
Funded
by the European Union
and the Council of Europe



COUNCIL OF EUROPE



Implemented
by the Council of Europe

Joint European Union – Council of Europe Project
“Strengthening the Capacities of Law Enforcement and Judiciary in the Fight against
Corruption in Serbia” (PACS)
www.coe.int/pacs

Technical Paper

**TRAINING FOR SERBIAN JUDGES AND PROSECUTORS ON ETHICS
AND THE PREVENTION AND DETECTING CORRUPTION:
ASSESSMENT AND RECOMMENDATIONS**

*Prepared by James Hamilton and Quentin Reed, Council of Europe experts,
and reviewed/edited by Lado Laličić, Council of Europe Secretariat*

September 2014

TABLE OF CONTENTS

1. Introduction	3
1.1 Regulations on ethics: the state of play	3
1.2 Training on ethics/conduct: the state of play	3
1.3 The context of ethics regulation and training	4
2. International standards and good practices	5
2.1 Ethics and conduct.....	6
2.2 Training.....	7
3. Training in practice: international experience.....	10
3.1 Serbia: gaps in training on ethics and integrity.....	10
4. Proposed Training Approach.....	11
4.1 Initial training.....	11
4.2 Integrity and Ethics for judges/prosecutors (Day 1)	11
Table 1: Judges’ Code of Ethics	15
Table 2: Prosecutors’ Code of Ethics	18
4.3 Interactive discussion of ethics regulations (Day 2)	22
4.4 On-going (in-service) training:	24
4.4.1 General issues.....	24
4.4.2 Court presidents and public prosecutors	25
4.4.3 Disciplinary prosecutors.....	27

<p>For any additional information please contact:</p> <p>Economic Crime Cooperation Unit Action against Crime Department Directorate General I, Council of Europe Tel: +381 11 71 555 12; Email: lado.lalicic@coe.int; www.coe.int/pacs</p>	<p>This document has been produced with the financial assistance of the European Union and the Council of Europe. The views expressed herein can in no way be taken to reflect the official opinion of the European Union or the Council of Europe.</p>
---	---

1. Introduction

This Technical Paper provides recommendations and guidelines on how judges and prosecutors in Serbia should be trained on integrity, ethics and the prevention of corruption/misconduct. The paper follows the recent PACS “Assessment of Risks of Poor Conduct and Corruption in the Serbian Judiciary and Prosecution” (hereinafter referred as ‘Risk Assessment’). It also identifies gaps in the existing training framework with reference to international good standards and good practice, and makes specific recommendations on i) How training should be structured; ii) The content of training curricula.

1.1 Regulations on ethics: the state of play

The Serbian judiciary and prosecution are subject to relatively extensive regulation of conduct and ethics. In particular (and as noted in the Risk Assessment):

- The Law on the Anti-corruption Agency¹ defines conflict of interest in a standard way as a "situation where an official has a private interest which affects, may affect or may be perceived to affect actions of an official in discharge of office or official duty in a manner which compromises the public interest" (Article 2). It prohibits the holding of various external positions, and obligates officials to declare to the Agency any doubts concerning a possible conflict of interest.
- The laws on Judges (Article 30) and Prosecutors (Section 5) contain clear prohibitions on external activities that may compromise impartiality, duties to notify superiors of activities that may do so and request exclusion from processes, as well as the duty to adhere to their respective codes of ethics (see below).
- The Code of Ethics of Judges² was approved by the High Judicial Council in December 2010 and the Code of Ethics of Prosecutors³ in October 2013. The Codes contain extensive and comprehensive rules and exhortations to good conduct. For prosecutors, the Regulation on Administration in the Public Prosecution also contains many of the same or similar provisions.

1.2 Training on ethics/conduct: the state of play

In terms of training, to the knowledge of the experts the only mandatory training on ethics and good conduct currently provided to judges and prosecutors in Serbia is delivered by the Judicial Academy. This training falls under the curriculum section “Professional Knowledge and Skills, EU Law and International Standards“. One of the seven modules under this section is “The Organisation of Justice and Ethics of Judges and Prosecutors“. Half of this module is entitled “Ethics“, and consists of:

¹ <http://www.osce.org/serbia/35100?download=true>

² <http://www.seio.gov.rs/upload/documents/ekspertske%20misije/judicial%20system/Code%20of%20Ethics.pdf>

³ <http://www.seio.gov.rs/upload/documents/ekspertske%20misije/Code%20of%20ethics.pdf>. Note the document is labelled as a draft, but the approved version has the same wording.

- A lecture on international standards and on regulations in Serbia concerning election, removal, liability (criminal, civil, disciplinary) of judges and prosecutors.
- A lecture on professional ethics in the judiciary. Concerning this part, the experts were provided with a sample one-day session for judges of misdemeanour courts.

It is clear from this that training on conduct and ethics isn't extensive enough (approximately one day). To the experts' knowledge there is no provision for on-going training of judges or prosecutors on ethics/conduct. Rather, judges and prosecutors are engaged in ad-hoc trainings on the subject, mostly organized by international organisations in cooperation with the Judicial Academy. Partly for these reasons, the PACS Risk Assessment included the following recommendations:

- Judges' and prosecutors' rules and standards of conduct, such as those in the codes of ethics should be disseminated more actively by the High Judicial Council (HJC) and State Prosecutorial Council (SPC), and the curricula of the Judicial Academy should be revised to include ethics and standards of conduct as a permanent component of on-going training of judges and prosecutors (Recommendation 31).
- Internal guidelines and mechanisms for advisory services (providing advice to prosecutors and judges on appropriate conduct on request) within Prosecution Offices and courts should be introduced. Training should also cover these guidelines through real-life scenarios, such as ethical dilemmas and attempts at improper influence. Training should also involve attorneys and lawyers, in order to encourage common values in the new criminal procedure system.
- (Recommendation 32).

The recommendations of this paper to a large extent elaborate these recommendations. However, this paper goes further in scope, including differentiation between:

- Initial training as part of the Judicial Academy curriculum/a for future judges and prosecutors, which would be compulsory on the one hand, and on-going training which is voluntary.
- Training of judges and prosecutors in general on the one hand, and of judges/prosecutors in managing positions (i.e. court presidents and public prosecutors) on the other. For the latter, training is recommended on corruption prevention, including mechanisms to prevent and minimise the risks of misconduct, Integrity Plans, and management practices that include being alert to factors that may signal the corruption or vulnerability to corruption of those in respect of whom the manager has responsibility.

