passed implementing legislation of most relevant international conventions, including the United Nations Convention Against Transnational Organized Crime (effective September 29, 2003); the Protocol on the Prevention and Suppression of Trade in Persons, Especially Women and Children, and Punishment for it Supplementing the United Nations Convention Against Trans-national Organized Crime (effective June 25, 2003) [hereinafter the Palermo Protocol]; the United Nations Convention Against Corruption (ratified October 22, 2005); and the Council of Europe Convention on Cyber Crime (signed on July 4, 2005 though not ratified). Serbia has ensured that crucial legislative definitions track those contained in the Palermo Protocol including that of “organized crime,” “public officials,” and “trafficking in persons” and “other serious crimes,” and has also enacted special investigative techniques recommended by the Palermo Protocol.

Serbia has entered into bilateral treaties on mutual legal aid with all the Balkans countries except Kosovo, as well as many in Europe. Serbia uses formal channels of cooperation through bilateral treaties and letters rogatory, but also depends greatly on informal channels, especially those developed via Memorandums of Understanding [hereinafter MOU’s] between national prosecutors in all Balkans countries, which are reviewed by the Ministry of Justice before being executed by the RPP. Informal sharing of information can not only can prevent or interrupt criminal activity, but can assist partner investigators to target the actual evidence needed to support a possible criminal proceeding, since the ultimate admissibility of this information may depend on the circumstances surrounding how it is obtained, and adherence to mutual assistance procedures. As part of this informal process Serbia has identified liaisons and contact points in each respective country.

Even though Serbia is not formally part of the EU it does cooperate with EUROJUST on an informal basis, much to its benefit as well as that of other European jurisdictions, especially in its use of EU warrants. It was noted that in November, 2011, the Balkan Countries are intending to finalize an agreement creating a regional arrest warrant through the Southeast European Prosecutors Advisory Group [hereinafter SEEPAG]. Available at http://www.seepag.info/index.php.

At the international level, Serbia is very involved with the U.N. Office of Drugs and Crime [hereinafter UNODC], Council of Europe [hereinafter COE], and U.N. Development Programme [hereinafter UNDP]. The RPP’s Office of International Cooperation is also active in coordinating
relevant trainings, and is in the process of developing various resources, including a manual for prosecutors to assist with the implementation of procedures under the Palermo Convention. The manual is funded by UNODC, and is scheduled to be published in May 2012. Additional training and resources, especially those designed to support international cooperation in the area of extraditions should continue to be emphasized.

In the Office of the War Crimes Prosecutor, investigators and prosecutors depend on formal MOU’s with Bosnia and Croatia as well as the use of informal channels. There is a high volume of requests for information from other interested countries, especially from Bosnia and Croatia (noting 168 for the year as of October 2011) and even though there have been no delays, the Office can barely keep up with such requests. It was further observed that Bosnia has 17 deputies to handle these types of requests, while in Serbia there are far fewer prosecutors to do so. A member of the international community noted that international cooperation on war crimes is indeed strong with Croatia and Montenegro, though not as strong with Bosnia or Kosovo. Before the advent of the special war crimes court these cases were handled by the military courts, and old warrants are still active on some cases. These may or may not still be possible to move forward on, and should be reviewed. The Office of the Organized Crimes Prosecutor also handles its own international issues and requests, though the both special Offices assist each other when possible.

Serious issues with extraditions in either direction with Kosovo were noted, while Serbia had fostered effective relationships with bordering prosecutors in Bosnia, Montenegro, and Croatia, at the federal level on war and organized crimes. Efficient and swift international cooperation is especially important in the area near Subotica, along the Hungarian/European Union border, where there are sizable trafficking and smuggling issues. Prosecutors and investigators there face practical issues, most notably with repatriation, when individuals are smuggled from all over the world. Lastly, one member of the international community noted that while there has been over RSD 30 billion (USD 392 million) in assets seized in the past year, there are still issues with obtaining such seizures across borders and it is currently occurring ad hoc.
VI. Finances and Resources

Factor 25: Budgetary Input

States provide an adequate budget for the prosecutor’s office, which is established with input from representatives of the prosecutor’s office.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Law on Public Prosecution transfers budgetary authority for prosecutors from the MOJ to the SPC. However, due to lack of capacity and expertise, the transfer of budgetary authority did not take place until January 2012.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

At the time this report was written, budget authority for prosecutors was in a state of transition. Until recently, MOJ had budgetary authority for the Public Prosecution, although the budget was drafted in consultation with the RPP. Under the Law on Public Prosecution, budgetary authority is expected to transfer to the SPC: “The State Prosecutors Council shall propose the size and structure of the budget funds necessary for the work of the public prosecutions, having obtained the opinion of the Minister responsible for the judiciary, and distribute said funds among the public prosecutions. Supervision of expenditure of budget funds allocated for the work of public prosecutions shall be conducted by the State Prosecutors Council, the Ministry responsible for the judiciary, and the Ministry of Finance.” LAW ON PUBLIC PROSECUTION art. 127.

