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FOURTH EVALUATION ROUND

Corruption prevention in respect of members of parliament, judges and prosecutors

EVALUATION REPORT

SERBIA

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GRECO Secretariat
Council of Europe
F-67075 Strasbourg Cedex
☎ +33 3 88 41 20 00

www.coe.int/greco

Directorate General I
Human Rights and Rule of Law
Information Society and Action against Crime Directorate

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EXECUTIVE SUMMARY

1. Serbia has come a long way in creating a regulatory and institutional framework for fighting corruption, but much remains to be done to have the system work properly and to close the noticeable gap between the law and practice. Perceptions of corruption have been decreasing over the years but remain quite high.

2. Judicial reforms have been underway since 2000 when an entirely new judicial system was to be established in the wake of the country's democratic changes. The most recent reform launched in 2009 failed to achieve the goal of improving efficiency by changing the old court structure and redistributing workload between the overburdened urban and underused rural courts. In addition, it led to the unlawful *de facto* dismissal of a large number of judges and prosecutors who – following an appeal to the Constitutional Court – have in the meantime been reinstated. This process contributed to the lack of trust of both professionals and the larger public in the independence of the judiciary and prosecution service and in their self-governing bodies, the High Judicial Council and the State Prosecutorial Council. At present, it would appear that these branches of power are exposed to undue outside influence and pressure exerted by politicians and the media. Another reason for concern with respect to the balance of state powers is the currently low profile of the National Assembly – the national parliament – which does not exercise proactive and meaningful control functions but mainly operates upon governmental initiatives which are, to a large extent, processed through urgent adoption procedures.

3. The present report addresses those overarching concerns through several specific recommendations. In particular, it is recommended that measures be taken to further improve the transparency of the parliamentary process; to strengthen the independence and role of the High Judicial Council and the State Prosecutorial Council; to amend the procedures for the recruitment and promotion of judges, court presidents and prosecutors, in particular by excluding the National Assembly from this process and ensuring merit-based recruitment; and to continue reforming the system of appraisal of judges' and prosecutors' performance, *inter alia*, by introducing more qualitative evaluation criteria.

4. Moreover, much more could to be done to raise awareness among MPs, judges and prosecutors of questions of ethics and integrity and to provide them with adequate guidance on such matters. It is therefore recommended that a Code of Conduct for MPs, which is currently under preparation, be adopted, made easily accessible to the public and effectively implemented in practice; and, for all three categories of persons under review, that appropriate guidance on ethical questions be provided, in particular, by way of complementary written instructions, dedicated training of a practice-oriented nature and confidential counselling.

5. Regarding specific subject matters relevant to the prevention of corruption such as the regulation of conflicts of interest, incompatibilities and secondary activities, the acceptance of gifts and submission of asset declarations, a quite comprehensive legal framework is provided by the Law on the Anti-Corruption Agency which is applicable to all "officials" including MPs, judges and prosecutors. Implementation of this law is entrusted to the Anti-Corruption Agency which plays a key role in the prevention of corruption in Serbia. The Agency has recently prepared a draft law meant to replace this law in order to further strengthen its independence, competences and capacities and to address a number of specific shortcomings in the rules on the above-mentioned subject matters which currently hamper the effective application of the law. The present report supports many of the proposals included in the draft law, which is currently being processed by a working group established by the Minister of Justice, and includes some complementary recommendations. *Inter alia*, it draws the conclusion that more attention needs to be devoted, in law and in practice, to the avoidance and management of conflicts of interest. In particular, with respect to MPs a tailor-made concept of conflicts of interest is needed which takes into account the nature of parliamentary work, as well as an appropriate and enforceable mechanism for *ad hoc* declarations of interest by MPs.

6. To conclude, it is noteworthy that the government, which is decided to gear the country towards EU accession and to pursue a policy of zero tolerance of corruption, is engaged in an ambitious reform process. A comprehensive framework is provided by the National Anti-Corruption Strategy and the National Judicial Reform Strategy with the corresponding Action Plans, which address many of the most urgent challenges. Implementation of both strategies is currently underway and, among a number of measures initiated, a Commission has been set up to deal with the required amendments to the Constitution. That said, it is crucial that the necessary reforms be carried through in a timely manner, that they gain the support of a large spectrum of political forces and of civil society and that they bring about tangible and sustainable results. GRECO expects that the present report with its recommendations and further suggestions will contribute to mastering this important challenge.

I. INTRODUCTION AND METHODOLOGY

7. Serbia joined GRECO in 2003. Since its accession, Serbia has been subject to evaluation in the framework of GRECO's Joint First and Second (in June 2006) and Third (in October 2010) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage (www.coe.int/greco).

8. GRECO's current Fourth Evaluation Round, launched on 1 January 2012, deals with "Corruption prevention in respect of members of parliament, judges and prosecutors". By choosing this topic, GRECO is breaking new ground and is underlining the multidisciplinary nature of its remit. At the same time, this theme has clear links with GRECO's previous work, notably its First Evaluation Round, which placed strong emphasis on the independence of the judiciary, the Second Evaluation Round, which examined, in particular, the public administration, and the Third Evaluation Round, which focused on the incriminations of corruption (including in respect of parliamentarians, judges and prosecutors) and corruption prevention in the context of political financing.

9. Within the Fourth Evaluation Round, the same priority issues are addressed in respect of all persons/functions under review, namely:

- ethical principles, rules of conduct and conflicts of interest;
- prohibition or restriction of certain activities;
- declaration of assets, income, liabilities and interests;
- enforcement of the applicable rules;
- awareness.

10. As regards parliamentary assemblies, the evaluation focuses on members of national parliaments, including all chambers of parliament and regardless of whether the members of parliament are appointed or elected. Concerning the judiciary and other actors in the pre-judicial and judicial process, the evaluation focuses on prosecutors and on judges, both professional and lay judges, regardless of the type of court in which they sit, who are subject to national laws and regulations. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (Greco Eval IV (2014) 10E) by Serbia, as well as other data, including information received from civil society. In addition, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to Serbia from 24-28 November 2014. The GET was composed of Mr Jean-Christophe GEISER, *Conseiller scientifique, Unité Projets et méthode législatifs, Office fédéral de la justice* (Switzerland), Mrs Diāna KURPNIECE, former Head of the Corruption Prevention Division of the Corruption and Prevention and Combating Bureau (Latvia), Mr José Manuel IGREJA Martins MATOS, Court of Appeal Judge, Vice-President of the International Association of Judges and the Ibero-American Group of the International Association of Judges, Judge in courts in criminal, civil and labour matters (Portugal) and Mr Elnur MUSAYEV, Senior Prosecutor, Anticorruption Department, General Prosecutor's Office (Azerbaijan). The GET was supported by Mr Michael JANSSEN from GRECO's Secretariat.

11. The GET held interviews with representatives of the Ministry of Justice, the Anti-Corruption Agency, the Anti-Corruption Council, members of the National Assembly (including national members of GOPAC), political party representatives and officials from administrative services of the National Assembly, a representative of the Constitutional Court and judges from courts of all levels (including the Supreme Court of Cassation, a high court, a basic court and a commercial court), representatives of the High Judicial Council and the Judges' Association of Serbia, prosecutors from the Office of the Public Prosecutor of the Republic and from all levels of prosecution offices, representatives of the State Prosecutorial Council and the Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, the Judicial Academy, non-governmental organisations (Transparency Serbia, "YUCOM", "CRTA" and "Council for monitoring, human rights and fight against corruption – Transparency"), inter- and supranational organisations (the EU

Delegation in Serbia, the OSCE Office in Belgrade, UNDP, USAID–JRGA), as well as media representatives.

12. The main objective of the present report is to evaluate the effectiveness of measures adopted by the authorities of Serbia in order to prevent corruption in respect of members of parliament, judges and prosecutors and to further their integrity in appearance and in reality. The report contains a critical analysis of the situation in the country, reflecting on the efforts made by the actors concerned and the results achieved, as well as identifying possible shortcomings and making recommendations for further improvement. In keeping with the practice of GRECO, the recommendations are addressed to the authorities of Serbia, which are to determine the relevant institutions/bodies responsible for taking the requisite action. Within 18 months following the adoption of this report, Serbia shall report back on the action taken in response to the recommendations contained herein.

II. CONTEXT

13. The government of Serbia considers corruption one of the country's most serious problems. The Council of Europe concurs; it has noted that the fight against corruption, money-laundering and organised crime remain priorities for its action in Serbia. The fight against corruption has been an important priority on the political agenda in Serbia for a number of years. Many key steps have been undertaken, in part due to the commitments emanating from the EU accession process and in response to the recommendations made by GRECO. In the First, Second and Third Evaluation Rounds, GRECO has addressed altogether 40 recommendations to Serbia and almost all of them have been implemented. However, it would appear that there is a noticeable gap between the law and practice.[1] During the on-site visit, the GET often heard that frequent legal reforms which led to frictions in the legal framework and made the application of the law difficult, contributed to this phenomenon. The GET also notes that according to some of its interlocutors, the fight against corruption is sometimes used as a political instrument and driven by political will to initiate criminal investigations for selected outstanding cases – while in other cases, proper investigations and convictions are wanting. An example that was repeatedly referred to during the on-site visit was the slow processing of 24 dubious privatisation cases involving prominent politicians and business tycoons which have attracted high public attention. Those cases have been pending for many years without leading as yet to any tangible results.

14. According to a 2013 survey by the United Nations Development Programme (UNDP),[2] corruption was the third biggest problem faced by citizens of Serbia, behind unemployment and poverty. While Serbia's scores in Transparency International's yearly corruption perception index (CPI) have steadily improved over more than a decade, they fell slightly again in 2014.[3] Similar trends can be observed with regard to the World Bank governance indicators rule of law and control of corruption.[4] In terms of the focus of the Fourth Evaluation Round, in Serbia respondents to Transparency International's 2013 Global Corruption Barometer[5] saw the judiciary as the most corrupted institution. More precisely, the judiciary was considered by 82% of respondents as corrupt/extremely corrupt (global average: 56%) and the national Parliament, by 69% (global average: 57%). According to the European Commission's 2014 survey on "Trust in Institutions",[6] 63% of the respondents did not trust the judiciary (EU average: 45%) and 58% the Parliament (EU average: 62%).

15. Many interlocutors interviewed by the GET stressed that corruption in Serbia, and in the judiciary in particular, is not as widespread as the international surveys would seem to indicate. Nevertheless, those figures point at a disconcerting lack of public trust in the judiciary as an independent branch of power – which is fuelled by frequent reports about external influence and pressure exerted by politicians and the media;[7] and by complaints

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[1] See e.g. the statements made in Transparency International's National Integrity System Assessment (2011), http://www.transparentnost.org.rs/images/stories/materijali/procenaintegriteta/National%20Integrity%20System%20Assessment%20Serbia%202011.pdf.

[2] "Attitudes of Serbian Citizens Towards Corruption" (2013), see http://www.rs.undp.org/content/dam/serbia/Publications%20and%20reports/English/UNDP_SRB_Corruption%20Benchmarking%20Survey%20December%202013.pdf

[3] In 2014, Serbia was ranked 78th with a score of 41 points out of 100, see http://www.transparency.org/cpi2014/results

[4] See http://info.worldbank.org/governance/wgi/index.aspx#home

[5] See http://www.transparency.org/gcb2013/country//?country=serbia

[6] See http://ec.europa.eu/public_opinion/cf/step1.cfm

[7] See e.g. the Anti-Corruption Council's Second Report on Judicial Reform of 17 April 2014 (pages 5-7) http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028/index/
See also the document "Judiciary in the fight against corruption – key findings of research and recommendations" prepared by Transparency Serbia in co-operation with the Judges' Association of Serbia (pages 28-31 and 34-36) http://transparentnost.org.rs/images/stories/materijali/pravosudje%20u%20borbi%20protiv%20korupcije/Judiciary%20in%20the%20fight%20against%20corruption,%20key%20findings%20of%20research%20and%20recommendations.pdf

about lengthy procedures and the ineffectiveness of the judicial system.[8] The latter has further suffered from the adverse effects of the 2009 judicial reform which led – temporarily – to a significant reduction in the number of judges and prosecutors.[9] On top of that, at the time of the visit, the judiciary was blocked due to a strike by thousands of lawyers dissatisfied with recent reforms – implemented through urgent legislative procedures – which, *inter alia*, awarded public notaries the exclusive right to sign contracts, taking away some key responsibilities and income sources from lawyers.[10] While the present report is not the right place to comment on this highly sensitive and controversial matter, it is clear that this incident further aggravated the difficulties currently encountered by the judiciary in Serbia, as well as the public's negative perception. At the same time, it might also illustrate another fundamental concern which was frequently voiced during the on-site visit, namely the insufficient transparency and participation of the public in the legislative process.[11] The GET was concerned to hear that in the current political system, which is characterised by a very strong government and a weak opposition,[12] the National Assembly – the national Parliament – does not exercise proactive and meaningful control functions but mainly operates upon governmental initiatives which are, to a large extent, processed through urgent procedures of adoption.

16. According to the National Anti-Corruption Strategy for the period 2013-2018 (hereafter NACS), "there is a strong awareness and political will in the Republic of Serbia to make substantial progress in the fight against corruption with due respect of democratic values, the rule of law and protection of fundamental human rights and freedoms."[13] The Strategy and the related Action Plan were designed as a comprehensive programme of action to achieve this goal. Priority areas include the judiciary as well as the crosscutting issue of prevention of corruption. Moreover, a comprehensive National Judicial Reform Strategy for the period 2013-2018 (hereafter NJRS) with a related Action Plan is in place, which aims to increase the quality and efficiency of justice and to reinforce judicial independence and accountability in order to strengthen the rule of law, democracy, legal certainty, improve access to justice and restore citizens' confidence in the judicial system.[14] The EU in its 2014 Progress Report on Serbia states that "considerable challenges remain regarding independence, impartiality, accountability, efficiency and access to justice, including primarily through the revision of the Constitution."[15] In this connection, it is to be noted that implementation of both the NACS and the NJRS is underway and that, among a number of measures initiated, a Commission has been set up to deal with the relevant amendments to the Constitution.

17. A key role has been given to the Anti-Corruption Agency (ACA),[16] which was established by virtue of the 2008 Law on the Anti-Corruption Agency (LACA) in order to eliminate the causes of corruption and thus create conditions for increasing the integrity of

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[8] According to the recent EU-funded public survey "Perception of the Contents of Chapters 23 and 24 of the Negotiations on the Accession of Serbia to the EU", 84% of the population think that the judiciary is inefficient, 83% of the population believe that the judiciary is dependent on political and other interest groups, and 82% believe that the judiciary is biased. See http://www.mc.rs/percepcija-sadrzaja-poglavlja-23-i-24-pregovora-za.4.html?eventId=9334 (quoted in the Anti-Corruption Council's Second Report on Judicial Reform of 17 April 2014, page 9).
[9] For more details, see below under "Corruption prevention in respect of judges" (paragraph 94).
[10] The strike lasted from September 2014 to January 2015.
[11] This concern is also expressed in different national and international analyses, see e.g. Transparency International's National Integrity System Assessment (2011) (pages 35/36 and 38-40), www.transparentnost.org.rs/images/stories/materijali/procenaintegriteta/National%20Integrity%20System%20Assessment%20Serbia%202011.pdf; see also the Anti-Corruption Council's most recent report on judicial reform of 4 December 2014 (pages 1-3), http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028/index/. – These problems are further described and discussed under "Corruption prevention in respect of members of parliament", see paragraphs 30 to 33 below.
[12] The government coalition which took office in April 2014 is based on an unprecedented wide majority of close to 80% of seats in the National Assembly.
[13] See www.mpravde.gov.rs/en/vest/3369/the-anti-corruption-strategy-and-the-action-plan.php (page 2).
[14] www.mpravde.gov.rs/en/vest/3394/the-national-judicial-reform-strategy-for-the-period-2013-2018-.php
[15] See http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf (page 11).
[16] http://www.acas.rs

public authorities and public officials, with the aim of strengthening citizens' trust in institutions and their representatives. The ACA became operational in January 2010. It has the status of an independent, autonomous state authority accountable to the National Assembly. The nine members of the ACA Board are elected by the National Assembly based on proposals by nine different nominators.[17] The ACA is entrusted with preventive, control and oversight competences. It is competent, *inter alia*, to handle issues related to conflicts of interest of officials, to control officials' asset and income declarations, to control the financing of political parties and election campaigns and oversee the implementation of the strategic anti-corruption framework, in particular, the NACS and the integrity plans for the public sector. The ACA is represented by its Director who has a broad range of responsibilities.[18]

18. The LACA also provides the legal framework for the prevention and resolution of conflicts of interest of all officials including MPs, judges and prosecutors. Given that the concept of "officials" in the meaning of the LACA only covers certain categories of persons employed in the public sector, the NACS foresees the enactment of a new law on prevention of conflicts of interest of all employees and officials in the public sector. In July 2014, the ACA, based on its prior experience in the implementation of the LACA, submitted to the Ministry of Justice and to the National Assembly a reasoned draft law named "Model Law on the Anti-Corruption Agency",[19] the objective of which is to clearly prescribe stricter rules on public officials' accountability, to make the ACA's work more efficient and to strengthen its independence. This initiative aims, at the same time, at harmonising the legal framework with the NACS. The draft law is currently being processed by a working group established in January 2015 by the Minister of Justice.[20]

19. Another important part in the anti-corruption arena is played by the Anti-Corruption Council established in 2001 as an expert, government advisory body.[21] Its six members are appointed by the government. It overviews anti-corruption activities, proposes measures to be taken for an efficient fight against corruption, follows their implementation and proposes initiatives for adoption of regulation, programmes and other acts and measures in this field. The Anti-Corruption Council also receives complaints of citizens, but it deals with individual cases only if they point to a broader phenomenon, which emphasises the sources of large-scale corruption in business and politics. In recent years, the Anti-Corruption Council has submitted *inter alia* several critical reports on the judicial reform[22] to the government; in the most recent one, it expresses regret that the measures proposed have not been taken for the time being.

20. To conclude, the current NACS and NJRS as well as recent assessments by relevant Council of Europe bodies and other international organisations already contain a wealth of valuable recommendations and lines of action for the prevention of corruption in Serbia. The present report with its recommendations and further suggestions focusses on a selected number of challenges considered as key for improving corruption prevention with respect to MPs, judges and prosecutors.

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[17] Namely, the Administrative Committee of the National Assembly; the president of the Republic; the government; the Supreme Court of Cassation; the State Audit Institution; the Protector of Citizens and Commissioner for Information of Public Importance; the Social and Economic Council; the Bar Association of Serbia; the Associations of Journalists of Serbia.

[18] More precisely, the Director of the ACA manages its operation, organises and ensures lawful and efficient discharge of its tasks, issues decisions on the violation of the LACA and pronounces measures, gives opinions and instructions for the implementation of the LACA, prepares the annual report on the operation of the ACA, drafts the proposal of budget funds for its operation, passes general and individual acts, decides on the rights, duties and responsibilities of the ACA staff, enforces decisions of the Board and performs other tasks determined by law.

[19] Prior to this, in March 2013, the ACA had submitted to the Ministry of Justice initial proposals for amendments to the LACA.

[20] The director of the ACA is the president of the working group, which includes further representatives of the ACA, the Ministry of Justice, the Anti-Corruption Council, the judiciary and prosecution service, NGOs and academics. Its meetings are open to representatives of international organisations.

[21] http://www.antikorupcija-savet.gov.rs/en-GB/content/cid1015/founding-and-jurisdiction

[22] See http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028/index/

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

Overview of the parliamentary system

21. Serbia, officially the Republic of Serbia, is a multi-party parliamentary republic. Under the 2006 Constitution,[23] the National Assembly (*Narodna skupština*) is a unicameral assembly tasked *inter alia* with enacting laws, approving the budget, electing the government, matters of national security, and ratifying international treaties and agreements. The 250 members of the National Assembly (MPs) are elected for a four-year term in direct elections by secret vote in a single nationwide constituency from the lists of political parties, party coalitions and groups of citizens, through a system of proportional representation. They represent, foremost, the national public interest. Parliamentary elections took place in March 2014. Eighty-five women gained seats in the National Assembly (34%).

22. The mandate of an MP terminates if s/he resigns, is sentenced by final judgment to at least six months' unconditional imprisonment (there have been no such cases in recent years), is denied his/her capacity by a final court decision, undertakes a job or functions which are incompatible with the office of MP (there have been no such cases in recent years), loses his/her citizenship, loses his/her residence on the territory of Serbia, dies, or when the mandate of at least two thirds of the members of the subsequent Assembly is confirmed.

23. In accordance with the 2010 Law on the National Assembly[24] (hereafter LNA), the Assembly establishes standing working bodies (committees) and it may establish ad hoc working bodies (inquiry committees and commissions). The Assembly elects the committee members from lists of candidates proposed by the parliamentary groups, proportional to the number of MPs of each parliamentary group in relation to the total number of MPs at the Assembly. Committees decide by a majority vote of all members present at a sitting attended by the majority of the members of the committee, unless the law prescribes a special majority. Experts, scholars and professionals may be invited to participate in the work of these bodies. The GET was informed that in this way, NGO representatives sometimes participate in committee meetings.

24. The National Assembly elects a Speaker who represents the Assembly, convenes and chairs its sessions, conducts other activities in accordance with the LNA and the 2010 Rules of Procedure[25] and ensures the application of the latter. S/he is assisted by the Collegium – which consists of the Speaker, the Deputy Speakers and the Heads of parliamentary party groups – and by the Secretary General and his/her deputies, who are appointed by the Assembly.

Transparency of the legislative process

25. Each MP, the government, assemblies of autonomous provinces or groups of at least 30,000 voters have the right to propose laws, other regulations and general acts.[26] Legislative provisions are in place to ensure transparency of the legislative process; this matter is regulated in detail, in particular, in section 11 LNA and Rules 255-261 of the Rules of Procedure.

[23] English version: www.parlament.rs/upload/documents/Constitution_%20of_Serbia_pdf.pdf
[24] See sections 27-29 LNA. English version: http://www.parlament.rs/upload/documents/The%20Law%20on%20the%20National%20Assembly.pdf
[25] English version: www.parlament.rs/upload/documents/06.06.2014.%20ENG%20Rules%20of%20Procedure%20edit%202014.pdf
[26] The Ombudsman and the National Bank of Serbia also have the right to propose laws falling within their competence.

26. Sittings of the National Assembly and its committees are in principle public and are broadcast live on the website of the National Assembly.[27] Sittings of the Assembly are broadcast on national television as well. Sittings of the Assembly may be closed to the public in cases specified by law, on the basis of a reasoned proposal by the government, a committee or at least 20 MPs. The authorities indicate that in practice, sessions of the National Assembly are rarely closed to the public. The last such session was held in 2011, when the report on the state of preparations for the defence of Serbia, which was classified secret, was discussed. Sittings of working bodies may be closed to the public on the basis of a reasoned proposal by at least one third of the total number of members of the working body. The authorities indicate that such cases occur – rarely – in practice when confidential information is considered, namely with respect to sessions held by the Security Services Control Committee, the European Integration Committee and other committees dealing with questions relating to negotiations on the accession of Serbia to the EU.

27. The National Assembly has to publish on its website, *inter alia*, agendas and minutes of the sittings of the Assembly and the working bodies, bills and proposals for other acts submitted to the Assembly as well as amendments and computer printouts of the vote taken. The authorities indicate that for each session it is stated who attended the session, who chaired the session, what was discussed, which acts were brought, planned future activities, conclusions drawn, etc.

