

## ANNEX 1: BACKGROUND INFORMATION ON THE SERBIAN JUDICIARY

*This Annex provides some background on recent judicial reforms in Serbia, the current structure and governance arrangements, as well as some background on the relevant stakeholders in the judicial system.*

### **i. Recent History of Judicial Reforms**

- 1. A series of reforms adopted over the last decade reflect different views of how the judicial system, and particularly the courts, should be managed.**
- 2. In 2000, democratic changes were followed by judicial reform initiatives, set as one of the priorities of the Government at that time.** In 2001 package of laws<sup>1</sup>, which according to the ABA Judicial Reform Index, “gave the judiciary unprecedented authority to regulate its own affairs,” including the establishment of the first High Judicial Council. However many of its functions were limited in 2002 and 2003. In April 2003, the HJC role in the appointment of prosecutors, for example, was curtailed completely.<sup>2</sup> In April 2004 another set of laws was adopted, in which the judiciary regained some of its institutional independence and a greater role in the appointment of judges and court presidents. Those laws also created the Commission on Judicial Reform. The purpose of the Commission was to contribute to legislative reform, to initiate judicial education programs, and to cooperate with international efforts aimed at improving the independence of the Serbian judiciary in accordance with European legal standards.<sup>3</sup> The Commission’s work resulted in the development of the National Judicial Reform Strategy for 2006-2011, announced by the Ministry of Justice (MOJ) in July 2005.
- 3. In May 2006, the National Assembly adopted the first National Judicial Reform Strategy 2006-2011, which was described by many as an affirmation of faith in Serbia’s future.** The strategy’s framework focused on improving the independence, transparency, accountability, and efficiency of the judiciary through a series of short-, medium-, and long-term reforms. The 2006 Constitution incorporated many of the strategy’s recommendations, including changes to the role and powers of the High Judicial Council (HJC), and the creation of the State Prosecutorial Council (SPC). However, few civil society, professional and business groups showed active interest in the strategy or its implementation.
- 4. In 2009, a reappointment procedure was announced for all judges (by the HJC) and prosecutors (by the SPC).** Under the procedure, the overall number of judges and prosecutors was reduced by 30%, and

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<sup>1</sup> Laws on Judges, on the Organization of Courts, on Seat and Territorial Jurisdiction of Courts and Public Prosecutors’ Offices, on Public Prosecutors’ Offices, and on the High Judicial Council, Official Gazette RS, no. 63/01, 8 November 2001.

<sup>2</sup> ABA Judicial Reform Index for Serbia December 2003.

<sup>3</sup> ABA Judicial Reform Index for Serbia September 2005, Volume II at 2.

more than 800 of 3,000 sitting judges were not reappointed.<sup>4</sup> Around 170 prosecutors and deputy public prosecutors were not reappointed. Many judges and prosecutors who were not reappointed appealed to the Constitutional Court (1,500 such appeals were lodged). The legislative amendments were adopted in December 2010 that transferred the cases back from the Constitutional Court to the Councils for further proceedings. A second round of decisions by Councils followed, and 109 judges and 29 prosecutors were reappointed. Unappointed judges and prosecutors filed another appeal with the Constitutional Court, which ruled that review of the reappointment decisions had not corrected the shortcomings of the reappointment process. The Constitutional Court ruled that the HJC and SPC had not applied objective criteria for reappointment; that judges and prosecutors had not been adequately heard during the procedure; and that Councils had not provided adequate explanations for reappointment decisions. The Constitutional Court ordered the reinstatement of all judges and prosecutors who had appealed for their non-reappointment. This 2012 Constitutional Court decision led to the reintegration of some 800 judges and 120 public prosecutors and deputies, representing one third of the total number. The Councils met the 60-day deadline set by the Constitutional Court for the reappointment of judges and prosecutors.

**5. In May 2012 Serbia's parliamentary elections brought a new set of parties to power, and changes to government coalitions led to successive changes in MOJ leadership.**<sup>5</sup> In July 2013, the National Assembly adopted the National Judicial Reform Strategy for 2013-2018<sup>6</sup> and the corresponding Action Plan.<sup>7</sup> This Strategy represents a continuation of the basic reform process contained in the 2006 Strategy. The 2013 Strategy is based on five key principles: independence, impartiality and quality of justice, competence, accountability and efficiency. It also calls for changes in the Serbian Constitution to address what European Union (EU) experts have described as a lack of judicial independence in some features of the 2006 Constitution.<sup>8</sup> The related Action Plan details concrete measures to meet the Strategy's objectives. A 'Strategy Implementation Commission', composed of representatives of major stakeholders, is responsible for monitoring and measuring progress in the implementation of the Strategy and Action Plan.

## ii. Serbia's Court System

**6. There are two categories of courts, established by Constitution and established by law.** The only courts established by Serbia's 2006 Constitution are the Constitutional Court and the Supreme Court of Cassation. All the other courts are established by the Law on Organization of Courts; they are collectively

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<sup>4</sup> The 3,000 figure includes misdemeanor judges: until 2010, misdemeanor judges were not part of the judicial system, so the reappointment process considered whether these judges should become part of the judiciary. See, below.

<sup>5</sup> As well as organizational changes this changed the MOJ to the Ministry of Justice and Public Administration (MOJPA).

<sup>6</sup> Official Gazette RS, No. 57/2013.

<sup>7</sup> Official Gazette RS, No. 71/2013.

<sup>8</sup> Role of the Parliament in the election of judges and deputy public prosecutors, role of Parliament in the election of court presidents and public prosecutors, role of the Parliament in the election of members of the HJC and SPC

referred to here as Serbia's courts. Republic level courts are: Supreme Court of Cassation, Administrative Court, Misdemeanor Appellate Court and Commercial Appellate Court.<sup>9</sup>

**7. The Constitutional Court was established in 2008, following the adoption of the 2006 Constitution.**

It has 15 judges with a renewable nine-year term of office; five of them are appointed by parliament, five by the President of the Republic and five by the general session of the Supreme Court of Cassation. The court rules on the constitutionality of legislation and on constitutional appeals for violation of human rights by individual acts or actions of state authorities. The Court also decides on the compliance of laws, other general acts and the ratified international treaties with Serbia's Constitution and on jurisdictional conflicts.

