



Strasbourg, 13 December 2022

CDL-REF(2022)071

Opinion No. 1106 / 2022

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

SERBIA

REVISED DRAFT LAW

ON THE HIGH PROSECUTORIAL COUNCIL

REVISED DRAFT
~~Draft~~ Law on the High Prosecutorial Council

I. GENERAL PROVISIONS

Subject of the Law

Article 1

This law regulates position, competences, organisation and methods of work of the High Prosecutorial Council (hereinafter: Council), conditions and procedure for election of elective members of the Council, duration of their mandate and termination of his/her function and securing conditions and means for work of the Council.

1. Position of the Council

Autonomy

Article 2

The Council is an autonomous state authority that ensures and guarantees the autonomy of the public prosecutor's office, the Supreme public prosecutor, chief public prosecutors and public prosecutors.

Within the scope of its competence, the Council cooperates with the High Judicial Council, bodies of the Republic of Serbia, the autonomous province, units of local self-government or municipalities, public services, holders of public powers and other natural and legal entities, judicial councils of other countries and international organisations.

Funds for the Work of the Council

Article 3

The funds for the work and functioning of the Council (hereinafter: the Council's budget) are provided in the budget of the Republic of Serbia, at the Council's proposal.

The Council independently disposes of the funds from the Council's budget.

The government cannot, without the consent of the Council, suspend, delay or restrict the execution of the Council's budget, i.e. the funds from the budget allocated for the work of the Public Prosecutor's Office.

The procedure for determining the Council's budget proposal is governed by this law.

Preparation of the Council's Budget Proposal

Article 4

The secretary of the Council prepares the Council's budget proposal in accordance with the law governing the budget system and submits it to the working body of the Council responsible for financial issues (hereinafter: the Budget Commission).

The Budget Commission determines the Council's budget proposal and sends it to the president of the Council for submission to the ministry responsible for financial affairs for an opinion.

In relation to the proposal referred to in Paragraph 2 of this Article, the minister responsible for financial affairs submits a reasoned opinion to the Council.

If the minister responsible for financial affairs has any objections regarding the submitted Council budget proposal, they shall organise consultations with the president of the Council and the Budget Commission to reach an agreement.

If the minister responsible for financial affairs has no objections to the Council's budget proposal or consent under Paragraph 4 of this Article is achieved, the Council approves the final proposal of the Council's budget, which the ministry responsible for financial affairs includes without amendments in the draft law on the budget of the Republic of Serbia, and the Government, without amendments, in the proposed law on the budget of the Republic of Serbia.

If no agreement stipulated by Paragraph 4 of this Article is achieved, the ministry responsible for financial affairs includes the final Council's budget proposal from Paragraph 5 of this Article, without amendments, in the draft law on the budget of the Republic of Serbia, and the Government, without amendments, in the proposed law on the budget of the Republic of Serbia.

If no agreement is reached, as stipulated by Paragraph 4 of this Article, in the reasoning of the draft law on the budget of the Republic of Serbia, the Government gives the reasons why it considers that the Council's budget proposal is not acceptable.

The provisions from Paragraphs 1 to 7 of this Article apply to the procedure for the proposal of budgetary funds under the competence of the Council prescribed by the Law on the Public Prosecutor's Office.

Control of the Execution of the Council's Budget

Article 5

Control of the execution of the Council's budget, internal financial control and audit are carried out in accordance with the regulations governing the budget system, accounting and audit.

The Seat and Features of the Council

Article 6

The seat of the Council is in Belgrade.

The Council has a seal, which contains the name and coat of arms of the Republic of Serbia and the name and seat of the body, in accordance with special laws.

Composition of the Council

Article 7

The Council has 11 members.

The members of the Council include five public prosecutors elected by the holders of the public prosecutor's functions, four prominent lawyers elected by the National Assembly, the Supreme public prosecutor and the minister responsible for the judiciary, as members elected according to function.

President of the Council

Article 8

The Council has a president, who is elected by the Council among the elective members of the Council who are public prosecutors, for a term of five years.

The president of the Council represents the Council, convenes and presides over the Council sessions, coordinates the work of the Council, ensures the implementation of the acts of the Council, and performs other duties in accordance with the law and acts of the Council.

Vice President of the Council

Article 9

The Council has a vice president, who is elected by the Council from among the members elected by the National Assembly, for a term of five years.

The vice president of the Council performs the duties of the president in case of absence or incapacity of the president.

Relationship with Public Prosecutor's Offices, Other Authorities, Public Authority Holders, Natural and Legal Persons and Holders of The Public Prosecutor's Function

Article 10

The public prosecutor's offices, other bodies of the Republic of Serbia, the autonomous province, units of local self-government, municipalities, public authority holders, natural and legal persons, as well as the holders of the public prosecutor's function, are obliged to act on the requests of the Council for the delivery of information, documents and other material related to the performance of the tasks within the competence of the Council.

The holders of the public prosecutor's function are under the obligation to act on the decisions of the Council.

2. Position of the Members

Immunity

Article 11

Members of the Council cannot be held accountable for the opinions given in connection with the duties of the Council member or for voting when making Council decisions.

The members of the Council cannot be deprived of liberty without the approval of the Council in proceedings initiated due to a criminal offence that they committed as members of the Council.

