

Serbia

- **Note**

The laws relating to the judiciary and in accordance with the November 2006 Constitution, which were to have been adopted at the second session of the Republic of Serbia National Assembly, have not been passed yet.

It is for this reason that the judicial legislation passed in 2001 is still applied in Serbia. Responses to the below questions shall relate to the valid legislation and will, where applicable, include notes on the different provisions in the new Constitution.

Judges and prosecutors in Serbia do not comprise one corpus and there is no possibility of horizontal mobility between the two occupations. The below responses will therefore predominantly pertain only to judges.

General questions

1. What developments have recently taken place in your country with respect to the matter of independence of the judiciary? What have been the developments in the area of fundamental freedoms and rights?

The new Constitution of the Republic of Serbia was adopted in November 2006. Under the Constitutional Act on the Implementation of the Constitution, all laws related to the work and organisation of the judiciary and in accordance with the new Constitution were to have been passed already at the second session of the Assembly of the Republic of Serbia. These laws have not been adopted yet.

- The High Judicial Council has become a constitutional category for the first time under the new Constitution.

- The new Constitution provides for a different system of appointing judges and prosecutors. With respect to the appointment of judges, the new Constitution envisages three types of appointment: to probationary three-year terms in office, to permanent tenure judgeship until the age of retirement and to a senior judgeship (the Serbian judiciary has not envisaged a promotion system to date: for a judge to be promoted to a senior position, s/he has had to undergo the same procedure as when applying for his/her first judgeship). The new Constitution envisages a system of judicial appointments differing from the hitherto appointment procedure under which the Serbian Assembly elected and dismissed all judges, court presidents, prosecutors and their deputies at the proposal of the High Judicial Council.

At the proposal of the High Judicial Council, the Assembly shall elect the judges to their first, so-called probationary three-year period, and the elective

members of the High Judicial Council from amongst the ranks of judges and court presidents.

- Under the new Constitution, the High Judicial Council shall be the body deciding on the immunity of judges. Under the valid laws (and until the new ones are passed), decisions on immunity are taken by the Assembly.

- The new Constitution is the first to allow judges whose tenure has been terminated to appeal to the Constitutional Court (The lodged appeal shall not include the right to lodge a constitutional appeal).

- The new Constitution is also the first to foresee different appointment procedures for judges and court presidents, who are recruited from amongst judges. Under the new Constitution, the court presidents shall always be appointed by the High Judicial Council, which is a major shortcoming in the view of the Association of Judges of Serbia.

- Reasons for termination of judgeship shall hereinafter be regulated by law, given that the new Constitution does not list them, which is another flaw in the opinion of the Association of Judges of Serbia.

Like the former FRY Constitution and the Constitutional Charter of the State Union of Serbia and Montenegro, the new Constitution guarantees all human rights and freedoms in accordance with international standards.

2. What are the texts which the independence of the judiciary are founded on and what is their value (constitutional value, legislative, practice, case law...)?

The status of the judiciary is regulated by the Constitution and the law. The Constitution leaves it to laws to regulate issues related to the termination of tenure, the accountability, salaries and pensions of judges and the judicial budget.

Given the social upheavals in Serbia, it is rational and socially justified to have as many as possible guarantees of judicial independence enshrined in the Constitution, especially since Serbia's laws related to the judiciary are not organic laws, but laws adopted by a simple parliamentary majority and therefore easily amendable.

3. Are the magistrates enjoying unhindered freedom of association and/or syndication? What is the proportion of magistrates belonging to a trade union or an association? Are there multiple trade unions or associations of magistrates?

Both the new Constitution and the valid laws guarantee the judges the right to professional association. The valid law includes the following shortcoming: it does not provide for real conditions in which judges, even those holding a post in the professional association requiring major involvement, would be able to devote part of their activities to the professional association, wherefore the possibility of professional association is essentially limited. On the other hand, the new Constitution prohibits judges from engaging in any political activity; it

cannot be ruled out that professional activities be treated as political in specific circumstances or at specific times, as had occurred in the past.

