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# OUTLINE FOR THE STATE PROSECUTORIAL COUNCIL'S 5-YEAR ACTION PLAN

Multi-Donor Trust Fund for Justice Sector Support in Serbia, World Bank



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# OUTLINE FOR THE SPC'S 5-YEAR ACTION PLAN

## INTRODUCTION

The governance of the Public Prosecution Organization is divided between the Republic Public Prosecutor's Office (RPPO) headed by the Republic Public Prosecutor and the more recently (2009) created State Prosecutorial Council (SPC). The SPC is an autonomous body with its own budget, most of which finances its Administrative Office (AO) that carries out its routine work. As regards the division of labor with the RPPO, the former is responsible for directing and overseeing the work of the Public and Deputy Public Prosecutors, while the SPC applies and further elaborates or proposes amendments to the rules governing the prosecutorial career (criteria for appointment, promotion, dismissal and ethics), manages human resources and the operating budget (about 8% of the total) for the PPOs, and participates in the appointment of its own elected members and of new prosecutors by providing lists of candidates for final selection by the National Assembly. At present, legal and administrative assistants working in the PPOs are selected and managed by the Ministry of Justice. This is one of the functions scheduled for transfer to the SPC in 2017 in the Action plan for Chapter 23. Although the timing and extent of transfer of responsibilities is somewhat uncertain, the SPC would like to prepare now as well as ensuring that the staffing, infrastructure and equipment of its Administrative Office allow it to carry out its current responsibilities adequately.

The new members took office in April 2016 with the 5 year mandate and would like to address a series of issues affecting performance of the PPOs, including those involving staffing and as stated in the law on its own competencies, "ensuring and guaranteeing autonomy of public prosecutors and deputy public prosecutors." These goals also figure in Chapter 23 of the EU *acquis*. In the course of carrying out its routine activities, it proposes to address a series of problems undermining its ability to perform its legally-defined role in the best possible manner. This list of actions could be described as a strategic, action or work plan, comprising specific activities and proposed end-term goals – or what the SPC envisions as its achievements over its term in office.

This document summarizes the results of the SPC discussions on its proposed agenda for its current members' five-year term in office. After a series of meetings it was determined that the SPC needs shaping of its 5-year goals and determining what type of assistance might need to support its efforts to achieve goals.

The SPC by law (Article 19 of the Law on the State Prosecutorial Council) must submit an annual report to the National Assembly. It has already submitted the report for 2015 and will not begin working on the next report until late in 2016. As the report's contents are set by tradition and law, there is not much room for creativity although, on reviewing the most recent example, it appears that the required data might be presented in a more interesting fashion with the addition of graphs,

more charts, and some interpretive analysis of content. Any additional analytic work might also be referenced, for example, a summary of the findings and recommendations from the SPC's recent study on backlog and caseload distribution. However, any assistance on the report's design and organization would necessarily come once the SPC begins to work on the 2016 submission, and for the moment it has more pressing issues.

Discussion Draft

## SPC's PLAN OF ACTION FOR THE NEXT FIVE YEARS

**Basis for and proposed goals to be realized over the next five years** – the entering council has discussed and analyzed the issues it believes need attention to ensure it does its work well and to strengthen the performance of the prosecutors whose career it helps oversee. If these areas are attended during its five-year period in office, it would propose to achieve the following:

- a. SPC's administrative offices now fully staffed with adequately prepared professionals, who have appropriate working space and sufficient equipment to carry out the required functions
- b. Improvement of budgetary process to ensure priority expenses are anticipated and covered, to link budget to improvements in performance (to convince the Ministry of Finance, the Assembly and the public that additional resources are needed) and to move toward multi-year programming or at least develop budgets with an eye to emerging needs.
- c. Improvement of analytic decision making - Analysis of human resource needs within PPOs, negotiation for additional staff (starting with existing systematization levels) on this basis, and placement of additional prosecutors or legal staff according to an analysis of the highest need and impact. Introduction of a process for the routine tracking of PPO staffing and performance and for a periodic (probably biennial) follow-up analysis to identify new needs arising from changing workloads and responsibilities; Analysis of caseload and workload on regular basis; Analysis of backlog and preparation of Backlog reduction strategy; Strengthening of capacities of disciplinary bodies (including administrative staff and financial resources)
- d. Prosecutors' concerns about independence and integrity issues attended through the creation of an office or officer for integrity to attend to prosecutors' complaints about pressures on their actions, improvement of appointment and evaluation criteria, greater transparency of the disciplinary process, and other related activities
- e. Improvement of Transparency – development of unified template for prosecutors' offices websites, improved communication with public and media, improvement of reporting methodology (annual reports format)

Additional areas that might be attended include review of the existing legal framework (especially the CPC, the SPC's own law, and possibly that on prosecutors) to identify areas needing amendment and develop proposals toward this end.