While vesting budgetary authority in the SPC will help ensure prosecutorial autonomy, the SPC has been delayed in assuming this responsibility due to the lack of resources and staff with the necessary expertise. As such, transfer of budgetary authority did not take effect until January 2012. LAW ON CHANGES AND ADDITIONS TO THE LAW ON BUDGET OF THE REPUBLIC OF SERBIA FOR 2011 art. 9, OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA No. 78/11, in force as of October 20th, 2011.
Factor 26: Resources and Infrastructure

States provide adequate funding, conditions, and resources to guarantee the proper functioning of the prosecutor’s office.

### Conclusion

While the budget for the Public Prosecution increased from 2010 to 2011, overall resources for prosecutors are, at best, adequate. The lack of sufficient office space was a particular concern; one that will only exacerbated if additional prosecutors are retained to handle the new investigatory responsibilities. The technological infrastructure for prosecutors is adequate but very basic, with no uniform case tracking database.

### Analysis/Background:

Successful operation of the prosecution function can only be obtained with adequate resources, including sufficient personnel, premises, office equipment, and information technology systems and equipment.

As shown in the following table, funding for the Public Prosecution has seen an overall increase over the past two years. Figures from earlier years are difficult to compare, due to the realignment of the prosecution structure to reflect the elimination of district and basic prosecutor offices. In 2010, the Public Prosecution budget of RSD 2,405,683,000 corresponds to USD 33,556,744. In 2011, the Public Prosecution budget of RSD 2,797,600,000 corresponds to USD 39,023,573, reflecting a 16.29% increase from the previous year.

### PUBLIC PROSECUTION BUDGET*

<table>
<thead>
<tr>
<th></th>
<th>2010</th>
<th>2011</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>SPC</td>
<td>50,594,000</td>
<td>705,733</td>
<td>58,839,000</td>
<td>820,742</td>
</tr>
<tr>
<td>Republic Public Prosecution</td>
<td>133,470,000</td>
<td>1,861,765</td>
<td>122,365,000</td>
<td>1,706,862</td>
</tr>
<tr>
<td>War Crime Prosecution</td>
<td>117,586,000</td>
<td>1,640,200</td>
<td>141,695,000</td>
<td>1,976,496</td>
</tr>
<tr>
<td>Organized Crime Prosecution</td>
<td>189,026,000</td>
<td>2,636,713</td>
<td>185,905,000</td>
<td>2,593,178</td>
</tr>
<tr>
<td>Appellate Public Prosecutions</td>
<td>204,581,000</td>
<td>2,853,689</td>
<td>265,566,000</td>
<td>3,704,366</td>
</tr>
<tr>
<td>Higher Public Prosecutions</td>
<td>586,388,000</td>
<td>8,179,495</td>
<td>706,465,000</td>
<td>9,854,442</td>
</tr>
<tr>
<td>Basic Public Prosecutions</td>
<td>1,124,038,000</td>
<td>15,679,146</td>
<td>1,316,765,000</td>
<td>18,367,485</td>
</tr>
<tr>
<td>TOTAL</td>
<td>2,405,683,000</td>
<td>33,556,744</td>
<td>2,797,600,000</td>
<td>39,023,573</td>
</tr>
</tbody>
</table>

Source: 2010 AND 2011 STATE BUDGETS OF THE REPUBLIC OF SERBIA

* In this report, Serbian dinars are converted to United States dollars at the average rate of conversion at the time when the PRI interviews were conducted (USD 1.00 = RSD 71.69).
Several respondents indicated that resources for prosecutors are inadequate, with numerous complaints as to overcrowded office space. MOJ is responsible for the court buildings in which all prosecutorial offices are located, although construction is expected to begin in 2012 in Belgrade on a new office building exclusively for prosecutors. While the assessment team was unable to visit all or even a significant sampling of court buildings, the overall working conditions for prosecutors appears to be inadequate. Most buildings visited by the assessment team were overcrowded, with small offices frequently occupied by three or more prosecutors and/or support staff. Additionally, with no meeting space, sensitive discussions and other meetings, including interviews with victims and witnesses, frequently take place in front of other staff members.

The technological infrastructure is adequate, although there is significant room for improvement. While most prosecutors have a personal computer and utilize computerized case tracking, some computers lack any Internet connectivity. In some offices there were reports of insufficient computers and the use of manual case tracking due to the lack of networking and computerized case tracking software.

Finally, while most respondents were generally satisfied with the level of staffing, some reported that the number of prosecutors is insufficient to carry existing caseloads, and that additional prosecutors and administrative support will be necessary once responsibility for investigations is assumed by the Public Prosecution.

