



REPUBLIC OF SERBIA

Ministry of Justice

# **LAW ON PUBLIC PROSECUTION**

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# **LAW ON PUBLIC PROSECUTION**

## **Chapter One**

### **GENERAL PROVISIONS**

#### **Article 1**

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

#### ***Public Prosecution***

#### **Article 2**

The public prosecution is an autonomous state body which prosecutes perpetrators of criminal and other punishable offences and undertakes measures for the protection of constitutionality and legality.

The public prosecution performs its function pursuant to the Constitution, the law, ratified international agreements and regulations enacted on the basis of law.

#### ***Establishment and Organisation***

#### **Article 3**

The Republican Public Prosecution is the highest public prosecution in Serbia.

The seat of the Republican Public Prosecution is in Belgrade.

The establishment, seats, and territorial jurisdiction of other public prosecutions are governed by law.

#### ***Function of Public Prosecution***

#### **Article 4**

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

#### ***Independence in Work***

#### **Article 5**

Public prosecutors and deputy public prosecutors are independent 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 independence of the work of a public prosecution, is prohibited.

#### ***Insignia of Public Prosecution***

#### **Article 6**

The public prosecution has a seal containing the name and seat of the public prosecution, and the name and coat of arms of the Republic of Serbia, in accordance with separate laws.

The name of the public prosecution, the coat of arms and the flag of the Republic of Serbia must be displayed on the building in which the public prosecution is located.

Public prosecutors and deputy public prosecutors shall use official IDs and badges in the performance of their prosecutorial duties.

The standard form, appearance and manner of use of the official ID and the badge shall be specified in detail in the Regulation on the Administration in Public Prosecutions.

### ***Official Language and Script***

#### **Article 7**

The Serbian language and Cyrillic script are in official use in public prosecutions in the Republic of Serbia.

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

### ***Duty to Forward Documents to Public prosecution***

#### **Article 8**

Courts, other public authorities, local self-government and autonomous province authorities, as well as other organisations and legal persons, are required to forward to the public prosecution, upon its request, documents and information required for undertaking actions within its purview. When a public prosecution is bound by a statutory time limit, they shall forward documents without delay.

### ***Duty to Provide Data and Explanations to Public prosecution***

#### **Article 9**

Everyone is required to directly provide to the public prosecution upon its request explanations and data it requires to undertake actions within its competences under the law.

The public prosecution is required to accept submissions and statements on matters which are within its jurisdiction, and may request supplements and explanations in respect of the submissions and statements received.

### ***Informing the Public***

#### **Article 10**

The public prosecution may inform the public on the state of criminality and other occurrences that come to its notice in its work, in accordance with the Regulation on the Administration of Public Prosecutions.

A public prosecution may, within the constraints of its competences and in accordance with the interest of proceedings, taking into account the protection of the privacy of participants in proceedings, notify the public on individual cases in which it is proceeding.

### ***Meaning of Terms in This Law***

#### **Article 11**

Terms used in this Law shall have the following meanings:

1. "The Prosecutorial Function" shall mean the function of the public prosecutor and the deputy public prosecutor.
2. "The Public Prosecutor" shall mean the Republican Public Prosecutor and other public prosecutors.
3. "Mandatory instruction" shall mean an order issued by a public prosecutor to a lower ranked public prosecutor or to a deputy public prosecutor to undertake certain actions within their statutory competences.
4. "First appointment" shall mean the first appointment to a public prosecutor's function.

## **Chapter Two**

### **ORGANISATION OF PUBLIC PROSECUTION**

#### **1. CONCEPT AND TYPES**

##### *Concept*

###### **Article 12**

A public prosecution consists of a public prosecutor, deputy public prosecutors and public prosecution staff.

The function of the public prosecution is performed by the public prosecutor.

Everyone in the public prosecution is subordinate to the public prosecutor.

##### *Types of Public Prosecutions*

###### **Article 13**

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.

Public prosecutions with special jurisdiction are the Public Prosecution for Organised Crime and the Public Prosecution for War Crimes.

The Republican Public Prosecution, The Public Prosecution for Organised Crime and the Public Prosecution for War Crimes are established for the territory of the Republic of Serbia.

Public Prosecution for Organised Crime and Public Prosecution for War Crimes are seated in Belgrade.

Appellate public prosecutions shall be formed for the territories of appellate courts.

Higher public prosecutors shall be formed for the territory of high courts, and basic public prosecutions shall be formed for the territories of basic courts.

The establishment, seats and territories of appellate, higher and basic public prosecutions are regulated by a separate law.

Public prosecutions may have separate departments responsible for prosecuting certain criminal offences, in accordance with a separate law.

The Public Prosecution for Organised Crime may have separate departments outside its seat, in accordance with a separate law.

##### *Material Jurisdiction*

###### **Article 14**

The material jurisdiction of a public prosecution shall be determined in accordance with provisions of laws on determining material jurisdiction of courts, unless specified otherwise by law.

##### *Territorial Jurisdiction*

###### **Article 15**

The territorial jurisdiction of public prosecutions shall be determined in accordance with the law governing the seats and territories of public prosecutions.

## **2. HIERARCHY**

### ***Seniority of Higher Ranked Public Prosecutors over Lower Ranked Public Prosecutor***

#### **Article 16**

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.

### ***Conflict of Jurisdiction***

#### **Article 17**

Conflicts of jurisdiction between public prosecutors shall be resolved by the immediately higher ranked public prosecutor.

Conflicts of jurisdiction between Special Public Prosecutors and conflicts of jurisdiction between Special Public Prosecutors and other public prosecutors shall be resolved by the Republican Public Prosecutor.

### ***Mandatory Instructions of Higher Ranked Public Prosecutor to Lower Ranked Public Prosecutor***

#### **Article 18**

A higher ranked prosecutor may issue to a immediately lower ranked prosecutor mandatory instructions for proceeding in particular cases when there is doubt in respect of the efficiency and legality of his actions, and the Republican Public Prosecutor may issue such instruction to any public 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 Republican Public Prosecutor within eight days of the date of receiving the instructions.

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

The public prosecutor filing the objection is required to act in accordance with the instructions until the decision of the higher ranked public prosecutor or the decision of the Republican Public Prosecutor.

The immediately higher public prosecutor may set aside the mandatory instructions and in such case the objection shall not be forwarded to the Republican Public Prosecutor.

The Republican Public Prosecutor is required to issue a decision within fifteen days from the date of receiving the objection to the mandatory instructions.

No objection shall be allowed to mandatory instructions of the Republican Public Prosecutor.

### ***Devolution***

#### **Article 19**

A higher ranked public prosecutor may undertake all actions for which a lower ranked public prosecutor is

competent, and is required to issue a substantiated ruling thereof.