## DISCUSSION OF THE FOUR PRINCIPAL ACTIVITIES AND GOALS

### *1. Strengthening of SPC's Administrative Offices*

The SPC's administrative offices are understaffed even by the official systematization. There are also concerns needing further examination that many existing staff members are not adequately prepared for their jobs. Some of these needs were addressed in the Training Needs Assessment (TNA) prepared by a World Bank consultant, but the assessment focused on training needs for existing staff and did not extend to two other issues: whether more staff is needed in specific offices and to what extent existing staff can be trained to fulfill actual and anticipated job requirements. It also did not lay out a specific curriculum in detail, which at some point will have to be done.<sup>1</sup>

**Table showing “systematized” positions within the SPC's Administrative Office and Remaining Vacancies**

Type of staff	Current systematization	Actual staffing	Vacancies to be filled
Budget office			
Human resource office			
IT			
Others -- list			

Moreover as the SPC assumes functions formerly performed by the Ministry of Justice (relating to budget coverage, IT and numbers, distribution and appointments of legal and non-legal staff) and as/if it takes a more proactive approach to its role,<sup>2</sup> it will need to increase personnel and further train those already in place. Additional staff or different staff profiles may also be required if the SPC is to carry out functions like providing opinions on proposed legislation or analyzing performance statistics, some but not all of them already in its mandate or implied but not officially recognized.

Additional needs, involve infrastructure, IT equipment and software; and staffing, space and equipment for the individuals handling disciplinary proceedings. Starting with infrastructure, needs here are already apparent. The present offices (in a building shared with the HJC) are very cramped

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<sup>1</sup> The EU Twinning Project has designed and is implementing training for staff with budgetary responsibilities, possibly the area of most concern. Training for other administrative staff, while recommended in the TNA, may hinge more on new responsibilities than existing ones.

<sup>2</sup> As discussed in the TNA, the traditional approach to the SPC's administrative role was fairly passive – what is often called “housekeeping” (fulfilling administrative requirements) as opposed to proactive management, including forward planning, consideration of alternative resource mixes (e.g. more IT may mean fewer human employees, or varying mixes of professional and support or administrative staff).

and any expansion of staff will only aggravate the problem. The SPC would need a serious study of its present and future needs, specific data on actual and recommended size and structural organization of internal offices, and some costing scenarios so that requests for financing from the government or from donors could be backed with adequate justifications and proposals.

As regards IT, for the present (although not with future staff additions) there were no complaints about hardware, but there were requests for an analysis of software needs for managing the AO's various program areas. Any new acquisitions would also have to be coordinated to permit adequate interoperability among systems. The SPC has finally acquired one IT specialist, but one person can barely manage the SPC's own needs; if responsibilities for IT maintenance, planning, software and so on for all PPOs are transferred to the SPC (from the Ministry of Justice and the Joint Services Administration handling procurement issues for the entire public sector), staffing, space, and budget will be needed. The new IT specialist estimates that with the addition of 8-10 technical staff (among them at least one person who can do statistical analysis) his "department" could meet the needs of all the PPOs. However, to verify his estimates and also ensure adequate planning for other inputs, a thorough analysis of this proposal should be added to the administrative study.

Another issue that might be handled by an IT department is interconnections among PPOs using SAPO (and potentially provision of SAPO for those tracking cases with other systems, or just Excel tables). At present, even the SPC's analysis of caseload data had to be done by requesting tables from individual PPOs. In a country as advanced as Serbia, this should no longer be required, but as the RPPO controls SAPO, any such plan would have to be coordinated with it. The study on administrative needs should thus cover all these issues, analyzing alternatives and their costs as well as procedures for coordinating use of SAPO with the RPPO.