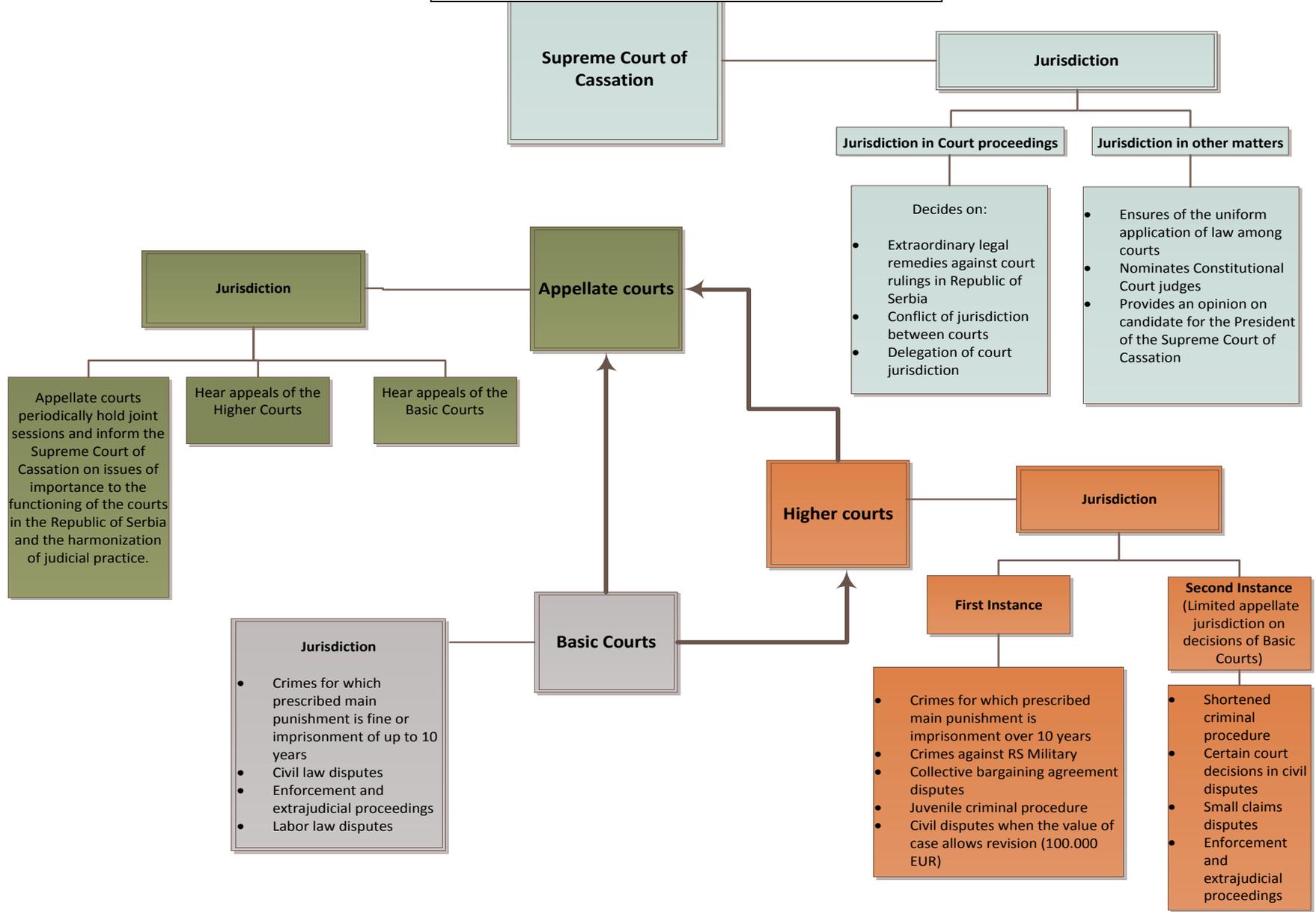
**8. Serbia's court system includes both courts of general jurisdiction and specialized courts.** General jurisdiction courts include the Supreme Court of Cassation, the courts of appeal, the higher courts, and the basic courts. The specialized courts include the Administrative Court, the commercial courts, the Commercial Appellate Court, the misdemeanor courts and the Misdemeanor Appellate Court (known from 2010 to 2013 as the Higher Misdemeanor Court).<sup>10</sup>

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<sup>9</sup> Article 13. Law on Organization of Courts, Official Gazette of the Republic of Serbia No. 166/08, 04/2009, 101/2010, 31/2011, 78/2011, 101/2013

<sup>10</sup> Article 11, Law on Organization of Courts, Official Gazette of the Republic of Serbia, No. 166/08.

# Courts of general Jurisdiction in Serbia



[insert new court network map here]

#### (a) General jurisdiction courts

9. **The highest court in Serbia is the Supreme Court of Cassation (SCC) which was established by Serbia's Constitution of 2006<sup>11</sup> and its jurisdiction is set by legislation.<sup>12</sup>** The president of the court is elected by the National Assembly from the judges of that court, following the recommendation of the HJC, and after the Assembly has received the opinion of the General Session of the SCC and the competent committee of the National Assembly.<sup>13</sup>

10. **The Supreme Court of Cassation has a two-fold role, as the highest court in the country and as court of cassation.** In its jurisdiction as the supreme court, it has jurisdiction over extraordinary legal remedies requested against decisions of Serbia's other courts; determines conflicts of jurisdiction between courts, and the transfer of jurisdiction of courts "to facilitate proceedings or for other important reasons".<sup>14</sup> In its role as a court of cassation, the SCC ensures uniform application of law and equality of the parties in court proceedings; discusses the application of laws and regulations and the work of courts; . It also appoints five of the 15 judges of Serbia's Constitutional Court.<sup>15</sup> The SCC has 35 judges is the immediately higher instance court to the Commercial Appellate Court, the Misdemeanor Appellate Court, the Administrative Court, and the four courts of appeal.<sup>16</sup>

11. **Appellate courts were established and started operations on January 1, 2010 in line with the reform and new court organization.** The four courts of appeal sit in Belgrade, Kragujevac, Nis, and Novi Sad. They were created by legislation rather than Serbia's Constitution.<sup>17</sup> These courts, which have a total of 228 judges, hear appeals from decisions of the basic and higher courts. The courts of appeal also have immediate jurisdiction over appeals on civil judgments. and criminal cases.<sup>18</sup>

12. **Higher courts were introduced in Serbian judicial system in 2010 and took over part of jurisdiction of prior district courts.**<sup>19</sup> As of January 1, 2014, there were 25 higher courts with a total of 377 judges.<sup>20</sup> For criminal offenses, higher courts have jurisdiction over cases with minimum possible imprisonment of

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<sup>11</sup> Article 143, Constitution of the Republic of Serbia.

<sup>12</sup> It is the successor to the Supreme Court created by Serbia's Constitution of 1990, when Serbia was still part of the Socialist Federal Republic of Yugoslavia.

<sup>13</sup> Article 79. Law on judges, Official Gazette of the Republic of Serbia, No. 16/2008, 58/2009, 104/2009, 101/2010, 8/2012, 121/2012, 124/2012, 101/2013.

<sup>14</sup> Article 30, Law on Organization of Courts, Official Gazette of the Republic of Serbia, No. 166/08, 104/09, 101/2010, 31/2011, 78/2011, 101/2011 and 101/2013.

<sup>15</sup> Article 30, Law on Organization of Courts, Off Gazette of the Republic of Serbia, No. 166/08, Constitution of the Republic of Serbia, Article 172.

<sup>16</sup> Article 15, Law on Organization of Courts, Off Gazette of the Republic of Serbia, No. 166/08.

<sup>17</sup> Article 6, Law on the seats and territorial jurisdictions of courts and public prosecutors offices, Official Gazette of the Republic of Serbia, No. 116/2008.

<sup>18</sup> Article 24, Law on Organization of Courts, Official Gazette of the Republic of Serbia, No. 166/08.

<sup>19</sup> As of January 1, 2010, there were 26 higher courts<sup>19</sup> with a total of 276 judges - Decision of the HJC, December 16, 2009, No. 06-00-0034/2009-01.

<sup>20</sup> Article 4 of the Law on the seats and territorial jurisdictions of courts and public prosecutors offices, Official Gazette of the Republic of Serbia, No. 101/2013.

10 years; all cases involving hate crimes, money laundering, and disclosures of state secrets; and petitions for extradition. As a court of second instance, the higher court decides on imposing measures to secure presence of defendants, and for criminal offences with the maximum possible imprisonment of 5 years and fines. There are also special departments in all of the higher courts for juvenile justice and the Higher Court in Belgrade has special departments for war crimes and organized crime.<sup>21</sup> For civil cases, the higher courts primary jurisdiction also includes civil cases in which review as extraordinary legal remedy is permitted;<sup>22</sup> they also have first-instance jurisdiction over a wide variety of labor and intellectual property disputes. As courts of secondary jurisdiction, they hear appeals of civil cases from the basic courts, judgments in cases of small value, and contentious proceedings.<sup>23</sup>

13. **Basic courts were established with the new organization of courts in 2010 as first instance courts for the majority of cases.** The basic courts generally have the same jurisdiction as the 138 municipal courts which existed before 2010. Among the ordinary courts, the number and seats of Serbia's basic courts changed the most between 2009 and 2014: they were reduced to 34 basic courts in 2010, with many courts having several locations.<sup>24</sup> As of January 1, 2014, Serbia again increased number of basic courts from 34 to 66 basic courts; some continue to have more than one location. The basic courts currently have a total of 1,430 judge positions (1423 filled).<sup>25</sup> The basic courts are first-instance courts, with criminal jurisdiction over cases in which the possible imprisonment can be a fine or imprisonment of less than 10 years. They also have primary jurisdiction over a wide range of civil cases, including housing disputes; disputes on commencement, existence and termination of employment; rights, obligations and responsibilities pursuant to employment; compensation for the damage suffered by an employee during work or related to work; disputes relating to satisfying housing needs on the basis of work.<sup>26</sup> Both the higher courts and the courts of appeal hear appeals from decisions of the basic courts.