A lower ranked public prosecutor who deems the decision of the higher ranked public prosecutor unjustifiable may file an objection with the Republican Public Prosecutor within eight days from the date of receiving the decision.

The objection shall be filed through the prosecutor who had issued the decision, who is required to review the ruling issued within three days from receiving the objection. The lower ranked public prosecutor may not undertake any case-related actions until the decision on the objection is issued.

In the course of reconsideration, the public prosecutor may issue a decision setting aside his ruling, in which case the objection shall not be forwarded to the Republican Public Prosecutor.

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

### ***Substitution***

#### **Article 20**

An immediately higher ranked public prosecutor may authorise a lower ranked public prosecutor to proceed in a matter under the jurisdiction of another lower ranked public prosecutor when the competent public prosecutor is prevented by legal or material reasons from proceeding in a particular case, and shall in such case issue a substantiated ruling.

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

### ***Inspection of Cases of Lower Ranked Prosecutor***

#### **Article 21**

In order to exercise seniority of rank, the Republican Public Prosecutor is entitled to inspect any case, and a higher ranked prosecutor is entitled to inspect any case of an immediately lower ranked prosecutor.

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

### ***Accountability***

#### **Article 22**

The Republican Public Prosecutor shall manage the work of the Public Prosecution and represent it.

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

A public prosecutor is accountable for the work of the public prosecution and his/her own work to the Republican Public Prosecutor and to the National Assembly, and a lower ranked public prosecutor is also accountable to the immediately higher ranked public prosecutor.

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

### ***Seniority of Public Prosecutor over Deputy Public Prosecutor***

#### **Article 23**

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 authorised without special authorisation.

## ***Mandatory Instructions of Public Prosecutors to Deputy Public Prosecutors***

### **Article 24**

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

A public prosecutor shall issue mandatory instructions in writing and they shall contain substantiation for the issuance thereof.

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

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

The public prosecutor may during the reconsideration procedure set aside the mandatory instruction and in such case shall not forward the objection to the higher public prosecutor.

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

The immediately higher public prosecutor is required to issue a decision within eight days from the day of receiving the objection to the mandatory instruction.

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

## ***General Instructions of the Republican Public Prosecutor***

### **Article 25**

The Republican Public Prosecutor shall issue in written form general mandatory instructions for all public prosecutors aimed at achieving legality, efficiency and uniformity in proceeding.

The Republican Public Prosecutor may issue in written form general mandatory instructions upon a proposal of the Collegium of the Republican Public Prosecution.

## **3. JURISDICTION**

### ***General Jurisdiction***

#### **Article 26**

In prosecuting criminal offences, economic offences and minor offences, public prosecutors shall act before the court and other state authorities, undertaking actions for which they are authorised by law.

Public prosecutors shall act in civil litigation, administrative, enforcement, non-contentious and other proceedings, performing actions for which they are authorised under separate laws.

Public prosecutors shall act within the constraints of their material and territorial jurisdiction, within the framework of the jurisdiction of the authorities before whom they are proceeding.

### ***Motions to Stay and Suspend Enforcement***

#### **Article 27**

Where public prosecutors deem that there are grounds to challenge a decision reached in judicial or other proceedings by an extraordinary legal remedy, they may request stay or suspension of enforcement of the decision.

The motion shall be filed with the authority approving the enforcement of the decision and, if enforcement has commenced, with the implementing body, together with proof that an extraordinary legal remedy has been filed.

## ***Consequences of Sustaining the Motion***

### **Article 28**

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

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

## ***Competences of the Republican Public Prosecutor***

### **Article 29**

The Republican Public Prosecutor exercises the competences of public prosecution within the framework of the rights and duties of the Republic of Serbia.

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

The Republican Public Prosecutor shall also be competent to:

- 1) file extraordinary legal remedies in accordance with the law;
- 2) oversee the work of the public prosecutions and the implementation of instructions, observe and study the practice of public prosecution and courts;
- 3) propose professional advanced training programs for public prosecutors and deputy public prosecutors;
- 4) submit reports to the National Assembly;
- 5) perform other tasks defined by law.

In the performance of the tasks within his competences, the Republican Public Prosecutor shall act directly and through his deputies.

## ***Competences of Appellate Prosecutors and Public Prosecutors with Special***

### ***Jurisdiction***

### **Article 30**

Appellate public prosecutors shall exercise the competence of the appellate public prosecution and are competent to act before the Appellate Court and other courts and authorities, in the manner prescribed by law, as well as to supervise and direct basic and higher public prosecutions from their territory, in accordance with this Law.

The Appellate Public Prosecutor in the seat of the Commercial Appellate Court shall also act before that court.

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

## ***Competence of the Higher and Basic Public Prosecutor***

### **Article 31**

Higher public prosecutors shall exercise the competences of the higher public prosecution and shall be competent to act before high courts and other courts and authorities in the manner provided by law, and to oversee and direct the territorial basic public prosecutions in the manner specified by this Law.

Basic public prosecutors shall exercise the competences of the basic public prosecution and act before basic courts.

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



## ***Transfer of Competences***

### **Article 32**

If a public prosecution is unable to exercise competence, the Republican Public Prosecutor may transfer its competences to another public prosecution of the same or higher level.

The transfer of competences shall last until the necessary requirements are fulfilled for the work of the competent public prosecution.

## ***Deciding on Motions for Recusal***

### **Article 33**

Decisions on the recusal of deputy public prosecutors shall be issued by the public prosecutor, and decisions on the recusal of a public prosecutor by the immediately superior public prosecutor.

The State Prosecutors Council shall decide on motions for the recusal of the Republican Public Prosecutor, after obtaining an opinion from the Collegium of the Republican Public Prosecution.

## **4. ADMINISTRATION IN PUBLIC PROSECUTION**

### ***Managing Public Prosecution Administration Tasks***

#### **Article 34**

The public prosecutor is the administrative authority in the public prosecution and is responsible for the proper and timely work of the public prosecution, in accordance with the law and the Regulation on Administration in the Public Prosecution.

The public prosecutor shall determine the organisation and work of the public prosecution, take decisions in respect of labour-related rights of deputy public prosecutors and employment of staff, rectify work-related irregularities and excessive delays, assure maintenance of independence in the performance of work and the dignity of the public prosecution, and perform other tasks as authorised by the law or other regulation.

### ***Deputising for the Public Prosecutor in Administration***

#### **Article 35**

A deputy public prosecutor duly designated by the annual schedule of tasks shall deputise for a public prosecutor who is absent or otherwise prevented from managing the public prosecution.

If a deputy is not designated, or requirements cannot be met to designate who shall deputise for the public prosecutor, the immediately superior public prosecutor shall appoint an administrator from the ranks of deputy public prosecutors.