1.3 The context of ethics regulation and training

In general, the experts wish to underline one point of fundamental importance that informs this paper. This is that ethics regulation and training are not sufficient alone to inculcate and maintain standards of good conduct among judges and prosecutors. Good conduct – as is stressed repeatedly in the Risk Assessment – also depends on the proper

functioning of many other institutional mechanisms. In the Serbian context, but also more generally, the experts note specifically that:

- Training on ‘ethics’ and ‘integrity’ overlaps fundamentally with many other aspects of conduct and training – including legal skills and knowledge, as well as judicial skills (managing a courtroom, dealing with tensions between participants in a criminal proceeding, etc.).
- Ethics regulations and training are less likely to have an impact if fundamental problems remain in the governance and independence of judges or prosecutors. In a judiciary or prosecution that is poorly governed or whose independence is threatened or potentially threatened, ethics regulations may in the worst case be regarded as irrelevant. These concerns are clearly reflected in international standards, which directly place issues of integrity/ethics and training within the context of governance mechanisms that ensure sufficient independence and resources for the judiciary and prosecution.

This said, even if such problems as those mentioned above persist, ethics regulations and training thereon may nevertheless increase the ability of judges and prosecutors to perform their duties properly and with integrity. Such mechanisms may even provide one of the mechanisms that judges and prosecutors can use to defend themselves from potentially illicit pressures, whether of a corrupt or political nature.

2. International standards and good practices

This section outlines existing international standards and good practices in relation to standards of ethical conduct for judges and prosecutors and training thereon. The section draws on the following standards in particular:

- For judges: the United Nations Basic Principles on the Independence of the Judiciary⁴, the European Charter on the Statute for Judges⁵, the Bangalore Principles of Judicial Conduct,⁶ as well as the Commentary thereon⁷, Council of Europe Committee of Ministers Recommendation CM/Rec(2010)12⁸, and Opinion No.4 of

⁴Adopted by the Seventh United Nations Congress on the Prevention of Crime, 1985, endorsed by General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

⁵ DAJ/DOC(98)23. The Charter was prepared under the auspices of the Council of Europe and adopted unanimously at a multilateral meeting of European judges held in Strasbourg from 8-10 July 1998.

⁶ Bangalore Principles of Judicial Conduct, adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices, Hague, November 25-26 20020. <http://www.unrol.org/files/>.

⁷Commentary on the Bangalore Principles of Judicial Conduct, UNODC September 2007, also prepared by the Judicial Integrity Group, http://www.unodc.org/documents/corruption/publications_unodc_commentary-e.pdf.

⁸ Council of Europe Committee of Ministers Recommendation CM/Rec(2010)12 on “Judges: independence, efficiency and responsibilities” and explanatory memorandum, [http://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec\(2010\)12E_%20judges.pdf](http://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec(2010)12E_%20judges.pdf)

the Consultative Council of European Judges (CCJE)⁹, as well as the European Network of Councils for the Judiciary (ENCJ) Judicial Ethics Report 2009-2010¹⁰ as a useful source of elaboration of standards.

- For prosecutors: the United Nations Guidelines on the Role of Prosecutors (the Havana Guidelines)¹¹, Recommendation Rec (2000)19 of the Committee of Ministers of the Council of Europe¹², and the International Association of Prosecutors Standards.¹³ The European Guidelines on Ethics and Conduct for Public Prosecutors ("Budapest Guidelines"¹⁴) while important and particularly relevant as having been adopted by European prosecutors themselves, in substance contains little that was not already in the three earlier documents.

2.1 Ethics and conduct

For judges, the most comprehensive document on standards of conduct is the Bangalore Principles, adopted in 2002 following a lengthy process of drafting and consultation among Chief Justices and other senior judges from a large number of countries from both the common law and civil law traditions. The Principles lay out six "values", Independence, Impartiality, Integrity, Propriety, Equality, and Competence and Diligence. These principles are further explained and fleshed out with more detailed examples in the Commentary. In addition, the European Charter provides a detailed section on conflict of interest.

In addition to the Bangalore Principles, the ENCJ Judicial Ethics Report elaborates the principles of Independence, Integrity, Impartiality, Reserve and Discretion¹⁵, Diligence, Respect and the Ability to Listen, Equality of Treatment, Competence, and Transparency. In essence, these principles do not cover different ground than the Bangalore Principles.

[http://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec\(2010\)12E_%20judges.pdf](http://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec(2010)12E_%20judges.pdf)

⁹ Opinion No. 4 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on appropriate initial and in-service training for judges at national and European levels, 27 November 2003.

[https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE\(2003\)OP4&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3](https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE(2003)OP4&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3)

¹⁰ European Network of Councils for the Judiciary, Judicial Ethics Report 2009-2010.

<http://www.encj.eu/images/stories/pdf/ethics/judicialethicsdeontologiefinal.pdf>

¹¹ Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 1990.

<http://www.unrol.org/files/Guidelines%20on%20the%20Role%20of%20Prosecutors%20.pdf>

¹² Council of Europe Committee of Ministers Recommendation Rec(2000)19 on the role of the public prosecution in the criminal justice system. <https://wcd.coe.int/ViewDoc.jsp?id=376859&Site=CM>

¹³ International Association of Prosecutors (IAP), "Standards of professional responsibility and statement of the essential duties and rights of prosecutors", adopted April 1999. http://www.iap-association.org/getattachment/34e49dfe-d5db-4598-91da-16183bb12418/Standards_English.aspx

¹⁴ European Guidelines on Ethics and Conduct for Public Prosecutors ("Budapest Guidelines"), adopted by the Conference of General State Prosecutors of Europe, May 2005.

http://www.coe.int/t/dghl/cooperation/ccpe/conferences/cpge/2005/CPGE_2005_05LignesDirectrices_en.pdf

¹⁵ Note that this is a different meaning of 'discretion' than is normally met in the AC work – it is actually very close to 'Reserve'

As is also the case with the Commentary to the Bangalore Principles, they are notable for the clarity of the explanation of each principle, making both documents useful for judges to read as an adjunct to training.

For prosecutors, the most important international document regarding standards of conduct is the International Association of Prosecutors Standards. The IAP Standards are also divided into six sections: Professional Conduct, Independence, Impartiality, Role in Criminal Proceedings, Co-operation, and Empowerment.