28. Committees may organise public hearings for the purpose of obtaining information, or professional opinions on proposed acts which are in the parliamentary procedure, clarification of certain provisions from an existing or proposed act, clarification of issues of importance for preparing the proposals of acts or other issues within the competences of the committee, as well as for the purpose of monitoring the implementation and application of legislation, i.e. realisation of the oversight function of the National Assembly.[28] Decisions to hold public hearings, which may be proposed by any committee member, are made by the committee. The chair of the committee is to invite committee members, MPs and other persons whose presence is of importance for the public hearing topics, and s/he has to draft a memo and communicate information concerning the public hearing[29] to the Speaker of the National Assembly, the committee members, and to the participants in the public hearing. The authorities indicate that brief information on public hearings is published on the website of the National Assembly, namely, who participated in the debate, in which organisation the hearing was held, if someone supported the public hearing organised, what was discussed and the recommendations and positions taken.

29. In addition, in the case of governmental bills, the proponent of draft legislation is under an obligation to conduct a public debate when preparing a law that can change significantly the way in which a matter has been addressed legally or that governs a matter of particular public interest.[30] The public debate lasts at least 20 days. The deadline for submission of initiatives, proposals, suggestions and comments in written or electronic form is at least 15 days from the day of announcement of the public debate on the proponent's website and e-government portal. The draft act, its rationale and annexes, information on its authors and the procedure are disclosed together with the announcement. The proponent is obliged to publish a report on the public debate conducted on his/her website and the e-government portal within 15 days of the date when the public debate ended.

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[27] http://www.parlament.rs – Live streaming of plenary and committee sessions was established in July 2013 and an android application was set up in November 2013.
[28] See Rules 83 and 84 of the Rules of Procedure of the National Assembly.
[29] Including the names of the participants in the public hearing and a short summary of statements, positions and proposals given during the public hearing. Committee members and participants in the public hearing may submit written comments on the information relating to public hearings to the committee chair.
[30] For more details, see Rule 41 of the Rules of Procedure of the Government of Serbia.

30. The GET acknowledges the measures taken to provide easy access to information, *inter alia*, via the parliamentary website and to involve the public in the law-making process. Nevertheless, there is still much room for improvement, as is also recognised in the NACS which foresees the adoption and implementation of "an effective legal framework which shall regulate lobbying and participation of the public in the decision-making procedure". In June 2013, the National Assembly passed a Resolution which specifies that one of the objectives of legislative policy should be providing complete transparency and openness during the legislative process, but no concrete action has been taken to date.[31] During the on-site visit, the GET's attention was repeatedly drawn to several specific concerns regarding the degree of transparency of the legislative process.[32]

31. Firstly, while bills are published on the internet as soon as they are submitted, this is sometimes 24 hours before the sitting of the National Assembly, in particular when the proponent of the bill – most often the government – asks for urgent procedures of adoption.[33] The GET was concerned to hear that in recent years, the large majority of bills have been processed through the urgent procedure.[34] This leaves sometimes only a few days for the drafting of amendments. The GET shares the concerns expressed by various interlocutors that this common practice – which was designed as an exception to the standard procedure[35] – might entail a disproportionate weakening of publicity and transparency. It is therefore crucial that the use of the urgent procedure be reviewed to ascertain that it is applied as an exception and not as a rule.[36] More generally, it needs to be ensured that in any case, bills are made available to MPs and the larger public at an early stage, so as to allow for proper scrutiny before they are put to plenary debate and vote.

32. Furthermore, the GET was informed that contrary to the Rules of Procedure, amendments to bills are not made publicly available on the internet. Several interlocutors of the GET also criticised the fact that government and committee opinions on amendments are not always published, that committee agendas are not always published before their sittings and that written minutes of committee sittings only contain very scarce information; e.g. they do not indicate which amendments to bills were adopted. The GET clearly supports the call for increasing transparency with respect to legislative amendments and committee work and for taking measures to ensure respect of the pertinent rules.[37]

[31] That said, the authorities indicate that in February 2015, at its 83rd session, the Committee on constitutional and legislative issues made an analysis of the existing legal framework with recommendations for improving public participation in the law making procedure – and submitted it to the Ministry of Justice. Furthermore, the National Assembly Service developed a campaign programme and submitted it to the ACA and to the Ministry of Justice.

[32] Cf. also the statements made in this respect in Transparency International's National Integrity System Assessment (2011) (pages 12 and 38-40), see http://www.transparentnost.org.rs/images/stories/materijali/procenaintegriteta/National%20Integrity%20System%20Assessment%20Serbia%202011.pdf

[33] The main specificity of the urgent procedure is laid down in Rule 168 of the Rules of Procedure, according to which a bill may be put on the agenda of a parliamentary sitting if it has been submitted at least 24 hours before the beginning of the sitting (under the regular procedure, the time limit is 15 days). Its use may thus affect transparency of the law-making process before a draft enters the National Assembly.

[34] The GET was pleased to hear, shortly before the adoption of the present report, that recently the use of the urgent procedure has decreased significantly.

[35] See Rule 167 of the Rules of Procedure. The urgent procedure can be applied, *inter alia*, in cases where the application of the standard procedure could cause detrimental consequences for human lives and health, the country's security and the work of institutions and organisations, as well as for the purpose of fulfilment of international obligations and harmonisation of legislation with the EU *Acquis.*

[36] This view is shared, *inter alia*, by the Anti-Corruption Council which in its most recent report on judicial reform of 4 December 2014 stresses that the recourse to the urgent procedure has been particularly widespread under the current composition of the National Assembly; during the period April-June 2014, out of 30 adopted laws only one was not adopted under emergency procedure. – See http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028/index/ (page 2).

[37] The authorities state in this connection that while there is no strict obligation to release the above-mentioned information (since it is dependent on the available technical capabilities), by virtue of Rule 260 of the Rules of Procedure such documents are, as a rule, published on the parliamentary website, and that the National

33. In addition, some of those the GET spoke to pointed to deficiencies in the rules on public debates and public hearings and of their implementation. In particular, they voiced concerns about the fact that public debates on bills are obligatory only in case of governmental bills. It was proposed to extend the pertinent rules to bills proposed by individual MPs or by groups of citizens, or to take other appropriate measures to increase transparency of such legislative initiatives, such as obligatory public hearings in certain cases – which are currently only organised by committees and left to their discretion. The GET's interlocutors also pointed out that the criteria for obligatory public debates set by the Rules of Procedure – "significant" changes, "matter of particular public interest" – lacked clarity and that even in case of obviously significant legal changes the rules on public debates are in practice frequently ignored (i.e. with no such debate being held at all or no information on its outcome being published).[38] The GET shares their view that clearer – and enforceable – rules are required to make this instrument work satisfactorily in practice. In view of the preceding paragraphs, **GRECO recommends that the transparency of the legislative process be further improved (i) by ensuring that draft legislation, amendments to such drafts and the agendas and outcome of committee sittings are disclosed in a timely manner, that adequate timeframes are in place for submitting amendments and that the urgent procedure is applied as an exception and not as a rule and (ii) by further developing the rules on public debates and public hearings and ensuring their implementation in practice.** In addition, it needs to be ensured that an adequate framework is in place for regulating MPs' contacts with lobbyists and other third parties who seek to influence the parliamentary process. A recommendation to that effect has been made further below.[39]

Remuneration and economic benefits

34. MPs have the right to be permanently employed in the National Assembly.[40] There is no legal obligation on MPs to work for a specified amount of time. MPs' salaries are based on coefficients multiplying a salary base which currently amounts to 7 941.60 RSD/approximately 69 EUR.[41] The coefficients are 8.60 for MPs, 8.80 for deputy heads of permanent working bodies of the National Assembly and of parliamentary groups, 9.40 for heads of permanent working bodies and of parliamentary groups, 10.50 for Deputy Speakers of the National Assembly and 12.00 for the Speaker.[42] On this basis, current monthly net salaries range from approximately 593 EUR (for a normal MP) to 828 EUR (for the Speaker).[43] MPs who are not in a permanent employment relationship in the National Assembly have the right to compensation for the difference between the MP salary and the salary they obtain via their employment or pension; similarly, compensation (up to 80% of the MP salary) is provided to MPs who earn their salary from an independent trade or agriculture.[44]

35. All MPs are entitled to an allowance in the form of a monthly flat-rate amount for performing the MP duties in an electoral unit, to the amount of 40% of the salary of an MP in a permanent employment relationship.[45] The Administrative Committee may approve a monthly remuneration to the amount of 35 000 RSD/approximately 304 EUR for the

Assembly is making its best efforts to release as many documents and information as possible and to make them available to the broader public.

[38] The Anti-Corruption Council in its above-mentioned report refers, as an example, to the 2008 laws on judicial reform which had not been made subject to a public debate at all.

[39] See below under "Misuse of confidential information and third party contacts" (paragraph 66).

[40] Section 4 of the Law on the Income of MPs in the National Assembly of the Republic of Serbia ("RS Official Gazette" no. 7/91, 22/91,48/91, 68/91, 44/98 и 34/01).

[41] Until recently, the salary base had the net value of 8 824 RSD. However, by Decision of the Committee on Administrative, Budgetary, Mandate and Immunity Issues of 5 November 2014 the salary base was reduced to the net value of 7 941.60 RSD.

[42] Sections 3(2) and 7 of the Law on the Salaries in State Authorities and Public Services ("RS Official Gazette" no. 34/01, 92/11, 99/11-law, 10/13, 55/13).

[43] In 2013, the average gross annual salary in Serbia, as published in the "Official Gazette of the Republic of Serbia" no. 6/14, was 728 496 RSD/approximately 6 335 EUR.

[44] Sections 5(1) and 5(3) of the Law on the Income of MPs in the National Assembly of the Republic of Serbia.

[45] Section 9 of the Law on the Income of MPs in the National Assembly of the Republic of Serbia.

purpose of apartment rental in Belgrade; MPs concerned also have the right to remuneration for expenses occurred in running two homes in the amount of 40% of the average salary of employees in Serbia. Furthermore, under certain conditions MPs have the right to compensatory remuneration for three months following the termination of functions.

36. For their work, MPs are provided with resources from the National Assembly budget. They are allowed to use the premises at the House of the National Assembly which are placed at the disposal of parliamentary groups and independent MPs. For reception of citizens outside the seat of the National Assembly, MPs may use the premises of local self-government units. Parliamentary groups in the National Assembly do not receive any public funds (funds from the Parliament's budget) for their work.[46] They may, however, use offices, technical equipment, materials and documentation necessary to carry out parliamentary functions. They are assisted in their work by both permanent employees of the National Assembly and persons employed part-time who provide their professional and administrative support.[47]

Ethical principles and rules of conduct

37. Some general principles can be found in the LNA, namely in the provisions on MPs' oath of office[48] and on MPs' duties[49] which include the duty to preserve the reputation, respect the dignity and decorum at the National Assembly sessions, committee and parliamentary group meetings while performing their duty and to address other deputies with respect, without causing offense or making assertions and judgements concerning the private lives of other persons. Furthermore, the Rules of Procedure stipulate rules of behaviour for MPs during Assembly sittings – e.g. the rules to speak only after requesting and obtaining the floor from the Speaker, to speak only about issues on the agenda, not to present facts and opinions relating to other people's private lives – and measures to be taken in case of violation of the rules, including reprimands, the measure of denying the floor and fines.[50]

38. In addition, the Rules of Procedure task the Committee for Administrative, Budgetary, Mandate and Immunity Issues to submit a proposal for a Code of Conduct.[51] A draft Code of Conduct for MPs has recently been prepared by a working group of the National Assembly made up of MPs representing all the parliamentary groups. Comments from the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the European Parliament were taken into account. It is planned that the above committee will soon finalise the text of the draft Code and submit it to the Assembly for adoption. The Code will then be binding on all MPs.

39. The draft Code of Conduct sets down the basic principles, general ethical values and rules of conduct for MPs, transparency, education, supervision and measures to be taken in case of violation of the Code. It foresees the establishment of an Ethics Council, which will primarily have an advisory role and ensure the implementation of the Code, and of a High Ethical Council as a second instance. According to the draft, the Ethics Council would be tasked with taking general positions and holding general opinions to be published on the parliamentary website.

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[46] According to the Law on Financing Political Activities ("RS Official Gazette" no. 43/11 and 123/14) only the parliamentary political parties receive funds from the national budget.
[47] In accordance with the Decision of the Committee on Administrative, Budgetary, Mandate and Immunity Issues on Employment of Consultants in Parliamentary Groups in the National Assembly of 30 April 2014.
[48] Section 17 LNA: "I do solemnly swear that I will perform the duty of member of parliament with devotion, honourably, truly and faithfully to the Constitution, defend human and minority rights and freedoms of citizens, and to the best of my knowledge and ability, serve the citizens of Serbia, the truth and justice!"
[49] Section 45 LNA.
[50] See Rules 105-117 of the Rules of Procedure of the National Assembly.
[51] Rule 65 of the Rules of Procedure of the National Assembly.

40. Regarding more specifically conflicts of interest, the draft Code of Conduct would introduce new rules, according to which an MP who has a direct or indirect personal interest in a matter discussed or decided upon in the National Assembly or an organ, organisation or body of which s/he is a member, must before participating in the discussion submit a written declaration of interest to the National Assembly. The Speaker must read the declaration of personal interest in the National Assembly session and the declaration is published on the parliamentary website. These draft rules would apply accordingly to sittings of parliamentary working groups and committees.

41. The GET welcomes the recent development of the draft Code of Conduct for MPs with the involvement of international organisations. This move represents a significant step towards defining and promoting ethical standards for all MPs in Serbia. The draft Code of Conduct is a valuable instrument which contains basic ethical values, specific rules of conduct as well as a mechanism for its implementation. The GET particularly acknowledges the planned introduction of new rules on conflicts of interest. The interviews conducted on site confirmed the view that a culture of prevention and avoidance of conflicts of interest has not yet fully emerged in Serbia. That said, clearer guidance to MPs on what might possibly constitute a conflict of interest is certainly required. The reference in the draft Code of Conduct to "direct or indirect personal interests" appears too vague. In the view of the GET, the concept of conflicts of interest needs to take into account the nature of parliamentary work, by focussing on specific private interests of MPs in relation to matters under consideration in parliamentary proceedings. Moreover, in order to provide meaningful tools for MPs, a reference to types and/or practical examples of conflicts of interest and their resolution – either in the Code of Conduct itself or in a complementary document – is required.

42. The draft Code of Conduct remains to be adopted, distributed among MPs and made publicly available. Furthermore, effective implementation of the Code in practice needs to be ensured. The GET is convinced that this can only be achieved if the planned Ethics Council performs its preventive and advisory role in a pro-active manner and if the Code is complemented by awareness-raising and – preferably regular – training activities of a practice-oriented nature (including practical examples) for the benefit of all MPs. Such measures could usefully be implemented in close co-operation with the ACA which is also competent to deal with questions relating to MPs' conduct, namely with respect to conflicts of interest and related matters (asset declarations, incompatibilities etc.). Given the foregoing, **GRECO recommends (i) swiftly proceeding with the adoption of a Code of Conduct for members of parliament and ensuring that clear guidance is provided for the avoidance and resolution of conflicts of interest and (ii) ensuring that the public is given easy access to the future Code and that it is effectively implemented in practice, including by raising awareness among members of parliament on the standards expected of them and by providing them with confidential counselling and dedicated training.** In addition, GRECO is of the firm opinion that the Code of Conduct also needs to reflect clear standards of transparency and conduct regarding MPs' contacts with third parties seeking to influence their work, as recommended further below.[52]

Conflicts of interest

43. The legal framework for the prevention and resolution of conflicts of interest is provided by the LACA which is applicable to all "officials" which include MPs. Section 3 LACA defines a conflict of interests as "a situation where an official has a private interest that affects, may affect or may be perceived to affect the actions of an official in discharge of office or official duty in a manner that compromises public interest." Sections 27 to 38 LACA provide for general rules on conflicts of interest and the duty to notify such conflicts; the prohibition on holding another public office; rules on holding a function in a political party/a political entity, on engaging in another job or activity; the prohibition on

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[52] See below under "Prohibition or restriction of certain activities" (paragraph 66).

establishing a business company or a public service when holding a public office; rules on membership in associations and bodies of associations, on the transfer of managing rights, on the duty to notify the Anti-Corruption Agency (hereafter ACA) in public procurement procedures and on the duty to notify prohibited influence on an official; and restrictions on other employment or business relations following termination of the public function.[53]

44. *Inter alia*, the law provides that officials (MPs included) must discharge their duties in a way that does not subordinate the public interest to the private interest, to secure and maintain the public's trust in their conscientious and responsible discharge of public office, to avoid creating relations of dependency towards persons who may influence their impartiality in the discharge of public office and not to use public office to acquire any benefit or advantage for themselves or any associated person.[54] An associated person is defined as a spouse or common-law partner, a lineal blood relative, collateral blood relative to the second degree, adoptive parent or adoptee, as well as any other legal entity or natural person who may be reasonably assumed to be associated with the interests of the official.[55]

45. Moreover, when taking up and holding public office, officials have to notify their direct superior and the ACA, in writing, within eight days, of any doubts they might have concerning a conflict of interests that might involve themselves or an associated person;[56] the authorities indicate that in the case of MPs, the term "direct superior" refers to the Committee for Administrative, Budgetary, Mandate and Immunity Issues of the National Assembly. The ACA may summon the official and request that s/he submits the necessary data. If it establishes a conflict of interests, it notifies the official and the body in which public office is held and proposes measures for eliminating the conflict of interests. Any individual legal act adopted through the involvement of an official disqualified due to a conflict of interests is deemed void, unless the official who participated in its adoption reported the conflict of interests in accordance with the LACA and if it was not possible to designate another person to participate in the adoption of the act. The authorities indicate that with respect to MPs there has been no such case so far.

46. Officials must also promptly notify the ACA of any prohibited influence exerted on them when discharging the duties of public office.[57] The ACA must notify the body competent for instituting disciplinary, misdemeanour and criminal proceedings and the competent body must inform the ACA, within 30 days, of the measures taken. The authorities indicate that with respect to MPs there have not been any such cases so far.

47. In addition to the above LACA provisions, the draft Code of Conduct for MPs includes a mechanism for *ad hoc* declarations of interest to be submitted by MPs to the National Assembly, which would be published on the parliamentary website, as described above under "Ethical principles and rules of conduct".[58]

48. Given the above information and the interviews held on site, it appears obvious to the GET that the LACA rules on conflicts of interest – in particular the requirement to disclose *ad hoc* conflicts as they arise in the discharge of public office – are not implemented satisfactorily with respect to MPs. It would appear that MPs tend to view their obligations under the LACA as implying mainly the formal filing of asset declarations with the ACA. In a similar fashion, the ACA seems to focus primarily on the control of declarations concerning assets, incompatibilities and other restricted activities. Against this background, the development of complementary rules on conflicts of interest specifically for MPs as foreseen by the draft Code of Conduct for MPs is clearly to be welcomed. That said, the GET refers to the comments it makes above on the need for

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[53] For more details on those rules see below under "Prohibition or restriction of certain activities".
[54] Section 27 LACA.
[55] Section 2 LACA.
[56] Section 32 LACA.
[57] Section 37 LACA.
[58] See paragraph 44 above.

clearer guidance in this area. It is furthermore of the opinion that this important matter should not only be dealt with by a Code of Conduct and that clear legal provisions are also required. The general LACA rules applicable to all officials are not tailored to MPs, and some of those the GET spoke to argued that this hampered their implementation in practice with respect to MPs. The rules foreseen by the draft Code of Conduct, complemented in line with the recommendation made above, need to be reflected in the law, for the sake of legal consistency and certainty. In this connection, the GET draws attention to the recommendation made below – with respect to all categories of persons under review – regarding the LACA rules on conflicts of interest and related matters.[59]

Prohibition or restriction of certain activities

Gifts

49. Sections 39 to 42 LACA, which apply to MPs, regulate the acceptance and handling of gifts – which are defined in section 2 LACA as "money, thing, right and service performed without adequate compensation and any other benefit given to the official or associated person in respect to discharge of public office". Namely, officials may not accept gifts in connection with the discharge of public office, except for protocol or other appropriate gifts other than money or securities. Protocol gifts must be handed over to the Directorate for State Property (i.e. the body competent to manage property in public ownership), unless the value of the gift – or the aggregate value of several gifts received during a calendar year – does not exceed 5% of the value of the average monthly net salary in Serbia i.e. 2 100 RSD/approximately 18.5 EUR (in 2013). If an official receives several gifts during a calendar year, the aggregate value of which exceeds one average monthly net salary in Serbia, s/he may not retain those gifts either. The criteria for establishing what is deemed an appropriate gift and the duty to report and record it is determined by the ACA. If necessary, the ACA establishes the value of the gift.[60] Persons associated with an official may not receive gifts in connection with the discharge of public office of the official, except for protocol gifts. If an associated person accepts something other than protocol gifts, the official is not held responsible if s/he can prove that s/he could not affect the behaviour of the associated person or that the gift received is not related to the discharge of his/her duties in public office.

50. Officials who have been offered a gift which they are not allowed to accept must reject the offer, inform the offerer that the gift, if accepted, will become public property and submit a written report to their direct superior and the ACA as soon as possible. If they cannot reject a gift, they must hand it over to the body competent to manage property in public ownership.

51. Officials have to report any gift received in connection with the discharge of public office to the state or other body, organisation or public service wherein they hold public office – in the case of MPs, the parliamentary Protocol Service –, which must keep separate records of such gifts and submit a copy of the records for the previous year to the ACA, no later than 1 March of the current year. The ACA must notify the body of any determined violation of the law and publish a catalogue of gifts for the previous year as well as notifications on determined violations by 1 June of the current year.

52. The draft Code of Conduct for MPs also regulates the issue of receiving gifts. It stipulates that MPs may neither request nor receive, nor allow another person acting in their name or on their behalf, to receive a gift in relation to the discharge of their duties in Parliament – except for courtesy gifts presented on specific occasions or required by protocol of a value that does not exceed the limit set by law. According to the draft, MPs must inform the Speaker of the National Assembly about every gift received in relation to their discharge of public office and hand over to the Speaker every gift of a value that is

[59] See below under "Crosscutting issues" (paragraph 215).
[60] Donations are regulated by the Law on Donations and Humanitarian Aid.

higher than that set by law. Gifts received by MPs in relation to the discharge of their duties in Parliament are to be recorded in a register published on the parliamentary website.

53. The authorities indicate that in practice it would be the Speaker of the National Assembly who would most commonly receive courtesy/protocol gifts in relation to that function. In the past two years, approximately 50 such gifts were received and there had been no violation of the law.

54. The GET notes that the handling of gifts is subject to quite detailed regulations in the LACA, which are also reflected in the draft Code of Conduct for MPs. According to the information gathered their implementation does not seem to raise particular problems in practice. That said, the GET has some concerns about the fact that the rules are only applicable to gifts received "in connection with the discharge of public office". In this connection, attention is drawn to the comments made below with respect to all categories of persons under review.[61]

Incompatibilities, accessory activities and post-employment restrictions

55. Article 102(3) of the Constitution stipulates that MPs cannot be members of an autonomous province assembly or officials in executive government bodies and the judiciary, nor may they perform other functions, affairs and duties which represent a conflict of interest according to the law. Section 39 LNA states that MPs may not, concurrently, perform another public function or professional duty incompatible with the MP's function in accordance with the Constitution and the law. Section 11 of the Law on the Election of MPs stipulates that MPs cannot simultaneously hold any judicial or other office elected by the National Assembly or be an office holder or an employee of a public authority conducting the activities related to the scope of work of such authority, except in cases defined by the Constitution.[62]

56. Rules on incompatibilities and accessory activities are also contained in sections 28 to 34 LACA, which apply to all public officials including MPs. In particular,

- officials may hold only one public office unless obligated by law or other regulation to discharge several public functions or unless the ACA has approved the holding of another public office, upon presentation of a positive opinion by the relevant body. However, officials elected to public office directly by citizens may, without seeking approval from the ACA, hold other public offices to which they are elected directly by citizens, except in cases of incompatibility determined by the Constitution;

- officials may not perform other jobs or engagements if their tenure in public office requires full-time working hours or full-time employment; the authorities indicate that this rule applies to MPs. As an exception, officials may engage in research, educational, cultural, humanitarian and sports activities without ACA approval if by doing so they do not compromise the impartial discharge and dignity of public office, which is determined by the ACA. Officials are required to report income from these activities to the ACA. Upon request, the ACA may give consent to the performance of other engagements or activities, upon presentation of a positive opinion by the relevant body;

- officials engaged in other activities at the moment of assuming public office are required to notify the ACA within 15 days, and the latter determines whether performing the activity compromises an unbiased discharge of public office, i.e. represents a conflict of interest;

[61] See below under "Crosscutting issues" (paragraph 216).
[62] On the day of confirmation of the MP's mandate by the National Assembly such an office ceases and employment of the employee in a public authority is suspended.