14. **Basic courts together with the misdemeanor courts that are discussed below receive the highest bulk of cases (in 2012 basic and misdemeanor courts received 84% of total number of cases in Serbia).**

### (b) Special Jurisdiction Courts

15. **The Misdemeanor Courts, which had been *sui generis* administrative bodies, became part of the judiciary in 2010.** With the changes in the court network that took effect January 1, 2014, there are now 44 Misdemeanor Courts, several with more than one location, so the total number of misdemeanor court locations is 143. Misdemeanor courts have a broad range of responsibilities. They are the first instance courts for minor offences, unless those offences are under the competence of an

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<sup>21</sup> Article 23, Law on Organization of Courts, Official Gazette of the Republic of Serbia, No. 166/08.

<sup>22</sup> Article 403 Civil Procedure Code.

<sup>23</sup> Article 23 of Law on organization of courts.

<sup>24</sup> Article 3, Law on the seats and territorial jurisdictions of courts and public prosecutors offices, Official Gazette of the Republic of Serbia, No. 166/08

<sup>25</sup> Article 3, Law on the seats and territorial jurisdictions of courts and public prosecutors offices, Official Gazette of the Republic of Serbia, No. 101/2013.

<sup>26</sup> Article 22, Law on Organisation of Courts, Official Gazette of the Republic of Serbia, No. 166/08.

administrative authority and have jurisdiction over traffic violations and provisions adopted by local governments.. Misdemeanor Courts have jurisdiction over offences with maximum possible imprisonment of up to 60 days. However, misdemeanor offences also include those relating to taxation; customs; foreign trade; foreign currency; the Law on Financing of Political Parties; the Law on Personal Data Protection, and the Law on Free Access to Information of Public Importance (Serbia's freedom of information law).<sup>27</sup> The Misdemeanor Appellate Court (from 2010 till 2013 known as the Higher Misdemeanor Court),<sup>28</sup> which is located in Belgrade and has units in Kragujevac, Nis and Novi Sad,<sup>29</sup> decides on appeals against decisions of misdemeanor courts, appeals against decisions in misdemeanor proceedings brought by administrative authorities, on conflicts of jurisdiction between misdemeanor courts and transfer of territorial jurisdiction of misdemeanor courts.<sup>30</sup>

**16.Serbia's Administrative Court is another court newly established in 2010 and adjudicates in administrative disputes.**<sup>31</sup> The Administrative Court decides on an administrative procedures about legality of final administrative acts and about legality of individual final acts deciding on rights, obligations or statutory interests, in terms of which in a specific case a law does not stipulate any other court protection. The Supreme Court of Cassation decides appeals from the the Administrative Court. It has a total of 37 judges, and is also located in Belgrade, with units in Kragujevac, Nis and Novi Sad<sup>32</sup>.

**17. Commercial courts and the Commercial Appellate Court have jurisdiction in disputes between domestic and foreign companies, enterprises, co-operatives and entrepreneurs.** There are 16 commercial courts with original jurisdiction over a wide range of commercial disputes and the status of commercial entities, including privatization,<sup>33</sup> and varied range of intellectual property issues.<sup>34</sup>

### (c) Judges

**18.Judges are guaranteed independence in their work as judges both by Serbia's Constitution<sup>35</sup> and the Law on Judges.**<sup>36</sup> According to systematization total number of judges is 2931 and 2831 positions are filled. For their initial appointments, judges currently are nominated by the High Judicial Council and

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<sup>27</sup> Article 39, Law on Organisation of Courts, Official Gazette of the Republic of Serbia, No. 166/08.

<sup>28</sup> Article 28, Law on Organisation of Courts, Official Gazette of the Republic of Serbia, No. 166/08.

<sup>29</sup> Article 7, Law on the seats and territorial jurisdiction of courts and public prosecutors offices, Official Gazette of the Republic of Serbia. No. 101/2013.

<sup>30</sup> Article 28, Law on Organisation of Courts, Official Gazette of the Republic of Serbia, No. 166/08.

<sup>31</sup> Article 29, Law on Organisation of Courts, Official Gazette of the Republic of Serbia, No. 166/08.

<sup>32</sup> Article 8. Law on the seats and territorial jurisdiction of courts and public prosecutors offices, Official Gazette of the Republic of Serbia. No. 101/2013

<sup>33</sup> Article 25, Law on Organisation of Courts, Official Gazette of the Republic of Serbia, No. 166/08.

<sup>34</sup> Article 5. Law on the seats and territorial jurisdiction of courts and public prosecutors offices, Official Gazette of the Republic of Serbia. No. 101/2013.

<sup>35</sup> Article 142, Constitution of the Republic of Serbia.

<sup>36</sup> Article 1, Law on Judges, Official Gazette of the Republic of Serbia, No. No. 116/2008, 58/2009 – decision CC and 104/2009, amended by the Law on amendments and supplements to the Law on judges, published in Official Gazette of RS no 101/2010.

appointed by the National Assembly.<sup>37</sup> The HJC has sole authority to decide whether to appoint judges to permanent office, after the judge has completed an initial three-year term<sup>38</sup>. However, Serbia is planning to amend its Constitution,<sup>39</sup> to eliminate the role of the National Assembly in the appointment of judges and court presidents. As a transitional measure, the Law on Judges was amended in December 2013 so the HJC proposes only one candidate for each judicial vacancy to the Assembly, to promote judicial independence.<sup>40</sup> Court presidents are nominated for their positions by the HJC from among judges of courts of the same or higher instance<sup>41</sup>, and elected as presidents by the National Assembly<sup>42</sup>, although as discussed above the Action plan of the National Judicial Strategy envisage that the Assembly will have no role in their election at some point in the future. As a transitional measure before amending Constitution the Parliament based on the Action plan of the Judicial Reform Strategy adopted in December 2013 amendments to the Law on judges in the direction that High Judicial Council proposes to the Parliament only one candidate for vacant court president position. After amendments of the Law on judges in December 2013 court president serve five year single terms (previously presidents served four year term and may be re-elected).<sup>43</sup>

**19. The president of a directly superior court has the right to oversee the administration of a lower court and to review work of the lower court's president.** The president of the superior court also may assume the duties of a president of a lower court if that president has failed to act.<sup>44</sup>

#### **(d) Judicial Assistants**

**20. Judicial assistant is the common term for the judge's associates, senior associates and judge's adviser.**<sup>45</sup> Their job consists of providing assistance to the judge, drafting court decisions, assessing of legal issues, case law and legal literature, drafting legal opinions, as well as performing other affairs. The Judge associates is a person who has passed the bar exam, and the senior associate after passing the bar exam need to have a minimum of two years of work experience in the legal profession. The judge adviser is a person who meets the requirements for a higher court judge. The Judge adviser performs professional tasks relevant to the judicial department, or the entire court. The Position of judge adviser exists in state level courts.