It should be noted that the Codes of Ethics of Judges and Prosecutors in Serbia to a significant extent mirror the above documents, and from the point of view of the experts there are no major 'gaps' between international good practice and local standards in this respect of these written documents. The only criticism that the experts might have concerning these documents is that the Code of Ethics of Prosecutors is in some places not as clear as it might be, or mixes together different themes under a single heading (the section on Respect of Rights is an example, where prohibitions on corruption and abuse of power are treated together for reasons that are not entirely clear). One of the purposes of training should be to communicate the provisions of these documents in a manner that is logical and comprehensible for judges and prosecutors.

2.2 Training

Regarding training, international standards emphasize three main themes: i) the obligations of judges and prosecutors themselves to pursue training in order to maintain their expertise and competence; ii) the duty of states to offer and provide training at public expense; iii) in the case of judges especially (but also to some extent for prosecutors) the need for training to be under judicial control.

To cite key elements of international standards on training for **judges**:

- Bangalore Principle 6.3 emphasizes both the judge's duty to keep himself or herself informed, and the importance of judicial training being kept under judicial control: *"A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges"*. The Commentary on the Bangalore Principles¹⁶ emphasizes the ethical duty of a judge to perform judicial work professionally, and the need for a judge to be committed to perpetual study and learning. The judge must be knowledgeable not only about the law but also the impact of the law on real life, with a need for training on many issues. Continuous training opportunities are of great importance. While the state has a duty to provide the resources and meet the costs of training, the judiciary should play a major role and be responsible for organising and supervising judicial training, either directly or through a body such as a judicial service commission.

¹⁶ http://www.unodc.org/documents/corruption/publications_unodc_commentary-e.pdf

- The UN Basic Principles make two express references to training. Principle 9 states that "Judges shall be free to form and join associations of judges or other organizations...to promote their professional training". While this clearly implies that judges should have control over ongoing training, Principle 7 requires UN Member States to provide adequate resources to enable the judiciary to properly perform its functions. Clearly training and the provision of information come within this rubric.
- The European Charter (which is non-binding but carries great weight as the opinion of European judges) states that candidates selected for judicial appointment should receive appropriate training at the expense of the state. This would cover not only initial training - there should also be "maintenance and broadening of their knowledge, technical as well as social and cultural, needed to perform their duties, through regular access to training which the state pays for". Among the functions of the judicial council (over half of whose members should be judges) would be those of ensuring the appropriateness of training programmes for judges and of the organization which implements them.
- The Council of Europe's Recommendation CM/Rec(2010)12 replaced the earlier Recommendation Rec(94)12. It contains two provisions on training as follows:
 - *"56. Judges should be provided with theoretical and practical initial and in-service training, entirely funded by the state. This should include economic, social and cultural issues related to the exercise of judicial functions. The intensity and duration of such training should be determined in the light of previous professional experience.*
 - *57. An independent authority should ensure, in full compliance with educational autonomy, that initial and in-service training programmes meet the requirements of openness, competence and impartiality inherent in judicial office."*

The CCJE's Opinion No. 4 on judicial training¹⁷ begins by rooting training in the ethical duty of a judge to perform judicial work professionally and diligently, an essential component of the independence of the judiciary. The Opinion provides a number of very useful practical proposals/recommendations in relation to training, in particular the following:

- Initial training should be mandatory even for judges who have been selected from among practising lawyers rather than graduated from a specialized school for judges without previous legal experience; even for practising lawyers the performance of judicial duties is a new profession involving a particular approach in many areas, notably with respect to professional ethics, procedure, and relations with other actors. Training should also take into consideration the need for social awareness and an extensive understanding of different subjects reflecting the complexity of life in society.

¹⁷ Opinion No. 4 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on appropriate initial and in-service training for judges at national and European levels, 27 November 2003.

- In-service (i.e. on-going) training is indispensable, not only because of on-going changes in the law, technology and the knowledge required to perform judicial duties, but because judges will acquire new responsibilities when they take up new posts.¹⁸ Moving to a new post may be made conditional on attending a relevant training programme. Training should be made sufficiently attractive to encourage judges to participate on a voluntary basis.
- Training should not be limited to techniques in the purely legal field but also include training in ethics and other relevant matters such as case management, court administration, information technology, foreign languages, social sciences and alternative dispute resolution.
- The training should be pluralist in order to guarantee and strengthen the open-mindedness of the judge.
- Training (particularly introductory) should be of significant length in order to avoid it being purely a matter of form.
- Collaboration with other legal professional bodies should be encouraged.
- All levels of the judiciary should be covered by training.

For **prosecutors**, international standards on training are less detailed, but contain the following key provisions:

- Training is both a right and a duty. Under the first of the International Association of Prosecutors Standards (on “Professional Conduct”), “Prosecutors shall keep themselves well-informed and abreast of relevant legal developments”, while Standard 6 includes a statement that prosecutors should be entitled to promote their professional training. COM Recommendation (2000)¹⁹ states explicitly that “Training is both a duty and a right for all public prosecutors, before their appointment as well as on a permanent basis”. The IAP Standards place the duty to “keep themselves well informed and abreast of relevant legal developments” among the core professional responsibilities of prosecutors. Among the rights which prosecutors should have is “to promote their professional training”.
- With regard to the content of training, the Havana Guidelines lay emphasis in particular on the need for prosecutors to be aware of the ideals and ethical duties of their office, the constitutional and statutory rights of both suspect and victim, and generally concerning human rights and fundamental freedoms. Particular emphasis is laid on the necessity for prosecutors to be persons of integrity as well as ability, and both recruitment and training have a key role in ensuring this. COM Recommendation Rec(2000)¹⁹ is even more specific and lists, among the necessary content of training, the principles and ethical duties of the office of a prosecutor, the protection of suspects, victims and witnesses, human rights, aspects of work

¹⁸ Ibid, paragraph 32.

organisation, including management and human resources, and mechanisms and materials which contribute to consistency of approach.

3. Training in practice: international experience

An important lesson of the standards outlined above is the explicit emphasis placed on training on judicial and prosecutorial ethics, integrity and conduct. This emphasis is also reflected in the practice of national judiciaries in developed countries. Even a relatively old review of judicial training practices across 12 countries – prepared for the Judicial Studies Board in the United Kingdom in 2006¹⁹ – found that all the countries surveyed provided education and training programmes to judges on judicial ethics. Such programmes covered a range of issues including that of avoiding bias in judging, dealing with conflicts of interest, and ethical issues related to specific legal issues.