Finally, the SPC wants to upgrade its disciplinary functions with new, more transparent rules, and some administrative support within its central office. There is a further issue unique to Serbia that needs to be addressed – currently PPs and Deputy PPs provide five-year, non-remunerated services on the Disciplinary Commission. This is part-time work but frequently requires those serving in other locations to travel two to three a month to Belgrade. At present, there is no way to reimburse their travel expenses.<sup>3</sup> The administrative study would thus include analysis of the current situation, recommendations on additional administrative support (as well as office space, software and hardware) to the disciplinary process, and some suggestions as to how travel costs for members located outside of Belgrade might be handled.<sup>4</sup>

A study will be done to determine additional staffing infrastructure and IT needs within the SPC's Administrative Office (AO) as well as alternatives and priorities for meeting them. This study may alter some of the recommendations of the TNA, which as noted only focused on training needs for

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<sup>3</sup> Neither the SPC nor the PPOs have budgets assigned for this purpose.

<sup>4</sup> The Twinning Project will instead focus on rules and internal processes, ensuring inter alia, that they are consistent with EU standards.

existing staff, and will also enter into the details of the recommended curriculum for those in specific offices (although probably not for the budget office, as this is being addressed by the Twinning Project). The new study will focus not only on AO staffing numbers, but also (as recommended in the TNA) develop staff profiles (tasks to be performed and educational and skill requirements for each position). The study on infrastructure and ICT resources that could contribute to efficiency of working processes is necessary (i.e. budget software, software for personal files, disciplinary bodies). Once a structure and priorities for implementation are identified, the SPC will need to negotiate with the Executive and Assembly for the approval of additional staffing allocations and training as well as budgets to cover them. Relevant portions of the study will also be used to seek funding for infrastructure and IT equipment, either from the government or from donors.

**The SPC's 5-Year Goal:** to create an administrative structure capable of carrying out existing and new tasks more effectively and efficiently. In the first year, the needs analysis will be conducted and a plan for implementation produced. The plan should include priorities, stages for implementation, and costs as well as a low and high budget scenario. It will also be coordinated with the goal of improved budgeting and any proposed changes to internal budgetary processes (as discussed in area 2, below), and will incorporate recommendations on skills training for existing and new staff. As regards existing staff, assuming budget availability, training recommended in the TNA could begin once the recommendations are presented and accepted by the SPC. Meeting other resource needs identified in the study will be an incremental process, requiring negotiation with the government and donors.

## *2. Improvements to Budgetary Process*

Traditionally the budget for both the SPC and the PPOs has followed historical patterns that may no longer reflect real needs (either in quantity of resources or where resources are placed). Moreover, when the investigative function was passed from the judges to the prosecutors under the new Criminal Procedures Code (CPC), the full complement of human<sup>5</sup> and financial resources used by the courts for this purpose was not assigned to the PPOs. Although according to those interviewed, a few courts continue to pay some expenses,<sup>6</sup> the failure to make additional funds

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<sup>5</sup> The former investigative judges remained in the courts and now perform related functions. They might have been transferred to the PPOs, but this would have required their consent as well as that of the SPC and RPPO. For whatever reason this was not done, although in countries that have effected the transfer, the results have not always been positive because judges may have difficulties adopting to prosecutorial work, even as investigators.

<sup>6</sup> This is partly because of continuing questions as to which organization is legally responsible for certain expenses – for example, prison transfers and fees for expert witnesses. It may also be because even where courts believe the responsibility lies with the prosecutors, they may make some contributions just to ensure trials move forward. No further explanation was given nor was information provided on how frequently this occurs.



available for prosecutorial investigation has created a situation of inadequate financing and instant arrears that is simply unsustainable.<sup>7</sup>

Additionally, as in the judiciary, although the Ministry of Finance sets a budget ceiling, global budgets are further developed bottom up, based on budget requests prepared by each work unit (PPO). Once these budgets are received, the SPC must consolidate them and in the likely event that the total exceeds the ceiling, make cuts to the requests. The criteria for this part of the process remain somewhat obscure although possibly only because the consultant did not ask for details (and moreover was speaking with SPC members and an Administrative Director who had not yet been through the exercise). While very democratic in design, this bottom-up procedure virtually guarantees that any overarching institutional priorities will not be included and that historical patterns will dictate new requests (“a little or a lot more than last year”). Whether or not this process is required by law, there are ways to preserve its democratic aspect while also providing guidelines and rules for drawing up new requests at the bottom as well as consolidating requests at the top.