- officials whose public office requires full-time employment or permanent engagement may not establish a business company or public service, nor commence engagement in private occupation, in terms of the law governing entrepreneurship, nor hold management, supervisory or representation of private capital in a business company, private institution or other private legal entity; the authorities indicate that this rule applies to MPs. As an exception, officials may hold office in bodies of professional associations, and they may be a member of bodies of other associations if the ACA does not determine a conflict of interest, but they may not receive reimbursement or gifts deriving from their membership in the association, except travel and other costs.

57. The Committee for Administrative, Budgetary, Mandate and Immunity Issues of the National Assembly is competent to give opinions on the holding of other public offices, jobs or activities and on membership in associations or bodies of associations, at the request of MPs and other officials elected by the Assembly.[63] During the period August 2010 to August 2014, the Committee issued 55 positive opinions permitting the holding of another public office, eight positive opinions permitting engagement in another job and one positive opinion permitting membership in an association. No requests were refused. Examples of other public functions held include member of the Board of the Institute of Public Health, member of the Board of the Institute of Cardiovascular Diseases or president of the Municipal Assembly. Regarding other jobs or activities, some MPs also work as a doctor, member of the administrative boards of sport clubs, manager of agricultural land, president of a shareholders assembly or advisor to the director at the Business College of Professional Studies.[64] The authorities further indicate that the ACA, during the period January 2013 to October 2014, has taken decisions relating to MPs' secondary activities as follows: 46 decisions granting approval to hold a second public office; five decisions granting approval to engage in other employment or another occupation; six notifications of no objections to the pursuit of other business or another occupation, to membership in bodies of associations; three decisions rejecting requests for approval to hold a second public office; and one decision rejecting a request for approval to engage in other employment.

58. The GET notes that the LACA rules on secondary activities of officials including MPs are quite detailed and, on paper, quite restrictive. That said, the GET's attention was drawn to some shortcomings of the current regime. For example, it would appear that the general rule that an official may discharge only one public office has become in practice the exception. In this connection, the GET refers to the recommendation made below – with respect to all categories of persons under review – regarding the LACA rules on conflicts of interest and related matters.[65]

59. No post-employment restrictions apply to MPs. The general rule that during the period of two years after termination of public functions, officials may not take employment or establish business relations with a legal entity, entrepreneur or international organisation engaged in an activity related to the office which the official held, except when approved by the ACA,[66] does not apply to any officials elected directly by citizens. While one needs to take account of the fact that a parliamentary mandate will not, as a rule, provide employment that spans a whole career, the GET is nevertheless concerned that MPs could influence decisions in the National Assembly while bearing in mind the potential benefit they might gain once they leave the National Assembly possibly to join/return to the private sector. The authorities are encouraged to reflect on the necessity of extending the above-mentioned general rule – which is applicable to all other officials – to MPs or introducing other adequate rules/guidelines for such situations, as is the case in some other European states.

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[63] Rule 65 of the Rules of Procedure of the National Assembly.
[64] Also, in the current legislature of the National Assembly, at the request of an MP the Committee decided that for the activity as a lawyer a positive opinion was not needed.
[65] See below under "Crosscutting issues" (paragraph 215).
[66] Section 38 LACA.

Financial interests, contracts with state authorities

60. Pursuant to section 35 LACA, an official must, within 30 days of election, appointment or nomination, transfer his/her managing rights in a business company to a legal entity or natural person who is not an associated person, who will exercise the managing rights on behalf of the official until termination of the public functions – unless the official owns less than a 3% share in the company – and submit relevant data to the ACA.

61. There is no specific prohibition on MPs entering into contracts with state authorities. The general legislation on public procurement is fully applicable in this context. Moreover, section 36 LACA obliges any legal entity with an official owning more than a 20% share or interest which – by taking part in a privatisation, public procurement or other procedure – signs a contract with a public body or a legal entity of which more than 20% of its capital is in public ownership, to accordingly notify the ACA; failure to notify gives rise to imposition of fines on the legal entity and its responsible person.

Misuse of public resources

62. MPs are legally obliged to responsibly and rationally manage the budgetary resources of Serbia allocated to the work of the National Assembly.[67] They are prohibited from using public resources and public meetings, which they attend in their capacity as MPs, for the promotion of political parties/political entities.[68]

63. Moreover, the draft Code of Conduct for MPs stipulates that they must respect the budgetary and financial discipline by which the proper management of public resources is guaranteed; that they have to consciously, efficiently and economically manage and use material and financial assets which are entrusted to them while in office and to prevent illegal use of them. According to the draft, MPs may not use public resources for private purposes nor allow others to do so, and they must pay for any material damage which they cause intentionally, or as a result of gross negligence, to the National Assembly; they are not allowed to use public resources and official premises for private purposes, or to use public assets or National Assembly assets for the purposes of electoral campaign.

Misuse of confidential information and third party contacts

64. Section 45 LNA states that MPs are under duty to guard the data which represent state, military or official secrets even after termination of their public function in the National Assembly. Further confidentiality rules are provided for by the Data Secrecy Law,[69] government bylaws implementing this law, as well as internal acts of the National Assembly.[70]

65. While section 37 LACA contains a general requirement on officials to notify the ACA of any prohibited influence exerted on them,[71] there are no specific restrictions or transparency regulations regarding MPs' contacts with third parties who might try to influence their decisions. The authorities stress in this connection that MPs are free to have contacts with whoever they wish as part of their political work, including lobbyists, interest groups, NGOs, trade unions, employers' associations or other organisations. At the same time, the government plans to regulate lobbying activities, in accordance with the NACS, and a working group under the Ministry of Foreign and internal trade and telecommunications (now "Ministry of Trade, Tourism and Telecommunications") was set up

[67] Section 45 LNA.
[68] Section 29 LACA.
[69] "RS Official Gazette" no. 104/09.
[70] Decision of the competent committee of the National Assembly on dealing with secret data of 7 July 2014; Instruction by the Secretary General of the National Assembly on office transactions with secret data in the National Assembly and Instruction on destruction of secret data in the National Assembly of 21 July 2014.
[71] See paragraph 46 above.

to this end in March 2013.[72] A working version of a draft "Law on lobbying activity/law on protection of public interest against impermissible trading in influence" has been prepared on the basis of a draft developed by the lobbyists' association, which includes, *inter alia*, an obligatory and public register of lobbyists and a range of mechanisms for enhancing transparency and ensuring that lobbying meets high professional and ethical standards.

66. While this initiative is clearly to be welcomed, the GET takes the view that the scope of the draft law is quite limited in that it only applies to professional lobbying and explicitly excludes "direct involvement of citizens, interested legal entities, stakeholders, the general public and professional communities in regulatory processes and public policy-making".[73] During the interviews, the GET was informed that in Serbia, influence on MPs by third parties other than professional lobbyists exerted in an informal manner is prevalent, and it is the GET's strong opinion that in such a context a broad range of measures aimed at enhancing transparency and at limiting the risk of undue influence by interested third parties is of particular importance. In this connection, it is to be noted that MPs are not subject to any obligation to disclose information on meetings and consultations held with third parties outside commission sittings. Various interlocutors consulted by the GET on the subject stated that the lack of transparency in this area constitutes an important loophole in the system. In the view of the GET, it would be clearly desirable to use the current reform process to regulate MPs' relations with third parties in an appropriate manner. This could be achieved, for example, by requiring MPs to disclose the contacts they have with third parties that relate to draft legislation, so as to provide a written trace of comments made by stakeholders that are taken into account in the drafting process, introducing rules of conduct for the third parties concerned – as well as for MPs, so as to provide guidance on how to deal with third parties seeking to influence MPs' work, and to actively promote transparency in this area. In view of the preceding paragraphs, **GRECO recommends introducing rules for members of parliament on how to interact with lobbyists and other third parties who seek to influence the parliamentary process and making such interactions more transparent.**

<u>Declaration of assets, income, liabilities and interests</u>

67. In accordance with sections 43 to 49 LACA, officials including MPs must submit to the ACA a disclosure report on their property and income and on that of their spouses or common-law partners and of minors living in the same household, within 30 days of election, appointment or nomination. In addition, a report must be filed no later than 31 January of the current year if any significant changes occur since the previous report, i.e. any change which exceeds the average annual net income in Serbia. Officials are also required to file a disclosure report within 30 days from the date of termination of public functions, as well as reports on significant changes on an annual basis and over a period of two years following the termination of public functions.

68. The director of the ACA has further specified the content, form and filing procedure regarding disclosure reports.[74] The reports must contain the following data:

1) property rights on real estate at home and abroad;
2) property rights on movable property subject to registration with the competent authorities in Serbia and abroad;
3) property rights on movables of high value (valuables, valuable collections, art collections, etc.);
4) deposits in banks and other financial organisations, at home and abroad;

[72] The working group includes representatives of the Ministry of Trade, Tourism and Telecommunications, the General Secretariat of the government, the Faculty of Law in Belgrade, the Serbian Lobbyist Association, the Ministry of Justice and the ACA. – Passing a law on lobbying had already been one of the subjects of the 2005 Anti-Corruption Strategy.
[73] Section 4 of the draft "Law on lobbying activity/law on protection of public interest against impermissible trading in influence".
[74] See the Rules on Registry of Officials and Assets Registry, as well as related forms.

5) shares and interests in legal entities and other securities;
6) rights deriving from copyright, patent and similar intellectual property rights;
7) debts (principal, interest and repayment period) and receivables;
8) source and amount of income from the discharge of public office, or public functions;
9) entitlement to use an apartment for official purposes;
10) source and amount of other net incomes;
11) other public functions, jobs or activities discharged in accordance with the law and other special regulations;
12) membership in civic association bodies;
13) all other data and evidence deemed by the official as relevant for the implementation of the LACA.

69. The ACA keeps a property register containing all data given in disclosure reports and monitors officials' property. Information on salary and other income received by officials from the budget and other public sources, and information on the public offices they are discharging, is public. The same is true for certain information concerning property, such as ownership rights on real estate at home or abroad (without specifying the address of such property), ownership rights on vehicles (without specifying the registration number), savings deposits (without specifying the bank and account number) and the right to use an apartment for official purposes. Furthermore, information on officials' property which is public according to other regulations, as well as other information which may be disclosed with the consent of the officials or their spouses or common-law partners, are deemed public information. The above-mentioned information is published on the official ACA website,[75] upon submission of the disclosure reports. Information from disclosure reports which is not deemed public may not be used for other purposes except in proceedings for determining whether a violation of the law has occurred.

70. The GET notes that the LACA rules on asset declarations to be submitted by officials including MPs are quite detailed and comprehensive. That said, there are clearly some weaknesses in the current regime, regarding for example the range of "associated persons" to be covered by the declaration obligations. Practice shows that the existing legal solution leaves a lot of room for malpractice and concealing the real value of property and income of officials, and there are plans to extend the scope of declarations to officials' parents, adoptive parents etc. This matter is covered by the recommendation made below – with respect to all categories of persons under review – regarding the LACA rules on conflicts of interest and related matters.[76]

Supervision and enforcement

71. In accordance with the Rules of Procedure of the National Assembly, the Speaker has to ensure order at Assembly sittings.[77] In case of breaches of order, the Speaker may pronounce the following measures: reprimand, denial of the floor or expulsion from the sitting. Records of the measures imposed are kept by the Secretary General. On the basis of the measure chosen, the Committee on Administrative, Budgetary, Mandate and Immunity Issues additionally imposes a fine on the MP concerned, which amounts to 10% to 50% of the MP's salary. Similar rules apply to committee meetings, the committee chairs being competent for ensuring the order. The information gathered by the GET suggests that implementation and enforcement of the Rules of Procedure is not always satisfactory. It would appear that, for example, respect of third persons is not fully ensured and that discussions are often not linked directly to the topic of the session. It was stated that in such cases measures were rarely imposed on MPs. It was proposed that in case of possible violation of the Rules of Procedure an independent expert body should

[75] http://www.acas.rs/sr_cir/registri.html
[76] See below under "Crosscutting issues" (paragraph 215).
[77] Rules 105-117 of the Rules of Procedure. See above under "Ethical principles and rules of conduct" (paragraph 37).

consider the matter before a decision on possible measures is taken. The authorities may wish to take this suggestion into account, in order to further the implementation of the general rules of MPs' conduct and, ultimately, the reputation of the National Assembly.

72. The draft Code of Conduct for MPs also foresees non-criminal enforcement mechanisms. According to the draft, for violations of the Code, the Ethics Council may impose non-public reprimands, public reprimands, public apologies and, as a last resort, fines amounting to three times the basic salary of a permanently employed MP. The MPs concerned can appeal to the High Ethics Council within eight days. According to the draft, the Ethics Council consists of two members of the Committee on Administrative, Budgetary, Mandate and Immunity Issues, two members of the Committee on Constitutional Issues and one member of the Committee on Human and Minority Rights. It can initiate the proceedings following a complaint filed by an MP or *ex officio*. The High Ethics Council consists of the Speaker of the National Assembly and his/her deputies.

73. Sections 50-57 and 72-76 LACA provide for mechanisms to implement the provisions of that law – including the rules on conflicts of interest and related areas, detailed above – and for sanctions in case of their violation. The key authority for the supervision and enforcement of those rules is the ACA.

74. More precisely, the ACA initiates and conducts *ex officio* the procedure to establish whether there is a violation of the LACA and is also competent for ordering measures. The respective procedure can also be initiated at the request of an official or his/her direct superior officer and it can also be initiated on the basis of a report by a legal entity or a natural person. The ACA may summon the official, an associated person or the person who filed the report initiating the procedure in order to collect information, as well as request that they submit the necessary data. The official must have an opportunity to give a statement in the procedure before the ACA.

75. The Director of the ACA is competent for issuing a decision establishing whether there is a violation of the LACA and ordering the corresponding measure. A caution and the public announcement of a decision on the violation of the LACA may be pronounced with respect to directly elected officials, officials whose public functions have terminated or associated persons. If these officials fail to comply with the caution within the time period specified in the decision, the measure of public announcement of the decision on the violation of the LACA is implemented. An appeal against the decisions of the Director may be submitted to the Board of the ACA within 15 days. The decision of the Board is final but an administrative claim can be made.

76. The ACA publicly announces measures pronounced for violations of the LACA, except for cautions. The rationale for a decision to publicly announce a decision regarding a violation of the LACA is published in the "Official Gazette of the Republic of Serbia" (hereafter Official Gazette) and other media. The cost of publishing such a decision is borne by the official concerned.

77. If it has been established that an official was holding another public office, job or activity contrary to the provisions of the LACA, the official has to pay any additional material gain acquired into the state budget.

78. Once the ACA has established a violation of the law, it accordingly notifies the competent body – in the case of MPs, the National Assembly, the competent misdemeanour court or public prosecution office – for the purpose of instituting a disciplinary misdemeanour or criminal procedure and the competent body has to notify the ACA of the measures taken within 90 days. Decisions of the ACA do not prejudice criminal and material accountability of the official concerned.

79. The LACA defines misdemeanour offences such as acceptance of another public office or performance of a job or activity contrary to the law, failure to notify conflicts of

interest, establishment of a business company or public service contrary to the law, violation of the rules on the transfer of managing rights for the duration of public office, violation of the rules on the acceptance and handling of gifts, or failure to report property in the manner and within the deadlines provided by the law (disclosure reports).[78] The fines available for such offences range from 50 000 to 150 000 RSD/approximately 435 to 1 315 EUR.

80. MPs may also be subject to <u>criminal proceedings and sanctions</u> if they commit offences such as bribery, fraud, breach of professional confidentiality. Furthermore, officials including MPs who fail to report property to the ACA or give false information about their property, with the intention to conceal details of it, are criminally liable and the applicable sentence is imprisonment for a period of six months to five years.[79] In addition, their office terminates in accordance with the law and they are banned from assuming public office for a period of ten years from the day the court decision becomes final. It is to be noted, however, that MPs enjoy immunity in accordance with the Constitution and the law and that they may not be subject to any criminal or other proceedings in which a prison sentence may be pronounced, without prior approval of the National Assembly, if they invoke their immunity.[80] Moreover, by means of majority votes of all MPs, the Assembly may re-establish the immunity of an MP who has waived it. GRECO concluded in its Joint First and Second Round Evaluation Report on Serbia that the scope of the immunity afforded to MPs was generally acceptable and did not represent an unacceptable obstacle in the prosecution of corruption. The authorities state that if a prosecutor requests the lifting of immunity for a criminal offence that carries a prison sentence, the immunity will always be lifted. They furthermore indicate that since 2008, in all seven cases where a prosecutor has requested the National Assembly to lift an MP's immunity, the requests have been granted.

81. Regarding more particularly the <u>control of asset declarations</u> to be submitted by officials including MPs, the above-mentioned regulations on supervision and enforcement of the LACA rules are complemented by the following specific arrangements. The ACA is tasked to check due filing of disclosure reports as well as accuracy and completeness of the information submitted.[81] In case of failure to submit a disclosure report to the ACA, the latter notifies the body in which the official concerned holds public office[82] – in the case of MPs, the Committee on Administrative, Budgetary, Mandate and Immunity Issues – following which the procedure against the official is initiated. The authorities indicate that so far, 92 proceedings against MPs have been initiated due to a violation of the rules on submitting disclosure reports. In the large majority of those cases (76), MPs had failed to submit the initial disclosure report after their election to office.

82. The ACA checks the accuracy of information contained in disclosure reports pursuant to the annual verification schedule for a certain number and category of officials. The authorities indicate that in 2011 (2012, 2013), disclosure reports of 349 (220, 282) public officials were assessed by six members of ACA staff (in 2013, by five staff); the annual plan 2014 envisaged the assessment of 230 officials by five staff. Disclosure reports of 250 MPs from the 2008 convocation of the National Assembly were assessed in 2011, and reports of 162 MPs from the 2012 convocation in 2013 (the ones having been assessed in 2011 were not reassessed). In addition to verification based on the annual plan, the ACA may conduct an extraordinary control of reports upon receiving reliable information. In practice, this means that up to 300 reports annually are subject to control. Currently, the checks of disclosure reports are carried out by seven ACA staff members.

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[78] Section 74 LACA.
[79] Section 72 LACA.
[80] Article 103 of the Constitution and section 38 LNA. However, MPs found in the act of committing a criminal offence for which a prison sentence of longer than five years is stipulated may be detained without the prior approval of the National Assembly.
[81] Sections 48 and 49 LACA.
[82] Section 43(3) LACA.

83. The ACA may request from the competent authorities data held by financial organisations, companies and other persons. It may also request the official to submit information on property and income of other associated persons within 30 days, in case of a reasonable suspicion that the official is concealing the real value of his/her assets. Should a discrepancy be revealed between the data presented in a disclosure report and the actual situation or between the increased value of an official's property and his/her lawful and reported income, the ACA notifies the body wherein the official holds office and/or other competent bodies – in the case of MPs, the President of the National Assembly, which in turn have to notify the ACA of the measures taken within three months. In the above-mentioned cases where the ACA detects possible irregularities in the disclosure reports, the ACA has to summon the official or the associated person concerned in order to obtain information on the real value of the official's assets.

84. The authorities submitted the following statistical information:

- The ACA has so far taken the following measures with respect to MPs: caution (94 cases), public announcement of decision on the violation of the LACA (3 cases), request for initiating misdemeanour proceedings (69 cases), criminal charges (4 cases). The large majority of those cases – including 66 requests for initiating misdemeanour proceedings and the three criminal charges – were related to the requirement on MPs to submit asset declarations. During the period January 2013 to October 2014, the ACA imposed measures against 22 MPs who had infringed the rules on asset declarations.

- Following the ACA's requests for initiating misdemeanour proceedings, 38 judgments in cases related to MPs' asset declarations have so far been rendered. In 20 of those cases fines ranging from 50 000 RSD/approximately 435 EUR to 13 x 50 000 RSD were imposed on MPs.[83] Furthermore, 4 judgments in cases related to MPs' conflicts of interest (e.g. exercise of a secondary activity) have so far been rendered. In 2 of those cases fines in the amount of 50 000 RSD were imposed on MPs.[84]

- No comprehensive information on the number and types of criminal cases and on the ensuing sanctions could be provided specifically with respect to MPs, since the courts' programme for automatic data recording does not foresee a search by function. According to the feedback received by the ACA, two prison sentences were imposed on MPs and in two cases, criminal charges were rejected.

85. The majority of persons interviewed by the GET positively assessed the role and work of the ACA in this area. The ACA was generally seen as an independent oversight body and as an appropriate and well-established control mechanism. MPs themselves pointed, in particular, to the strict checks by the ACA of their asset declarations. That said, some interlocutors took the view that the outcome of those checks was unsatisfactory, given that only a few serious violations of the rules have been detected so far. In this context, ACA representatives stressed the necessity of strengthening the Agency's human and IT capacities, so as to allow for checks of a higher number of asset declarations. In this connection, it is to be noted that there are plans to further strengthen the ACA's capacities and that support for that initiative is formulated in a recommendation below regarding all categories of persons under review.[85]

Advice, training and awareness

86. Introductory sessions are organised by the ACA for newly elected MPs in order to present them the main LACA provisions and the ACA's competencies, including with regard to conflicts of interest and the requirement to submit asset declarations. The ACA also

[83] In the remaining 18 cases, 8 admonitions were issued, 6 decisions on suspension of the procedure and 4 decisions on termination of the procedure were taken.
[84] In the remaining 2 cases, 1 admonition and 1 acquittal were issued.
[85] See below under "Crosscutting issues" (paragraph 220).

distributes a guide for officials at the beginning of every legislature of the National Assembly and publishes information on its practice on the internet. Furthermore, the National Assembly Service provides MPs with a collection of provisions which include the Constitution, the Constitutional Law on Implementation of the Constitution, the LNA and the Rules of Procedure of the National Assembly as well as the Uniform Methodological Rules for Legislative Drafting.

87. MPs can receive further information on the above-mentioned regulations from the National Assembly Service, and they can request the Committee for Administrative, Budgetary, Mandate and Immunity Issues to give an opinion on the existence of a conflict of interest. In addition, MPs have the possibility to contact directly the competent service in the ACA in order to get advice. The authorities indicate that during the period January 2013 to October 2014, the ACA finalised 94 proceedings regarding MPs' conflicts of interest, of which 78 were requested by MPs. The large majority of those cases concerned secondary activities; the ACA also gave 17 opinions on the implementation of the LACA. Finally, it is to be noted that according to the draft Code of Conduct for MPs, the planned Ethics Council would also have an advisory role. It would hold consultative meetings with the aim of clarifying certain issues and counselling MPs, publish general positions and general opinions that are put on the parliamentary website, and, at the request of an MP, issue an opinion regarding the application of the Code, within 30 days. According to the draft, an MP would have the right to refer to the opinion given by the Ethics Council. It is planned to regulate the procedure and deadlines applicable more in detail in the rules of procedure of the Ethics Council.