### ***Acting Public Prosecutor***

#### **Article 36**

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

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

### ***Personal File***

#### **Article 37**

The State Prosecutors Council shall maintain a personal file for every public prosecutor, deputy public prosecutor and employee in the public prosecution.

The data contained in the personal file shall be forwarded to the State Prosecutors Council by the public prosecutor who shall be responsible for their accuracy, as well as by the person to whom such data relates,

if supplied by such person.

Data from the personal file shall be deemed an official secret and may be used only for the purposes of implementation of this Law.

The State Prosecutors Council shall specify the obligations of public prosecutors in supplying the data required for maintaining personal files.

### ***Contents of the Personal File***

#### **Article 38**

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

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

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

The State Prosecutors Council shall determine the form and detailed content of personal files referred to in paragraphs 1 and 2 of this Article.

### ***Regulation on Administration in the Public Prosecution***

#### **Article 39**

The Regulation on Administration in the Public Prosecution shall prescribe: the relationship of public prosecution to other state authorities, citizens and the public, the manner of keeping records, manner of allocation of cases, case management, procedure with archive materials and other issues of relevance to the work of public prosecutions.

The Regulation on Administration in the Public Prosecution shall be issued by the Minister responsible for the judiciary, following the opinion obtained from the Republican Public Prosecutor.

The Regulation on Administration in the Public Prosecution shall be published in the *Official Gazette of the Republic of Serbia*.

### ***Overseeing Application of the Regulation***

#### **Article 40**

The Ministry responsible for the judiciary shall supervise the application of the Regulation on Administration in the Public Prosecution.

In the performance of the supervision, the Ministry responsible for the judiciary may request reports and data from public prosecutions under supervision.

Supervision may only be performed by persons fulfilling for the position of deputy public prosecutor in the public prosecution whose work they are overseeing.

## *Effects of Supervision*

### **Article 41**

A record shall be made of the performed supervision and forwarded to the public prosecutor of the public prosecution where the oversight was conducted, to the immediately superior public prosecutor, and to the Minister responsible for the judiciary.

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

The time limit for notification is defined in the Regulation on Administration in the Public Prosecution.

## **Chapter Three**

### **JUDICIAL ADMINISTRATION**

#### *Judicial Administration Tasks in Public Prosecution*

### **Article 42**

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

#### *Competences in Respect of Judicial Administration Tasks*

### **Article 43**

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

The Ministry responsible for the judiciary may, in performing judicial administration tasks, request reports and data from public prosecutions.

#### *Prohibition of Influence on the Independence of Public Prosecutions*

### **Article 44**

Any individual act of the judicial administration infringing the independence of the work of public prosecution is null and void.

The Administrative Court shall decide on the nullity of an act referred to in paragraph 1 of this Article.

## **Chapter Four**

### **STATUS OF PUBLIC PROSECUTOR AND DEPUTY PUBLIC PROSECUTOR**

#### **1. BASIC RIGHTS AND OBLIGATIONS**

##### *Autonomy of Public Prosecutors and Deputy Public Prosecutors*

### **Article 45**

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

A public prosecutor and deputy public prosecutor are required to maintain the confidence in their

independence of work.

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

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

### ***Impartiality***

#### **Article 46**

The office of a public prosecutor is discharged in the public interest in order to enforcement of the implementation of the Constitution and the law, while respecting and protecting human rights and fundamental freedoms.

The office of a public prosecutor must be performed impartially.

### ***Code of Ethics***

#### **Article 47**

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

### ***Publicity of Work***

#### **Article 48**

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

### ***Prohibition of Political Activity and Activities Incompatible with Prosecutorial Function***

#### **Article 49**

A public prosecutor and deputy public prosecutor may not be members of political parties, or engage in any political activities.

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

### ***Financial Independence and Rights from Employment***

#### **Article 50**

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

The salary of a public prosecutor or deputy public prosecutor must be in conformity with the dignity of the public prosecutorial office and the burden of responsibility.

The salaries of public prosecutors and deputy public prosecutors are determined by this Law.

Public prosecutors and deputy public prosecutors shall exercise their rights proceeding from employment in accordance with regulations on rights proceeding from employment of elected persons, unless provided for otherwise by this Law.

### ***Immunity***

#### **Article 51**

A public prosecutor and deputy public prosecutor may not be held accountable for opinions expressed in the performance of prosecutorial office, except in case of 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.

### ***Liability for Damage***

#### **Article 52**

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

If it is determined by a final decision of the Constitutional Court, a final court decision, or a settlement before a court or another competent body, that damage was caused intentionally or by gross negligence, the Republic of Serbia shall be entitled to seek compensation of the amount paid out from the public prosecutor or deputy public prosecutor.

### ***Right to Association***

#### **Article 53**

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.

The State Prosecutors Council and the higher ranked public prosecutor shall undertake measures to ensure the right to association of persons referred to in paragraph 1 of this Article.

### ***Professional Training***

#### **Article 54**

Public prosecutors and deputy public prosecutors have a right and an obligation undergo professional training at the expense of the Republic of Serbia, in a manner regulated by law.

## **2. TERM OF OFFICE**

### ***Term of Office of Public Prosecutor***

#### **Article 55**

Public prosecutors are elected from the ranks of public prosecutors and deputy public prosecutors or from the ranks of persons who fulfil requirements for election, to a term of office of six years, and may be re-elected.

Public prosecutors whose office is terminated at personal request, or those not re-elected, are required to be elected to the office of deputy public prosecutor performed prior to election. If elected to the office of a higher public prosecutor from a lower ranked public prosecution, they shall upon termination of the office of public prosecutor be required to continue to perform the office of deputy public prosecutor in the public prosecution they had headed. If a public prosecutor is elected from the ranks of persons who are not deputy public prosecutors, upon termination of the office he/she shall be appointed deputy public prosecutor in the public prosecution in which he/she was a public prosecutor. The decision on the appointment shall be taken by the State Prosecutors Council.

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

### ***Term of Office of Deputy Public Prosecutor***

#### **Article 56**

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

The term of office of a deputy public prosecutor may cease prior to the expiry of the term to which they were

elected, or prior to the fulfillment of pensionable years of service, only on grounds and reasons provided under this Law.

### *Continuation of Office*

#### **Article 57**

If a public prosecution is abolished, a public prosecutor and deputy public prosecutor shall continue to perform the office of a public prosecutor and deputy public prosecutor in a public prosecution designated by the State Prosecutors Council, at the recommendation of the Republican Public Prosecutor.

## **3. SUSPENSION FROM DUTY**

### *Grounds for Suspension*

#### **Article 58**

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

A public prosecutor and deputy public prosecutor may be suspended from duty upon the institution of proceedings for their dismissal, or of criminal proceedings for a dismissable offence.