There is only one professional association of judges in Serbia and it is not organised as a trade union. The Association of Judges of Serbia has around 1600 members – judges and retired judges (NB There are 2,100 judges adjudicating in Serbia at the moment, although there ought to be 2,400). The prosecutors are rallied in their own association, the only one in Serbia, which is not a trade union either.

4. Does the general public feel (if it can be established on the basis of surveys or public opinion polls) that magistrates are independent?

There have been no separate public opinion surveys on the independence of the judiciary. There have, however, been surveys on the public's perception of corruption in the judiciary. According to the Centre for Liberal Democratic Studies 2004 survey on corruption in trade courts, 50% of the parties to the proceedings believe that the level of corruption in the judiciary is average or significant. With respect to court staff, court enforcement officers are perceived as the most corrupt. The 2004 survey, when compared to the one conducted in 2001, showed an increase in trust in the judiciary, given that 15% fewer respondents said that there was significant corruption in this area. The 2004 survey confirmed that 40% have little or no trust in the judiciary. The public opinion poll on the website of the First Municipal Court in Belgrade included inter alia the following question: "Do you believe the court is independent?" – 80% of the respondents said they did not. One should, however, bear in mind that IT development in Serbia is still extremely undeveloped and that computers and the Internet are accessible mostly only to the younger and better educated urban population.

Judging by the surveys, one may gain the impression that the public does not believe the judiciary is independent. Also, the public does not understand the importance of judicial independence and lacks interest in the topic. Both the politicians and the media have contributed to the public perception of the independence of the judiciary as mostly the privilege of the judges, not as the right of the citizens. It is the judges themselves who best understand the significance of judicial independence and insist on it.

The fact is that the judicial reforms establishing strong guarantees of independence have not been undertaken yet merely reinforce such convictions.

5. Has justice been seriously criticized in the last ten years? If yes, on what occasion?

The judiciary has been frequently criticised in the past ten years.

After the Criminal Procedure Code was amended to legally limit pre-trial detention to a maximum of two years, eight defendants under trial for grave crimes had to be released because their detention had exceeded two years. Most of them fled and the judiciary was unjustifiably accused of releasing them from detention and letting them flee.

Dejan Milenkovic Bagzi Case – An attempt to kill the subsequently assassinated Prime Minister Djindjic took place in February 2003 when Milenkovic suddenly swerved the vehicle he was driving towards the car in

which the PM was riding. On the basis of data the prosecutors and court had at their disposal at the time, the suspect, Dejan Milenkovic Bagzi, was criminally charged with forgery of the document proving ownership of the vehicle he was driving. Given that there were no grounds to keep him longer in detention on those charges, he was released after a few days. His release was later used to attack the judiciary and hold it accountable for the subsequent assassination attempt in which PM Djindjic was killed.

The Ibar Road Case, and other trials for the gravest crimes, given amendments to the law – With the aim of harmonising the law with that of the European Union after the abolition of capital punishment, 20 years' imprisonment was for a while the most stringent sentence in Serbia. Subsequent legal amendments introduced 40-year imprisonment, but it has remained disputable whether such a sentence can be pronounced also for crimes committed before these amendments were passed due to the principles prohibiting the retroactive application of the law and on the application of a milder law to the perpetrator of a crime. Given that this dilemma has not been definitely resolved by the expert public, the judiciary has been accused of applying a mild penal policy every time a judge decided that s/he could not sentence the perpetrator to 40 years in prison.

The judiciary has in the past years been constantly accused of insufficiency and overly long trials although it has been operating in circumstances burdened by systemic problems affecting the work of the judges. For instance, there has been a significant increase (by nearly 60% in the past four years) in the number of appellate civil proceedings (in courts with general jurisdiction and trade courts). Although the percentage of court rulings has risen by 40% in the period, the number of newly-filed cases has exceeded the number of rendered judgements; in result, the system has become increasingly inefficient and the judges are blamed for the inefficiency. With respect to criminal trials (the two most prominent ones regarding priests accused of paedophilia), there have been instances where the statute of limitations expired, where short imprisonment sentences are envisaged by the law and where the judges conducting the trial changed. In some cases, the statute of limitations expired because the legal amendments made in the meantime reduced penalties for specific crimes (and thus envisaged shorter statutes of limitations). Despite numerous objective reasons that led to the expiry of the statutes of limitations, the Justice Minister and other politicians, and subsequently the media and the public, have mostly pinned the blame on the judges.