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<sup>37</sup> Article 51, Law on Judges, Official Gazette of the Republic of Serbia, No. No. 116/2008, 58/2009 – decision CC and 104/2009, amended by the Law on amendments and supplements to the Law on judges, published in Official Gazette of RS no 101/2010.

<sup>38</sup> Article 52, “

<sup>39</sup> According to the Action plan accompanying Judicial Reform Strategy 2013-2018.

<sup>40</sup> Article 50, Law on Judges, Official Gazette of the Republic of Serbia, No. 116/2008, 58/2009, 104/2009, 101/2010, 8/2012, 121/2012, 124/2012 and 101/2013.

<sup>41</sup> Article 69, “

<sup>42</sup> Articles 10 and 71, Law on Judges, Official Gazette of the Republic of Serbia, No. No. 116/2008, 58/2009 – decision CC and 104/2009, amended by the Law on amendments and supplements to the Law on judges, published in Official Gazette of RS no 101/2010.

<sup>43</sup> Article 72, Law on judges, Official Gazette RS, No. 116/2008, 58/2009, 104/2009, 101/2010, 8/2012, 121/2012, 124/2012 and 101/2013.

<sup>44</sup> Article 54, Law on Organization of Courts, Official Gazette of the Republic of Serbia, No. 116/08, 04/2009, 101/2010, 31/2011, 78/2011, 101/2011, 101/2013.

<sup>45</sup> Equivalent is for the prosecutors' assistant.

### (e) Lay judges

21. **According to of the Constitution<sup>46</sup> lay judges should participate in trials of many cases as panel members, with the rights and duties of a judge.** They do so as a type of internal control of professional judges. The Criminal Procedure Code, Civil Procedure Code,<sup>47</sup> and the Law on Juveniles<sup>48</sup> determine in which cases a lay judges will sit on panels.

22. **Lay judges are appointed by the HJC, upon nomination by the MOJPA.** They are appointed for five-year terms and may be reappointed.<sup>49</sup> Any citizen of Serbia between 18 and 70 at the time of appointment, and “who is worthy of the function,” but is not an advocate (see page 18 for a discussion of advocates and Bar Association), may be appointed as a lay judge.<sup>50</sup> There are 3,026 lay judges in Serbia. Lay judges receive reimbursement of their trial-related expenses and compensation determine by the HJC.<sup>51</sup>

### (e) Prosecutors

23. **The Public Prosecution is an independent state body established by Serbia’s Constitution, with specific duties set by legislation.**<sup>52</sup> The Law on Public Prosecution states that all prosecutors are to be independent in their work, and that legislative or executive branch influence is prohibited.<sup>53</sup> The organization of the other prosecutors in Serbia corresponds to the organization of the courts (basic, higher, appellate level). There is a total of 393 in the Basic Public Prosecutor’s Offices (442 positions by systematization), 162 deputy public prosecutors in the Higher Public Prosecutor’s Offices (179 positions by systematization), 62 in the Appellate Prosecutor’s Offices (72 positions by systematization), and 11 in Republic Prosecutor’s Office (15 position by systematization), as well as 16 deputy public prosecutors for organized crimes (25 positions by systematization) and 8 for war crime. It is ongoing procedure for election of four Appellate Public Prosecutor, 2 Deputies for the Prosecutor’s office for organized crime, 15 deputies for Higher Prosecutor’s office and 47 Deputies for Basic Prosecutor’s office in total of 64 Deputies and 4 Appellate Public Prosecutors.

24. **The Public Prosecution is an independent state body established by Serbia’s Constitution, with specific duties set by legislation.**<sup>54</sup> The Law on Public Prosecution states that all prosecutors are to be independent in their work, and that legislative or executive branch influence is prohibited.<sup>55</sup> The

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<sup>46</sup> Article 99 Paragraph 1.

<sup>47</sup> Article 35, Civil Procedure Code, Official Gazette RS, 72/2011, 49/2013, 74/2013.

<sup>48</sup> Articles 42-44, Law on Juvenils, Official Gazette RS, No. 85/2005.

<sup>49</sup> Articles 81-82, Law on Judges, Official Gazette RS, No. 116/2008, 58/2009, 104/2009, 101/2010, 8/2012, 121/2012, 124/2012 and 101/2013.

<sup>50</sup> Articles 82 and 85, Law on Judges, Official Gazette RS, No. 116/2008, 58/2009, 104/2009, 101/2010, 8/2012, 121/2012, 124/2012 and 101/2013.

<sup>51</sup> Article 87, Law on Judges, Official Gazette RS, No. 116/2008, 58/2009, 104/2009, 101/2010, 8/2012, 121/2012, 124/2012 and 101/2013.

<sup>52</sup> Article 156, Constitution of the Republic of Serbia.

<sup>53</sup> Article 5, Law on Public Prosecution, Official Gazette of the Republic of Serbia, No. 166/08.

<sup>54</sup> Article 156, Constitution of the Republic of Serbia.

<sup>55</sup> Article 5, Law on Public Prosecution, Official Gazette of the Republic of Serbia, No. 166/08.

organization of the other prosecutors in Serbia corresponds to the organization of the courts (basic, higher, appellate level). There is a total of 156 deputy public prosecutors in the Higher Public Prosecutor's Offices (168 positions by systematization), 413 in the Basic Public Prosecutor's Offices (416 positions by systematization), and 65 in the Appellate Prosecutor's Offices (72 positions by systematization), as well as 16 deputy public prosecutors for war crimes (25 positions by systematization) and 8 for organized crime

**25. As of October 1, 2013 when new Criminal Procedure Code took effect, prosecutors, rather than investigative judges, became responsible for supervising the investigations of criminal cases<sup>56</sup>.** One objective of the new Code is to shorten the investigative phase of a case. The Public Prosecutor is authorized<sup>57</sup> to manage pre-investigation proceedings; to decide whether to undertake or defer criminal prosecution; to conduct investigations; to conclude plea agreements, agree on alternative sentences (the concept of "opportunity") and agreements on giving testimony; to file and represent an indictment before a competent court; to drop charges; to file appeals against court decisions which are not final, and to submit extraordinary legal remedies against final court decisions.

**26. On October 1, 2014 around 38,000 investigation cases (summary proceedings and regular cases in which decision to conduct investigation is not issued) were transferred from courts to prosecution offices.** This will require that prosecutors work in new areas such as case management; cross-examination; ; and protecting victims' rights.

**27. The Republic Public Prosecutor (RPP) is the highest prosecutor in the country and has a separate office.<sup>58</sup>** The RPP is nominated by the Government from a list of candidates prepared by the SPC, elected by the National Assembly for a six-year term, and may be reappointed<sup>59</sup>. All public prosecutors are subordinate to the RPP, and all public prosecutor offices are subordinate to the Office of the RPP<sup>60</sup>. The RPP accounts for the work of prosecutors, as well as the work of the RPP's Office, to the National Assembly.<sup>61</sup>

**28. Public prosecutors are proposed by the SPC to the Government, nominated by the Government, and then elected by the National Assembly<sup>62</sup>.** The SPC nominates and the National Assembly elects

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<sup>56</sup> Article 603 of the CPC specifies that all investigations started under the prior law should be finished by the courts. For older cases in which no formal court investigation had begun, any investigation will be handled primarily by prosecutors, although judges may still be involved in some preliminary proceedings.

<sup>57</sup> Article 285, Criminal Procedure Code, Official Gazette of the Republic of Serbia, No. 72/2011, 101/2011, 121/2012, 32/2013 i 45/2013.

<sup>58</sup> Article 157, Constitution of the Republic of Serbia; Article 13, Law on Public Prosecution, Official Gazette of the Republic of Serbia, No. 166/08.

<sup>59</sup> Article 158, Constitution of the Republic of Serbia; Article 74, Law on Public Prosecution, Official Gazette of the Republic of Serbia, No. 166/08.