Removal From the Post of Council Member

Article 12

The member of the Council must be removed from that post for the term of the detention.

A Council member may be removed from that position until the completion of the procedure for determining the grounds for the removal.

The decision on the removal of a Council member is made by the Council.

The member of the Council whose removal is being decided upon is excluded from the decision-making process.

A member of the Council has the right to lodge an appeal against the decision on removal with the Constitutional Court within three days from the day of receipt of the decision, which excludes the right to submit a constitutional appeal .

The appeal does not delay the execution of the decision.

Rights Ensuing from Employment

Article 13

An elective member of the Council shall exercise his/her employment rights in the Council in accordance with the regulations governing the employment rights of the holders of the public prosecutor's function, unless otherwise provided by this law.

During the mandate, the employment rights of the elective member of the Council exercised prior to the appointment as a Council member are inactive.

Notwithstanding the provisions of Paragraph 2 of this Article, an elective member of the Council elected by the National Assembly, who is also a professor at the Faculty of Law, may exercise his/her rights from employment with the Faculty of Law.

Salaries and compensation for work

Article 14

An elective member of the Council has the right to a basic salary equal to the basic salary of the Supreme public prosecutor.

An elective member of the Council elected by the National Assembly who exercises the rights from an employment relationship at the Faculty of Law has the right to a monthly compensation for work in the Council in the amount of the difference between the salary of the member of the Council, calculated for full-time work without an increase based on the years of service and the salary he/she earns at the Faculty of Law.

The minister responsible for the judiciary has the right to a monthly compensation for the work in the Council in the amount of the difference between the salary of a member of the Council, calculated for full-time work without an increase based on the years of service, and the basic salary of the minister. ~~equal to the basic salary of the Supreme public prosecutor.~~

The Supreme public prosecutor has the right to a monthly compensation for work in the Council in the amount of 30% of the basic salary from paragraph 1 of this Article.

The basic salary of the President of the Council is increased by 20%, and of the Vice President of the Council by 10%.

An elective member of the Council has the right to salary compensation during absence from work and to compensation for expenses in cases prescribed by law, as well as the right to compensation for unused vacation, under the same conditions and in the same scope of rights as other employees of the Council.

Incompatibility of Function, Job and Private Interest with the Function of the Member of the Council

Article 15

An elective member of the Council from among the public prosecutors may not perform the function of a public prosecutor during the mandate in the Council.

An elective member of the Council elected by the National Assembly may not have a function in bodies of the Republic of Serbia, the Autonomous Province, local units of self-government or municipalities, public authorities, may not be a member of a political party or act politically in some other manner, engage in any paid public or private work except professorship at the Faculty of Law, nor extend legal services or advice for compensation.

Other functions, jobs and private interests are also incompatible with the function of a member of the Council if they are contrary to the dignity and independence of a member of the Council or harmful to the reputation of the Council.

The Ethics Committee of the Council decides which other functions, jobs and private interests are contrary to the dignity and independence of a member of the Council, and which are harmful to the reputation of the Council.

The member of the Council may, outside of working hours, engage in teaching, artistic and scientific activities, for a fee, without special approval.

In cases stipulated by the law, a member of the Council may engage in teaching activities at a Judicial Academy during working hours.

Based on the approval of the president of the Council, a member of the Council, during working hours, may participate in the work of professional bodies established in accordance with special regulations and working groups for the preparation of laws and other acts.

An elective member of the Council cannot be appointed as a holder of the public prosecutor function, a judge or the president of the court.

Term of Mandate of the Members

Article 16

The term of mandate of the Council members is five years, except for ex officio members. An elective member of the Council may not be elected to such a function again.

II. COMPETENCES AND METHODS OF WORK OF THE COUNCIL

Competences

Article 17

The Council:

- 1) proposes the election and termination of the function of the Supreme public prosecutor to the National Assembly;
- 2) elects the chief public prosecutors and public prosecutors;
- 3) decides on the termination of the function of the chief public prosecutor and the public prosecutor;
- 4) elects the president and vice president of the Council;
- 5) appoints the acting Supreme public prosecutor and chief public prosecutor;
- 6) decides on other issues pertaining to the position of the Supreme public prosecutor, chief public prosecutors and public prosecutors in line with the law;
- 7) elects members of the Commission for deciding on ~~decides on the~~ objections to mandatory instructions ~~for of the Supreme public prosecutor and chief public prosecutor for the work and procedure in an individual a specific case, objections and on the objection to at the decision on devolution and on the objection to the~~ decision on substitution and objections to a decision on devolution;
- 8) proposes candidates for judges of the Constitutional Court to the Supreme Court in line with the law;
- 9) decides on the permanent relocation of chief public prosecutors and public prosecutors and ~~temporary~~ assignment of public prosecutors;
- 10) determines the number of public prosecutors for each public prosecutor's office;
- 11) decides on the removal of holders of public prosecutor's function;
- 12) decides on the incompatibility of other functions, services and jobs with the public prosecutor's function;
- 13) decides in the process of evaluating the work of chief public prosecutors and public prosecutors;

14) determines the composition and termination of the term of mandate of the members of the disciplinary bodies, appoints the members of the disciplinary bodies and regulates the work and decision-making in the disciplinary bodies;

15) decides on the appeal in the disciplinary procedure;