### *Decision on Suspension*

#### **Article 59**

A public prosecutor decides on the mandatory suspension of a deputy public prosecutor, while an immediately higher ranked public prosecutor decides on the mandatory suspension of a public prosecutor.

Where suspension is not mandatory, it shall be taken by the Republican Public Prosecutor.

The State Prosecutors Council shall decide on the suspension of the Republican Public Prosecutor.

### *Right to Objection*

#### **Article 60**

A public prosecutor and deputy public prosecutor are entitled to file objections with the State Prosecutors Council in connection with decisions of the Republican Public Prosecutor's on non-mandatory suspension.

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

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

Filing of the objection referred to in paragraphs 1 and 2 of this Article shall not stay the enforcement of the decision.

### *Duration of Suspension*

#### **Article 61**

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

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

## 4. TRANSFER AND ASSIGNMENT

### *Transfer*

#### **Article 62**

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

The ruling on the transfer shall be issued by the Republican Public Prosecutor.

In the case referred to in Article 57 of this Law, a deputy public prosecutor may be transferred even without his/her consent, on the basis of a decision of the State Prosecutors Council.

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

### *Assignment*

#### **Article 63**

A deputy public prosecutor may be assigned, with his/her written consent, to another public prosecution for a period not exceeding one year. Upon a proposal by a special public prosecutor, a deputy public prosecutor may be assigned, with his/her written consent, to a special prosecution for a period not exceeding four years.

When a deputy public prosecutor is assigned to a public prosecution of a higher rank, he/she must fulfil the requirements for election as deputy public prosecutor of the public prosecution to which he/she is transferred.

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

The assignment referred to in paragraph 3 of this Article may not exceed one year.

The decision on the assignment shall be issued by the Republican Public Prosecutor.

#### ***Assignment to another Public Authority, Institution Responsible for Judicial Training, or an International Organisation***

#### **Article 64**

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

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

The assignment may not exceed a period of three years.

The ruling on the assignment shall be issued by the State Prosecutors Council.

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

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

#### **Article 65**

A public prosecutor or deputy public prosecutor may not hold office in 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.

By exception from paragraph 1 of this Article, a public prosecutor or deputy public prosecutor may be a member of the governing body of the institution responsible for judicial training, in accordance with a decision of the State prosecutors Council, pursuant to another law.

Other functions, jobs or private interests which are contrary to the dignity and independence of the public prosecution or harm its reputation are also incompatible with the function of public prosecutor or deputy public prosecutor.

The State Prosecutors Council shall determine the offices and engagements that are contrary to the dignity, violate the autonomy, or damage the reputation of a public prosecution.

A public prosecutor or deputy public prosecutor may outside office hours engage without explicit permission in paid educational and scientific activities.

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

A public prosecutor or deputy public prosecutor may be sent on a study or other trip abroad, on the basis of a decision of the State Prosecutors Council, after obtaining the opinion of the immediately superior prosecutor or deputy public prosecutor, where particular attention shall be given to the performance evaluation from the personal file, as well as knowledge of foreign languages.

#### ***Duty to Notify***

#### **Article 66**

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

A public prosecutor shall notify the immediately higher ranked prosecutor of such a function, engagement, or private interest, and the Republican Public Prosecutor shall notify the State Prosecutors Council.

#### ***Initiating Proceedings***

#### **Article 67**

A public prosecutor is required to initiate a procedure to decide on the incompatibility of office of a lower ranked public prosecutor or deputy public prosecutor before the Republican Public Prosecutor, when becoming cognizant of, and estimating as probable the existence of, grounds referred to in Article 65 paragraphs 1,3 and 4 of this Law.

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



## ***Decision on Incompatibility***

### **Article 68**

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

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

The State Prosecutors Council or the Republican Public Prosecutor referred to in paragraphs 1 and 2 of this Article are required to submit a disciplinary report.

## **6. FINANCIAL STATUS**

### ***Base Salary***

#### **Article 69**

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

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

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

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

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

### ***Pay Grades***

#### **Article 70**

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

The first pay grade includes deputy basic public prosecutors.

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

The third pay grade includes deputies of appellate public prosecutors.

The fourth pay grade includes deputy Republican Public Prosecutors.

The fifth pay grade includes the Republican Public Prosecutor.

### ***Pay Levels***

#### **Article 71**

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

The second pay grade shall have a pay level of 3.50.

The third pay grade shall have a pay level of 4.00.

The fourth pay grade shall have a pay level of 5.00.

The fifth pay grade shall have a pay level of 6.00.

### ***Base Salary of a Public Prosecutor***

#### **Article 72**

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

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

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

### ***Salary in Case of Transfer or Assignment and Increase of Base Salary***

#### **Article 73**

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

Compensations and other emoluments of a deputy public prosecutor transferred or assigned to another public prosecution, the Ministry responsible for the judiciary, an institution or international organisation, are prescribed by the State Prosecutors Council, with the consent of the Ministry responsible for the judiciary.

The base salary of deputy public prosecutors performing duty in a public prosecution where deputy prosecutorial vacancies cannot be filled may be increased by up to 50%, on the basis of a decision of the State Prosecutors Council

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

## **Chapter Five**

### **ELECTION**

#### ***Fundamental Rules for Election of Public Prosecutor***

#### **Article 74**

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

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

The Government shall nominate candidates from paragraph 2 of this Article from the list of candidates determined by the State Prosecutors Council.

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

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

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

### ***Fundamental Rules for Election of Deputy Public Prosecutor***

#### **Article 75**

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

The National Assembly shall elect a deputy public prosecutor elected for the first time, from one or more candidates proposed by the State Prosecutors Council.

The State Prosecutors Council shall elect deputy public prosecutors to permanent office in the same or other public prosecution.

The State Prosecutors Council shall also decide on the election of deputy public prosecutors with tenure to another or a higher ranked public prosecution.

The number of deputy public prosecutors for each public prosecution is determined by the State Prosecutors Council, following the obtained approval of the Minister responsible for the judiciary.

## **1. ELECTION REQUIREMENTS**

### ***General Requirements***

#### **Article 76**

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

### ***Special Requirements***

#### **Article 77**

A person may be elected public prosecutor and deputy public prosecutor if he/she, in addition to general requirements, has experience in the legal profession after passing the 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 Republican Public Prosecutor and eleven years for Deputy Republican Public Prosecutor.

## **2. ELECTION PROCEDURE**

### ***Advertisement of Election***

#### **Article 78**

The State Prosecutors Council shall advertise for the election of public prosecutors and deputy public prosecutors.

The notice shall be published in the *Official Gazette of the Republic of Serbia* and other public media that cover the entire territory of the Republic of Serbia.