The same study revealed important facts about **types of training**. In particular, while centralised, face-to-face training programmes (such as lectures at a central judicial academy) were the most common, their share in training was decreasing and they were among the less popular types of training. Conversely, decentralised, court-based interactive programmes were expanding and were most popular among judges. Streamed training programmes for different judicial ranks were provided in half of the countries.²⁰

3.1 Serbia: gaps in training on ethics and integrity

The foundations for training of judges and prosecutors – in the form of the Judicial Academy - are established sufficiently well that this paper will not address again underlying issues related to the Academy as an institution. From the information provided to the experts, introductory training is exhaustively elaborated through Academy curricula. However:

- Only a very small part of the introductory training curricula are devoted to ethics and integrity.
- In-service training appears to be minimal in general, limited to one-off trainings such as those provided prior to the coming into effect of the new Criminal Procedure Code in 2013, and trainings provided from international technical assistance.

¹⁹ Thomas C./University of Birmingham School of Law, *Review of Judicial Training and Education in Other Jurisdictions*, Report prepared for the Judicial Studies Board, 2006. http://www.ucl.ac.uk/laws/socio-legal/docs/Review_of_Judicial_Train.pdf

²⁰ A key citation from the report is the following: “Lectures appear to be used less frequently, and interactive teaching methods are increasingly being used: case studies, small group discussions, individual and joint presentations, panel discussions, audio-visual teaching materials and self evaluated tests. In addition, a number of jurisdictions are developing more on-line, web-based programmes often in an attempt to provide immediate and up-to-date information, and to provide distance learning in jurisdictions where it is more difficult for all judges to attend courses at a central location.” (*Ibid.*, p. 92)

- There does not appear to be any targeted training for different levels of prosecutors and judges – i.e. with specific provision for court presidents and public prosecutors (i.e. heads of prosecution offices) that would differ from general training for all judges and prosecutors.

4. Proposed Training Approach

This section provides a proposed model for the training of judges and prosecutors on integrity and ethics. It also provides specific content for curricula based on the codes of ethics of prosecutors and judges and other legal regulations underpinning integrity, and sample scenarios for interactive training. All training should be conducted by experienced serving judges and prosecutors, and if possible those who enjoy high standing within the judicial community.

4.1 Initial training

The experts recommend that in the Judicial Academy curricula for judges and prosecutors, an independent section on Ethics and Integrity is inserted. This would for example mean that the existing sub-section on ethics in the judges' curriculum is separated into an independent section. The section should be expanded to contain the following sub-sections or modules:

- In the following outline, 'judiciary' should be taken to mean either the judiciary proper (system of courts and judges) and/or the prosecution. The outline provides modules in which some of the material is the same for both judges and prosecutors, but most varies according to the standards and appropriate needs of judges and prosecutors respectively.

4.2 Integrity and Ethics for judges/prosecutors (Day 1)

i) Introduction: why ethics in the judiciary?

For judges, provide introductory citation from European Network of Council for the Judiciary Report on Judicial Ethics (p. 11 on "Qualities and Virtues of a Judge"):

"The complexity of the act of judging, beyond the singularities determined by the history of each country, means that many virtues or qualities must be combined so that justice can be done.

Confidence in justice is not only guaranteed by an independent, impartial, honest, competent and diligent judge.

A judge should perform his role with wisdom, loyalty, humanity, courage, seriousness and prudence, while having the capacity to listen, communicate and work.

These requirements are not specific to the judge but they are essential to guarantee the right of everyone to have a judge.”

For prosecutors, provide introductory citation from IAP Standards (Standard 1):

Prosecutors shall:

- *at all times maintain the honour and dignity of their profession;*
- *always conduct themselves professionally, in accordance with the law and the rules and ethics of their profession;*
- *at all times exercise the highest standards of integrity and care;*
- *keep themselves well-informed and abreast of relevant legal developments;*
- *strive to be, and to be seen to be, consistent, independent and impartial;*
- *always protect an accused person's right to a fair trial, and in particular ensure that evidence favourable to the accused is disclosed in accordance with the law or the requirements of a fair trial;*
- *always serve and protect the public interest; respect, protect and uphold the universal concept of human dignity and human rights.*

Main content of session:

- a) Ask judges/prosecutors what they think is the purpose of ethical rules – are they to tell you what to do or tell you how to decide what to do?
- b) Ethics and integrity are as much or more about norms of behaviour as about enforceable rules. Ethical rules are not only ‘enforceable laws/rules’; ideally, their prime purpose is as a source of ‘behavioural guidance’, i.e. providing the group concerned with principles by which to make ethical decisions rather than providing a blueprint for behaviour in every situation. Nevertheless, their violation can lead to disciplinary action in some cases, depending on the rule/norm violated.
- c) Following from this, judges/prosecutors should not see such rules and norms as “extra requirements” but as integral to what it means to perform one’s duties well, and in other words central to what it means to be a judge or prosecutor: a measure of status, and one of the main reasons to take pride in one’s office (in a non-moral sense), and as underpinning of status, rather than a requirement to be enforced.
- d) Following from this, ethical rules and norms hold a special position – while they may be elaborated (for example in codes of ethics or in particular provisions of law), they run through every aspect of the performance of duty including the rules that govern the conduct of a trial. The requirements to act with impartiality and objectivity underlay the rules on the collection of evidence, its evaluation by prosecutors and ultimately the court and the duty of the prosecutor to disclose all relevant evidence to the defence. These are not just technical rules, they are also grounded in standards of ethical conduct intended to ensure that the trial process is fair, objective and impartial. The same objective leads to the rule that one should halt a prosecution when the evidence ceases to support it. The duty of

judges to be socially aware is also linked to impartiality – being aware of what behaviour in particular social groups may be regarded as normal helps judges to make sound and unprejudiced decisions concerning the reliability of evidence. Prejudice is the enemy of truth, and fairness demands that the judge approach the task of assessing evidence with an open mind.