<sup>60</sup> Article 16, Law on Public Prosecution, Official Gazette of the Republic of Serbia, No. 166/08.

<sup>61</sup> Article 160, Constitution of the Republic of Serbia

<sup>62</sup> Article 159, Constitution of the Republic of Serbia; Article 74, Law on Public Prosecution, Official Gazette of the Republic of Serbia, No. 166/08.

deputy public prosecutors for their first three-year appointments<sup>63</sup>. The NJRS 2013 includes planned amendments of the Constitution, which would exclude the Assembly from any role in appointment of public prosecutors and deputy public prosecutors. As a transitional means of strengthening of independence of prosecutors, in December 2013 the Assembly adopted amendments to the Law on Public Prosecution, so the SPC now proposes only one candidate for each vacancy for deputy public prosecutor to the Assembly.<sup>64</sup> However, the amendment did not include a similar provision for the election of public prosecutors, so for them the SPC proposes a list with one or more candidates to the Government, and Government in turn proposes one or more candidates for each vacant position to the Assembly.<sup>65</sup> The SPC also determines whether deputy public prosecutor should be appointed to a permanent position after his or her first three years.<sup>66</sup>

### iii. Governing Serbia's courts

**29. Responsibility for Serbia's court system is now shared by the HJC and the MOJPA.** Serbia's Constitution of 2006 established the present form of the HJC, although many of its responsibilities are created by law rather than the Constitution.

**30. The HJC has mixed composition that consists of judges, representatives of attorneys, academia and *ex officio* members as representatives of executive and legislative branch.** The 11 members of the HJC include the President of the Supreme Court of Cassation (who also chairs the HJC), the Minister of Justice of Public Administration, and the President of the National Assembly Committee for Judicial Affairs. There are also eight other members, who include six judges elected by the National Assembly for five-year terms, one attorney at law and one law professor.

**31. The HJC is responsible for managing many aspects of Serbia's judiciary.** It has responsibility in the selection, promotion, discipline and ethics of judges. It proposes new judges for election by the National Assembly, and has sole authority for determining if those new judges should receive permanent appointments after their initial three-year terms.<sup>67</sup> In addition, the HJC determines general guidelines on the internal court organization; maintains personal records of judges, lay judges and court staff; determines the number of judges and lay judges for each court; defines the curricula for the initial training of judges by the Judicial Academy, approves the curriculum for continuous training of judges and court staff, and monitors the implementation of that training; evaluates the performance of all judges, including court presidents; the HJC proposes the budget for "overhead expenses" of the courts and disburses them; controls the spending of authorized funds; oversees the financial and

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<sup>63</sup> Article 159, Constitution of the Republic of Serbia; Articles 75 and 78-82, Law on Public Prosecution, Official Gazette of the Republic of Serbia, No. 166/08.

<sup>64</sup> Article 75, Law on Public Prosecution, Official Gazette of the Republic of Serbia, No. 116/2008, 104/2009, 101/2010, 78/2011, 101/2011, 38/2012, 121/2012, 101/2013.

<sup>65</sup> Article 74, Law on Public Prosecution, Official Gazette of the Republic of Serbia, No. 116/2008, 104/2009, 101/2010, 78/2011, 101/2011, 38/2012, 121/2012, 101/2013.

<sup>66</sup> Article 159, Constitution of the Republic of Serbia; Articles 75, Law on Public Prosecution, Official Gazette of the Republic of Serbia, No. 166/08.

<sup>67</sup> Article 13, Law on High Judicial Council.

material operations of courts, and implements of many aspects of the National Strategy for Reform of the Judiciary.<sup>68</sup>

32. **The MOJPA, however, retains significant responsibility for running of the courts and there is not always a clear delineation between the duties of the HJC and those of the MOJPA.** The MOJPA is responsible by law for “monitoring” of the work of courts and supervising the courts’ implementation of the courts’ rules of procedure; collecting statistics and other data; approving the rules for the internal organization and job classifications of staff within courts; supervising the courts to see that statutory time limits are met; acting on complaints and petitions, and proposing part of the budget intended for investments, projects and other programs for the judiciary. The MOJPA also is responsible for providing court premises and the equipment, supplies and security of courts, and oversight of the financial and material operations of courts and the HJC. Other Ministry duties including organization and development of the IT for the courts; developing and implementing capital projects and “other programs” for the courts, and appointing and dismissing expert witnesses and court interpreters<sup>69</sup>. The Ministry also determines the rules for court costs to be paid by parties.<sup>70</sup> MOJPA has competence for adoption of Court Rules of Procedure with the parameters of article 74 of the Law on organization of courts (see box). The HJC’s and MOJ’s responsibilities for court management lie alongside of the Supreme Court of Cassation as discussed above.

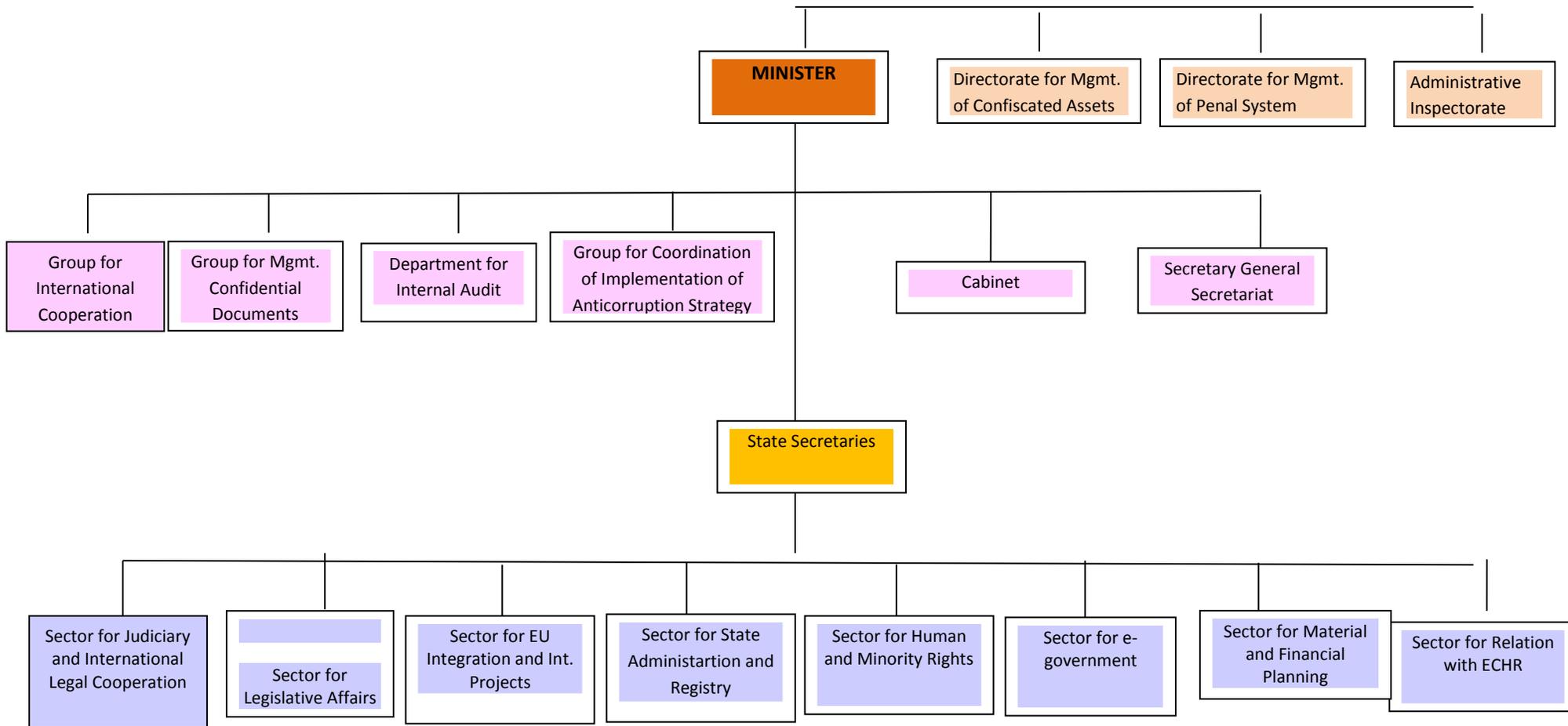
*The Court Rule of Procedure prescribe the court internal organization and operation, in particular: organization and work of departments and other internal court units; work of the joint session of the departments and the session of all judges; informing the public about the work of courts; the conducting of proceedings and the providing of decisions in the languages of national minorities; providing legal aid and holding court days; extending mutual legal assistance; keeping records, summoning and assigning lay judges; determining the obligation of the court president regarding the submission of data necessary for keeping personal records; practice for trainees; treatment of court users by court staff; keeping registration and other supporting books; handling briefs; action on complaints and petitions; keeping statistics and drafting reports on work; collection of fines, costs of criminal proceedings and seized proceeds; procedure on court deposits; introducing joint services in places with several courts and other judicial authorities; dress code for judges, court staff, parties and other participants in court proceedings and all others who conduct their work in a court, as well as other court organization and operation-related matters.*