However, the SPC also lacks a good analysis of present and future needs, which is a necessary first step to improved budgeting. Either by itself, or with donor assistance, the SPC will conduct a budget analysis based on historical patterns, new activities and their financing within the courts, and use this to reach conclusions on budgetary needs for staff and for investigative and prosecutorial expenses. Additional experts, possibly provided through the twinning process, will also be engaged to assess the budget preparation process and to support the SPC in taking over additional budgetary competences.

One result of this analysis will be the development of guidelines for PPO’s budget submissions, so that estimated resource needs can be based on criteria like:

- a. Number of complaints received and of what type
- b. Patterns in means of disposition and estimated expenses for each type
- c. Numbers of prosecutors
- d. Numbers of assistants (legal associates and purely administrative) absolutely and per prosecutor.
- e. Proposed production and productivity improvements for the following year.

Once this type of guidance is provided to PPOs, overall budget requests will have a more uniform rationale and method for their development. Over the longer run, a process like that used in Holland, France and other Western European countries – performance contracts or budget increases based on proposed achievements -- can be introduced. Over the shorter run, the intent is to rationalize requests using a series of uniform criteria for their elaboration. The process within

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<sup>7</sup> There is a related issue with the budgets for ex-officio defense attorneys, also now transferred to prosecution. The arrears here are even greater, but budget rigidity helps some inasmuch as funds for other expenses cannot be transferred to pay the lawyers. The defense budget is thus a separate issue, and while many agree changes must be made to how it is developed and utilized, no one (including the SPC) wants to take it on at the moment.

the SPC's budget office will have to be readjusted accordingly, to make consolidation of the requests proposed output rather than demand-based.

What makes this study of the utmost urgency is, however, another aspect. The development of arrears in the end generates new costs for government, as creditors file cases claiming not only monies owed but also legal costs, interests and fines. The SPC needs to document the amounts involved as a first step to seeking either additional funding or a redistribution of responsibilities for paying ordinary and expert witnesses, public defense attorneys, costs of transportation of prisoners to courts, and other such expenses. The SPC envisions an opportunity for making such adjustments in the upcoming amendments to the Criminal Procedures Code (CPC) and thus wants this part of the study (as well as the rest) done as quickly as possible.

**Goal for the next five years:** The change will take time (and if Serbia eventually moves to performance contracts, will require legal change), but the target for the next five years is to make the budget process more transparent (from the bottom up and top down), link it to performance and demonstrable shortages affecting output quantity and quality, and permit the SPC to project budgeting outwards over a three-year period. and reduce if not eliminate the arrears problem. Doing so effectively will also require access to the RPPO's performance statistics as they will provide further support for estimating needs by PPO. The SPC says it already has access to data in SAPO and is prepared to use it to assist with the analysis. However, this apparently was not done for the performance analysis just completed by SPC members, so perhaps there are still coordination issues or this is only be a reflection of the inadequacy of what SAPO collects and the large number of PPOs that do not use it.

### *3. The Functional Review of the Prosecutorial System and Services*

An analysis of prosecutorial workloads and output was completed by SPC members in September 2016. Based on information painstakingly collected from individual PPOs, the study took 4 month and raised as many questions as it answered particularly as regards large disparities in incoming and completed cases among the 89 PPOs in the country. The new questions can thus be explored in a comprehensive assessment that could be done as a separate study or as a part of the Functional Review (FR) of the Prosecutorial System and Services, in which case the SPC would like to use it to orient the further issues explored in the FR.

#### *a) Increasing the complement and improving the distribution of staff (prosecutors, legal assistants and administrative personnel) in PPOs to ensure they can carry out their work*

Staff numbers in PPOs still do not meet the old systematization, but additionally the new Criminal Procedure Code adds functions that were never considered when the old scheme was drawn up.

The systematization has been amended at least once since then, but there are still doubts that it matches current requirements either in the number or distribution of prosecutors, legal associates, and administrative staff. The former SPC did an analysis of staffing needs, but it would require updating and revision to take full account of these new demands. In addition, the methodology used for the analysis is never specified, but appears based on a rough estimate of how many cases a prosecutor can handle, derived with no explanation of the reasoning behind it. Moreover, the analysis only looks at incoming cases, not at the number and types of dispositions or the accumulation of pending cases (those transferred to the next year). To determine whether staffing is adequate, output would also have to be considered. The prior analysis also did not consider numbers of legal associates and administrative staff and their use to take some routine and administrative burdens off the prosecutors' shoulders.<sup>8</sup>