Factor 27: Efficiency

Prosecutors perform their functions expeditiously, in order to achieve the best possible use of available resources.

Prosecutors’ offices have a written organizational plan to facilitate such efficiency. The prosecutor’s office has written guidelines, principles, and criteria for the implementation of criminal justice.

**Conclusion**

<table>
<thead>
<tr>
<th>Correlation: Neutral</th>
</tr>
</thead>
</table>

While recent reforms have taken steps to increase efficiency, such as the adoption of postponements and plea bargains, the Public Prosecution faces numerous challenges in fulfilling its functions efficiently. These include a lack of office space, poorly integrated technological resources, limited specialization of prosecutors, and an inadequate number of prosecutors to handle existing caseloads, let alone the impending transfer of investigatory authority.

**Analysis/Background:**

Several mechanisms within the Public Prosecution indicate a concern for efficiency, and the hierarchical structure facilitates the flow of information from prosecution offices up to the RPP. For example, each office provides an annual report to the immediately superior public prosecution office, which in turn consolidates and forwards the information up through the hierarchy and eventually into the hands of the RPP. These reports inform the RPP’s annual report for the Public Prosecution, and are also used to help create an annual plan for the following year. As such, the hierarchical structure helps ensure that the overall strategy for the Public Prosecution is applied at all levels and across all regions.

Despite the evident recognition of efficiency as an important issue, the Public Prosecution faces numerous challenges in this area. These inefficiencies stem from various sources, including a
lack of resources and technological infrastructure, a culture of passivity created, in part, by a strict, hierarchical structure that represses initiative, and prosecutors with high caseloads and inadequate training that are unprepared to take on additional responsibilities.

While several of the reforms introduced in the new CPC are clearly intended to address efficiency concerns, their success is far from certain, and may instead introduce other problems. Perhaps most controversial is the anticipated shift of investigatory powers from investigative judges to prosecutors. On one hand, this could help address a persistent problem identified by numerous respondents – a culture of passivity by prosecutors, whose participation in the investigation and actual prosecution is frequently minimal. Many respondents indicated that prosecutors do not adequately review criminal reports submitted by police, resulting in weak and unsubstantiated cases that are dismissed or sent back by the investigative judges, wasting both time and resources. While the speed with which prosecutors handle cases and meet deadlines is an important aspect of their evaluations, various respondents complained that they are not held accountable for simply passing on poor cases to the investigative judges. As such, requiring prosecutors to manage investigations could force them to assume more responsibility, leading to better cases and fewer dismissals. On the other hand, there was great concern as to whether prosecutors have the capacity and training to successfully assume this responsibility. Prosecutors and outside observers often noted that prosecutors are frequently overwhelmed with cases, which is likely a major factor in their perceived lack of attention to the quality of cases. If prosecutors are currently overburdened with high caseloads, it is unrealistic to expect them to assume even more responsibility. While most prosecutors were eager to see the shift in investigatory responsibility, most respondents indicated they would be unable to do so without additional personnel and training.

The introduction of plea bargains and postponements is a step that, if properly implemented, could greatly facilitate the disposition of less complex cases and allow prosecutors to improve the quality of investigations and prosecutions for more complex cases. As noted in Factor 10, the use of postponements to dispose of lower level crimes has increased substantially. The use of plea bargains, however, has been more limited and problematic. A number of high-profile cases involving plea bargains led to the public perception of favoritism for well-connected defendants, such as in the Svetlana Raznatovic case. Regardless of whether any favoritism actually occurred, such cases will undermine public support for plea bargains, which may in turn make prosecutors reluctant to use them. Additionally, some respondents indicated concerns as to whether supervisors exert excessive influence over plea bargains. Finally, the utility of plea bargains is reportedly hampered by lenient penal policy, such that defendants and their attorneys see no benefit to entering into a plea bargain, as, even if convicted, they expect a relatively mild sentence from the court.

Another serious concern impacting efficiency is an inadequate technological infrastructure. While most prosecutor offices are computerized and most, but not all, seem to utilize computerized case tracking, Serbia lacks an integrated case tracking system for police, prosecutors, and the courts. Currently, each entity tracks cases separately, leading to duplicative and, potentially, inaccurate information across systems, likely leading to delays, inefficient handling of cases, and mistakes. An integrated, centralized and secure information network would greatly enhance transparency, allowing the criminal justice actors, the government, and the public to determine inefficiencies in the criminal justice process and take steps to correct them. Another technological deficiency is in communications, where requests and instructions between police and prosecutors are often submitted in writing. Instead of waiting for overburdened typing pools to write up letters and instructions, an effective communications network between police, prosecutors, and the courts would significantly enhance the efficient handling of investigations and prosecutions.