6. What is the share of the budget of the judiciary in the overall state budget? Has there been any major increase or decrease of that share?

In 2004, 2.2% of the Republic of Serbia budget was earmarked for the administration and work of the judiciary (courts and prosecution offices). In 2006, 1.9% of the budget was allocated for the purposes. Data on these allocations are insufficiently transparent, but there are indications that over 2% of the budget were allocated for the judiciary in 2007.

Status

(The following questions concern judges and prosecutors)

7. *Recruitment and education:* a) What are the selection criteria? b) What is the content of the magistrates' education c) What are the modalities of the first appointment of magistrates?

7. a) *In accordance with the note at the beginning of the Questionnaire and given that the laws related to the judiciary and in accordance with the new Constitution are yet to be adopted, the response to this question shall regard the current situation.*

Apart from the other conditions (citizenship of the Republic of Serbia, law degree, bar exam, specific work experience), a candidate applying for the post of judge must also fulfil the following two fundamental criteria: expertise and worthiness. These criteria are elaborated in detail in an enactment passed by the High Judicial Council, the body which nominates the candidates for judgeship to the Assembly.

Although the High Judicial Council (first established under a law passed in 2001) lists the detailed criteria and standards in its Rulebook, such regulation is far from optimal.

The criteria and standards for evaluating the work of the applicants for judgeship and judges during their appointment (and work) have not been defined; they are not comprehensive, clear, consistent, reliable or harmonised and they do not take into account all the circumstances relevant to the assessment of the work of judges. Nor do they guarantee uniform application in all circumstances. The application procedure before the High Judicial Council is not transparent; the judicial election procedure by the Assembly is even less so. Neither have been conducive to improving the public trust in the work of the courts.

7. b) *The 2006 Act on the Training of Judges and Prosecutors was the first to introduce initial training for judges and prosecutors. Under that law, every future judge needs to undergo training before s/he assumes the post. Although the Act has come into force, it has never been applied. A new law on training is being drafted.*

Under the valid regulations, trainees (law college graduates) are hired by courts and undergo training in the court in which they work, under the supervision of a mentoring judge. After a two-year probationary period, they are to take the bar exam, which they must pass within the third year of apprenticeship. Once they pass the bar exam, they are bestowed the title of adviser (expert associate) and have to work in that position at least another two years before they become eligible to apply for a judgeship. The training of advisers is not regulated by the law.

Law graduates, who had not worked in the judiciary, but have passed the bar exam and have longer legal experience, may also be appointed judge. Their training has not been legally regulated either.

Permanent training of judges is regulated by the law. Judges have the right and obligation to undergo additional professional training. The training is mostly conducted via the Judicial Centre, established by the Association of Judges of

Serbia and the Government of Serbia in 2002. The transformation of the Judicial Centre into a national institution for training judges and prosecutors is currently under way. Permanent training is in principle voluntary, with the exception of matter where the law declares such training mandatory (family disputes and in criminal proceedings, juvenile criminal justice).

7. c) *All law graduates who have passed the Bar and have specific legal experience are eligible for judgeship in principle.*

Under the laws adopted in accordance with the former Constitution (given that the new laws related to the judiciary have not been adopted yet), the High Judicial Council proposes to the Assembly of the Republic of Serbia candidates for the posts of judge or court president, who are thereupon elected by the Assembly. The nomination made by the High Judicial Council is not binding on the Assembly. The Assembly need not elect the nominated candidates and it has often refused to do so. Not one judge has been appointed in Serbia for over two years now, although their nominations have been submitted to the Assembly.