88. During the interviews held on site, MPs described the co-operation with the ACA as generally positive and evaluated favourably both the introductory sessions and the advice given on request. That said, it would appear that mainly technical issues are dealt with, while more substantial dialogue and awareness-raising about conflicts of interest and related matters is lacking. The GET is confident that this gap can be filled by the combined efforts of the relevant instances, in particular the ACA and the Ethics Council, which would have to be given a clear mandate to provide confidential counselling to MPs, thus going beyond what is planned so far. In this connection, the GET welcomes information provided by the authorities according to which the national branch of GOPAC which was established in 2011 plays an active role and promotes ethical values among MPs. The GET wishes to stress how important it is that, in addition to the ACA – whose educational role with respect to the requirements under the LACA needs to be strengthened, Parliament itself also takes responsibility for better promoting a culture of ethics among its members. As GRECO highlighted on numerous occasions, for an ethics and conduct regime to work properly, MPs must themselves take a stake in its success. Putting values into effect requires communication of basic standards as well as education and periodic training to raise awareness and to develop abilities to resolve ethical dilemmas. The GET attaches prime importance to creating appropriate mechanisms for addressing questions of MPs' integrity and conduct, and it refers in this connection to the recommendation made above under "Ethical principles and rules of conduct".[86]

[86] See paragraph 42 above.

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

Overview of the judicial system

89. The judicial system in Serbia is established by the Constitution and several laws, in particular the Law on Organisation of Courts – which regulates the organisation, jurisdiction, system and structure of courts – and the Law on Judges (hereafter LoJ) – which includes provisions on the election and the status of judges and on their disciplinary accountability. Both laws were adopted in 2008.[87]

90. Pursuant to article 143(1) of the Constitution, judicial power is vested in courts of general and special jurisdiction. Courts of general jurisdiction are basic courts (66), high courts (25), appellate courts (4) and the Supreme Court of Cassation, which is the court of highest instance in Serbia. Courts of special jurisdiction are commercial courts (16), the Commercial Appellate Court, misdemeanour courts (44), the Higher Misdemeanour Court and the Administrative Court. A basic court is established for the territory of a town, or one or several municipalities, a high court for the territory of one or several basic courts, an appellate court for the territory of several high courts, while a misdemeanour court is established for the territory of a town or one or more municipalities. In addition, Serbia has a Constitutional Court[88] which is competent, in particular, to decide on the compatibility of legislation with the Constitution and with national and international law, on conflicts of jurisdiction and on the banning of a political party, trade union or civic association.

91. The Supreme Court of Cassation is the immediately higher instance court to the Commercial Appellate Court, the Higher Misdemeanour Court, the Administrative Court and the appellate courts. The appellate court is the instance immediately above the high courts and basic courts. The high court is the instance immediately above the basic courts, the Commercial Appellate Court is immediately above the commercial courts, whereas the Higher Misdemeanour Court is the instance court immediately above the misdemeanour courts.

92. The court system comprises professional judges and lay judges. All professional judges belong to a single professional group and are subject to the same rules, including those related to recruitment and career, integrity and disciplinary accountability. According to the Decision of the High Judicial Council (hereafter HJC) on the number of judges, the total number of professional judges in Serbia is 3 096; in November 2014, there were 2 790 filled judicial posts. The authorities indicate that more than 60% of all professional judges are female but no precise data is available. According to the Decision of the HJC on the number of lay judges, the total number of lay judges in Serbia is 2 997. Lay judges participate in the first instance criminal and civil proceedings when the Criminal Procedure Code or Civil Procedure Law prescribes it. They have equal voting rights in the decision-making process when the court panel makes a decision, as well as in making decisions on the merits when the Criminal Procedure Code or Civil Procedure Law prescribes it. Lay judges also participate in proceedings before the commercial courts and the Commercial Appellate Court.

93. The Constitution guarantees independence of the judiciary as a whole and of judges individually.[89] In performing their judicial function, judges are independent and responsible only to the Constitution and the law, and any influence on judges while performing their judicial function is prohibited. In addition, the Law on Organisation of Courts emphasises the prohibition of use of public office, the media or any public appearance to unduly influence the course and outcome of court proceedings. It makes it clear that any single act of judicial administration interfering with the autonomy and

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[87] "RS Official Gazette" no. 116/08 of 27 December 2008
[88] See articles 166 to 175 of the Constitution.
[89] Articles 4(4), 142(2) and 149 of the Constitution

independence of courts and judges is deemed null and void. Moreover, among the generally accepted principles prescribed by the LoJ figure independence, security of tenure and non-transferability, material independence, immunity, right to association and right to advanced professional education and training. As stressed by the authorities no one can give directions in individual cases to judges, the only exception being the right of the president of the immediately higher instance and of the HJC to give instructions regarding the course of court proceedings, i.e. as regards efficiency and speed.

94. Judicial reforms have been underway in Serbia since 2000, when an entirely new judicial system was to be established. In the wake of the new Constitution of 2006, a further wave of judicial reforms led, *inter alia,* to the creation of a new court network and the establishment/reform of the two bodies of self-administration (the HJC and the State Prosecutorial Council, SPC). The subsequent judicial reform process, which began in 2009/2010, was aimed at improving efficiency by changing the old court structure and redistributing the workload between the overburdened urban, and underused rural courts. However, the reform failed to achieve this goal and led, in addition, to the unlawful *de facto* dismissal of a large number of judges and prosecutors[90] as the result of a non-transparent reappointment procedure. The professionals concerned turned successfully to the Constitutional Court and have in the meantime been reinstated. The NJRS for the period 2013-2018 sets out to repair such failings and to carry on with the reform process, with the following priorities: reintegration in the judicial system of the judges and prosecutors reinstated following the Constitutional Court's decisions, revision of the judicial network, resolving the case backlog, ensuring trial within a reasonable time, upgrading the status of the HJC and SPC and normative regulation of their responsibilities, establishing uniform case law, establishing a unified e-justice system. Overall, the GET welcomes this ambitious reform programme which, if implemented effectively and with some adjustments as suggested in this report, has the potential of resolving the significant problems faced by the judiciary at the present moment.

95. As indicated above in the chapter "Context", the judiciary enjoys a very low level of trust and its independence is widely perceived as unsatisfactory. During the on-site visit, the GET was repeatedly told that both politicians and the media exert significant pressure on the judiciary – including with regard to individual cases – resulting in fear and lack of self-confidence on the part of judges and prosecutors.[91] In this connection, reference was made to the institutional framework for governance of the judiciary and prosecution in which the appointment and promotion of both professions was politicised, and to the damaging effects of the 2009 judicial reform. The NJRS and the corresponding Action Plan recognise the need for strengthening the independence and accountability of the judiciary and contain a number of strategic guidelines and concrete measures in order to achieve this objective. Similarly, the specific recommendations contained in the present report are also aimed at, *inter alia*, strengthening the independence of the judiciary.

96. Under article 153 of the Constitution, the HJC is established as an independent and autonomous body to provide for and guarantee the independence and autonomy of courts

[90] In the framework of a re-appointment process, more than 800 of 3,000 sitting judges and approximately 170 prosecutors and deputy public prosecutors were not re-appointed. At the same time, the overall number of judges and prosecutors was reduced by 30%.

[91] According to the Anti-Corruption Council's Second Report on Judicial Reform of 17 April 2014 (page 5), "Representatives of the government interfere in the work of courts with a very serious violation of the presumption of innocence. It has become common for government officials to comment on trials in concrete cases. Representatives of the executive power announce arrests and detentions even though the court has not issued such a decision … politicians threaten judges if they do not like their trials and decisions … Politicians participate in citizens' protests against court decisions in front of court buildings and intimidate judges." – See http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028/index/.
See also the document "Judiciary in the fight against corruption – key findings of research and recommendations" (pages 28-31),
http://transparentnost.org.rs/images/stories/materijali/pravosudje%20u%20borbi%20protiv%20korupcije/Judiciary%20in%20the%20fight%20against%20corruption,%20key%20findings%20of%20research%20and%20recommendations.pdf

and judges. It has 11 members, three of whom are members by post (the President of the Supreme Court of Cassation, the Minister of Justice and the President of the authorised committee of the National Assembly, i.e. the Committee on Justice). The other eight members are elected by the National Assembly for a five year term, from candidates proposed by the competent bodies. Six members of the HJC must be judges. The HJC is competent to elect judges to permanent office and to propose candidates for election for a first three-year mandate, to appoint lay judges, to rule on the termination of a judge's functions, to propose the election and dismissal of the President of the Supreme Court of Cassation and court presidents to the National Assembly, to decide on the transfer and assignment of judges, to rule on the process of the performance evaluation of judges and court presidents, to rule on issues of immunity of judges and members of the HJC, to rule on the incompatibility of other services and jobs, to perform tasks in respect of the implementation of the National Strategy for the Reform of the Judiciary within its remit and to perform other duties as specified by law.

97. Vesting an independent Judicial Council and judicial self-governing bodies with a decisive influence on decisions concerning the appointment and career of judges is an appropriate method for guaranteeing the independence of the judiciary and, as such, is in line with international standards. Nonetheless, it is recalled that as per Recommendation Rec(2010)12 of the Committee of Ministers of the Council of Europe,[92] judges elected by their peers should make up not less than half the members of councils for the judiciary. In Serbia the legal provisions referred to above fall short of meeting this requirement, even if six members elected by the National Assembly must be judges. The Council of Europe's Venice Commission has criticised the constitutional provisions on the composition of the HJC, stating that "the judicial appointment process is thus doubly under the control of the National Assembly: the proposals are made by the High Judicial Council elected by the National Assembly and the decisions are then made by the National Assembly itself. This seems a recipe for politicisation of the judiciary and therefore the provisions should be substantially amended."[93] While the Law on the HJC was then amended so that the National Assembly is only presented with the name of the person elected by the authorised nominators in respect of each vacancy, the National Assembly is still entitled to reject the candidate, in which case another election would take place.

98. Furthermore, some of the GET's interlocutors questioned in particular that the Minister of Justice (as representative of the executive power) and the President of the Parliamentary Committee on Justice (as representative of the legislative power) are *ex officio* members of the HJC, given the particular context in Serbia where judges see themselves exposed to "permanent pressure" from the executive and politicians in general. The GET draws the attention of the authorities to Opinion No.10 (2007) of the Consultative Council for European Judges,[94] which explicitly stresses that members of the Judicial Council should not be active politicians, in particular members of the government.

99. In addition to these principle concerns, the GET was made aware that the HJC in its current composition was perceived by many as being weak and ineffective and unlikely to perform key functions properly. This was explained, *inter alia*, by the role of this instance in the re-appointment process that was initiated in 2009: the HJC – in its current composition – refuted the complaints by the *de facto* dismissed judges and confirmed their dismissal, and afterwards the professionals concerned successfully turned to the Constitutional Court. Moreover, the members of the HJC in its current composition were

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[92] Recommendation Rec(2010)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities (paragraph 27), see: https://wcd.coe.int/ViewDoc.jsp?id=1707137

[93] Opinion on the Constitution of Serbia, CDL-AD(2007)004 (paragraph 70), see: http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2007)004-srb

[94] Opinion No.10 (2007) of the Consultative Council for European Judges on the Council for the Judiciary at the service of society (paragraph 23): http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/CCJE-opinion-10-2007_EN.pdf

elected without the participation of a substantial proportion of the judges who were reinstated only after the elections had taken place. During the discussions held with the GET, professionals also complained about the fact that this instance did not properly defend their interests and their independence, that it was "quite far away" from the professional body and that in cases of public pressure on judges, they were completely left on their own.[95] The Anti-Corruption Council, for its part, openly criticised the HJC for carrying out a number of its important tasks with significant delay[96] – such as establishing a rulebook on performance evaluation of judges, submission of proposals of candidates for the position of court president, etc. – and called for new elections of that body under amended rules, i.e. by holders of judicial office instead of by the National Assembly. In the view of the GET, in the specific context in Serbia as described above, such a reform – which is also foreseen by the NJRS – is urgently needed in order to strengthen the independence and the public image of the judiciary. Moreover, it is crucial that the HJC adopts a more pro-active role in identifying and addressing problems of the judicial branch. This could be achieved, *inter alia*, by giving it a clear mandate to that effect and designating contact persons for judges tasked with taking stock of and processing their concerns. Finally, bearing in mind the deficiencies in the HJC's performance observed in recent years, the call by the Anti-Corruption Council for an increase in transparency and accountability of these bodies is to be supported,[97] and the GET welcomes that the NJRS includes such objectives. Consequently, in order to strengthen the independence of the judiciary from undue political influence, **GRECO recommends (i) changing the composition of the High Judicial Council, in particular by excluding the National Assembly from the election of its members, providing that at least half its members are judges elected by their peers and abolishing the *ex officio* membership of representatives of the executive and legislative powers; (ii) taking appropriate measures to further develop the role of the High Judicial Council as a genuine self-governing body which acts in a pro-active and transparent manner.** In this connection, the authorities draw attention to the fact that full implementation of the recommendation will require amendments to the Constitution. According to the Action Plan for EU accession, constitutional changes are planned for end 2017.

100. The NJRS also foresees clarifying the resource needs of courts and fully transferring budgetary authority to the HJC. Bearing in mind the objective set by the NJRS to strengthen the independence of the judiciary, the GET would be in favour of the judiciary having a separate budget administered by the HJC once it has been reformed as recommended above – while at the same time acknowledging the government's competence to make final budgetary decisions. Moreover, it is crucial that resource needs of courts are actually met. Even if it has been decided to substantially increase the number of judges and even if the budget for the judiciary appears to have increased significantly over the years, adequately equipping the courts still warrants close attention by the authorities. In this connection, the EU comments in its 2014 Progress Report on Serbia that "persistent differences in the workload among judges, lack of adequate premises and equipment still constitute serious obstacles to judicial efficiency. A proper case methodology to measure workload and to ensure a more equal distribution of cases among judges and prosecutors as part of the reform of the court network is required."[98]

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[95] See also, for example, the document "Judiciary in the fight against corruption – key findings of research and recommendations" (page 29), http://transparentnost.org.rs/images/stories/materijali/pravosudje%20u%20borbi%20protiv%20korupcije/Judiciary%20in%20the%20fight%20against%20corruption,%20key%20findings%20of%20research%20and%20recommendations.pdf

[96] See the Anti-Corruption Council's Second Report on Judicial Reform of 17 April 2014 (page 8), http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028/index

[97] The Anti-Corruption Council suggests, *inter alia*, that the HJC's and SPC's meetings should not be secret, that minutes and conclusions from their sessions should be fully and permanently available on their websites.

[98] See http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf (page 41). – See also the Anti-Corruption Council's Second Report on Judicial Reform of 17 April 2014 (pages 13/14), http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028/index : "As an example we can cite the difference in the number of pending cases in the work of the investigative department judges of the Second Basic

The authorities are invited to take account of those concerns which match the clear impressions the GET gained on site.

Recruitment, career and conditions of service

101. The planned holding of elections for judges[99] is publicly announced by the HJC, to which applications are submitted along with evidence of eligibility. A citizen of Serbia who meets the general requirements for employment in state bodies, who is a law school graduate, who has passed the bar exam and who is deserving of a judgeship may be elected judge. The required professional experience in the legal profession following the bar exam is two years for a judge of a misdemeanour court, three years for a judge of a basic court, six years for a judge of a higher court, a commercial court, and the Misdemeanour Appellate Court, 10 years for a judge of an appellate court, the Commercial Appellate Court and the Administrative Court and 12 years for a judge of the Supreme Court of Cassation.

102. Other requirements for the election of a judge are qualification, competence and worthiness, i.e. ethical characteristics that a judge should possess, and conduct in accordance with such characteristics. The moral characteristics of a judge must include honesty, thoroughness, diligence, fairness, dignity, perseverance and esteem, and conduct in compliance with these characteristics involves upholding the dignity of a judge on and off duty; the awareness of social responsibility; preservation of independence and impartiality; reliability and dignity on and off duty, as well as taking responsibility for the internal organisation and a positive public image of the judiciary.

103. The HJC collects information and opinions about the qualifications, competence and moral integrity of a candidate, namely from bodies and organisations where the candidate worked in the legal profession. In case of a candidate coming from a court, it is mandatory to obtain the opinion of the session (collegium) of all judges of that court, as well as the opinion of the session (collegium) of all judges of the immediately higher instance court. Before the election, a candidate has the right to view information and opinions. Before presenting its nominations, the HJC conducts interviews with the candidates.

104. Those elected as a judge for the first time are elected by the National Assembly, based on a proposal by the HJC, for a three-year mandate. The decision to elect a judge is published in the Official Gazette. In addition to qualification, competence and moral integrity, the HJC must take into particular consideration the type of jobs that the candidate performed after passing the bar exam. The recently introduced rule according to which first time elected judges and prosecutors must be graduates of the Judicial Academy, as foreseen by the NJRS, was quashed by the Constitutional Court in February 2014.[100] The Judicial Academy had been established with the aim of creating a modern training institution for judges and prosecutors. It started operating in January 2010 and provides initial training for judicial and prosecutor candidates, and in-service training for judges, prosecutors and court staff.

105. A first-time elected judge whose work during the first three-year term of office is assessed as having "performed the judicial duty with exceptional success", is elected mandatorily to permanent office by the HJC. If the assessment is "not satisfactory", appointment to permanent office is not possible. Every decision related to election must be reasoned and published in the Official Gazette.

106. The HJC is responsible for the promotion and transfer of judges. There is no specific procedure for the promotion of judges, the general procedure for the election of judges is

Court of Belgrade (1624 cases per judge per year) and the Basic Court of Prijepolje (11 pending cases per judge per year) as at 31 December 2012."

[99] See sections 42 to 55 LoJ.

[100] The provisions in question had been introduced in the Law on the Judicial Academy.

applied. Moreover, secondments to higher courts are possible. As a rule, a judge is elected only to the court where s/he applied and can be transferred or assigned from one court to another, to another state authority, institution or international organisation only with his/her written consent.[101] Exceptionally, a judge may be transferred, without his/her consent, to another court if the court or the prevalent part of the court jurisdiction to which s/he was elected is dismantled by a decision of the HJC. In accordance with the Law on Seats and Territories of Courts and Public Prosecutors and the LoJ, the HJC on 29 November 2013 adopted the "Rulebook on the criteria for the transfer of judges to other courts in the event of termination or change in a predominant part of the jurisdiction of the court". The authorities indicate that in December 2013, the HJC decided on the transfer of 1 259 judges to basic courts which had been newly established in the wake of the revision of the 2009 judicial reform. In addition to that process, 17 judges were transferred without their consent according to other criteria.

107. A judge's office ends either at the request of a judge, upon retirement, due to a permanent inability to work, if not elected to permanent office, or in case of dismissal.[102] The HJC issues a decision on the termination of functions and an objection may be filed against it with the HJC within 15 days of the decision. A judge is dismissed if convicted of an offence carrying a sentence of imprisonment of at least six months or of a punishable act that demonstrates that s/he is unfit for the judicial function, in case of incompetence or due to a serious disciplinary offence. The judge is entitled to file an appeal against the final decision of the HJC to the Constitutional Court, within 30 days of delivery of the decision. Final decisions on termination are published in the Official Gazette. The authorities indicate that one judge was dismissed in 2012, one in 2013 and three judges in 2014, as a result of disciplinary actions brought against them. One judge who received a one year prison sentence was dismissed in 2014.

108. Court presidents[103] are elected by the National Assembly based on proposals by the HJC, for a five-year term which is not renewable. A permanent judge in a court of the same or higher instance, with clear managerial and organisational skills based on the criteria set by the HJC, is eligible for the position of court president. The National Assembly decides on the termination of the functions of court president. Reasons for dismissal are violation of obligations set out by the provisions governing the court administration, violation of the principle of autonomy of judges, violation of the rules on the allocation of cases, departure from the rules that regulate the Annual Calendar of Judges, a serious disciplinary offence committed while performing the function of court president, or incompetence.

109. The President of the Supreme Court of Cassation[104] is elected by the National Assembly from among the judges of that court, on the basis of a recommendation by the HJC and following the opinion of the General Session of that court and the competent committee of the National Assembly, for a five-year term which is not renewable. S/he can be dismissed for the same reasons as other court presidents, by decision of the National Assembly based on a proposal by the HJC which is competent for conducting dismissal proceedings initiated by the General Session of the Supreme Court of Cassation.

110. When the term of office of a court president ceases, the president of the directly higher instance court has to designate a judge who will perform the function for a period of no more than six months until a new president takes up office. In the case of the Supreme Court of Cassation, the acting president is appointed by the General Session.[105]

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[101] See article 150 of the Constitution and sections 18 to 21 LoJ.
[102] See sections 56 to 67 LoJ.
[103] See sections 68 to 79 LoJ.
[104] See section 78 LoJ.
[105] Section 72 LoJ.

111. The involvement of the National Assembly in the election and promotion of judges and court presidents has been subject to criticism and recommendations by international instances and has also been identified by the authorities as an issue for reform. The NJRS foresees the preparation of constitutional amendments to exclude the National Assembly from the process of appointment of judges and court presidents. Meanwhile, a provisional solution has been found by making it clear in the law that the HJC proposes to the National Assembly only one candidate for each vacant judicial post for first time election (three year mandate) and for each vacant post of court president. The National Assembly is not bound by the HJC proposal, but it has never happened that it did not accept the proposal. The National Assembly cannot choose a candidate who has not been proposed by the HJC.

112. While acknowledging this provisional solution, the GET – bearing in mind the specific context in Serbia where complaints about insufficient independence of the judiciary and about political influence are numerous – clearly supports the continuation of the reform process in view of constitutional amendments, as called for by various national and international stakeholders. *Inter alia*, the EU comments that "the constitutional and legislative framework still leaves room for undue political influence affecting the independence of the judiciary, particularly in relation to the career of magistrates."[106] The GET also wishes to refer again to the statements by the Venice Commission, quoted above with respect to the HJC, that the judicial appointment process is doubly under the control of the National Assembly, which "seems a recipe for politicisation of the judiciary"; the Venice Commission also emphasised on several occasions with respect to the situation in Serbia that "the involvement of parliament in judicial appointments risks leading to a politicisation of the appointments and, especially for judges at the lower level courts, it is difficult to see the added value of a parliamentary procedure. In Serbia the People's Assembly hitherto has not limited its role to confirming candidates presented by the High Judicial Council but it has rejected a considerable number of such candidates under circumstances where it seemed questionable that the decisions were based on merit. This is not surprising since elections by a parliament are discretionary acts and political considerations will always play a role."[107] Finally, the GET draws attention to the Magna Carta of Judges adopted by the Consultative Council for European Judges (CCJE) according to which "decisions on selection, nomination and career shall be based on objective criteria and taken by the body in charge of guaranteeing independence."[108]

113. In this connection, the GET notes that the authorities are also working towards improving procedures for first election, appointment to permanent office and career advancement for judges, as foreseen in the NJRS. They state that so far, the procedures have lacked objective and clear criteria and proposals by the HJC for the selection among a high number of candidates have been made in a non-transparent manner, based mainly on interviews held behind closed doors, which creates risks of corruption, favouritism and biased decisions. These concerns were shared, *inter alia*, by representatives of international organisations consulted on the subject. Against this background, the GET was interested to hear that a rulebook on criteria for the selection of judges and court presidents is under preparation. It takes the view that this reform process needs to be continued and followed up, for example, by assessing the implementation of the rules after a pilot phase and further improving the selection procedure, in order to ensure a more rigorous and merit based selection.

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[106] See the EU's 2014 Progress Report on Serbia (page 40), http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf.

[107] See e.g. the above-mentioned Opinion on the Constitution of Serbia, CDL-AD(2007)004 (paragraph 65): http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2007)004-srb

[108] See https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE-MC(2010)3&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864 (paragraph 5). – See also Recommendation Rec(2010)12 of the Committee of Ministers of the Council of Europe (paragraphs 44-48), which – while accepting that it is possible for the legislative power to take decisions on the selection and career of judges – gives preference to an independent and professional body, whose recommendations other powers should follow. Appointments based on political considerations are clearly not considered admissible. See https://wcd.coe.int/ViewDoc.jsp?id=1707137.