The current SPC has already drafted an updated version of the 2012 study that has identified problems with backlog accumulation and uneven caseload distribution. To expand on this work, study should be done to consider:

- a. Size of actual and anticipated demand – total, by PPO, and by type of case
- b. Number and types of dispositions done – again total, by PPO, and by case type
- c. Accumulation of pending cases (transferred to the next year) total and by PPO and type of case<sup>9</sup>
- d. Analysis of staff time required for each type of case and disposition<sup>10</sup>
- e. Staffing alternatives to meet new demands – use of deputy prosecutors, as well as work that may/should be performed by legal assistants and administrative staff

On the basis of this analysis, calculations for overall staffing needs and various scenarios for meeting them will be developed along with a prioritized list of specific PPOs where the needs are most urgent. This should result in a new, if informal systematization, to be discussed with the Ministry of Finance (and of Justice if it is still involved), the Assembly, and the RPPO. At some point the new system should be discussed with all prosecutors, but most probably once approved by the others – prosecutorial input will of course be considered in its elaboration, but asking

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<sup>8</sup> One complaint heard from interviewees was that prosecutors and deputy prosecutors spend much time on tasks that could be delegated, legally, to legal and administrative assistants were they present in sufficient numbers.

<sup>9</sup> The analysis already done by the SPC, based on data provided by each PPO thus demonstrates that some PPOs are accumulating backlog rapidly –for example the First Belgrade PPO started 2013 with 11,000 pending cases and by 2016 had 17,500 although the number of incoming cases has remained stable (roughly 9,000 annually). This may be an issue of caseload distribution, staffing numbers, or inefficient operating procedures, but clearly backlog cannot continue to accumulate at this rate if the right to a speedy trial (and investigation) is to be observed.

<sup>10</sup> This process could move the prosecutors toward a case weighting system, but as the latter takes considerable time (and inevitably generates controversy) the immediate aim would be to get a better estimate of how much work the most common types of cases (and dispositions) require. When this is done, as in several Western European countries, it usually develops that very simple cases require only a few hours of work from the prosecutor and his/her staff. Even for cases requiring a lengthy investigation, there may be a long queue time (waiting period) between the stages where prosecutors and staff engage in active work. A thorough study of level of effort would also be time consuming, but the exercise recommended here would be briefer, aimed only at producing some tentative estimates to guide the further analysis.

prosecutors to vote on it would only draw out the process. If adopted, the revised systematization can form the basis for negotiations for increasing numbers and distribution of all staff, making the point, based on the analysis that existing staffing patterns do not reflect the new needs and that the PPOs can handle more work more expediently if staffing patterns are adjusted.

Over the short run (before the analysis is done and recommendations provided), the SPC may take the route of requesting that vacancies in the existing systematization be filled. This should be done carefully, however, as it runs the risk of placing immovable prosecutors into positions where they are not needed, or at least not needed as much as elsewhere.

**Five year goal:** The target, to be reached gradually over the 5-year period, is to increase staffing complements, by order of most urgent need. In the process, some experiments may be done with alternative staffing patterns (ratio of deputy prosecutors to other staff) to determine relative effectiveness and costs. Legal associates and administrative personnel are of course cheaper than prosecutors, but if present in adequate numbers may allow prosecutors to focus on more important work. As budgets will remain tight government-wide over the next few years, exploring less expensive ways of increasing output will be important.

#### *b) The Functional Review (FR)*

A proposed outline for the FR has been developed by the SPC, but it should be discussed further.

This analysis will build on that begun by the SPC members, but will go far beyond it in tracking differences in distribution of types of cases among PPOs; their relationship to output numbers (i.e. do some PPOs produce more completed investigations or other types of case distributions because they largely handle different types of crime?); the exploration of other causes to explain differences in output; and the size of and reasons for accumulating backlog. It bears noting that accumulating backlog seems to occur in nearly all countries shifting from a system of judicial to prosecutorial investigation and more adversarial proceedings. However, reasons may differ, ranging from inadequate numbers of prosecutors or other support staff, through bad relationships with the police or simply bad policing, to prosecutors' lack of adequate training (and procedures) to conduct their part of the criminal chain. While the analytic study can hardly propose solutions that could be implemented by the SPC alone for all problems identified, it can provide a roadmap for the appropriate party or parties to take.

More importantly, for immediate purposes (the FR) the findings of the performance analysis can help structure the subsequent study of the role of various inputs in shaping performance variables. The only suggested addition to the outline provided for this second stage is a focus on procedures and practices, whether legally mandated or simply a question of "how things are always done."