Six of the 11 High Judicial Council (HJC) members are judges. The President of the Supreme Court is a member of the HJC ex officio. The HJC has five permanent members and 6 elective members – the latter are elected from the ranks of judges and take part in the work of the HJC when it is deliberating issues relevant to judges. The permanent members include the President of the Supreme Court of the Serbia, the Minister of Justice, the Republican Public Prosecutor (all of them ex officio members), a lawyer (appointed by the Bar Association of Serbia) and a member appointed by the National Assembly (usually the chairman or representative of the Assembly committee for judicial affairs, who ought to be an eminent legal professional). The six elective members – judges are appointed by the Supreme Court of Serbia from amongst judges; the Supreme Court is to take into account that the six judges represent all court instances.

The elective members of the HJC currently include no representatives of municipal courts, while both representatives of district courts are also court presidents. The remaining three judges are Supreme Court judges, wherefore the HJC comprises four Supreme Court judges.

The new Constitution envisages a different appointment system. At the proposal of the High Judicial Council, the Assembly elects the judges to their first three-year probationary terms in office and the elective members of the High Judicial Council from amongst the ranks of judges and court presidents. The High Judicial Council appoints judges to permanent tenures until age of retirement after their probationary period and to higher judicial posts (promotes them).

Under the new Constitution, the High Council of the Judiciary shall have 11 members. Three of them – the President of the Supreme Court of Cassation, the Justice Minister and the Chairman of the Assembly Committee for Judicial Affairs – shall be members ex officio. Two members shall be appointed from amongst the ranks of eminent legal professionals who have at least 15 years of experience in law – one from amongst the ranks of law college professors and one from amongst the ranks of lawyers. The remaining six members are

elected by the Assembly from amongst the ranks of judges, a solution assessed by both the Association of Judges and the Venice Commission as posing one of the greatest risks to the independence of the judiciary.

8. *Council of the Judiciary*: Is there a council of the judiciary or magistracy? If yes, what are the modalities of its appointment and functioning? Its competences?

The High Judicial Council (HJC) was established by a law adopted in November 2001, which came into force on 1 January 2002.

The HJC nominates to the National Assembly the candidates for the posts of court presidents, judges, public prosecutors and deputy public prosecutors, appoints lay judges and performs other duties prescribed by the law.

The HJC has five permanent and eight elective members from the ranks of judges and public prosecutors. Six of the elective members are judges and two are public prosecutors.

The permanent members of the HJC comprise the President of the Supreme Court of Serbia, the Republican Public Prosecutor and the Justice Minister, all of them ex officio. The fourth permanent member is appointed by the Serbian Bar Association from amongst the ranks of lawyers and the fifth is elected by the National Assembly from amongst three candidates nominated by the Supreme Court of Serbia. The fifth member shall be an eminent legal professional not holding the post of judge, public prosecutor or deputy public prosecutor.

The six elective members from amongst the ranks of judges are appointed by the Supreme Court of Serbia

One elective member from amongst the ranks of public prosecutors is appointed by the Deputy Republican Public Prosecutor and the other by district public prosecutors at a joint session.

The HJC works and takes decisions either by convening only the so-called core members or by also convening others – the so-called expanded HJC, depending on the issue on the agenda.

The HJC core members (5 permanent and 6 elective members from amongst the ranks of judges) nominate candidates for judgeship to the National Assembly. The HJC's core members (five permanent and two elective members from the ranks of prosecutors) nominate candidates for the posts of prosecutor to the National Assembly.

The so-called expanded HJC comprises all permanent members, with the exception of the Justice Minister and Republican Public Prosecutor, and all elective members, both from the ranks of judges and from the ranks of prosecutors. They take decisions on base salary increases envisaged by the law, rule on objections to decisions on incompatibility, objections by public prosecutors and deputy public prosecutors to decisions on suspensions from duty that were not mandatory and on the Republican Public Prosecutor's objection to a decision to suspend him/her from duty.