16) approves the permanent training programme for public prosecutors and employees of the public prosecutor's offices and supervises the implementation of the programme;

17) determines the initial training programme for public prosecutors;

18) adopts the Code of Ethics;

19) considers and decides on the report of the Ethics Committee on compliance with the Code of Ethics;

20) decides on the existence of undue influence on the work of holders of public prosecutor's function and public prosecutor's offices and measures to prevent such undue influences;

21) performs the administration tasks at the public prosecutor's office and judicial administration tasks within its jurisdiction;

22) decides on issues of immunity of holders of public prosecutor's function and elective members of the Council;

23) proposes the scope and structure of the budget and supervises the spending, in accordance with the law;

24) decides on objections in the election procedure for members of the Council from among the public prosecutors;

25) collects and analyses statistical data, adopts annual and long-term plans for the purpose of efficient management of the personnel, financial and material resources of the public prosecutor's office;

26) establishes working bodies of the Council and elects and dismisses their members;

27) gives an opinion on amendments to the existing or the adoption of new laws that regulate the position of holders of public prosecutor's function, the organisation and activities of the public prosecutor's office, as well as other systemic laws applied by the public prosecutor's office or of significance for the performance of public prosecutor's function;

28) adopts an annual report on its work;

29) informs the public about its work;

30) cooperates with judicial councils of other countries and international organisations;

31) adopts the acts provided by law;

32) performs other competencies and activities provided by law.

Method of Work

Article 18

The sessions of the Council are public, and the Council may decide to close the session to the public, in accordance with the Constitution, the law and the act of the Council. The Council sessions are convened by the president of the Council in cases foreseen by the Council's Rules of Procedure or at the proposal of at least three Council members.

Working Bodies

Article 19

Working bodies of the Council are: The Commission for evaluating the work of chief public prosecutors and public prosecutors, Election Commission, Commission for monitoring the proper allocation of cases, Budget Commission, Ethics Committee, the Commission for deciding on

objections to mandatory instruction for work and procedure in an individual case, objection to the decision on substitution and objection to the decision on devolution and disciplinary bodies. -and disciplinary bodies-

In order to protect against any undue influence on the performance of the public prosecutor's function, the Council appoints one member of the Council from among the public prosecutors to proceed in cases of undue influence on the work of the public prosecutor's office and the holders of the public prosecutor's function. The actions of the elective member of the Council and the Council in cases of undue influence are regulated in more detail by the act of the Council.

In order to consider certain issues within its competencies, the Council may form other working bodies.

The establishment, composition and method of work of the working bodies are regulated in more detail by the act of the Council.

Decision-making

Article 20

The decisions of the Council are made by a majority of eight votes.

Notwithstanding Paragraph 1 of this Article, in the decision in the procedure for determining disciplinary responsibility, except in disciplinary proceedings against the Supreme Public Prosecutor, on the removal or termination of the term of function of the elective Council member, on the approval of the proposal for the termination of the Supreme public prosecutor, on exclusion or removal of the Supreme public prosecutor, the Council makes a decision by a majority of seven votes.

Exceptionally from para. As an exception to Paragraph 1 and 2 of this ~~article~~Article, the ~~Council makes the decision in disciplinary proceedings on an objection~~ against the Supreme Public Prosecutor is taken by the Council a mandatory instruction for work and action in a specific case by a majority of ~~six~~three votes.

The Council makes decisions by public vote, with the exception of decisions on the election of the president and vice president of the Council and the determination of proposals for the election of the Supreme public prosecutor, which are voted for secretly .

The decisions of the Council must be reasoned, unless otherwise stipulated by Law.

Council's Rules of Procedure

Article 21

The Council adopts the Council's Rules of Procedure, which regulate the method of work and decision-making of the Council.

Publication of Acts and Decisions of the Council

Article 22

The Council's Rules of Procedure, other general acts of the Council, decisions on the election or termination of the function of a chief public prosecutor or public prosecutor, decision on the election of the president and vice president of the Council, decision on the election of Council members from among the public prosecutors, decision on the termination of the function of Council members, as well as other decisions of the Council determined by law shall be published in the "Official Gazette of the Republic of Serbia" and on the Council's website.

Publicity of Work

Article 23

The Council prepares an annual report, which is published on the Council's website.

The Council's annual report is submitted to the National Assembly for information purposes.

The Council regularly informs the public about its work in the manner regulated by the Council's Rules of Procedure.

Ethics Committee

Article 24

The Ethics Committee ensures the compliance with the Code of Ethics.

The Ethics Committee submits to the High Judicial Council an annual report on compliance with the Code of Ethics and performs other duties in accordance with the act of the Council.

III. PROCEDURE FOR THE ELECTION OF COUNCIL MEMBERS

1. Selection of Candidates for Members of the Council from Among the Public Prosecutors

Decision on the Commencement of the Procedure

Article 25

The decision to start the selection of candidates for the elective members of the Council from among the public prosecutors is made by the president of the Council no later than six months before the expiry of the term of mandate of the elective members of the Council from among the public prosecutors.

The decision from Paragraph 1 of this Article is published in the "Official Gazette of the Republic of Serbia" and on the website of the Council and submitted to the president of the Election commission of the Council (hereinafter: the Election Commission).