### ***Submission of Applications***

#### **Article 79**

Applications shall be submitted to the State Prosecutors Council, within 15 days from the publication of the notice.

Proof of fulfilment of the election requirements shall be attached to the applications, unless it is already in the public prosecution.

### ***Obtaining Information and Opinions***

#### **Article 80**

The State Prosecutors Council shall obtain information and opinions about the professional qualifications, specific knowledge and worthiness of candidates.

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

### ***Interviewing Candidates***

#### **Article 81**

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

### ***Nomination and Election***

#### **Article 82**

In nominating and electing candidates to a prosecutorial function, the State Prosecutors Council shall take into consideration the professional qualifications, specific knowledge and worthiness of a candidate, pursuant to the criteria for the evaluation of the professional qualifications, specific knowledge and worthiness determined by the State Prosecutors Council in accordance with the law. In nominating and electing candidates to a prosecutorial function, discrimination on any grounds shall be prohibited.

In electing and nominating candidates for election as public prosecutors and deputy public prosecutors, care shall be taken of the national composition of the population, adequate representation of members of national minorities, as well as knowledge of professional legal terminology in national minority languages in official use in courts.

Every proposal or decision regarding the election passed by State Prosecutors Council must be substantiated.

## **3. OATH AND TAKING OFFICE**

### ***Taking the Oath***

#### **Article 83**

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

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

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

## ***Text of the Oath***

### **Article 84**

The text of the oath reads: "I swear on my honor that I shall perform the public prosecutorial office with dedication, conscientiously and impartially, and shall protect constitutionality and legality, human rights and civil liberties".

## ***Taking Office***

### **Article 85**

A public prosecutor and deputy public prosecutor shall assume office at a formal session in the public prosecution to which they are elected.

By assuming office, other office they may have in a public prosecution shall cease.

## ***When Deemed that There Was no Election***

### **Article 86**

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

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

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

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

## **Chapter Six**

### **TERMINATION OF OFFICE**

#### ***All Reasons for Termination of Office***

### **Article 87**

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

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

### **1. DETERMINATION OF REASONS FOR TERMINATION OF OFFICE**

#### ***Termination of Office at Personal Request***

### **Article 88**

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

A deputy public prosecutor shall submit a request for the termination of office in writing to the State Prosecutors Council.

The request may be withdrawn until the office of the public prosecutor or deputy public prosecutor is

terminated by a decision of the National Assembly or the State Prosecutors Council.

If the request for termination of office is not decided on within 30 days, it shall be deemed that the office of a public prosecutor or deputy public prosecutor was terminated by the expiry of 30 days from the day of submitting the request for termination of office.

### ***Completion of Years of Service***

#### **Article 89**

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

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

Years of service may be extended only in order for the public prosecutor or deputy public prosecutor to complete work on cases already initiated.

### ***Permanent Loss of Working Capacity***

#### **Article 90**

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

Decisions on referral to mandatory health checks shall be issued by the State Prosecutors Council, at the proposal of the public prosecutor, immediately superior public prosecutor, and public prosecutors or deputy public prosecutors themselves.

### ***Competence and Initiation of Procedure***

#### **Article 91**

The procedure for determination of reasons for the termination of office of a public prosecutor at personal request, due to completion of years of service, and due to permanent loss of working capacity, shall be conducted by the State Prosecutors Council.

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

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

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

## **2. DETERMINATION OF GROUNDS FOR DISMISSAL**

### ***Grounds for Dismissal***

#### **Article 92**

A public prosecutor and deputy public prosecutor shall be relieved of office when sentenced by a final judgment for a criminal offence to a term of imprisonment of at least six months, or for a punishable offence making them unworthy of office, or when incompetently discharging their function, or for a committed serious disciplinary offence.

## ***Specially on Incompetent Performance***

### **Article 93**

Public prosecutor or deputy public prosecutors are deemed to be performing their office incompetently if their performance is rated "unsatisfactory" according to the criteria and standards of performance evaluation.

## ***Competence and Initiation of Dismissal Procedure***

### **Article 94**

Any person is entitled to file an initiative for the dismissal of a public prosecutor or deputy public prosecutor.

The dismissal procedure shall be initiated upon a proposal by the public prosecutor, immediately superior public prosecutor, Republican Public Prosecutor, Minister responsible for the judiciary, the authority responsible for evaluating performance and the Disciplinary Commission. The procedure for dismissing a public prosecutor or deputy public prosecutor may also be initiated by the State Prosecutors Council *ex officio*.

Grounds for dismissal shall be established by the State Prosecutors Council.

## ***Procedure Before the State Prosecutors Council***

### **Article 95**

The State Prosecutors Council shall establish facts and decide in proceedings that shall be closed to the public.

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

The decision of the State Prosecutors Council must be substantiated.

Public prosecutors or deputy public prosecutors may submit objections to decisions of the State Prosecutors Council determining reasons for dismissal to the State Prosecutors Council, within 15 days of the date of delivery of the decision.

The State Prosecutors Council may dismiss the objection as untimely if not submitted within the prescribed period, uphold the objection and revise the decision, or deny the objection and confirm its decision.

The decision determining the reasons for dismissal shall become final if confirmed in the objection procedure, or at the expiry of the time limit for submitting an objection, if no objection was submitted.

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

## ***Status of Public Prosecutor or Deputy Public Prosecutor in Dismissal Procedure***

### **Article 96**

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

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

### **3. DECISION ON TERMINATION OF OFFICE**

#### ***Decision Taking***

##### **Article 97**

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

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

The State Prosecutors Council decides on the termination of office of deputy public prosecutors.

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

The decision on the termination of office shall be published in the *Official Gazette of the Republic of Serbia*.

#### ***Complaint to the Constitutional Court***

##### **Article 98**

Public prosecutors or deputy public prosecutors are entitled to file appeals to the Constitutional Court against decisions on termination of office passed by the National Assembly or the State Prosecutors Council within 30 days from being served the decision.

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

The decision of the Constitutional Court shall be final and shall be published in the *Official Gazette of the Republic of Serbia*.

## **Chapter Seven**

### **PERFORMANCE EVALUATION OF PUBLIC PROSECUTOR AND DEPUTY PUBLIC PROSECUTOR**

#### ***Concept***

##### **Article 99**

The evaluation of the performance of a public prosecutor or deputy public prosecutor constitutes grounds for election, mandatory training, and dismissal.

The evaluation of performance shall be conducted on the basis of publicised, objective and uniform criteria based on applicable and comparable standards established by the State Prosecutors Council in the Regulation on the Criteria and Standards for Evaluating Performance.

#### ***Periodic Evaluation***

##### **Article 100**

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

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



## ***Performance Rating***

### **Article 101**

Performance shall be rated.