114. The further development of the Judicial Academy also has the potential for contributing to more objective and merit based recruitment. While the recent legal provisions making the Judicial Academy the compulsory entry point to the judicial profession were declared unconstitutional, the GET was informed that works are being conducted with the aim of introducing such a rule on a different legal basis, which might possibly but not necessarily imply constitutional amendments. It is clear that the introduction of such a requirement is a sensitive issue which raises much debate in the judicial corpus, especially among a high number of judicial assistants (and prosecutorial assistants), many of whom have worked in their positions for a number of years in the expectation that such experience will enable them to be considered for appointment as a judge (or prosecutor).[109] In the view of the GET, transitional measures have to be sought by the authorities in the frame of the current reform process, possibly exempting court assistants under certain conditions from completing the entire curriculum at the Judicial Academy. Moreover, it shares the view expressed by several interlocutors that the Judicial Academy needs to be given adequate resources,[110] including a sufficient number of highly qualified personnel, appropriate equipment and space – especially if its role in the recruitment process for judges and prosecutors is to be expanded as planned. The NJRS does not contain any clear commitments to this effect. In addition, the functioning of the Judicial Academy might have to be reconsidered. In particular, the Anti-Corruption Council is critical of the fact that the current procedure for the selection of candidates for admission to the Judicial Academy creates risks of abuse, and it claims that in practice party connections or family ties play an important role in the selection process.[111] The GET is not in a position to verify such claims but takes the view that adequate safeguards need to be in place in order to prevent such incidents.

115. Finally, the GET notes that the election of court presidents has been a particular concern in recent years, given that no objective and transparent criteria were in place and that elections were, in addition, often delayed. As indicated above, the HJC failed to submit proposals for a number of years. As a result, between 2009 and October 2013 the most senior courts were all headed by acting presidents, which made them "liable to pressures as it created the possibility of influencing them in order to keep their managerial position, or to 'earn' it."[112] The GET acknowledges that in the meantime, most court presidents have been elected by the National Assembly[113] according to the proposal of the HJC and that a rulebook on criteria for the selection of judges and court presidents is under preparation, in line with the NJRS. It is of the strong opinion that this reform process needs to be continued, so as to ensure that court presidents are effectively selected on the basis of clear and objective criteria in a transparent manner – preferably through public selection procedures, with the involvement of all judges of the court concerned, giving them a decisive role in the process by ensuring that their opinions are taken into consideration, and to ensure that in practice, there are no more acting presidencies for lengthy periods of time. Given the preceding paragraphs, **GRECO recommends reforming the procedures for the recruitment and promotion of judges and court presidents, in particular by excluding the National Assembly from the process, ensuring that decisions are made on the basis of clear and**

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[109] Judicial and prosecutorial assistants have passed the bar exam. In order to study at the Judicial Academy, they would have to resign as assistants and thus take a considerable professional risk.
[110] At the time of the visit, the Judicial Academy had 29 core staff. The GET was also informed that the Judicial Academy was to receive considerable financial support from USAID over a two-year period. Some interlocutors stressed, however, that this institution required long-term capacities.
[111] See the Council's Second Report on Judicial Reform of 17 April 2014 (pages 10/11), http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028/index.
[112] See the Council's Second Report on Judicial Reform of 17 April 2014 (page 8), http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028/index/.
See also the document "Judiciary in the fight against corruption – key findings of research and recommendations" (page 30), http://transparentnost.org.rs/images/stories/materijali/pravosudje%20u%20borbi%20protiv%20korupcije/Judiciary%20in%20the%20fight%20against%20corruption,%20key%20findings%20of%20research%20and%20recommendations.pdf
[113] Three courts still have acting presidents, since the HJC did not make proposals for the election of those presidents (the High Court in Prokuplje, the Basic Court in Prokuplje and the Basic Court in Vranje).

objective criteria, in a transparent manner and that positions of court presidents are occupied on an acting basis only for short periods of time. In this connection, the authorities again draw attention to the fact that full implementation of the recommendation will require amendments to the Constitution and thus cannot be achieved within a short timeframe.

116. The work of all judges and court presidents is subject to regular evaluation,[114] which represents the basis for the election, mandatory training and dismissal of judges. Performance evaluation is conducted on the basis of publicised, objective and uniform criteria and standards established by the HJC in July 2014.[115] The HJC decided to conduct a pilot phase before the rules enter into force. The performance of judges and court presidents is evaluated by HJC commissions composed of three members, whereby judges of higher instance evaluate the work of judges and court presidents at lower instance. According to the Rulebook established by the HJC, the appraisal of judges is based on quantitative and qualitative criteria. It is to be ensured that judges whose work performance is evaluated can participate in the evaluation procedure. Objections to evaluation are decided on by a commission composed of three members appointed by the HJC from among judges of the Supreme Court of Cassation. An administrative complaint may be made against the decision of the commission.

117. While the GET generally welcomes the recent establishment by the HJC of criteria and standards for performance evaluation as an attempt to render the appraisal system more objective and uniform, in line with the NJRS, it notes that some dissatisfaction was expressed during the on-site visit about the criteria adopted. The GET notes that the system relies almost exclusively on elements of productivity, even among the so-called "qualitative" criteria (e.g. percentage of decisions set aside after a legal remedy has been sought, time period for rendering decisions in writing). It points out in this connection that, even though productivity is certainly a necessary element of the evaluation of judges' work, it must not be the only one. Elements of a more qualitative character, like the quality of reasoning and its contribution to the development of case-law, or the behaviour of a judge including adherence to ethical and integrity values, also have an important role to play. Moreover, the GET is concerned that the excessive dependence on quantitative criteria could instil an improper attitude where the focus is on statistical targets rather than high-quality work. The GET draws attention to the relevant opinions by the Consultative Council for European Judges, *inter alia*, Opinion No.17 (2014)[116] according to which evaluation criteria "should principally consist of qualitative indicators"; "a heavy reliance on the number of cases a judge has decided is problematic because it might lead to false incentives"; "the CCJE continues to consider it problematic to base evaluation results on the number or percentage of decisions reversed on appeal"; "in order to evaluate the quality of a judge's decision, evaluators should concentrate on the methodology a judge applies in his/her work overall". The GET is therefore of the firm opinion that more qualitative factors need to be introduced.

118. The GET is furthermore concerned that evaluations serve as grounds for dismissal if "unsatisfactory" and that the HJC can initiate evaluations outside the usual three-year cycle, which might carry a risk of possible harassment or pressure, in particular in the specific context in Serbia as described throughout this report. In the view of the GET, the evaluation system needs to be focused on improving the judiciary as a whole and not on punishing individual judges. It refers in this connection to Recommendation Rec(2010)12

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[114] See sections 32 to 35 LoJ.

[115] "Rulebook on criteria, standards, procedure and bodies for performance evaluation of judges and court presidents"

[116] Opinion No. 17 (2014) on the evaluation of judges' work, the quality of justice and respect for judicial independence (paragraphs 35, 34 and 49), see: https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE(2014)2&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864

of the Committee of Ministers of the Council of Europe,[117] according to which "a permanent appointment should only be terminated in cases of serious breaches of disciplinary or criminal provisions established by law, or where the judge can no longer perform judicial functions." In view of the above, **GRECO recommends that the system of appraisal of judges' performance be reviewed (i) by introducing more qualitative criteria and (ii) by abolishing the rule that unsatisfactory evaluation results systematically lead to dismissal of the judges concerned.**

119. The Constitutional Court[118] is composed of 15 justices elected and appointed among legal experts for a nine-year term which is renewable once. The National Assembly appoints five justices from among 10 candidates proposed by the President of the Republic, the President of the Republic appoints five justices from among 10 candidates proposed by the National Assembly, and the General Session of the Supreme Court of Cassation appoints five justices from among 10 candidates proposed at a General Session by the High Judicial Court and the State Prosecutor Council. The National Assembly decides on early termination of tenure.

120. Judges' monthly net salaries[119] range from 82 877.43 RSD/approximately 720.00 EUR (Misdemeanour/Magistrate Courts) to 198 905.82 RSD/approximately 1 730.00 EUR (President of the Supreme Court of Cassation). There are six salary groups, expressed in coefficients: magistrates; basic court judges; judges of commercial courts, higher courts and the Misdemeanour Appellate Court; judges of the Commercial Appellate Court, appellate courts, and the Administrative Court; judges of the Supreme Court of Cassation; the President of the Supreme Court of Cassation. The base salary of a court president (except the President of the Supreme Court of Cassation) is determined by increasing the salary of a judge of that court by between 10% and 30%, depending on the number of judges employed in the court concerned; the base salary of a deputy court president is increased by half of the above percentages. The HJC may decide that the base salary of a judge adjudicating in a court in which judicial vacancies cannot be filled be increased by up to 50% and that of a judge adjudicating in criminal offence cases with organised crime and war crime elements by up to 100%. Currently, gross incomes are subject to a solidarity tax.

121. Lay judges[120] are appointed by the HJC based on proposals by the Minister of Justice – who must first obtain an opinion from the court to which a lay judge is to be appointed –, for a period of five years. They may be re-appointed. Any national of Serbia of legal age who is not older than 70 years at the time of appointment and who is worthy of the function may be appointed as a lay judge. As is the case for professional judges, worthiness means ethical characteristics that a judge should possess, and conduct in accordance with such characteristics. A lay judge is suspended from office by the court president if criminal proceedings have been instituted against him/her for an offence that might lead to dismissal, or if dismissal proceedings have been instituted. Possible reasons for dismissal of a lay judge are political activity or political party membership. The procedure to determine the reasons for the termination of the function of a lay judge is initiated on proposal of the court president, president of the immediately superior court, the president of the Supreme Court of Cassation or the Minister of Justice; the HJC conducts the proceedings and takes a decision. Lay judges are entitled to reimbursement

[117] See Recommendation Rec(2010)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities (paragraph 50): https://wcd.coe.int/ViewDoc.jsp?id=1707137. – See also the above-mentioned CCJE Opinion No.17 (paragraph 6), which states that "when an individual evaluation has consequences for a judge's promotion, salary and pension or may even lead to his or her removal from office, there is a risk that the evaluated judge will not decide cases according to his or her objective interpretation of the facts and the law, but in a way that may be thought to please the evaluators."
[118] See articles 166 to 175 of the Constitution.
[119] Salaries are regulated by sections 36 to 41 LoJ.
[120] See sections 80 to 87 LoJ.

of costs incurred while performing the function, compensation for lost earnings and reward.

Case management and procedure

122. Cases are allocated to judges randomly, according to a schedule that is independent of the parties and circumstances of the case. Allocation of cases is based on the court schedule of tasks, in accordance with the Court Rules of Procedure, according to the order determined in advance for each calendar year, exclusively on the basis of the designation and the number of the case file. The order of admission of cases can be departed from in cases stipulated by the law, as well as in the case of work overload or justified unavailability of judges, in accordance with the Court Rules of Procedure.[121] The GET heard some concerns about the system for random allocation of cases which is not yet automated in all courts and the related risk of circumvention; the authorities are invited to address these concerns.

123. A judge can be removed from hearing a case if there are grounds for disqualification (see below) or, in accordance with the Court Rules of Procedure, if in the judge's prolonged absence it is deemed, due to law or the nature of the case, urgent to proceed with the case ; if the effective functioning of the court is threatened; if a legally binding disciplinary sanction has been imposed on the judge due to a disciplinary offence for unjustified delay in proceedings; and in other cases stipulated by law.

124. In order to ensure that judges conclude proceedings without unnecessary delay, they must notify the court president of the reasons for failing to conclude first-instance proceedings within a period of one year and from then on notify him/her every three months of the progress of proceedings.[122]

125. As indicated above in the chapter "Context", there are frequent complaints about lengthy procedures and ineffectiveness of the judiciary, and the system suffers indeed from a significant backlog of cases: the total number of backlogged cases in general and special jurisdiction courts has for several consecutive years been over 3 million (2.8 million cases pending at the end of 2013). The reasons are manifold, including the adverse effects of the failed 2009 judicial reform and the uneven distribution of workload among the courts. The problem has even been exacerbated by temporary phenomena such as the recent lawyers' strike. The NJRS and the corresponding Action Plan recognise the need for resolving the backlog and ensuring trial within a reasonable time span and contain a number of strategic guidelines and concrete measures in order to achieve this objective. In December 2013, the Supreme Court of Cassation adopted a national backlog reduction programme with the objective of reducing the number of cases older than two years by 80% nationwide by the end of 2018. In the view of the GET, the current situation raises the question of whether the judiciary is in a position to function properly, and it may also create risks for corruption (e.g. parties might be tempted to offer bribes to speed up cases). The authorities are invited to make every effort to achieve tangible results as soon as possible, however, without impacting negatively on the quality of judicial work. In particular, as highlighted earlier in the present report, a more equal distribution of cases among judges as part of the reform of the court network is urgently required. Moreover, after the interviews held on site, *inter alia* with practitioners, the GET was left with the clear impression that judges need to be provided with much more training on the significant changes introduced by the new Criminal Procedure Code and Civil Procedure Law, in particular on the new division of competences between judges and prosecutors and on the tools available for more efficient processing of cases.[123]

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[121] Sections 24 and 25 LoJ.
[122] Section 28 LoJ.
[123] For more details on this reform, see below under "Corruption prevention in respect of prosecutors" (paragraph 179).

126. Another matter of concern identified by various national and international instances is the inconsistency in case law, especially in appellate courts, which aggravates the problem of legal uncertainty stemming from frequent – and not always coherent – legal reforms. The NJRS and the corresponding Action Plan foresee several measures in this area, aimed at establishing a normative framework and mechanisms for enhancing uniformity of court practice and developing electronic databases of legal regulations and case law. The authorities are encouraged to implement such measures as soon as possible. That said, the GET wishes to draw attention to criticism expressed by judges and by the Anti-Corruption Council with respect to the planned establishment of a certification commission at the Supreme Court of Cassation aimed at the harmonisation of court practice, whose competences and working methods would be specified by the Ministry of Justice. The authorities may wish to take account of the concerns expressed about the possible creation of a new source of law with the establishment of such a body.[124] In the view of the GET, the Supreme Court of Cassation itself – as the court of highest instance – would be the most suitable body to play a leading role in the harmonisation of judicial practice.

127. The NJRS furthermore envisages legal amendments aimed at enhancing the process of appointment of expert witnesses and permanent court interpreters and translators, in order to improve their expertise. In this connection, the GET was concerned to hear that the current procedure for expert witnesses is vulnerable to corruption, since it lacks clear criteria for appointments and the payment of fees. It was furthermore suggested to openly publicise appointments and regulate standards of conduct of expert witnesses. The authorities may wish to take these suggestions into account in the current reform process.

128. Court proceedings are as a main rule public and oral. The Court may close the proceedings to the public only if stipulated by law, in accordance with the Constitution.[125]

Ethical principles, rules of conduct and conflicts of interest

129. The provisions of the LoJ include some general principles, in section 53 which contains the judges' oath of office[126] and section 3 which requires judges to preserve the confidence in their independence and impartiality at all times and to adhere at all times to the Code of Ethics issued by the HJC. The Code of Ethics for judges, which was adopted in 2010,[127] contains a compilation of ethical principles and rules of conduct with which judges must comply in order to maintain and improve their dignity and reputation. The document revolves around the following tenets: independence, impartiality, competence and responsibility, dignity, dedication, freedom of association and dedication to the principles of the Code of Ethics. The Code was inspired, in particular, by the 2002 Bangalore Principles of Judicial Conduct. Judges were involved in its preparation through their representatives in the HJC. Serious violations of the Code of Ethics constitute disciplinary offences.[128]

130. The GET welcomes that the Code of Ethics has been prepared within the judiciary and that it takes into account international standards such as the Bangalore Principles. It believes, however, that more needs to be done to raise judges' awareness of ethical dilemmas they may encounter in their professional life and about the existing standards. While the authorities indicate that all courts in Serbia have received the Code of Ethics in poster format and that the Code is published on the HJC website,[129] several interlocutors stated that it was very difficult to find on the website and that judges were not generally

[124] See the Council's Second Report on Judicial Reform of 17 April 2014 (pages 14/15), http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028/index
[125] Article 142(3) of the Constitution.
[126] "I solemnly swear on my honour that I will perform my duties in compliance with the Constitution and the law, according to the best of my knowledge and ability and in the service of only truth and justice."
[127] "RS Official Gazette" no. 96/2010 of 18 December 2010.
[128] Section 89(1) LoJ.
[129] www.seio.gov.rs/upload/documents/ekspertske%20misije/judical%20system/Code%20of%20Ethics.pdf

well aware of its concrete content. The GET therefore sees a need for communicating the Code of Ethics more actively to all judges. Regarding the content of the Code of Ethics, it addresses the main ethical questions relevant to the exercise of the judicial profession. At the same time, it remains rather vague and appears insufficient to properly guide judges in the handling of concrete situations. The GET is convinced that answers to ethical questions need to be provided – for example, as regards conflicts of interest or how to behave in situations where judges are faced with pressure from politicians, the media or society at large. As GRECO has highlighted on numerous occasions, a Code of Ethics is most valuable when it provides practical guidance on how principles apply in daily practice and helps solve concrete dilemmas. It also needs to be conceived as a living document, updated as necessary in view of evolving values and challenges. Such further guidance – including explanations, interpretative guidance and practical examples – and update could be provided either in the Code of Ethics itself or in a complementary document.

131. In addition, given that not everything can be captured by written rules and guidelines, it is crucial that judges have access to confidential counselling on ethical questions within the judiciary[130] and to specific – preferably regular – training activities of a practice-oriented nature. Currently, some training is organised by the Judicial Academy and by the ACA – to a limited extent, mainly dealing with technical questions, *inter alia*, on asset declarations. After the visit, the GET was left with the clear impression that there is a need and a demand from practitioners for further developing training along the lines indicated above. In this connection, the GET took note of current initiatives such as the drafting of a Memorandum of Understanding between the ACA and the Judicial Academy, to establish co-operation including on tailor-made manuals/workshops on ethics and integrity (including ethical dilemmas) for judges and prosecutors, and the organisation of training for trainers of judges and prosecutors in the framework of the Joint EU-Council of Europe Project PACS Serbia.[131] After the visit, the GET was interested to learn that subsequent to completion of the training of trainers programmes (November and December 2014), four follow-up training sessions for judges and prosecutors on ethics, conflicts of interest and disciplinary responsibility were held (during the period March to June 2015). It is essential that the above-mentioned initiatives are further developed and fully implemented.[132] Finally, regarding advice on ethical questions, it can in principle be obtained from the HJC. However, as described above, judges' trust in that body in its present composition is low. While the GET is confident that this situation will improve once the HJC has been reformed as recommended above, it might be necessary to find a more immediate solution such as designating confidential counsellors – e.g. experienced judges in appellate courts – who command specific expertise in the field and are distinct from disciplinary bodies and placed outside the official hierarchy. In view of the above, **GRECO recommends (i) that the Code of Ethics for judges be communicated effectively to all judges and complemented by further written guidance on ethical questions – including explanations, interpretative guidance and practical examples – and regularly updated; (ii) that dedicated training of a practice-oriented nature and confidential counselling within the judiciary be provided for all categories of judges.**

132. The legal framework for the prevention and resolution of conflicts of interest is provided by sections 27 to 38 LACA which are applicable to all "officials" including judges.

[130] Attention is drawn in this context to Opinion No. 3 (2009) of the Consultative Council of European Judges (CCJE) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality (paragraph 49), see https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE(2002)OP3&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3

[131] "Strengthening the Capacities of Law Enforcement and Judiciary in the Fight against Corruption in Serbia", see: http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/PACS-Serbia/PACS_default_en.asp

[132] It is also to be noted that the NJRS and related Action Plan envisage some measures in this area, such as further amending the Code of Ethics for judges, organising training on integrity and ethics and organising periodic discussions on these matters within the judiciary (however, no concrete timeframes are indicated).

These provisions, which have been described under the section on MPs,[133] provide the general rules on conflicts of interest and the duty to notify such conflicts; the prohibition on holding another public office; rules on holding a function in a political party/a political entity, on engaging in another job or activity; the prohibition on establishing a business or a public service during when holding public office; rules on membership in associations and bodies of associations, on the transfer of management rights, on the duty to notify the ACA in public procurement procedures and on the duty to notify prohibited influence on an official; and restrictions on other employment or business relations following termination of the public function. In addition, it is to be noted that judges cannot act in a particular case in which they hold a private interest. The specific grounds for disqualification are provided by the Criminal Procedure Code and the Civil Procedure Law.[134]

133. Overall, the regulatory framework with respect to conflicts of interest appears satisfactory. That said, the co-existence of the LACA and the specific procedural laws warrants clarification so as to ensure that there are no inconsistencies or duplication of rules. The GET refers in this regard to the comments and recommendation made further below.[135] Moreover, there is a need for further awareness-raising and guidance on the rules, as recommended above in connection with the Code of Ethics.

134. Lay judges also take an oath of office.[136] The LACA rules on conflicts of interest are not applicable to lay judges, as they are not categorised as public officials in the meaning of that law.

Prohibition or restriction of certain activities

Incompatibilities and accessory activities, post-employment restrictions

135. Judges are obliged to act in accordance with the general rules contained in sections 27-38 LACA (Chapter 3, Conflicts of interest). These provisions include a general prohibition on holding another public office, restrictions on the performance of other jobs or activities and a prohibition on holding functions in commercial companies, as described in the section on MPs.[137] In addition, judges are subject to the following specific regulations.

136. Article 152 of the Constitution states that judges are prohibited from engaging in political actions and that other functions, actions or private interests which are incompatible with the judicial function are to be stipulated by law. Pursuant to section 30 LoJ, judges may not hold office in bodies enacting or enforcing legislation, public offices, or autonomous province and local self-management units. They may not be members of a political party or politically active in some other manner, engage in any paid public or private work, provide legal services or legal advice for compensation. As an exception judges may, without explicit permission, engage in compensated educational and research activity outside working hours and, in cases set out by law, in teaching and research activities in a judicial training institution during working hours. During working hours, with the approval of the court president, they can also participate in activities of professional bodies established in accordance with special regulations, and working groups for the drafting of laws and other regulations, and they may be sent on study and/or other professional visits abroad by decision of the HJC, following the opinion of the court president. Finally, the HJC decides, on the basis of the Code of Ethics, whether other functions, engagements and activities are to be considered contrary to the dignity and

[133] See paragraphs 43 to 46 above.
[134] See below under "Prohibition or restriction of certain activities" (paragraph 140).
[135] See below under "Crosscutting issues" (paragraphs 214 and 215).
[136] Section 82(2) LoJ: "I solemnly swear that I will perform my duties in compliance with the Constitution and the law, scrupulously, dedicatedly, and impartially."
[137] See paragraph 56 above.

independence of a judge or damaging to the reputation of the court, in which case they would be deemed incompatible.

137. A judge is required to notify the HJC, in writing, of any engagement or work that may be deemed incompatible, and the HJC notifies the court president and the judge if there is an incompatibility.[138] The court president has to file disciplinary charges immediately upon learning that a judge is engaged in service, or work, or engaging in activities that may be deemed incompatible with his/her function. The authorities indicate that in 2013 the HJC decided that holding the following positions would be incompatible with the judicial function: President of the Census Commission for the preparation, organisation and implementation of the Census of Agriculture; President and members of the Commission for rehabilitation and compensation; President or member of the Commission for the determination of damages and of compensation to persons wrongfully convicted and wrongfully deprived of their liberty; bankruptcy trustee. In 2014, the HJC decided in six cases on compatibility/incompatibility.

138. In accordance with the general LACA rules, during the period of two years after the termination of public functions, officials including judges may not take employment or establish business relations with a legal entity, entrepreneur or international organisation engaged in an activity related to the office which the official held, except when approved by the ACA.[139]

139. A lay judge cannot be a member of a political party or politically active in any other way. A lay judge may not be an attorney-at-law or provide legal services or advice for a fee. Other jobs, engagements and activities that are contrary to the dignity and independence of a judge or harmful to the reputation of the court are also incompatible with the functions of a lay judge.[140] The authorities indicate that in practice, there have been some cases of political engagement by lay judges but no other cases of incompatibility.