<sup>68</sup> Article 13, “, and Articles 70 and 83, Law on Organisation of Courts, Official Gazette of the Republic of Serbia, No. 166/08, 104/2009, 101/2010, 31/2011, 78/2011, 101/2011, 101/2013.

<sup>69</sup> Articles 70, 75 and 84, Law on Organisation of Courts, Official Gazette of the Republic of Serbia, No. 166/08, 104/2009, 101/2010, 31/2011, 78/2011, 101/2011, 101/2013.

<sup>70</sup> Article 86, Law on Organisation of Courts, Official Gazette of the Republic of Serbia, No. 166/08, 104/2009, 101/2010, 31/2011, 78/2011, 101/2011, 101/2013.

Figure 1 Current Organizational Structure of the MoJPA



**33. Amendments to the Law on court organization from December 2013 envisaged transfer of competences from the MOJPA to HJC as of June 1, 2016.** The following competences shall be assumed by the HJC: criteria for determination of the number of court staff and a wide array of judicial administration tasks<sup>71</sup> Capital expenditures will also be disbursed by the HJC.

**34. The Ministry of Finance (MoF) oversees the financial operations of the HJC and MOJPA.** MoF also shares with the HJC and MOJPA oversight of budget funds earmarked for court operations. The Ministry of Finance also shares oversight of the “financial and material business” of the HJC with MOJPA.<sup>72</sup>

#### **iv. Governing Serbia’s Prosecutors**

**35. Responsibility for administration over prosecutors’ system is within the SPC.** The SPC is another body created by the 2006 Constitution, but with the details of its duties and operations enacted by law. Its 11 members include the Republic Public Prosecutor (who serves as president of the SPC), the Minister of Justice of Public Administration, and the President of the National Assembly Committee for Judicial Affairs. The other eight members are elected by the National Assembly: six public prosecutors or deputy public prosecutors are chosen by their peers (at least one of whom must be from Vojvodina) for nomination to the Assembly by the SPC, one attorney chosen by the Serbian Bar Association and one law professor chosen by a joint session of the deans of Serbia’s law faculties<sup>73</sup>. The six elected members are directly elected by deputy and public prosecutors. As is true for the HJC, the elected members of the SPC serve five-year terms.<sup>74</sup>

**36. The SPC has key role in election of Republic Prosecutor, public prosecutors and deputy public prosecutors.** The SPC develops a list of candidates, which it forwards to the Government for nomination to the National Assembly.<sup>75</sup> Once chosen, the Republic Prosecutor and public prosecutors may serve six-year terms.<sup>76</sup> As it is mentioned above the SPC also is responsible for nominating deputy public

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<sup>71</sup> Monitoring of the work of courts; collecting statistics and other data; approval of court rules on internal organization and job classification; supervision of proceeding in cases within statutory time limits and proceeding on complaints and petitions; the proposing of the part of the budget intended for investments, projects and other programs for operation of judicial authorities; ensuring spatial requirements, equipment supply and security of courts; oversight of financial and material operations of courts and the High Judicial Council; organization and development of the judicial IT system; organization, development and maintenance of the database of legal enactments; development and implementation of capital projects and other programs for judicial authorities; appointment and dismissal of expert witnesses and court interpreters.

<sup>72</sup> Article 84, Law on Organisation of Courts, Official Gazette of the Republic of Serbia, No. 166/08.

<sup>73</sup> Article 20, Law on the State Prosecutorial Council, Official Gazette of the Republic of Serbia" No. 116/08.

<sup>74</sup> Article 5, Law on the State Prosecutorial Council, Official Gazette of the Republic of Serbia" No. 116/08.

<sup>75</sup> Article 13, Law on the State Prosecutorial Council, Official Gazette of the Republic of Serbia" No. 116/08.

<sup>76</sup> Article 158, Constitution of the Republic of Serbia; Articles 55 and 74, Law on Public Prosecution, Official Gazette of the Republic of Serbia, No. 166/08.

prosecutors to the National Assembly. After these deputies have served three years, the SPC determines if they should be elected to permanent jobs as deputy prosecutors.<sup>77</sup>

**37. Many of the other duties of the SPC are similar to those of the HJC.** The SPC can terminate or promote deputy prosecutors; plays a significant role in discipline and evaluation of public prosecutors and deputy public prosecutors; determines the curricula for the initial training of deputy public prosecutors and prosecutors' assistants; proposes the curriculum for continuous training of public prosecutors and deputy public prosecutors; passes the code of ethics; proposes the budget for "overhead expenses" by prosecutor's offices and disburses them; and implements of many aspects of the National Strategy for Reform of the Judiciary. The SPC also appoints the Acting Republic Prosecutors and rules on the suspension of the Republic Prosecutor.<sup>78</sup>

**38. Public prosecutors in Higher Public Prosecutor's Offices oversee and direct the work of Basic Public Prosecutors in their territory**<sup>79</sup>. The Republic Public Prosecutor also proposing advanced training programs for public prosecutors and their deputies.<sup>80</sup> The MOJPA, however, retains significant responsibility for running of the prosecutors' offices, including adoption of Rules of Procedure in prosecution service and oversee application of the Rules.

## v. Related Institutions and Stakeholders

### (a) Judicial Academy

**39. The Judicial Academy began operating in 2010, and provides initial training for judicial and prosecutor candidates, and continuing training for judges, prosecutors and court staff.**<sup>81</sup> The JA is the legal successor of the Judicial Training Center. Participants in the 30-month initial training program have coursework and have practical internships relating to civil law, criminal law, minor offences law, and the prosecution of cases. The HJC and the SPC determine the number of trainees to be admitted to the Academy each year, and trainees are selected based on the results of a publicly advertised examination. The entrance exam consists of practical test, theoretical test and personality test.<sup>82</sup> Candidates are admitted based on the ranking of their exam scores.

**40. Initial training students have training organized in courts, prosecution offices and training with the supervision of mentors.** Participants take a final exam at the end of the initial training, which includes a practical simulation of three days of trial, including a day of a civil trial, a day of a criminal trial, and a day of acting as a prosecutor.

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<sup>77</sup> Article 13, Law on Public Prosecution, Official Gazette of the Republic of Serbia, No. 166/08.

<sup>78</sup> Article 13, Law on the State Prosecutorial Council, Official Gazette of the Republic of Serbia" No. 116/08.