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

Ratings shall be entered in public prosecutors' or deputy public prosecutors' personal files.

A public prosecutor or deputy public prosecutor is entitled to object to the rating to the State Prosecutors Council within 15 days from the day of service of the decision on the rating, which must be substantiated.

## ***Evaluation Procedure***

### **Article 102**

The evaluation of the performance of a public prosecutor shall be conducted by the immediately superior prosecutor, after obtaining the opinion of the Collegium of immediately superior public prosecution.

The evaluation of the performance of a deputy public prosecutor shall be conducted by a public prosecutor, after obtaining the opinion of the Collegium of the public prosecution.

In evaluating performance, periodical reports on the work of the public prosecution shall be taken into account.

## **Chapter Eight**

### **DISCIPLINARY LIABILITY AND DISCIPLINARY PROCEEDINGS**

#### ***Disciplinary Offence***

##### **Article 103**

Disciplinary offences are unconscientious performance of prosecutorial office, or such actions of a public prosecutor or deputy public prosecutor that renders them unworthy of office, prescribed by this Law.

#### ***Disciplinary Offences***

##### **Article 104**

Public prosecutors or deputy public prosecutors commit a disciplinary offence if they:

- fail to render prosecutorial decisions and file ordinary and extraordinary legal remedies within stipulated time limits;
- frequently miss, or are late for, scheduled trials, hearings, and other procedural actions in cases allocated to them;
- fail to request recusal in cases where legal grounds for doing so exist;
- refuse to perform assigned tasks and duties;
- fail to comply with a written instruction of a superior public prosecutor;
- manifestly violate rules of proper procedure in respect of judges in proceedings, parties, their legal counsel, witnesses, staff. or colleagues;
- engages in inappropriate relations with parties or their legal counsels in pending proceedings;
- provide in complete or incorrect information important to the work of the State Prosecutorial Council in procedures for appointment or dismissal of public prosecutors and deputy public

- prosecutors, disciplinary accountability proceedings, and other matters under his competence;
- violate the principle of impartiality and jeopardizes the public's trust in the public prosecution;
  - engage in activities set forth by the Law as incompatible with a public prosecutorial office;
  - accepts gifts, contrary to regulations governing the conflict of interest;
  - fail to observe working hours;
  - make serious violations of the Code of Ethics;
  - fail to attend mandatory training programmes without justification.

Serious disciplinary offence are deemed to exist if a disciplinary offence referred to in paragraph 1 of this Article resulted in a serious disruption in the performance of prosecutorial office, or in the performance of work tasks in the public prosecution, or in serious damage to the reputation of, and trust in, the public prosecution, which in particular includes the expiry of the statute of limitations for criminal prosecution, as well as in cases of repeated disciplinary offences.

Repeated disciplinary offence referred to in paragraph 2 of this Article shall be deemed responsibility for a disciplinary offence of a public prosecutor or deputy public prosecutor determined on three occasions.

### ***Disciplinary Sanctions***

#### **Article 105**

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

The disciplinary sanction pronounced shall be commensurate to the seriousness of the committed disciplinary offence.

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

### ***Disciplinary Bodies***

#### **Article 106**

Disciplinary bodies are: the Disciplinary Prosecutor and deputies, and the Disciplinary Commission, established by the State Prosecutors Council.

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

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

### ***Disciplinary Proceedings***

#### **Article 107**

Disciplinary proceedings shall be conducted by the Disciplinary Commission on a proposal of the Disciplinary Prosecutor.

The Disciplinary Prosecutor shall file a motion for the initiation of disciplinary proceedings on the basis of a disciplinary report.

Disciplinary proceedings shall be deemed urgent and closed to the public, unless the public prosecutor or deputy public prosecutor subject to the proceedings requests that the proceedings be open to the public.

Disciplinary proceedings shall be subject to limitation after one year from the day the disciplinary offence was committed.

### ***Decisions of the Disciplinary Prosecutor***

#### **Article 108**

The Disciplinary Prosecutor may reject a disciplinary report as unfounded, or uphold the accusation and file a motion for disciplinary proceedings.

### ***Status of Public Prosecutor or Deputy Public Prosecutor in Disciplinary Proceedings***

#### **Article 109**

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

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

### ***Decisions of the Disciplinary Commission***

#### **Article 110**

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

The Disciplinary Prosecutor and the public prosecutor or deputy public prosecutor subject to disciplinary proceedings may file an appeal to the State Prosecutors Council against the decision of the Disciplinary Commission, within eight days of the service of the decision.

### ***Decisions of the State Prosecutors Council***

#### **Article 111**

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

The State Prosecutors Council shall decide on the appeal within 30 days from the delivery of the appeal.

The decision of the State Prosecutors Council shall be final.

The final decision on the imposition of a disciplinary sanction shall be entered in the personal record of the public prosecutor or deputy public prosecutor.

## **Chapter Nine**

### **PUBLIC PROSECUTION COLLEGIUM**

#### ***Composition of the Public Prosecution Collegium***

##### **Article 112**

A public prosecution Collegium consists of the public prosecutor and all deputy public prosecutors in that public prosecution.

#### ***Convening the Public Prosecution Collegium***

##### **Article 113**

The public prosecution Collegium shall be convened and chaired by the public prosecutor, or a deputy

public prosecutor he/she designates.

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

### ***Manner of Work and Decision Taking***

#### **Article 114**

The public prosecution Collegium takes a decision if a minimum of two thirds of deputy public prosecutors are present, and the decision shall be valid if voted for by the majority vote of present members.

### ***Competence of the Public Prosecution Collegium***

#### **Article 115**

The public prosecution Collegium:

- provides opinions to the State Prosecutors Council on candidates for deputy public prosecutors in its own, or the immediately lower, public prosecution
- provides opinions to the State Prosecutors Council on candidates for public prosecutors in the immediately lower public prosecution
- reviews the report on the work for the previous year
- reviews issues of relevance to the professional training and work organisation of the public prosecutor's office
- performs other tasks authorised by the Regulation on Administration in the Public Prosecution.

### ***Collegium of the Republican Public Prosecution***

#### **Article 116**

The Collegium of the Republican Public Prosecution consists of the Republican Public Prosecutor and all Deputy Republican Public Prosecutors.

In addition to competences specified in Article 115 of this Law, the Collegium of the Republican Public Prosecution:

- provides opinions on draft laws and other regulations of relevance to the work of the public prosecution or performance of prosecutorial office;
- provides opinions to the State Prosecutors Council in procedures involving the resolving of motions for recusal of the Republican Public Prosecutor;
- performs other tasks pursuant to the Regulation on Administration in the Public Prosecution.