Recusal and routine withdrawal

140. The Civil Procedure Code[141] and the Criminal Procedure Law[142] both contain a set of grounds according to which a professional judge or a lay judge can be excluded from certain cases. These grounds aim at avoiding that a judge works on a case s/he has particular links to, by being a victim or a party to the case, having worked on it before e.g. during preliminary proceedings, being related by family or business relations to the parties or their representatives, etc. Aside from such specific reasons, a judge can be excluded from a case when there are any circumstances that cast doubt on their impartiality.

141. Judges must, immediately upon becoming aware of the existence of any of the reasons for exclusion, discontinue proceedings upon the case and duly inform the parties (in civil proceedings) and the court president, who has to appoint a substitute. Likewise, in case of doubt judges must suspend the proceedings and duly inform the parties and the court president of the grounds for possible disqualification. Furthermore, the parties and the defence counsel (in criminal proceedings) may submit a motion for recusal of a judge. The court president is competent to decide on disqualification of the judge. Where the recusal concerns a court president, the recusal ruling is rendered by the president of the immediately higher court, and where the recusal of the president of the Supreme Court of Cassation is sought, the ruling is rendered by a General Session. In criminal proceedings (but not in civil proceedings), a ruling denying a recusal motion may be challenged by a

[138] Section 31 LoJ.
[139] Section 38 LACA.
[140] See sections 80(2) and 84 LoJ.
[141] "RS Official Gazette" no. 72/2011 of 28 September 2011. See articles 66 to 73.
[142] "RS Official Gazette" no. 72/2011 of 28 September 2011. See articles 37 to 42.

special appeal which is decided by the appellate court. A ruling upholding a recusal motion is not appealable.

Gifts

142. As explained in relation to MPs,[143] sections 39 to 42 LACA, which apply to all officials including judges, regulate the acceptance and handling of gifts. In particular, officials (and associated persons) may not accept gifts in connection with the discharge of public office, except for protocol or other appropriate gifts other than money or securities. Protocol gifts – as well as other gifts which cannot be refused – must be handed over to the Directorate for State Property (i.e. the body competent to manage property in public ownership), unless the value of the gift – or the aggregate value of several gifts received during a calendar year – does not exceed 5% of the value of the average monthly net salary in Serbia i.e. 2 100 RSD/approximately 18.5 EUR (in 2013). Officials must reject any unacceptable offers, inform the offerer that the gift, if accepted, will become public property and submit a written report to their direct superior – in the case of a judge, the court president (who him/herself reports to the HJC) – and the ACA. The ACA must notify the public bodies of any determined violation of the law and publish a catalogue of gifts for the previous year as well as notifications on determined violations by 1 June of the current year. The authorities indicate that in recent years, there have been no recorded gifts to judges and no proceedings initiated.

Third party contacts, confidential information

143. The Court Rules of Procedure provide for and regulate communication with and treatment of third parties by judges with regard to cases falling under their competence. Moreover, judges are bound by the general rules on confidentiality provided for by the Data Secrecy Law[144] and government bylaws implementing this law. Finally, section 3, point 3.7 of the Code of Ethics on "Qualification and Accountability" stipulates that judges must not use or communicate to other persons secret information learned during the course of proceedings, except for the purposes of discharging judicial office.

Declaration of assets, income, liabilities and interests

144. Given that judges are considered "officials" in the meaning of the LACA, they are subject to a duty to submit a disclosure report on their property and income and on that of their spouses or common-law partners and of minors living in the same household, within 30 days of election. In addition, a report must be filed no later than 31 January of the current year if any significant changes occur since the previous report. Judges are also required to file a disclosure report within 30 days from the day of the termination of functions, as well as reports on significant changes on an annual basis and over a period of two years following the termination of public functions. The elements of this system have been described under the section on MPs.[145]

Supervision and enforcement

145. Supervision over the rules applicable to judges is mainly divided between the ACA on the one hand and the Disciplinary Commission and the Disciplinary Prosecutor on the other. The ACA is competent to supervise compliance with the rules on conflicts of interest and related matters, including on asset declarations, under the LACA. The elements of the latter supervision regime described in relation to MPs[146] apply to judges, apart from the following specific rules: the measures that may be pronounced against judges for a violation of the LACA are a caution and the public announcement of a recommendation for

[143] See paragraphs 49 to 51 above.
[144] "RS Official Gazette" no. 104/09
[145] See paragraphs 67 to 69 above. Cf. sections 43 to 49 LACA.
[146] See paragraphs 73 to 83 above.

dismissal. As indicated above, once the ACA has established a violation of the law, it accordingly notifies the competent body for the purpose of instituting a disciplinary misdemeanour or criminal procedure and the competent body has to notify the ACA of the measures taken within 90 days. If it is decided to publicly announce a recommendation for dismissal of the official, the ACA has to file an initiative for dismissal to the body which elected, appointed or nominated the official, and the latter has to notify the ACA of the measures taken.

146. Disciplinary accountability of judges is regulated in sections 88 to 97 LoJ. These provisions include a list of disciplinary offences, *inter alia*, violation of the principle of independence, failure of a judge to request his/her recusal due to negligent performance in cases where there are reasons for recusal or exclusion foreseen by law, unjustifiable delays, acceptance of gifts contrary to the regulations on conflicts of interest, engaging in inappropriate relations with parties in proceedings and their legal representatives, engaging in activities that are incompatible with a judge's function under the law, serious violation of provisions of the Code of Ethics.

147. The disciplinary bodies – namely the Disciplinary Commission, the Disciplinary Prosecutor and his/her deputies – are appointed by the HJC from among judges in accordance with an act stipulating the requirements for their appointment, duration of the term in office, and manner of the termination of functions, as well as the working and decision-making methods. Disciplinary proceedings are conducted by the Disciplinary Commission at the motion of the Disciplinary Prosecutor. Proceedings are urgent and closed to the public, unless the judge charged requests that the proceedings be open to the public. They are subject to the statute of limitation after two years from the day of commission of an offence. A judge has the right to be promptly notified of the motion of the Disciplinary Prosecutor, to examine the case file and the supporting documentation, to present explanations and evidence to support his/her statements, in person or through a representative, and to verbally present his/her statements before the Disciplinary Commission.

148. Having completed the disciplinary proceedings, the Disciplinary Commission may reject the motion of the Disciplinary Prosecutor or uphold it and impose a disciplinary sanction which is in proportion to the gravity of the offence.[147] Disciplinary sanctions include public reprimand (only in the case of a judge's first disciplinary offence), salary reduction of up to 50% for a period not exceeding one year and prohibition of advancement for a period of up to three years. The latter two may be imposed either separately or jointly. If the Disciplinary Commission establishes the responsibility of a judge for a serious disciplinary offence as defined by law, it is to institute dismissal proceedings.

149. The Disciplinary Prosecutor and the judge who is subject to disciplinary proceedings may file an appeal with the HJC against the decision of the Disciplinary Commission within eight days. The HJC has to decide on the appeal within 30 days. It may either uphold or reverse the first-instance decision of the Commission. The decision by the HJC is final but the judge concerned may initiate an administrative claim. The final decision on the imposition of a disciplinary sanction is entered in the personnel record of a judge.

150. Finally, judges may be subject to ordinary criminal proceedings and sanctions if they commit offences such as bribery, fraud, breach of professional confidentiality or failure to report property to the ACA or giving of false information, with an intention to conceal facts about it.[148] Judges are subject to the same criminal proceedings as other citizens. However, they may not be held responsible for their expressed opinion or voting in the process of passing a court decision (except in cases when they committed a criminal offence by violating the law), nor may they be detained or arrested in legal proceedings

[147] The authority to initiate proceedings is thus clearly separated from the authority to decide on sanctions.
[148] Section 72 LACA.

instituted due to criminal offences committed in performing their judicial function without the approval of the HJC.[149]

151. The authorities submitted the following statistical information:

- In recent years, the ACA has initiated 45 proceedings against judges, all of which were related to the requirement on judges to submit asset declarations. During the period January 2013 to October 2014, the ACA took the following measures in respect of judges: 18 cautions and public announcement of a decision on the violation of the LACA in one case, seven requests for initiating misdemeanour proceedings and one criminal charge was brought.

- Between the establishment of the disciplinary bodies and September 2014, 51 cases had been brought before the Disciplinary Commission and the following sanctions were imposed on judges: six dismissals from judicial function (e.g. for repeated significant delay in proceedings, or a serious violation of the Code of Conduct) as well as public reprimand and salary reduction (from 10% for a period of four months to 40% for a one year period) in several cases.

- The authorities could not provide comprehensive information on the number and types of criminal cases and the sanctions applied specifically with respect to judges since the courts' programme for automatic data recording does not foresee a search by function. They instead provide an example: the case of a Kragujevac High Court judgment delivered against a judge for the criminal offence of bribery under article 367 CC. In addition, according to the feedback received by the ACA, one criminal charge brought by it was rejected.

152. As described above,[150] lay judges may be suspended from office by the court president if criminal proceedings have been instituted against them for an offence that might lead to dismissal, or if dismissal proceedings have been instituted. Furthermore, the functions of a lay judge may be terminated by the HJC; proceedings may be initiated on a proposal by the court president, president of the immediately superior court, the president of the Supreme Court of Cassation or the Minister of Justice.

Advice, training and awareness

153. Training events (lectures or seminars) are occasionally organised for judges on ethics, corruption prevention, conflicts of interest and related subjects, and to discuss guidelines for the drawing-up and implementation of the integrity plan which the courts are obliged to adopt. The ACA organises periodical one day training for all public officials, including judges, on their rights and duties in the aforementioned areas. The intention is that all judges will attend, but the programme is optional. In addition, the ACA has prepared a Manual on Ethics and Integrity as a general tool for all public sector employees, which can be used in the training of judges. No specific introductory or further training is organised for lay judges, including on questions of ethics and conduct. During the visit, the GET was informed that the Judicial Academy organises initial training for judicial candidates which includes modules dedicated to ethical standards and also includes such issues in its in-service training programme for elected judges. However, practitioners consulted on the subject on site stated that much more needs to be done in this area. It can be noted that, as indicated above, the Memorandum of Understanding between the ACA and the Judicial Academy that is being drawn up will provide for cooperation in the drawing up of tailor-made manuals and the organisation of workshops on ethics and integrity (including ethical dilemmas) for judges and prosecutors. Moreover, training for trainers of judges and prosecutors is being organised in the framework of the Joint EU-Council of Europe Project PACS Serbia.

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[149] Article 151 of the Constitution

[150] See above under "Recruitment, career and conditions of service" (paragraph 121).

154. Judges can receive advice on questions regarding ethical principles and rules of conduct from the HJC. Moreover, the ACA provides opinions and instructions on related issues according to the LACA. The authorities indicate that during the period January 2013 to October 2014, the ACA finalised five proceedings in respect of judges initiated at the request of a judge and another one that was dealt with on the basis of a report or *ex officio* as follows: three opinions on the implementation of the LACA were issued, two requests for approval to engage in other employment or another occupation were rejected a decision to terminate proceedings was taken in one case.

155. The GET is convinced that confidential counselling for judges on ethical questions, along with further dedicated training and written guidance is needed and refers to the comments and the recommendation made to that effect above.[151]

[151] See above under "Ethical principles, rules of conduct and conflicts of interest" (paragraphs 130 and 131).

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Overview of the prosecution service

156. Public Prosecution in Serbia is part of the judicial branch. Its task is to prosecute perpetrators of criminal and other punishable offences and to take measures for the protection of constitutionality and legality. The prosecution service is an autonomous institution in relation to other state bodies. Its autonomy is guaranteed by article 156 of the Constitution and by the Law on Public Prosecution (hereafter LPP). Any influence on the work of the public prosecution service and on actions in cases by the executive and the legislative powers through the use of public office, public media and in any other manner that may jeopardise the independence of the work of a public prosecution office, is prohibited.[152]

157. The Public Prosecution Service consists of the Office of the Public Prosecutor of the Republic, the Office of the Appellate Public Prosecutor, the higher public prosecution offices, the basic public prosecution offices, and the public prosecution offices with special jurisdiction, namely the Office of the Public Prosecutor for Organised Crime and the Office of the Public Prosecutor for War Crimes. There are altogether 90 public prosecution offices, 36 public prosecutors, 54 acting public prosecutors and 675 deputy public prosecutors in Serbia. The authorities indicate that currently 58% of all prosecutors are female.

158. One of the fundamental features of the public prosecution is its hierarchical structure and organisation.[153] Each public prosecutor is subordinate to the next higher ranking public prosecutor and every public prosecutor is subordinate to the Public Prosecutor of the Republic.

159. A public prosecution office consists of the public prosecutor (i.e. s/he who heads the office), deputy public prosecutors and staff.[154] Everyone in the public prosecution office is subordinate to the public prosecutor.[155] A deputy public prosecutor is required to perform all actions entrusted to him/her by the public prosecutor and is authorised to undertake any action a prosecutor is authorised to undertake.[156]

160. The Public Prosecutor of the Republic manages the work of and represents the Public Prosecution Service.[157] S/he is accountable to the National Assembly for the work of the Public Prosecution Service and for his/her own work. S/he is competent to proceed before all courts and other authorities in Serbia and to undertake all actions within the purview of the public prosecution office.[158] Other specific competences include competence to issue both mandatory instructions in specific cases and mandatory general instructions to all public prosecutors aimed at achieving legality, effectiveness and uniformity in proceedings; to oversee the work of the public prosecution offices and the implementation of instructions, observe and study the practice of the public prosecution offices and courts; and to submit to the National Assembly regular annual reports on the work of the public prosecution offices and reports requested by the Judicial, Public Administration and Local Self-Government Committee of the National Assembly.

161. Following nomination by the government, the Public Prosecutor of the Republic is elected by the National Assembly which has first obtained obtaining the opinion of the Judicial, Public Administration and Local Self-Government Committee, for a six year term

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[152] Section 5(2) LPP. See also section 45 LPP.
[153] See sections 16 to 25 LPP.
[154] When this report refers to the term "prosecutor" without any reference to him/her being either a head of office or a deputy, it is meant to encompass all members of the prosecution service no matter of their rank.
[155] Section 12 LPP.
[156] Section 23 LPP.
[157] See article 160 of the Constitution and section 22 LPP.
[158] Section 29 LPP.

and may be re-elected.[159] The government proposes one or more candidates from a list of candidates established by the State Prosecutorial Council (hereafter SPC). If the Public Prosecutor of the Republic is not re-elected or if his/her term in office is terminated at personal request, s/he continues to work as a Deputy Public Prosecutor of the Republic, upon decision by the SPC. The tenure of the Public Prosecutor of the Republic is terminated by a decision of the National Assembly, or if s/he is not re-elected or requests termination, if a legally prescribed condition comes into force or upon relief of duty for reasons stipulated by law (in the latter case, the proposal emanates from the government).

162. Under articles 164 and 165 of the Constitution, the SPC is an autonomous body that provides for and guarantees the autonomy of prosecutors. It was first established in April 2009 and is involved, *inter alia*, in the election and termination of the functions of public prosecutors, and performs other duties specified by law. It comprises 11 members, the Public Prosecutor of the Republic, the Minister of Justice and the President of the Judicial, Public Administration and Local Self-Government Committee of the National Assembly are *ex officio* members and eight electoral members are elected by the National Assembly for a five year term. Electoral members must include six prosecutors holding permanent posts – one of whom from the autonomous provinces – and two respected and prominent lawyers who have at least 15 years of professional experience, one of whom must be a solicitor and the other a professor at the law faculty. Electoral members of the SPC may be re-elected, but not consecutively.

163. Judicial administration tasks are carried out by the Ministry of Justice, with the exception of tasks related to the provision of funds needed for the work of public prosecution offices, which are performed by the SPC.[160] The Ministry may, in performing judicial administration tasks, request reports and data from public prosecution offices. In contrast, any individual act of judicial administration infringing the independence of the work of a public prosecution office is null and void. Funds for the work of public prosecution offices are provided from the national budget. The SPC proposes the scope and structure of budget funds necessary for the work of the public prosecution offices, having obtained the opinion of the Minister of Justice, and distributes the funds amongst the public prosecution offices. Supervision of expenditure of budget funds is conducted by the SPC, the Ministry of Justice and the Ministry of Finance.

164. In the constitutional framework in Serbia where the prosecution service is an autonomous state body, the establishment of the SPC as a self-governing body tasked with guaranteeing the autonomy of prosecutors is clearly to be welcomed. That said, the concerns expressed with respect to the HJC in the chapter on judges apply similarly to the SPC and the GET refers to its comments made in that context.[161] During the on-site visit, it was repeatedly stated that the SPC in its current composition is vulnerable to political influence and that in the performance of its duties it is weak and ineffective and lacks transparency and accountability. Other reasons evoked for that appraisal include the role the SPC had played in the 2009 re-appointment process – where it had refuted the majority of complaints made by prosecutors who had, *de facto*, been dismissed, and had moreover confirmed the dismissals – and the fact that its members were elected without the participation in the vote of those prosecutors who were later reinstated. For these reasons, various interlocutors called for reforming the SPC in the same way as is recommended above with respect to the HJC. Similarly, the NJRS foresees changes in the process for electing SPC members to exclude the National Assembly from the process and to exclude representatives of the executive and legislative branches from membership. Furthermore measures to increase the transparency and efficiency of its work are envisaged. Such plans are clearly to be welcomed. In order to strengthen the independence of the prosecution service from undue political influence and bearing in

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[159] Article 158 of the Constitution and section 74 LPP
[160] Section 43 LPP.
[161] See paragraphs 97 to 99 above.

mind current reform projects, **GRECO recommends (i) changing the composition of the State Prosecutorial Council (SPC), in particular by excluding the National Assembly from the election of its members, providing that a substantial proportion of its members are prosecutors elected by their peers and by abolishing the *ex officio* membership of representatives of the executive and legislative powers; (ii) taking appropriate measures to strengthen the role of the SPC as a genuine self-governing body which acts in a pro-active and transparent manner.** Full implementation of the recommendation will require amendments to the Constitution. As mentioned above, according to the Action Plan for EU accession constitutional changes are planned for end 2017.

165. The NJRS foresees clarifying the resource needs of public prosecution offices and fully transferring budgetary authority to the SPC. The GET is in favour of the prosecution service having a separate budget administered by the SPC once it has been reformed as recommended above – while at the same time acknowledging the government's competence to make final budgetary decisions. Moreover, it is essential that the resource needs of public prosecution offices are actually met and, in particular, that prosecutors in Serbia have adequate space and equipment to perform properly the investigative role given to them by the new Criminal Procedure Code.[162]

Recruitment, career and conditions of service

166. Deputy public prosecutors who are elected for the first time are elected by the National Assembly based on proposals by the SPC, for a term of three years. It is recalled here that the recent rule under the Law on the Judicial Academy that first time elected judges and prosecutors must be graduates of the Judicial Academy was nullified by a decision of the Constitutional Court. Following the three year term, deputy public prosecutors are elected to permanent office by the SPC within the prosecution service (i.e. in the same or another public prosecution office).[163]

167. Public prosecutors are elected by the National Assembly, from the ranks of public prosecutors and deputy public prosecutors, upon nomination by the government based on proposals by the SPC, for a term of six years.[164] The SPC proposes to the government a list of one or more candidates for election. If only one candidate is proposed, the government may return the proposal to the SPC. The government and the National Assembly do not have the competence to elect a candidate who has not been nominated by the SPC. A public prosecutor may be re-elected. If s/he is not re-elected or if his/her office is terminated at personal request, s/he shall continue work as a deputy public prosecutor.

168. Upcoming elections of public prosecutors and deputy public prosecutors are publicly announced by the SPC and applications are submitted along with evidence of eligibility. A citizen of Serbia who meets the general requirements for employment in state bodies, who is a law school graduate, who has passed the bar exam and who is worthy of the office, may be elected. The required professional experience in the legal profession following the bar exam is 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

[162] According to a recent report of the World Bank prepared in the framework of the Serbia Judicial Functional Review under the umbrella of the Multi-Donor Trust Fund for Justice Sector Support, "on 1 October 2014, around 38 000 investigation cases … were transferred from courts to prosecution offices", which "will require that prosecutors work in new areas such as case management, cross-examination and protecting victims' rights." See: http://www.mdtfjss.org.rs/archive//file/Annex%201%20-%20Background%20Information%20on%20the%20Serbian%20Judiciary(1).pdf

[163] Section 75 LPP.

[164] Sections 55 and 74 LPP

prosecutor and deputy public prosecutor with special jurisdiction, 12 years for the Public Prosecutor of the Republic and 11 years for the Deputy Public Prosecutor of the Republic.

169. As well as having the required qualifications and competence, a candidate must demonstrate worthiness, i.e. the requisite ethical and moral integrity (honesty, diligence, fairness, dignity, persistence and exemplarity). This implies conduct that safeguards the reputation of a prosecutor during and outside service, shows awareness of social responsibility, maintains autonomy and impartiality, confidentiality and dignity during and outside service as well as taking responsibility for the internal organisation of the prosecution service and its positive public image.

170. The SPC collects information and opinions about the qualifications, competence and moral integrity of a candidate, namely from bodies and organisations where the candidate worked in the legal profession. Before presenting its nominations, the SPC conducts interviews with the candidates. The lists of candidates compiled by the SPC are published on its website. It must justify its proposals and decisions. A "Rulebook on the criteria for the evaluation of qualifications, competence and worthiness of candidates for nomination and election for the public prosecutors and deputies" is being drafted. It is foreseen that it will stipulate the implementation of a point grading system for establishing lists of candidates.

171. Promotion of a public prosecutor by means of election to a higher ranking public prosecution office follows the same procedure as described above. The SPC is responsible for the promotion of deputy public prosecutors.

172. The concerns expressed with respect to the recruitment and promotion of judges and court presidents in the chapter on judges[165] apply *mutatis mutandis* to the recruitment and promotion of public prosecutors and deputy public prosecutors. During the on-site visit, it was repeatedly stated that the involvement of the National Assembly in this process provides room for undue political influence,[166] that the selection of candidates by the SPC is non-transparent and lacks objective and clear criteria and that there have been cases where prosecution offices have been headed by acting public prosecutors for long periods of time, making them liable to pressure. In addition, concerns were raised with regard to the role of the government in the appointment process as it enjoys wide discretion when accepting or refusing candidates proposed by the SPC for election by the National Assembly. Against this background, the GET can only agree with the various national and international instances that call for the procedures for the recruitment and promotion of public prosecutors and deputy public prosecutors to be reformed in a way that is similar to what is recommended above with respect to judges – *inter alia*, by excluding the National Assembly from the process, limiting the discretion of the government and ensuring that all decisions taken during the appointment and promotion procedure are based on objective and clear criteria.

173. Again, the GET welcomes that such a reform process has already been initiated within the framework of the NJRS. The GET was informed that on 18 May 2015, the SPC established a Rulebook which sets out to introduce "rules on criteria and standards for the evaluation of qualification, competence and worthiness of candidates in the procedure for proposing and election prosecutorial office holders" and aims at excluding from the procedure "any type of prohibited influence or discrimination". While the GET acknowledges the introduction of such rules, it did not have the opportunity to assess their content in depth as they were provided only very shortly before the adoption of the present report. It is crucial that the application of the rules be kept under review so as to

[165] See paragraphs 112 to 115 above.
[166] As for judges, pending a possible constitutional reform which would exclude the National Assembly from the recruitment process, a transitional solution has been found by stipulating that the SCP proposes only one candidate for each vacancy for deputy public prosecutor to the Assembly, see section 75 LPP. However, such an amendment has not been introduced for the election of public prosecutors, see section 74 LPP.

ensure that in practice, decisions are made in a transparent and objective manner. In view of the foregoing and notably the reform process underway, **GRECO recommends reforming the procedures for the recruitment and promotion of public prosecutors and deputy public prosecutors, in particular by excluding the National Assembly from the process, limiting the discretion of the government and ensuring that decisions are made on the basis of clear and objective criteria in a transparent manner and that positions of public prosecutors (i.e. heads of office) are occupied on an acting basis only for a short period of time.** The authorities again stress that full implementation of the recommendation will require amendments to the Constitution which cannot be achieved within a short timeframe.