Finally, prosecutors are hampered by an overall lack of specialization. Some progress has certainly been made, particularly in the areas of juvenile crimes, war crimes, organized crime,
cybercrime, and corruption and financial crime. However, prosecutors in regular courts should receive training and greater opportunity to specialize in specific types of cases, such as trafficking, intellectual property, and corporate crime, to name but a few. Doing so would allow prosecutors to develop greater expertise, which in turn should lead to the more efficient handling of cases.

**Factor 28: Compensation and Benefits**

*Prosecutors have reasonable compensation and benefits established by law, such as remuneration and pension, proportionate with their role in the administration of justice.*

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>While some prosecutors expressed dissatisfaction with their salaries, most believe their salaries were reasonable, particularly in light of the current economic climate. However, salaries are not adjusted according to locales with a higher cost of living, and do not provide bonuses or incentives for superior performance.</td>
<td></td>
</tr>
</tbody>
</table>

**Analysis/Background:**

Salary levels for prosecutors are established by the Law on Public Prosecution, which specifies that prosecutors are entitled to sufficient salary to protect their independence and the security of their families, as well as being commensurate with the dignity of their office and responsibilities. **Law on Public Prosecution** art. 50.

Compensation for prosecutors is broken down by five pay levels. The salary for each pay level is determined by multiplying the base salary for prosecutors, which is set at the same level of base pay for judges, by a coefficient assigned to each pay grade. *Id.* arts. 70 and 71. For 2011, pay levels for prosecutors are show in the table below:

### RPP AND DEPUTY PROSECUTOR PAY GRADES

<table>
<thead>
<tr>
<th>Position</th>
<th>Monthly Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>RSD</td>
</tr>
<tr>
<td>Republic Public Prosecutor</td>
<td>171,360</td>
</tr>
<tr>
<td>Deputy Republic Public Prosecutor</td>
<td>142,800</td>
</tr>
<tr>
<td>Deputy Appellate Public Prosecutors</td>
<td>114,240</td>
</tr>
<tr>
<td>Deputy Higher Public Prosecutors and</td>
<td>99,960</td>
</tr>
<tr>
<td>Deputy Special Public Prosecutors</td>
<td></td>
</tr>
<tr>
<td>Deputy Basic Public Prosecutors</td>
<td>85,680</td>
</tr>
</tbody>
</table>

Under Article 72, salaries for Public Prosecutors are determined separately, and are tied to the salaries of specific judicial positions and the size of the applicable court.

Article 73 provides for various adjustments to compensation for prosecutors. For example, prosecutors assigned to another institution receive the base salary of that institution if it is more favorable; the salaries of Deputy Public Prosecutors in offices with unfilled vacancies may be increased by up to 50% at the discretion of the SPC, and; prosecutors working on organized crime or war crimes cases may have their salaries increased up to 100%, again at the discretion of the SPC. *Id.* art. 73.
Overall, most prosecutors seemed fairly satisfied with their compensation, although they often framed their responses in the context of Serbia's economic difficulties, i.e., while they would prefer it if their salaries reflected the difficulties of their work, in light of the current economic climate it would be unreasonable for them to expect more. Some prosecutors, however, were dissatisfied with the level of compensation. As in many countries, while compensation for prosecutors may be well below that of the top ranks of the attorneys’ profession, competition for prosecutorial positions does not seem to have suffered due to the salary levels.

It is worth noting that the various salary levels are uniform across all of Serbia, with no adjustments for the cost of living in different regions. Accordingly, while prosecutors in rural areas may live fairly comfortably on their salaries, some prosecutors in Belgrade reportedly receive support from their families in order to make ends meet. As such, locality pay adjustments for areas with a higher cost of living may be worthwhile. Finally, it was noted that the salary levels do not provide any incentives or bonuses for superior performance. From a human resources perspective, it would be wise to recognize and reward prosecutors based on their performance evaluations, in order to both encourage higher levels of performance and to help retain the top performing prosecutors.
List of Acronyms

ABA: American Bar Association
CEELI: Central European and Eurasian Law Initiative
COE: Council of Europe
CPC: Criminal Procedure Code
ECHR: European Court of Human Rights
EU: European Union
EULEX: European Union Rule of Law Mission in Kosovo
HJC: High Judicial Council
ICTY: International Criminal Tribunal for the Former Yugoslavia
MOJ: Ministry of Justice
OPDAT: Office of Overseas Prosecutorial Development, Assistance, and Training
OSCE: Organization for Security and Cooperation in Europe
PAS: Prosecutors Association of Serbia
PRI: Prosecutorial Reform Index
RPP: Republic Public Prosecutor
SPC: State Prosecutorial Council
UNDP: United Nations Development Programme
UNODC: United Nations Office of Drugs and Crime