An example from the UK is a miscarriage of justice in the 1970s where 6 men were wrongly convicted for an IRA bombing; during the trial, the judge (an upper class Englishman) ridiculed one of the men's statements that he was travelling to Ireland on the evening of the bombing to a funeral. One possible reason for such ridicule was lack of cultural awareness of the significance of funerals in Ireland. The significance clearly goes beyond 'cultural awareness' and impinges directly on the impartiality and objectivity of the judge. Examples like this but from Serbia should be found to illustrate such points.

ii) **International standards**

a) **For judges:**

- Outline/explain: United Nations Basic Principles on the Independence of the Judiciary, the European Charter on the Statute for Judges, the Bangalore Principles of Judicial Conduct and its Commentary, Council of Europe Committee of Ministers Recommendation CM/Rec(2010)12, and Opinion No.4 of the Consultative Council of European Judges (CCJE). See Section 2 for more detail.

b) **For prosecutors**

- Outline/explain: United Nations Guidelines on the Role of Prosecutors (the Havana Guidelines), Recommendation Rec (2000)19 of the Committee of Ministers of the Council of Europe, the International Association of Prosecutors Standards and the Budapest Guidelines. See Section 2 for more detail.

c) **Reflection in national legislation**

- Explain with examples how the international standards are directly reflected in Serbian legal framework (Law on Judges, Law on High Judicial Council, Law on Public Prosecution, Law on State Prosecutorial Council) and Codes of Ethics.

iii) **Ethical principles/rules for Serbian judiciary and public prosecution**

- Four levels of rules/principles: Constitution (independence of judiciary); statute laws (on Judges, Public Prosecution), other binding norms such as regulations, orders made by bodies empowered to make rules, by-laws; and non-binding instruments such as guidelines. Ethical principles may be stated at all levels. The Codes of Ethics in Serbia are of a binding nature – referred to as binding in laws on Judges and Prosecution, and entrusted to the HJC/SPC in the laws on those Councils. The Code should be used as the primary reference point as it contains all of the principles in one place (i.e. it repeats principles that are in other laws/Constitution).

- For both judges and prosecutors: statement and explanation of the legal basis of the Code – basic law for each branch entrusting HJC/SPC to issue Code. For prosecutors, Article 47 of Law on Prosecutors; For judges, Article 3, Law on Judges.
- Explain purpose of the Code, stressing that its prime purpose is to provide a positive model of behaviour, rather than establish a set of prohibitions. Underline however that it may be used in exceptional circumstances as a ground for disciplinary sanctions.
- Second key point: the Code is not only a set of obligations to which one must adhere, but also an instrument that the judge or prosecutor can and should use to defend him/herself from improper pressures and influences. This is a key point that is often forgotten.
- Make a distinction between ‘more important’ and ‘less important’ aspects of the Code: for example, proceeding in a biased manner in the adjudication of a case (being partial) and/or taking decisions on the basis of political pressures should be seen as fundamental breaches that justify resignation or dismissal or investigating a case (each section); dressing poorly or behaving rudely in the office is unlikely to warrant the same kind of sanction.
- Explain/elaborate the sections of the Code (see Tables 1-2). Again, the way in which the Code interacts with other rights and obligations of judges and prosecutors as contained in their basic laws should be underlined with examples. See Tables 1 and 2 for guidance on elaboration/explanation of the Code.
- Overarching characteristic of the Codes: the interdependence of the principles they elaborate. E.g.: impartiality requires independence (but is not guaranteed by it); dedication is essential for competence; competence is a condition for impartiality AND independence to be sustained; etc.

Table 1: Judges' Code of Ethics

Section/ Principle	Key points of explanation	Examples/illustration of violation
<p>Independence</p>	<ul style="list-style-type: none"> • Article 3, Law on Judges • Independence is not a privilege but ‘the right of citizens to a judiciary which is - and is seen to be - independent of other branches of government • Independent from whom? Any other person or institution: not only legislative and executive power but media, other institutions, political parties, other judges, parties to proceedings • What does it mean in terms of conduct?: i) That you judge impartially and without being influenced by any other person or institution; ii) That these other entities must (in the case of institutions)/should (in the case of other entities) respect your independence; iii) That you may use the Code and other legal provisions on independence to defend yourself against attempts at influence/pressure • Perception as well as reality is important: need to conduct oneself in public role but also in private in such a way as to ensure one is not perceived as dependent – e.g. be careful of statements on matters of public policy • Independence can only be effectively defended if judge strives to maintain knowledge, skills and competence 	<ul style="list-style-type: none"> • Judge – wrongly - refuses to authorise use of special investigative means, admit evidence or issue a verdict that would be unfavourable to a defendant with close connections to the ruling political party, not for objective reasons but because of a bias in favour of that party or a belief that this will help his or her career. • Judge acts in a way beneficial to defendant because of fear of the defendant. • In a high-profile criminal case, judge issues a guilty verdict partly under the influence of media pressure or because of a desire to court popularity with the public. • Judge accepts an “instruction” from a senior colleague despite believing that the senior judge’s view is wrong.

<p>Impartiality</p>	<ul style="list-style-type: none"> • Article 3, Law on Judges • Fundamental principle: conducting proceedings on the basis of own assessment of facts and interpretation of law, taking into account only relevant considerations • Impartiality might be seen as Independence + Objectivity. Independence underpins impartiality to some extent (freedom of influence by entities mentioned above) but does not guarantee it – a judge can be free of unauthorised influences but still be partial (e.g. ethnic prejudice) • Again, perception is important as well as reality, although from the very nature of the judge’s function you may be perceived as partial. You may be accused publicly of being partial even when you are not. For this, behaviour that builds trust in impartiality is vital – for example ‘reserve’ (see ENCJ Report on Judicial Ethics, pp. 5-6), dignity, competence. • Direct link with conflict of interest and acceptance of gifts (see Section 3.1.1.iv) 	<ul style="list-style-type: none"> • Examples under ‘Independence’ • Verdict is influenced by the fact that the defendant belongs to e.g. a minority or marginalised group. • Judge issues an appropriate verdict for a sensitive case but does so in an emotional manner – (lack of dignity and reserve resulting in perception problem)
<p>Competence and Responsibility</p>	<ul style="list-style-type: none"> • Obligation to maintain and improve theoretical and practical knowledge and judicial skills – includes obligation to engage in training. • This is also your right in the sense that the state (Judicial Academy) is obligated to provide such training free-of-charge. • Practical aspects in the courtroom: honouring deadlines; maintaining order and decency in proceedings 	<ul style="list-style-type: none"> • Judge allows parties to case or their representatives to argue verbally during court proceedings or use foul language, or allows observers (public) to converse freely (maintaining order in courtroom) • Judge issues verdicts which are clearly based on ignorance of the legal basis on which the judgement should be made • Judge fails to subscribe to training available programmes