174. As a rule, a deputy public prosecutor may be permanently transferred to another public prosecution office of the same level only with his/her written consent.[167] The decision to transfer is issued by the Public Prosecutor of the Republic. If, however, a public prosecution office is dismantled, deputy public prosecutors and public prosecutors can be transferred without their consent, on the basis of a decision of the SPC. The authorities indicate that there have been no such cases in recent years.

175. The work of all prosecutors is subject to regular evaluation,[168] which represents the basis for election, mandatory training and dismissal. Performance evaluation is to be conducted on the basis of the publicised, objective and uniform criteria and standards established by the SPC on 29 May 2014.[169] The SPC decided to conduct a pilot phase before the rules enter into force. The performance evaluation of a public prosecutor is conducted by the directly superior, after obtaining the opinion of the Collegium of the directly superior public prosecution office. The performance evaluation of a deputy public prosecutor is conducted by the public prosecutor, after obtaining the opinion of the Collegium of the public prosecution office. According to the Rulebook established by the SPC, the criteria for the evaluation of the work of a public prosecutor are general ability to administer a public prosecution office, ability to monitor and include the total performance results of the public prosecution office under his/her management. The criteria for evaluation of the work of a deputy public prosecutor are promptness when proceeding, expertise and results, professional commitment and cooperation. Performance ratings – "performs prosecutorial function exceptionally", "satisfactory performance of prosecutorial function" and "unsatisfactory performance" – are entered onto the prosecutor's personnel file. Prosecutors can submit reasoned objections to the rating to the SPC.

176. The GET welcomes the recent establishment by the SPC of criteria and standards for performance evaluation in an attempt to render the appraisal system more objective and uniform, in line with the NJRS. At the same time it is concerned (as in the case of the appraisal of judges, though to a lesser degree) that the system might give too much weight to quantitative factors, some of which appear inadequate – such as the percentage of final convictions – and might put inappropriate pressure on prosecutors.[170] Furthermore, the GET is again concerned that evaluations serve as grounds for dismissal if "unsatisfactory" and that the SPC can initiate evaluations outside the usual three-year cycle, which provides room for possible harassment or undue pressure. The GET refers to the similar concerns it expresses above with respect to judges. In addition, it is of the opinion that the rules do not provide for adequate participation of prosecutors in the evaluation procedure. They merely state that prosecutors have the right to access the evaluation sheet and to ask for errors to be corrected. In the view of the GET, it is crucial

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[167] See section 62 LPP.

[168] See sections 99 to 102 LPP.

[169] "Rulebook on criteria and standards for evaluation of work of public prosecutors and deputy public prosecutors"

[170] In this connection, the authorities indicated – shortly before the adoption of the present report – that on 3 December 2014, the SPC established draft "Rules on evaluation and complexity and weight of cases in public prosecution offices of the Republic of Serbia" which were sent, on 18 December, to the European Commission for comment. The authorities state that once they have received the comments, they will revise the rules on prosecutors' performance evaluation accordingly.

that prosecutors are given the opportunity to express their views on their own activities and on the assessment that is made of them, for example by commenting on a preliminary draft or by being heard in the evaluation process. Such guarantees of procedural fairness would contribute to creating a more objective and transparent promotion process, free from any possible undue influence. In view of the above, **GRECO recommends that the system for appraising the performance of public prosecutors and deputy public prosecutors be reviewed (i) by revising the quantitative indicators and ensuring that evaluation criteria consist principally of qualitative indicators and (ii) by abolishing the rule that unsatisfactory evaluation results systematically lead to dismissal and ensuring that prosecutors have adequate possibilities to contribute to the evaluation process.**

177. The term in office of a public or deputy public prosecutor terminates if s/he personally requests it, upon completion of 40 years of service, in the case of permanent loss of the capacity to work, or if dismissed.[171] It is also terminated if a public prosecutor is not re-elected, and if a deputy public prosecutor is not elected to permanent office. Public prosecutors and deputy public prosecutors are dismissed if sentenced for a criminal offence to at least six months' imprisonment, or convicted for a punishable offence that renders them unworthy of office, or if they discharge their functions incompetently (i.e. their performance is rated "unsatisfactory"), or for committing a grave disciplinary offence. The National Assembly decides whether to terminate the functions of a public prosecutor if the recommendation for dismissal emanates from the government and is based on reasons for dismissal determined by the SPC. The SPC decides whether to terminate the functions of a deputy public prosecutor. Decisions on termination can be appealed to the Constitutional Court, which takes a final decision. Decisions on termination are published in the Official Gazette. The authorities indicate that no public prosecutors have been dismissed in recent years. In 2013, one deputy public prosecutor was dismissed after being convicted by the Appellate Court in Belgrade for the criminal offence of passive bribery (article 367 CC) and sentenced to three years' imprisonment, a fine and a security measure.

178. The monthly net salary of public prosecutors, according to the type of prosecution office, is as follows: at the Office of the Public Prosecutor of the Republic, 198 905.82 RSD/approximately 1 730.00 EUR; Office of the Appellate Public Prosecutor, 159 124.66 RSD/approximately 1 384 EUR; higher public prosecution office, 139 234.07 RSD/approximately 1 211 EUR; and basic public prosecution office, 121 001.04 RSD/approximately 1 052 EUR. For deputy public prosecutors, salaries range from 165 754.85 RSD/approximately 1 441 EUR at the Office of the Public Prosecutor of the Republic to 99 452.91 RSD/approximately 865 EUR at the basic public prosecution office. The salary depends on various factors, such as what part of the structure of the prosecution service one works in, additional tasks and responsibilities.

Case management and procedure

179. The opportunity principle (allowing public prosecutors to defer criminal prosecution in certain cases) was introduced by the Criminal Procedure Code of 2001. The Public Prosecutor of the Republic issued guidelines for public prosecutors on the application of this principle. Further significant changes to the criminal procedure were introduced by the Criminal Procedure Code of 2011, the major parts of which entered into force in October 2013. One objective of the new Code is to shorten the investigative phase of criminal cases. While, previously, judges were responsible for investigation, the new legislation assigns this competence to prosecutors, who direct all aspects of the investigation and have to take equal account of evidence that is incriminating or favourable to the defendant.

[171] See sections 87 to 98 LPP.

180. Under the NJRS broader application of actions based on the discretionary prosecution system and plea bargaining are seen as instruments that raise the efficiency of the criminal justice system. During the interviews held by the GET on site, it transpired however that prosecutors and other relevant practitioners did not feel adequately prepared for their new roles. It is clear that prosecutors need much more training on their new functions, responsibilities (including the obligation to also safeguard the rights of the defendant in adversarial proceedings) and legal tools. As already mentioned, they also need adequate space and equipment to properly perform the investigative role given to them by the new Criminal Procedure Code. Moreover, the GET took note of concerns that the new discretionary powers of public prosecutors might bear risks of corruption, and of calls for the development of adequate mechanisms to keep these powers in check. The authorities are encouraged to address these issues in the framework of the current reform process.

181. Pursuant to rule 42 of the Rulebook on the Administration in Public Prosecutions, the allocation of cases is conducted by the public prosecutor or, if absent/unable to do so, by the deputy public prosecutor designated in the annual schedule of tasks. Prior to the allocation of cases, the public prosecutor may classify them according to complexity in conformity with the category of case processor. Cases are allocated according to the order of their receipt to case processor on an alphabetical (Cyrillic alphabet) list with each case going to the next processor on the list. An exemption from this rule is allowed only when warranted, for example, by the work overload of a case processor, in their absence, or if justified by other reasons. There are no guidelines as to what might constitute "other reasons". The authorities indicate that in practice it is rare that the allocation of cases does not follow the prescribed rules.

182. It follows from the hierarchical structure of the Prosecution Service that a higher ranked prosecutor is authorised to issue to an immediately lower ranked prosecutor mandatory instructions for proceeding in cases[172] - when there is doubt in respect of the efficiency and legality of his/her performance - and public prosecutors are authorised to issue mandatory instructions to their deputies, i.e. within the same public prosecution office. The Public Prosecutor of the Republic is competent to issue mandatory instructions in specific cases and mandatory general instructions for all public prosecutors. As a rule, mandatory instructions are issued in writing and must explain the reason and rationale behind them.

183. A lower ranking prosecutor who deems that a mandatory instruction is unlawful and unwarranted may submit a reasoned objection to the Public Prosecutor of the Republic through the public prosecutor issuing the instruction, who must reconsider it. As a rule, the public prosecutor filing the objection is not required to act on the instruction before the decision of the higher ranking public prosecutor. If the latter revokes the instruction, the objection is not forwarded to the Public Prosecutor of the Republic. No objection can be made to a mandatory instruction by the Public Prosecutor of the Republic.

184. Under certain circumstances, the injured party to a case can object to decisions of a public prosecutor. In such a case, a decision is taken on whether the objection is founded by the immediately higher ranked public prosecutor whose ruling cannot be objected to or appealed against. If the objection is allowed, a compulsory instruction is issued to the competent public prosecutor to conduct or resume criminal prosecution.[173]

185. A higher ranking public prosecutor may perform all actions for which a lower ranking public prosecutor is competent and is required to issue a ruling that indicates the reasons for such "devolution".[174] A lower ranking public prosecutor who deems that a decision by a higher ranking public prosecutor has been made with no legal grounds, may

[172] Section 18 LPP.
[173] Article 51(3) of the Criminal Procedure Code
[174] Section 19 LPP.

file an objection with the Public Prosecutor of the Republic. A higher ranking public prosecutor may authorise a lower ranking public prosecutor to take over a matter under the jurisdiction of another lower ranking public prosecutor when the public prosecutor with competent jurisdiction is prevented by legal or objective reasons from proceeding in a particular case, and has to issue a ruling that indicates the reasons for such substitution.[175] *Inter alia*, a public prosecutor can be removed from a case if disqualified.[176] In order to exercise seniority of rank, the Public Prosecutor of the Republic is entitled to inspect any case, while a higher ranking prosecutor is entitled to inspect any case of a directly lower ranking prosecutor.

186. Prosecutors must take care to resolve cases lawfully and promptly.[177] As indicated above, one of the criteria for performance evaluation is promptness when proceeding which is assessed according to the number of cases processed. Moreover, undue delay gives rise to disciplinary liability.[178] The authorities indicate that since disciplinary bodies were established within the SPC in May 2013, only a few complaints against public prosecutors have been submitted and in those cases the Disciplinary Prosecutor found no legal grounds for conducting disciplinary proceedings. In contrast, the Disciplinary Prosecutor submitted motions to conduct disciplinary proceedings against four deputy public prosecutors. In two of those cases, deputy prosecutors were found guilty of disciplinary offences, the other two disciplinary proceedings are still ongoing.

Ethical principles, rules of conduct and conflicts of interest

187. The LPP provisions require all prosecutors to take an oath of office,[179] they define the basic rights and obligations of prosecutors,[180] including the principles of independence and impartiality and incompatibilities with the prosecutorial function, and they state that in the performance of their office, prosecutors must adhere to the Code of Ethics passed by the SPC. The "Code of Ethics for public prosecutors and deputy public prosecutors of the Republic of Serbia", which was adopted in October 2013, is aimed at strengthening the rule of law and public trust in the prosecution service by establishing standards of professional ethics for prosecutors. It covers the basic duties of public prosecutors and the ethical principles of independence, impartiality, respect of rights, responsibility and professional commitment, professionalism and dignity. Significant violations (i.e. deliberate, serious or repeated) of the Code of Ethics with respect to those ethical principles constitute disciplinary offences. In the introduction to the Code, the SPC states that prosecutors should also have in mind Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe to member States on the role of public prosecution in the criminal justice system, as well as the European Guidelines of Ethics and Conduct for Public Prosecutors.[181]

188. On 29 May 2014, the SPC created an Ethical Committee as an *ad hoc* working body of the SPC consisting of a President and two further members. According to the Code of Ethics, the Ethical Committee is tasked with interpreting particular provisions of the Code and giving individual advice to prosecutors. During the on-site visit, representatives of the SPC indicated that it was planned to publish opinions on the interpretation of the rules, i.e. guidelines for prosecutors' conduct, on its website. The organisation of training for

[175] Section 20 LPP.
[176] Cf. articles 37 to 42 of the Criminal Procedure Code and section 33 LPP. See below under "Prohibition or restriction of certain activities" (paragraph 195).
[177] Cf. section 10a LPP.
[178] Cf. section 104 LPP. See below under "Supervision and enforcement" (paragraph 200).
[179] Section 84 LPP: "I swear on my honour that I shall perform the public prosecutor's office with dedication, conscientiously and impartially, and shall protect the constitutionality and legality, human rights and civil freedoms."
[180] See sections 45 to 54 LPP.
[181] European Guidelines on Ethics and Conduct for Public Prosecutors ("Budapest Guidelines"), adopted by the Conference of Prosecutors General of Europe of 31 May 2005. CPGE (2005)05, see:
http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Budapest_guidelines_EN.pdf

members of the Ethical Committee was also envisaged. The scope of its activities will be further determined by the new Regulations on internal management of the SPC.

189. The GET welcomes the recent adoption of the Code of Ethics, its structure and content is quite similar to the Code of Ethics applicable to judges. That said, information gathered by the GET clearly suggests that more needs to be done to raise prosecutors' awareness of ethical dilemmas they may encounter in their professional life, of the existing standards, and to provide practical guidance on how principles apply in daily practice and help in solving concrete dilemmas – through further written guidance, confidential counselling within the prosecution service and dedicated training. The GET refers in this connection to the information on recent initiatives – including four training sessions for judges and prosecutors on ethics, conflicts of interest and disciplinary responsibility which have already been held in the framework of the Joint EU-Council of Europe Project PACS Serbia (during the period March to June 2015) – and to the comments made with respect to judges above.[182] The authorities indicate that in addition, during the period October to December 2014 the OSCE organised three roundtables for prosecutors on those issues. Furthermore, it would appear that it can be expected that some of the above-mentioned measures will be taken by the recent Ethical Committee which has been given the task of providing interpretative guidance. In the view of the GET, it would be advisable to consider assigning the function of providing confidential counselling in concrete cases to dedicated practitioners, e.g. public prosecutors at the Office of the Appellate Public Prosecutor or the higher public prosecution offices, who command specific expertise in the field and are distinct from disciplinary bodies. **GRECO recommends (i) that the Code of Ethics for public prosecutors and deputy public prosecutors be communicated effectively to all prosecutors and complemented by further written guidance on ethical questions – including explanations, interpretative guidance and practical examples – and regularly updated; ii) that dedicated training of a practice-oriented nature and confidential counselling within the prosecution service be provided for all categories of prosecutors.**

190. The legal framework for the prevention and resolution of conflicts of interest is provided by sections 27 to 38 LACA which are applicable to all "officials" including prosecutors and are described under the section on MPs.[183] *Inter alia*, those provisions contain a definition of conflicts of interest and the requirement on officials to avoid such conflicts and to notify their direct superior and the ACA of any doubts over a conflict of interest concerning themselves or an associated person. In addition, it is to be noted that prosecutors cannot act in a particular case in which they hold a private interest; the specific grounds for disqualification are provided by the Criminal Procedure Code.[184] The GET finds the regulatory framework with respect to the prosecution service and conflicts of interest satisfactory overall, as it is with respect to judges. However, it refers to the comments and recommendations made with regard to the co-existence of the LACA and the specific procedural laws which warrants clarification[185] and as regards the need for awareness-raising and further guidance on the rules (as recommended above in connection with the Code of Ethics).

<u>Prohibition or restriction of certain activities</u>

Incompatibilities and accessory activities, post-employment restrictions

191. Prosecutors are obliged to act in accordance with the general rules contained in sections 27-38 LACA (Chapter 3, Conflicts of interest). These provisions include a general prohibition on holding another public office, restrictions on the performance of other jobs or activities and a prohibition on exercising functions in commercial companies, as

[182] See paragraphs 130 and 131 above.
[183] See paragraphs 43 to 46 above.
[184] See below under "Prohibition or restriction of certain activities" (paragraph 195).
[185] See below under "Crosscutting issues" (paragraphs 214 and 215).

described in the section on MPs.[186] Regarding the performance of other jobs or activities, the authorities indicate that during the period January 2013 to October 2014, the ACA finalised one procedure requested by a deputy public prosecutor by granting approval to pursue another job. In addition to the general LACA provisions, prosecutors are subject to the following specific regulations.

192. Article 163 of the Constitution states that prosecutors are prohibited from engaging in political activities and that other functions, activities or private interests which are incompatible with the prosecutor's function are to be stipulated by law. Pursuant to section 65 LPP, prosecutors may not hold office in authorities enacting or enforcing regulations, in bodies of executive power, public services, and bodies of autonomous provinces and local self-management units. They may not be members of political parties, engage in public or private paid work, nor provide legal services or legal advice for compensation. As an exception prosecutors may, without explicit permission, engage in compensated educational and research activity outside working hours and, in cases set out by law, in teaching and research activities in a judicial training institution during working hours. They may also be sent on study and/or other professional visits abroad by decision of the SPC, following the opinion of the directly superior prosecutor. Finally, the office of public prosecutor is also incompatible with other offices, engagements or private interests that are contrary to the dignity and autonomy of a public prosecutor's position or are damaging to its reputation, which is decided upon by the SPC.

193. A deputy public prosecutor has the duty to notify the public prosecutor in writing of another office held, other engagements or private interests that might possibly constitute an incompatibility, as well as of the engagements or private interests of members of his/her immediate family, if they might possibly be incompatible with the public prosecutor's functions. A public prosecutor must notify the directly higher ranking prosecutor of such commitments or private interests, and the Public Prosecutor of the Republic must notify the SPC. It is the duty of a public prosecutor to initiate proceedings before the Public Prosecutor of the Republic when s/he gains knowledge of a possible incompatibility and considers it probable that there are grounds for deciding that an incompatibility exists. The SPC initiates and conducts proceedings to decide whether incompatibilities exist for the Public Prosecutor of the Republic[187] The authorities indicate that no such cases have occurred in practice.

194. In accordance with the general LACA rules, during a period of two years after termination of public functions, officials, and therefore prosecutors, may not take up employment or establish business relations with a legal entity, entrepreneur or international organisation engaged in an activity related to the office which the official held, unless approval is given by the ACA.[188]

Recusal and routine withdrawal

195. The provisions of the Criminal Procedure Code on disqualification of judges described above also apply to prosecutors.[189] Public prosecutors decide on motions for the recusal of a deputy public prosecutor and motions for recusal of a public prosecutor are ruled on by the immediately superior public prosecutor. Motions to exclude the Public Prosecutor of the Republic are decided by the SPC once the opinion of the Collegium of the Office of the Public Prosecutor of the Republic has been obtained.[190] The authorities indicate that disqualification of prosecutors is rare in practice. Violation of these rules is considered a disciplinary offence. Since the establishment of the disciplinary bodies no complaints regarding violation of these rules have been submitted.

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[186] See paragraph 56 above.
[187] See sections 66 and 67 LPP.
[188] Section 38 LACA.
[189] Cf. articles 37 to 42 of the Criminal Procedure Code. See above under "Corruption prevention in respect of judges" (paragraph 140).
[190] These rules are also contained in section 33 LPP.

Gifts

196. As explained in relation to MPs,[191] sections 39 to 42 LACA, which apply to all officials including public prosecutors, regulate the acceptance and handling of gifts. In particular, officials (and associated persons) may not accept gifts in connection with the discharge of public functions, except for protocol or other appropriate gifts other than money or securities. The authorities indicate that in recent years, no gifts have been recorded and no proceedings initiated with respect to prosecutors. Violation of the rules on gifts is also considered a disciplinary offence under the LPP. Since the establishment of the disciplinary bodies no complaints regarding violation of these rules have been submitted.

Third party contacts, confidential information

197. Engaging by a prosecutor in inappropriate relations – i.e. relations and behaviour not in line with the provisions of the Code of Ethics – with the parties or their legal counsels in pending proceedings constitutes a disciplinary offence.[192] Moreover, prosecutors are bound by the general rules on confidentiality in the Data Secrecy Law and government bylaws implementing that law. Finally, chapter III, section 3 of the Code of Ethics on "Respect of rights" stipulates that public prosecutors must not use the prosecution function and confidential information they have access to for private purposes or to satisfy the interests of their family or close persons.

Declaration of assets, income, liabilities and interests

198. Under the provisions of the LACA which apply to all "officials", prosecutors are subject to a duty to submit a disclosure report on their property and income and on that of their spouses or common-law partners and of minors living in the same household, within 30 days of election. In addition, a report must be filed no later than 31 January of the current year if any significant changes occur since the previous report. Prosecutors are also required to file a disclosure report within 30 days from the day of the termination of functions, as well as reports on significant changes annually for two years following the termination of public functions. The elements of this system have been described under the section on MPs.[193]

Supervision and enforcement

199. Responsibility for supervising adherence to the rules that apply to prosecutors is mainly divided between the ACA on the one hand and the Disciplinary Commission and the Disciplinary Prosecutor on the other. The ACA supervises compliance with the rules on conflicts of interest and related matters, including on asset declarations, under the LACA. The elements of the latter supervision regime described in relation to MPs[194] apply to prosecutors. The following specific rules also apply: measures that may be pronounced against officials such as prosecutors due to a violation of the LACA are a caution and the public announcement of a recommendation for dismissal. As indicated above, once the ACA has established a violation of the law, it notifies the competent body – which in the case of a prosecutor is the office where duties are performed – for the purpose of instituting a disciplinary, misdemeanour or criminal procedure and the competent body has to notify the ACA of the measures taken within 90 days. If the public announcement of a recommendation for dismissal is pronounced, the ACA has to file an initiative for dismissal to the body which elected, appointed or nominated the official, and the latter has to notify the ACA of the measures taken.

[191] See paragraphs 49 to 51 above.
[192] Section 104(1) item 12 LPP.
[193] See paragraphs 67 to 69 above. Cf. sections 43 to 49 LACA.
[194] See paragraphs 73 to 83 above.

200. Disciplinary accountability of prosecutors is regulated in sections 103 to 111 LPP. These provisions include a list of disciplinary offences, *inter alia*, failure of a public prosecutor to request recusal in cases where legal grounds for doing so exist, failure to draw up prosecutorial decisions and file ordinary and extraordinary legal remedies within stipulated time limits, failure to comply with the written instruction of a superior public prosecutor, acceptance of gifts in breach of the regulations on conflicts of interest, engaging in inappropriate relations with the parties or their legal counsels in pending proceedings, engaging in activities that are incompatible with the functions of a prosecutor under the law, violation of the principle of impartiality and jeopardising the public's trust in the public prosecution service, significant breaches of provisions of the Code of Ethics.

201. The procedural rules are to a large extent identical with those described above with regard to judges.[195] The members of the disciplinary bodies (Disciplinary Commission, Disciplinary Prosecutor and his/her deputies) are appointed by the SPC from among public prosecutors and deputy public prosecutors in accordance with an act of the SPC stipulating the requirements for appointment, duration of the term of office and manner of termination of functions, as well as working and decision-making methods. Disciplinary proceedings are conducted by the Disciplinary Commission at the motion of the Disciplinary Prosecutor.[196] Disciplinary sanctions include public reprimand (only in the case of a first disciplinary offence by a prosecutor), salary reduction of up to 50% for a period not exceeding one year and prohibition of advancement for a period of up to three years. The Disciplinary Prosecutor and the prosecutor who is subject to disciplinary proceedings may file an appeal with the SPC against the decision of the Disciplinary Commission within eight days. The SPC has to take a decision on the appeal within 30 days, which is final, but the prosecutor concerned may initiate an administrative claim. Finally, a grave disciplinary offence is a reason for dismissal, to be decided upon by the National Assembly or the SPC (in the case of a deputy public prosecutor).[197]

202. Finally, prosecutors may be subject to ordinary criminal proceedings and sanctions if they commit offences such as bribery, fraud, breach of professional confidentiality or failure to report property to the ACA or giving of false information, with an intention to conceal.[198] Prosecutors are subject to the same criminal proceedings as other citizens. However, they may not be held responsible for the opinions they express in the performance of prosecutorial office (except if they have committed a criminal offence), nor may they be detained or arrested during legal proceedings instituted against them for a criminal offence committed in the performance of prosecutorial office without the approval of the Judicial, Public Administration and Local Self-Government Committee of the National Assembly.[199]

203. The authorities have submitted the following statistical information:

- In recent years, the ACA initiated four proceedings against prosecutors for violation of the obligation to submit an asset declaration and issued a caution in each of these cases. During the period January 2013 to October 2014, no such measures had been taken.