Representation of public prosecutor's offices

Article 26

The elective members of the Council from among the public prosecutors are elected from the following public prosecutor's offices:

- 1) One from the Supreme public prosecutor's office;
- 2) One from the appellate public prosecutor's offices, the Public Prosecutor's Office for Organised Crime and the Public Prosecutor's Office for War Crimes;
- 3) One from the higher public prosecutor's offices;
- 4) Two from the basic public prosecutor's offices.

Conditions for candidacy

Article 27

Any public prosecutor may be a candidate for an elective member of the Council from among the public prosecutors.

As the member of the Council may be elected a public prosecutor nominated by the collegium of one or more public prosecutor's offices according to the type and level of public prosecutor's office (Article 26) in which the candidate performs the function of a public prosecutor.

The collegium of one public prosecutor's office may nominate only one candidate.

At the collegium, the proposed candidates are voted for secretly.

As a member of the Council may be elected a public prosecutor who is supported by at least 15 holders of the public prosecutor's function according to the type and level of the public prosecutor's office in which he/she performs the public prosecutor's function (Article 26). The chief public prosecutor and public prosecutor may support only one candidate.

Notwithstanding the provisions of Paragraph 5 of this Article, a candidate for an elective member of the Council from among the public prosecutors of the Supreme public prosecutor's office and public prosecutor's offices of special jurisdiction acquires the status of a candidate by submitting an application.

The chief public prosecutor and acting chief public prosecutor cannot be candidates for election to the Council.

Voting Right

Article 28

The holders of the public prosecutor's function elect the members of the Council on the basis of free, general, equal and direct electoral rights, by secret voting.

No one has the right, on any grounds, to prevent or compel a holder of the public prosecutor's function to vote or to hold him accountable for voting.

The holder of the public prosecutor's function votes for only one candidate from the list of candidates of the type, i.e. the level of the public prosecutor's office in which he/she performs the public prosecutor's function (Article 26).

Election Commission

Article 29

The process of nominating candidates for elective members of the Council from among the public prosecutors is organised and carried out by the Election Commission.

The Election Commission consists of the president and four members and their deputies, who are chosen by the Council from among the chief public prosecutors and public prosecutors, with their consent.

Deputy president and deputy members of the Election Commission have the same rights and responsibilities as the members they replace.

Council members cannot at the same time be the members and deputy members of the Election Commission.

The mandate of the members of the Election Commission lasts five years, with the possibility of re-election.

Members of the Election Commission cannot run for election as members of the Council.

Position of the Election Commission

Article 30

The Election Commission is independent in its work and works on the basis of laws and regulations adopted on the basis of laws.

The Election Commission makes decisions by the majority vote of all members.

For its work, the Election Commission reports to the Council, which ensures the conditions for its work.

The public prosecutor's offices are obliged to provide assistance to the Election Commission and to provide it with the data necessary for its work.

Election Actions

Article 31

The Election Commission, after receiving the decision to commence the candidate nomination procedure, makes a decision on election activities and deadlines. The decision of the Election Commission is published on the website of the Council.

The President of the Election Commission submits to the Supreme public prosecutor and the chief public prosecutors the decision on starting the candidate nomination procedure and the decision on election actions and deadlines.

The Supreme public prosecutor and the chief public prosecutor are obliged to make the decision on the commencement of the candidate nomination procedure and the decision on election activities and deadlines available to all public prosecutors in the public prosecutor's office they manage, in an appropriate manner.

The chief public prosecutor shall be obliged to schedule the collegium session of the public prosecutor's office for the nomination of candidates within the deadline determined by the decision of the Election Commission.

Candidacy Application

Article 32

The application for candidacy shall be submitted to the Election Commission within 30 days from the date of publication of the decision on the initiation of the procedure for nominating candidates for elective members of the Council in the "Official Gazette of the Republic of Serbia".

The candidacy application shall be accompanied by a signed statement of the candidate accepting the candidacy and the decision of the Public Prosecutor's Office collegium to support the candidacy, i.e., a form with the signatures of the chief public prosecutors and public prosecutors supporting the candidate and personal and professional information about the candidate.

A candidate may withdraw his/her candidacy by submitting a written statement to the Election Commission no later than eight days from the date of determination of the final list of candidates.

Procedure Upon Application

Article 33

The Election Commission examines the timeliness, admissibility and completeness of the application.

Within 24 hours of receiving an incomplete application, the Election Commission will issue a conclusion inviting the candidate to complete the submitted application within 48 hours of receipt, with a warning that otherwise the application will be rejected.

Untimely, inadmissible and incomplete application shall be rejected by the Election Commissions decision.

Final List of Candidates

Article 34

The Election Commission determines the final list of candidates within 15 days from the expiry of the deadline referred to in Article 32, Paragraph 1 of this law.

The Election Commission determines one final list of candidates for each degree and type of public prosecutor's office (Article 26).

The order of candidates on the lists is determined according to the order of submission of candidacy applications to the Election Commission.

The Election Commission at the same time publishes all final lists of candidates, together with the personal and professional data and programmes prepared by the candidates, on the Council's website.

Presentation of Candidates

Article 35

All candidates have the same right to be represented to the holders of the public prosecutor's function. The Election Commission determines the deadline for the presentation of candidates, which cannot be shorter than 30 days. The Election Commission determines the schedule for presentations of candidates in the seats of appellate public prosecutor's offices and informs all holders of public prosecutor's functions about it according to the type and level of the public prosecutor's office (Article 26).