Finally it bears mention that the FR will utilize inputs from the two abovementioned studies as well as from other activities, including those financed by other donors like the Twinning Project. This will provide a far richer content, while also reducing costs and time required for conducting the study. This FR, should also include a public opinion/user study to tap into other aspects of performance, including what the public thinks about the institution, their views on services they actually received, citizens' inclinations to access its services, and any areas where distrust or other factors may discourage reporting of crimes and cooperation with investigation and adjudication.

**Five-year goal:** the FR will have to be agreed upon by all SPC members, and will also need to be coordinated with the RPPO whose agreement not only to its realization but also to its own participation in the process will be required for the FR's successful implementation. Conducting the FR is a short-term goal. Its larger purpose is to increase understanding of factors inhibiting improved performance, to provide ideas as to how to overcome them, and to use the findings and recommendations to seek necessary cooperation from the government, donors and the public in pursuing these remedies. Depending on the FR's findings and recommendations, the SPC (and the RPPO) may identify other actions to be carried out in the interests of improving overall performance, easing the burden on prosecutors, and increasing public understanding of the challenges to and accomplishments of the overall institution (SPC and RPPO).

#### *4. Strengthening of prosecutorial integrity and independence*

##### *a) Strengthening of prosecutorial independence*

SPC members from their own experience and from discussions with other prosecutors recognize a number of concerns relating to prosecutors' sense that they are under pressures in making decisions as to how and whether to prosecute a case. They also express concern about a lack of sufficient objectivity and transparency in the appointment and evaluation system; this they believe affects their autonomous status. In addressing the first of these issues, the SPC might undertake several actions, several of which already figure in the platforms of some elected members:

- i. Further more systematic discussions and workshops with prosecutors to better understand their concerns. This might also be combined with activity ii, below, using a focus group methodology to inform the referenced study.
- ii. An outside diagnostic analysis to provide an objective review of the situation –to provide external evidence on the problems and, depending on the results, to strengthen the argument on the need for solutions.
- iii. Consideration of mechanisms used in other countries (for example Norway and Holland's prosecutorial ombudsman) to deal with prosecutors' concerns about erosions of their independence and on this basis the creation of an Independence

(or Integrity) Office or Officer to deal with the issues. If the SPC selects a model from another country, consultants from there might be used to help establish the office in Serbia.

**Five-year goal:** The target for the next 5 years is the development of mechanisms for reaction to political and other undue pressures on prosecutors as stipulated in Chapter 23 of the EU Action Plan. This will most probably be done through the creation of an office within the SPC or designation of one Commissioner as the Independence Ombudsperson. The intended results are that prosecutors no longer feel pressured to act against their legal mandate and that when this occurs a remedy is immediately available so that they can be confident that if they do their jobs well, they will not face adverse consequences from any source (including the press and members of the public.).

#### b) Strengthening Prosecutorial Integrity: Appointments, Promotions and Discipline

The following two activities are currently contemplated, but are currently expected to be conducted in coordination with the EU Twinning Project. The Functional Review will at the SPC's suggestion review necessary administrative staffing, office space, equipment and software to facilitate the work of the Disciplinary Committee.

- i. Analysis of existing appointment and evaluation criteria for prosecutors, solicitation of suggestions from prosecutors and other stakeholders as to how they might be improved, and proposal of changes to regulations (and if needed, laws) to introduce a more objective, meritocratic, and transparent system for evaluating new recruits and the performance of prosecutors already within the system.
- ii. Analysis of existing disciplinary system and development of clear rules and by-laws to govern its operation both as regards the process for reviewing cases and the rules and sanctions guiding its decisions

**Five-year goal:** Creation of a more transparent appointment, evaluation, promotion and disciplinary system so that prosecutors know what is expected of them and how they will be judged on their performance. This should serve the two aims, of enhancing their independence and ensuring their integrity.

#### 5. Other activities

Without replicating the work and role of the Prosecutors' Association, the SPC might engage in some of the following areas – perhaps less urgent, or less likely to be advanced, but still to develop

specific analyses and recommendations. Most of the activities will be focused on improvement of transparency.