The HJC elective members currently do not comprise representatives of municipal (first-instance) courts. Both representatives of the district (second-instance) courts are court presidents. The remaining three elective members from the ranks of judges are Supreme Court judges, wherefore four of the judges – members of the HJC - are Supreme Court judges, a shortcoming in the view of the Association of Judges.

The HJC and the State Prosecutors' Council have become constitutional categories under the new Constitution.

Under the new Constitution, the HJC shall have 11 members: three of them - the President of the Supreme Court of Cassation, the Justice Minister and the Chairman of the Assembly Committee charged with the judiciary - shall be HJC members ex officio. Two members shall be elected from amongst the ranks of eminent legal professionals with at least 15 years of working experience - one from the ranks of law college professors and the other from the ranks of lawyers. The remaining six members shall be elected from amongst the ranks of judges. These eight members shall be elected by the Assembly.

The HJC shall be an independent and autonomous authority ensuring and guaranteeing the independence and autonomy of courts and judges. It shall appoint and dismiss judges in accordance with the Constitution and the law, nominate to the National Assembly candidates for probationary three-year judgeships, the President of the Supreme Court of Cassation and court presidents, participate in the procedure launched to terminate the tenures of the presidents of the Supreme Court of Cassation and other courts, and perform other duties prescribed by the law.

The Association of Judges shares the concerns of the Venice Commission that the election of HJC members from the ranks of judges by the Assembly poses a great risk to the independence of the judiciary.

Under the Constitution, the State Prosecutors' Council (SPC) shall be an autonomous body ensuring and guaranteeing the autonomy of the public prosecutors and their deputies. It shall comprise 11 members; the Republican Public Prosecutor, the Justice Minister and the Chairman of the Assembly Committee charged with the judiciary shall be SPC members ex officio, while the eight elective members shall be elected by the National Assembly from amongst the ranks of public prosecutors and their deputies with permanent tenures. One of them shall be from the territory of Serbia's autonomous provinces and two from amongst the ranks of respected and prominent lawyers with at least 15 years of legal experience – one of them will be nominated from amongst the ranks of lawyers and the other from amongst the ranks of law college professors.

The SPC shall nominate to the National Assembly the candidates applying for the post of deputy public prosecutor for the first time, appoint deputy public prosecutors to permanent tenures, reassign deputy public prosecutors with permanent tenures to work in other public prosecution offices, take decisions in the procedure for terminating the office of deputy public prosecutors and perform other duties specified by the law.

9. Career: a) Is rank separated from the post? b) What are the rules governing, if applicable, promotion? c) Are there criteria for promotion on the basis of merit or other criteria apart from seniority? d) Are there rules in place setting limits to the duration of exercising a particular function and/or in a particular geographical location?

9. a) *The Serbian judiciary still lacks a promotion system, wherefore judges who wish to move to a higher court (be promoted) have to undergo the whole procedure all over again as when they applied for their first judgeship: they have to be nominated, their candidacies submitted to the Assembly and then they have to be elected by the National Assembly.*

9. b) *Given that there are no promotions in the classical meaning of the word, the candidates for higher judicial posts need to fulfil the same requirements as first-time applicants for judgeship.*

A citizen of Serbia fulfilling the criteria for employment in state authorities, who has a law college degree and passed the bar exam and is worthy of judgeship, may be elected judge. Apart from the bar exam, the candidates need to have the following working experience when applying for judgeship in specific courts:

- two years of working experience to become a judge in a municipal or misdemeanour court;*
- four years of working experience to become a judge in a trade court;*
- six years of working experience to become a district court judge;*
- eight years of working experience to become a judge of the Appellate, High Trade, High Misdemeanour or Administrative Courts;*
- twelve years of working experience to apply for judgeship in the Supreme Court of Serbia.*

9. c.) *Under the Decision on Criteria and Standards for Nominating Candidates for the Posts of Judge and Court President passed by the HJC, the work of the judges applying for higher judicial posts shall be evaluated in accordance with basic and additional criteria. The HJC shall nominate to the National Assembly judges applying for judgeships in higher courts. The HJC shall practically appraise the work of the applicants when reviewing their applications.*

The basic criteria comprise professionalism (quality and achieved coefficient of efficiency) and worthiness.