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

## **Chapter Ten**

### **PUBLIC PROSECUTION STAFF**

#### ***Composition and Number of Staff***

#### **Article 117**

A public prosecution staff consists of prosecutorial assistants, prosecutorial interns, public servants, and employees employed on administrative, technical, accounting, IT and other supporting tasks that are of

relevance to the public prosecution.

The number of staff in a public prosecution shall be determined by the public prosecutor, in the act on internal organisation and job classification, with the approval of the Minister responsible for the judiciary.

The standards for determination of the number of staff members in a public prosecution are determined by the Minister responsible for the judiciary.

### ***Secretary***

#### **Article 118**

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

A person meeting the requirements for appointment as a deputy appellate public prosecutor may be appointed Secretary in the Republican Public Prosecution.

The Secretary of the Republican Public Prosecution has the status of an appointed public official.

A public prosecution may have a secretary who assists the public prosecutor in the performance of prosecutorial administration tasks.

A public prosecutor assigns a secretary of the public prosecution.

### ***Prosecutorial Assistant***

#### **Article 119**

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

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

### ***Prosecutorial Assistant Grades***

#### **Article 120**

Prosecutor's assistants may attain the following grades: prosecutorial associate, senior prosecutorial associate, advisor, and senior advisor.

The grade of prosecutorial associate may be attained by a person who has passed the Juridical Examination and the grade of senior prosecutorial associate by a person with a minimum of two years' experience in the legal profession after passing the Juridical Examination.

The grade of advisor in a public prosecution may be attained by a person meeting the requirement for a deputy higher public prosecutor. The grade of advisor exists in the Republican Public Prosecution and the public prosecutions with special jurisdiction.

A grade entitled senior advisor exists in the Republican Public Prosecution and is attained by a decision of the Collegium of the Republican Public Prosecution. It can be attained by a person with the title of advisor.

### ***Performance Evaluation of Prosecutorial Assistants***

#### **Article 121**

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

The rules on the evaluation of judicial assistants are accordingly applied to the evaluation of prosecutorial assistants.

## ***Prosecution Trainee***

### **Article 122**

A Law School graduate meeting the general requirements for employment in public authorities may be employed as a prosecutorial trainee.

A prosecutorial trainee may be employed in a basic and higher public prosecution.

Candidates graduating from Law School with a high grade average shall have an advantage in employment.

In employing prosecutorial trainees, particular attention shall be paid to the national structure of citizens, appropriate representation of national minorities, as well as knowledge of professional legal terminology in national minority languages officially used in courts.

## ***Employment of a Prosecution Trainee***

### **Article 123**

A p prosecutorial trainee shall be employed for a period of three years.

A prosecutorial trainee who passes the Juridicial Examination "cum laudae" shall have advantage for permanent employment with the grade of prosecutorial associate.

## ***Volunteering***

### **Article 124**

A person with a law degree may be accepted for training in a public prosecution, without concluding an employment contract, in order to gain experience at work and fulfil the requirements for sitting for the Juridicial Examination (volunteer).

## ***Training***

### **Article 125**

The training programme for prosecutorial trainees and prosecutorial assistants shall be established by the State Prosecutors Council.

A prosecutorial assistant and prosecutorial trainee can be assigned, for training purposes, to another public prosecution, public authority, or local self-government authority.

## ***Other Rules on Staff in the Public Prosecution***

### **Article 126**

Staff in a public prosecution shall perform their duties conscientiously and impartially, and shall maintain the dignity of the public prosecution.

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

## **Chapter Eleven**

### **FUNDS FOR THE WORK OF PUBLIC PROSECUTOR'S OFFICES**

#### **Article 127**

Funds for the work of public prosecutions are provided in the budget of the Republic of Serbia.

The funds, by their extent and time of payment, shall at all times reflect the autonomy and proper work of public prosecutions.

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.

## **Chapter Twelve**

### **TRANSITIONAL AND FINAL PROVISIONS**

#### **1. TRANSITIONAL PROVISIONS**

#### **Article 128**

Public prosecutors and deputy public prosecutors shall continue to perform their offices in public prosecutions to which they were elected or assigned in accordance with the Law on Public Prosecutions (*Official Gazette of the Republic of Serbia*, Nos. 63/01, 42/02, 39/03, 44/04, 51/04, 61/05, 46/06 and 106/06) and the Law on Organisation and Jurisdiction of State Bodies in War Crimes Proceedings (*Official Gazette of the Republic of Serbia*, Nos. 67/03, 135/04, 61/05 and 101/07) until 31<sup>st</sup> December, 2008.

#### ***Election of Deputy Public Prosecutors***

#### **Article 129**

The decision regarding the number of deputy public prosecutors shall be issued by the State Prosecutors Council, within a period of 30 days from the day of election of the first composition of the State Prosecutors Council, with previously obtained consent of the Minister responsible for the judiciary.

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

Deputy public prosecutors elected in accordance with this Law shall assume office on 1<sup>st</sup> January 2010.

Election to office of public prosecutor or deputy public prosecutor shall be considered as a first election to a prosecutorial function, in accordance with laws previously in effect.

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

#### **Article 130**

The office of public prosecutors and deputy public prosecutors who were not elected in accordance with this Law shall be terminated on 31<sup>st</sup> December 2009.

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

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

### ***Election of Public Prosecutors***

#### **Article 131**

The election of the Republican Public Prosecutor shall be conducted within a period of 90 days from the effective date of this Law, and election of other public prosecutors within a period of six months from the effective date of this Law.

Public prosecutors referred to in paragraph 1 of this Article, elected in accordance with this Law, shall take office on 1<sup>st</sup> January 2010.

### ***Delegation of Cases***

#### **Article 132**

The cases in which public prosecutors act on 31<sup>st</sup> December 2009 in accordance with the Law on Public Prosecution (*Official Gazette of the Republic of Serbia*, Nos. 63/01, 42/02, 39/03, 44/04, 51/04, 61/05, 46/06 and 106/06) and Law on Seats and Territories of Courts and Public Prosecutions (*Official Gazette of the Republic of Serbia*, Nos. 63/01 and 42/02) and which are not concluded, shall be delegated to public prosecutors within whose competence they enter, pursuant to this Law and the law governing the seats and territories of public prosecutions.

The cases within the competence of the Special Department for the Suppression of Organised Crime, formed at the District Public Prosecution in Belgrade, in accordance with the Law on Organisation and Competences of State Authorities in Combating Organised Crime (*Official Gazette of the Republic of Serbia*, Nos. 42/02, 27/03, 39/03, 67/03, 29/04, 58/04, 45/05 and 61/05) by 31<sup>st</sup> December 2009 shall be delegated to the Public Prosecution for Organised Crime which shall commence its activities on 1<sup>st</sup> January 2010.