<p>Dignity</p>	<ul style="list-style-type: none"> • General: duty in public and private life to conduct oneself in such a way as to protect reputation and dignity of judiciary • In court: courtesy and respect for parties, combined with sufficient detachment to underline independence and impartial • Duty to avoid compromising situations (e.g. public drunkenness) 	<ul style="list-style-type: none"> • Judge behaves rudely in court • Judge is seen in a place and/or in a state improper for him/her (e.g. having a drunken altercation in a nightclub). • Judge who is married is often seen in public with lover.
<p>Dedication</p>	<ul style="list-style-type: none"> • Mainly a combination of commitment to competence (see above) and ensuring performance of judicial duties takes priority over any other activities (again, link to conflict of interest) 	<ul style="list-style-type: none"> • Self-explanatory
<p>Freedom of Association</p>	<ul style="list-style-type: none"> • More of a right than an obligation; necessary for judges to collectively preserve their independence and status in general 	<ul style="list-style-type: none"> • Self-explanatory
<p>Dedication to principles of Code of Ethics</p>	<ul style="list-style-type: none"> • 2 aspects: • i) Principles of the Code should represent judges' way of life – i.e. a positive model of conduct • ii) 'Grave violations' of Code are disciplinary offences 	<ul style="list-style-type: none"> • 'Grave violation' is defined elsewhere – see Section 3.2.3

Table 2: Prosecutors’ Code of Ethics²¹

Section/ principle	Key points of explanation	Examples/illustration of violation
Independence/ autonomy	<ul style="list-style-type: none"> • Article 5, Law on Public Prosecution • Making case decisions on the basis of “own assessment of evidence and interpretation of legal norms”. • Independent/autonomous from whom? Not only legislative and executive power but media, other institutions, political parties, other judges, parties to proceedings 	<ul style="list-style-type: none"> • Prosecutor fails to disclose evidence in favour of defendant in high-profile case where authorities are eager for conviction • Fails to press charges in case involving businessman with close ties to government, despite strong evidence for the case
Impartiality	<ul style="list-style-type: none"> • The “assessment” mentioned above is not the prosecutor’s ‘own’ in the sense that s/he can do what s/he wants; must be based only on objective and relevant considerations. • Conflict of interest: duty of recusal when there are reasons to doubt their impartiality; includes 4 specific situations where recusal mandatory. See Section 3.1.1.iv for more elaboration on conflict of interest • Duty to refrain from any activities in private life that might cast doubt on impartiality 	<ul style="list-style-type: none"> • Examples under ‘Independence’ • Prosecutor systematically fails to give equal weight to evidence in defendants’ favour (example could be under ‘Professionalism’) • Prosecutor fails to disclose that his brother is related to the defendant • Prosecutor is seen in a restaurant/cafe with relatives of defendants in a case that his/her Office is dealing with (problem of perception – note the case does not have to be his/hers)

²¹ In the opinion of the experts, the Prosecutors’ Code of Ethics is somewhat less clear than the Judges’ Code – for example certain principles are perhaps too vague (e.g. ‘Responsibility and attention to professional duties’) or are elaborated into content that is not obviously related to the title of the principle e.g.: the aforementioned principle; Respect of Rights; Dignity (does not include important aspects of dignity). Some amendments to the Code might be considered at an appropriate time, although this is a subject for a separate assessment.

Respect of rights	<ul style="list-style-type: none"> • Provision mainly requires prosecutor to obey law and respect right to fair trial • Includes specific prohibitions on receiving gifts and abusing power (gifts, abuse of power). 	<ul style="list-style-type: none"> • Examples 1 under Independence and 2 under Impartiality • Prosecutor accepts hospitality from relatives of damaged party in a case
Responsibility and attention to professional duties	<ul style="list-style-type: none"> • Basically reiterates obligations in collecting evidence/making decisions – and illustrates the way in which ethical principles are an essential underpinning for these other technical obligations 	<ul style="list-style-type: none"> • See other principles in this table
Professionalism	<ul style="list-style-type: none"> • Brings together other obligations/principles (impartiality, responsibility, efficiency) as components of ‘professionalism’ • Includes obligation to improve knowledge and skills (includes training) – and right of access to training. • Obligation of confidentiality • Obligation to dress appropriately and properly 	<ul style="list-style-type: none"> • Prosecutor fails to properly follow legal developments in the area of his speciality • Failure to turn up to training to which he/she has subscribed • Leakage of case information to media. This also includes ‘passiveness’ when they suspect that some classified information may be taken by media but fail to do anything (e.g. inform their superiors) to prevent it.
Dignity	<ul style="list-style-type: none"> • Treating participants to proceedings fairly and with respect taking into account their views and legitimate interests. • Treating colleagues with decency and respect 	<ul style="list-style-type: none"> • Behaving rudely towards parties/legal representatives • Personalising professional disputes in the workplace
Implementation and enforcement	<ul style="list-style-type: none"> • Significant violations may be a disciplinary offence • ‘Significant’ = deliberate serious or frequent violation of principles contained in Code 	<ul style="list-style-type: none"> • Self-explanatory

iv) Focus on conflict of interest

a) What is a conflict of interest?

- Where you have a private interest which affects, may affect or may be perceived to affect your actions in the discharge of office or official duty
- Conflict of interest is not the same thing as corruption. Some conflict of interest situations are illegal *per se* (see below on incompatibilities). But others may emerge during the performance of function. In such case, an official (including a judge or prosecutor) may be subject to a conflict of interest yet still perform his/her duty in the way that s/he should (e.g. a judge is related to a defendant but this does not in fact affect his/her decisions in the case).
- However, conflicts must be avoided or resolved regardless if they will affect the outcome or not!
- Although conflict of interests can be elaborated into detail in laws/codes/guidelines etc., the complexity of life inevitably means that borderline cases will occur. A good rule of thumb is that if you have to seriously consider the question whether you are subject to a conflict of interest, you probably are. Scenarios in Day 2 will illustrate certain borderline situations.

b) Obligations 1: incompatibilities

- Positions that may not be held at the same time as being a judge or prosecutor. This is straightforward – Law on Anti-corruption Agency Article 2, Law on Judges (Articles 30-31), Law on Public Prosecution (Section 5). Ensure that judges/prosecutors are aware of these prohibitions.

c) Obligations 2: disclosure

- Article 32, Law on Anti-corruption Agency: Duty to notify superior and Agency of any “doubts” concerning a conflict of interest, in writing and within 8 days. If Agency establishes a conflict of interest it notifies the official and institution and proposes measures to eliminate this conflict.
- General comment: the provision is cumbersome and not well designed to address everyday situations where a prosecutor or judge realises that he/she is subject to a conflict of interest in a particular case.

Prosecutors:

- Chapter 4, Section 5 of Law on Public Prosecution contains duties of notification, but these are for situations of ‘incompatibility of function’.