The quality of a judge's work is evaluated on the basis of the number of his/her meritorious rulings and the numbers of his/her upheld, overturned and modified rulings by a higher court.

The coefficient of efficiency is the quotient of pending cases in the appraisal period and the average number of cases assigned to the judge every month during that period.

The applicant's success is appraised by reviewing how s/he has handled old cases, i.e. the ratio between the number of newly filed cases and the number of old cases s/he has ruled on, and with respect to the number of cases in which the statute of limitations has expired (where it is impossible to undertake criminal prosecution or enforce the penal sanction) due to his/her fault. Applications of candidates, who had failed to render their rulings within a

month, are especially carefully scrutinised (and the HJC shall obtain a detailed report on their work over the past three years).

The judges working in the same court as the applicant and the judges of the immediately higher court shall give descriptive assessments of his/her work to the HJC. The HJC may also take into account the opinion of the bar chamber covering the same jurisdiction as the court in which the applicant is working.

Worthiness is the reputation the applicant enjoys in the environment he comes from, the tolerance s/he has displayed in expert debates, his/her willingness to respect different opinions and arguments in collective decision-making procedures. In real life, however, these qualities do not bear much importance.

Some of the numerous shortcomings of these standards and criteria are listed in the last paragraph of section 7.a) and in section 10.

9. d) Judges in Serbia are elected to specific judgeships in specific courts. Judges may be reassigned to other courts only exceptionally, in instances provided by the law and with their consent.

10. *Appraisal*: how are magistrates appraised?

10.) The appraisal of the work of judges in Serbia is most often understood as involving the numerical measurement of the results of their work (number of cases they are adjudicating, number of cases they ruled on, number of pending cases, numbers of upheld and overturned judgements, number of cases in which they rendered their judgements after a specific deadline, etc). Each court keeps monthly statistics and submits reports on the work of the court, its departments and individual judges. These quarterly, six-month and annual reports are submitted to the Ministry of Justice, the immediately higher court and the Supreme Court of Serbia.

Although based on statistical data, the very measurement of the results (quantity) of work as part of the appraisal of the work of judges is neither systematic nor consistent. The statistical data are not followed by analyses, conclusions or evaluations of the work of the judges, or a plan of measures to eliminate the identified problems and ensure the better work of the judiciary, the specific court or the individual judge. There is no system for comparing the results of the work of the judges and indicating the average results of their work in a specific court or in Serbia.

The measurement of the results is conducted if necessary, with respect to a specific judge aspiring to be promoted to a higher court or in order to launch the procedure for his/her dismissal. Specific data, courts or judges are not analysed within the context of the overall results of a specific court or Serbia's judiciary on the whole.

This is a serious shortcoming given that it obstructs the achievement of all the goals that can and ought to be achieved by the evaluation of the work of judges. The absence of continual evaluation of the work of all judges renders impossible systemic interventions based on reliable analyses and comprising realistic expectations of desired effects.

Appraisal does not take into account the types and complexity of the cases a judge adjudicated in the reported period or the definition of cases adjudicated meritoriously or in another manner. It also fails to consider how many rulings had not been appealed, although resolution of as many disputes as possible in the first instance is extremely useful for the society. The actions taken in view of specific types of cases and preparations for trial are not taken into account. The coefficient of efficiency (see section 9.c. para 4), which is fiercely insisted on, must be taken with caution and reservation, because it is affected by circumstances the judge has no impact on (judges adjudicating the same number of cases as their colleagues each month may have different coefficients of efficiency depending, for instance, on the number of cases assigned to them). Although they submit detailed statistical reports, neither the judges nor the courts receive feedback on whether a specific judge has been appraised and how. The data are not analysed either.