- a. Public opinion survey, or inclusion of questions in an existing survey to determine how the public views the prosecution services and to what extent they have faith in their quality. We know there has been public criticism of the handling of notorious cases, but conceivably the public has more positive impressions of their contact with the PPOs. Similarly it would help to better understand whatever criticisms they have, including the allegedly negative views on plea bargaining and “opportunity” cases
- b. Depending on the results of the survey, public education campaigns on any objected practices. NGOs and the press should be involved in preliminary discussions and then in their own outreach campaigns.
- c. Public relations campaign to foment public understanding of prosecutors’ role, the need for integrity and independence, and the essential nature of a well-functioning prosecution service in advancing the rule of law and a just and equitable society. Consultant’s suggestion based on interviews with SPC members and others with knowledge of the situation about their own perceptions of public views.
- d. Ensuring websites of all prosecutors’ offices in the country in line with unified template and guideline for maintenance.
- e. Discussion with prosecutors on necessary legal changes (to CPC, SPC law, law for prosecutors, Constitution?) to facilitate performance of work. Formulation of recommendations.
- f. Discussions and formulation of recommendations on need for better physical working environment – this might involve contracting an expert to do a study of prosecutors’ offices and develop list of needs as well as plan to meet them. The study could be used to negotiate donor projects focusing on improved infrastructure. However, care should be taken that this need does not become a single-minded plea for “our own buildings.” Sometimes renting is better assuming the rented structure conforms to institutional needs.
- g. Discussion and formulation of recommendations on other aspects of working conditions. This could be done through a contracted study, a series of focus groups with representative prosecutors, or less formal discussions conducted by the SPC itself.

## FURTHER CONSIDERATIONS ABOUT THE FORMULATION AND PRESENTATION OF THE ACTION PLAN

A logical question was whether the SPC's "Five-Year Action Plan" or more simply put, the goals it wishes to meet beyond carrying out its routine duties, should be announced in some formal fashion, incorporated in the next and following Annual Plans, or simply pursued without any further publicity.

Although a plan of this will be listed in the SPC Rules of Procedure, the SPC could simply carry it out with no further publicity. Whether or not to publicize the plan is a tactical and political issue and there are arguments for and against it, most of which occurred to the consultant as an afterthought and so have not been discussed with the SPC.

On the pro (positive) side, current SPC members may have an interest in making the five-year plan and goals known to their relevant public (principally other prosecutors, but also government authorities involved in approving the budget, NGOs and the public writ large) in part because elected members had campaigned on a platform in which many of these actions figure. This would argue for publicizing the plan among prosecutors, but not for the general public. Still, public knowledge of the plan might generate support for its aims and so help overcome any resistance. Moreover to the extent the SPC requires donor financing of its various initiatives, greater publicity could heighten donor interest and thus mobilize various sources of funds. Also, to the extent the plan's contents can be tied to compliance with Chapters 23 and 24 of the EU accession criteria, publicizing it would be a plus.

On the con (negative) side, as the plan's success could threaten business as usual and the interests vested in its perpetuation, publicity could generate opposition even among the most relevant stakeholders, the state prosecutors. There also may be advantages to not announcing the plan until some progress is made in a few areas, and if the plan is to be announced, there is still the question of to whom and how. The manner and timing of a presentation were discussed very briefly with the SPC, but not in sufficient detail or with sufficient time to produce answers to such questions as:

- a. To whom it would be presented? Prosecutors, the public and/or the Assembly?
- b. How it will be presented? In a public statement, in a document, in some other form?
- c. Whether it will initially or eventually be incorporated in the Annual Report?

In afterthought, it is very likely the SPC members had not arrived at this point in their own thinking – focusing instead on the substantive projects they want to carry out and the potential for the MDTF or some other donor source assisting with financing. However, while the audience and presentation



are definitely secondary issues, probably best decided once the SPC further defines its plan for the next five years, they will need to be addressed.

The plan might simply be included in the 2016 Annual Report, as part of the activities carried out during that year, but some SPC members (especially those who campaigned on a similar platform) may want to announce it earlier. That raises the question of how the plan or specific elements will be presented – in a separate document, on the SPC website, or in a public event.

## NEXT STEPS

Although these are implicit in the above discussion, it might be useful to summarize the recommended actions and the order in which they should be addressed. In all cases, the SPC should further develop its Strategic plan and decide:

- Timeframe for the finalization of the Strategic plan;
- If it will be formally adopted at the SPC session;
- If it will be publicly available document;
- If it will be widely disseminated;
- How to monitor implementation of the Strategic plan.