Chief public prosecutors are obliged to allow public prosecutors to attend the presentations of candidates at the seats of the appellate public prosecutor's offices on whose territory they are located. The Election Commission, with the consent of the candidates, organises video recording of the presentation of candidates in the appellate public prosecutor's offices and publishes the videos created in this way on the Council's website.

Candidates are entitled to paid leave for the days when they are presenting themselves in the seats of the appellate public prosecutor's offices.

The candidates have the right to present themselves directly to the holders of the public prosecutor's function and in other public prosecutor's offices according to the type and level of the public prosecutor's office (Article 26).

The Council provides compensation for the travel expenses of the candidates for holding of presentations in the seats of appellate public prosecutor's offices.

Election Time and Polling Stations

Article 36

The Election Commission determines the date and time of the election and informs the Supreme public prosecutor and the chief public prosecutors about it ten days before the election.

The Supreme public prosecutor and the chief public prosecutors inform the public prosecutors of the day and time of the election, no later than eight days before the day of the election.

Voting for candidates for elective Council members from among the public prosecutors is carried out at polling stations in public prosecutor's offices designated by the Election Commission.

Polling Stations and Voting Material

Article 37

The Election Commission shall be obliged to prepare voting materials for each polling station in a timely manner, namely: the list of holders of the public prosecutor's function that vote at the polling station, the required number of ballots and the established list of candidates.

The Election Commission appoints a Polling committee for each polling station.

The Polling committee consists of three public prosecutors who are not candidates for election.

The Election Commission organises the training for the members of the Polling committees.

Method of Voting

Article 38

The established list of candidates on the day of voting must be prominently displayed at all polling stations and in all public prosecutor's offices according to the degree and type of public prosecutor's offices (Article 26), which choose the candidate from that list of candidates.

Each holder of the public prosecutor's function votes in person.

Voting is secret.

Voting is done on certified ballots.

The Polling committee conducts voting in the public prosecutor's office designated in a timely manner by the Supreme public prosecutor or chief public prosecutor.

Exception from Paragraph 5 of this Article, if a holder of the public prosecutors function is unable to come to the polling station in the premises of the public prosecutor's office due to health reasons, at his request the Polling committee may enable him to vote outside the polling station.

Determining the Results

Article 39

After the closing of the polling stations, the Polling committee shall complete, sign and deliver to the Election Commission the voting results record that contains the number of holders of the public prosecutor's function with the right to vote at that polling station, the number of holders of the public prosecutor's function who vote, the number of ballots that have been inserted into the ballot box, the number of invalid voting ballots, number of valid ballots and number of votes received by each of the candidates.

The Election Commission determines the total number of holders of the public prosecutor's function and the number of holders of public prosecutor's function who voted by polling stations, the number of unused, invalid and valid ballots, the number of votes received by candidates at individual polling stations, as well as the total number of votes received per candidate for each list of candidates.

The record of determining the results of the election, signed by all members of the Election Commission, is submitted to the Council.

The Right to Complain

Article 40

The holder of the public prosecutor's office has the right, through the Election Commission, to submit a complaint to the Council for a violation of the electoral rights within 24 hours from the moment when the violation of the electoral right was committed.

The Council decides on the complaint by virtue of a decision within 48 hours from the receipt of the complaint and delivers the decision to the person who submitted the complaint through the Election Commission. If the Council fails to adopt a decision on the complaint within the prescribed deadline, it is considered that the complaint has been adopted.

If the Council approves the complaint, it will invalidate the electoral action, i.e. the election, and the electoral action or election is repeated within ten days.

The Right to Appel

Article 41

Against the decision of the Council by which the complaint was rejected or refused, the applicant may submit an appeal to the Administrative court within 48 hours of the publication of the decision.

Against the decision of the Council which adopted the objection, the candidate and every holder of the public prosecutor's function may submit an appeal to the Administrative court within 48 hours from the publication of that decision.

The Administrative court shall decide on the appeal within 72 hours of receiving the appeal with case file.

If the Administrative court accepts the appeal and cancels the electoral action or the election, the corresponding electoral action or the election will be repeated in ten days at the latest.

The decision adopted in the appeal procedure is final and no extraordinary legal remedies provided for by law governing administrative disputes may be filed against it.

Publication of Results

Article 42

The public prosecutor who receives the highest number of votes according to the type and level of the public prosecutor's office (Article 26) is elected as a member of the Council.

Notwithstanding the provisions of Paragraph 1 of this Article, two candidates with the highest number of votes from among the public prosecutors of the basic public prosecutor's offices are elected as members of the Council.

If two or more candidates according to the type and level of the public prosecutor's office (Article 26) have the same highest number of votes, the elections are repeated for those candidates within 15 days.

After deciding on the complaint or after the expiry of the deadline for submitting the complaint, the Council announces the final results of the voting and delivers a decision confirming the election of the Council member.

2. Election of the Members of the Council Elected by the National Assembly

Article 43

The National Assembly elects four members of the Council among the prominent lawyers with at least ten years of experience in the legal profession among the eight candidates proposed by the National Assembly's committee responsible for the judiciary (hereinafter: the Committee), after a public competition, with the votes of two thirds of all members of the Parliament.