The system for appraising judges in Serbia:

- Plays no role in improving the management of the judicial system, but exclusively in decision-making on the status of judges (appointments and dismissals);*
- Is neither constant nor applicable to all judges and is applied only when nominating a specific judge to a higher court or when establishing whether there is cause for his/her dismissal. Only judges, who have applied for a judgeship in a higher court (for promotion), or those against whom the dismissal procedure has been launched are appraised;*
- Is governed by unharmonised and frequently contradictory norms strewn across a number of laws and by-laws adopted by various bodies (Supreme Court, High Judicial Council, High Personnel Council);*
- Comprises criteria and standards for evaluating the work of judges which are undefined, incomplete, unclear, imprecise, inconsistent, unreliable and unharmonised and do not take into account all the circumstances of relevance to appraising the work of judges, whilst failing to guarantee their uniform application across the board;*
- Is conducted by stakeholders who have no say about judicial training (High Judicial Council, High Personnel Council, court president), wherefore the appraisal mark has no impact on the type, mode and curriculum of the training (advanced professional training) and the type of work the judges will be doing in court;*
- Is conducted in procedures which are not transparent (open, public, clear) and do not provide for the protection of the rights of the judge being appraised;*
- Does not allow for an assessment of the duration of the proceedings given that data on the real caseloads of the judges and courts are often insufficiently reliable or comparable;*
- Deprives citizens of the possibility to assess and decide whether to go to court at all or resolve their dispute by other legal means;*
- Has led to lesser public trust in the work of the courts, which has hindered the establishment of the rule of law.*

11. *Secondment: what are the rules regarding secondment and return to the original corps (in particular after exercising political functions)?*

Under the valid legislation, a judge may not have any other engagement or job apart from judgeship

12. *Earnings*: what are the earnings of magistrates at the beginning of their career?

A novice judge earns a salary of around 1,000 €.

Criminal Law

13. Is the Prosecutor's Office subject to the principle of legality of prosecution, or does it have the possibility of choice? In the case of the latter, are these choices subject to control?

The public prosecutor is duty bound to criminally prosecute a suspect reasonably suspected of having perpetrated a crime.

The public prosecutor may dismiss the criminal report with the consent of the damaged party for a crime warranting maximum three-year imprisonment or a fine in the event the accused meets specific obligations (compensates damages, makes a specific contribution to a humanitarian organisation, performs a charitable deed, fulfills outstanding alimony/child care obligations).

14. Is there a criminal policy defined in a centralized manner? What is the authority in charge of such policy? Is it politically accountable?

There is no centralised penal policy.

15. Are the prosecutors obliged to inform justice ministers, even about particular cases? Are there rules protecting confidentiality?

Public prosecutors are not obliged to report on their work to the Justice Minister.

16. Is a prosecutor or an investigating judge in charge of criminal investigations?

The investigation is conducted by the investigating judge at the request of the public prosecutor. Under the new Criminal Procedure Code, which has not come into force yet, the investigations shall be conducted by public prosecutors.

17. Is the judicial police dependent or independent from the public ministry? Is it obliged to report to the prosecutor all infractions (*notitiae criminis*) it is aware of?

There is no special judicial police. The police are under the jurisdiction of the Minister of Internal Affairs.

18. Are the citizens involved in criminal justice? (Jury, *echevinage*, non-professional judges?)

Citizens' involvement in trials is achieved through the involvement of lay judges.

Trials of crimes warranting over three years of imprisonment are held before a judicial panel comprising one professional and two lay judges. Trials of crimes warranting 15 years' imprisonment and more are held before a panel comprising two professional and three lay judges. Lay judges have equal say as professional judges when decisions are reached.

19. Is there a system of legal assistance for poor persons in place? If so, how does it function?

Defence by an attorney is mandatory in trials for crimes warranting over ten years of imprisonment and, if the defendant does not hire an attorney, the court shall appoint him/her legal assistance ex officio. These fees are covered by the court.

At the end of the proceedings, a defendant found guilty is obliged to cover the fees of the defence attorney appointed by the court. If the accused is unable to cover the costs, the court releases him/her of the duty to pay them.