- For everyday situations, the duty in Code of Ethics ('Impartiality') to request recusal (exemption) from proceedings implies notification of the conflict of interest situations of conflict of interest, this is the most relevant provision for such situations.

Judges:

- Duty to notify conflict of interest situations is not codified explicitly, and regulation is based on the assumption that the independence of judges makes the duty of recusal sufficient.

d) Obligations 3: recusal

Prosecutors:

- Code of Ethics (Impartiality): i) general duty to request recusal from proceedings if there are any reasons/circumstance which might give rise to doubts about impartiality; ii) prosecutor must recuse him/herself from proceedings in circumstances of specifically if injured by criminal offence or related to relevant parties within proceeding.

Judges:

- Article 2.3, Code of Ethics – "Judges must refrain from acting in cases when there are reasons for suspicion regarding their impartiality. Suspicions regarding the impartiality of a judge are particularly provoked by family, friendship, business, social, and similar connections with parties in proceedings and their legal representatives.
- Are there cases where notification of conflict of interest is sufficient without recusal? If the interest involved is minor/peripheral, the judge only becomes aware of it in the middle or late in the proceeding, and s/he notifies the court giving parties the opportunity to request his/her recusal.

e) Disciplinary and enforcement aspects

- Both codes of ethics state clearly that serious (or 'grave') violations of codes may be disciplinary offences.
- In general: it is clear that minor breaches should not result in serious sanctions, and many breaches may and should be resolved without recourse to formal disciplinary proceedings.

4.3 Interactive discussion of ethics regulations (Day 2)

i) Sample scenarios

a) Judges

Scenario 1: You have been judging a complex economic crime case (fraud) for a number of months, when you learn that one of the damaged parties in the case is related to your cousin-in-law, neither of whom you have ever met. You are specially trained for economic crime cases, the case has taken up a disproportionate amount of your time (in terms of familiarisation with the substance and evidence), and recusing yourself from it would impose significant human costs in terms of ensuring that the case is transferred to a judge that is sufficiently trained and has the time to catch up with the case in a brief period of time. What do you do?

Scenario 2: Same as Scenario 1, except that you learn that your sister-in-law owns a small shareholding in the company whose representative is being charged.

Scenario 3: You are judging a high-profile case that represents an opportunity to send a signal/lesson to potential future perpetrators; in similar cases in the past defendants have gone free due to loopholes in legislation/procedures. Is it legitimate – in order to send a ‘signal’ - to impose a particularly harsh sentence/sanction?

Scenario 4: The legal representative of a defendant in a criminal case calls your office and asks for a meeting to provide information relevant to the case. What do you do?

Scenario 5: The legal representative of a party in a civil dispute comes to the court where you work and asks to speak to you. What do you do?

Scenario 6: A party in a civil dispute with a powerful company knocks on your door and states that he needs to communicate to you - as the judge dealing with the case - facts about the case and does not feel safe doing so in court. What do you do?

Scenario 7: You are judging a commercial dispute between two companies. Your wife owns a small share in one of them, but the outcome of the dispute is not important enough to affect the value of the stake. What do you do?

b) Prosecutors

Scenario 1: You are in charge of the investigation of a human trafficking case involving a notorious alleged underworld figure. During the investigation you become aware that certain evidence was collected in technical violation of the Criminal Procedure Code; this has no bearing on the factual guilt of the

defendant/s, but for procedural reasons might lead to the case collapsing if it is disclosed. What do you do?

The answer here may depend on whether Serbia applies a strict exclusionary rule concerning admissibility of evidence rather than on ethical principles per se.

Scenario 2: You are in charge of an investigation into an assault on a man by 2 other men, one of whom was apprehended, and due to reasons of loyalty within his small ethnic community will not reveal the identity of the other assailant. The injured party states that the man who was not apprehended was the prime instigator of the attack. The assailant under investigation is an asylum seeker who will be certainly be deported on completion of any prison sentence, , and the injured party feels that such a punishment would be too harsh in view of the circumstances of the case. Do you prosecute the case?

Scenario 3: You are prosecuting a case of racketeering (extorting protection money), and one of your main sources of evidence is from a police informant who infiltrated the gang. However, it emerges that the informant had a sexual relationship with the sister of the gang leader and as a consequence a dispute with the latter. Do you use the informant's evidence?

Scenario 4: You are prosecuting an organised crime case in which the main witness is a reformed Mafioso who has decided to expose the organisation whatever the personal cost. He is willing to give evidence in his own name, although it is clear he may suffer reprisals and witness protection is not sufficiently developed to ensure his safety. How do you proceed?

Scenario 5: You are heading an investigation into corruption involving a senior politician. Powerful media with ties to the politician's party have orchestrated a campaign alleging that you are biased, including untrue statements about your political sympathies and ties. The campaign is effective enough that your impartiality may seem questionable for a majority of the interested public. What do you do?

Scenario 6: You are prosecuting a murder case in which the perpetrator tortured the victim prior to death. The parents of the victim do not want the details of the torture to be elaborated in the case, so that the siblings do not have to learn the full facts of the death. However, a murder charge alone will yield a shorter sentence than if additional charges of torture are added. What do you do?

Scenario 7: You are prosecuting a case of alleged corruption involving high-level officials and a powerful company, in which those under investigation are undermining the case publicly by spreading disinformation to the media. You have a good working relationship with a journalist in a respected media outlet. Are there any circumstances in which leaking information to him/her about the investigation might be justified?

Scenario 8: You are prosecuting a case, and the media threaten to report something true about your private life (which will have serious consequences for you personally) unless you drop the case. What do you do?

ii) **Training with scenarios**

- Either divide participants into groups and ask them to provide collective answers, or ask individual participants to write down answers.
- Presentation by representative of groups, or by individuals in second case, of analysis and chosen course of action for each scenario.
- Discussion by group of the proposed analysis/course of action.
- Trainer should ensure that the discussion identifies i) the principles/ethical rules the judge should use to determine the appropriate course of action; ii) whether principles conflict with each other –e.g. in Scenario 6 for prosecutors, does ‘impartiality’ conflict with ‘dignity’ as they are elaborated in the Code of Ethics?; ii) circumstances that should be taken into account in making the decision.
- Other scenarios or variations on the scenarios should be devised and used. Ideal scenarios depict ‘borderline’ situations or ethical dilemmas, where the appropriate course of action may not be entirely obvious, or ethical principles may conflict, etc. The purpose is not to instruct judges how to act in every possible situation, but to stimulate them to think about how decisions to act should be made.