Conditions for the Election of the Council Members

Article 44

A person who, in addition to the conditions stipulated by Article 43 of this law, also meets the following conditions, may be elected as a member of the Council if he/she :

- 1) meet the general requirements for work in state bodies;
- 2) acquired a university education during basic academic studies with at least 240 ECTS or university education obtained during basic studies at the Faculty of Law for at least four years;
- 3) have experience and knowledge of significance for the work of the judiciary;
- 4) have worthiness for performing the function of a Council member;
- 5) are not fullfeed general conditions for old-age pension;
- 6) are not performing the function of a public prosecutor or a judge;
- 7) have not exerted undue influence on the work of the public prosecutor's function or the public prosecutor's office, judges or courts;
- 8) have not, in public appearances, advocated positions that threaten the independence of the public prosecutor's office or the independence of the judiciary.

Worthiness implies moral qualities that the member of the Council should possess and his/her conduct in accordance with those qualities. The moral qualities are: honesty, conscience, fairness, dignity, perseverance and exemplary behaviour, and behaviour in accordance with those characteristics implies safeguarding the reputation of the Council and the public prosecutor's office in the exercise of their function and beyond it, awareness of social responsibility, safeguarding independence and impartiality, reliability and dignity in performing the function and beyond it and keeping confidence in work and authority of the Council and the public prosecutor's office in public.

During the election, special emphasis is placed on professional or scientific work of importance for the work of the judiciary, as well as understanding of the judiciary and advocacy in professional work or public activity for the independence of the public prosecutor's office.

The Procedure for the Election of the Council Members Elected by the National Assembly

Article 45

The National Assembly elects a member of the Council from among the prominent lawyers, after a public competition, at the proposal of the Committee, with the votes of two-thirds of all members of the Assembly .

The Committee proposes to the National Assembly twice the number of candidates than the number of Council members who are elected.

Opening of the Public Competition

Article 46

The public competition for the election of a member of the Council is announced by the decision of the president of the National Assembly no later than six months before the expiry of the term of mandate of the member of the Council.

If the mandate of a Council member is terminated before the end of the term for which he/she was elected, a public competition is announced within 15 days from the date of termination of mandate.

The public competition is published in the "Official Gazette of the Republic of Serbia" and at least one other media with national coverage in the Republic of Serbia and on the websites of the National Assembly and the Council.

If that an insufficient number of candidates is registered for the public competition, a new public competition shall be announced within 15 days from the expiry of the deadline for the submission of applications for the previous public competition.

Submission of Applications for a Public Competition

Article 47

Applications for a public competition are submitted to the Committee within 15 days of the announcement of the public competition in the "Official Gazette of the Republic of Serbia".

The application for the public competition contains information about the candidate and evidence of the fulfilment of the conditions for the election of a Council member. The detailed content of the application is determined by the decision on the public competition.

Implementation of the Public Competition

Article 48

The public competition for the election of Council members is implemented by the Committee.

The Committee examines the applications for the public competition and the enclosed evidence on the fulfilment of the conditions for the election of a Council member.

Unauthorised, incomplete and untimely applications are rejected by the Committee.

The Committee may obtain the data about the candidate from the authorities, organisations and legal entities in which the candidate has worked, as well as other data about the candidate that are significant for the election.

After examining the untimely, inadmissible and incomplete of the applications, the Committee prepares a list of candidates who meet the conditions for election.

The Committee publishes the biographies of candidates who meet the conditions for election and the schedule of interviews with them on the website of the National Assembly.

At a public session, the Committee, with the participation of the general and expert public, considers the applications and submitted evidence and conducts an interview with the candidates from the list referred to in Paragraph 5 of this Article.

Interview with the candidates is broadcasted directly by media.

Determining the Proposal of Candidates

Article 49

At a special session, the Committee adopts a proposal for double number of candidates for the election of the Council members from the number that is to be elected, which submits to the President of the National Assembly within 90 days from the expiry of the deadline for application of candidates.

Every member of the Committee has the right to propose a candidate for election of the Council members.

The proposal from Paragraph 1 of this Article is decided on~~adopted~~ by the Committee by a majority vote of the total number of Committee members, with the Committee being obliged to consider the proposals of candidates for election of the Council members given by every member of the Committee.

The President of the National Assembly may extend the deadline referred to in Paragraph 1 of this Article by 30 days, based on the reasoned proposal of the Committee.

Session for the Election of Council Members

Article 50

The President of the National Assembly convenes a session for the election of Council members.

The session is scheduled no sooner than 15 days from the receipt of the proposal for the election of the Council member, under the condition that the session must be held and completed within 30 days from the date of receipt of the proposal.

Before holding the session referred to in Paragraph 1 of this Article, the Committee organises a public hearing for the purpose of presenting the candidate, with the participation of the representatives of the general and professional public.

At the session referred to in Paragraph 1 of this Article, the National Assembly elects the Council members with the votes of two thirds of all members of the Parliament.

The National Assembly votes for each candidate individually, and four candidates who have received the highest number of votes are elected.

If more proposed candidates have received the same, and at the same time the lowest, number of votes sufficient for election, election among those candidates is subject to repeated voting.