<sup>79</sup> Article 31, Law on Public Prosecution, Official Gazette of the Republic of Serbia, No. 166/08.

<sup>80</sup> Article 29, Law on Public Prosecution, Official Gazette of the Republic of Serbia, No. 166/08.

<sup>81</sup> Article 1, , Law on Judicial Academy, Official Gazette of the Republic of Serbia, No. 104/2009

<sup>82</sup> The Judicial Academy has developed a test making software to prevent misuse.

**41. Candidates who successfully complete the initial training program have been given preference for appointments as judges or prosecutors.**<sup>83</sup> However, a February 6, 2014 decision of the Constitutional Court may mean the statutory preference for appointment of trainees from the JA may no longer be valid.<sup>84</sup> The Association of Judicial and Prosecutorial Assistants,<sup>85</sup> established in reaction to the preference given to JA graduates for judicial and prosecutorial appointments, over judicial and prosecutorial assistants who met the requirements for judges and prosecutors before the establishment of the JA. The Association of Judicial and Prosecutorial Assistants challenged constitutionality of the Law on the JA.

#### **(b) Bailiffs**

**42. Private Bailiffs were introduced in 2011, to improve the enforcement of court decisions relating to the collection of debts.**<sup>86</sup> The Law on Enforcement and Security defines a private bailiff as an individual appointed by the MOJPA to conduct enforcement in accordance with the enforcement ruling, and to exercise other authorities invested in him/her under the Law.<sup>87</sup> For the collection of bills from public utilities, bailiffs can act on the basis of “authenticated documents” (e.g. invoices or bills) rather than a court decision. Private Bailiffs and court bailiffs have the same authority to enforce matter, however they deal in different case type. Court bailiffs have jurisdiction for family relations and reinstatement of employees to work, which can be done only by court bailiffs.<sup>88</sup> Private Bailiffs can deal only with enforcement cases that have commenced since 1 May 2012.<sup>89</sup>

**43. Private Bailiffs must have a law degree, a minimum of two years of experience in enforcement, or three years of legal experience and passed the examination for enforcement.** The first group of bailiffs who passed the qualifying exam were sworn in during May 2012. While the MOJPA determines the number of private Bailiffs to be appointed, Law call for the appointment of 1 Bailiff per 25.000 inhabitants and currently there are 130 of them. The geographic district for each private bailiff corresponds to the boundaries of certain court. Private Bailiffs are automatically members of their own chamber, which is largely self-governing. The examination for bailiffs must take place at least once a

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<sup>83</sup> The first generation of students who successfully completed the initial training program and passed their final exams were elected as judges and prosecutors in 2013.

<sup>84</sup> Articles 26-27, Law on Judicial Academy, Official Gazette of the Republic of Serbia, No. 104/2009

<sup>85</sup> In February 2014 the Association of Judicial and Prosecutorial Assistance split in two Associations since they have different views on possible solutions after decision of the Constitutional Court.

<sup>86</sup> Law on Enforcement and Security, Official Gazette of the Republic of Serbia, No. 31/2011, 99/2011, 109/2013 – decision of the Constitutional Court.

<sup>87</sup> The Law also provides detailed procedures and conditions for appointment as private bailiffs, their authorities and duties, and their liability for any damage caused in the course of enforcement proceedings.

<sup>88</sup> Article 3 Law on Enforcement and Security.

<sup>89</sup> Article 358 and 363 of the Law on Enforcement and Security.

year<sup>90</sup>. The MOJPA determines the date and place of the exam and the panel comprises of representatives from MOJPA, courts and Chamber of Bailiffs.

### (c) Notaries

44. **The Law on the Public Notaries<sup>91</sup> was adopted in May 2011 and its application has been delayed for September 2014.** Amendments to the law adopted in February 2013 considerably extended the powers of notaries and now notaries have authority relating to real property transactions, proceedings pertaining to co-owners of property, the division of common property and non-contentious and administrative proceedings, including inheritance proceedings.<sup>92</sup>

45. **Public notaries will assume the authority for legal authentication services, which have been handled by the courts.** Plans call for Serbia to have approximately 360 notaries.<sup>93</sup>

### (d.) Mediators and Other Forms of Alternative Dispute Resolution

46. **In the 2005 the Law on Broking and Mediation<sup>94</sup> was enacted, providing for the use of mediation in all disputes other than those whose resolution was in the exclusive jurisdiction of a court or other authority and allowing for the mediation to be initiated either after or before the legal action has been taken, i.e. independently from the initiation of any formal proceeding.**

47. **The National Mediation Centre (NMC) was established in Belgrade, in 2006 by Ministry of Justice, National Bank of Serbia, the Belgrade Bar Association and the Child Rights Center, based on the 2005 Law on Brokering and Mediation.** The law provides for the use of mediation in all disputes other than those whose resolution is in the exclusive jurisdiction of a court or other authority. It allows for mediation to be initiated with or without a corresponding formal proceeding. The NMC was set up with the primary tasks of providing mediation services, organizing trainings and expert meetings, promoting mediation and publishing materials about mediation. However, by 2012 there were only 729 cases brought to the NMC, of which 313 were resolved through mediation. The 2010 Law on Consumer Protection has generated an increase in the number of mediation cases: the ratio of consumer protection cases rose from 57% in 2011 to 73% in 2012.

48. **The MOJPA set up a task force in 2012 to draft a new Mediation law, in an attempt to meet international standards and EU accession criteria.** The resulting draft law would introduce a system for the licensing of mediators. Initial licenses would be issued for three years, with possible renewals for five years. The draft law also provides for MOJPA to keep a registry of mediators; issue, renew and

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<sup>90</sup> Rules on the exam for bailiffs, Official Gazette of the Republic of Serbia, No. 74/2011. The rules contains specific provisions about the contents of the exam.

<sup>91</sup> Official Gazette of the Republic of Serbia, No. 31/2011, 85/2012, 19/2013.

<sup>92</sup> Article 82 and 83. Law on Public Notaries.

<sup>93</sup> Article 15, Law on notaries.

<sup>94</sup> Official Gazette of the Republic of Serbia, No. 18/2005.

revoke licenses; define training program for mediators and issue accreditation for implementation of training.

**49. Beside mediation, other forms of Alternative Dispute Resolutions exist within the National Bank (Center for protection and education of financial service users), and the Serbian Chamber of Commerce (Mediation in Financial Restructuring of Companies<sup>95</sup> and the Foreign Trade Arbitration<sup>96</sup>).** In 2006 Law on Arbitration<sup>97</sup> was adopted and it is obligatory for domestic arbitrations.

#### (e) Ombudsman

**50. Citizens can file complaints with Serbia's Ombudsmen if they feel their rights to a fair trial or to trial within a reasonable time have been violated; there is non-enforcement of court judgments, or they consider the manner in which the MOJPA has acted upon citizen complaints inappropriate or inadequate.**<sup>98 1</sup> According to the Ombudsperson Annual Report for 2012 the Ombudsman office receives 289 complaints that alleged violation of the right to trial within a reasonable time.

**51. Ombudsperson institutions are independent.** There are ombudsmen at the local, provincial and republic levels. In many of these cases, citizens have indicated they would also be filing cases in the European Court of Human Rights for the same violations of their rights. Ombudsmen also have seen increasing numbers of requests for legal assistance to drafting petitions, represent parties before courts and other state authorities, and to interpret or explain legal provisions.

#### (f) Anti-corruption Agency

**52. The Anti-corruption Agency (ACA) is an independent public body established to eliminate the causes of corruption and thus create conditions for increasing the integrity of public authorities, and the personal integrity of the Serbian citizens, particularly public officials.** The ACA was established by the Law on the Anti-Corruption Agency, in October 2008, and began operations in January 2010.