4.4 On-going (in-service) training:

This section outlines the components and content of on-going training on i) ethics for all judges and prosecutors, ii) particular obligations of public prosecutors (heads of Public Prosecution Offices) and court presidents, and iii) the obligations of disciplinary prosecutors.

4.4.1 General issues

While in-service training should not be made compulsory in general (at least for judges), it can and should be made a practical condition for being appointed to certain positions (court president, public prosecutor, disciplinary prosecutor). Training for ordinary judges and prosecutors will be voluntary, and for this reason must be made sufficiently easy to participate in and interesting to generate participation. Judges and prosecutors should have a right to a certain level of training. The times and places of training should be organised so as to facilitate the exercise of this right. The approach recommended is the following:

- It is not necessary to provide dedicated sessions on ethics during in-service training. Rather, ethics training should be integrated into in-service training sessions that are provided on other subjects that explicitly required on-going training – in particular, new legislation, relevant case law that requires dissemination to contribute to consistency in judgments or other issues on

which judges or prosecutors do not have knowledge of or have not been involved in before. For any on-going training that is organised, the subject matter should be examined to identify where principles of the Code of Ethics may be brought in, and the training module modified accordingly.

- A good example of how integration rather than separation is the logical approach to ethics awareness and training is the new Criminal Procedure Code which came into full effect in October 2013. Ideally, training on the Code, which was provided during the year period prior, would integrate key ethical components – for example the obligation of prosecutors to give equal weight to evidence that is for or against an accused/defendant (impartiality).
- Training should not be taken in isolation from other aspects of on-going education, in particular ensuring access to databases of statute law and relevant case law (issues highlighted by the PACS Risk Assessment), and ensuring established mechanisms to draw the attention of judges and prosecutors to important developments (for example by circulating a regular information bulletin in paper form or via internet).
- Regarding the physical context of training, it may be most practical from an organisation point of view to provide training in centralised sessions at the Judicial Academy. However, European trends in judicial training and education should be taken into account, and if possible more decentralised and interactive sessions should be conducted at court or at least regional level.
- As a future component of training strategy, online interactive sessions on ethics may be considered. These may be entirely voluntary and would be based around interesting scenarios such as those already provided in Section 4.3. Discussion on issues of ethics and integrity could also be stimulated by posting such scenarios for discussion between judges/prosecutors on the internet. Such methods can be both effective in stimulating thinking and awareness on issues of judicial ethics, and also cost-effective (requiring perhaps only minimal moderation by Judicial Academy trainers).

4.4.2 Court presidents and public prosecutors

Training for these groups should be broadly similar and based around the following themes:

i) Leading by example rather than by enforcement

In order to ensure and maintain adherence – and internalisation – of principles of the Codes of Ethics, superiors must lead by example and pay particular attention to ‘softer’ provisions of the Codes of Ethics such as decency/courtesy/fairness with respect to colleagues. A pleasant working environment is a condition for integrity to be sustainable.

ii) Establishing clear channels for consultation/mentoring on ethical issues/questions

It is important for public prosecutors and court presidents to ensure that those who serve under their authority are able to approach them directly to discuss any question they may have about proper conduct, and in particular ethics situations that have arisen or may arise.

iii) Maintaining vigilance for red flags in the behaviour/conduct of subordinates

Court presidents and public prosecutors should remain alert to signs that individual prosecutors/judges have problems that make them vulnerable to corruption, or signs that improper conduct is occurring. Such signs include but are not limited to:

- Poor punctuality or attendance at work or hearings, or departure from typical work performance in terms of caseload managed. These may be the result of other problems such as e.g. alcoholism or addiction. The latter in turn increase vulnerability to improper influence. Departures from work norms should be interpreted carefully, in case they are due to legitimate reasons.
- Unusual patterns of decision-making (such as an unusually high level of acquittals). Again, careful interpretation needed – there may be an innocent explanation.
- Level of complaints against an individual judge or prosecutor may also be significant but of course no assumption that complaints are justified should be made. Again, conclusions can only be made on a case-by-case basis.
- Acquisition of assets (e.g. car, house) not corresponding to the judge/prosecutor's income and likely financial resources.
- Signs that a judge/prosecutor may be in debt, making him/her vulnerable to improper approaches.

It is vital to note that an appropriate balance has to be struck between the independence of the individual prosecutor/judge and the role of the public prosecutor/court president. In other words, the role of supervision – including the elements listed above – must be performed with sensitivity and care.

4.4.3 Disciplinary prosecutors

Prosecutors who become disciplinary prosecutors should receive brief training covering the following issues:

i) Guidelines on disciplinary offences

- Disciplinary Prosecutors should be provided with a clear and definitive list of conduct that may be the subject of disciplinary proceedings.
- The definition and meaning of ‘serious’ or ‘grave’ violation should be clearly elaborated using laws on Judges/Public Prosecution, and the disciplinary rules/rulebook (see below).

ii) Disciplinary proceedings

- This part of the training should familiarise Disciplinary Prosecutors with how disciplinary proceedings are to be conducted: for judges according to The Judges Rulebook of Disciplinary Proceedings, for prosecutors according to the Prosecutors’ Rules on Disciplinary Proceedings and Disciplinary Liability.
- DPs should be made aware of specific ethical obligations that apply to them, in particular duty of recusal from disciplinary proceedings in conflict of interest situations (Article 11, Judges’ Rulebook; Article 13, Prosecutors’ Rules).

iii) Sanctions

- Range of sanctions for both judges and prosecutors: public reprimand, salary reduction up to 50% for a period not exceeding one year, ban on promotion for a period up to three years.
- Grounds for initiating dismissal: serious disciplinary offence
 - Judges: found guilty of disciplinary offences three times, violation causing serious disruption in the exercise of judicial power or regular duties at the court or severe damage to the dignity of the court or public trust in the judiciary, in particular where statute of limitations causes serious damages to party in proceedings (Article 90, Law on Judges)
 - Prosecutors: same grounds for dismissal (Article 104, Law on Public Prosecution)

iv) Proportionality to seriousness of violations

- Concerning violations of the Codes of Ethics, disciplinary prosecutors should be provided with clear guidance on which types of violation are serious and which are not. This involves two types of consideration:

- Principle violated – for example breaching principle of independence is likely to be more serious than breaching principle of decency;
- Scale of the breach (e.g. minor discourtesy vs ‘bullying’ within the workplace, or a minor conflict of interest involving a distant relative vs a major financial interest in a case);
- Frequency/repetition of violation;
- Sanctions must take into account previous work record of judge/prosecutor.