Commission for the Election of Council Members

Article 51

If the National Assembly fails to elect all the members of the Council who are to be elected within the period referred to in Article 50, Paragraph 2 of this law, the remaining members, from among all the candidates who meet the conditions for election, shall be elected by the Commission consisting of the president of the National Assembly, the president of the Constitutional Court, the president of the Supreme Court, the Supreme public prosecutor and the Ombudsman, by a majority of votes, within 30 days from the date of expiry of the deadline for the election by the National Assembly.

The President of the National Assembly convenes and presides the session of the Commission.

Before the election of a Council member, the Commission considers the applications of all the candidates who meet the conditions for election at a public session.

The Commission conducts an interview with all the candidates who meet the conditions, which is open to the public and broadcasted live through the media.

The decision on the election of a Council member is made by secret voting and must be reasoned.

A Council member may only vote for the number of candidates as there are remaining Council members for election.

If more proposed candidates have received the same, and at the same time the lowest, number of votes sufficient for election, election among those candidates is subject to repeated voting.

If the Commission fails to reach a decision within the deadline referred to in Paragraph 1 of this Article, a new public competition shall be announced for the election of the Council member for whom no election decision has been made.

The Commission, by a majority of votes, adopts the Rules of Procedure, which regulate the work in more detail.

Professional and administrative tasks for the needs of the Commission are performed by the National Assembly.

Publication of the Decision on the Election of a Council Member

Article 52

The decision on the election of the Council member elected by the National Assembly is published in the "Official Gazette of the Republic of Serbia" and on the websites of the National Assembly and the Council.

3. Taking Function by the Elective Member of the Council

Article 53

The elective member of the Council takes the function within 30 days from the date of publication of the decision on the election in the "Official Gazette of the Republic of Serbia".

If an elective member of the Council was elected before the expiry of the mandate of the previous Council member, the elected Council member takes the function within 30 days from the date of expiry of the mandate.

An elective member of the Council takes the function at the ceremonial session of the Council.

If the elective member of the Council does not take the function within the deadline prescribed by Paragraphs 1 and 2 of this Article without a valid reason, it will be considered that he/she is not elected.

The Council adopts a decision stating that a member of the Council has not been elected.

If a member elected by the National Assembly does not take function, the Council notifies the National Assembly thereabout.

The Council, i.e., the National Assembly, shall announce the elections, i.e., a public competition for the election of the Council member within 15 days from the day of the Council's decision from Paragraph 5 of this Article.

IV. TERMINATION OF FUNCTION OF THE COUNCIL MEMBER

Reasons for the Termination of Function

Article 54

The function of a member of the Council ends with the termination of the function on the basis of which he/she became a member of the Council.

The function of an elective member of the Council ends at the expiry of the mandate.

Before the expiry of the mandate of an elective member of the Council, his/her function ends at member's request, if he/she is convicted of a criminal offence and sentenced to a prison sentence of at least six months, if his/her citizenship of the Republic of Serbia is terminated, if he/she becomes a member of a political party, if he/she becomes undignified to perform the function of a member of the Council, or if he/she does not ~~participate in perform~~ the ~~workfunction~~

of ~~the~~ Council without justified reason. ~~member in accordance with the Constitution and the law.~~

The function of an elective member of the Council from among the public prosecutors ends with the termination of the public prosecutor's function.

An elective member of the Council elected by the National Assembly ceases to be a member of the Council if he/she permanently loses his/her capacity to perform the function of a Council member or fulfils the general conditions for old-age pension.

The loss of ability to perform the function of a Council member is determined on the basis of the expert opinion of a competent health institution.

The competent court is obliged to submit to the Council a final court decision on the conviction of a member of the Council to a prison sentence of at least six months.

Decision on the Termination of Function of Council Member

Article 55

If an elective member of the Council requests the termination of his/her function, if he/she is convicted of a criminal offence to a prison sentence of at least six months, if his/her citizenship of the Republic of Serbia ceases, if he/she permanently loses his/her ability to perform the function of a Council member or if he/she meets the general requirements for an old-age pension, the Council shall adopt a decision on the termination of the function of a Council member within 15 days from the day of learning the reason for the termination of the function.

The decision on termination of function referred to in Paragraph 1 of this Article is made by the Council if the public prosecutor's function of an elected Council member from among the public prosecutors has been terminated.

Decision on the Proposal for Termination of Function of a Council Member

Article 56

The function of the elective member of the Council may be terminated before the expiry of the mandate if he/she becomes a member of a political party, if he/she becomes unworthy to perform the function of a Council member or if he/she does not participate in perform the workfunction of ~~the~~ Council without justified reason~~member in accordance with the Constitution and the law.~~

A proposal for the termination of the function of a Council member may be submitted by a Council member for the reasons prescribed in Paragraph 1 of this Article.

The member of the Council against whom the proposal was submitted for the termination of the function has the right to be immediately informed about the proposal, to become familiar with the content of the proposal and the evidence, to provide explanations and evidence for his/her allegations either directly or through a proxy and to verbally present the allegations before the Council.

The Council by its decision may reject or adopt the proposal and decide on the termination of the function of the Council member.

The member of the Council against whom the proposal for the termination of function is submitted is excluded from the decision-making process.

Right to Appeal with the Constitutional Court

Article 57

A member of the Council has the right to lodge an appeal against the decision on termination of the function from Articles 55 and 56 of this Law with the Constitutional Court within 15 days from the day of receipt of the decision, which excludes the right to submit a constitutional appeal.