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<sup>95</sup> Mediation in financial restructuring of companies is an agreement on restructuring of company's debt, that is redefining the debtor-creditor relationship between the company in financial difficulties and its creditors, primarily banks.

<sup>96</sup> When its jurisdiction is agreed upon by the parties, the Foreign Trade Arbitration is competent to settle disputes arising out of international business relations, i.e. the business relations where: the parties have their places of business in different States, or the place where a substantial part of the obligations of the business relationship is to be performed or the place with which the subject matter of the dispute is most closely connected is located abroad, or the parties have explicitly agreed that the subject matter of the arbitration agreement relates to more than one country.

<sup>97</sup> Official Gazette of the Republic of Serbia, No. 46/2006.

<sup>98</sup> Article 17 Law on Ombudsperson: „The Protector of Citizens shall have the power to control the respect of the rights of citizens, establish violations resulting from acts, actions or failure to act by administrative authorities, if they are violations of the laws, regulations and other general acts of the republic. The Protector of Citizens shall have the power to control the legality and regularity of the work of administrative authorities.

The Protector of Citizens shall not have the power to control the work of the National Assembly, President of Republic, Government of Serbia, Constitutional Court, courts and public prosecution's offices.“

**53. ACA has competence to act on complaints by natural or legal persons.** From 2010 through 2012, the majority of complaints to the ACA were against public bodies, particularly in alleged irregularities in the work of public administration and judicial bodies. According to the ACA Annual Report for 2012 there were 208 complaints against Public Prosecutor's Office, 72 complaints against Courts and 230 against Public Administration in the period 2010-2012. In response to received complaints the ACA can initiate inquiry (administrative procedure) and if the complaint is founded the ACA will inform competent institutions (e.g. prosecutor, misdemeanor court).

#### **(f) Professional associations**

##### **(i.) Judge's Association of Serbia**

**54. Judges' Association of Serbia (JAS) is voluntary professional association of judges, established in 1997.** JAS is affiliated with the MEDEL and International Association of Judges and has been outspoken in protecting judicial independence.

**55. JAS protects interests of judges and offers its views on reform of judiciary and introduction of systems of education of judges, regular evaluation of their performances and disciplinary liability.** Those systems now are introduced in current laws. Establishing the Judicial Council in 2001 Law as well as further development of HJC status and its regulation by the Constitution was done with the efforts of JAS and prominent professors who shared the same point of view. Judicial training center (JTC) was established in 2001, on the initiative of JAS which, jointly with Serbian Government, was 50%-50% cofounder of JTC.

##### **(ii.) Prosecutor's Association of Serbia**

**56. The Prosecutors' Association of Serbia (PAS) is a voluntary association of Public Prosecutors and Deputy Public Prosecutors formed in 2001.** Its activities include working with the Serbian government to draft model for the Law on Public Prosecution, the Law on the State Prosecutorial Council, and by-laws for the SPC.

**57. PAS created strategic partnership with the Judges' Association of Serbia based on mutual goals to contribute to the judicial reform process. PAS protects interest of prosecutors and offers its proposals for the reform of judiciary.** The membership perceives the PAS as the organization that has reliably and consistently been providing best possible service, adapting actions to the clients' needs (especially in times of re-appointment process in 2009 and beginning of 2010) and external factors coming from fast pace judicial system reform. That collaboration, with strong assistance from international networks (MEDEL and International Association of Prosecutors - IAP) was utilized strategically by the PAS.

##### **(iii.) Association of Misdemeanor Judges**

**58. The Association of Misdemeanor Judges (MAS) is voluntary association of Misdemeanor judges established in 2002.** MAS activities are focused on the support to the Government in drafting

legislative framework relevant for the Misdemeanor Judges (Law on misdemeanor) and providing trainings on new laws.

59. **MAS protects interest of the Misdemeanor Judges.** All Misdemeanor Judges are members of the Association.

#### (iv) Bar Association of Serbia

60. **Membership in the Bar Association of Serbia is obligatory for lawyers practicing before Serbia's ordinary courts.**<sup>99</sup> The Association includes nine regional bar chambers<sup>100</sup> and it regulates all aspects of attorneys appearing in the ordinary courts: their admission to and departure from practice; how they organize their practices (as individual attorneys, partnerships or joint law offices); and the type and applicability of disciplinary measures<sup>101</sup>. It is also responsible for drafting the code of ethics for attorneys appearing before the courts, setting the fees and expenses to be charged by attorneys.<sup>102</sup> The Association also is responsible for an Attorney Academy to provide continuing training for lawyers.<sup>103</sup> In addition to paying membership fees to the Association, attorneys also must obtain professional liability insurance, through a group policy obtained by the Association, or directly from an insurance company.<sup>104</sup>

#### (g) Civil Society Organizations

61. **While Serbia has many CSOs, including many human rights organizations, few of them focus on issues relating to the general development of Serbia's judicial institutions.**<sup>105</sup> To date, human rights organizations have focused on the effect measures might have on individuals or groups, rather than their effects on judicial operations as a whole. There are also some national CSOs active in informing the public and generating debate about European integration. Some CSOs are involved in drafting laws relevant for judicial reform, surveys, trainings, public awareness activities.

#### (h) Free Legal Aid Providers

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<sup>99</sup> Article 6, Law on legal practice, Official Gazette of the Republic of Serbia, No. 31/2011, 24/2012.

<sup>100</sup> Article 54, Law on legal practice, Official Gazette of the Republic of Serbia, No. 31/2011, 24/2012

<sup>101</sup> Articles 65, 75-81, and 87, Law on legal practice, Official Gazette of the Republic of Serbia, No. 31/2011, 24/2012.

<sup>102</sup> The attorney tariff is set by the Bar Association of Serbia as an autonomous, independent and mandatory professional organisation (association) of attorneys. The amount of the reward for attorneys in criminal proceedings in the attorney tariff is set based on the potential punishment for the criminal offence that the defendant is charged with. The amount of the reward for the work of attorney – ex officio defence counsel is set in accordance with the Rulebook adopted by Ministry of Justice and in these cases it amounts to 50% of the applicable attorney tariff. The reward for the work of attorneys – ex officio defence counsels in pre-criminal proceedings (police investigation) is set in the same way and based on the same regulations as in the criminal proceedings.

<sup>103</sup> Article 86, Law on the attorney at law, Official Gazette of the Republic of Serbia, No. 31/2011, 24/2012.

<sup>104</sup> Article 37, Law on the attorney at law, Official Gazette of the Republic of Serbia, No. 31/2011, 24/2012.

<sup>105</sup> TASC Needs Assessment, 2011.

**62. Although the Constitution of the Republic of Serbia guarantees the right to legal aid, the provision of legal aid, including free legal aid (FLA), integrally regulated system of legal aid does not exist.** In order to regulate FLA systemically the MOJPA prepared draft Law on FLA in December 2013. Draft Law defines the providers and users of free legal aid, register and obligations of providers, the procedure for exercising the right to free legal aid, financing, control and supervision of the implementation of the Law, and tort liability for violations of the legal provisions.

**63. While the new Law is not adopted several different laws contains provisions related to legal aid and enable legal aid services in municipalities, direct legal representation, reimbursement for costs of representation, support for access provided through NGO's, university law clinics and/or pro bono service by members of the Serbian bar association.** The Law on Local Self-Government<sup>106</sup> stipulates that municipalities organize legal aid services to be used by citizens. Municipal legal centers exist in approximately 1/3 of all municipalities (from 150 municipalities in Serbia 42 municipalities established FLA, 9 that have not established FLA services, but nevertheless provide free legal aid).<sup>107</sup> In 2011 there were 62,242 services provided by municipal FLA service and in 2012 there were 71,741 services.

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<sup>106</sup> Article 20 point 31, Official Gazette of the RS, No. 129/07.

<sup>107</sup> Survey was organized by World Bank.