20. Are there specialized authorities in place for certain areas: combating corruption, terrorism and/or economic and financial crime, other?

The Belgrade District Court is home to special departments with jurisdiction over all of Serbia to try organised crime, war crimes and high technology crimes. Specialised prosecutorial departments prosecute these crimes.

21. What is the maximum penalty? Has the number of detainees evolved in the recent years?

The maximum prison sentence is forty years.

Responsibility - Discipline

22. a) What is the disciplinary regime for magistrates (disciplinary proceedings, sanctions? b) What are the authorities that initiate the proceedings carry them out and enact the decision? c) Are there ways or means to appeal against decisions of disciplinary proceedings?

22.a) *As opposed to the prior Constitution, the new one does not list the reasons for dismissing judges. Despite the petitions by the Association of Judges of Serbia, the new Constitution, like the prior one, does not envisage the disciplinary accountability of the judges.*

The valid Act on Judges does not have clear provisions on the disciplinary accountability of judges.

The Act provides for measures that are disciplinary in character only in two instances: in a procedure for establishing whether there is an incompatibility between a judge's other engagement and judgeship and in the dismissal procedure against a judge for negligence and unprofessionalism in the event the conditions for his/her dismissal have not been fulfilled.

22. b) *The procedure for establishing incompatibility of a judge's engagement or service and judgeship are launched by the court president. The decision on incompatibility is taken by the High Personnel Council (a nine-member body comprising Supreme Court judges, which proposes the dismissal of a judge to the National Assembly). The High Personnel Council is authorised to caution the judge and enter the caution in the judge's personal record.*

The dismissal procedure may be launched by the court president, the president of the immediately higher court, the president of the Supreme Court of Serbia, the Justice Minister and the Supervisory Board (a body of the Supreme Court of Serbia comprising five Supreme Court judges elected to four-year terms in office by a majority vote of all Supreme Court judges. NB A member of the Supervisory Board may not simultaneously sit on the High Personnel Council). The Supervisory Board is authorised to examine court cases and peruse them either acting upon a complaint or at its own initiative. The Board may launch a procedure for dismissing a judge before the High Personnel Council due to his/her negligent or unprofessional discharge of duty or propose disciplinary measures against the judge.

The decision that there is cause for dismissal is taken by the High Personnel Council. In the event the High Personnel Council concludes that there is no cause for dismissal, it is authorised to caution the judge or order his/her removal from office for a period lasting between one month and one year (in the event the High Personnel Council does not reach a decision within 60 days from the day the procedure was initiated, the decision shall be reached at a plenary session of the Supreme Court of Serbia within 30 days and the terms in office of the members of the High Personnel Council shall be terminated).

22. c) *A judge may file an objection with the High Personnel Council against the caution pronounced in the procedure for establishing incompatibility of his/her other engagement and judgeship.*

A judge may object to the plenary session of the Supreme Court against a caution or removal from office lasting between one month and one year pronounced with respect to a motion for dismissal in the event that there is no cause for dismissal.

A judge has no legal remedy to contest the High Personnel Council's motion to the National Assembly to dismiss him/her or the Assembly decision to dismiss him/her.

The new Constitution allows judges to appeal the decision on their dismissal with the Constitutional Court (after which they may not file a constitutional appeal).

23. Are the magistrates involved in defining deontological or ethical rules of the magistracy?

There are no provisions regulating the ethical accountability of judges.

The Association of Judges of Serbia has, however, adopted its Code of Conduct when it was established in 1997. In 2003, it adopted Judicial Code of

Conduct Standards, which are in accordance with Opinion 3 of the Consultative Council of European Judges (CCJE), and set up its Code of Conduct Council. The Council has the following goals:

- *consider ethical questions and issue opinions, on a regular basis*
- *create and maintain a mechanism that would enable judges and the general public to request and obtain advice, guidance and opinions on important ethical questions*
- *implement and further develop JAS Standards of Ethics (possibly for adoption by the Supreme Court. and/or the legislator as standards of conduct for all judges)*

(The answers to the questionnaire may include qualitative assessments)