The Constitutional Court is obliged to bring a decision on the appeal referred to in Paragraph 1 of this Article within 30 days from the day the appeal was submitted to the Constitutional Court.

The appeal from Paragraph 1 of this Article does not delay the execution of the decision on the termination of function.

V. ADMINISTRATIVE OFFICE

Activities, Organisation and the Method of Work of the Council

Article 58

An Administrative Office is established to perform professional, administrative and other tasks within the Council.

The organisation, task and method of work of the Administrative Office are regulated in more detail by an act of the Council.

The rights and obligations of employees in the Administrative Office are subject to the regulations governing the position of civil servants and officials.

Secretary of the Council

Article 59

The Council has a secretary who is appointed for a period of five years and may be reappointed.

The Secretary is appointed by the Council.

The Secretary manages the Administrative Office and reports to the Council.

The secretary has the status of a civil servant in office.

The conditions for the appointment of the secretary are determined by an act of the Council.

Assignment of the Public Prosecutor in Council

Article 60

A public prosecutor may be assigned to the working bodies of the Council for the purpose of performing professional duties.

The decision on assignment is made by the Council, based on the obtained opinion of the chief public prosecutor of the public prosecutor's office in which the public prosecutor performs his/her function, with the written consent of the public prosecutor.

The assignment can last for a maximum of three years, without the possibility of re-assignment to the Council.

VI. TRANSITIONAL AND FINAL PROVISIONS

Election of Members of the Council Elected by the National Assembly

Article 61

The President of the National Assembly, on the day following the publication of this law in the "Official Gazette of the Republic of Serbia", shall announce a public competition for the election of Council members from among the prominent lawyers.

The Committee for the Judiciary of the National Assembly is obliged to submit the proposal for eight candidates for Council members within 30 days from the date of expiry of the candidate application deadline.

If the National Assembly fails to elect all members of the Council within the prescribed deadline, the deadline for adoption of a decision by the Commission referred to in Article 51 of this law on the election of the remaining Council members is 15 days from the date of expiry of the deadline for the decision of the National Assembly.

The Date of Constitution of the Council

Article 62

The day when the decision on the election of all members of the Council elected by the National Assembly is published in the "Official Gazette of the Republic of Serbia" is considered the day of the constitution of the Council.

Continuation of Exercising of Powers

Article 63

The State Prosecutorial Council, the Government and the National Assembly continue to exercise their responsibilities towards public prosecutors and deputy public prosecutors, which they have according to the laws in force until the constitution of the Council.

Termination of Function of a Member of the State Prosecutorial Council

Article 64

The function of the members of the State Prosecutorial Council is terminated on the day of constitution of the Council.

Notwithstanding the provision of Paragraph 1 of this Article, the member of the existing convocation of the State Prosecutorial Council who is the deputy public prosecutor shall continue to perform his/her duties as the Council member until the end of his/her term of office.

The members of the current convocation of the State ~~Prosecutorial~~~~Procecutorial~~ Council from rank of attorneys and ~~professors~~~~professors~~ of Faculty of Law may be elected as the member of the Council in accordance with the provision of this law.

A member of the State Prosecutorial Council from Paragraph 2 of this Article may perform another function in addition to the function of a member of the Council in accordance with the provisions of the law on the State Prosecutorial Council ("official gazette of RS", no. 116/08, 101/10), 88/11 and 106/15).

Continuation of work of the working body of the State Prosecutorial Council

Article 65

The Working body of the State Prosecutorial Council, established in accordance with the provisions of the Law on State Prosecutorial Council („Official Gazzette of the Republic of Serbia”no, 116/08, 101/10, 88/11 и 106/15) will continue its work as a

working body of the High Prosecutorial Council in accordance with the provisions of this Law.

Member of the working body from the Paragraph 1 of this Article perform its function in the working body until the mandate he is elected for expires.

Takeover of Employees, Rights, Obligations, Cases, Equipment, Means of Work and Archives

Article 66

~~Article 65~~

On the day of its constitution, the Council takes over the employees, as well as rights, obligations, cases, equipment, means of work and archives from the State Prosecutorial Council.

Election of the President and Vice President of the Council

Article ~~67~~ 66

The president and the vice president of the Council shall be elected within 15 days from the day of constitution of the Council.

Deadline for passing of by-laws

Article ~~68~~ 67

By-laws prescribed by this law shall be adopted within one year from the date of constitution of the Council.

The by-laws adopted in accordance with the Law on State Prosecutorial Council ("Official Gazette of the RS" no. 116/08, 101/10, 88/11 and 106/15) shall apply until the adoption of acts referred to in paragraph 1 of this Article, unless they are contrary to this law.

Expiry of the Law on the State Prosecutorial Council

Article ~~69~~ 68

The Law on the State Prosecutorial Council ("Official Gazette of RS", no. 116/08, 101/10, 88/11 and 106/15) ceases to be valid on the day of the constitution of the Council.

Final provision

Article 70 ~~69~~

This law enters into force on the date of the constitution of the Council, with the exception of the provisions of Articles 43 to 53 and Articles 61 to ~~70~~69, which enter into force on the date of publication in the "Official Gazette of the Republic of Serbia".