- Since the establishment of disciplinary bodies, the Disciplinary Prosecutor submitted eight motions to conduct disciplinary proceedings against two public prosecutors and six deputy public prosecutors. Two of those cases were related to failure to draw up prosecutorial decisions, failure to comply with a written instruction of a superior public prosecutor and violation of working hours; two cases were related to failure to file ordinary legal remedies within the stipulated time limits; two cases were related to refusal

[195] See paragraphs 147 to 149 above. The relevant LPP provisions are complemented by detailed rules contained in the Rulebook on disciplinary proceedings and disciplinary liability of public prosecutors and deputy public prosecutors that are within the purview of the disciplinary bodies.
[196] The authority to initiate proceedings is thus clearly separated from the authority to decide on sanctions.
[197] See above under "Recruitment, career and conditions of service" (paragraph 177).
[198] Section 72 LACA.
[199] Article 162 of the Constitution.

of performing duties and tasks entrusted to him/her; one case was related to violation of the principle of impartiality and jeopardising public trust in the public prosecution offices and one case was related to a significant violation of provisions of the Code of Ethics (the disciplinary proceeding is ongoing).

- Between January 2012 and October 2014, 664 criminal complaints were filed against 836 public prosecutors/deputy public prosecutors for the criminal offence "Violation of Law by a Judge, Public Prosecutor or his/her Deputy" (article 360 CC). In six of those cases investigations are ongoing. Moreover, three criminal complaints were filed against four public prosecutors/deputy public prosecutors for the criminal offence "Embezzlement" (article 364 CC). One of them was indicted after the investigation and in in one other case the investigation is ongoing. Finally, two criminal complaints against two public prosecutors/deputy public prosecutors for the criminal offence "Abuse of Office" (article 359 CC) were filed to the Office of the Public Prosecutor for Organised Crime.

Advice, training and awareness

204. Seminars primarily focused on corruption prevention are organised periodically by the ACA and professional associations. Namely, the ACA organises periodical training for public officials on rights and duties in respect of conflicts of interest, asset declarations, gifts and integrity plans (including ethics and integrity issues), which is also attended by some prosecutors. As indicated above with respect to judges, the ACA is currently drafting a Memorandum of Understanding to be signed with the Judicial Academy, to establish co-operation including on tailor-made manuals/workshops on ethics and integrity (including ethical dilemmas) for judges and prosecutors. Moreover, training for trainers of judges and prosecutors is organised in the framework of the Joint EU-Council of Europe Project PACS Serbia. In addition, the ACA has prepared a Manual on Ethics and Integrity as a general tool for all employees in public service, which can be used in the training of prosecutors.

205. Prosecutors can receive advice on questions regarding ethical principles and rules of conduct from the SPC and the ACA. In this connection, it is to be noted that the Ethical Committee recently established as an *ad hoc* working body of the SPC is tasked with giving individual advice to prosecutors and issuing their opinions on whether behaviour is contrary or not to the provisions of the Code of Ethics. No practical examples for the SPC were provided by the authorities. Regarding the activity of the ACA, they indicate that between January 2013 and October 2014, the ACA finalised one proceeding initiated following a request by a deputy public prosecutor by granting approval for pursuing a secondary job. During the interviews held on site, prosecutors described co-operation with the ACA as positive and indicated that all prosecution offices have designated contact persons for such co-operation. It involves, *inter alia*, reporting by the ACA of suspected violations of the LACA by officials, as well as advice offered on prosecutors' obligations under the LACA. That said, it would appear that mainly technical issues are dealt with (e.g. in relation to the drawing up of asset declarations), while more substantial dialogue and awareness-raising about conflicts of interest and related matters is lacking.

206. The GET is convinced that confidential counselling for prosecutors on ethical questions, along with further dedicated training and written guidance is needed and refers to the comments and the recommendation made to that effect above.[200]

[200] See above under "Ethical principles, rules of conduct and "conflicts of interest" (paragraph 189).

VI. CROSSCUTTING ISSUES

207. As mentioned above in the chapter "Context", the National Anti-Corruption Strategy for the period 2013-2018 (NACS) foresees the enactment of a new law on prevention of conflicts of interest of public employees and officials and the Anti-Corruption Agency (ACA) has taken the initiative to prepare a draft law named "Model Law on the Anti-Corruption Agency" (hereafter referred to as "the draft law"). According to the rationale of the draft law, "during the enforcement of the existing law a need arose for clarification and specification of certain number of provisions as well as for the different regulation of certain important issues, especially ones related to the conflict of interests, the holding of several public offices concurrently, asset and income declaration by officials and competencies of the Agency." The draft law contains a large number of specific amendments concerning those matters. It is currently being processed by a working group established in January 2015 by the Minister of Justice. The following paragraphs include comments on some of the areas where the draft provides for new or amended regulation.

208. Overall, the GET takes the view that the current Law on the Anti-Corruption Agency (LACA) chapter on conflicts of interest – as complemented by specific legislation applicable to the different categories of professionals – provides a quite comprehensive legal framework for the prevention of corruption among MPs, judges, prosecutors and other officials. It contains a range of tools for avoiding and resolving conflicts of interest and regulates closely areas such as secondary activities, gifts and asset declarations. That said, various of the GET's interlocutors stated that implementation of the law is not fully satisfactory which could at least in part be explained by a number of legal shortcomings that would for the most part be remedied by the draft law. In addition, they made some additional suggestions for reform. The GET wishes to highlight here the main areas that are relevant to the present evaluation where the existing legislation does not appear fully satisfactory, including some concerns which – in the view of the GET – have not yet been comprehensively addressed in the draft law.

209. First and foremost, according to the rationale of the draft law, the rule under the current LACA that an official may hold only one public office has turned out in practice to be the exception. This is explained by the fact that the concurrent holding of two or more public offices is permitted if approved by the ACA and that the LACA does not offer any precise criteria for making decisions on that matter. Moreover, regarding the performance of other jobs or activities – which is subject to certain restrictions described above in the chapter on MPs – the LACA fails to define the term "other jobs" or to distinguish between freelance professional and entrepreneurial activities. In addition, some of those restrictions apply only to public offices "which require full-time working hours or full-time employment", a concept which appears ambiguous and causes difficulties in the implementation of the rules. This concept also applies to the current prohibition on officials establishing a business company or commencing an entrepreneurial engagement – which furthermore appears doubtful in so far as it is not applicable to situations where officials were already engaged in such activities when taking up public office, thus placing such officials in a more favourable situation. The draft law therefore does not contain any such prohibition but further develops the rules on obligatory transfer of management rights, management and other functions held by officials in legal entities.

210. Another area where further improvement is desirable is the regulation of asset declarations to be submitted by officials. According to the rationale of the draft law, practice shows that the scope of information to be provided by officials – i.e. their own property and income and that of their spouses or common-law partners and minors living in the same household – is too narrow and leaves a lot of room for malpractice and concealing the real value of property and income. It is therefore suggested to expand the information officials are required to provide to the property and income of parents, adoptive parents, children or adopted children of the official, regardless of whether they live in the same household or not. The draft law also provides that the ACA would in addition have the right to request such information directly from these associated persons

(in cases of doubt) and to monitor their property status. The draft law furthermore contains amendments concerning the requirement to submit – at the end of January – an extraordinary asset declaration while in public office if there is a "significant change of data" from the regular disclosure report. It makes it clear that the term "change" not only refers to an increase but also to a decrease of property and income and to changes in the structure of property, and it provides that very significant changes must also be reported throughout the year.

211. Still regarding asset declarations, the GET's attention was drawn to another concern not taken into account by the draft law. Namely, a large part of the information provided by officials is not made public, e.g. information on the value of their bank deposits, on the source and amount of non-public income, on debts or loans. In the view of the GET, this might hamper the monitoring of asset declarations by the public and warrants further reform. At the same time, it is clear that the privacy and security of officials (and their families) must be appropriately respected.

212. Turning to the sanctions available for violations of the rules, several interlocutors stated that they are ineffective and not dissuasive, in law and in practice. As far as misdemeanour offences are concerned, the GET finds the current maximum level of fines available – i.e. approximately 1 315 EUR – quite low. Such fines can hardly be considered as an efficient deterrent from malpractice, especially in cases where significant private interests are at stake. The GET takes due note of the amendments foreseen by the draft law, namely an increase of the minimum level of fines as well as an extension of the statute of limitations, but it is of the opinion that the maximum level of fines also needs to be further increased.

213. Furthermore, the current wording of 72 LACA which establishes criminal liability for officials failing to report property to the ACA or giving false information about their property, gives rise to some concerns as it only refers to information about the official's property and not about income. The draft law sets out to address those concerns, and it furthermore provides for the dismissal of the official if a prison sentence is passed.

214. Finally, the GET is concerned that the current LACA might inappropriately narrow the concept of conflict of interests by focussing mainly on prohibitions and restrictions with respect to secondary activities. While the GET notes that the draft law envisages some amendments concerning the management of such conflicts, e.g. clearer rules on their notification by officials, it is of the firm opinion that in addition, clearer guidance needs to be provided on what situations actually or potentially constitute conflicts of interest and on how to deal with them. This need appears particularly pressing with respect to MPs, given that a culture of prevention and avoidance of conflicts of interest has apparently not yet fully taken root in the National Assembly – as is argued in the chapter on MPs.[201] Moreover, the concept of conflict of interests with respect to MPs needs to take into account the nature of parliamentary work by focussing on specific private interests of MPs in relation to matters under consideration in parliamentary proceedings. In the view of the GET, this important question should not only be dealt with by a Code of Conduct, as planned,[202] clear legal provisions are also required. Such regulation must be tailored to include a precise definition of conflict of interests for MPs and an appropriate and enforceable mechanism for *ad hoc* declarations of interest by MPs. It could either be included in the LACA/a future law governing conflicts of interest of public employees and officials, or in another legal act applicable specifically to MPs such as the LNA, as was also suggested by some of those the GET spoke to. As far as judges and prosecutors are concerned in this respect, the GET notes that practitioners interviewed during the visit referred exclusively to the disqualification rules provided by the relevant procedural laws

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[201] See above under "Ethical principles and rules of conduct" (paragraph 41) and "Conflicts of interest" (paragraph 48).
[202] See above under "Ethical principles and rules of conduct" (paragraph 40) and "Conflicts of interest" (paragraph 47).

and not to the rules contained in the LACA. The GET considers it necessary to clarify the relationship between the specific procedural laws and the LACA regarding the handling of conflicts of interest and to ensure that there are no inconsistencies or duplication of rules.

215. To conclude, the GET can only support the current reform process and invites the authorities to take the above-mentioned additional concerns into account. Bearing in mind that effective implementation of the law appears to be a considerable concern in Serbia, the GET urges the authorities to make every effort to take appropriate measures aimed at perfecting the legal framework and removing any obstacles to its enforcement. **GRECO recommends that the rules on conflicts of interest and related matters that apply to members of parliament, judges and prosecutors, *inter alia*, those that concern the definition and management of conflicts of interest, the holding of several public offices concurrently and secondary activities, asset declarations (scope, disclosure of information and control) and sanctions, be further developed and clarified.**

216. In addition, regarding the issue of gifts, the GET notes that both the existing LACA and the draft law only regulate gifts received "in connection with the discharge of public office". Some of its interlocutors expressed concerns about this restriction which may lead to circumvention of the rules. For example, an official may easily claim that a high-value birthday present from a business partner was given in private and therefore does not have to be reported. Furthermore, it is not clear who is competent to determine whether the gift is connected with the discharge of public office or not. One possible way to address such concerns might be to require officials to report any gifts they receive above a certain value threshold. The authorities may wish to take such suggestions into account in the current reform process as well.

217. As highlighted throughout this report, the ACA plays a central role in many of the issues relevant to the present evaluation, with respect to the three professional categories concerned. The majority of persons interviewed by the GET assessed the ACA, which is commonly perceived as pro-active and constructive, positively. It is generally seen as an independent oversight body and an appropriate control mechanism. That said, several others took the view that the ACA had to fight to maintain its independence and to secure adequate resources, and that it was currently too weak to bring about effective results. It was stated that the number of violations of the rules on conflicts of interest and related matters detected has increased in recent years, however cases are still few and far between. Some of those the GET spoke to argued that the priorities of the ACA's work would have to be reconsidered: At the time of the visit, only four of the staff (plus the head of department) out of 84 are dealing with conflicts of interest, with the others dealing with tasks such as coordinating the process of introducing integrity plans to the public sector and overseeing the process of implementing the NACS. Currently, the checks of asset declarations are carried out by seven ACA staff members. According to the EU's 2014 Progress Report on Serbia,[203] the ACA "should reflect on proactively enhancing its role as a key institution in the fight against corruption", which implied *inter alia* "developing and ensuring sound working conditions with the Ministry of Justice" – which are commonly considered as in great need of improvement.

218. In the view of the GET, it is essential that the ACA disposes of adequate resources and competences and of a proper degree of independence in order to effectively perform its wide range of tasks. In this connection, it notes that the NACS envisages to "extend and specify competences and build personnel capacities and working conditions of the ACA" and other independent state authorities, noting that in current practice those institutions often lacked the requisite competences and did not dispose of "adequate personnel, premises and technical capacities". The GET further notes that the above-mentioned draft law foresees a further strengthening of the ACA's role, *inter alia*, by

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[203] See http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf (page 42).

making it clear that the annual funding for the operation and functioning of the ACA provided from the state budget, should be sufficient to enable the effective and efficient performance of the activities within its purview. It also suggests further strengthening its independence by shifting the responsibility for proposing candidates for election to the ACA Board from the government and the president to independent institutions such as the Ombudsman in order to reduce the risk of politically motivated proposals.[204]

219. Furthermore, the draft law foresees further enhancing the ACA's role in supervising compliance with the LACA. In particular, more detailed rules would be introduced to ensure that the ACA is granted immediate and unimpeded access to the official records and documents held by public authorities and other legal entities, which are of importance for the proceedings it conducts. In the framework of checks on asset declarations, banks and other financial institutions would also be obliged to submit data on all the accounts of officials to the ACA, as well as on the official's (and associated persons') other business relations with the bank. This is to be welcomed as access to information has in practice often been hampered – often for technical reasons. In addition, the ACA would be obliged to act upon complaints by natural and legal persons and its competences would be expanded, for example, to include acting on anonymous complaints and at its own initiative in order to disclose corruptive behaviour (e.g. in reaction to news articles),[205] as well as filing criminal charges, submitting requests for misdemeanour proceedings and launching initiatives for disciplinary proceedings.[206]

220. The GET fully supports those proposals for reform. It is furthermore convinced that the ACA needs to be given a more central role in preventing and resolving conflicts of interest. In this connection, it notes with interest the suggestions of some persons interviewed to define the ACA's mandate more clearly, e.g. by prescribing that a specific number of asset declarations are to be checked each year or by requiring that all officials are to be checked at least once during their mandate. At the same time, it takes due note of the concerns voiced by ACA representatives that such arrangements would lead to a workload which could not be managed with the existing staff and IT tools. Finally, the GET shares the view expressed by some interlocutors that in order to play an effective preventive role in this area, the ACA needs not only to further strengthen the control of secondary activities and asset declarations, but also to offer more practical guidance to MPs, judges and prosecutors, to help them avoid or manage conflicts of interest and to further develop its related training activities. In view of the foregoing, **GRECO recommends that the role of the Anti-Corruption Agency in the prevention of corruption and in the prevention and resolution of conflicts of interest with respect to members of parliament, judges and prosecutors be further strengthened, *inter alia*, i) by taking appropriate measures to ensure an adequate degree of independence and by providing adequate financial and personnel resources and ii) by extending the Agency's competences and rights, to include, for example, the right to immediate access to data from other public bodies, the right to act upon anonymous complaints and on its own initiative, and the right to file criminal charges, request misdemeanour proceedings and launch initiatives for disciplinary proceedings.**

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[204] The current composition of the ACA's Board is indicated above in the chapter "Context" (paragraph 17).

[205] In this connection, it is interesting to note that according to some studies, the relatively low number of misdemeanour proceedings may be explained, *inter alia*, by the lack of complaints, see e.g. the document "Judiciary in the fight against corruption – key findings of research and recommendations" (page 91), http://transparentnost.org.rs/images/stories/materijali/pravosudje%20u%20borbi%20protiv%20korupcije/Judiciary%20in%20the%20fight%20against%20corruption,%20key%20findings%20of%20research%20and%20recommendations.pdf:
"The problem concerning all the mentioned laws is the insufficient motivation of the injured parties to initiate misdemeanour proceeding on their own or the nonexistence of directly injured parties in some situations, due to which the allegations could be rejected. Similarly, public prosecutors, although generally authorised to initiate misdemeanour proceedings, do not have a special incentive to act in such cases…"

[206] Under current law, the ACA merely *notifies* the competent body in case it has established a violation of the LACA, see section 57 LACA.

VII. RECOMMENDATIONS AND FOLLOW-UP

221. In view of the findings of the present report, GRECO addresses the following recommendations to Serbia:

Regarding members of parliament

i. **that the transparency of the legislative process be further improved (i) by ensuring that draft legislation, amendments to such drafts and the agendas and outcome of committee sittings are disclosed in a timely manner, that adequate timeframes are in place for submitting amendments and that the urgent procedure is applied as an exception and not as a rule and (ii) by further developing the rules on public debates and public hearings and ensuring their implementation in practice** (paragraph 33);

ii. **(i) swiftly proceeding with the adoption of a Code of Conduct for members of parliament and ensuring that clear guidance is provided for the avoidance and resolution of conflicts of interest and (ii) ensuring that the public is given easy access to the future Code and that it is effectively implemented in practice, including by raising awareness among members of parliament on the standards expected of them and by providing them with confidential counselling and dedicated training** (paragraph 42);

iii. **introducing rules for members of parliament on how to interact with lobbyists and other third parties who seek to influence the parliamentary process and making such interactions more transparent** (paragraph 66);

Regarding judges

iv. **(i) changing the composition of the High Judicial Council, in particular by excluding the National Assembly from the election of its members, providing that at least half its members are judges elected by their peers and abolishing the *ex officio* membership of representatives of the executive and legislative powers; (ii) taking appropriate measures to further develop the role of the High Judicial Council as a genuine self-governing body which acts in a pro-active and transparent manner** (paragraph 99);

v. **reforming the procedures for the recruitment and promotion of judges and court presidents, in particular by excluding the National Assembly from the process, ensuring that decisions are made on the basis of clear and objective criteria, in a transparent manner and that positions of court presidents are occupied on an acting basis only for short periods of time** (paragraph 115);

vi. **that the system of appraisal of judges' performance be reviewed (i) by introducing more qualitative criteria and (ii) by abolishing the rule that unsatisfactory evaluation results systematically lead to dismissal of the judges concerned** (paragraph 118);

vii. **(i) that the Code of Ethics for judges be communicated effectively to all judges and complemented by further written guidance on ethical questions – including explanations, interpretative guidance and practical examples – and regularly updated; (ii) that dedicated training of a practice-oriented nature and confidential counselling within the judiciary be provided for all categories of judges** (paragraph 131);

Regarding prosecutors

viii. **(i) changing the composition of the State Prosecutorial Council (SPC), in particular by excluding the National Assembly from the election of its members, providing that a substantial proportion of its members are prosecutors elected by their peers and by abolishing the *ex officio* membership of representatives of the executive and legislative powers; (ii) taking appropriate measures to strengthen the role of the SPC as a genuine self-governing body which acts in a pro-active and transparent manner** (paragraph 164);

ix. **reforming the procedures for the recruitment and promotion of public prosecutors and deputy public prosecutors, in particular by excluding the National Assembly from the process, limiting the discretion of the government and ensuring that decisions are made on the basis of clear and objective criteria in a transparent manner and that positions of public prosecutors (i.e. heads of office) are occupied on an acting basis only for a short period of time** (paragraph 173);

x. **that the system for appraising the performance of public prosecutors and deputy public prosecutors be reviewed (i) by revising the quantitative indicators and ensuring that evaluation criteria consist principally of qualitative indicators and (ii) by abolishing the rule that unsatisfactory evaluation results systematically lead to dismissal and ensuring that prosecutors have adequate possibilities to contribute to the evaluation process** (paragraph 176);

xi. **(i) that the Code of Ethics for public prosecutors and deputy public prosecutors be communicated effectively to all prosecutors and complemented by further written guidance on ethical questions – including explanations, interpretative guidance and practical examples – and regularly updated; ii) that dedicated training of a practice-oriented nature and confidential counselling within the prosecution service be provided for all categories of prosecutors** (paragraph 189);

Regarding all categories of persons

xii. **that the rules on conflicts of interest and related matters that apply to members of parliament, judges and prosecutors, *inter alia*, those that concern the definition and management of conflicts of interest, the holding of several public offices concurrently and secondary activities, asset declarations (scope, disclosure of information and control) and sanctions, be further developed and clarified** (paragraph 215);

xiii. **that the role of the Anti-Corruption Agency in the prevention of corruption and in the prevention and resolution of conflicts of interest with respect to members of parliament, judges and prosecutors be further strengthened, *inter alia*, i) by taking appropriate measures to ensure an adequate degree of independence and by providing adequate financial and personnel resources and ii) by extending the Agency's competences and rights, to include, for example, the right to immediate access to data from other public bodies, the right to act upon anonymous complaints and on its own initiative, and the right to file criminal charges, request misdemeanour proceedings and launch initiatives for disciplinary proceedings** (paragraph 220).

222. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Serbia to submit a report on the measures taken to implement the above-mentioned recommendations by 31 December 2016. These measures will be assessed by GRECO through its specific compliance procedure.

223. GRECO invites the authorities of Serbia to authorise, at their earliest convenience, the publication of this report, to translate the report into the national language and to make the translation publicly available.

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ANNEX: LIST OF ABBREVIATIONS

Abbreviation	**English Title**
ACA	Anti-Corruption Agency
CC	Criminal Code
CCJE	Consultative Council of European Judges
CCPE	Consultative Council of European Prosecutors
GET	GRECO evaluation team
HJC	High Judicial Council
LACA	Law on the Anti-Corruption Agency
LNA	Law on the National Assembly
LoJ	Law on Judges
LPP	Law on Public Prosecution
MP	Member of parliament
NACS	National Anti-Corruption Strategy
NJRS	National Judicial Reform Strategy
SPC	State Prosecutorial Council

About GRECO

The Group of States against Corruption (GRECO) monitors the compliance of its 49 member states with the Council of Europe's anti-corruption instruments. GRECO's monitoring comprises an "evaluation procedure" which is based on country specific responses to a questionnaire and on-site visits, and which is followed up by an impact assessment ("compliance procedure") which examines the measures taken to implement the recommendations emanating from the country evaluations. A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary.

The work carried out by GRECO has led to the adoption of a considerable number of reports that contain a wealth of factual information on European anti-corruption policies and practices. The reports identify achievements and shortcomings in national legislation, regulations, policies and institutional set-ups, and include recommendations intended to improve the capacity of states to fight corruption and to promote integrity.

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