### ***Temporary Acts on Internal Organisation and Systematization of Positions at the Republican Public Prosecution, the Appellate Public Prosecutors Offices, and the Office of Public Prosecutors for Organised Crime***

#### **Article 133**

The Minister responsible for the judiciary shall provide temporary acts on internal organisation and systematization of positions at the Republican Public Prosecution, the appellate public prosecutions, and the Office of Public Prosecutors for Organised Crime.

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

### ***Taking Over of Resources, Equipment, Archives, and Employees***

#### **Article 134**

Resources needed for the work of the Republican Public Prosecution, as well as the equipment, archive, and employees, shall be taken over by the Republican Public Prosecution and appellate public prosecutions, in accordance with jurisdiction as provided in this Law.

A Commission established by the Minister responsible for the judiciary shall conduct the distribution of the resources, equipment and the archive referred to in paragraph 1 of this Article.

A Commission established by the State Prosecutors Council shall decide on the assignment of employees of



the Republican Public Prosecution to the appellate public prosecutors offices, in accordance with the temporary act on internal organisation and job classification.

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

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

### ***Rights of Employees of the Republican Public Prosecution***

#### **Article 135**

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

### ***Competence of the State Prosecutors Council with Regard to Resources Needed for the Work of Public Prosecutions***

#### **Article 136**

Competences of the State Prosecutors Council as stipulated in Article 127 of this Law shall be performed by the Ministry responsible for the judiciary until 1st September 2011.

### ***Subordinate Legislation***

#### **Article 137**

Subordinate legislation, the adoption of which is envisaged by this Law, shall be passed within a period of six months from the day of coming into effect of this Law, with the exception of Article 82 paragraph 1 of this Law, which shall be passed within a period of 60 days from the day of establishment of the State Prosecutors Council.

Until the subordinate legislation from paragraph 1 of this Article is passed, the provisions of regulations passed on the basis of the Law on Public Prosecutions (*Official Gazette of the Republic of Serbia* Nos. 63/01, 42/02, 39/03, 44/04, 51/04, 61/05, 46/06 and 106/06) shall apply, unless contrary to provisions of this Law.

## **2. FINAL PROVISIONS**

### ***Termination of Validity of Laws***

#### **Article 138**

On the effective date of this Law, the Law on the Public Prosecution (*Official Gazette of the Republic of Serbia*, Nos. 63/01, 42/02, 39/03, 44/04, 51/04, 61/05, 46/06 and 106/06) shall cease to be valid.

### ***Termination of Validity of Other Laws***

#### **Article 139**

On the effective date of this Law, provisions of the Law on Salaries in State Authorities and Public Services (*Official Gazette of the Republic of Serbia* Nos. 34/01, 62/06, and 63/06), in the part which applies to the calculation of salaries, additional funds, and compensation of public prosecutors and deputy public prosecutors, shall cease to be valid.

## ***Coming Into Force of the Law and the Start of Application***

### **Article 140**

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

### ***Independent Articles of the Law on amendments and supplements to the Law on Public Prosecution***

***(“Official Gazette RS” no. 104/2009)***

### **Article 4**

This Law shall enter into force on eighth day following its publication in the Official Gazette of the Republic of Serbia and shall be applied as of 1 January 2010.

### ***Independent Articles of the Law on amendments and supplements to the Law on Public Prosecution***

***(“Official Gazette RS” no. 101/2010)***

### **Article 6**

The permanent composition of the State Prosecutors Council shall review the decisions of the first composition of the State Prosecutors Council on the termination of office of public prosecutors and deputy public prosecutors referred to in Article 130 paragraph 1 of the Law on the Public Prosecution (Official Gazette of the RS, Nos. 116/08 and 104/09), in accordance with the criteria and standards for evaluating professional qualifications, specific knowledge and worthiness which shall be issued by the permanent composition of the State Prosecutors Council.

The proceedings instituted by appeals and constitutional complaints submitted by the public prosecutors and deputy public prosecutors referred to in paragraph 1 of this Article to the Constitutional Court shall be discontinued by the coming into force of this Law and the cases shall be referred to the State Prosecutors Council.

The appeals and constitutional complaints referred to in paragraph 2 of this Article shall be deemed objections to decisions of the State Prosecutors Council.

The public prosecutors and deputy public prosecutors referred to in paragraph 1 of this Article who have not submitted appeals or constitutional complaints to the Constitutional Court may submit objections to the decisions referred to in paragraph 1 of this Article within 30 of the effective date of this Law. The permanent composition of the State Prosecutors Council shall decided on these objections.

In the procedures instituted by objections referred to in paragraphs 3 and 4 of this Article, public prosecutors and deputy public prosecutors referred to in paragraph 1 of this Article are entitled to be informed about the case, attending documentation and course of the procedure, and to state their assertions orally to the permanent composition of the State Prosecutors Council. The decision of the State Prosecutors Council issued in connection with an objection must be substantiated, in accordance with Article 17 paragraph 2 of the Law on the State Prosecutors Council.

The public prosecutors and deputy public prosecutors referred to in paragraph 1 of this Article may submit appeals to the Constitutional Court against decisions of the permanent composition of the State Prosecutors Council issued in connections with objections referred to in paragraphs 3 and 4 of this Article confirming the decision of the first composition of the State Prosecutors Council on termination of office, within 30 days of the date of delivery of the decision.

### **Article 7**

The permanent composition of the State Prosecutors Council shall review the decisions of the first composition of the State Prosecutors Council on the election of deputy public prosecutors to permanent tenure, and the decisions on the nomination for the election of public prosecutors and deputy public prosecutors being

elected for the first time, for the purpose of determining the existence of reasons leading to doubt the professional qualifications, specific knowledge and worthiness of individual public prosecutors and deputy public prosecutors, or the existence of reasons indicating breaches of procedure in rendering decisions on the election of individual deputy public prosecutors or nominations for the election of individual public prosecutors and deputy public prosecutors.

Decisions of the permanent composition of the State Prosecutors Council determining the existence of the reasons referred to in paragraph 1 of this Article represent grounds for initiating a procedure for dismissal.

The procedure for dismissal referred to in paragraph 2 of this Article shall be initiated by the permanent composition of the State Prosecutors Council ex officio.

The first evaluation of the deputy public prosecutors elected for the first time shall be conducted by the permanent composition of the State Prosecutors Council.

#### **Article 8**

The criteria and standards referred to in Article 6 paragraph 1 of this Law shall be determined by the permanent composition of the State Prosecutors Council within 15 days of the election of the members of the permanent composition of the State Prosecutors Council from the ranks of public prosecutors and deputy public prosecutors.

#### **Article 9**

This Law shall enter into force on the next day following its publication in the Official Gazette of the Republic of Serbia.